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THE ROLE OF LEGAL REFORM IN SUPPORTING CIVIL SOCIETY: AN INTRODUCTORY PRIMER

International Center for Not-For-Profit Law
and
United Nations Development Programme

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Disclaimer

The views expressed in this publication are those of the author(s) and do not necessarily represent those of the United Nations or UNDP.

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Preface

This year we mark the anniversaries of two scientific accomplishments. Four hundred years ago, Galileo Galilei made a subtle yet profound adaptation to the compound microscope invented just a few years earlier. Instead of looking downward, Galileo turned his spyglass to the night sky. Among other observations, Galileo discovered "Medicean stars" revolving around Jupiter. Today we call them Jupiter's moons, and they proved that not all heavenly bodies revolve around the Earth. His observations suggested that we are not the center of the universe, despite his contemporaries' protestations to the contrary. Literally and figuratively, Galileo revolutionized science by extending his perspective and looking outward.

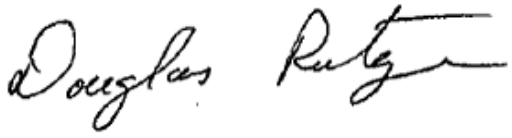
The same can be said of another scientific luminary we celebrate this year. In 1859, Charles Darwin published *On the Origin of Species*. Similar to Galileo, Darwin's insights would not have been possible if he had studied that which is close, rather than that which is far. Indeed, it was only by sailing aboard the HMS Beagle that Darwin encountered all manner of animals, many of which were unknown in England. It was the study of different environments – more specifically, the identification of similarities and differences – that unlocked creativity and intellectual innovation.

It is in a similar spirit that we present the Primer. We present no "solutions," for we have worked in over 100 countries and recognize that the legal framework for civil society must be adapted to the local environment. Rather, we have worked with our partners at UNDP to share comparative perspectives to facilitate creative thinking.

The need for innovation is apparent as we consider the confluence of contemporary challenges, including poverty, HIV/AIDS, climate change, and other constraints on human development. In addition, the global financial crisis has contributed to a recalibration of governance. This is most readily apparent in relations between government and business, as sectoral boundaries become increasingly blurred and governments apply a stronger hand to guide market forces.

This recalibration similarly extends to civil society. In the past year alone, over sixty countries have embarked on legal initiatives redefining the rights and responsibilities of civil society organizations. Some initiatives empower "whole of society" responses to contemporary challenges. Others limit civic space and disable participatory governance. In any event, the legal framework for civil society is a primary manifestation of a country's governance theory and plays a key role in the ability of nations to advance human development

We hope this Primer serves as a helpful resource for governments, civil society, and multilateral institutions seeking to promote an enabling environment for civil society. We thank UNDP for its generous guidance and support, and we express our appreciation to our partners around the world from whom we have learned so much.



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Foreword

The success of democratic governance depends on the existence of both a robust state and a healthy and active civil society. Strong levels of civic engagement are an essential element of participatory governance which today increasingly focuses on creating inclusive and responsive democratic institutions and increasing opportunities for citizen voice.

A critical factor for civil society organizations to work in a country is the legal and regulatory framework allowing and governing their establishment, space and scope to function in public life. A healthy civil society benefits from the rule of law and the realization of civil and political rights, which include freedom of expression, right to association and taking part in public affairs. Adequate regulatory frameworks are inextricably linked to society's right to development and defining development paths through democratic and inclusive processes.

UNDP can play a strategic role in mediating state-citizen relations, especially in fragile democracies or countries that are consolidating democratic gains, to advocate for support and an enabling environment in which civil society can function and contribute to development.

A number of governments increasingly seek UNDP advice and support in formulating a legal/regulatory framework for civic participation in public affairs. A 2008 global inventory of country office engagement with civil society showed that 60 per cent of country offices in Africa and Europe-CIS reported strong involvement in supporting legal frameworks. However, the survey also showed that there is a need for more effort in three regions: almost half of country offices in Asia-Pacific, Arab States and the Latin America and Caribbean regions reported little or no engagement in this area.

This primer was authored by the International Centre for Not-for-Profit Law, which specializes in this area and works with governments and civil societies in a number of developing countries to help draft progressive laws. With its definitions and explanations of different types of regulatory frameworks that exist, country case examples and lessons learned, and guidance on how to support governments and civil society, this primer is a thorough and comprehensive guide to colleagues in country offices and regional centres who deal with this important and often sensitive issue.

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I. Introduction

Attention to civil society and the wide range of organizations that fill the space between the state and the market has increased considerably in the past 20 years. We have witnessed what has been called a "global associational revolution" or "a massive upsurge of organized private, voluntary activity in virtually every region of the world."[1] Civil society organizations [CSOs] are playing an increasingly active role in social, economic and political spheres. Multilateral organizations including the United Nations and the World Bank have recognized the important role of civil society and have established mechanisms for engagement and dialogue with CSOs.[2] A strong civil society is an important end in itself, and also a crucial means towards delivering on specific objectives, such as the Millennium Development Goals [MDGs].

A state's legal framework is one of many factors that affect how conducive the overall environment is towards civil society and its organizations. An enabling legal framework is certainly no guarantee of a vibrant civil society, and a disabling or restrictive legal framework is not necessarily an insurmountable barrier for civil society engagement and participation in public affairs. Nonetheless, the legal framework plays a pivotal role and an overall supportive legal framework can be considered a necessary, but not sufficient, condition for the development of a strong and sustainable civil society sector.

Laws and policies affecting civil society are highly dynamic and volatile, and often subject to change. Many countries have revised and continue to refine the legal and regulatory framework affecting CSOs. Sometimes such revision is favorable to civil society, and sometimes it is constraining. Diverse contexts require a range of different responses and international actors should always consider a wide range of civil society support initiatives.

In all contexts, international actors need to carefully determine the opportunities for reform and whether to pursue:

1. Improvements to the legal framework governing civil society;
2. Improvements in the process of implementation of the law governing civil society; or
3. In circumstances where space for civil society is constricting but legal reform is not currently feasible, the most appropriate strategies to protect civil society, build its capacity to survive and respond where appropriate, and lay the foundations for future reform.

The aim of this paper is to provide (1) an introductory overview of the legal environment for civil society and (2) a general orientation to civil society law reform for international actors who are involved in advising on, designing or developing programmes which seek to promote a more conducive environment for civil society.

Definitions

It is important to define what we mean by "civil society" and CSOs. Volumes have been written on the meaning of "civil society"[3] and the task of defining the concept has proven a complex and sometimes

[1] Lester M. Salamon, S. Wojciech Sokolowski, and Regina List, *Global Civil Society: An Overview*, Center for Civil Society Studies, the Johns Hopkins University, © 2003, Lester M. Salamon.

[2] Key documents guiding UNDP engagement with civil society are available here: For information on broader UN engagement with civil society, see, e.g., United Nations Non-Governmental Liaison Service; Focal Points for NGOs (); Strengthening the Partnership between the UN and NGOs; DESA NGO Section.

For the World Bank, see World Bank dialogue with civil society.

[3] Numerous studies have sought to define civil society and to classify civil society organizations. As for a few examples, see the *UN Nonprofit Handbook Project*, Johns Hopkins Center for Civil Society Studies; the London School of Economics, Centre for Civil Society; CIVICUS Civil Society Index.

controversial process. The "civil society" sector has been labeled variously as the "third" sector, "voluntary" sector, "nonprofit" sector, "charitable" or "independent" sector, and the "social economy". The organizations making up civil society come in a diverse range of forms, which may include associations, foundations, non-profit corporations, public benefit companies, development organizations, community-based organizations, religious congregations and faith-based organizations, hospitals, universities, mutual benefit groups, sports clubs, advocacy groups, arts and culture organizations, charities, unions and professional associations, humanitarian assistance organizations, non-profit service providers and charitable trusts. Taken together, they are often referred to as non-governmental organizations (NGOs), not-for-profit organizations (NPOs), or civil society organizations (CSOs).

For purposes of this primer, UNDP defines civil society organizations based on its Policy of Engagement with CSOs (2001)[4]: "CSOs are **non-state actors whose aims are neither to generate profits nor to seek governing power."** This definition is intended to embrace the diverse range of organizational forms listed in the prior paragraph. In the UNDP definition, political parties are not included as part of civil society, although they are clearly important players in development contexts and UNDP engages with them in a variety of contexts and ways.[5] Moreover, some of the issues around freedom of association also affect political parties so they are used in this document as examples where relevant.[6] The paper will generally use the term "civil society" or "CSOs" but may make reference to other terms ("NGOs" or "NPOs"), if referenced as such by other sources.

For purposes of this primer, "international actors" includes the U.N., particularly UNDP, and other multi-lateral organizations such as the World Bank, the OSCE, the European Community, as well as bi-lateral governmental organizations and international NGOs. We recognize the broad and differing range of missions, mandates, entry points, and available tools for support and intervention. This paper is not tailored exclusively to UNDP, and neither presumes to provide advice on what strategy might be appropriate for any given country, nor seeks to detail 'how-to' guidance on implementing any given strategy. Instead, the paper seeks to raise issues of common concern relating to civil society legal reform. The most effective strategy and implementation of any given strategy can only be determined by those operating within a specific country context.

Content and Structure

Section II contains an overview of the legal framework for civil society, describing the roots of civil society in international law, common features of the national-level legal frameworks governing civil society, and the fundamental importance of law to civil society. Section III presents four (4) country reports, which review the legal reform challenges in each, as well as the legal reform strategies adopted in pursuing reform; these case studies reveal some of the key elements of successful legal reform.[7] Section IV seeks to provide a general orientation to international actors in supporting a more enabling legal environment for civil society. Finally, Section V concludes the paper with a checklist for reform actors. Answers to frequently asked questions can be found in the appendix.

[4] See UNDP (2001) UNDP and Civil Society Organizations: A Policy of Engagement

[5] See UNDP (2005) A Handbook on Working with Political Parties.

[6] Indigenous peoples' organisations (IPOs) sometimes do not define themselves as NGOs or CSOs as in some contexts they do not want to come under government legislation and structures, which are seen to undermine their right to self-determination. However, it is beyond the scope of this paper to deal with the specific issues related to IPOs, although their particular needs must be taken into account in legal reform initiatives.

[7] We recognize that these case studies are merely illustrative examples of reform challenges and reform strategies. The lessons learned in Section IV do not depend alone on the case studies, but additionally on ICNL experience in more than 100 countries, and on research into the laws of more than 150 countries.

II. Overview of Legal Framework for Civil Society

A. International Law and Civil Society

The international legal basis for civil society – that is, for associational life as expressed through the diverse range of civil society organizations – is rooted in the body of international law that protects the fundamental freedoms of association, peaceful assembly and expression, as well as freedom of thought, conscience and religion, and the right to take part in the conduct of public affairs.[8]

The U.N. human rights instruments protecting these fundamental freedoms include the following:

- Universal Declaration of Human Rights (UDHR) (1948): Article 20 states "Everyone has the right to freedom of peaceful assembly and association."
- International Covenant on Civil and Political Rights and the First Optional Protocol (ICCPR) (1976): Article 22 states "Everyone shall have the right of freedom of association with others, including the right to form and join trade unions for the protection of his interest."
- International Convention on the Elimination of All Forms of Racial Discrimination (1969): Article 5 states "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: … The right to freedom of peaceful assembly and association."
- Convention on the Elimination of All Forms of Discrimination against Women (1989): Article 7 affirms that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right …(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country."
- Convention on the Rights of the Child (1990): Article 15 maintains that "States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly."
- UN General Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Defenders Declaration) (1999).

UN Defenders Declaration, Article 5:

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

a. To meet or assemble peacefully;
b. To form, join and participate in non-governmental organizations, associations or groups;
c. To communicate with non-governmental or intergovernmental organizations.

[8] Its origins in political thought go back to concepts of national sovereignty, through which people concede power to the sovereign but power and authority remain with the people.

The State has a duty to promote respect for human rights and fundamental freedoms. That duty includes both a 'negative' responsibility – i.e., to refrain from interference with rights and freedoms – and positive – i.e., to ensure that the legal framework is appropriately enabling and that the necessary institutional mechanisms are in place "to ensure all individuals" the recognized rights and freedoms.[9]

This means that states have certain obligations to protect these rights with respect to third parties. Article 2 of the ICCPR is explicit in describing this State duty.[10]

International Covenant for Civil and Political Rights, Article 22:

No restrictions may be placed on the exercise of this right [freedom of association with others] other than those which are prescribed by law and which are necessary in a democratic society in the interests of 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

State interference with fundamental freedoms must be based on legal grounds. First, certain rights are derogable in times of public emergency which threatens the life of the nation.[11] Second, the ICCPR sets the parameters for restrictions on the right to freedom of association in Article 22(2).[12]

In other words, excepting situations of public emergency, restrictions on the exercise of freedom of association are *only* justifiable where:

(a) Prescribed by law;
(b) In the interests of one of the four legitimate state interests:
    - National security or public safety;
    - Public order;
    - The protection of public health or morals;
    - The protection of the rights and freedoms of others; *and*
(c) Necessary in a democratic society.

[9] See the U.N. Charter, Articles 55-56; the Universal Declaration of Human Rights, Sixth Preamble; ICCPR, Article 2; ICESCR, Article 2; U.N. Declaration on the Right to Development, Article 6; U.N. Defenders Declaration, Article 2.

[10] The ICCPR Human Rights Committee also emphasized the state obligation in General Comment 31(7) (2004): "Article 2 requires that States Parties adopt legislative, judicial, administrative, educative, and other appropriate measures in order to fulfill their legal obligations."

[11] Article 4 authorizes States "in time of public emergency which threatens the life of the nation" to "take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

[12] While only binding on signatories to the ICCPR, there are sound arguments for broader applicability. As members of the United Nations, every government has accepted obligations to protect the rights enshrined in international law, including the Universal Declaration and the ICCPR, among others. No state has ever sought to join the UN and reserve against Articles 55 and 56 of the Charter, according to which member states pledge themselves to take joint and separate action to promote "universal respect for and observance of human rights and fundamental freedoms without distinction as to race, sex, language, or religion." Of the eight States that abstained from the General Assembly vote in 1948, only Saudi Arabia has not renounced its abstention. (Forsythe, David, Human Rights Fifty Years after the Universal Declaration, PS: Political Science and Politics, Vol. 31, No.3 (Sep. 1998).

International Covenant for Civil and Political Rights, Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

To support compliance with U.N. human rights instruments, the U.N. has established a number of protective mechanisms. For example, the Human Rights Committee[13] was created to help ensure state compliance with the International Covenant on Civil and Political Rights, and is empowered to accept individual complaints respecting alleged violations.[14] The 1503 Procedure, based on a resolution of the UN Commission on Human Rights from 1970, is designed for complaints that appear to show "consistent patterns of gross and reliably attested human rights violations received from individuals or NGOs."[15] "Special procedures" refers to the mechanisms used by the Human Rights Council to address specific country situations or thematic issues; special procedures may be an individual (e.g., the Special Representative of the U.N. Secretary-General on Human Rights Defenders) or a working group.[16] None of these mechanisms can issue legally binding decisions that force states to comply, but the political and moral force of the decisions may be significant in influencing state behaviour.[17] For example, statements by human rights treaty bodies and compliance committees are increasingly being used by civil society to name and shame governments; this constitutes an important trend in civil society's use of international mechanisms.

The body of international human rights law has been strengthened and, in many cases, complemented by regional human rights instruments, in which the freedoms of association and expression are also enshrined.

[13] The Human Rights Committee should not be confused with the more high-profile Commission on Human Rights, a Charter-based mechanism, or its replacement, the Human Rights Council. Whereas the Commission on Human Rights was a political forum where states debated all human rights concerns (since June 2006, replaced by the Council in that function), the Human Rights Committee is a treaty-based mechanism pertaining only to the ICCPR.

[14] More information regarding the individual complaint procedure is available here.

[15] See Front Line Defenders at http://www.frontlinedefenders.org/manual/en/udhr_m.htm; more recently, a new complaint procedure has been established in relation to the 1503 procedure: http://www2.ohchr.org/english/bodies/chr/complaints.htm.

[16] More information on special procedures, including the UN Special Rapporteurs, and the UN Special Rapporteur on Human Rights Defenders who accepts urgent communications.

[17] The political and moral force of international law generally is uncertain. See Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?* Journal of Conflict Resolution, Vol. 49, No. 6, 925-953, © 2005 SAGE Publications ("After the nonbinding Universal Declaration of Human Rights, many global and regional human rights treaties have been concluded. Critics argue that these are unlikely to have made any actual difference in reality. Others contend that international regimes can improve respect for human rights in state parties, particularly in more democratic countries or countries with a strong civil society devoted to human rights and with transnational links. The findings suggest that rarely does treaty ratification have unconditional effects on human rights. Instead, improvement in human rights is typically more likely the more democratic the country or the more international nongovernmental organizations its citizens participate in. Conversely, in very autocratic regimes with weak civil society, ratification can be expected to have no effect and is sometimes even associated with more rights violation.")

Depending on the country and corresponding regional instrument, these may offer recourse to individuals and/or CSOs whose rights have been violated. Key regional instruments[18] include:

- African Charter on Human and Peoples' Rights.[19]
- American Convention on Human Rights.[20]
- American Declaration of the Rights and Duties of Man.[21]
- Arab Charter on Human Rights.[22]
- European Convention for the Protection of Human Rights and Fundamental Freedoms.[23]

To safeguard the rights contained in these charters and conventions, protective mechanisms have been established, including the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; the African Commission on Human and People's Rights and the recently-established African Court on Human and People's Rights; and the European Court on Human Rights. While any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization [of American States], may lodge petitions with the Inter-American Commission containing complaints of violation of the American Convention by a State Party, only the State Parties and the Commission have the right to submit a case to the Inter-American Court.[24] By contrast, in the African Court, individuals and non-governmental organizations can bring cases if they have been recognized as having observer status; if, on the other hand, the State has not opted to recognize the competence of the Court in cases from individual entities, then the Court cannot hear such petitions against the State.[25] The European Court goes furthest by clearly allowing individuals, groups of individuals and non-governmental organizations claiming to be victims of rights violations to submit cases to the Court.

From the Universal Declaration of Human Rights (1948) to the International Covenant on Civil and Political Rights (1976) to the Declaration on Human Rights Defenders (1999), recognition under international law of the importance of civil society activity has become increasingly well rooted. However the precise contours of the rights that flow from international law and attach to CSOs are the subject of ongoing discussion and debate.

[18] At the time of writing, there is no regional human rights treaty for Asia. Significantly, however, on November 20, 2007, Southeast Asian leaders adopted the ASEAN Charter, which sets out a common set of rules for trade negotiations, investment, the environment, and other fields; notably, the Charter envisions the creation of a regional human rights body. More recently, on July 20, 2009, the Terms of Reference for the ASEAN Intergovernmental Commission on Human Rights (AICHR) were approved at the 42nd meeting of the ASEAN Foreign Ministers in Thailand. It is anticipated that the AICHR will be operational late in 2009. (In addition, it should be noted that there is a "people's charter" on human rights, formally declared on 17 May 1998, but this is not a treaty or convention.)

[19] Entry into force 21 October 1986; adopted by the eighteenth Assembly of Heads of State and Government, June 1981, Nairobi, Kenya. Currently, 53 States are parties to the Charter.

[20] Entry into force 18 July 1978; adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969. Currently 24 States are parties to the Convention.

[21] Approved by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

[22] Adopted by the Council of the League of Arab States in its resolution 5437 (102nd regular session) on 15 September 1994.

[23] Entry into force 3 September 1953; adopted 4 November 1950 by the members of the Council of Europe, Rome.

[24] The question of standing before the Inter-American Commission and Court is addressed in Articles 44 and 61, respectively, of the American Convention on Human Rights.

[25] Protocol for Establishment of an African Court, art 5(3), art. 34(6). The Protocol provides for an optional jurisdiction for cases submitted by individuals or non-governmental organizations with observer status. For the Court to be able to hear cases from these individual entities, the State that is the subject of the complaint must have first recognized such competence at the time of ratification or any time thereafter. The Court cannot hear petitions against States that have not opted to allow that type of competence by the Court. It should be noted, however, that the African Court has, at the time of writing, only begun to accept cases.

Concluding Observations of the Human Rights Committee (ICCPR)

The Human Rights Committee, in reviewing individual complaints against the following States, expressed concern in its "concluding observations" with the protection of the right to freedom of association. The following is an illustrative list of countries and issues of concern. [More details are available here.]:

- **Mongolia**, ICCPR, A/47/40 (1992): Absence of adequate mechanisms to appeal against administrative decisions.
- **Estonia**, ICCPR, A/51/40 vol. I (1996): Limitations to the exercise of freedom of association for long-term permanent residents.
- **Lebanon**, ICCPR, A/52/40, vol. I (1997): Restriction of right to freedom of association through a process of prior licensing and control.
- **Slovakia**, ICCPR, A/52/40 vol. I (1997): Requirement that associations and NGOs be registered in order to function freely and restrictive prerequisites to registration.
- **Belarus**, ICCPR, A/53/40 vol. I (1998): Difficulties arising from the registration procedures to which NGOs and trade unions are subjected.
- **Kuwait**, ICCPR, A/55/40 vol. I (2000): Inability of the Kuwaiti Society for Human Rights to register as an association since 1992.
- **Syria**, ICCPR, A/56/40 vol. I (2001): Restrictions on establishment of private associations, including NGOs and human rights organizations.
- **Viet Nam**, ICCPR, A/57/40 vol. I (2002): Reported obstacles imposed on the registration and free operation of non-governmental human rights organizations.
- **Egypt**, ICCPR, A/58/40 vol. I (2003): Restrictions on efforts of NGOs to secure foreign funding.
- **Togo**, ICCPR, A/58/40 vol. I (2003): Inability of non-governmental human rights organizations to register.
- **Russian Federation**, ICCPR, A/59/40 vol. I (2003): The definition of "extremist activity" in the federal law is too vague to protect individuals and associations against arbitrariness in its application.
- **Colombia**, ICCPR, A/59/40 vol. I (2004): Actions taken against human rights defenders, including intimidation and physical attacks, as well as the interception of communications.

On the one hand, the rights created by treaty provisions apply by their terms to individuals, not to legal entities. International law explicitly protects the right of individuals to form trade unions and other associational forms, but there is no specific language addressing the rights of these associational forms once they have been established. One notable exception is trade unions; under a series of multilateral treaties, trade unions themselves are explicitly protected.[26]

On the other hand, there are strong arguments to support the concept that civil society organizations generally are subject to the protections afforded by international law:

(1) Many of the rights enshrined in the ICCPR and other U.N. human rights instruments can be enjoyed individually or in association with others. The ICCPR Human Rights Committee explains in General Comment No. 31 (2004): "The beneficiaries of the rights recognized by the Covenant are individuals. Although … the Covenant does not mention the rights of legal persons or similar entities or collectivities, many of the rights recognized by the Covenant, such as … the freedom of association … may be enjoyed in community with others. The fact that the competence of the Committee to receive

[26] See Freedom of Association and Protection of the Right to Organize Convention (ILO No. 87), 68 U.N.T.S. 17, *entered into force* July 4, 1950; Right to Organize and Collective Bargaining Convention (ILO No. 98), 96 U.N.T.S. 257, *entered into force* July 18, 1951; Workers' Representatives Convention (ILO No. 135), 883 U.N.T.S. 111, *entered into force* June 30, 1973; Labor Relations (Public Service) Convention (ILO No. 151), 1218 U.N.T.S. 87, *entered into force* Feb. 25, 1981.

and consider communications is restricted to those submitted by or on behalf of individuals (article 1 of the Optional Protocol) *does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.*" (emphasis added) Indeed, the U.N. Special Representative on human rights defenders, in reports to the Secretary-General, makes reference to the rights of NGOs ("NGOs have a right to register as legal entities" / "Governments must allow access by NGOs to foreign funding").[27]

(2) The European Convention on Human Rights (ECHR) acknowledged the right of "any person, non-governmental organisation, or group of individuals claiming to be the victim of a violation"[28] to submit an application after meeting the admissibility criteria. From this we can conclude that at least some of the fundamental rights of the European Convention also attach to NGOs. It would not make sense to create a right to complaint unless underlying substantive rights apply. Therefore, it must be assumed that references in the ECHR to "everyone" may in principle refer to natural *and* legal persons, including NGOs. Of course, certain fundamental rights, by their nature, do not apply to legal entities, such as the right to life, personal freedom and safety, family life and marriage. Recognizing that NGOs have no capacity to bring representative applications (i.e., invoke rights which protect their members), NGOs can only invoke rights that apply to them.[29]

(3) A similar right to complain exists in other regional human rights mechanisms, thus contributing to a growing consensus in the international legal framework that NGOs have rights that can be violated and defended. Under Article 44 of the American Convention on Human Rights, a right of NGOs to complaint is also recognized: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."[30] As mentioned above, the newly-established African Court permits individuals and non-governmental organizations to bring cases if they have been recognized as having observer status.

(4) Many decisions of the European Court of Human Rights[31] confirm the rights and standing of NGOs under the European Convention (see text box).[32] Specifically, the European Court has firmly established that there is a right under international law to form legally registered associations and that, once formed, these organizations are entitled to broad legal protections.[33] This has been tested by political parties and other associations in Turkey and elsewhere. In United Communist Party of Turkey and Others v. Turkey ("UCP"), the Court held that "the protection afforded by Article 11 [freedom of association] lasts for an association's entire life and that dissolution of an association …

[27] Report submitted by the U.N. Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178, pages 21-23.

[28] Protocol 11, European Convention on Human Rights.

[29] Erik Denters and Wino J.M. van Veen, *Voluntary Organizations in Europe: The European Convention on Human Rights*, International Journal for Not-for-Profit Law, Volume 1, Issue 2 (December 1998).

[30] American Convention on Human Rights, Article 44. Article 61, however, limits the right to bring cases before the Inter-American Court to only State Parties and the Inter-American Commission itself.

[31] Among all the regional courts, the European Court has the most well developed body of case law interpreting freedom of association issues. Very few cases related to freedom of association have been decided by the relatively young Inter-American Court, and the African Court, which has only recently become operational, has yet to issue any case decisions on freedom of association.

[32] For a detailed overview of the case law on freedom of association, see Zvonimir Mataga, *The Right to Freedom of Association under the European Convention on the Protection of Human Rights and Fundamental Freedoms*, © October 2006, European Center for Not-for-Profit Law.

[33] See, e.g., *Sidiropoulos and others v. Greece*, judgment of 10 July 1998, Reports of Judgments and Decisions 1998-IV; *United Communist Party of Turkey and others v. Turkey*, judgment of 30 January 1998, Reports 1998-I.

must accordingly satisfy the requirements of paragraph 2 of that provision …"[34] In Freedom and Democracy Party (ÖZDEP) v. Turkey, the Court affirmed the nexus between the freedom of association and the freedom of speech (Article 10 of the ECHR): "Article 11 must also be considered in light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and democracy."[35] By finding in UCP and ÖZDEP that the protection of Article 11 extends throughout the life of an association, the Court has effectively conferred the protections of the right to freedom of association on legal entities.[36]

European Court of Human Rights

Notable decisions relating to freedom of association include:

- United Communist Party of Turkey and Others v. Turkey (30 January 1998)
- Socialist Party and Others v. Turkey (25 May 1998)
- Sidiropoulos and Others v. Greece (10 July 1998)
- Freedom and Democracy Party (OZDEP) v. Turkey (8 December 1999)
- Stankov and the United Macedonian Organization Ilinden v. Bulgaria (2 October 2001)
- Refah Partisi and others v. Turkey (13 February 2003)
- Gorzelik and others v. Poland (17 February 2004)
- Moscow Branch of the Salvation Army v. Russia (5 October 2006)

In sum, the position that CSOs, as legal entities expressive of the freedom of association, have rights in and of themselves is increasingly viable. Because of European Court case-law, the argument is strongest in the European context, but defensible more broadly as well. The usefulness of such arguments, however, will likely depend on the national context within which CSOs are operating.

B. National Legal and Regulatory Framework Affecting CSOs

The relevance and impact of international law varies from country to country.[37] Civil society organizations operate within the framework created by national law and regulation in their respective countries. The overarching framework at the national level for most countries is the constitution, although there is often a

[34] UCP, European Court of Human Rights, (133/1996/752/951) (Grand Chamber decision, January 30, 1998) ("The right guaranteed by Article 11 would be largely theoretical and illusory if it were limited to the founding of an association, since the national authorities could immediately disband the association without having to comply with the Convention. It follows that the protection afforded by Article 11 lasts for an association's entire life and that dissolution of an association by a country's authorities must accordingly satisfy the requirements of paragraph 2 of that provision. . . .")

[35] OZDEP, European Court of Human Rights, (93 1998/22/95/784) (Grand Chamber decision, December 8, 1999).

[36] Leon Irish and Karla Simon, Recent Developments regarding the "Neglected Right", International Journal for Not-for-Profit Law, Volume 3, Issue 2 (December 2000).

[37] The international legal system assumes that the rule of international law applies in internal law. However, since many international rules can only be effectively enforced through domestic law mechanisms, the internal law view regarding the implementation of international law is significant. There are two traditional schools of thought on this matter. Monism holds that all law is part of a universal legal order, and that therefore international law automatically applies in the domestic legal order. Dualism is the theory that international law and domestic law are separate bodies of law. Rules of international law therefore must be actively incorporated into domestic law before they become effective in a particular jurisdiction.

huge discrepancy between constitutional rhetoric and actual practices. Flowing from the constitutional context, the national-level legal framework may consist of laws and regulations, executive orders and administrative directives, as well as judicial decisions interpreting that body of law. National law is often bound, at least in writing, by the confines of applicable international legal instruments, although this is certainly not always the case in practice. Of course, the precise contours of the legal framework vary considerably from country to country and depend on a variety of factors. The sections below examine some of the most common features of the legal and regulatory framework affecting civil society.

1) Constitution

The fundamental freedoms relating to opinion, speech, assembly and association are often codified in national constitutions. Human rights codified at the national level as constitutional or fundamental rights grant protection against arbitrary interference by the State but also entail certain obligations by the State to fulfill and protect these rights with respect to third parties. The precise wording of such constitutional protections varies from country to country. In some countries, the fundamental freedoms extend to citizens only, but more broadly in other countries to non-citizens as well.[38] In most countries, the fundamental freedoms of association and expression are not absolute; constitutions often articulate specific limitations in the language of the constitution itself. Specific examples of constitutional language applicable to the freedom of association in particular are contained in the following box.

While constitutions may contain empowering language, they are often undermined through disabling or inadequate sub-constitutional laws and regulations, or by poor or inadequate implementation. As but one example, North Korea protects the right to free association in its constitution ("Citizens are guaranteed freedom of speech, of the press, of assembly, demonstration and association"[39]), but not in actual practice.[40] It is the framework of sub-constitutional laws – including, of course, citizen access to and understanding of these laws as well as their practical implementation – that, in most cases, determines the actual scope and real meaning of free association.

2) Sub-Constitutional Laws and Regulations

Within the constitutional framework, the legislative and regulatory system consists of laws and regulations governing various forms of CSOs, and may also include executive orders and administrative directives, as well as judicial decisions. Indeed, it is the sub-constitutional legal framework that defines the organizational forms which civil society can assume.

Regardless of the number of underlying CSO forms, the legal framework will typically[41] address a wide range of issues relating to the *life-cycle* of a CSO, the fiscal treatment of CSOs, relations between the state and the civic sector, and public participation. Not surprisingly, there is no single piece of legislation that can embrace such a wide range of issues.

[38] For example, Bulgaria and Romania extends the constitutional protection of these freedoms to citizens only, but the Czech Republic, Hungary, Poland and Slovakia extend these constitutional freedoms more broadly to everyone.

[39] Article 67, Constitution of the Democratic People's Republic of Korea, amended and adopted on 5 September 1998.

[40] According to the U.S. State Department Country Report on Human Rights Practices for North Korea (2006): "The constitution provides for freedom of association; however, the government failed to respect this provision in practice. There were no known organizations other than those created by the government. Professional associations existed primarily to facilitate government monitoring and control over organization members."

[41] Laws and country reports have been collected from over 150 countries and analyzed to ascertain prevailing international practices. Access to information about various countries can be obtained through ICNL.

Constitutional Protections

- **Argentina** Art. 14: All inhabitants of the Nation are entitled to the following rights, in accordance with laws that regulate their exercise, namely: to associate for useful purposes.
- **Brazil**: Art. 5 (XVII): Freedom of association for lawful purposes is fully guaranteed, any paramilitary association being forbidden.
- **People's Republic of China**: Article 35. Freedom of speech, press, assembly: Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.
- **India**: Article 19(1)(c): All citizens shall have the right to form associations or unions.
- **Indonesia**: The second amendment to the 1945 Constitution guarantees the freedom of association (Article 28) and freedom of expression (Article 28E section (3)). The Constitution also, however, states that those rights can be limited for "satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society" (Article 28J section (2)).
- **Mexico**: Article 9: The right to assemble or associate peaceably for any lawful purpose cannot be restricted; but only citizens of the Republic may do so to take part in the political affairs of the country. No armed deliberative meeting is authorized.
- **Nigeria**: Art. 40: Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition. Art 45: (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom or other persons
- **Philippines**: SEC. 8: The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.
- **South Africa:** Art 18: Everyone has the right to freedom of association.
- **Uganda**: Art V (ii): The State shall guarantee and respect the independence of nongovernmental organisations which protect and promote human rights.
- **Viet Nam**: Art 69: The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of law.
- Interestingly, Montenegro's 1992 Constitution guarantees "national and ethnic groups the right to establish educational, cultural and religious associations, *with the financial support of the State*" (emphasis added) (Article 70, Constitution of Montenegro, 1992).

Rather, depending on the country and legal traditions, there is likely to be a complex web of legal sources that may include civil code provisions, laws relating to various organizational forms, tax law, labor law, criminal law, as well as regulations, decrees, and possibly court decisions that will likely have direct or indirect influence on the existence, operations and activities of CSOs.

The following chart (page 20) illustrates some of the issues commonly regulated, as divided into four (4) clusters (column 1), and the various laws and regulations in the legal framework that may govern each cluster of issues (column 2).

C. Unpacking the Components of Civil Society Law

The legal and regulatory framework addresses a range of fundamental issues, including, as suggested above: the *life-cycle* of a CSO, the fiscal treatment of CSOs, relations between the state and the civic sector, and public participation. In this section, we will examine some of the key features of the *life-cycle* of a CSO.

1) Characteristics of a CSO

As mentioned above, there are a wide range of legal **organizational forms**. Religiously-affiliated NGOs are not listed as a specific category as they are typically established under the framework for secular, not-for-profit organizations. Indeed, it is considered international good practice not to impose a special regulatory regime on these organizations. In this way, religion-based NGOs are simply subject to the same rules applicable to other not-for-profit organizations.[42]

Organizational Forms (illustrative list only)

- Association: membership-based
- Foundation: non-membership, often property-based
- Not-for-profit company: companies limited by the non-distribution constraint
- Trust: legal device used to set aside money or property of one person for the benefit of one or more persons or organizations
- Charity: legal form for voluntary organizations common in Britain and some Commonwealth countries.
- Specialized forms: public benefit companies, funds, centers/institutes, societies, humanitarian organizations, etc.

Regardless of the organizational form, however, all CSOs (as defined for purposes of this Guide) share a fundamental defining characteristic: the **non-distribution principle** (or constraint). The non-distribution constraint is the single most important feature that distinguishes CSOs from for-profit organizations. The principle prohibits the distribution of net earnings, assets or profits to any founder, director, officer, member, employee or donor of a CSO. In this way, the constraint seeks to ensure that all assets, earnings and profits shall be used to support the not-for-profit purposes of the CSO. Of course, the principle does not prevent the payment of reasonable compensation for work performed.[43]

To reinforce the non-distribution constraint, national law may also include other prohibitions:

- Prohibition on private inurement. Private inurement happens when an insider — an individual who has significant influence over the organization — enters into an arrangement with the CSO and receives benefits greater than she or he provides in return. The most common example is excessive

[42] For more information on international standards and country reports relating to the freedom of religion, see the Office of the UN High Commissioner for Human Rights and the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion and Belief. Also see this database of legislative texts and other documents relating to this issue.

[43] For more on the non-distribution principle, see the *UN Nonprofit Handbook Project*, Johns Hopkins Center for Civil Society Studies, © 2003 United Nations, pages 16-18; *Guidelines for Laws Affecting Civic Organizations*, by Leon Irish, Robert Kushen, Karla Simon, © 2004 Open Society Institute, page 48.

compensation, but may also include special personal benefits, such as scholarships for relatives.

- Prohibition on self-dealing. Self-dealing may result where an insider undertakes a transaction that constitutes an unreasonable benefit to an individual, often to the detriment of the CSO. For example, the founder of a CSO could arrange for the CSO to purchase an asset from him or her at an inflated price, or purchase an asset from the CSO at a fraction of its actual value.[44]

General life-cycle issues:	**Regulated potentially by**:
▪ Definition of CSO organizational type; ▪ Establishment; ▪ Registration; ▪ Internal structure and governance; ▪ Activities; ▪ External supervision, including reporting and auditing; ▪ Termination, dissolution and liquidation; ▪ Foreign civic organizations.	▪ Civil Code; ▪ Specific legislation governing various organizational types (laws on associations and foundations, for example) ▪ Legislation governing companies or corporate forms; ▪ Industrial relations acts (relating to trade unions). ▪ Licensing laws (for certain activities)
Fiscal Regulation of CSOs:	**Regulated potentially by:**
▪ Public benefit (or charitable) status; ▪ Income or profits tax exemptions for CSOs; ▪ Income or profits tax preferences for donations; ▪ Economic activities and the taxation of income from economic activities; ▪ VAT and customs duties; ▪ Government funding ▪ Investment income; ▪ Fundraising (public collections).	▪ Public benefit legislation; ▪ Income tax law; ▪ Law on VAT; ▪ Law on customs duties; ▪ Law on fundraising (public collections); ▪ Budgetary appropriations acts; ▪ Finance and audit acts; ▪ Land (duties and taxes) act.
State / Civic Sector Relations:	**Regulated potentially by:**
▪ Registration; ▪ External supervision, including reporting and auditing; ▪ Public policy / political activities; ▪ State subsidies, grants and contracts; ▪ QUANGOs and GONGOs; ▪ Policy documents for cooperation; ▪ Liaison offices.	▪ All of the laws/regulations listed above; ▪ Local government act; ▪ Law on public procurement; ▪ Laws on social assistance, healthcare, education; ▪ Laws establishing various kinds of not-for-profit organizations, often considered QUANGOs or GONGOs; ▪ Policy documents for cooperation.
Public Participation:	**Regulated potentially by:**
▪ Public policy / political activities; ▪ Receipt of information; ▪ Consultations; ▪ Active participation.	▪ Freedom of information laws; ▪ Acts on decisional transparency; ▪ Legislative process rules; ▪ Government policy.

[44] For more detail on these prohibitions, see *Guidelines for Laws Affecting Civic Organizations*, © 2004 Open Society Institute, pages 47-51.

Non-Distribution Principle

- No distribution of net earnings, assets or profits is permitted to any founder, director, officer, member, employee or donor of the CSO.
- Instead, the assets, earnings and profits shall be used to support not-for-profit purposes of the CSO.
- The constraint does not prevent the payment of reasonable compensation for work performed by employees or others on behalf of the CSO, although the definition of 'reasonable' is debated in some contexts.

2) Legal Existence

Typically, the law defines **criteria for the formation** of various types of CSOs. The criteria vary widely according to organizational type, but often address the following questions, among others:

- For membership CSOs, what is the required minimum number of members?
- For some non-membership CSOs, what is the required minimum amount of initial property?
- Who may serve as founders of the CSO?
- What purposes are permissible for the CSO to pursue?
- What documents – establishment act, statute, etc. – are required to establish a CSO?

Once formed, many CSOs will want to be recognized as a **legal entity**. Recognition of legal person status may flow automatically upon establishment (that is, simply as a consequence of having a written charter), or by completing a simple and wholly voluntary notification procedure (that is, through a declaration to a government entity that publicizes or enters into a public registry identifying information regarding the organization). Such is the case for associations in a number of European countries. In many other countries, however, legal entity status is dependent on a process of registration. Registration is sometimes made mandatory for all CSOs, but more typically, is considered voluntary.[45]

The law may vest registration authority into any of a variety of government organs, including a ministry, the courts, or an independent commission. Registration usually requires the submission of documentation including the establishment document and governing rules of the organization, as well as an application. Well-drafted laws also include a number of procedural safeguards, including:

- A reasonable, fixed time period for governmental review of registration applications;
- In some cases, a rule of presumptive registration if the government fails to act within the fixed time period;
- Clear, objective grounds for denial of registration;
- The requirement of written notice to the applicant of the decision on denial;
- The right to appeal the denial of registration to an independent court.

The **termination** and dissolution of CSOs is commonly addressed by the legal framework. Termination may follow the voluntary decision of the CSO or may result from government or court order (involuntary termination). The grounds for termination in well-drafted laws are clear, objective and exhaustive. Among others, the grounds for termination might include:

- The failure to remedy an ongoing significant violation of law, following notification and the opportunity to correct the problem;
- Declaration of bankruptcy;
- Inactivity, often measured through the failure to file reports.

[45] To be consistent with international legal norms, registration should be voluntary. Mandatory registration, especially where supported by fines for unregistered activities, is almost certainly a violation of freedom of association principles.

What are the advantages of legal entity status?

Legal entity status confers definite benefits on a CSO:

- The ability to open a bank account, employ staff and have assets in its own name.
- Limited personal liability for the board members and staff of the CSO.
- A stronger position to seek and secure funding, as donors generally have more confidence in a CSO with legal entity status and many are only able to fund such organizations.

What are the disadvantages?

At the same time, there may be good reasons why a CSO would opt against seeking registration (although this option is not always available):

- The expenditures (preparing paperwork, registration fee) and the time spent to file for registration.
- Potential reporting and/or tax implications as a registered legal entity.
- If a group is small, does not manage money, or does not plan economic activity or to attract grants or donations, it may not make sense to be registered.
- In restrictive environments, registration may be perceived as a means of government monitoring and control over NGO activities.
- In certain contexts, local and national indigenous peoples' organizations may prefer to operate according to indigenous peoples' governance systems rather than a legislative system perceived as being imposed from outside.

Following the dissolution of the organization, the assets are **liquidated** and transferred. After payment to creditors, CSO assets are often channeled to a CSO with the same or similar purpose. In exceptional cases, the assets are absorbed by the state. The prohibition against reversion of assets prevents assets being claimed by CSO insiders.

3) Structure and Governance

The internal structure and governance of a CSO is determined by rules flowing from at least four (4) different sources[46]:

- Legal requirements;
- Voluntary standards set by umbrella organizations[47];
- Donors and supporters of a CSO;
- The purely discretionary choices of the CSO itself, as expressed through its membership, board of directors, or other governing body.

[46] See *Guidelines for Laws Affecting Civic Organizations*, © 2004 Open Society Institute, page 39.
[47] See list of various codes of ethics and codes of conduct adopted by international organizations or national umbrella groups at CIVICUS here.

Well-drafted laws and regulations typically set the minimum standards for the structure and governance of the organization, while leaving room for discretion to the CSO to adapt its structure according to its mission and means. Certainly, different forms of CSOs will have different internal structures. For example, associations are generally governed by the assembly of members, while foundations are governed by a board of directors. That said, certain internal governance rules may be broadly applicable to all forms of CSOs.

Good Governance Principles

The following "good governance" provisions are among the best regulatory practices included in CSO legislation:

- The highest governing body of the CSO, its powers and duties, and the minimum number of times it must meet each year;
- Other governing bodies, the basic powers and responsibilities of each, as well as their relation to the highest governing body and to each other;
- Duties of loyalty, diligence and confidentiality applicable to officers and board members of a CSO;
- Provisions clarifying the liability of CSO officers, directors, employees, which often insulate these individuals from personal liability, except in cases of willful or gross negligence;
- Prohibition on conflicts of interest, requiring officers, board members and employees to avoid any actual or potential conflict between their personal or business interests and the interests of the CSO.
- Record-keeping requirements to ensure that CSOs maintain records relating to finances and activities;
- Internal reporting requirements, with the submission of activity and finance reports to the highest governing body for review and approval;
- Prohibitions on private inurement and self-dealing.

4) CSO Activities

A CSO with legal person status generally has the same rights and responsibilities as other legal entities. For example, a CSO (with legal person status) is generally able to enter into contracts, own property, hire employees, maintain a bank account, lease office space, sue and be sued, etc., in its own name. CSOs engaged in activities subject to licensing or regulation by a government agency (such as health care, education and social services) are generally subject to the same licensing and permit requirements applicable to individuals, legal entities and business entities. Special rules may apply, however, to certain defined **areas of CSO activity**, namely public benefit activities, political activities, and economic activities.[48]

Most regulatory systems allow some organizations, based on their purposes and activities, to be recognized as "**public benefit organizations**" for the purpose of receiving special benefits from the state, such as special tax benefits or the right to compete for certain state contracts. Depending on the regulatory approach, CSOs pursuing such purposes and activities may alternatively be called "tax-exempt" organizations or "charities." Recognition may be extended by the tax authorities, by a designated ministry or ministerial department, by the courts, or by a special commission set up for that purpose. The qualifying activities and criteria vary widely

[48] See *Guidelines for Laws Affecting Civic Organizations*, © 2004 Open Society Institute, pages 53-59.

from country to country, as do the procedures for recognition, the corresponding benefits and accompanying accountability standards.[49]

In the sphere of **political and/or public policy activities**, countries adopt a wide variety of different regulatory approaches. Most commonly, CSOs are permitted to engage in public policy activities, which might include, among others, research and education, advocacy, and the publication of policy papers. Indeed, to be consistent with international norms relating to the freedom of speech, CSOs should, like any individual, be able to speak out on all matters of public significance, including existing or proposed legislation, state actions and policies, and state officials or candidates for public office. Restrictions are often, though not always, imposed to prevent CSOs from electioneering activities, such as campaigning and/or fundraising for political parties or candidates.

Economic activities may be defined as regularly pursued trade or business involving the sale of goods and services. Here again, we find a variety of regulatory approaches regarding the permissible extent of economic activity. Generally, CSOs are permitted to engage directly in the sale of goods and services (particularly those related to the mission of the organization). The taxation of income from economic activities is a related, but separate issue, and is beyond the scope of this paper.

5) Transparency and Accountability

The transparency and accountability of CSOs should, ideally, be a shared goal of government and CSOs, donors and beneficiaries of CSOs. As with internal governance – which is a fundamental starting point for transparent and accountable CSOs – the law may have a critical role to play in setting standards of transparency and accountability. It is important to re-emphasize, however, that international law creates a presumption against any state regulation that would amount to a restriction of recognized rights, including the right to freedom of association. International actors supporting reform processes must help guard against government efforts to stifle the sector through legal regulations justified by calls for transparency and accountability.

A common regulatory tool used by governments to help ensure accountability is to require the submission of reports. The issue of reporting requirements is complex, especially when considering the diverse range of organizations within civil society. Many, if not most, CSOs are small, community-based organizations that may or may not be registered, often rely to some extent on volunteer services rather than paid employees, and receive little to no public funding, whether in the form of tax exemptions or direct subsidies or grants; such CSOs are typically not required to submit reports to government. Other CSOs are professional organizations with offices, paid staff and large budgets. They will likely be registered and may be benefiting from fiscal privileges, in the form of tax exemptions or government grants; such CSOs are typically required to submit activity and financial reports on a regular basis. The regulatory challenge with reporting requirements is developing and implementing a system that recognizes the diversity of civil society and imposes supervisory requirements where necessary in a democratic society to meet a legitimate government interest. The Open Society Institute's *Guidelines for Laws Affecting Civic Organizations* provide more information on how the legal framework can help support transparency and accountability.[50] It is also worth noting the ongoing debate relating to broader issues of NGO accountability.[51]

[49] For more information on the legal framework for public benefit organizations, see ICNL here.

[50] See *Guidelines for Laws Affecting Civic Organizations*, © 2004 Open Society Institute, pages 65-75.

[51] See, e.g., Jem Bendell, *Debating NGO Accountability*, © 2006 UN ; Kumi Naidoo, *"Civil Society Accountability: Who Guards the Guardians?* © 2003 CIVICUS: World Alliance for Citizen Participation; Gary Johns, *NGO Way to Go: Political Accountability of Non-Governmental Organizations in a Democratic Society*, © 2000 Institute for Public Affairs (); Hugo Slim, *By What Authority? The Legitimacy and Accountability of Non-Governmental Organisations*, © 2002, International Council on Human Rights Policy.

Finally, it is worth noting that an enabling legal framework can and should also allow for, and possibly even encourage, voluntary self-regulation. Through voluntary self-regulation, CSOs can set and follow higher standards of conduct and performance. Umbrella organizations representing the sector as a whole or some sub-sector (e.g., CSOs pursuing children rights) will sometimes play a leadership role in this respect. An individual organization may choose to adopt its own internal code of conduct. Any successful self-regulatory initiative will need to consider the incentives for signing up to standards of governance more rigorous than the law requires, and also the issue of monitoring and enforcement.[52]

D. Importance of Legal and Regulatory Framework to Civil Society

1) Enabling or Restrictive Legal and Regulatory Frameworks

The precise impact of the legal framework on the development of civil society – and on the health, vibrancy and sustainability of the civic sector – may be difficult to measure.[53] Certainly, the legal framework is only one factor among many that influence the scope and strength of civil society in any given country. Political, cultural, historical, and economic factors also play defining roles.

That the application of the law has a direct impact on civil society, however, is indisputable. The legal framework and the way that it is applied directly affect the ability of a CSO to form, operate and sustain itself. The sector as a whole has the capacity to engage citizens, deliver services, interact with the state, and otherwise participate in social, political and economic life. Taken together, these activities help advance democratic development, service delivery, and other macro-level objectives.

One may conceive of the law as providing legal space – in the same way that a public building provides architectural space – within which individuals may act through CSOs to address a wide range of mutual benefit and public benefit goals. That legal space may be open, broadly accessible, supportive and enabling, or it may be closed, difficult to access, constraining, and inhibitive. The former springs from an *enabling* legal framework, and the latter from a *restrictive* legal framework.

More recently, law has been used as the tool of choice by governments to constrict the space available for civil society, to create barriers against their activities and funding sources and to threaten their very existence. Through such regulatory burdens, governments have moved to weaken and undermine the often nascent civil society in their countries. The regulatory burdens can take many forms – barriers to establishment, barriers to registration, government interference in the internal affairs of CSOs, excessive taxation, barriers to foreign funding, punitive sanctions, and other legal constraints. But the negative impact, demonstrated through the reduced ability of CSOs to participate meaningfully on issues of public importance, and through their struggle to survive at all, is clear.

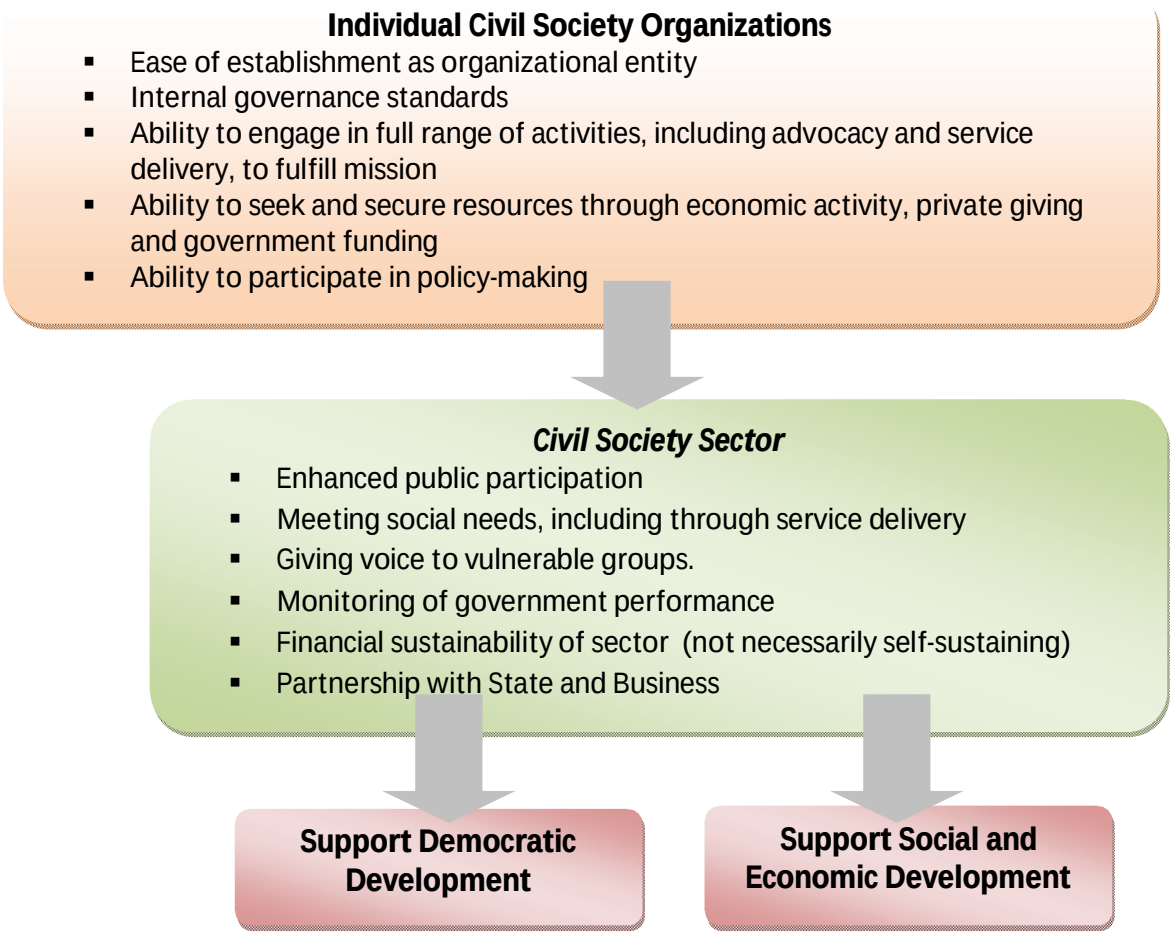
[52] For a database and global interactive map of civil society self-regulatory initiatives, see One World Trust.

[53] Noteworthy indices have sought to assess the impact of legal and regulatory reform. These include, e.g., the Johns Hopkins University (Center for Civil Society Studies) Comparative Nonprofit Sector Project , the CIVICUS Civil Society Index, and the USAID NGO Sustainability Index.

Measuring the CSO Legal Environment

Noteworthy indices have sought to assess the impact of legal and regulatory reform on civil society. These include, for example:

- *The Comparative Nonprofit Sector Project*, Johns Hopkins University
- *Civil Society Index*, CIVICUS
- *NGO Sustainability Index*, U.S. Agency for International Development



2) The Implementation Process

The strength and viability of civil society is not merely a question of the legal framework, and the degree to which it is enabling versus restrictive. It is also a question, of course, of implementation. A sound, well-drafted law may be poorly or inadequately implemented or not implemented at all. Of course, judges and lawyers play a key role in applying the laws.

Implementation Challenges

- ***Bosnia and Herzegovina***: The 2001 Law on Associations and Foundations in Bosnia and Herzegovina is considered to be a well-drafted, enabling piece of legislation, which provides for a clear, simple, straightforward registration process at the state level. [See note] The state-level implementation, however, has been routinely problematic, as the registration officials have routinely denied registration to applicants (such as trade unions or associations of legal entities), even though clearly allowed under the Law.
- ***The Palestinian Territories***: Law No. 1 of 2000, the Law of Charitable Associations and Community Organizations, is generally considered to be among the best CSO laws in the Arab world. It creates a relatively liberal registration procedure and oversight mechanism. Unfortunately, however, the political circumstances have prevented its effective implementation, and currently, the Hamas-led government is opposed to the law and either ignores it or actively circumvents it.
- ***South Africa***: Designed to create an enabling environment and encourage good governance for the civic sector, the 1997 Nonprofit Organizations (NPO) Act provides certain categories of NPOs with tax and fiscal benefits. Due to the immense backlog in registration applications, and poor administration, many NPOs have not sought registration under the Act and therefore cannot access the fiscal benefits.

Note: Due to the constitutional structure of the Bosnian state, there are three (3) laws on associations and foundations, one applicable to the Republic of Srpska, one applicable to the Federation of Bosnia & Herzegovina, and one applicable to the State of Bosnia. Here we are referring to the latter

At the same time, however, poor, inadequate and even constraining legislation may be progressively implemented.

Progressive Implementation

- ***Hungary***: The legal framework in Hungary does not provide for the registration of a branch office of a foreign CSO; there is simply a gap in the law. In response, the government in Hungary has facilitated the operation of foreign CSOs in Hungary by allowing them to register as a non-profit branch office of a commercial company. The legal barrier has thus been dissolved through a practical approach to the problem.
- ***Lebanon***: The legal framework affecting CSOs in Lebanon is based on a 1909 Ottoman-era Law on Associations. Not surprisingly, the Law defines outdated registration procedures, requiring associations to apply to the Ottoman Imperial Authority, to pay the registration fee in the Ottoman-era currency, etc. The Lebanese Interior Ministry has issued guidelines to "interpret" the Law; throughout most of Lebanon's modern history, the guidelines interpreted the Law regressively, burdening CSOs. More recently, the new Interior Minister Dr. Ahmad Fatfat has issued more progressive guidelines, requiring only notification rather than approval at the registration phase.
- ***Ukraine***: The Law on Public Associations prohibits associations from engaging in economic activities and limits activities according to the territorial status of associations. Neither provision is currently being enforced by the government.

In sum, the question of implementation – and the degree to which a law is fairly, objectively and apolitically applied – is just as important as the legal framework itself and how well it reads on paper.

III. Overview of Legal Environments in Selected Countries

This section contains four (4) case studies or, more accurately, country studies that examine, briefly, the legal framework governing CSOs in each country, highlight the key legal reform challenges, and describe the strategies that were used or are being used to address those challenges.

The countries selected – Afghanistan, Liberia, Mauritius and Serbia – represent a broad geographic range and a diverse range of legal reform challenges. As a post-conflict country, **Afghanistan** offers a glimpse of the tremendous pressures which can surround the legal reform process where CSOs are perceived as absorbing substantial amounts of incoming foreign donor aid flows. **Liberia** is also struggling with similar issues. As a middle-income island nation of 1.2 million people, **Mauritius** has a civil society sector that is comparatively well-developed and supported by a more progressive legal framework; yet economic changes are creating new tensions in society and the need for improved CSO capacity is increasing. In its transition from an authoritarian regime to a struggling young democracy, legal reform efforts in **Serbia** have, until just recently, been frustrated by the political wrangling of the elite. By examining each country closely, we hope to draw lessons of broader application.

A. Afghanistan

1) Legal Reform Challenges

In the years immediately following the fall of the Taliban (from 2001-2005), there were two available organizational forms for those civic groups seeking legal entity status: social organizations and non-governmental organizations ("NGOs"). Most organizations, including all foreign organizations, were registered as NGOs, and governed by the Taliban-issued *Regulation on the Activities of Domestic and Foreign Non-Governmental Organizations in Afghanistan*.[54] Indeed, as of June 2005, there were more than 2300 registered "NGOs" and approximately 400 registered social organizations. Consequently, early reform efforts addressed the Taliban Regulation on NGOs and sought to develop an improved legal framework for NGOs in particular.

Unfortunately, however, NGOs found themselves operating in an environment increasingly marked by suspicion, distrust, and even hostility toward NGOs and the sector as a whole. Many in the government and among the general public came to believe that NGOs were engaged in profit-making activities and siphoning foreign aid money away from the Afghans for whom it was intended. NGOs became the scapegoat for a wide range of perceived abuses.

Doubtless, actual incidents of abusive conduct lent credence to the negative perceptions. It is virtually certain, however, that the negative perceptions were rooted, at least in part, in misunderstanding regarding the definition of who NGOs are, what they do and how they operate.

Arguably, the negative perception stemmed from the fact that donors often prefer to address reconstruction needs through NGOs rather than through the young Afghan Government. It seems at least as likely, however, that the inadequate legal framework for NGOs, carried over from the Taliban period, left NGOs to operate for too long in an ambiguous, uncertain legal space and fueled the atmosphere of suspicion and distrust.

[54] The Taliban Regulation was issued in 2000, in the Official Gazette No. 792.

Specific problems included the following:

- NGOs were inadequately defined, leading to confusion about what was being regulated.
- Registration criteria were not clear and were subject to arbitrary administrative discretion, without time limits for final action or the right to administrative or judicial review.
- Internal governance rules were not prescribed, even by title, and no requirements existed for internal accountability or responsibility, thereby undermining public trust in the transparency and accountability of NGOs.
- Reporting and public accountability rules were draconian in form, but frequently not enforced, a practice leading to uncertainty and potential arbitrary action by the authorities and evasion by the sector.

Lessons Learned: Afghanistan

- ✓ ***The importance of political will.***
  The law drafting process in Afghanistan was initiated with the support of the Ministry of Planning (then responsible for the registration and supervision of NGOs), under whose leadership a cross-sectoral working group was formed. The process – which led to the completion of an enabling draft law – was derailed due to the change of leadership at the Ministry, and the appointment of a minister who not only opposed the enactment of enabling legislation but also independently proposed a regressive law (which was loudly opposed by CSOs in Afghanistan). It was only after this minister's resignation (December 2004) that the law reform process could be re-initiated.
- ✓ ***The importance of a cross-sectoral working group.***
  The 2002/2003 law drafting process was based, from the beginning, on a working group that included representatives of both civil society and government. This led to a far more enabling draft than the subsequent process in 2005, at which time the government assumed the drafting role and only later invited outside comment. The inclusion of CSOs from the outset is far more likely to lead to legislation that is responsive to the needs of both sectors.
- ✓ ***The importance of broader public input.***
  Efforts were made in both 2003 and 2005 to invite feedback and input from the wider CSO community. In 2003, this gave further legitimacy to the draft law; in 2005, while it was important in allowing CSOs to vent concerns, it was insufficient to overcome the lack of engagement during the drafting process itself and to lend legitimacy to the draft.
- ✓ ***The importance of donor support.***
  The donor community may have greater leverage and influence with the government than the CSO community. This leverage can be applied, if properly coordinated, for a potentially positive impact. In 2005, the provision excluding NGOs from bidding on government projects focused donor attention on the draft law. It was the vocal opposition to this draft provision on the part of the donors, including UNAMA, which led to the formation of a "joint task force" to prepare recommendations in relation to this provision and the draft generally. The donor recommendation led to the elimination of the bidding exclusion.

1) Legal Reform Strategy

The Government recognized the importance of developing a comprehensive legal framework for NGOs in Afghanistan early in the reconstruction period. Backed by the Ministry of Planning, a legislative drafting group was formed, comprised of key ministry representatives and representatives of the NGO sector. The working

group prepared a progressive draft Law on NGOs, which was circulated widely to NGOs throughout the country. Based on feedback from NGOs, the draft Law was revised and refined before being submitted to the Ministry of Planning in July 2003. Thus, the July 2003 draft Law was the product of a broadly inclusive and deeply participatory process, which included both NGOs and government officials. Unfortunately, due in part to the changes in personnel at the Ministry, the draft Law was not enacted and reform efforts stalled.

Subsequently, in January 2005, the newly elected Afghan Government placed priority on the enactment of a new NGO law. The Ministry of Economy issued a new draft law in February 2005. The draft Law was based in part on the 2003 draft, but also included significant differences that sought to control and sometimes stifle NGO activity. In response to objections from the NGO sector as well as the international community, the Government undertook to refine the draft Law and invited feedback from the NGO sector and international donors. As a result of this process, the draft Law underwent a series of revisions between February and June 2005.

President Karzai signed the new Law on NGOs in June 2005. Unlike the Taliban Regulation, the new Law complies with international standards and good regulatory practices in a number of critical areas. That said, certain burdensome provisions in the Law and the implementation of the Law remain problematic.

B. Liberia

1) Legal Reform Challenge

During two decades of unrest and civil war (1989-2003) in Liberia, civil society organizations stepped in to provide basic services and aid to people when state governance structures and systems failed. CSOs were also at the forefront of the pro-democracy movement and advocated for basic human rights. Their increased role in service delivery and humanitarian assistance led to proliferation in numbers - at one point, over 1000 NGOs operated in Liberia, which has a population of just over 3 million people. A lack of clear guidelines and insufficient coordination between various line ministries and oversight of the sector resulted in both confusion and abuse. In addition, the lack of NGO accountability towards their beneficiaries led to question being raised by the public on the nature and sustainability of NGO work.

The following challenges existed:

- The absence of clear guidelines for NGOs on how to obtain incorporation (registration) and accreditation, which resulted in proliferation of NGOs, including so-called 'briefcase NGOs'.
- The lack of centralized reporting mechanisms, which resulted in demands from different government institutions for the submission of various reports from NGOs.
- Increased demands from the NGO sector to clarify procedures on various issues relating to their day to day operations, including on personnel, immigration, taxation, duty waivers and other logistics including storage and transportation.
- The need for improved transparency and accountability of the NGO sector.
- The need to build an effective partnership mechanism between NGOs and the Government of Liberia (GoL) to enhance civic engagement in the defining national development agenda and reform processes.

2) Legal Reform Strategy

Efforts were made in the 1980s to develop guidelines for the operation of Private Voluntary Organizations (PVOs). Although guidelines were adopted in 1988, they were largely not operational due to the civil war. Further attempts were made in 2000, 2001 and 2005 to develop an NGO policy. A draft version was developed in 2005 during the transition government but it was never adopted.

In 2005, UNDP supported the mapping of civil society organizations. The final report of the mapping exercise highlighted the need for UNDP's involvement in developing a policy framework to ensure legal space and the guarantees needed for CSOs, and NGOs in particular, to operate.

The first post-war democratically elected government in 2006 recognized the significant role played by civil society organizations, and in particular NGOs, in providing basic services and humanitarian aid and acknowledged their continued importance in moving forward the national development agenda. Responding to demands from the NGO sector as well as the general public, it therefore prioritized the development of an NGO policy and guidelines to provide a policy framework for NGO operations in Liberia and this was reflected in the interim Poverty Reduction Strategy (iPRS, 2006).

The 1986 Constitution of Liberia guarantees the right to association, and therefore the policy framework aimed to provide clear guidelines for the registration (incorporation) and oversight of NGO operations. The Ministry of Planning and Economic Affairs (MPEA) was mandated to monitor and evaluate the activities of NGOs and enhance cooperation between GoL and NGOs and it requested UNDP's assistance to formulate the policy.

Lessons Learned: Liberia

- ✓ ***The importance of identifying and working with champions within Government:***
  The policy process enjoyed sufficient political will as GoL prioritized it in its IPRS as a key deliverable. In addition to widespread political will, the policy process also found champions within the MPEA. The Minister and Deputy Minister of Planning and Economic Affairs understood the importance of engaging with civil society to develop a fair policy that would provide a framework for NGO operations, strengthen the oversight role of the Government, while also providing adequate space for NGOs to self-regulate. These champions were able to address concerns and opposing views within the Ministry and in other line ministries and reach a consensus within the Government on policy provisions.
- ✓ ***The importance of finding common ground among a cross-section of civil society organizations:***
  International NGOs were keen for the policy to address basic operational procedures – registration, taxation and duty waivers - whereas national civil society organizations were focused on strengthening the nascent democracy in Liberia and saw the policy process as a step towards it. They wanted to ensure that the policy did not over-regulate the activities of small NGOs but rather guaranteed their participation and engagement in defining a national agenda. Reaching a common ground within the NGO sector was important for stronger dialogue with the Government. Thus, NGO self-regulation was proposed as an alternative to government regulation. Participation in the national NGO Council (the proposed self-regulating and coordination body) was suggested to be voluntary, as many international NGOs were unsure of participating in national self-regulating mechanisms. The policy encouraged all accredited NGOs to become members of the NGO Council.
- ✓ ***The importance of addressing key concerns raised by stakeholders:***
  A key lesson is the importance of addressing the underlying concerns of various stakeholders, in order to ensure their continued engagement during the policy development process, as well as for successful implementation of the policy itself. It was crucial to address the issues of transparency and accountability of the NGO sector. NGOs and the UN were successful in advocating for strengthening the capacity of NGOs to self-regulate rather than for the government to have an extended oversight role where it might have to spend critical resources and capacity to monitor NGO projects and financial activities.
- ✓ ***The importance of continued support to implementation of NGO policy:***
  Support to legal frameworks for NGOs should extend to implementation of the framework to ensure their effective and efficient implementation.

UNDP responded to MPEA's request and hired a consultant to produce a draft policy framework in 2007, after a series of consultations with local, national and international NGOs, government agencies, donors and the UN system.

MPEA also developed another draft version of the policy. The proposed provisions in the Ministry's version severely curtailed the ability of NGOs to operate independently. Provisions ranged from submission of all project proposals to the MPEA for approval prior to applying for funding to ad-hoc monitoring of NGO activities by government officials.

The Ministry's draft version created uproar within the NGO sector and the draft was severely criticized by national and international NGOs. The UN system also submitted its comments to the Ministry and urged the Ministry to develop guidelines that did not constrain both NGO activities and the Ministry's capacity and resources. UNDP and UNMIL played an important role in facilitating dialogue between national and international NGOs and the concerned ministries. A working committee, chaired by MPEA, was set up with representatives of the Civil Society Advisory Committee (a consortium of 15 national umbrella organizations), the Management and Steering Group (a consortium of international NGOs in Liberia), and representatives of various line ministries. UNDP and UNMIL also participated in the working committee, and UNDP provided logistical support to these meetings. The members of the working committee negotiated every aspect of the policy and drafted a new NGO policy in July 2007. UNDP supported the CSO Advisory Committee to organise a series of outreach workshops to present the draft policy to local civil society organizations in other regions of Liberia and thus involve organizations outside the capital in the policy process. The final draft version was validated at a national stakeholder meeting in January 2008. Following approval by the cabinet, the ***National Policy on Non Governmental Organizations in Liberia*** came into effect in June 2008.

UNDP continues to provide technical and logistical support to both national NGOs and MPEA towards effective implementation of the policy. It supported the signing of a Memorandum of Understanding between 22 key local NGOs and NGO networks to lead the consensus building processes to establish the NGO Council, a self-regulating and coordinating body for NGOs. When formed, the Council will become a substantive representative voice for NGOs in all types of engagement with Government and in national dialogue processes. UNDP is also supporting the Governance Commission to build on the national policy to develop a clear strategy for institutionalizing civic engagement in governance and development processes at local and national level.

C. Mauritius

1) Legal Reform Challenges

Since independence in 1968, Mauritius has developed from a low-income, agriculturally-based economy to a middle-income diversified economy with growing industrial, financial and tourist sectors. The economic transition has inevitably brought additional social pressures, which have caused the government to rely more heavily on civil society to meet public needs.

The legal framework for civil society in Mauritius has roots in both common law and civil law, as well as Islamic legal traditions. This hybrid orientation is manifest in the range of available organizational forms for CSOs, including associations, youth organizations and clubs, sports clubs and federations, multi-sport organizations, employees superannuation funds, non-profit companies, trusts, including charitable trusts, and "waqf" trusts, among others.

The overwhelming majority of CSOs in Mauritius are formed and registered as associations; nearly 8000 organizations are listed in the official registry, though estimates of the number of active associations vary.

While the law governing associations sets forth a workable legal framework, there are several critical areas for improvement, including the following:

- The law provides insufficient procedural safeguards to ensure a speedy registration process.
- The law does not adequately address issues of transparency, good governance, and accountability.
- The fiscal framework commendably provides for a charitable status, which is linked with tax exemptions, but the application procedures are unclear and there are no corresponding accountability standards.
- Existing tax incentives available to donors were eliminated for individual donors in 2006, and were eliminated for corporations in 2007, thereby undermining the ability of CSOs to attract funds.

Lessons Learned: Mauritius

✓ ***The importance of a comprehensive strategy.***
The legal reform process in Mauritius does not stand alone, but rather is part of a broad civil society strengthening project over several project cycles, which is examining government policy towards civil society, corporate social responsibility, and the state of civil society generally through an empirical study. The results of all these research pieces, among others, helped inform the research base for the legal review. Having spent considerable time in research, consultation and written recommendations, the formation of the new, practical and implementation stage of the Legal Review highlights how the entire process has been comprehensively planned and followed through.

✓ ***The importance of timing.***
The law reform process in Mauritius is distinctive not only for being part of comprehensive strategy, but also for its recognition that the process needs time. The assessment of the current framework and legal reform needs was prepared following a 9-month process, with multiple interviews and focus group meetings, as well as a thorough review of the laws and regulations. It was also recognized that the process needs time and activities around the drafting and revision of the bill were spaced to ensure that it has greater legitimacy.

✓ ***The importance of broad public participation.***
The findings of the legal review are based on an extensive process of information-gathering, through a series of interviews and focus group meetings with both government officials and CSO representatives. In addition, the presentation of preliminary findings and recommendations at a national workshop provided additional opportunity for public engagement in the process and led to the refinement of the legal review. There has also been a continuation of support to participation in the legal review process in the form of practical awareness activities.

✓ ***The importance of technical assistance.***
Mauritius has a well-developed legal system with strong roots in both the French civil law and British common law systems. The national legal consultant tasked with preparing the legal review is an experienced practicing lawyer and law professor, as well as Chief of the Law Reform Commission in the country. Nonetheless, the introduction of international comparative experience has proved critical to provide a wider perspective into the strengths and weaknesses of the Mauritian legal framework for civil society.

2) Legal Reform Strategy

Recognizing the importance of the legal framework to the overall capacity, strength and viability of the civic sector, and understanding the importance of a strong, capable civic sector to social and economic development in Mauritius, the United Nations Development Programme (UNDP) in Mauritius conceived and prepared a comprehensive civil society support project entitled *Strengthening of the NGO Sector in Mauritius*. The three-year project (2005-2007) was funded and administered by UNDP and implemented in partnership with the Mauritius Council of Social Services (MACOSS) and the Ministry of Social Security, National Solidarity, Senior Citizens Welfare and Reform Institutions (Ministry of Social Security). By strengthening the NGO sector, the Project aimed to enhance its role as an able and meaningful partner of government and the private sector in the socio-economic development process of the country.

The review of the legal and regulatory framework affecting civil society was but one component of the overarching project. Other components included a participatory civil society assessment using the Civil Society Index tool, a complete review of the Mauritius Council of Social Services (MACOSS), a review of corporate social responsibility (CSR) policies in Mauritian enterprises, and a review of the government's policy toward the civil society sector. The results of each of these project components fed into the legal review.

The legal assessment reviewed the legal and regulatory framework affecting all aspects of the NGO life-cycle – that is, the definition, existence, internal governance, external supervision, and termination of NGOs, and their funding and fiscal treatment. It was conducted by a National Legal Consultant and International Legal Consultant. The two lawyers worked together to gather and analyze information from at least three sources:

1) Desk review of the laws and regulations, administrative directives and court decisions that impact on NGOs.
2) Field research conducted through consultations with the relevant stakeholders to help assess the actual implementation practices.
3) A national workshop hosted by the project partners (UNDP, MACOSS and the Ministry of Social Security), at which the preliminary findings and recommendations were presented for discussion.

Subsequently, a draft legal assessment report was prepared and disseminated to the project partners and broader civil society community. The report examined a comprehensive range of issues, from freedom of association as protected by international law and the Constitution of Mauritius to an overview of the legal framework governing the distinct legal forms of CSOs, from the ability of CSOs to engage in public policy activities to economic activities, from the regulation of charitable status and tax treatment to the framework for various kinds of direct financing for CSOs. The report closed with specific recommendations aimed at improving the legal and regulatory framework. The drafters expressly invited feedback on the findings and recommendations contained in that draft report, and the report was finalised in May 2008.

The Legal Assessment output from the Strengthening the NGO Sector in Mauritius (SNSM) project has been further developed and integrated into UNDP Mauritius' next project cycle, entitled 'Support to Inclusive Development' (SID). The recommendations from the legal assessment have been drafted into a bill which, as of May 2009, was undergoing processing at the ministerial level. In anticipation of the bill being passed through Cabinet, SID plans to carry out several workshops and awareness activities to improve the impact of the Legal Assessment from the SNSM project.

D. Serbia

1) Legal Reform Challenges

Until July 2009, CSOs in Serbia operated under archaic laws enacted during the Socialist Federal Republic of Yugoslavia (SFRY), including the following:

1) The Law on Association of Citizens in Associations, Social Organizations and Political Organizations Established for the Territory of SFRY (1990);
2) The Law on Social Organizations and Associations of Citizens of the Socialist Republic of Serbia (1982); and
3) The Law on Legacies, Foundations and Funds of the Republic of Serbia (1989).

These laws failed to provide a clear, comprehensive and enabling legal framework for CSOs in Serbia. Specific shortcomings in the legal framework included the following:

- Mandatory registration requirements for both associations and foundations;
- The failure to permit a foreign legal or natural person to be a founder of an association;
- The failure to permit foreign CSOs to establish a branch office in Serbia;
- Broad discretionary power of the registration authorities (including a requirement that the registration body determine the necessity of establishing a foundation);
- The requirement to register membership in international organizations.
- The concept of accepted public benefit purposes in the law is construed narrowly and does not include a number of activities which are conventionally deemed to be public benefit.

2) Legal Reform Strategy

Since the ousting of Slobodan Milosevic in Serbia in 2000, there have been a number of initiatives to modernize the legal framework in Serbia; only on July 8, 2009, was a new Law on Associations finally enacted. Until that point, Serbia was among the few countries in Europe whose legal framework for NGOs has not yet undergone comprehensive reform to bring it into compliance with international standards and regional best practices.

Nonetheless, substantial progress has been made by civil society in Serbia, with the support of international actors, and the experience gained in the process will be important in meeting future challenges. Most legislative reform efforts to date have focused on revising the legal framework for associations.[55] In 2001, a draft Law on Associations was prepared, and refined in 2002, with substantial input from the Council of Europe and both international and Serbian NGOs. The draft Law then languished before the Serbian Parliament and was subsequently withdrawn following early elections.

[55] In addition, past or present law reform initiatives include the preparation of a draft Law on Foreign NGOs, a draft Law on Endowments and Foundations, and a draft Law on Volunteerism. The two latter draft laws remain pending.

Lessons Learned: Serbia

- ✓ ***The importance of political will.***
  In Serbia, the lack of political will limited the ability of determined local reformers to realize the desired reform. It is important to note that key government leaders and CSO representatives recognized the need for reform and worked collaboratively to prepare the ground for reform, so that when the opportunity arose, the draft Law was finally enacted.
- ✓ ***The importance of a cross-sectoral working group.***
  As in Afghanistan, we find that in Serbia the formation of a cross-sectoral working group from the outset of the process was crucial to the preparation of an enabling draft Law on Associations.
- ✓ ***The importance of broader public input.***
  Again, efforts were made to invite input and feedback on the draft Law by circulating the draft widely to associations throughout Serbia.
- ✓ ***The importance of engagement of multi-lateral institutions.***
  The Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) have played critical roles in the law drafting process by convening stakeholders and by commenting on the draft law directly. Moreover, as a member of the Council of Europe (CoE) and aspirant to the European Union, Serbia is normally attentive to the position of the CoE.

In November 2004, the Serbian Ministry for Administration and Local Self-Government (Ministry) re-started the reform process by issuing a new draft Law on Associations. From the outset, the Ministry invited the inclusion and participation of NGOs. First, the Ministry hosted a roundtable event on the new draft Law and supported the formation of a working group consisting of local NGOs and an international expert. In April 2005, the Ministry issued a revised draft Law and requested comments from the NGO working group. In May 2005, the Ministry released a third version of the draft Law, which largely included the comments of the NGO working group. In November 2005, the Ministry, in collaboration with the Council of Europe and OSCE, hosted a roundtable on the draft Law, to discuss the draft Law and comments submitted by the Council of Europe. In addition to representatives of the host organizations, representatives of leading NGOs in Serbia, academics, and human right lawyers participated in the roundtable.

In March 2006, the Ministry re-convened a meeting of the working group, to present the revised version of the draft Law, which the Government subsequently approved and submitted to the Parliament. In the meantime, however, the Government lost majority support in the Parliament, leading to new general elections in January 2007. With the formation of a new Government in the spring of 2007, the draft Law on Associations was revived as a priority initiative, slightly revised by the Ministry, and received Government approval. It was almost approved by the National Assembly in December 2008, but was put on hold for procedural reasons. With the recent amendment of the Rules of Procedure for the Serbian National Assembly, the Law on Association was finally enacted on July 8, 2009.

IV. The Role of International Actors in Supporting a Conducive Civic Environment

This section seeks to describe the prerequisites for successful legal reform efforts, and the role that international actors – those involved in the design and development of civil society related initiatives – can play in working effectively toward the promotion of enabling legal environments for civil society. As mentioned earlier, legal reform is often only one step in a process designed to facilitate effective civil society engagement in development and democracy. International organizations should therefore consider how their plans to support legal reform fit into their broader strategies for civil society support.

After examining certain threshold considerations, this section looks to reform strategies in three separate but related areas: (1) improvements to the legal framework, (2) improvements in the implementation process, and (3) in especially difficult circumstances, potentially appropriate strategies to protect civil society – or to lay the foundations for future reform.

A. Threshold Considerations

1) Political Will

In order to reform legal and regulatory acts, or to improve implementation, the government needs to recognize the need and to prioritize the reform initiative over competing governmental priorities. This may seem obvious, but is sometimes overlooked.

The Importance of Political Will

Afghanistan: The Transitional Government recognized early on (in 2002) that the Taliban-era legal framework was inadequate. It supported the reform process for the next year but changes in the leadership of the Ministry spearheading the reform effort then removed the necessary political will. Only in 2005 did the Afghan Government renew its commitment to legislative reform affecting civil society.

Mauritius: Although reform is still pending, the Government, as an implementing partner in the UNDP-led civil society strengthening project, has committed itself to the reform process, out of recognition of the need for a more developed civil society sector.

Serbia: The lack of political will was perhaps the primary obstacle to reform since 2000. Narrow windows of opportunity were suddenly closed due to changes in government or new constitutional arrangements.

In some contexts, CSO representatives have launched reform initiatives without the support or participation of government. Such independent reform efforts may be subsequently endorsed by the government. In other cases, the government, even if initially supportive of the reform effort, and happy to be relieved of the burden of engagement on the issues, may later become concerned with the direction of the reform process, and then intervene to delay, obstruct or derail the reform process. Thus, the failure to secure government buy-in has in many cases led to stalled reform efforts. In other cases, elections usher in new government officials who, anxious to distinguish themselves from the efforts of their predecessors, may reject existing reform initiatives. The challenge, of course, is to educate the government on the benefits of reform.

International actors[56] have a potentially pivotal role to play in strengthening political will. By convening CSOs and government officials for discussion, by providing comparative information and expertise, by serving as a broker between relevant stakeholders to foster understanding and consensus, by simply raising the profile of such discussions through participation, by hosting fora to educate government officials on reform needs, international organizations can help build bridges of dialogue, education and understanding. Indeed, all of the reform strategies and approaches listed below contribute toward fostering consensus and strengthening political will to support legal reform.

2) Leadership by Indigenous Institutions and Individuals

Programmes promoting a more conducive civic environment are most likely to succeed where indigenous institutions and individuals assume ownership of activities. The role of international organizations is instead to serve as catalysts for the process, whether at the political level or at the grass roots level. International support can be provided through multiple interventions, including technical assistance, capacity development, diplomatic support, etc. – but does not best serve local civil society needs through exclusive leadership in writing laws or leading lobbying efforts. By supporting local initiatives, international organizations reinforce the notions of accountability and self-reliance, promote democratic values, and help ensure that laws appropriately reflect local conditions.

Local leadership presupposes local capacity. Many international organizations dedicate substantial resources to capacity development efforts, targeting CSO representatives, government officials, judges, and private lawyers and practitioners. Capacity development may be delivered through, among other interventions: the provision of comparative information and technical assistance on relevant issues; trainings which seek to impart substantive knowledge and/or practical skills; training-of-trainers programmes as a way of multiplying impact; university courses, internships and fellowships targeting students and practitioners; the preparation of publications; and conferences, seminars and international events. Enhanced networking, improved access to information and resources, and more effective communication and coordination between CSOs, but also between CSOs and government and/or other actors, are all critical to fostering local capacity.

Keeping these threshold presumptions in mind, we now consider different kinds of interventions appropriate to different contexts. In many countries, there is a real possibility for legal reform. In many others, legal reform may not be immediately feasible.[57] International organizations must recognize the reform possibilities and devise appropriate responsive strategies.

B. In Pursuance of Legal Reform

In countries where there is a true possibility for legal reform, international organizations can play a supportive and facilitating role, acting to galvanize the process.[58] Law reform is of course not a one-time event, but rather an ongoing, iterative process. The process can be considered as several overlapping stages, including the

[56] To repeat, "international actors" could potentially embrace the U.N., particularly the U.N. Development Programme, and other multi-lateral organizations such as the World Bank, the OSCE, the European Community, as well as bi-lateral governmental organizations and international NGOs. We recognize the broad and differing range of missions, mandates, entry points, and available tools for support and intervention. This paper is not tailored for any single organization, and does not presume to provide advice on what strategy may be appropriate for any given country. Instead, the paper seeks to address issues of common concern relating to civil society legal reform. The most effective strategy can only be determined by those operating within a specific country context.

[57] See Section IV-D for a discussion of potential approaches where legal reform is not immediately feasible.

[58] This section is focusing on those country contexts where there are identifiable opportunities for legal reform and international engagement. We recognize, of course, that this is often not the case. Governments may be reluctant to consider legal reform for civil society, and/or may find international involvement intrusive. In such cases, international actors will need to consider alternative strategies, which are outlined in Section IV-D.

assessment phase, the law drafting phase, as well as monitoring and evaluation of the law ultimately enacted. Supportive interventions may be appropriate at any (or all) of these phases. UNDP's role in the legal reform process in Cyprus, described below, provides a good example of supporting and facilitating a number of stages.

1) Assessment

Successful legal reform depends on a sound assessment of the current legal framework; the assessment is the foundation on which reform efforts must be built.

The first step is to conduct a contextual analysis – that is, looking beyond the law at the broader environment and the opportunities for and barriers against reform. The kinds of questions to be considered at the start of any reform initiative may include: What is the government attitude toward reform? Are there political opportunities for reform? What are the political barriers? How is the CSO sector performing? Is the timing right? Or are there macro-political issues (such as, for example, constitutional reform or elections), which make legal reform affecting civil society unlikely?

Second, the assessment phase should include stakeholder mapping. Stakeholder mapping builds on the contextual analysis to identify which stakeholders have a vested interest in promoting or preventing law reform. It is crucial to consider stakeholders in all sectors, particularly government and civil society. Are there CSOs with the expertise and ability to champion reform? If the government attitude is largely negative, are there potential allies within a ministry? Are there available contacts within the parliament? Given the paramount importance of local ownership, which stakeholders should be involved in the assessment and in the broader reform initiative? Who has the capacity to undertake the legal drafting and lead advocacy efforts?

Stakeholders

Defined: Any organization, governmental entity, or individual that has a stake in or may be impacted by CSO law reform. These may include:

- CSOs
- Government: central government, ministries, local governments, government/NGO liaison offices, etc.
- Parliament/Congress
- The judiciary
- Businesses
- Media organizations
- Academics
- Law students
- CSO beneficiaries and constituents

Third, it is necessary to conduct a thorough and professional review of the existing legal and regulatory framework affecting civil society. Of course, the scope of the legal review will vary; it may be fully comprehensive, looking at the overall framework for civil society, or be more targeted, considering, for example, the legal framework governing CSO involvement in economic activities or in advocacy activities. Regardless, it will want to consider both the law and actual practice. And, as stated above, the legal review should be conducted through the leadership or at least with the participation of local lawyers (depending on local capacity). Ideally, the legal review should compare the given legal framework to international good regulatory practice.

Supporting the Legal Reform Process in Cyprus

The Medium Term Strategy for Official Development Assistance (2006-2010) of **Cyprus** highlights the role of NGOs in the delivery of assistance and the implementation of development projects. A preliminary study of the existing legal framework affecting NGOs in Cyprus carried out by the Planning Bureau laid out a number of gaps in the legislation as well as procedural difficulties affecting the evolving NGO-Government cooperation. Issues identified included NGO eligibility and selection for funding, accountability requirements and other conditions, and controls to safeguard public funds. In 2007, the Bureau requested assistance from UNDP Action for Cooperation and Trust in Cyprus (UNDP-ACT).

In response, UNDP-ACT supported the European Centre for Not-For-Profit Law (ECNL) to hold a number of consultations with CSOs and the Planning Bureau to produce a detailed assessment of the existing legislative and institutional framework in Cyprus and provide recommendations for further consultations and actions. The report indicated that change towards a more enabling environment for CSOs would be a long-term effort.

In 2008 UNDP-ACT mobilized additional resources to take the reform agenda forward, with continued expertise and guidance from ECNL. Outputs included:

- Establishment of a joint cross-sector advisory/working group under the auspices of the Planning Bureau with representatives from the government, CSOs/NGOs and lawyers; and
- Increased capacity of stakeholders to support the reform of the institutional framework in which civil society functions in Cyprus, through, among other activities, a study tour facilitated by ECNL to Hungary.

Challenges

- Difficulty in overcoming feelings of mistrust and antagonism between the NGO sector and the Government;
- Managing differing expectations - with the NGO sector expecting major changes to the status quo but Government considering that simply engaging in a reform process was a big step;
- Limited coordination between relevant Government departments.

Successes

- The newly established NGO Working Group has evolved into a hub of institutional reform activity within the NGO sector; and
- The Government is committed to bringing in further legal expertise in order to draft new legislation regarding the registration and operation of associations, foundations and clubs, including the introduction of public benefit status.

Lessons learnt

- Engaging all relevant stakeholders significantly contributes to advancing the reform process since they all have ownership of the process and an incentive to monitor progress;
- Involving the NGO sector in a reform process that affects them directly supports the strengthening of civil society and a shift in the government's perceptions about CSOs;
- A patient approach, with long-term commitment toward reform, is critical.

Once completed, consideration should also be given to the publication of the legal assessment review. Distributing draft versions of the legal review to vested stakeholders for comment and feedback is a sound way to include a broader pool of actors in the assessment phase. Public discussion events are also useful tools in encouraging wider participation in the process. The final assessment should be widely disseminated beyond the vested stakeholders to all affected members of the CSO community and government circles.

With the completion of a sound assessment, local stakeholders will have a solid ground for deciding on a reform strategy. In addition to identifying the substantive areas in need of reform, and alternative solutions, the assessment should, ideally, help stakeholders to recognize the consequences of pursuing reform.

2) Interest in Reform

International organizations can help local efforts to focus attention on CSO legal issues. Of course, the engagement of local partners in the initial assessment phase, in conducting baseline research and weighing potential solutions, directly fuels local commitment to the process. But not all reform processes are seamless. Instead, for a variety of reasons (e.g., elections), there may be a significant break in time between the assessment phase and any law drafting efforts, thereby removing any reform momentum that may have existed.

Considering the Consequences of Reform

In **Slovakia** the adoption of a tax allocation mechanism (allowing individual and corporate taxpayers to designate up to 2% of their tax payment to a qualified CSO) led to the elimination of individual and corporate donor incentives (i.e. tax deductions available for donors to CSOs). Advocates of tax designation systems would be well advised to consider the potential risks as well as gains for the sector before launching such a tax reform initiative. Indeed stakeholders may want to identify the factors that inform the "to reform or not to reform" decision.

As highlighted above, law reform efforts in Serbia were stalled repeatedly, largely due to macro-political factors. Although vested stakeholders in the CSO community recognize the need for reform, their ability to push for reform has waxed and waned, and frustration over the past five (5) years has grown. In circumstances such as these, international organizations can provide critical support – by focusing attention on the ongoing need for reform. This can be accomplished in numerous ways, including through support to national actors to organize awareness-building campaigns or events, cross-sectoral and multi-stakeholder meetings and in-country workshops, supporting national actors to participate in international events, as well as the sharing of international practices. In Sierra Leone, for example, UNDP has played a key role in informing NGOs about proposed legislation and bringing CSOs and the government together to discuss concerns on both sides. The NGO-UNDP consultative forum has formed a committee to study the proposed NGO legislation carefully and make recommendations on reform issues.

As a way of generating momentum, international organizations may be tempted to provide compensation to local law-drafters. Certainly, on the one hand, this would seem a straightforward means of moving ahead with a law reform initiative, while still ensuring local ownership. At the same time, however, compensation may act as a perverse incentive, which forwards the reform initiative, but perhaps not for the right reasons. In other words, the profit motive may cloud the more balanced judgment of vested stakeholders. If reform does not occur but for the payment of compensation, then the local ownership of the reform initiative seems questionable. At best, compensation for law-drafting is a double-edged sword, and should be considered with great caution.

Generating Interest in Reform

Honduras: Beginning in 2003, ICNL launched its Partners for Enabling Environment Reform Project ("PEER") in Honduras. Through PEER, ICNL worked with the Federation of Honduran NGOs, an umbrella organization of 70 social development organizations, to revive efforts to draft an NGO Law. Previous efforts during the preceding decade had stalled due to the inability of CSOs to agree on several key reform issues, including appropriate legal standards for CSO accountability. The PEER Project helped CSOs reach consensus; an external evaluation of the Project in 2006 concluded that "The NGO community, with the PEER Project's support, was able to find middle ground – a basic agreement for drafting the NGO Law proposal."

Viet Nam: The Vietnamese government was reluctant to undertake legal reform affecting CSOs. ICNL has worked steadily with UNDP and local partners to help maintain a "diplomatic" level of momentum, which has led to a more constructive reform approach by the government.

3) Drafting Groups Representing All Parties

Based on a sound assessment, and fueled by the commitment of vested local stakeholders, the drafting of the law may now move forward with surer steps. At this stage, international organizations can play a crucial role in supporting a participatory process. Indeed, the degree to which the reform process invites participation by all potentially interested parties frequently determines a particular project's success. A process that represents the views of CSOs, government officials, parliamentarians, and others leads to better legislation, a stronger likelihood of enactment, and an interest in fair implementation and sound compliance following enactment. It also leads to an interest in continuing the reform process.

Of course, there are often obstacles to such cooperation, including the lack of coordination among ministries and, sometimes, open hostility between the government and CSOs. Indeed, this represents one of the single greatest challenges to successful law drafting. To overcome these obstacles, international organizations can act as conveners – bringing stakeholders together and providing a forum for informational exchange; the exchange of views and information can help bring people with different views together. Particularly useful can be the formation of a multi-stakeholder or cross-sectoral drafting group to address unresolved issues. Care should, of course, be taken in the selection of CSO representatives, particularly since international actors may only know or be in contact with a small part of the broader civil society in a country. In addition, the government may push for the involvement of only certain sympathetic CSOs, resulting in an apparent broad consensus but leaving out other actors that are crucially important for the sustainability of the reform efforts.

Inviting CSO input only after the government has issued a draft leaves less room for meaningful input. Through cross-sectoral working groups, parties with divergent views are more likely to find areas of shared concern. International actors can be critical in supporting the formation of cross-sectoral drafting groups from the beginning of the drafting process.

4) Broader Public Participation

While the number of participants in any drafting group must necessarily remain limited in order to be effective, it is important that all interested stakeholders have the opportunity to provide input on legislative reform. The effort to ensure broader public participation is critical to giving the reform initiative wider and deeper legitimacy.

Cross-Sectoral Drafting Groups

Afghanistan: The contrast between the two drafting processes in Afghanistan illustrates the importance of cross-sectoral engagement in law drafting. The legislative drafting group formed in 2002/2003 worked from the outset with civil society involvement; the result was a reasonably progressive draft law that had the backing of stakeholders in both sectors. The drafting process in 2005 was government-led and allowed for civil society input only reluctantly. Moreover, the process was less deliberate and more hurried. Consequently, the law that was ultimately enacted, although a big step toward a more enabling environment, was less enabling than the 2003 draft promised to be.

Mexico: To promote and secure the adoption of legislation to facilitate the development of philanthropy and civil society in Mexico, four partner organizations have formed a working group, each bringing specific skills and expertise to contribute to a well-coordinated reform effort. The Instituto Tecnologico Autonomo de Mexico is a university and research institute that can conduct investigations and provide empirical evidence to support arguments for reform. Incide Social is an advocacy organization known and respected by CSOs throughout Mexico. Communications consultant Cristina Galindez has extensive lobbying expertise and an in-depth knowledge of the legislative process. Finally, ICNL brings international and comparative information to the table to buttress reform positions.

Tanzania: A working group of CSOs and mid-level government officials attached to the Deputy Prime Minister's Office steered amendments to the NGO Act through Cabinet and Parliament, resulting in a significantly improved legislative environment for the sector.

Several innovative practices have been developed to support broad public participation:

- Dissemination of the draft law to the wider CSO community through email, coupled with the solicitation of feedback;
- Publication of the draft law in a leading national newspaper, to encourage input both from CSO representatives and the broader public;
- Establishing a website dedicated to the law reform initiative, with information updates routinely posted, and a dedicated email account that interested stakeholders can use to provide input;
- Expert meetings with various target groups, including, for example, academics, donors, lawyers, or affected beneficiaries;
- Town-hall meetings to promote public participation, with comments recorded and sometimes reflected in the final version of the law;
- National-level workshops and public discussions to present the draft legislation, solicit input and validate proposals.
- International conferences to seek the input of international experts, as well as in-country stakeholders.

If sufficient input is not received, valuable insights might be missed and some CSOs may perceive the drafting initiative as the work of an elite group, thereby undermining the legitimacy of the reform effort. The lack of a broad sense of local ownership is also likely to hamper effective implementation. Through the range of available participatory mechanisms, international actors can play a crucial role in facilitating a process that affords the time and space for broad public participation.

Encouraging Public Participation

Mexico: The working group seeking to promote civil society law reform in Mexico: (1) convened 6 expert fora (involving 150 representatives of CSOs and government) to present information, solicit input from CSOs on the challenges they face, and collectively develop participant recommendations; (2) published a report – *Definition of a Fiscal Agenda for the Development of Civil Society Organizations in Mexico* – which included the input from these participatory sessions and concrete legal reform proposals; and (3) provided additional opportunities to participate through a website on the reform initiative.

South Pacific: In the South Pacific islands, many segments of society are routinely excluded from the formulation of public policy. In its Civil Society Law Program, ICNL has sought to ensure fuller participation through visits to remote islands within each island nation; through visits to villages and local communities and not just capital cities; through meetings with chiefly bodies, and with both the leading ethnic groups and minority groups. In this way, ICNL has served as a communications channel between the government and the public. Consensus has been building in certain of these nations for reforms that would protect and even enable organizations to represent and serve these groupings. Such patient steps toward consensus building assists the progress of participatory democracy.

5) Cross-Border Linkages

Regional and international linkages validate and strengthen the commitment of local stakeholders, while sharpening their skills by supplying them with comparative information and expertise. International organizations should be aware of the potential benefits cross-border linkages provide and the most effective means to facilitate them. Successful linkages have been accomplished through cross-border consultations, regional conferences, seminars, study tours, fellowships, academic networks, and other activities.

Information may flow between countries within a given region. Countries of Central and Eastern Europe have exchanged ideas among themselves and reaped the mutual benefits of such exchanges for the past 15 years. More than 175 civil society, government, private sector and university representatives attended the Honduran Forum for Not-for-Profit Law in 2006, which included experts from Costa Rica and El Salvador, as well as Chile and Venezuela. Nigerian lawyer Emeka Iheme has served as a resource for law reform efforts in Tanzania and more widely in sub-Saharan Africa. Soloman Islands lawyer David Lidimani is supporting efforts to reform civil society legal structures in Samoa, Vanuatu, and elsewhere in the Pacific. A Civil Society Preparatory Meeting preceded the 2006 Forum for the Future and brought together individuals from 13 Arab countries to discuss priorities, goals, and strategies to create an enabling legal environment for civil society in the Arab world; the outcome of this meeting was a Declaration made by CSO representatives about priorities for civil society reform. This meeting followed a conference in Beirut that provided a forum for Arab reformers to discuss civil society reform strategies.

> ***"One of the greatest things about these two conferences was that they facilitated the creation of a large network of Arab reformers who do continue to stay in touch with one another to inform us about what is going on in their countries and to discuss strategies and ideas to pursue reform throughout the region."***
>
> Kareem Elbayar, Legal Consultant for the Middle East and North Africa, ICNL

Information may also flow between regions. Countries of the former Soviet Union have routinely drawn lessons from the CEE region to help inform their own reform processes. In addition, countries of the Middle East have considered the transitional experience of CEE countries. The African island nation of Mauritius has looked to European regulatory practices in reviewing its own legal framework. Law drafters in Afghanistan have sought comparative information from both neighboring Central Asian states and also European and U.S. practice. At a Global Forum on Civil Society Law hosted by ICNL in November 2005, representatives from North America, Latin America, Africa, Europe, the Middle East and Asia all participated and shared experiences. Clearly, international organizations have tremendously important roles to play in facilitating such linkages.

> ***"You almost contained the 'world in one room' discussing and empowering each other on civil society law of different nations across the world."***
>
> Kefale Belachew, LLB Managing Director, AEPA, Ethiopia

Regional organizations, such as the African Union, the Council of Europe, or the Organization of American States (OAS) may also facilitate cross-border support. Recently, a proposed Law on International Cooperation has raised fears in Venezuela that the government would have unprecedented authority to control the financing of CSOs active in the sphere of international cooperation. In response, several Venezuelan CSOs sought to de-rail the proposed legislation through cross border linkages, which included:

- Participation in hearings at the Organization of American States (OAS) on the proposed law;
- Participation in meetings of MercoSur, a customs union of four Latin American countries (Argentina, Brazil, Paraguay, and Uruguay), stressing the link between human rights and the proposed law;
- Participation in regional and international conferences, affording the opportunity to discuss the law and its potential impact on the Venezuelan CSO sector.

Taken together, these efforts are believed to have influenced the Venezuelan Congress to delay consideration of the proposed law.

6) Technical Assistance

As highlighted above, comparative international expertise is fundamentally important to reform, especially in those contexts where local capacity may be lacking. Even where local legal capacity is high-quality, there are likely to be questions and issues that can benefit from a broader legal perspective. International actors can help to supply technical assistance by opening the process up to international consultant organizations and by coordinating the input of the donor community.

Technical Assistance

The role of an international consultant is to:

- Provide an independent, professional perspective on the in-country issues;
- Provide comparative international expertise on the particular regulatory problems at issue;
- Help local stakeholders understand the alternative regulatory approaches available, the pros and cons of each, and the consequences of various legal options;
- Promote a legal reform process that is appropriately inclusive and participatory;
- Promote a legal reform process that leads to a legal framework that is more compliant with international law and good practices;
- Support, not supplant, local stakeholders;
- Empower local stakeholders, not draft the laws and legal provisions directly.

Moreover, it is important to recognize that technical assistance is usually more effective when supplied by independent experts, rather than those who are perceived to be partisan or advocates for certain positions. Those organizations that can speak from an 'honest broker' position will be better able to speak credibly to the government. Here again, international organizations have a potentially important role to play.

C. Following Legal Reform

1) Implementation Assistance

Once legal reform has been accomplished, the challenge turns to implementation. Indeed, the progressive, consistent and apolitical implementation of law usually poses even greater challenges than legislative change. To support the smooth implementation of law, international organizations have key roles in supporting (1) training of government regulators; (2) the education of CSO sector practitioners; (3) the preparation of written educational materials for the benefit of both; and (4) public awareness campaigns so the general public can understand the need for reform.

Training can be provided through seminars and workshops on the new legal framework, through direct technical assistance, and through cross-border initiatives, just to name a few. In the context of civil society law, implementation assistance may relate to registration issues, tax and fiscal issues, and supervision and monitoring issues. Trainings may target officials responsible for registration, tax, and/or supervision, as well as judges. Implementation needs often include the establishment of central registries, the preparation of implementing regulations, and the development of model forms and documents for registration and reporting (possibly including model founding acts, statutes, reporting forms and other standardized forms).

Implementation Support to Government

Afghanistan: The Department of NGOs (responsible for registration and supervision of NGOs) within the Ministry of Economy in Afghanistan sought and received assistance in creating a computerized central registry of NGOs.

Peru: Peru's Agency for International Cooperation (APCI), responsible for drafting two sets of implementing regulations, invited international comparative input on the content of the draft regulations.

Russia: Despite the regressive nature of the amendments to the NGO legal framework in Russia, the government still invited international technical assistance in preparing the implementing regulations for the newly amended law. This highlights the importance for international actors of remaining alert to such opportunities for positive intervention.

Tanzania: Through extensive workshops during the months following enactment of an amended law, ICNL provided basic training for government officials and the government/NGO commission on the implementation of the amended law.

CSO education efforts can take advantage of similar training methods. Another potentially effective training approach is the train-the-trainers programme, which can multiply the impact of a single training. Trainings aimed at lawyers can also be critical to creating a pool of legal expertise on civil society legal issues within a country. In addition, there is often good reason to conduct cross-sectoral training initiatives, which encourage improved communication between the sectors in addition to capacity building of each respective sector.

Written educational materials may include easy-to-read brochures for non-lawyers, handbooks and in-depth commentaries on relevant laws for government regulators and practitioners, comparative analyses, how-to guides, etc. The writing process itself is an important capacity-building tool, underscoring that local ownership of implementation initiatives is as important as local ownership of law reform efforts.

2) Monitoring and Evaluation

Recognizing that even well-drafted laws are not necessarily properly implemented, the monitoring and evaluation of the implementation process is crucial to improve implementation and support ongoing law reform efforts. Monitoring and evaluation mechanisms should be considered even before the legal reform is accomplished, in order to ensure that all actors agree not only on the available tools and consequences of monitoring. Pre-agreed monitoring guidelines and principles might help prevent conflicts between government and CSOs. Consideration should be given to existing mechanisms governments may use to evaluate the performance of ministries/bureaus regarding the implementation of laws.

An additional and potentially valuable approach is to facilitate the work of "watchdog" organizations, that is, organizations dedicated to monitoring government performance, if the context allows. Generally speaking, watchdogs may monitor pre-election promises of elected officials and the implementation of various policies and laws. This helps encourage transparent government operations, provides additional information to the public, and supports improved government performance.

There was significant interest within the Russian CSO sector and the international community to measure the impact of the 2006 amendments to Russian NGO legislation. In response, a tool to monitor and track the implementation of newly enacted NGO legislation was drafted for use in Russia, but may be adapted for use in broader contexts. The monitoring tool could help measure potential points of government constraint on civil society, such as the following:

- *Registration*: Is the registration body politicized, are the procedures burdensome, do officials have broad discretion to deny registration?
- *Internal Governance*: Does the government have the right to attend the organization's events, including board meetings; can the government replace board members?
- *Activities*: Does the law prohibit undefined "political" or "extremist" activities; are NGOs allowed to engage in service delivery?
- *Sustainability*: Does the law allow organizations to receive foreign funding, fees for services?
- *Regulation*: Does the government have the right to audit organizations – if so, for what reason, and how often; does the government have the right to issues "notices" of correction or to terminate organizations?

The monitoring mechanism will need to be appropriate for the local context. In order to make that determination, it is critical to answer several questions:

- Who is the target audience and how will they use the monitoring data?
- What laws are to be assessed for impact (e.g., a single law or the entire legal framework)?
- What level of impact should be evaluated (e.g., the impact on individual organizations, on the sectoral level, or on the societal level)?
- What groups should be targeted for assessment (e.g., specific organizational forms, organizations engaged in specific activity areas or geographic areas)?
- What methodology should be used to collect data (e.g., organizational surveys, government statistics, focus groups, and structured interviews)?

- Who should be involved in the monitoring process (e.g., representatives of the local and international NGO community, donors, the diplomatic community, host government, parliament, academia, and perhaps even the business community)?

The Ethiopian Experience: after legal reform

Even in situations where legal reform has been regressive, international organizations can play an important role after reform, as illustrated by experience in **Ethiopia**.

The Ethiopian Government, while recognising the contribution of CSOs, argued that in order to improve development, control corruption and complement the efforts of the Government, it needed to develop a policy framework that regulated the composition and nature of organizations operating in Ethiopia. It published a draft of the Proclamation on Charities and Societies in the latter half of 2007. The Proclamation is controversial as various articles are considered by civil society organizations to restrict their operations rather than improve development. Specifically, it decrees that: Ethiopian organisations pursuing certain designated activities, such as the advancement of human and democratic rights, can receive only up to 10% of their total funding from foreign sources; 70% of their overall budget must be used for programmatic activities and no more than 30% for administrative costs; societies must secure a permit for public collections; and the Charities and Societies Agency has the power to institute inquiries whenever it deems necessary.

The UN system was concerned about the draft Proclamation and advocated for revisions of articles to create a more enabling environment for NGO operations. In addition, UNDP as the secretariat of the donor Development Assistance Group, engaged the Government on the proclamation. However, Proclamation No. 621/2009 on Charities and Societies (PCS) was adopted in February 2009.

Currently, the UNCT is undertaking an analysis of the law in terms of its programmatic implication for the implementation of UNDAF and other projects supported by the UN system, as well as its compatibility with international and regional human rights instruments.

The international donor community is also working on strategies for engagement now the law has been passed. These include:

- Monitoring the enforcement and impact of legislation on both Ethiopian and international NGOs;
- Supporting and building the capacities of Ethiopian and international NGOs to adapt and respond to the new operating environment;
- Ensuring that donor development and humanitarian assistance funding channels and programmes adapt to the requirements of the Proclamation in ways that do not compromise either the efficient and effective delivery of resources to beneficiaries or donor values.

D. Beyond Legal Reform

Of course, legal reform may not be a realistic option in every context; some countries may be impervious to immediate law reform efforts. In such situations, civil society support will need to assume alternative approaches. It is the potential alternative strategies that this section seeks to address.

One important threshold consideration is the need to develop and implement civil society support with a long-term perspective. Many of the strategies will necessarily be linked to building the capacity of potential reform actors, who may be able to support reform only once the political landscape offers such an opportunity, which could be years away. Certainly, all strategies should, ideally, be part of a long-term vision; but in some contexts, it may not be realistic to press for short-term results. Even those strategies that seek to make a more immediate impact (such as raising awareness of the weakened state of civil society), however, will likely be only one step on the longer walk toward a reformed environment.[59]

1) Supporting Alliances and Networks

In politically difficult environments, the formation and maintenance of alliances and networks can play an invaluable role in protecting and strengthening individual CSOs and the broader civil society community. In such environments the CSO sector may be divided making attempts at networking difficult or only symbolic. Nonetheless, networking can provide the benefit of information sharing, increased access to expertise, inspirational value from knowing that the struggle to protect human rights is not a solitary one, and possible protection to organizations and individuals struggling in repressive environments. International organizations can play a catalyzing role in convening and enlivening such networks, be they national or international in nature.

Supportive Interventions

- Facilitating the formation of the alliance and network by serving as the convener of potential members of the alliance or network;
- Providing information and technical expertise to existing networks;
- Conducting national and/or international meetings to strengthen networks;
- Providing gravitas and/or a "protective cloak" to networks, as well as international leverage. In repressive contexts, international organizations can even provide a measure of protection from violence and oppression;
- Supporting groups in exile who are working to support civil society in countries such as Burma (Myanmar) and Turkmenistan.

2) Raising Public Awareness

In nearly all contexts, raising public awareness is critical to working effectively with civil society. Whether the issue at stake relates to legal reform or CSO/government relations or the public image of the civic sector, efforts to inform and educate – to raise awareness – are likely to be fundamental to addressing the issue. Effective awareness raising may target the broader NGO community, the general public, and/or international organizations, as well as other nations and multilateral bodies. Raising awareness is likely to be core to civil society engagement strategies in both developed and developing countries, though the methods of awareness raising will certainly vary depending on the context.

In addition to building capacity on awareness-raising techniques (see below), international organizations can provide significant support as independent monitors. Through research, investigation, documentation, analysis and reporting on existing threats, abuses, and problems, awareness raising efforts can be more

[59] The following strategies to protect civil society are based in part on research conducted by ICNL and contained in *Safeguarding Civil Society*, International Journal for Not-for-Profit Law, Vol. 9, Issue 3, July 2007.

effectively planned and staged. There are a number of ratings indices, which provide comparative tools regarding individual country compliance with various objective measures. For example, the U.N.'s new Human Rights Council created the Universal Periodic Review (UPR), which will seek to measure the human rights records of all U.N. Member States through a common mechanism.[60]

3) Developing Capacity

Perhaps the most important role that international organizations can play is to develop the capacity of local CSOs to conduct or effectively participate in law reform processes and to help protect civil society even where law reform is not immediately possible. Recognizing the importance of strong local leadership, the legal, organizational, and advocacy capacities of local individuals and organizations are fundamental to successful efforts to strengthen the environment for civic activity. Capacity development efforts can seek to provide education and skills in a number of areas and can often be provided through facilitating South-South linkages.

4) Facilitating Dialogue

International organizations may be able to facilitate dialogue by bringing together CSOs and government officials and parliamentarians at conferences or seminars or study tours. The convening role can be critical to all phases of legal reform. Admittedly, however, not all international actors have the same capacity as a convenor. Multi-lateral organizations, such as the U.N. and regional bodies, are particularly well-suited to play this role. Indeed, the participation and presence of international organizations can provide additional leverage to the advocacy efforts of local actors. Moreover, government officials and parliamentarians may be more likely to participate in meetings and events at the invitation of international actors.

Capacity Development Interventions

- *Dialogue and Discussion.* CSOs need to be empowered to participate in in-person meetings and discussions with government officials and parliamentarians.
- *Awareness Raising.* The first step toward addressing an issue is to focus public attention on it. Whether through campaigns to educate the general public, or through more targeted 'know your rights' campaigns, CSOs have a critical role to play in this area.
- *Use of Media.* Effective use of all forms of media – newspapers, radio, and television, in addition to the internet – and their potential to expose violations, educate the public, overcome isolation, reach out to victims and beneficiaries, and help mobilize communities is critical to awareness raising and advocacy efforts.
- *Use of Technologies*. Internet technology is a potentially powerful tool to collect, organize, safeguard and disseminate information.
- *Advocacy Capacity*. Advocacy skills can strengthen law reform efforts in any context. Volumes have been written on the tools, techniques and strategies available for those engaged in advocacy and international actors, including the U.N., can help support advocacy strengthening as fundamental to a vibrant civil society.
- *Legal Capacity*. CSOs frequently require training on the existing legal framework and its implementation to help them navigate through the often complex and contradictory laws and regulations affecting their activity. Moreover, individual lawyers should have the capacity to use domestic litigation procedures – as well as international human rights mechanisms – to protect CSOs under threat.

[60] See the Universal Periodic Review Mechanism (June 29, 2006).

5) International Diplomacy

In many situations, international diplomacy can be fundamental to the protection of civil society. Clearly, this strategic tool is an exception to the rule of local ownership. International diplomatic efforts are led, quite properly, by governments and multilateral organizations. That said, they are undertaken to support local players and will often supplement other strategies such as raising awareness and advocacy efforts led locally. As mentioned above, multilateral diplomatic efforts have borne fruit in advancing NGO law reform in Afghanistan (UN Assistance Mission in Afghanistan), Albania (World Bank), in Kazakhstan (OSCE) and in Russia (the G8). Bilateral diplomatic efforts may also be useful, depending on the relationship between the two (or more) countries involved. Clearly, international actors have a leading role to play in this connection and should be alert to possibilities for productive diplomatic intervention. At the same time, they should be conscious of their own credibility as outside actors, and alert to the risks of weakening diplomatic efforts where that credibility is low.

V. Checklist for Programme Design

In Pursuance of Legal Reform

1) Conduct Assessment

a. Conduct contextual analysis: looking at the broader political and social environment in order to determine the opportunities for and barriers against reform; consider also the cultural expressions of community organization and how civic engagement is understood by different sectors of the population.
b. Conduct stakeholder mapping: identify which stakeholders have a vested interest in promoting or preventing law reform; identify which stakeholders have obligations and are accountable in this regard (duty-bearers).
c. Conduct a thorough and professional review of the existing legal and regulatory framework affecting civil society, including the ratification of international treaties and conventions that recognize freedom of expression and association (among others).
d. Publicize the legal assessment review, possibly through distribution to stakeholders for comment and feedback.

2) Help Focus Attention on CSO Legal Issues

a. Engage local partners in the assessment phase, stressing the legal recognition of rights;
b. Focus attention on the ongoing need for reform, which can be accomplished in numerous ways, including cross-sectoral meetings, in-country workshops, participation in international events, as well as the sharing of international practices;
c. Be aware of the risks to providing compensation to local law-drafters.

3) Support Inclusive, Cross-Sectoral Drafting Groups

a. Support a process that relies on inclusive, cross-sectoral drafting group early on in the process;
b. Act as a convenor, bringing stakeholders together and providing a forum for informational exchange;
c. Allow for and empower local leadership of drafting group.

4) Promote Broader Public Participation

a. Disseminate draft law/regulations to the wider CSO community through appropriate means, including e-mail, the Internet, newspaper, etc.
b. Solicit feedback and comment on proposed law/regulation.
c. Establish clear mechanism through which feedback can lead to substantive revisions in draft law/regulations.
d. Publicize results of comment and feedback period;
e. Consider benefit of public discussion events, such as expert meetings, town-hall meetings, national conferences and workshops.

5) Bolster Reform Efforts through Cross-Border Linkages

a. Consider benefit of regional or international meetings, conferences, events to strengthen in-country expertise;
b. Consider appeal to and intervention of regional human rights bodies and/or inter-governmental organizations.

6) Support Reform Efforts through Expert Technical Assistance

a. Provide or facilitate the provision of independent, professional, comparative international expertise on in-country issues;
b. Help local stakeholders understand the alternative regulatory approaches available, the pros and cons of each, and the consequences of various legal options;
c. Work to support, not to supplant, local stakeholders.

Following Legal Reform

1) Assist in Implementation of Law

a. Provide training to government regulators on the new legal framework.
b. Assist in preparation of implementing regulations, the development of model forms and documents for use by government regulators.
c. Educate CSO representative on their rights and responsibilities under the new legal framework.
d. Prepare written educational materials on the new legal framework for the benefit of government and CSO representatives.
e. Be alert and responsive to implementation problems as they arise.

2) Conduct Monitoring and Evaluation of New Legal Framework

a. Consider role of "watchdog" organizations and how to empower them.
b. Develop and implement monitoring tool for the context at issue.

Beyond Legal Reform: Protecting CSOs in Difficult Circumstances

1) Determine Realistic Protective Strategy

a. Conduct assessment of broader environment, specific challenges facing CSOs, and realistic responsive strategies.
b. In selecting appropriate strategy, employ long-term perspective.

2) Implement Protective Strategy

a. Monitor success and problems with strategy and be ready to adjust the strategy as necessary.
b. Take advantage of opportunities to strengthen efforts through:
    - Supportive alliances and networks;
    - Raising awareness, either domestically and/or internationally;
    - Building capacity of local CSOs;
    - Facilitating dialogue between CSOs and government or other stakeholders;
    - Using international diplomacy.

Appendix A: Frequently Asked Questions (FAQs)

What is civil society?

The term "civil society" has been defined in a tremendous variety of ways, and its meaning and scope are the subject of ongoing debate and discussion. In its policy of engagement with CSOs (2001), UNDP defines civil society organizations and locates its own collaboration thus: "CSOs are **non-state actors whose aims are neither to generate profits nor to seek governing power. UNDP collaborates with CSOs whose goals, values and development philosophies accord with its own."** Other definitions are found in the web-based resources provided in Appendix B.

What is the relevance of international law to CSOs?

International law is relevant to civil society and CSOs in that the fundamental rights and freedoms enshrined in international legal instruments, including the freedoms of association, assembly and expression, are the spring from which civil society flows – and the most fundamental protection for CSOs. Freedom of association embraces the right of individuals to form associations, political parties, trade unions, and other membership groups to pursue collective interests. The meaning and scope of the right continues to be developed and refined through U.N. treaties and resolutions, as well as through the interpretation of courts and commissions operating under U.N. treaties and regional human rights instruments.

Do CSOs have rights under international law?

Yes. Although international covenants and treaties protecting freedom of association and expression apply by their terms to individuals, certain protections also extend to collective entities.

Are CSOs typically regulated by a single law?

No. CSOs are typically subject to a range of laws and regulations, addressing issues from registration to taxation, economic activity to public funding, volunteerism to philanthropy. In some countries, there may be a single law, which deals with many aspects of the "life-cycle" of the CSO, but there will always be issues, such as V.A.T., social contracting, or participation in policy-making, regulated elsewhere in the legal framework.

Is there a "Model Law" available?

No. Designing and drafting laws that impact civil society is a process unique to the needs and culture of a particular country. One size does not fit all— UNDP needs to work with local stakeholders to design the most appropriate and beneficial laws for all parties. However, ICNL has a wealth of materials and handbooks available in its online library that provide the foundations and principles necessary to developing appropriate laws and regulations.

What does it mean to be not-for-profit?

"Not-for-profit" is used in preference to "non-profit" in order to emphasize that a defining criterion is the intention of the organization is not to make profits for private gain. It is possible that such an organization will in fact make a profit from time to time, but that is not the principal purpose for which it is organized and operated. Nor is its purpose to distribute any portion of any profit for private gain. The major distinguishing characteristic between not-for-profit and for-profit organizations is that the former are governed by the principle of non-distribution.

Are CSOs legally permitted to engage in political activities?

The answer depends on the legal framework and the definition of "political" activities. Most commonly, CSOs are permitted to engage in public policy activities, which might include, among others, research and education, advocacy, and the publication of policy papers. Indeed, to be consistent with international norms relating to the freedom of speech, CSOs should, like any individual, be able to speak out on all matters of public significance, including existing or proposed legislation, state actions and policies, and state officials or candidates for public office. Often, however, restrictions prevent CSOs from engaging in electioneering activities, such as campaigning and/or fundraising for political parties or candidates.

Are there "good practices" relating to the regulation of CSOs?

Yes. In addition to the norms defined under international law, we can also speak of "good practices" for the regulation of civil society. International law sets the broad boundaries by making clear, for example, that the state must protect the right of individuals to form an association. But many, if not most, regulatory issues are left unaddressed by international law. In these cases, we must examine good regulatory practices. Take, for example, the question of whether CSOs should be allowed to engage directly in economic activities. Based on our examination of regulatory approaches in more than 100 countries around the world, we can conclude that a CSO should be permitted to engage directly in economic activities, under certain conditions.

For a basic checklist of provisions that should be included in legislation governing CSOs, and that are consistent with generally accepted international principles, see the ICNL Checklist for CSO Laws.

What is the first step in promoting law reform affecting CSOs?

The first step is to conduct an assessment. A professional assessment includes:

1) Contextual analysis – that is, looking beyond the law at the broader environment and the opportunities for and barriers against reform.
2) Stakeholder mapping – that is, identifying which stakeholders have a vested interest in promoting or preventing law reform.
3) A thorough and professional review of the existing legal and regulatory framework affecting civil society.

Who should lead civil society law reform efforts?

Indigenous institutions and individuals should lead civil society law reform efforts. The role of international organizations at any level is to serve as catalysts for the process.

Who else should be involved in the law reform process?

This depends on the nature of the reform process. Generally, however, the process is more likely to be successful it is broadly inclusive and participatory. Stakeholders in the process should usually include CSO and government representatives, and may also include, for example, parliamentarians, business representatives, and academics.

Appendix B: Select Resources on Civil Society

- Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA): http://www.arnova.org/
- Center for Advancement of Philanthropy: http://www.capindia.org/introduction.htm
- Centre on Philanthropy and Civil Society: www.philanthropy.org
- Charity Commission for England and Wales
- http://www.charity-commission.gov.uk/tcc/intprog.asp
- CIVICUS: World Alliance for Citizen Participation: www.civicus.org
- Civil Society International: http://www.civilsoc.org/
- Civil Society: Organization of American States: www.civil-society.oas.org
- CIVITAS: The Institute for the Study of Civil Society: www.civitas.org.uk
- Freedom House: www.freedomhouse.org
- Global Legal Information Network: www.glin.gov
- Global Policy Forum: http://www.globalpolicy.org/ngos/index.htm
- Inter-American Development Bank: Civil Society:
- http://www.iadb.org/resources/civilSociety/index.cfm?lang=en
- Inter Press Service News Agency, Civil Society the New Superpower:
- http://ipsnews.net/new_focus/c_society/index.asp
- International Center for Not-for-Profit Law: www.icnl.org
- Johns Hopkins University: www.jhu.edu/~ccss/
- The Comparative Nonprofit Sector Project: http://www.jhu.edu/~cnp/
- Legislation Online (OSCE region): www.legislationline.org
- London School of Economics, Centre for Civil Society: www.lse.ac.uk/collections/CCS
- Open Society Institute Guidelines for Laws Affecting Civic Organizations:
- http://www.soros.org/resources/articles_publications/publications/lawguide_20040215
- Organisation for Economic Co-operation and Development, Civil Society and Parliamentarians: http://www.oecd.org/department/0,2688,en_2649_34495_1_1_1_1_1,00.html
- PRIA – An International Centre for Learning and Promotion of Participation and Democratic Governance: http://www.pria.org
- Public Interest Law Initiative: www.pili-law.org
- Rights International: http://www.rightsinternational.org/
- The European Commission and Civil Society: http://ec.europa.eu/civil_society/index_en.htm
- The International Monetary Fund and Civil Society: http://www.imf.org/external/np/exr/facts/civ.htm
- The United Nations and Civil Society: www.un.org/issues/civilsociety
- The World Bank and Civil Society: www.worldbank.org/civilsociety
- Union of International Associations: Web Resources on Civil Society: http://www.uia.org/civilsoc/links.php