



The OECD Standards on Civil Society: Protecting Civic Space while Making Civil Society Organisations More Accountable

Dr Jacqueline Wood

Team Lead—Senior Civil Society Specialist at the OECD Development
Co-operation Directorate, Paris, France

jaqueline.wood@oecd.org

Dr Domenico Carolei

Lecturer in Public Law & International Law, Law and Philosophy Division,
University of Stirling, Stirling, Scotland

Corresponding author

domenico.carolei@stir.ac.uk

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Abstract

This paper examines the Organisation for Economic Co-operation and Development's (OECD) role in addressing two regulatory challenges: protecting civic space and establishing accountability mechanisms for civil society organisations (CSOs) internationally. It focuses on two standards: the 2021 OECD Development Assistance Committee (DAC) Recommendation on Enabling Civil Society and the 1975 OECD Guidelines for Multinational Enterprises, recently applied to CSOs. By analysing their strengths, gaps, and complementarity of these standards, the paper highlights the OECD's evolving role as a regulator of CSO-related issues. It shows how the OECD addresses shrinking civic space, CSO accountability deficits, and donor-state pressures through new standards developed via inclusive consultations and the adaptation of corporate frameworks for CSOs. This analysis underscores the complementarity and limitations of these approaches, contributing to discussions on enabling civil society and improving CSO accountability in an increasingly restrictive global environment.

Keywords

CSO – regulation – accountability – civic space – Organisation for Economic Co-operation and Development

1 Introduction

The purpose of this paper is to examine the potential role and contribution of the Organisation for Economic Co-operation and Development (OECD) standards in regulating civil society organisation (CSOs).¹ It investigates how the OECD has been dealing with two contemporary policy and regulatory challenges: the protection of civic space and the lack of legal avenues to hold CSOs accountable in the international arena. The examination focuses on two sets of complementary OECD standards: the 2021 OECD Development Assistance Committee (DAC) Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance,² and the 1975 OECD Guidelines for Multinational Enterprises,³ the first a new instrument and the second, while not new, having only recently been applied to CSOs.

Focusing on the potential role of the OECD standards in relation to CSOs, this paper contributes to the academic and policy discussion on civic space and on the regulation and accountability of CSOs at the international level. The protection of civic space and the lack of accountability standards for CSOs represent the most topical policy and regulatory challenges for CSOs. On the one hand, civic space is under threat due to restrictions imposed by national governments on CSOs' activities. According to the International Center for Not-for-Profit Law, 161 restricting laws were introduced worldwide between

1 For the purpose of this paper, the definition of CSO in the DAC Recommendation is used: “CSOs are an organisational representation of civil society and include all not-for-profit, non-state, non-partisan, non-violent, and self-governing organisations outside of the family in which people come together to pursue shared needs, ideas, interests, values, faith and beliefs, including formal, legally registered organisations as well as informal associations without legal status but with a structure and activities.”

2 Organisation for Economic Co-operation and Development, Development Assistance Committee, *DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*, OECD/LEGAL/5021, 06 July 2021 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5021>>

3 Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises Annex to Declaration on International Investment and Multinational Enterprises*, OECD Doc. C (76) 99 (Final) (1976) later amended in 1979, 1982, 1984, 1991, 2000, 2011, and 2023.

2012 and 2018 preventing CSOs from fundraising, providing services to those in need, and operating as watchdogs over governments, with emergency legislation to tackle the Covid-19 pandemic further shrinking civic space in many countries.⁴ The Council of Europe reported that CSOs face restrictions such as funding disclosure requirements and criminalisation of migrant rescue boats in the Mediterranean Sea.⁵ Diminishing respect for human rights and democracy in a context of rising autocratisation around the globe is further exacerbating restrictions on civic space, including online space.⁶ Overall, the key rights that enable CSOs to form and operate, including the freedoms of peaceful association, assembly and expression that are grounded in international legal instruments, are under threat.

On the other hand, there have been calls for greater accountability of CSOs due to a rise in scandals in recent years that have revealed lapses and failures in CSO accountability. For example, the 2018 and 2021 Oxfam scandals in Haiti and the Democratic Republic of Congo and the alleged human rights violations of the World Wide Fund for Nature (WWF) in Cameroon have shown that CSOs can fail to protect their beneficiaries, and thus they should be subject to more stringent forms of regulation beyond mere self-regulation. In 2018, research on the feasibility of establishing international ombudsmen, known as International Ombuds for Humanitarian and Development Aid, was commissioned by the Dutch government.⁷ In 2021, the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator called for the establishment of an independent commission to make aid agencies,

4 International Center for Not-for-Profit Law, *Effective Donor Responses to the Challenge of Closing Civic Space*, May 2018 <<https://www.icnl.org/wp-content/uploads/Effective-donor-responses-FINAL-1-May-2018.pdf>>; International Center for Not-for-Profit Law, *Top Trends: Covid-19 and Civic Space*, 2020

<<https://www.icnl.org/wp-content/uploads/05.2020-Trends-in-COVID-impact-on-CS-vf.pdf>>.

5 Carla Ferstman, *Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States* (Thematic Study CONF/EXP(2019)1, Council of Europe, Expert Council on NGO Law, 2019)1.

6 Nazifa Alizada et al, *Autocratization Turns Viral. Democracy Report 2021* (Report, University of Gothenburg, V-Dem Institute, 2021) <https://www.v-dem.net/documents/12/dr_2021.pdf>; Organisation for Economic Co-operation and Development, *Digital Transformation and the Futures of Civic Space to 2030* (OECD Development Policy Papers, No. 29, Paris OECD, 2020) <https://www.oecd.org/en/publications/digital-transformation-and-the-futures-of-civic-space-to-2030_79b34d37-en.html>.

7 Dorothea Hilhorst et al, *International ombuds for humanitarian and development aid scoping study* (Study, International Institute of Social Studies, Erasmus University Rotterdam, September 2018) <<https://www.iss.nl/en/media/2018-10-2018-international-ombuds>>.

including CSOs, more accountable.⁸ Overall, the “normative goodness” that has characterised CSOs is at risk unless their accountability is strengthened.⁹

Against this backdrop, donor governments continue to rely on CSOs as partners in implementing international development and humanitarian aid outside of donor governments’ borders. Members of the OECD Development Assistance Committee (DAC) alone have provided on average 15 % of their Official Development Assistance (ODA, or “foreign aid”) to CSOs over the 2013–2022 period.¹⁰ However, there is no shortage of critiques on the way that donor state funding puts inappropriate pressures on CSOs. Issues such as overly directive funding mechanisms and stringent financial and administrative requirements affect CSOs’ ability to operate in a demand-driven and responsive way, thus undermining their relationships of accountability with the constituencies they serve or represent.¹¹

Scholarly literature tends to treat these three problems CSOs face, shrinking civic space characterised by repressive legislation, insufficient CSO accountability, and pressures from donor state support, separately. A growing base of evidence points to their inter-linkages and provides recommendations geared to address them together as part of policy and regulatory efforts toward enabling civil society worldwide.¹²

8 Office for the Coordination of Humanitarian Affairs, *Proposal: Piloting the Independent Commission for Voices in Crises* (Proposal, 20 April 2021) <<https://policycommons.net/artifacts/375916/proposal/4564665/>>.

9 Elizabeth Bloodgood, ‘When accountability kills: Alternative accountability mechanisms and NGO demise’ (Paper, 2013 Annual Meeting of the American Political Science Association, Chicago, IL, August 28–31, 2013).

10 Organisation for Economic Co-operation and Development, ‘Creditor Reporting System flows’, OECD Data Explorer, (Webpage, 2025) <[https://data-explorer.oecd.org/?fs\[0\]=Topic%2C1%7CDevelopment%23DEV%23%7COfficial%20Development%20Assistance%20%28ODA%29%23DEV_ODA%23&pg=0&fc=Topic&bp=true&snb=19](https://data-explorer.oecd.org/?fs[0]=Topic%2C1%7CDevelopment%23DEV%23%7COfficial%20Development%20Assistance%20%28ODA%29%23DEV_ODA%23&pg=0&fc=Topic&bp=true&snb=19)>.

11 Organisation for Economic Co-operation and Development, *Development Assistance Committee Members and Civil Society* (Report, Paris: OECD, 2020) <https://www.oecd.org/en/publications/development-assistance-committee-members-and-civil-society_51eb6dfi-en.html>; Rights CoLab and West Africa Civil Society Institute, *Fostering Equitable North-South Civil Society Partnerships: Voices from the South* (Research report, 23 February 2021) <<https://wacsi.org/fostering-equitable-north-south-civil-society-partnerships-voices-from-the-south/>>.

12 ICNL (n 4); Saskia Brechenmacher and Thomas Carothers, ‘Defending Civic Space: Is the International Community Stuck?’ (Working Paper, Carnegie Endowment for International Peace, 2019) <https://carnegie-production-assets.s3.amazonaws.com/static/files/WP_Brechenmacher_Carothers_Civil_Space_FINAL.pdf>; Saskia Brechenmacher et al, ‘Civil Society and the Coronavirus: Dynamism Despite Disruption’ (Article, Carnegie Endowment for International Peace, 2020) <https://carnegie-production-assets.s3.amazonaws.com/static/files/Brechenmacher_Carothers_Youngs_Civil_Society.pdf>; Jean

In terms of the paper's contribution to the existing literature, the OECD is a global actor, whose potential policy and regulatory role and contribution to regulation relating to CSOs has been understudied and neglected in the fast-growing literature on civic space, CSO regulation, and accountability. Indeed, scholars have been interested mainly in understanding the causes and consequences of restrictive laws on civic space. For instance, scholars have studied the conditions under which governments become illiberal, introducing restrictive laws against CSOs.¹³ Another body of the literature shows that repressive CSO laws are a predictor of worsening human rights abuses, specifically physical integrity rights¹⁴ and voting rights.¹⁵ Other academics have documented how restrictions on CSOs presented as preventing terrorist attacks are, instead, exacerbating terrorism.¹⁶ Scholars have also shown how restrictive laws are implemented to deter the influx of foreign aid for CSOs.¹⁷ Other literature has drawn attention to the heavy reliance that CSOs working across borders have on foreign aid and its influence on their priorities and ways of working. Scholars have emphasised the pressures that come with foreign aid for upward accountability to donor states at the expense of CSO accountability to beneficiaries and constituents in the countries in which these CSOs work.¹⁸ Civil society scholars, meanwhile, have not yet explored the significance of

Bossuyt and Martin Ronceray, *Claiming Back Civic Space: Towards Approaches Fit for the 2020s?* (Report, ECDPM and the Kingdom of Belgium, 18 May 2020) <<https://ecdpm.org/work/claiming-back-civic-space-towards-approaches-fit-for-the-2020s>>; Organisation for Economic Co-operation and Development, Development Assistance Committee, *Draft DAC Policy Instrument on Enabling Civil Society in Development Co-operation and Humanitarian Assistance, Third Draft*, DCD/DAC/2021/17, 30 March 2021 <<https://one.oecd.org/document/DCD/DAC/2021/17/en/pdf>>; Jaqueline Wood, 'State and Self-regulation of Civil Society Organizations in Context: A Case Study of Kenya' (Unpublished doctoral dissertation, Ottawa: Carleton University, 2019) <<http://doi.org/10.22215/etd/2019-1m17011>>.

- 13 Marlies Glasius et al, 'Illiberal Norm Diffusion: How Do Governments Learn to Restrict Nongovernmental Organizations?' (2020) 64(2) *International Studies Quarterly* 453.
- 14 Suparna Chaudhry and Andrew Heiss, 'NGO repression as a predictor of worsening human rights abuses' (2022) 22(3) *Journal of Human Rights* 123.
- 15 Kendra Dupuy and Aseem Prakash, 'Why Restrictive NGO Foreign Funding Laws Reduce Voter Turnout in Africa's National Elections?' (2022) 51(1) *Nonprofit and Voluntary Sector Quarterly* 170.
- 16 Jeong-Woo Koo and Amanda Murdie, 'Do NGO Restrictions Limit Terrorism? Smear Campaigns or Counterterrorism Tools?' (2022) 7(1) *Journal of Global Security Studies* 1.
- 17 Kendra Dupuy and Aseem Prakash, 'Do Donors Reduce Bilateral Aid to Countries with Restrictive NGO Laws? A Panel Study 1993–2012' (2017) 47(1) *Nonprofit and Voluntary Sector Quarterly* 89; Kendra Dupuy et al, 'Hands Off My Regime! Governments' Restrictions on Foreign Aid to Non-Governmental Organizations in Poor Countries' (2016) 84 *World Development* 299.
- 18 Ronelle Burger and Dineo Seabe, 'NGO accountability in Africa' in Ebenezer Obadare (ed), *The Handbook of Civil Society in Africa* (Springer 2014) 77.

OECD instruments in the context of CSO accountability discourse; their primary focus has been on self-regulatory instruments, particularly those designed for the development and humanitarian sectors.¹⁹ Moreover, while the relevance of the OECD as a transnational policymaker, idea broker, and standard setter in various policy sectors—including international taxation and education—has been addressed by scholars,²⁰ the role of the OECD in regulation relating to CSOs as a category of actors remains understudied.

In general terms, the OECD is well placed to address a myriad of common policy challenges via its standard-setting and monitoring. Over the six decades since its creation, the OECD, through its various expert Committees, has established 272 international standards in the form of OECD legal instruments.²¹ These include legally binding Decisions and International Agreements, as well as non-legally binding instruments such as Recommendations, Declarations, or Arrangements, amongst others. The OECD's objectives in standard-setting are to benefit individuals and societies through national-level implementation of standards, as well as to facilitate cross-border exchange and level the playing field between actors—both state and non-state—in the international arena.²² As such, the OECD's standards not only address OECD member policy and regulation in their own countries but also in non-member countries they work with or seek to influence. The organisation is deemed to have been able to “facilitate agreement on flagship standards with global impact”, while its role and influence are growing.²³ The OECD's membership comprises thirty-eight of some of the world's largest economies, as well as the European Union, with another eight countries currently undergoing the OECD accession process, and an additional five countries affiliated as “key partners”.²⁴ The OECD's members

19 Angela Crack, ‘The regulation of international NGOs: Assessing the effectiveness of the INGO accountability charter’ (2018) 29(2) *Voluntas* 419; MZ Deloffre, ‘Global Accountability Communities: NGO Self-Regulation in the Humanitarian Sector’ (2016) 42(4) *Review of International Studies* 724; Dennis Kennedy, ‘The Inherently Contested Nature of Non-governmental Accountability: The Case of HAP International’ (2019) 30(6) *Voluntas* 1393; Joannie Tremblay-Boire et al, ‘Regulation by Reputation: Monitoring and Sanctioning in Nonprofit Accountability Clubs’ (2016) 76(5) *Public Administration Review* 712.

20 See in general Fabrizio De Francesco and Claudio M. Radaelli (eds), *The Elgar Companion to the OECD* (Edward Elgard, 19 September 2023).

21 Organisation for Economic Co-operation and Development, ‘OECD Legal Instruments’ (Webpage, 2025) <<https://legalinstruments.oecd.org/en/>>.

22 Organisation for Economic Co-operation and Development, *Annual Update on OECD Standard-Setting* (Update N° C/MIN(2024)/11, 24 April 2024) <[https://one.oecd.org/document/C/MIN\(2024\)11/en/pdf](https://one.oecd.org/document/C/MIN(2024)11/en/pdf)>.

23 Ibid 6.

24 Organisation for Economic Co-operation and Development, ‘Members and Partners’ (Webpage, 2025) <<https://www.oecd.org/en/about/members-partners.html>>.

and affiliates are diverse and span the globe, inclusive of Global North and South countries. In light of this and of the above-referenced literature and considering the paper's focus on the OECD's potential as a regulator in relation to CSOs, the present paper fills a gap in the academic literature.

Methodologically, this paper performs a doctrinal analysis relying on data from primary and secondary legal and non-legal sources. The examination of the OECD Guidelines is based on an analysis of the normative content of these Guidelines and the decisions taken by National Contact Points (NCPs) in Norway, Switzerland, and the United Kingdom (UK), focusing on their legal reasoning. The examination of the DAC Recommendation is based on an analysis of the rationale and process of its development, its normative content, and steps by adherents and CSOs towards its implementation.

The results show that, while the OECD handled the three problems of repressive legislation, insufficient accountability, and donor-state pressures by creating a new and specific regulatory instrument through a consultation process inclusive of CSOs, the lack of accountability avenues was filled through the adaptation and application of an existing regulatory framework, meant for corporations, by and to CSOs. The paper documents the complementarity of these two different regulatory standards, their ability to address the three problems CSOs face, their relative strengths and gaps as regulatory tools, and overall, the role of the OECD as a regulator of CSO-related issues.

2 The OECD DAC Recommendation on Enabling Civil Society

In 2021, the OECD DAC adopted the DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance (hereafter "Recommendation") to better enable civil society actors to maximise their contributions to the 2030 Agenda for Sustainable Development, inclusive sustainable development, and democracy.²⁵ The DAC is made up of thirty-one OECD member states and the European union, that are among the largest and most influential providers of foreign aid, channelling substantial amounts to CSOs for their development co-operation and humanitarian work in developing countries. In 2022, DAC members contributed 25 billion USD for CSOs, averaging 12 % of members' total bilateral aid for CSOs, while DAC member country CSOs themselves contributed an estimated additional 54 billion USD to development co-operation.²⁶

²⁵ OECD (n 2).

²⁶ OECD (n 10).

DAC members' aim in establishing the Recommendation was to provide a framework to guide and support themselves and other donor states to advance policies and practices that would reinforce the impact and roles of CSOs working in development co-operation and humanitarian assistance in their own and in developing countries.²⁷ The Recommendation was developed to address a constellation of policy and regulatory challenges of growing concern to DAC members and CSOs alike and around which the OECD had gathered evidence to support the DAC in its standard-setting work. A first concern was the ever-growing threats to civic space ranging from detention, harassment, and assassination of CSOs and attacks on humanitarian workers and assets, to constraining regulatory requirements such as regards registration, reporting and access to cross-border funding. Misapplication or misuse of counter-terrorism regulations, restrictions on access to information and assembly in the Covid-19 context, and the growing use of digital technology to repress CSOs online were all seen as undermining efforts not only to respond to the Covid-19 pandemic but also to achieve the 2030 Agenda for Sustainable Development in keeping with principles of inclusion, equality and sustainability.²⁸ Second, DAC members recognised that they had not always been working with CSOs in the most effective manner. A 2020 OECD study based on surveys and consultation with DAC members and CSOs found gaps and tensions in how and to whom they provided funding, with issues such as short-term and overly-directive project funding, reliance on DAC country and international CSOs rather than developing country CSOs, and burdensome administrative and financial requirements impeding CSOs' ability to operate effectively and in a demand-driven way.²⁹ Third, DAC members were concerned about the shortcomings in CSOs' effectiveness when it comes to achieving development results and upholding accountability to CSOs' varied stakeholders including not only donors, but beneficiaries, constituents, rights-holders, and developing country governments. Issues of highly inequitable partnerships between donor country and developing country CSOs, and insufficient transparency were key areas deemed as needing attention.³⁰

Critically, a growing body of evidence also drew attention to the inter-linked nature of these three challenges and donor governments' impact on them.³¹ The ability of CSOs to fill their varied roles effectively and be responsive and accountable to their constituencies, rights-holders and beneficiaries is

²⁷ OECD (n 12).

²⁸ *Ibid.*

²⁹ OECD (n 11).

³⁰ *Ibid.* OECD (n 12).

³¹ ICNL (n 4); Brechenmacher and Carothers (n 12); Brechenmacher et al (n 12); Bossuyt and Ronceray (n 12); OECD (n 12); Wood (n 12).

contingent to a degree on the openness of civic space. At the same time, how donor states fund and engage with CSOs affects the latter's effectiveness and their ability to reinforce their relationships of accountability at developing country level. Shortcomings in CSOs' effectiveness and accountability in turn provide rationale—or an excuse, however unsubstantiated—for governments in aid-recipient countries to place restrictions on civic space. While autocratic governments may not necessarily feel a need to justify their actions that restrict civic space, addressing CSO accountability can nonetheless bolster CSOs' legitimacy and thus offer a counterweight to restrictive measures. In developing the Recommendation, DAC members realised the necessity of addressing these three interlinked challenges coherently in one instrument.³² They experienced threats to civic space not only as an affront to the internationally agreed rights that they ascribe to, but also as an impediment to the best use of the foreign aid they channel, whether to governments or CSOs, in developing countries. Further, DAC members recognised that the imperative of addressing civic space falls within their mandates, whether through foreign aid spending on rights and democracy, or through diplomatic measures, as is reflected in their programming and policies.

The Recommendation thus broke new ground by bringing together three inter-linked pillars of how donors enable CSOs by: 1) respecting, protecting and promoting civic space; 2) supporting and engaging with CSOs; and 3) incentivising CSO effectiveness, transparency and accountability.³³ While designing a legal instrument to govern their own policies and practices, through inclusion of the Recommendation's third pillar, the DAC sought to underscore that CSOs also have a responsibility to enhance their own effectiveness and accountability.³⁴

The process of developing the Recommendation extended over a more than a year. DAC members' technical experts in the DAC Community of Practice on Civil Society led the Recommendation's development, consulting with CSOs, especially but not exclusively those in the DAC-CSO Reference Group platform, through the process. Consultation was facilitated by the DAC's commitment to systematically dialogue with CSOs, as illustrated by the 2018 Framework for Dialogue between the DAC and CSOs.³⁵ CSOs commented on drafts and articulated their support for the Recommendation. While reiterating the

32 OECD (n 12).

33 OECD (n 2).

34 Ibid.

35 Organisation for Economic Co-operation and Development, Development Assistance Committee, *Framework for Dialogue between the DAC and Civil Society Organisations* DCD/DAC(2018)28/FINAL 03 September 2018 <[https://one.oecd.org/document/DCD/DAC\(2018\)28/FINAL/EN/pdf](https://one.oecd.org/document/DCD/DAC(2018)28/FINAL/EN/pdf)>

long-herd CSO position that CSOs should have primary responsibility for regulating their own accountability,³⁶ CSOs welcomed and offered suggestions to strengthen the Recommendation's third pillar.³⁷

The Recommendation is one among many OECD legal instruments which, though not legally-binding, signals a strong political commitment on the part of adherents to the standards contained in it. The DAC opted for a legal instrument to indicate this commitment and benefit from the Recommendation's establishment of a common framework with global reach and a high chance of impact through implementation support tools and monitoring which are requirements stipulated in all OECD Recommendations. Implementation is the responsibility of adherents to the Recommendation, with support provided by the OECD through toolkits and learning exchanges on practices, lessons and challenges. Implementation supports for the Recommendation are provided on an ongoing basis, guided by priorities identified by DAC members and by the OECD based on Peer Reviews of members. To date, two toolkits have been developed addressing the problem of disproportionate donor state pressures that impede ownership of and accountability for CSOs' programming in developing countries.³⁸ A third toolkit addressing the need for donor state co-ordination—within donor states, with other donor states, with CSOs, and with international and regional bodies—is under development.

Monitoring of implementation is done using processes and data already in place in the OECD system, in particular: Peer Reviews of DAC members that take place on a six-year cycle (with less comprehensive mid-term Reviews every three years), which since January 2022 cover progress implementing the Recommendation; annual OECD data on member financial flows for CSOs; and

36 Lisa Jordan and Peter van Tuijl 'Rights and Responsibilities in the Political Landscape of NGO Accountability: Introduction and Overview' in L. Jordan and P. van Tuijl (eds), *NGO Accountability: Politics, Principles and Innovations* 3.

37 DAC-CSO Reference Group, Letter to the Chair and Members of the OECD Development Assistance Committee (DAC) with regard to an OECD DAC Recommendation on Enabling Civil Society, 24 June 2021, <<https://www.dac-csoreferencegroup.com/post/letter-to-the-chair-and-members-of-the-dac-with-regard-to-recommendation-on-enabling-civil-society>>.

38 Organisation for Economic Co-operation and Development, *Funding Civil Society in Partner Countries—Toolkit for Implementing the DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* (Report, 09 May 2023) <https://www.oecd.org/en/publications/funding-civil-society-in-partner-countries_9ea40a9c-en.html>; Organisation for Economic Co-operation and Development, *Shifting Power with Partners—Toolkit for Implementing the DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* (Report, 16 July 2024) <https://www.oecd.org/en/publications/shifting-power-with-partners_7987e8db-en.html>.

input from learning exchanges with DAC members and CSOs, amongst other sources. Evidence to date shows progress, with many DAC members adjusting or adopting new policies and practices in line with the Recommendation.³⁹ Numerous Peer Reviews completed since inclusion of the Recommendation point to advancements in the Recommendation's implementation, particularly as relate to localising support for CSOs to enhance accountability in developing countries.⁴⁰ Per OECD Recommendation requirements, a monitoring report to the OECD Council five years following the Recommendation's adoption (eg in July 2026) will address implementation, continued relevance, and the overall state-of-play regarding the Recommendation's effectiveness and impact, including that of the implementation support tools developed. Reporting to Council is required at least every ten years thereafter.

While CSOs are not adherents to the Recommendation, inclusion of the third pillar on their accountability, alongside a requirement for systematic DAC-CSO engagement through the processes of dissemination, implementation and monitoring, contribute to an environment of mutual accountability for progress.⁴¹

3 The OECD Guidelines for Multinational Enterprises

In 1976, the OECD Guidelines for Multinational Enterprises (hereafter "Guidelines") were adopted to promote responsible corporate conduct concerning human rights among multinational enterprises and regulate their activities in developing countries.⁴² These guidelines consist of voluntary recommendations for multinational corporations operating in or from adhering countries and address several fields such as transparency, human rights, employment, environment, anti-corruption, competition, and taxation. Adhering governments are required to establish an NCP that

39 Organisation for Economic Co-operation and Development, Development for Assistance Committee, *Update: DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*, DCD/DAC(2023)/15/FINAL 24 April 2023 <[https://one.oecd.org/document/DCD/DAC\(2023\)/15/FINAL/en/pdf](https://one.oecd.org/document/DCD/DAC(2023)/15/FINAL/en/pdf)>.

40 OECD, 'Development Co-operation peer reviews and learning' (Webpage, 2025) <<https://www.oecd.org/en/topics/development-co-operation-peer-reviews-and-learning.html>>.

41 Organisation for Economic Co-operation and Development, Development Assistance Committee, *Draft DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*, DCD/DAC/2021/29 22 June 2021 <[https://one.oecd.org/document/DCD/DAC\(2021\)29/en/pdf](https://one.oecd.org/document/DCD/DAC(2021)29/en/pdf)>.

42 OECD (n 3).

oversees the implementation of these recommendations at the national level and handles complaints, known as ‘specific instances’, against enterprises for non-compliance.⁴³ NCPs serve as a state-based forum for mediation and conciliation to address corporate non-compliance with the Guidelines.⁴⁴ Upon concluding mediation, NCPs offer recommendations, rather than sanctions, to encourage parties to resolve issues of non-observance of the Guidelines.

While the Guidelines were initially intended for multinational enterprises, NCPs have received complaints against CSOs, with the first complaint against a CSO filed in 2011 before the Norwegian NCP. Although this complaint was dismissed, subsequent cases in the Swiss and UK NCPs have assessed the applicability of the guidelines to CSOs, ultimately applying them to certain types of CSOs under specific conditions. These conditions include the CSO operating in at least two countries, within a signatory state of the Guidelines, and that the Guidelines’ violation must have occurred in relation to the business activity of the CSO.⁴⁵ In unpacking these conditions and addressing complaints against CSOs, NCPs emphasise that, as a matter of law, CSOs are private actors subject to domestic legal rules and institutions regardless of where they operate. To the extent that there is a lack of accountability and regulation for CSOs at the international level, this gap appears to be *de facto* rather than *de jure*. In this respect, CSOs resemble multinational enterprises and have been treated as such by the NCPs. Furthermore, the accountability of CSOs mirrors that of multinationals in that, unlike international organisations, CSOs do not possess privileges and immunities.⁴⁶ When operating transnationally, CSO staff are subject to the host state’s criminal jurisdiction without the legal immunity granted to UN personnel and peacekeepers.⁴⁷ Despite lacking formal immunity, they may benefit from the host state’s inability to prosecute those involved in humanitarian or development work. CSOs often worsen the issue by failing to report staff misconduct, fostering impunity and weak vetting, which allows perpetrators to move to other organisations.⁴⁸ Consequently, the

43 Ibid 56.

44 Ibid 58–86.

45 Domenico Carolei, ‘Accountability beyond Corporations: The Applicability of the OECD Guidelines for Multinational Enterprises to Non-profit Organisations’ (2022) 13(1) *Nonprofit Policy Forum* 31.

46 Róisín Sarah Burke, *Sexual Exploitation and Abuse by UN Military Contingents—Moving Beyond the Current Status Quo and Responsibility under International Law* (Brill, 2014) 63–64.

47 Gabrielle Simm, *Sex in Peace Operations* (Cambridge University Press, 2013) 128.

48 Carla Ferstman, ‘Reparation for Sexual Exploitation and Abuse in the (Post) Conflict Context: the Need to Address Abuses by Peacekeepers and Humanitarian Aid Workers’ in Carla Ferstman and Mariana Goetz (eds) *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill, 2020) 283.

OECD Guidelines has become an appropriate forum for addressing complaints against CSOs.

In 2011, the Norwegian NCP received a complaint against Norwegian Church Aid (NCA), alleging breach of the Guidelines due to inadequate due diligence in managing a refugee camp in Kosovo, resulting in exposure to serious health risks.⁴⁹ The complainant argued that NCA should be considered a multinational enterprise as it receives significant public funds and operates internationally.⁵⁰ However, after consulting with the OECD Investment Committee, the Norwegian NCP determined that NCA did not qualify as a multinational enterprise and declared the complaint inadmissible.⁵¹ The Norwegian NCP reasoned that, although a precise definition of multinational enterprises is not required under Chapter I (3) of the 2000 version of the Guidelines, there are no specific references to complaints against non-commercial organisations in the preparatory works of the 2000 negotiations.⁵² The NCP further interpreted the scope of the Guidelines as part of the Investment Declaration, overseen by the OECD Investment Committee, thus requiring a business nexus.⁵³ Additionally, the NCP observed that NCA was registered as a non-for-profit organisation, not as a business enterprise, within the Register for Voluntary Organisations.⁵⁴

In 2015, the Swiss NCP allowed a complaint by the Building and Wood Workers' International (BWI) against Fédération Internationale de Football Association (FIFA), an association registered in the Commercial Register of the Canton of Zurich in accordance with Articles 60 ff. of the Swiss Civil Code, concerning alleged human rights violations of migrant workers related to the FIFA 2022 World Cup in Qatar.⁵⁵ The NCP held that the Guidelines were applicable to FIFA, highlighting that the Guidelines do not precisely define 'multinational enterprises', but the definition in Chapter I (4) is broad enough to include entities operating in various sectors, established in more than one country, and coordinating their operations.⁵⁶ The Guidelines establish legally non-binding principles and standards for responsible business conduct, generally understood as the responsibility of entities involved in commercial

49 National Contact Point (NCP) of Norway, Initial Assessment and Final Conclusion. 129 Roma in Kosovo V. Norwegian Church Aid (NCA), 2011, p 1.

50 Ibid 5.

51 Ibid 6; see also Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises* (Report, 08 June 2023) 21.

52 NCP Norway (n 49) 6.

53 Ibid.

54 Ibid.

55 OECD National Contact Point (NCP) of Switzerland, *Specific Instance Regarding the Fédération Internationale de Football Association (FIFA)* (Initial Assessment, 13 October 2015) 2.

56 Ibid 4.

activities.⁵⁷ Thus, the crucial issue for the NCP to ascertain—by examining each case individually and considering the specific circumstances—is whether an entity engages in commercial activities, irrespective of its legal structure or industry.⁵⁸ In this complaint, the NCP observed that FIFA conducts international operations and has a multinational scope, with entities operating in multiple countries coordinating their global activities.⁵⁹ The Swiss NCP handled another complaint against FIFA by Americans for Democracy and Human Rights in Bahrain (ADHRB) in 2016, claiming that FIFA violated the Guidelines by allowing Sheikh Salman Al Khalifa to run for the FIFA presidency.⁶⁰ However, the NCP concluded that the alleged violations were not linked to FIFA’s commercial activities and fell outside the scope of the Guidelines.⁶¹ In 2022, UNITE HERE Local 11, a trade union, submitted a specific instance to the Swiss NCP alleging that FIFA had failed to observe the Guidelines by not demonstrating due diligence and stakeholder involvement in potentially selecting the Rose Bowl Stadium in Los Angeles as a venue for the Football World Cup 2026.⁶² After accepting the complaint for further consideration, the Swiss NCP closed the procedure as the parties agreed on a solution outside of the NCP process.⁶³

In 2016, Survival International (SI), a CSO advocating for indigenous rights, lodged a complaint against WWF, an independent foundation under Swiss Civil Code Chapter 3.⁶⁴ SI alleged that WWF facilitated violent abuse against Baka Pygmies in Cameroon, forcing them from their homeland in a national reserve, while neglecting to adequately consult affected local communities during the planning process.⁶⁵ SI also documented violent abuses perpetrated

57 Ibid.

58 Ibid.

59 Ibid 6.

60 OECD NCP of Switzerland, *Specific Instance Regarding the Fédération Internationale de Football Association (FIFA) submitted by the Americans for Democracy and Human Rights in Bahrain (ADHRB)* (Initial assessment, 17 August 2016) 2.

61 Ibid 4.

62 OECD NCP of Switzerland, *Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the trade union UNITE HERE Local 1* (Initial assessment, 31 March 2022).

63 OECD NCP of Switzerland, *Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the trade union UNITE HERE Local 1* (Final Statement, 15 September 2022).

64 OECD NCP of Switzerland, *Specific Instance Regarding the World-Wide Fund for Nature International (WWF) Submitted by Survival International Charitable Trust (SI)* (Initial Assessment, 20 December 2016) 5.

65 Ibid 3.

by eco-guards allegedly trained and financed by WWF.⁶⁶ WWF objected to the allegations but accepted NCP mediation, despite concerns over applying Guidelines meant for commercial entities to resolve disputes between two CSOs.⁶⁷ The NCP, utilising prior reasoning from FIFA complaints, deemed the Guidelines applicable to WWF based on two factors: WWF International's global presence in over 80 countries and its market-based approach to conservation, generating income through royalties, collectors' albums, and environmentally friendly product sales featuring the panda emblem.⁶⁸ Although both organisations initially accepted the OECD system as a conciliation forum, the mediation talks ultimately failed.⁶⁹

In 2018, the Swiss NCP addressed a complaint against the Roundtable on Sustainable Palm Oil (RSPO) by Transformation for Justice (TuK Indonesia), concerning an unresolved land conflict in Indonesia and RSPO's complaint mechanism.⁷⁰ Despite RSPO's non-traditional multinational enterprise status and operational control in Malaysia, the Swiss NCP deemed it covered by the Guidelines due to its multinational scope and income generated from commercial activities.⁷¹ The mediation process resulted in an agreed action plan for legal review.⁷²

In 2019, the UK NCP received a complaint pertaining to Bonsucro, a London-based company limited by guarantee that identifies itself as a global multi-stakeholder non-profit organisation. The complaint, jointly submitted by three CSOs—Inclusive Development International (IDI), Equitable Cambodia (EC), and Cambodian League for the Promotion and Defense of Human Rights (LICADHO)—alleged that Bonsucro failed to prevent land-grabbing incidents in Cambodia by Mitr Phol Group—Thailand (MPG-T), one of its participating companies.⁷³ In their submission, the complainants drew attention to a

66 Ibid 4.

67 Patrick Barkham, 'Human Rights Abuses Complaint Against WWF to be Examined by OECD', *The Guardian* (Online, 5 January 2017) <<https://www.theguardian.com/environment/2017/jan/05/oecd-to-examine-complaint-against-wwf-over-human-rights-abuses-in-cameroon>>.

68 NCP of Switzerland, *supra* note 64, p. 8.

69 OECD NCP of Switzerland, *Specific Instance Regarding the World-Wide Fund for Nature International (WWF) Submitted by the Survival International Charitable Trust* (Final Statement, 21 November 2017).

70 OECD NCP of Switzerland, *Specific Instance Regarding the Roundtable for Sustainable Palm Oil (RSPO) Submitted by Transformation for Justice (TuK)* (23 January 2018) 2.

71 Ibid 5.

72 OECD NCP of Switzerland, *Specific Instance Regarding the Roundtable for Sustainable Palm Oil (RSPO) Submitted by TuK Indonesia (TuK)* (Final statement, 5 June 2019).

73 OECD NCP of the United Kingdom, Initial Assessment: Complaint from IDI, EC and LICADHO against Bonsucro Ltd, 25 September 2019, para 2.

previous Swiss NCP case examining the applicability of the Guidelines to a similar multi-stakeholder initiative, the RSPO. The UK NCP accepted a complaint against Bonsucro for further examination as a limited company based in the UK with over 500 company members operating in more than 40 countries.⁷⁴ Bonsucro questioned the UK NCP's suitability as a forum to assess the conduct of one of its overseas subsidiaries, but their argument was dismissed.⁷⁵ In January 2022, the UK NCP found that Bonsucro breached the Guidelines in relation to due diligence when readmitting MPG-T as a member, but it acknowledged Bonsucro's efforts to align with the Guidelines by implementing a new grievance mechanism and updating its code of conduct.⁷⁶

In 2021, the Swiss Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community of Switzerland and Liechtenstein, and Tibetan Women's Association Switzerland filed a complaint against the International Olympic Committee (IOC) at the Swiss NCP, alleging insufficient due diligence and contribution to potential human rights and labour rights violations in various Chinese regions by awarding the 2022 Winter Olympics to Beijing.⁷⁷ The IOC is a non-profit organisation, dedicated to using the revenue generated from the Olympic Games to assist athletes and develop sport worldwide, registered in the Commercial Register of the Canton of Vaud.⁷⁸ The NCP assessed the applicability of the Guidelines to the IOC and determined that it was a multinational enterprise with responsibilities under the Guidelines due to its international operations, multinational scope, and revenue generation from the Winter Olympics. The NCP emphasised that the IOC's involvement in organising the games can be considered as commercial activities to which the Guidelines apply.⁷⁹ However, the NCP clarified that this conclusion should not lead to the generalisation that all sports federations are multinational enterprises, as they remain non-profit organisations with a primary goal of promoting sports worldwide, distinguishing them from other multinational enterprises.⁸⁰ This complaint ended with no resolution

74 Ibid [29].

75 Ibid [14].

76 OECD NCP of the United Kingdom, *IDI, EC and LICADHO complaint to UK NCP about Bonsucro Ltd* (Final statement, 11 January 2022).

77 OECD NCP of Switzerland *Specific Instance regarding the International Olympic Committee submitted by the Swiss Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community of Switzerland and Liechtenstein as well as the Tibetan Women's Association Switzerland* (Initial assessment, 27 July 2021).

78 Ibid 6–7.

79 Ibid.

80 Ibid.

due to one of the complainants breaching the confidentiality rules in NCP processes.⁸¹

4 Complementarities, Addressing CSO-related Challenges, and Strengths and Gaps of the OECD Frameworks

In the previous sections it was shown how the OECD has taken two different regulatory approaches in relation to CSOs via two different regulatory frameworks to address the dual challenges of protecting civic space and ensuring accountability of CSOs. Together, the Recommendation and the Guidelines engage with three critical problems CSOs face of repressive legislation, insufficient accountability and donor-state pressures. Despite their distinct methods, the two frameworks collectively form a regulatory ecosystem that supports CSOs in navigating these challenges. The complementarities of these two regulatory approaches, the ways in which they address the three problems CSOs face, as well as their strengths and gaps are discussed below.

4.1 *Complementary Approaches to Regulation*

4.1.1 Tailored Approach vs. Adaptive Mechanism

The first area of complementarity between these two regulatory approaches has to do with the origins of their design and application. The Recommendation is the result of a specific standard-setting process to create a new dedicated framework to address systemic issues such as civic space restrictions and inequities in donor-CSO relationships. It is an example of evidence-based standard setting wherein the standard's development, negotiation and consensus-based adoption was grounded in DAC members' shared aim of enabling CSOs in the development co-operation and humanitarian assistance context. The Recommendation positions donor governments as key enablers of CSOs, urging these governments to work towards open civic space, better funding practices, and more accountable CSOs. The Guidelines on the other hand were initially designed for multinational enterprises and have been adapted via NCPs to address gaps in CSO accountability, particularly in instances of human rights violations. The application of the Guidelines to CSOs is a (*quasi-*)judicial creation developed by an adjudicative body—namely, the

81 OECD NCP of Switzerland, *Specific Instance regarding the International Olympic Committee submitted by the Swiss-Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community in Switzerland and Liechtenstein as well as the Tibetan Women's Association Switzerland* (Final statement, 21 December 2021).

NCPs—because of several complaints filed against CSOs within the OECD system. Essentially, it is the result of a number of decisions taken by the NCPs, which have allowed the application of the Guidelines beyond their intended recipients (multinational corporations), based on an extensive interpretation of “Multinational Enterprise” under the meaning of the Guidelines.

4.1.2 Collaborative Engagement vs. Conflict Resolution

The second area of complementarity lies in the way CSOs interact with each other, paying attention to the politics of CSO interactions,⁸² and interact with the OECD, in the development and implementation of the two instruments. Regarding the Recommendation, the nature of the CSO-CSO and CSO-OECD interaction is collaborative. The Recommendation promotes mutual accountability through platforms like the DAC-CSO Reference Group, enabling CSOs to participate throughout the Recommendation’s processes. CSOs were not only involved in developing the Recommendation, but also in implementation and monitoring. They engage with the DAC to provide substantive input to toolkit development to support DAC member implementation and participate in learning and monitoring exchanges on an ongoing basis. They are also active in monitoring through the DAC Peer Review process in which consultation with CSOs is systematically included, and their involvement in the five-year report’s development is a requirement of the Recommendation.⁸³ That CSOs’ involvement is largely coordinated through the DAC-CSO Reference Group platform implies that possible points of conflict between participating CSOs are resolved in that platform before its representatives intervene with the DAC. In effect, the quid pro quo nature of the Recommendation’s three pillars fosters collaborative and constructive CSO-CSO and CSO-OECD/DAC engagement.

By contrast, the application of the Guidelines to CSOs is the consequence of a conflictual relationship between CSOs. The NCPs provide a platform for resolving disputes, often between CSOs, fostering peer accountability through adversarial mechanisms. Essentially, it is an avenue for peer-accountability where a CSO acts as a complainant, accusing another CSO, the defendant, of failing to comply with the Guidelines. Most of the complaints examined above were filed by CSOs against other CSOs and focused on whether the Guidelines, meant for corporations, applied to CSOs and the extent of CSOs’ compliance with the Guidelines. In terms of interaction between CSOs and the OECD,

82 Maryam Zarnegar Deloffre and Sigrid Quack (eds), *A Relational Approach to NGOs in World Politics: Beyond Cooperation and Competition* (Oxford University Press, 2025).

83 Organisation for Economic Co-operation and Development, ‘DAC Peer Review Methodology, Updated 2023’, (Note N° DCD/DAC(2022)57/FINAL, 23 May 2023) <[https://one.oecd.org/document/DCD/DAC\(2022\)57/FINAL/en/pdf](https://one.oecd.org/document/DCD/DAC(2022)57/FINAL/en/pdf)>.

CSOs have made significant contributions to the Guidelines, with around 350 complaints against corporations submitted by CSOs and community groups in the past two decades.⁸⁴ OECD Watch, a global network of CSOs, supports victims of corporate abuse and contributed to the 2011 and 2023 revision of the Guidelines, which strengthened provisions on human rights, supply chain responsibility, and emissions.⁸⁵ More recently, 130 CSOs from a broad range of groups have signed a letter calling for a greater civil society role in OECD policymaking and meaningful implementation of the OECD Guidelines.⁸⁶

4.1.3 Carrot vs. Stick Dynamic

A third area of complementarity lies in the dynamics of the motives to implement the two instruments. The DAC Recommendation acts as a “carrot”, incentivising compliance through collaboration and systemic solutions. As noted, a collaborative approach characterises the Recommendation, with ongoing CSO-DAC interaction that encourages implementation, criticises when implementation is falling short, and exchange on solutions to bottlenecks. At the level of the DAC, the Community of Practice on Civil Society meets bi-annually to share progress, obstacles and solutions. The occurrence of DAC Peer Reviews every six years, along with mid-term Reviews every three years, motivate implementation, even as these Reviews are designed as both an accountability and a learning tool. Further, the Recommendation’s systematic approach to enabling civil society represented by its three pillars also incentivises implementation given the shared interest of donor states and CSOs to enabling civil society. There is keen commitment on the part of the DAC-CSO Reference Group to the Recommendation’s successful implementation and monitoring, as the policy and practice changes by donor states that the Recommendation calls for respond well to CSOs’ needs for open civic space and for improved donor state funding practices.

The Guidelines on the other hand serve as a ‘stick’, enforcing accountability through a structured complaint mechanism which can result in reputational damage, financial losses, and calls for greater accountability. The OECD Guidelines, while non-binding, are backed by adhering governments promoting compliance. NCPs mediate complaints but lack enforcement power. Yet, non-compliance with OECD Guidelines can have severe reputational and financial

84 OECD Watch, ‘Complaints Database’, (Webpage, 2025) <<https://www.oecdwatch.org/complaints-database/>>.

85 OECD Watch, ‘About Us’ (Webpage, 2025) <<https://www.oecdwatch.org/about-us/>>.

86 OECD Watch, ‘OECD Watch and 130+ NGOs call for meaningful Guidelines’ implementation’ (Webpage, 29 April 2024) <<https://www.oecdwatch.org/oecd-watch-and-130-ngos-call-for-meaningful-guidelines-implementation/>>.

impacts on CSOs, even more than companies, given their reliance on donations and scrutiny of institutional donors.

In *SI v. WWF*, donor accountability evolved after the UN Development Programme Social and Environmental Compliance Unit (SECU) investigated 2018 allegations of human rights abuses against the Indigenous Baka in Congo and Cameroon. SECU confirmed credible threats, prompting WWF to improve transparency.⁸⁷ The German Government suspended funding for Salonga National Park,⁸⁸ and the European Union froze WWF funding in Messok Dja, Republic of Congo.⁸⁹ The US Congress Natural Resources Committee conducted a bipartisan investigation into the WWF's allegations of human rights violations overseas.⁹⁰ Similarly, FIFA faced human rights backlash linked to OECD complaints. German supermarket REWE ended its sponsorship of the German Football Association during the Qatar World Cup.⁹¹ Fans and players protested, with German stadiums displaying banners calling for a boycott and condemning corruption and abuses in Qatar.⁹²

4.1.4 Oversight

The two instruments' differing approaches to oversight is a fourth area of complementarity. Firmly built into the Guidelines since their 2000 review is establishment by adhering governments of NCPs that, as stated, have a role

87 United Nations Development Programme, 'Draft Investigation Report: Case No. SECU0009' OAI, Social and Environmental Compliance Unit (10 March 2020) <https://info.undp.org/sites/registry/secu/SECU_Documents/SECU0009_Draft%20Investigation%20Report_For%20Public%20Commentoddfo41323354a9ca3864d50de9970b7.pdf>.

88 Tom Warren and Katie JM Baker, 'WWF Has Suspended Support for Rangers at a Major Nature Reserve after a Suspicious Death' *BuzzFeed News* (Article, 11 December 2019) <https://www.buzzfeednews.com/article/tomwarren/wwf-has-suspended-support-for-rangers-at-africas-largest>

89 European Parliament, 'Answer Given by High Representative/Vice-President Borrell on Behalf of the European Commission', Parliamentary Question N° E-006722/2020 (Webpage, 2 March 2021) <www.europarl.europa.eu/doceo/document/E-9-2020-006722-ASW_EN.html>.

90 NATURAL RESOURCES COMMITTEE DEMOCRATS RANKING MEMBER JARED HUFFMAN, 'Protecting Human Rights in International Conservation' (Webpage, 26 October 2021) <<https://democrats-naturalresources.house.gov/news/videos/watch/protecting-human-rights-in-international-conservation>>.

91 John Silk, 'Qatar 2022: REWE Drops German National Team Partnership' *Deutsche Welle* (article, 22 November 2022) <<https://www.dw.com/en/qatar-2022-rewe-drops-german-national-team-partnership/a-63847556>>

92 Ciaran Fahey, 'German Fans Protest Qatar World Cup with Stadium Banners' *Associated Press* (Article, 21 November 2022) <<https://apnews.com/article/world-cup-sports-soccer-germany-boycotts-2e05577993f10976b97f76356b93be2e>>

in advancing the Guidelines' observance by multinational enterprises and handle complaints against enterprises by parties that deem the enterprises as non-compliant. Oversight of the Recommendation on the other hand relies on Peer Reviews among DAC members, promoting accountability through mutual learning and self-regulation. Peer Reviews monitor implementation of past Review recommendations and implementation of OECD Recommendations, with the aim of improving the reviewed member's performance, and official management responses by reviewed members are encouraged.⁹³ However, the Recommendation lacks enforceable oversight mechanisms. In developing the Recommendation, no consideration was given to requiring the establishment of oversight bodies such as the NCPs of the Guidelines. Both instruments do require regular review and reporting to the OECD Council on their impact, but only the Guidelines have the requirement for national level oversight.

4.1.5 Scope of Target and Reach

The fifth and final area of complementarity of the two instruments stems from the classes of actors they target, within the confines of the nature of international law as regards regulating CSOs, and their reach. The Recommendation directly targets donor governments, which are the traditional recipients of norms under international law and, along with inter-state organisations, are eligible to formally adhere to the Recommendation. The Guidelines target a specific set of non-state actors, multinational corporations, and were subsequently interpreted as applying to CSOs. In effect, the Guidelines also target governments, again the sole actors that can formally adhere to the Guidelines. However, by adhering, governments commit to implementing the Guidelines in their regulation of multinational corporations; the Guidelines "are recommendations addressed by governments to multinational enterprises."⁹⁴

Thus, non-state actors, namely multinational enterprises may choose to endorse or, in OECD terms, "follow" OECD instruments but do so at their own discretion and are not subject to the formal OECD monitoring mechanisms. The Guidelines, originally designed to address corporate accountability, have been adapted to include CSOs to the extent that these organisations engage in business activities. This adaptation expands the Guidelines' reach, recognising that CSOs, while traditionally focused on advocacy and non-profit initiatives, often undertake commercial activities such as fundraising through enterprises or providing goods and services. These business activities can have direct or indirect implications for human rights, labour standards, environmental

93 OECD (n 83).

94 OECD (n 3).

impact, and other ethical considerations. However, the reach of the Guidelines remains inherently tied to the commercial dimensions of CSOs' operations. As long as CSOs engage in business activities, they fall within the scope of the Guidelines' provisions. This ensures that their actions are subject to the same standards of accountability as corporate entities, fostering transparency, ethical conduct, and respect for human rights in their commercial engagements.

In terms of its reach, given the Recommendation addresses the field of development co-operation and humanitarian assistance, the scope of the Recommendation is global. It applies to all CSOs that donor states work with, whether directly or indirectly. While the bulk of DAC members' funding for CSOs (90 % in 2022) flows directly to DAC country and international CSOs, nearly all DAC members' funding for these CSOs requires that they work in partnership with developing country CSOs.⁹⁵ Moreover, locally led development is a throughline of the Recommendation which calls for more direct support for developing country CSOs and for more equitable donor country/international CSO—developing country CSO partnerships.⁹⁶ The reach of the Guidelines is inherently tied to the adherence of countries that commit to this instrument. Corporations headquartered or operating in these adhering countries are expected to align their activities with the Guidelines, ensuring respect for human rights, labour rights, environmental sustainability, and ethical business practices. This creates a framework for accountability that extends beyond domestic boundaries of countries adhering to the Guidelines, influencing the behaviour of multinationals and CSOs worldwide. For instance, SI filed a complaint before the Swiss NCP against WWF, alleging human rights violations against the Baka people in Cameroon—a non-adhering country. The Swiss NCP accepted the case, facilitating mediation between the parties. Likewise, the UK NCP accepted the complaint against Bonsucro, a UK-based organisation, concerning alleged human rights abuses in Cambodia, another non-adhering country.

4.2 *Addressing CSO Challenges*

4.2.1 Repressive Legislation and Actions by Host States

Under its first pillar on respecting, protecting and promoting civic space, the Recommendation calls on its adherents to take various actions to foster open civic space in the developing countries in which CSOs operate. These actions include for example dialogue with these countries' governments on the value of civil society and open civic space, supporting these governments to develop

⁹⁵ OECD (n 10); OECD (n 11).

⁹⁶ OECD (n 38).

regulatory frameworks that enable civil society, and countering mis- and disinformation targeting civil society. Addressing repressive legislation and actions in countries in which CSOs operate, which are countries to which donor states' aid flows for other actors as well (government, multilateral institutions, private sector), aligns with donor state policy and programme mandates.⁹⁷ In addition, the three inter-linked pillars of the Recommendation seek to advance open civic space indirectly through better practices of funding CSOs that can strengthen CSO accountability and deter repressive measures in host states. However, the Recommendation's reliance on actions by donor states leaves gaps in its ability to influence repressive host states directly.

The Guidelines promote the rule of law and safe civic spaces by urging companies to respect the rights of human rights defenders, avoid reprisals, and help remediate any harm caused.⁹⁸ They emphasise the need for businesses to collaborate with their partners, including governments, to prevent reprisals and create a safe environment for communities and defenders to express concerns.⁹⁹ Additionally, companies are encouraged to consider potential harms to marginalised groups, including human rights defenders, ensuring their activities do not exacerbate vulnerabilities.¹⁰⁰ According to OECD Watch, NCPs have handled over 250 complaints from NGOs and communities since 2000, with at least 25 % involving reprisals such as threats or lawsuits against complainants.¹⁰¹ Filing complaints often increases the risk of reprisals, particularly during or after the complaint process, in sectors such as mining, agriculture, and textiles, which account for 64 % of all reprisals.¹⁰² Yet, as civic space has closed dramatically in the past decade, Protection International's

97 Examples that reflect DAC members' mandates in this regard include: Swiss Agency for Development and Cooperation, *The SDC's Guidance on Governance* (Guidance, Bern: Federal Department of Foreign Affairs, Swiss Agency for Development Cooperation, 2020) <https://www.eda.admin.ch/content/dam/deza/en/documents/die-deza/strategie/SDC-governance-guidance-web_EN.pdf>; Federal Ministry for Economic Cooperation and Development, *The Federal Development Ministry's Cooperation with Civil Society—Assuming international responsibility in a spirit of solidarity* (Guidance, Bonn: Federal Ministry of Economic Cooperation and Development, 2024) <<https://www.bmz.de/resource/blob/225426/bmz-zivilgesellschaft-en-barrierefrei.pdf>>.

98 OECD (n 3), Preface [6]; Chapter II [9]–[10] commentary 14; Chapter IV: commentary 45.

99 Ibid Part II: [I.C.9]; commentaries 26, 27, 28 and 47.

100 Ibid Chapter IV: commentary 45.

101 OECD Watch and Business and Human Rights Resources Center, 'Use with Caution: The Role of the OECD National Contact Points in Protecting Human Rights Defenders' *Publication* (Factsheets, 10 June 2019) 1 <<https://www.oecdwatch.org/wp-content/uploads/sites/8/2019/06/Reprisals-NCP-system.pdf>>

102 Ibid 2–3.

letter to the OECD emphasises the critical need for robust measures to protect human rights defenders, aligning with the broader call for the OECD and its NCPs to mitigate reprisal risks and foster safe spaces for advocacy.¹⁰³ However, the current scope of the Guidelines focuses on what corporations can do to address human rights abuses against CSOs and human rights defenders individually but does not extend to outlining or empowering CSOs in their responsibilities to protect their peers. Such responsibilities have been outlined and addressed elsewhere. For instance, the UN Special Rapporteur's report on Mexico highlights threats to human rights defenders, emphasizing the role of CSOs in documenting violations, the need for inclusive networks to support isolated defenders, and the challenges faced by rights advocates, particularly due to religious opposition to LGBTQ+ and reproductive rights efforts.¹⁰⁴

4.2.2 Insufficient Accountability

Through its third pillar on incentivising CSO effectiveness, transparency and accountability, the Recommendation encourages CSOs to adopt accountability measures and donor states to support them in doing so. For example, it calls for CSOs to participate in self-regulation mechanisms, to meet human rights standards, and to develop more equitable partnerships between donor country/international CSOs and developing country CSOs. At the same time, its second pillar calls on DAC members to adapt their funding practices in ways that can reinforce CSOs' accountability relationships in the countries in which CSOs operate. As noted, though the bulk of DAC members' funding for CSOs flows to donor country/international CSOs, the Recommendation's provisions related to CSO accountability and to donor state funding practices extend to CSOs in developing countries given the donor country/international CSO—developing country CSO partnerships that characterise DAC members' CSO funding. However, the Recommendation's reliance on voluntary measures, both by donor states and CSOs, reduces its enforceability.

The Guidelines, traditionally designed for corporate entities, hold considerable potential for adaptation to enhance accountability within CSOs. As CSOs increasingly expand their roles in areas of service delivery and market-based activities, applying the Guidelines to their operations can help

¹⁰³ Protection International, 'Joint Open Letter: Civil Society Letter to the OECD on Human Rights Defenders and the Update of the OECD Guidelines for Multinational Enterprises' (Webpage, 10 February 2023) <<https://www.protectioninternational.org/news/letter-to-oecd-on-hrds/>>

¹⁰⁴ Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico*, UN Human Rights Council, 37th session, Agenda Item 3, A/HRC/37/51/Add.2 (12 February 2018) [106], [107]–[108]; [para 103].

address critical gaps in their accountability. This is particularly important given the absence of a tailored framework that outlines the human rights responsibilities of CSO under international law.¹⁰⁵ By ensuring CSOs adhere to the same rigorous standards expected of corporate actors, the Guidelines can promote accountability across sectors. Notably, NCP complaints offer structured avenues for grievance redress, enabling the resolution of disputes between CSOs, being an important avenue for peer accountability. However, the complainants are primarily northern CSOs, which, while well-suited to identify systemic human rights issues due to shared contexts, raise concerns about the mechanism's inclusivity and relevance, as it lacks involvement from directly affected groups in the global South. In that sense, this mechanism could be misused for disputes among northern CSOs, driven by competition for resources or reputational gain, potentially undermining the cooperative principles of civil society. Despite these concerns, the NCP mechanism remains a valuable tool for addressing accountability gaps, particularly where robust domestic or international standards are absent, though it relies on voluntary compliance and focuses primarily on CSO's commercial activities. Indeed, the current scope of the Guidelines is limited to CSOs engaged in commercial activities, leaving significant accountability gaps in non-commercial domains, notably advocacy activities.

4.2.3 Donor-state Pressures

The Recommendation is clearly designed to address key pressures that CSOs face in their funding relationships with donor states. Its second pillar on supporting and engaging with CSOs calls for, amongst other things, CSOs' participation in donor states' policy and programme priority setting and design, providing more long-term flexible funding, promoting developing country CSO leadership and ownership, and reducing the heavy burden of administrative and financial requirements. Again, its reliance on voluntary actions by donor states limits enforceability, though ongoing monitoring of implementation motivates compliance.

The Guidelines, while not explicitly targeting the issue of donor influence, provide a set of standards and mechanisms like NCPs to address accountability and mitigate potential negative human rights impacts. Through NCP oversight, these mechanisms can resolve conflicts involving CSOs accused of prioritising donor-driven agendas over local community needs. For instance, an NCP-led mediation process might involve a CSO alleged to have shifted its focus

¹⁰⁵ Anna-Karin Lindblom, *Non-Governmental Organisations in International Law* (Cambridge University Press 2005) 187–189.

disproportionately toward donor state priorities at the expense of its stated mission or ethical obligations. Host countries, often complicit in enabling donor-driven projects that disregard local contexts, also contribute to these challenges, exacerbating conflicts between global and local priorities.

A notable example is the complaint of *SI v WWF*, where eco-guards funded and trained by WWF with support from the Cameroonian government faced accusations of human rights violations against Indigenous communities, including acts of violence and forced displacement. The conservation activities, aligned with donor-state priorities, raised concerns about neglecting community needs. An NCP-led mediation could help resolve such disputes by recommending the integration of community perspectives and consent in conservation practices.

4.3 *Strengths and Gaps*

4.3.1 Strengths

In terms of their strengths, the Guidelines have contributed to enact and promote human rights responsibilities for businesses since their adoption, despite their non-legally binding nature and the limited effectiveness of the NCP as a mechanism to remedy harms arising from corporate misconduct.¹⁰⁶ From a regulatory perspective, the increased usage of the Guidelines to hold CSOs accountable for their adverse human rights performance is a sign of a lack of adequate national regulatory standards at the domestic level.¹⁰⁷ Additionally, as noted above, no instrument sets the human rights responsibilities of CSOs in international law.¹⁰⁸ In this legal vacuum, the Guidelines are a precious tool to ensure human rights compliance, filling a regulatory gap.

Some complaints examined, such as TuK against RSPO, concluded in mediation, showing the Guidelines can effectively address CSO accountability issues in some cases.¹⁰⁹ However, failed mediation in *SI v WWF* highlights their limitations due to the voluntary nature of mediation.¹¹⁰ Organisational changes followed OECD complaints: WWF formed an independent panel to review

106 Stefanie Khoury and David Whyte, 'Sidelineing Corporate Human Rights Violations: The Failure of the OECD's Regulatory Consensus' (2019) 18(4) *Journal of Human Rights* 363–381; KA Reinert et al, 'The New OECD Guidelines for Multinational Enterprises: Better but Not Enough' (2016) 26(6) *Development in Practice* 816–823; John Ruggie and Tamaryn Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges', Working Paper N. 66, Harvard University, Corporate Social Responsibility Initiative (2015).

107 Helmut K. Anheier and Stefan Toepler, 'Policy Neglect: The True Challenge to the Nonprofit Sector' (2019) 10(4) *Nonprofit Policy Forum* 1–9.

108 Anna-Karin Lindblom (n 105) 187–189. Footnote 105 and note 106.

109 NCP of Switzerland (n 70).

110 NCP of Switzerland (n 69).

human rights allegations, recommending stronger policies and grievance mechanisms.¹¹¹ The former UN Special Rapporteur on Human Rights and the Environment suggested WWF start over with its social policies and standards, using the UN Guiding Principles on Business and Human Rights (UNGPs)¹¹² and human rights norms.¹¹³ FIFA has adopted reforms like its 2017 Human Rights Policy incorporating the UNGPs,¹¹⁴ and Bonsucro, which has updated its code of conduct referencing the UNGPs.¹¹⁵ The Guidelines and UNGPs converge; the Guidelines were revised after 2011 to align with UNGPs.¹¹⁶ Domestic laws like the UK Modern Slavery Act extend human rights due diligence to CSOs,¹¹⁷ prompting compliance from CSOs like Amnesty International and Oxfam GB.¹¹⁸ Focus Rights developed guidance for CSOs on incorporating human rights due diligence.¹¹⁹ Both the Guidelines and the UNGPs apply to CSOs and represent an attractive avenue to improve their accountability, despite not being intended for them.¹²⁰

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- 111 WWF Independent Panel, 'Embedding Human Rights in Nature Conservation: From Intent to Action, Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work' (Report, 17 November 2020) <WWF Report>.
- 112 John Ruggie, *Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Human Rights Council, Agenda Item 3, 17th Session, A/HRC/17/31 (21 March 2011).
- 113 John H. Knox, letter sent to Pavan Sukhdev, President, Marco Lambertini, Director-General, WWF International Gland Switzerland (30 June 2021) <<https://www.mediafire.com/file/djd94a93rq79b24/Knox+Comments+on+WWF+Safeguards++30+June+2021.pdf/file>>.
- 114 Fédération International de Football Association, *FIFA's human rights policy* (May 2017).
- 115 NCP of the United Kingdom (n 73).
- 116 Nadia Bernaz, *Business and Human Rights: History, Law and Policy—Bridging the Accountability Gap* (Routledge, 2017) 202.
- 117 Rosana Garciandia, 'Accountability of NGOs: The Potential of Business and Human Rights Frameworks for NGO Due Diligence' (2023) 34(3) *King's Law Journal* 524–545. As the author specifies on page 532: "Organisations pursuing charitable aims do fall under section 54 of the UK Modern Slavery Act if they engage in 'commercial activities and [have] a total turnover of £36m—irrespective of the purpose for which profits are made.'"
- 118 *Ibid.*
- 119 Focus Rights, 'Human Rights Due Diligence for Non-Governmental Organisations' (Working Paper, May 2022) <<https://static1.squarespace.com/static/5a6ede6f268b96417e62c6a6/t/62b2b9daef9ba32836f84514/1655880156266/focusright+working+paper+HRDD+for+NGOs+May+2022.pdf>>.
- 120 Domenico Carolei and Nadia Bernaz, 'Accountability for Human Rights: Applying Business and Human Rights Instruments to Non-Governmental Organisations' (2021) 13(3) *Journal of Human Rights Practice* 507, 522.

A key strength of the Recommendation is that it provides a systematic normative framework to address structural issues related to the three problems faced by CSOs—repressive legislation, insufficient accountability and donor-state pressures, alongside a systematic approach to engagement between donor states and CSOs in pursuit of its implementation and monitoring. While at the time of writing, comprehensive data to assess the results of the Recommendation's systematic framework and approach in changing policies and practices to better enable civil society is lacking, the Peer Reviews that have since 2022 covered the Recommendation indicate that implementation is happening, which is reinforced through bi-annual updates within the DAC Community of Practice on Civil Society.¹²¹ As proxies, the standards of other recent DAC Recommendations, specifically those on Ending Sexual Exploitation, Abuse and Harassment¹²² and on the Humanitarian-Development-Peace Nexus¹²³ are being translated, however incrementally, into policy and practice change among adherents.¹²⁴ While CSOs cannot adhere to these Recommendations, there are indications that CSOs are also taking steps to assess and adapt their own policies and

121 OECD (n 41); OECD (n 40).

122 Organisation for Economic Development and Co-operation, Development Assistance Committee, *DAC Recommendation on Ending Sexual Exploitation, Abuse and Harassment in Development Co-operation and Humanitarian Assistance: Key Pillars or Prevention and Response*, OECD/LEGAL/5020 (Paris: OECD, 2019) <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5020>>.

123 Organisation for Economic Co-operation and Development, *DAC Recommendation on the Humanitarian-Development-Peace Nexus*, OECD/LEGAL/5019 (Paris: OECD, 2019) <<https://legalinstruments.oecd.org/en/instruments/oecd-legal-5019>>.

124 Organisation for Economic Co-operation and Development, *The Humanitarian-Development-Peace Nexus Interim Progress Review* (Report, 10 May 2022) <https://www.oecd.org/en/publications/the-humanitarian-development-peace-nexus-interim-progress-review_2f620ca5-en.html>; Organisation for Economic Co-operation and Development, *Report on the Implementation of the DAC Recommendation on Ending Sexual Exploitation, Abuse and Harassment in Development Co-operation and Humanitarian Assistance: Key Pillars of Prevention and Response*, DCD/DAC(2024)33/FINAL (Report, 03 July 2024) <[https://one.oecd.org/document/DCD/DAC\(2024\)33/FINAL/en/pdf](https://one.oecd.org/document/DCD/DAC(2024)33/FINAL/en/pdf)>; Organisation for Economic Co-operation and Development, *Report on the Implementation, Dissemination and Continued Relevance of the DAC Recommendation on the Humanitarian-Development-Peace Nexus*, DCD/DAC/INCAF(2023)1/FINAL (Report, 11 March 2024) <[https://one.oecd.org/document/DCD/DAC/INCAF\(2023\)1/FINAL/en/pdf](https://one.oecd.org/document/DCD/DAC/INCAF(2023)1/FINAL/en/pdf)>; Inter-Agency Standing Committee (IASC) Task Force 4, *Mapping Good Practice in the Implementation of Humanitarian-Development-Peace Nexus Approaches Synthesis Report* (Report, September 2024) <<https://interagencystandingcommittee.org/sites/default/files/2024-10/2024%20Mapping%20good%20practice%20in%20the%20humanitarian%20development%20peace%20nexus%20synthesis%20report.pdf>>.

practices in line with these Recommendations' standards,¹²⁵ illustrating that the Recommendations inspire CSOs to meet the common standards they represent. Signs are that the systematic framework is also inspiring CSOs to also address their accountability. Upon the Recommendation's adoption, the DAC-CSO Reference Group established a Recommendation working group, the aim of which is both to seek to influence adherents' implementation such as by inputting to toolkit development and monitoring, and to encourage CSOs to adopt the Recommendation's standards in their own work. In May 2022 the working group initiated a Global South-led discussion group on reforms to funding practices by donors, and significantly, by their Northern CSO partners, to better strengthen leadership, ownership, independence, sustainability and accountability of CSOs in the Global South. More recently, DAC-CSO Reference Group members published a reflection on international CSOs' progress on key accountability measures in light of the Recommendation.¹²⁶

4.3.2 Gaps

The lack of binding oversight is a gap in the Recommendation, and its reliance largely on Peer Reviews and five-year reporting to the OECD Council limits enforceability. By the time of the five-year report, many of the 32 DAC member adherents to the Recommendation will have been subject to a Peer Review including coverage of progress implementing the Recommendation. For the five-year report these Review findings will be supplemented by surveys of DAC members and CSOs on changes they've enacted and perceptions of the Recommendation's effectiveness in holding DAC members and CSOs accountable for upholding its standards. While not a mechanism for holding CSOs to account per se, that systematic engagement between the DAC and CSOs is a feature of the Peer Reviews, the survey, and the Recommendation's implementation overall will help ensure ongoing conversations in the international arena about the shared responsibility for enabling civil society, including CSOs' own accountability. It further responds to the necessity of a pro-active role for CSOs in any standard-setting related to their own accountability.¹²⁷ Still, absent any binding oversight mechanism, implementation of the Recommendation remains unenforceable.

¹²⁵ Ibid.

¹²⁶ Chilande Kuloba-Warria and Brian Tomlinson, 'Implications of the Istanbul Principles and the DAC CSO Recommendation on Enabling Civil Society for ICsOs' (Working paper, March 2023) available at <<https://csopartnership.org/resource/implications-of-istanbul-principles-and-dac-recommendations-on-enabling-civil-society/>>.

¹²⁷ Domenico Carolei, 'An International Ombudsman to make non-governmental organizations more accountable? Too good to be true ...' (2022) 35(4) *Leiden Journal of International Law* 867, 882.

As to the gaps of the Guidelines, this instrument primarily addresses CSO accountability in the context of commercial activities, leaving broader aspects of CSO operations unaddressed—specifically those CSOs engaging primarily or seclusively in advocacy work. This gap means that while CSOs can be held accountable for their business-like activities, they remain largely unregulated in non-commercial contexts. This limited scope reflects the Guidelines' origin as tools designed for businesses, not civil society actors, thereby constraining their applicability to the full spectrum of CSO activities. Yet, it was argued that CSOs are expected to assess and address the human rights impacts of their naming and shaming campaigns, requiring due diligence as outlined by the UNGPs, and thus by extension by the OECD Guidelines, through impact pre-assessments and remediation planning.¹²⁸ Additionally, the protection of civic space, a critical issue highlighted by the letter of Protection International,¹²⁹ remains a significant gap in the Guidelines that warrants more decisive action, potentially extending to explicitly reference the responsibilities of CSOs toward their peers.

5 Conclusion

This paper has analysed the complementary roles of the OECD DAC Recommendation on Enabling Civil Society and the OECD Guidelines for Multinational Enterprises in addressing two pressing regulatory challenges faced by CSOs: safeguarding civic space and ensuring CSO accountability. It has shown the Recommendation and the Guidelines collectively address three core problems faced by CSOs: repressive legislation, insufficient accountability, and donor-state pressures. While employing distinct approaches, these frameworks together create a cohesive regulatory ecosystem that aids CSOs in tackling these issues effectively.

The Recommendation plays a pivotal role by fostering collaboration and innovation between donor states and CSOs, and by addressing systemic inequities in funding relationships. Its three-pillar approach—respecting civic space, supporting CSOs, and incentivising CSO accountability—establishes a comprehensive framework that guides donor states in their interactions with and support for civil society. By encouraging equitable partnerships and

128 Clair Apodaca, 'The Human Cost of Naming and Shaming' in Alison Brysk and Michael Stohl (eds) *Contracting Human Rights: Crisis, Accountability, and Opportunity* (Edward Elgar, 2018) 73.

129 Protection International (n 103).

emphasising transparency, the Recommendation directly engages with the structural barriers CSOs face, particularly in development co-operation and humanitarian assistance contexts. However, its voluntary nature and reliance on donor-state implementation limit its enforceability, highlighting a gap in its ability to uniformly mandate change.

The OECD Guidelines, initially designed for multinational enterprises, have evolved through the NCP mechanism to include CSOs under specific conditions. This adaptation has provided a crucial avenue for holding CSOs accountable in the absence of a dedicated international framework. By leveraging human rights due diligence principles, the Guidelines enforce compliance in areas where CSOs engage in commercial or business-like activities. However, their application remains confined to such contexts, leaving advocacy and non-commercial activities largely unregulated.

The comparative strengths and gaps of these instruments underscore their complementary nature. The Recommendation acts as a ‘carrot’, creating a collaborative and incentive-driven environment to promote best practices and systemic improvements. In contrast, the Guidelines function as a ‘stick’, offering structured accountability through dispute resolution mechanisms. While the Recommendation’s systematic framework promotes mutual accountability and sustainable practices, the Guidelines’ complaint mechanism has proven effective in resolving specific grievances, albeit with limitations due to its non-binding nature.

Future opportunities lie in enhancing the interoperability of these frameworks. This includes expanding the Guidelines’ definition of “multinational enterprises” to explicitly encompass a broader range of CSO activities. The Guidelines specifies, through a commentary on “Concepts and Principles” (Part I, para 4),¹³⁰ that a precise definition of multinational enterprises is not required for the purpose of this instrument. In 2020, the OECD launched a stocktaking of the Guidelines to assess whether they remain fit for purpose and to provide a basis to explore issues that may need attention. The definition of “multinational enterprise” and by extension the Guidelines’ applicability to varied actors is one amongst other issues arising in the stocktaking.¹³¹ Specifically, the stocktaking indicates that multinational enterprises are not limited to one specific sector, and that the Guidelines’ avoidance of precisely defining multinational enterprises could lead to

130 OECD (n 3) 12.

131 Organisation for Economic Co-operation and Development, *Stocktaking Report on the OECD Guidelines for Multinational Enterprises* (Report, 2 February 2022) <<https://mne.guidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>>

conflicting interpretations by NCPs, forum-shopping, and allow entities, particularly governments, to exempt themselves when acting as economic actors.¹³² Findings from this paper suggest that future reforms could recognise, more explicitly and on a normative level, the applicability of the Guidelines to CSOs under the “Concepts and Principles”. Additionally, addressing the protection of civic space more explicitly within the Guidelines could provide a more robust framework for safeguarding CSOs against restrictive measures. By embedding detailed guidance on mitigating reprisals, promoting safe environments for advocacy, and ensuring transparent mechanisms for redress, the Guidelines could serve as a vital tool in countering the global trend of repressive laws and safeguarding the operational independence of civil society.

A further opportunity of improvement and integration consists in creating national-level oversight mechanisms inspired by the NCP model to strengthen implementation of the Recommendation’s standards. By drawing from the NCP model used in the OECD Guidelines, such mechanisms could provide a structured platform for monitoring, mediation, and dispute resolution. These mechanisms would facilitate transparency and accountability, ensuring that donor states and CSOs align their practices with the Recommendation’s three pillars. Furthermore, they could encourage localised implementation of standards, fostering a collaborative approach to oversight while addressing specific challenges within national contexts. This could bridge gaps in enforceability, enhance compliance, and promote consistent application of the Recommendation across diverse settings.

The prospect of creating an international instrument to hold CSOs accountable is dim. CSOs do not possess legal personality under international law. Moreover, any such efforts are bound to meet resistance from CSOs, with appeals to the primacy of the existing international instruments that protect the rights to freedom of association, peaceful assembly and expression. The practical matter of co-ordinating the creation of such an instrument with a hugely diverse sector comprised of countless CSOs worldwide would also be difficult to surmount. Absent an international instrument, the OECD has a role to play as a respected standard-setter in a vast range of policy areas in which state and non-state actors alike operate. Though existing OECD standards have not been designed to regulate CSOs per se, they are relevant to any package of regulatory efforts, at international or national level. While applying OECD standards to their own policies and practices, adhering states could take further steps, with CSOs, to translate relevant OECD standards to these non-state actors operating in their jurisdictions. CSOs could themselves take steps

¹³² Ibid 39.

to better understand how OECD standards could benefit their own efforts to uphold and demonstrate their accountability.

In conclusion, the OECD's dual approach highlights both the challenges and opportunities of regulating CSOs internationally. While not a universal solution, these instruments make notable progress in addressing civic space and accountability issues. Their potential to shape global policy and practice warrants greater focus, paving the way for more accountable and resilient CSOs in diverse and complex contexts.