



# JUSTRAC

JUSTICE SECTOR TRAINING, RESEARCH  
& COORDINATION PROGRAM

*Promoting the Rule of Law in the Post-Soviet Region through  
State and Non-State Collaboration*

A JUSTRAC (Justice Sector Training, Research and Coordination) Symposium

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## Executive Summary

The post-Soviet region has a long tradition of active civil society, but most of the focus in the decades following the collapse of the Soviet Union was on social issues, such as health, education, and poverty alleviation. Political issues such as human rights, good governance, anti-corruption, and the rule of law were much more sensitive, and civil society organizations (CSOs) that focused on these topics were subject to restrictive laws intended to keep them small and silent. In the aftermath of the color revolutions, however, political CSOs took the spotlight, since many of the issues driving those revolutions were ones that had been at the center of their advocacy for years. These included corruption, transparency and accountability, equal economic opportunities, and equal treatment under the law.

Civil society plays two critical roles: it bridges the gap between the government and the public, and it conveys the needs of citizens and communities to the government. In the post-Soviet region, these two roles have often intersected during times of political upheaval, when civil society helped to mobilize large-scale public movements calling for regime change or reform. In the aftermath of these popular revolutions, CSOs once again assume roles as watchdogs, advocates, and agitators to ensure that the reforms are truly implemented. Civil society also finds itself negotiating new roles, as former activists join the government and organizations seek ways to influence policy without returning to their prior identities as the de facto opposition.

Although CSOs in the region have made significant advances, both in their freedom to operate and in promoting the rule of law more broadly, significant challenges remain. Collaboration between the government and CSOs on policy-making remains ad hoc and topic specific – a culture of collaboration has not yet been institutionalized in any of the four participating countries (Armenia, Georgia, Moldova, and Ukraine). Reform efforts are counterbalanced in some places by closing civic space and entrenched corruption. CSOs have struggled to maintain the broad coalitions and the high level of public engagement they relied on during the revolutionary period. Meanwhile, international donors and CSOs are increasingly focused on the problem of securing sustainable funding for rule of law work in the region, a difficult prospect when most CSOs are dependent on external funding support. Governments, even pro-reform governments, have not set aside public funds to support civil society work, and have preferred to capture international aid for government ministries and rule of law initiatives. Not all CSOs have sufficient financial or management capacity to develop lasting donor partnerships or build a collaborative relationship with government actors. CSOs are also facing new threats from the false news industry, where individuals and organizations are often targeted with smear campaigns and false accusations of criminal conduct intended to undermine their advocacy for reforms.

Symposium participants were divided into three Working Groups, each of which engaged in discussions focused on civil society collaboration in a different thematic area (“Improving Access to Justice,” “Promoting Transparent and Accountable Government,” and “Building Safe and Secure

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Communities”). The Working Groups each prepared a set of recommendations related to their topic – a compilation of the recommendations from all three Working Groups appears at the end of this report.

## Background

From June 12 to 14, 2019, the Rule of Law Collaborative (ROLC) at the University of South Carolina, and the Bureau of International Narcotics and Law Enforcement Affairs (INL), U.S. Department of State, held the fifteenth Justice Sector Training, Research, and Coordination Program (JUSTRAC) symposium and the sixth JUSTRAC symposium outside of the United States, at the Tbilisi Marriott Hotel in Tbilisi, Georgia. The symposium, “Promoting the Rule of Law in the Post-Soviet Region through State and Non-State Collaboration,” brought together representatives from U.S. and foreign governments and key regional civil society organizations (CSOs) working on justice sector and rule of law issues. In a series of closed-door sessions, participants explored how they could improve collaboration between state and non-state actors. Participants were challenged to identify ways that change agents and international actors should take account of local conditions and local solutions in their efforts to promote the rule of law. Similarly, participants considered how space for independent voices has been both promoted and constrained, with an eye towards developing prescriptions for expansion of freedoms of expression, association, and assembly across the region and elsewhere.

In thematic plenary sessions, participants discussed ways that civil society organizations could better engage with the following groups:

- their home governments;
- their public;
- the international donor community; and
- the domestic and international private sector.

This report highlights selected points of discussion from the symposium and details the recommendations from the symposium Working Groups, which appear at the end of the report. Participants were divided into Working Groups that focused on specific issues in smaller breakout sessions, and the recommendations are based on the discussions of those Working Groups. The recommendations are grouped broadly around the themes of a) improving access to justice, b) promoting transparent and accountable governance, and c) building safe and secure communities, and recommendations are further divided into sub-topics.

All remarks are off the record and appear without attribution. See the Appendix for a copy of the symposium program.

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## Introduction

The post-Soviet region has undergone profound political changes in the last two decades, which have touched all four of the countries represented in this symposium. From Georgia’s Rose Revolution in 2003 to the Moldovan constitutional crisis in June 2019, popular reform movements have driven out of power governments known for corruption, failed economic policies, and repressive tactics. Civil society organizations (CSOs) have been at the heart of these people’s revolutions, playing a critical role in demanding reforms, mobilizing the public, shaping the narrative, and rallying international support to their cause. Each revolution, and the campaigns that preceded them, has had at its core basic demands related to the rule of law.<sup>i</sup>

Political revolutions in the post-Soviet region have ousted dictators and ushered in more liberal, democratically-oriented governments. However, the forces of reform have been less successful in institutionalizing respect for the rule of law, unraveling corrupt networks, and keeping the public engaged in long-term pressure for political reform.<sup>ii</sup> Meanwhile, anti-reform forces have returned to government, or in some cases never left. These elements recognize the role played by civil society in their loss of political control, and seek to capture that civic space for their own purposes.<sup>iii</sup>

The region faces a number of important rule of law challenges. A deeply-entrenched culture of corruption touches nearly every element of government, including the justice sector.<sup>iv</sup> Although all citizens are bound by the same law on paper, wealth and political connections often shape daily interactions between individuals and the law. Governments in all four countries (Armenia, Georgia, Moldova, and Ukraine) have adopted laws in the last decade to make government operations more transparent and accountable to the people, but these laws have not been fully implemented, and do not consistently impose penalties for non-compliance.<sup>v</sup>

Civil society has experienced a resurgence in the region, due in large part to the critical role civil society organizations have played in those moments of political crisis.<sup>vi</sup> A more permissive operating environment has encouraged formation of new and stronger civil society organizations that can work openly and directly on human rights, justice sector reform, and the rule of law.

However, civil society organizations still face serious challenges of internal capacity, coordination, and restrictive legal frameworks. Additionally, civic space is closing once again in some countries in the region.<sup>vii</sup> The following section summarizes some of the most significant challenges affecting rule of law-oriented civil society organizations across the region.

Finally, the paper presents a list of recommendations produced by the symposium’s three Working Groups. The recommendations are grouped around three themes: (1) improving access to justice; (2) promoting transparent and accountable government; and (3) building safe and secure communities.

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## Challenges

Symposium participants outlined a number of challenges limiting progress on rule of law reforms or preventing state and non-state collaboration toward that goal. Some of these challenges are related to the broader political framework which civil society organizations must navigate. Other challenges are related to how CSOs operate, both internally and externally.

### Limited Opportunities for Civil Society-Government Collaboration

Throughout the symposium, participants observed that while opportunities exist for collaboration between civil society and the government on rule of law issues, they tend to be ad hoc or dependent on specific individuals in government. A culture of institutional collaboration has not yet emerged, even in countries where significant numbers of civil society activists entered government after political upheaval.

### Participation in Decision-Making

Participants reported several different mechanisms by which civil society has input into decision-making. Armenia has created Policy Councils in each ministry and agency, where civil society is represented and theoretically consulted on draft laws and policies. In Georgia, members of Parliament and the government often consult formally and informally with civil society, especially during strategic planning processes. Moldova’s government has an online platform where CSOs can submit inputs on draft legislation. Ukraine has also established some “Consultative Councils,” and some officials regularly seek input from civil society.

The existence of consultation mechanisms does not necessarily translate into real opportunities for input, or into meaningful impacts on law or policy. Several participants observed that the only engagement they got from the government was a meeting where CSOs could talk about their problems, with no official follow-up or effort toward mutual problem-solving. Some of the consultation mechanisms described above meet infrequently, and the government is not required to do anything with the input it receives. Both government and CSOs need to have a motive for collaboration beyond just checking a box.

Participants noted that CSOs are not always prepared for the kind of collaboration government officials would find useful. In some cases, particularly when it comes to draft legislation, CSOs are unable to prepare high-quality inputs in the time allotted for public or civil society consultation. Some CSOs simply do not have the capacity to participate in policy-making at a level that is useful to government officials, or claim expertise they do not have.

Even where governments are genuinely committed to seeking and acting upon civil society input, this is often due to the influence of individual officials. Symposium participants noted that former civil society activists who entered government were often the most receptive to ongoing collaboration with civil society, although this is not universally true. Ad hoc consultation means that civil society and government are able to collaborate closely on some issues, such as electoral reform, but have little

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interaction on other, equally important topics, such as judicial corruption or justice issues affecting marginalized populations.

### **Monitoring Outcomes**

Throughout the symposium, participants emphasized that true collaboration between government and civil society goes beyond meetings to air grievances or even feedback on draft policies and legislation. CSOs also play a critical role in monitoring the implementation of new laws and policies, including by collecting data on implementation, conducting legal needs surveys, creating indicators for justice issues, and publishing the results. Where collaboration on monitoring occurs now, it is largely limited to laws and policies housed in the Ministry of Justice. Collaboration between monitoring organizations and a wider set of ministries would be more effective, since many justice problems have their roots in health care, housing, education, and other sectors.

Watchdog organizations experience an additional challenge in countries that have recently undergone significant political upheaval resulting in a new government that includes former civil society members. The new government is familiar with civil society’s watchdog and monitoring function, but does not expect to undergo the same level of scrutiny as the previous government. Consequently, criticism of the new government is often seen as a betrayal, even when it represents the same standards watchdog organizations have previously upheld.

### **Closing Public Space**

Armenia, Georgia, Moldova, and Ukraine have all experienced periods where civic space was mostly closed, and periods where it was more open. CSOs working on rule of law issues are particularly vulnerable to these fluctuations, since the issues they work on are inherently political and often quite sensitive. Several symposium participants noted that CSOs in the region today navigate less restrictive legal frameworks than previously, but must still register with the state and are often subject to special laws regarding fundraising and financial disclosures. Individuals and organizations also run the risk of extrajudicial consequences for broaching sensitive topics or reporting on specific individuals. These can range from smears in domestic or international media outlets to physical assaults.

### **Coalitions and Partnerships**

CSO do not work in a vacuum, particularly on political issues such as human rights, good governance, or the rule of law. They form coalitions with other organizations, collaborate with the government on policy planning, partner with external actors to fund and amplify their work, and engage the public. Organizations in the post-Soviet region are adept at all these forms of cooperation, which they have used from the Rose Revolution to the Euromaidan, but have struggled to establish sustainable, long-term working relationships. Most partnerships, whether with donors, the government, the public, or each other, tend to be specific to a single project or issue.

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### **Coordination Between Civil Society Organizations**

CSOs in the post-Soviet region have successfully formed broad, effective coalitions to advocate for broad political change, demand the ouster of national leaders, and defend against laws or policies that threaten to restrict their rights. However, they have been less successful at maintaining coalitions over time, especially when the initial crisis point has passed. In some cases, this is because organizations are rapidly shifting their focus from one hot-button issue to the next. In other cases, CSOs are reluctant to form coalitions because they are seen as time-consuming, dilute the overall influence of an organization or individual, or require compromising on positions. Some symposium participants observed that the large coalitions formed to oust a government collapsed afterward due to infighting between coalition partners. When coalitions are formed around rule of law issues, they tend to be ad hoc and project-specific. By contrast, so-called “social CSOs” – those focused on health, education, poverty, and similar issues – have been more effective at forming long-term coalitions for advocacy or public outreach on a set of issues.

Symposium participants noted another challenge to coalition-forming by rule of law CSOs. Elements of the former ruling parties in the four countries have recognized the power of civil society and have set up their own “pocket CSOs,” privately funded by political parties or individuals. “Pocket CSOs” undermine the reputation for independence that so many CSOs work to maintain; in some cases, their purpose is to undermine the perception of civil society as a whole. They also tend to prioritize issues that favor their funders’ interests, such as security or conservative social agendas.

### **Donors**

Civil society in all four countries is heavily dependent on external funding sources; symposium participants repeatedly affirmed the importance of good relationships with the international donor community. Participants emphasized their appreciation for the work that donors do, not only in funding civil society in the region, but also stepping in to defend civil society when their rights or safety are threatened by government actors. However, participants noted that their organizations often struggle to meet expectations when donors change their own priorities without explanation or fail to articulate their priorities in the first place. Participants also noted that donor funding is often quite rigid, when programs really need to be maximally flexible given the constantly changing political context. This is particularly challenging when a country is going through a political crisis, because there tends to be significant donor attention but also a highly dynamic environment that makes some donors wary.

### **Engaging the Public**

Civil society across the region struggles to remain engaged with the public, which diminishes public opinion of civil society as a whole and makes it harder for CSOs to know what issues top the agendas of their beneficiary communities. Civil society actors tend to be based in large cities where citizens have above-average levels of education. As a result, CSOs are often seen as expert clubs that exist primarily to impress international donors. CSOs also typically do only issue- or project- specific public

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outreach, rather than pursuing long-term engagement that keeps the public educated about their core mission.

Participants agreed that civil society is most effective at building trust with the public and meeting the needs of people if they are actually present in communities. Organizations that work at the grassroots level understand the problems people face, many of which overlap sectors and share root causes. Grassroots civil society also has a better understanding of what resources are available locally to address these challenges. Community-based work will also help CSOs know when they are advocating for progressive policies that are not reflective of mainstream positions in society, and either moderate their positions or engage in public education on those issues.

### Capacity

Organizational capacity is an ongoing challenge for both new and established CSOs. New organizations struggle to acquire funding, retain staff, implement good financial and organizational management practices, and stretch their human and financial resources to cover all the issues in their portfolio. Established organizations additionally struggle to secure core funding, without which it is difficult to maintain the kind of projects that will continue to attract donors.

### **Sustainable Financing**

Funding concerns were raised repeatedly throughout the symposium, with participants emphasizing that reliable core funding would make a profound difference in their operations. Core funding would permit them to retain qualified staff, implement physical and information security measures, ensure adequate facilities and equipment, take risks building coalitions with other organizations outside of specific projects, and sustain more successful activities even after the program funding period ends.

Very few CSOs are able to achieve sufficient core funding, however. Little to no local government-sponsored funding is available to civil society. Civil society-private sector relationships are the exception rather than the rule, given that many private sector actors are tied to anti-rule of law factions that CSOs have traditionally opposed. Some of the countries in the region, such as Armenia, have large wealthy diasporas that could serve as an alternative funding source, but most CSOs have not built relationships out into the diaspora. Additionally, governments in the region have historically imposed strict legal restrictions on how CSOs can raise funds. CSOs have been subject to onerous financial disclosures and at certain points they have been prohibited from receiving funding from some kinds of external sources.

Some of these restrictions have relaxed in recent years, with the turn to more liberal governments that include former members of civil society. Some governments have also initiated measures to ease the financial burden on CSOs. For instance, Armenia’s Law on Public Organizations (2016) permitted CSOs to generate their own income.<sup>viii</sup> Moldova’s Parliament voted in 2017 to allow citizens to direct up to two percent of their income tax to one of the non-governmental organizations on a designated list.<sup>ix</sup> All four countries now permit CSOs to use volunteers, which allows organizations to do more with less. Nevertheless, civil society across the region remains dependent on external donors.

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International donors have partnered with civil society in the region for decades, but project-specific funding often comes with the expectation that organizations will find ways to make key project activities self-sustaining after the program period has ended. Some participants also noted that international donors worked closely with civil society before the revolutions in their countries, but that after the revolution they preferred to send their money to the new government instead. Since governments in the region have largely not established domestic funding sources for civil society, this shift in approach resulted in a net loss of funding for many CSOs.

### **Organizational Capacity**

CSOs in the post-Soviet region demonstrate a broad disparity in organizational capacity, as is the case in all other regions of the world. Organizations based in cities, especially the capital, tend to have larger staff and greater capacity than organizations based in the provinces, where external funding sources are scarcer. In some countries, such as Georgia and Ukraine, CSOs focused on rule of law and other political topics tend to have higher capacity than other types of civil society, due to their long history of serving as watchdogs and advocates on sensitive issues. This includes greater facility in public messaging and interacting with the media. In other countries, such as Armenia, a similarly long history of government repression of political discourse means that rule of law CSOs trail behind their social counterparts.

Capacity challenges present themselves at nearly every stage of a CSO’s operational life-cycle. Without a clear organizational structure and good financial controls, it is difficult to secure funding. Limited funding means an organization struggles to attract the caliber of personnel with expertise in both the substance of the organization’s work and in CSO management. CSOs with a small staff often cannot spare one or more individuals to attend trainings. Blending substantive and professional capacity is also an issue of concern. If CSOs have substantive expertise on an issue such as preventing corruption or legal aid, but lack the professional capacity to engage the public or provide inputs to the government, the organization will fail to have its desired impact.

### **Social Media**

Symposium participants were particularly focused on improving civil society capacity in media and public relations, especially on social media. CSOs with low capacity in media and public relations are not always able to reach media outlets willing to convey their messages and may not have the skill set to make those messages compelling to their intended audience. Social media and public relations skills are increasingly important to counter the false news industry, which is often deployed to smear organizations raising sensitive issues. Conversely, facility with social media campaigns has permitted some CSOs represented at the symposium to reach communities they would normally not be able to access, or to present their messages in a more accessible manner.

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## Recommendations

Symposium participants were divided into three Working Groups, each with a different focus: a) improving access to justice, b) promoting transparent and accountable governance, and c) building safe and secure communities. A set of recommendations based on the Working Groups’ discussions follows, grouped broadly into those three issue areas. The recommendations are numbered for reference only; they do not necessarily reflect an order of priority.

### Working Group A: Improving Access to Justice

This working group focused on how to promote better access to justice. Civil society organizations, including associations of legal professionals, have traditionally played an important role in expanding access to justice issues and will continue to do so in the future. Topics of discussion included legal aid; rights awareness; monitoring and evaluating courts; promoting equality and non-discrimination; empowering marginalized and vulnerable populations; enhancing judicial independence, accountability, and efficiency; and alternative dispute resolution. While these are broad topics, the group was able to focus in on the most important recommendations for collaboration.

#### 1. Expanding Rights Awareness:

- a. **States need to work more closely with CSOs to improve understanding of the public’s gaps in the knowledge and awareness of rights.**
  - i. This work consists of state and non-state collaboration in the areas of data collection, access to data and data analysis.
  - ii. States should consider CSOs partners in this regard who can add valuable assistance in these areas.
- b. **Incentives for pro bono legal services in the areas of rights awareness should be enhanced.** Bar associations and other legal organizations should encourage lawyers to promote rights awareness as a free-of-charge professional duty.
- c. **States should collaborate with non-state actors in rights awareness campaigns aimed at local communities and marginalized groups.** Many local communities that are not part of a major metropolitan city lack basic rights awareness, and campaigns directed towards those more isolated communities will yield the best results. Campaigns aimed at marginalized groups, regardless of location, will also yield strong results (see also sub-section on Vulnerable Groups, below).

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- d. **CSOs should increase their work on “shadow reports” to better highlight specific areas of progress or lack of progress on states’ compliance with international treaty obligations.**
- e. **States and CSOs should engage para-legals to promote rights awareness where possible.** Due to the high barriers to entry, bar membership is limited and expensive. As a result, many licensed lawyers feel pressed to engage in paid activities. Since para-legals are less expensive, they represent an untapped resource in the efforts to raise awareness of rights.
- f. **States and CSOs should encourage university students and faculty to promote rights awareness.** Students can both learn about rights and promote rights awareness as an integral part of their education. CSOs should work with public education authorities to deliver interventions at the primary, secondary, and tertiary levels of education.

## 2. Protecting and Empowering Vulnerable Groups:

- a. **States and CSOs should promote training and capacity building for legal professionals and NGOs to ensure that legal services address the specific needs of vulnerable groups.** Examples include making representation available in specific dialects or minority languages and providing representation in rural areas where the number of lawyers is low. Para-legal professionals may also be employed.
- b. **States and CSOs should collaborate on the training of vulnerable groups regarding their rights and how to enforce them.** Many vulnerable groups remain unaware of the protections that the law affords them. CSOs can help the states promote local groups’ capacities to understand and communicate their rights, as well as how to enforce them. Too often, vulnerable groups seek assistance outside of formal state structures, and CSOs will be a natural partner in helping these groups, when necessary, find formal remedies.
- c. **CSOs should partner with states to facilitate the enhancement of vulnerable groups’ communication skills.** Due to lack of education, language barriers and economic dislocation, many vulnerable groups do not have a strong voice in their countries. By improving their communication skills, these groups will improve their abilities to find solutions with their local and national governments.
- d. **CSOs should help states improve physical access to the legal system such as courts, lawyers, police and penitentiaries.** This includes physical improvements for disabled people, as well as other improvements, such as written guides, better signage,

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- more robust online/social media, information and stronger state agency outreach efforts.
- e. **CSOs and states should engage in public awareness campaigns about vulnerable groups, to both the general public and the target groups** (see also sub-section on Rights Awareness, above).
  - f. **CSOs and states should work to bring all key institutions together to coordinate strategy and policy towards vulnerable groups.** One way to do this is to create a standing quasi-public council wherein the various ministries and state agencies, as well as CSOs, can meet regularly to discuss practical solutions to problems facing vulnerable groups. Health care and educational authorities, for instance, can discuss local-level problems with access or communication and inform others in government about necessary reforms.
  - g. **CSOs should help facilitate the specific problem that Roma, IDPs (internally displaced persons), and refugees face of formal government identification and registration.** Many of the problems these groups face are linked to the foundational defects in their members’ formal governmental registration papers (or they have no registration whatsoever). CSOs can bring together the various agencies responsible for issuing passports, social insurance, pension, health care or other important governmental identification documents to find practical solutions for these groups.
  - g. **CSOs and states should collaborate on legislation that specifically protects the rights of vulnerable groups.** Some represented countries have developed excellent models, while others have yet to adopt any such legislation.
  - h. **CSOs should work with their governments to establish social institutions of reconciliation.** These institutions could promote informal justice models and alternative dispute resolution (such as community mediation). They could also engage in safe, inclusive, government-endorsed intercultural programs and dialogs, including the police and other local authorities.
  - i. **CSOs and states should help establish employment solutions for vulnerable groups so that they can be better incorporated into society.** Many vulnerable groups suffer from high levels of unemployment, which often leads to other social problems such as crime and domestic violence. Employment schemes directed toward skills training or employment incentives for specifically marginalized and vulnerable groups would help reduce social problems, reduce societal prejudice and promote a positive cycle of improvement.
  - j. **CSOs and education authorities should collaborate on improving educational opportunities for vulnerable groups, including establishing a strategy to reduce the potentially deleterious effects associated with the incorporation of these**

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**groups into mainstream educational institutions.** Many schools struggle with the increased attention needed for students from vulnerable groups. CSOs can help public schools prepare for these difficulties.

- k. **In countries with de-centralization programs, CSOs should work with local authorities to build in strategies to protect and empower vulnerable groups.**
- l. **States should consider outsourcing some vulnerable group services to CSOs.** An example would be establishing women’s shelters or a hotline for sexual trauma victims. CSOs might be more successful in establishing new vulnerable group services due to their strong relations and working experience. CSOs and local governmental authorities could work together for a sustainable future plan that might include continued CSO involvement.

### 3. Improving Legal Aid:

- a. **Collaboration between states and CSOs on the legal aid eligibility criteria is essential.** CSOs are in an excellent position to understand the gaps in coverage and the specific difficulties that candidates face when eligibility criteria are vague, unfair, discriminatory, or contradictory. CSOs can help states clarify this criteria, based on actual practice, and promote more inclusive practices.
- b. **States and CSOs can extend the reach of legal aid by jointly focusing capacity building on non-lawyers such as paralegals and others.** Too often, states consider legal aid to be strictly associated with licensed bar members. Yet, there is a large group of qualified non-members who can assist with legal aide. CSOs are in the best position to identify this community of potential actors.
- c. **To increase pro bono legal aid, states and CSOs need to work together to create an effective incentive structure.** CSOs can work with bar associations and other actors to promote pro bono incentives. States can help incentivize pro bono service by clarifying tax exemptions and reporting obligations. The two need to coordinate their efforts so that legal professionals are properly incentivized.
- d. **States should work with CSOs to implement effective and comprehensive needs assessments in the area of legal aid.**
- e. **CSOs can help states develop indicators of performance and outcome targets based on these needs assessments.**
- f. **CSOs can assist states with collecting and measuring legal aid data, consistent with the indicators and targets.**

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- g. **CSOs and states can periodically evaluate the effectiveness of their legal aid regimes, based on the jointly collected data, and work together to propose solutions to any shortcomings found.** For instance, CSOs and states both need to understand the effectiveness of their lawyer referral systems. Both would benefit from working together to measure this effectiveness and find creative solutions.
- h. **CSOs should consider piloting legal aid programs, with a view towards handing the program over to the state for scaling up to nationwide implementation.** CSOs are better positioned to try out new models and when successful, consider handing them over for sustainable, scalable public implementation.

#### 4. Promoting Equality and Anti-Discrimination:

- a. **States and CSOs must collaborate to address the wider cultural sources of discrimination.** This calls for creative, society-wide solutions to promote the rights of disadvantaged groups. States and NGOs can address the cultural challenges through education, religion, media, elites, and other non-legal areas.
- b. **CSOs should work with governments to draft higher-quality legislation that complies with international anti-discrimination standards.** One example is legislation that protects a larger number of discriminated groups, in particular women in the workforce, as well as sexual minority rights. Another example is legislation that provides actual remedies and real pathways for judicial redress, and not just aspirational language.
- c. Related to equality legislation is the **engagement of state and non-state actors in building the institutional capacity of the justice sector to respond to and enforce these equality rights.** States and CSOs should collaborate on capacity building of justice sector institutions (such as police, penitentiaries, courts and prosecutor offices) to better to enforce equality rights. One example of capacity building would be to train prosecutors on when to file a case under the ordinary criminal code for damage to persons or property and when to file a case under the hate crimes laws. This also requires that CSOs, if they are part of the solution, be mindful that they have their own capacities updated.
- d. **CSOs should consider working with the state to develop viable alternatives to traditional court-centered dispute resolution.** Examples include quasi-judicial ombudsperson institutions (sometimes called “public defenders”) and public councils for equality. These institutions can be given fact-finding authority and even binding decision authority, taking some of the pressure off of the overloaded court system. These quasi-judicial institutions can sometimes offer non-legal suggestions, such as apologies and other creative remedies, whereas the courts are more constrained.

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- e. **CSOs and the state should collaborate to enhance the education of justice sector professionals to better promote equality rights.** This education should begin at the pre-graduate levels, either in secondary or even primary schools. At the professional level (lawyer training, prosecutor training, police training, judge training, etc.) it is highly recommended that cross-sectoral training be employed whereby defense lawyers and prosecutors, for instance, receive training together.
- f. **CSOs should consider pursuing strategic litigation in order to help the state enforce its own rules or live up to its human rights commitments.** While this is an aggressive approach, some state authorities actually prefer a court order authorizing action, especially in a legal question of first impression.

5. Improving Court Performance:

- a. **CSOs and states should promote judicial independence by collaborating at the earliest stages of policy formulation.** Instead of involving CSOs at the legislation drafting stage, governments should include civil society in long-term strategy discussions, and collaborate with CSOs in the identification of needs to better promote structural changes that enhance judicial independence. This might include drafting strategic documents that help inform the government’s reform agenda.
- b. **CSOs and states should collaborate to promote judge training on judicial independence.** While the state is capable of training judges on judicial independence, CSOs are more likely to emphasize this aspect, and their involvement in the training design would improve judges’ understanding of these important concepts.
- c. **CSOs and states should collaborate to promote judge training on legal reasoning and judgment drafting.** Many judges in this region need training on advanced legal reasoning skills. They also need to improve their ability to draft a well-reasoned and clear formulation of the legal analysis underlying their judgement.
- d. **CSOs should collaborate with judicial officials to improve the accessibility of court-related information.** This includes two specific sub-recommendations:
  - i. CSOs should work with courts to **improve to case databases.** Databases of court judgments should be available to the public. They should be comprehensive and searchable, and the online platform should be stable, user-friendly and efficient. Ideally, databases should also include court filing documents from the parties, as well as preliminary court orders. Provision should be made for those groups that lack basic online access (penitentiaries, Roma, occupied territories, rural poor, etc.).

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- ii. CSOs should also work with courts to **implement audio/visual recording** of court cases by the media (“open trials”). While this remains a somewhat controversial idea, CSOs can help courts adopt to this new reality.
- e. **CSOs should help courts establish “judge speaker” positions.** These individuals would essentially serve as liaisons between the court and the public (often represented by the media). They would help the courts communicate important information to the public. They could improve the often-adversarial relationship between the courts and media by helping communicate more accurate and useful information about the workings of the justice system. While the media will remain mostly interested in high-profile cases, the public will benefit from the improved accuracy in reporting. CSOs can help train the judge speakers in modern communication skills and media literacy.
- f. **CSOs should facilitate regular, informal public meetings between civil society and court professionals.** CSOs can learn about specific court challenges as well as find funding for jointly-agreed solutions.
- g. **CSOs should facilitate inter-professional dialog between judges, prosecutors, lawyers and police.** These groups are often isolated from each other yet can learn about each other’s challenges through regular dialog. Many professional complaints relate to problems that seem to originate from other professionals. For instance, prosecutors often blame defense attorneys for court problems. Both groups often blame judges. If the three groups had regular meetings, they would find practical solutions to many of their difficulties. CSOs could facilitate these discussions and even propose agendas and possible solutions.
- h. **CSOs should work with officials on court monitoring programs.** CSOs can develop jointly with court officials appropriate indicators and targets, and then monitor the courts to assess their performance.
- i. **CSOs should work with officials on developing and implementing user surveys to periodically assess public satisfaction with court performance.** CSOs have the expertise in this area that courts lack. Survey question development and survey implementation can be jointly achieved. Questions can relate to implementation of reforms (such as jury trials) as well as regular ongoing efficiency or corruption monitoring.
- j. **CSOs should collaborate with courts and governments to improve the institution of juries.** Some countries in this region have “lay juries” or “professional juries,” but judicial and legal professionals claim that these jurors lack education or specific training for their position. CSOs should play a key role in helping courts train jurors so that the institution will work better.

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- k. **CSOs should collaborate with courts to improve the qualification, evaluation and disciplinary proceedings for judicial professionals.** This includes three specific sub-recommendations:
  - i. CSOs should work with judicial officials to develop **clear and objective criteria** for judicial qualification and **standards** for evaluation and disciplinary proceedings.
  - ii. CSOs should help officials develop and implement effective **appeal mechanisms**.
  - iii. Court officials should involve CSOs in **monitoring** the process and enforcement of violations. All proceedings should be as open and transparent as possible.

## **Working Group B: Promoting Transparent and Accountable Governance**

This working group focused on promoting transparency and accountability in government. Local and international civil society organizations have taken the lead role in monitoring and evaluating social accountability performance. CSOs also have worked with host governments to develop national action plans to reach open government goals, including those related to open justice and the rule of law. Topics of discussion included government performance monitoring, police oversight and accountability, establishing and working with anti-corruption bodies, e-governance, access to information, justice system data, media freedom, and ethics regimes.

### 1. Input on Draft Legislation:

- a. **Parliaments, ministries, and government agencies should allow more time for comments on draft laws.** More time will improve the quality and diversity of civil society inputs.
- b. **The work of parliamentary committees should be open and public.** This includes members of the public, civil society and experts.
- c. **Both executive and legislative branches should institute comment and consultation procedures.** Consultation is currently dependent on the willingness of individual ministers or offices and is more likely when the government officials involved were previously members of civil society. Standardized consultation procedures will ensure that the opportunity to make inputs on draft legislation and policy does not depend on who is in office.

### 2. Access to Information and E-Governance:

- a. **Both civil society organizations and government offices that maintain public databases should make them more user-friendly.** This includes three specific sub-recommendations:
  - i. Databases should make it **easier to download and analyze data.**
  - ii. Government-maintained databases should **present all information relevant to a decision**, not just the final decision. This includes evidence, intermediary decisions, and justifications for decisions not taken.
  - iii. Wherever possible, **requests for information should be processed electronically**, to reduce delays. This includes mechanisms to submit requests electronically.
- b. **Government offices should release clear urban development plans.** Clear, publicly available plans will make it possible to follow land sales and construction permitting, which are a significant problem area for corruption and improper exercise of influence. Individuals and civil society should be able to verify based on these plans that permitting and sales are based on one plan and consistent criteria.

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- c. **High-profile court cases, especially those involving corruption, should be open to the public.** The public needs to have access to these court cases, or accurate, independent reporting on these cases, to build confidence that the law is being applied equally to everyone. Only highly sensitive parts of such a hearing should be closed.
3. Police and Security Sector Oversight:
  - a. Government bodies should **increase civil society participation in police oversight** and proposals for reform.
  - b. **Governments should clearly distinguish between the act of policing and policy-making on policing and crime.** Different agencies should have authority over these aspects. The police should be an agency responsible for providing safety and security to society. These functions should not be mixed together, because this leads to a police force whose purpose is only to punish.
4. Anti-Corruption Infrastructure:
  - a. **Different anti-corruption institutions need to have clearly defined mandates and roles.** When it is not clear how these different entities interact and what responsibilities they have, the public cannot understand if anyone is being held accountable.
  - b. **Governments should have institutions with the function of investigating corruption and institutions with the function of preventing corruption.** Both functions are important, and it is difficult for one institution to perform both well.
5. Media Freedom and Ethics:
  - a. **Media companies should be required to publish their full beneficial ownership structure.** The public has the right to know who owns their information providers and may be making decisions about whether and how issues are covered. Whenever information about beneficial owners is provided, the government should be responsible for verifying the information.
  - b. Laws regulating media ownership, especially digital media, should be revised to **prevent ownership monopolies.**
  - c. False news and propaganda represent a threat to civil society. Donors should **support civil society with digital security and legal support** when they face attacks.

### **Working Group C: Building Safe and Secure Communities**

This working group explored the ways that civil society can help build safe and secure communities. CSOs often work at the ground level, sometimes augmenting and at other times competing with governmental efforts, such as with law enforcement activities. There are many lessons learned in this newly-expanding area of intervention. Topics of discussion included juvenile justice, community-police relations, prison/penitentiary reform, sexual and gender-based violence, and protecting vulnerable populations. The following represents the key recommendations agreed to by the group.

#### 1. Protecting Vulnerable Populations:

- a. **CSOs and states should collaborate on training and information sharing.** This includes three specific sub-recommendations:
  - i. CSOs are providing a range of services in different locations; cooperation with the government to **map the extent and location of services** for vulnerable populations will enable the state to better identify service gaps that it can remedy.
  - ii. The collective expertise of CSOs and government agencies in working with vulnerable populations can be harnessed to improve the provision of services on all sides, through efforts to **share expertise and design interventions** that harness the different competencies of government and relevant civil society actors;
  - iii. To ensure effective efforts to understand and meet the needs of vulnerable populations, and to combat entrenched discrimination, CSOs can organize **sensitivity trainings and other supports** for government and civil society actors alike.
- b. **The government should contract for services with CSOs working in relevant fields and geographical areas.** This would help states fulfill their obligations to provide services meeting the needs of various vulnerable populations in different places.
- c. **Civil society actors should build citizen engagement.** NGOs, universities, religious institutions and others can play an effective role in the political empowerment of vulnerable communities, through know-your-rights trainings, information campaigns, advocacy projects that bring issues of interest to vulnerable populations into the public spotlight, and community organizing to help foster political participation. Government can support these efforts through public service announcements, efforts to facilitate voting and other forms of civic participation, and support to CSOs working on community empowerment.

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## 2. Preventing Sexual and Gender-Based Violence:

- a. **Civil society campaigns to advocate for the ratification of the Istanbul Convention** (Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence) and efforts to align domestic laws with it can change the way the government addresses domestic violence and sexual and gender-based violence (SGBV). Governments have largely been receptive to the Istanbul Convention, and civil society advocacy can help to ensure comprehensive efforts on alignment and compliance in domestic legal systems.
- b. **CSOs should partner with law enforcement and other state agencies in the area of sexual and gender-based violence.** Partnerships between law enforcement and other government agencies with women’s rights NGOs and coalitions can result in more women having access to the legal advice and representation as well as psychosocial services they need to address the SGBV they have experienced.
- c. **CSOs should work closely with governments to address the underreporting of domestic violence and victim protection.** This includes three specific sub-recommendations:
  - i. NGOs can partner with government in **understanding the needs and concerns of victims and designing legislation** that will help ensure prosecution of abusers and ensure that the safety of victims is protected.
  - ii. NGOs running domestic violence shelters that work closely with victims need **active law enforcement support** to ensure the safety of their clients. Programs that ensure close collaboration between them are essential.
  - iii. Often, victims of domestic violence and sexual and gender-based violence disclose not to state authorities, but to civil society actors – social workers, therapists, educators, and social service providers. Civil society actors bear a responsibility to treat these as criminal matters. **Laws that make it mandatory for these professionals to report such crimes** can ensure better protection of victims.
- d. **CSOs should engage religious leaders in prevention efforts to help change attitudes and better protect potential victims.** Religious leaders sometimes start from a conservative stance, emphasizing the preservation of marriage. CSOs that work with victims can be enlisted to help these leaders better understand the problem. Governments, meanwhile, can also play a helpful role through information provided to religious leaders, grant requirements that shape responses to the issue, and other initiatives.

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### 3. Promoting Penitentiary Reform:

- a. **States should be willing to work with CSOs on penitentiary reform.** Civil society access to prisons is limited, and this weakens protections for prisoners’ human rights. This can be improved by adopting laws that mandate access, or by developing local-level councils that include representatives of civil society as well as government, and that have strong mandates on monitoring prison conditions. Oversight and human rights monitoring is one area where civil society could play a useful role – even where there are state-employed prison ombudsmen.
- b. **CSOs can help states fulfill their unmet obligations to address prisoners’ legal needs.** In many places, there is a lack of post-conviction legal services: government-appointed public defenders will represent defendants at trial, but there is no system to address their legal needs once they are in prison. This is a gap that NGOs can fill.
- c. **CSOs should work with states on rehabilitation and reintegration of penitentiary inmates.** In many places, the government is failing in its obligation to ensure that offenders emerge from the prison system able to reintegrate into society, and to avoid re-offending. Contracting with CSOs in relevant fields to provide education, training and other social services would extend the state’s capacity and improve services by drawing on the specialized expertise of the NGO sector.

### 4. Improving Juvenile Justice Outcomes:

In some places, there is a lack of coordination between different civil society and government actors, leading to a lack of clear understanding of the problems and causes of juvenile delinquency. There are three areas where more extensive cooperation between government and civil society would be fruitful:

- a. Prevention
  - i. At the local level, civil society should work with government to ensure a comprehensive **understanding of the risk factors youth face**.
  - ii. **Early identification and intervention for at-risk youth** may be more effectively handled by civil society, including NGOs, but also educational and religious institutions. Government coordination with (and of) civil society leadership could improve prevention outcomes by understanding where services and juvenile offenders are concentrated and ensuring a distribution that leaves fewer service gaps.
  - iii. CSOs engaged in education and community organizing can be effective in **partnerships with schools** to provide after-school programs, organize peer-to-peer mentorship and provide other services targeting at-risk youth.

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- iv. Local and national governments should cooperate with CSOs to ensure that **appropriate social services are accessible** to families and at-risk youth regardless of their location.
- b. Reintegration
  - i. **Educational and skill-building programs** are available to some juveniles in prison, but not comprehensively. CSOs can fill in the gaps in government-run programs.
  - ii. **Data on children being housed in adult prisons** is limited. With government cooperation, university programs or research NGOs can gather data and improve understanding of the scope of the problem.
- c. Respecting the rights of juvenile offenders
  - i. **Legal services for juvenile offenders** are not always available; systems to draw on civil society to provide services where the state cannot would ensure that their rights are respected and protected in court.
  - ii. **The right to education for juvenile offenders** must be respected both in prison and after they have been released; partnerships between the state and civil society can help ensure that juvenile offenders have access to education.

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## Endnotes

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- <sup>ii</sup> Eli Lake, “Georgia’s Democracy Recedes Into Russia’s Shadow,” Bloomberg Opinion, September 13, 2018, <https://www.bloomberg.com/opinion/articles/2018-09-14/georgia-s-rose-revolution-recedes-into-russia-s-shadow>; Simon Hoellerbauer, “Armenia and the Velvet Revolution: The Merits and Flaws of a Protest-Based Civil Society,” Foreign Policy Research Institute, February 19, 2019, <https://www.fpri.org/article/2019/02/armenia-and-the-velvet-revolution-the-merits-and-flaws-of-a-protest-based-civil-society/>.
- <sup>iii</sup> Adam Hug, “Introduction: The Rise of Illiberal Civil Society?,” *The Rise of Illiberal Civil Society in the Former Soviet Union?*, Foreign Policy Center, 2018.
- <sup>iv</sup> Henrik Sundbom and Martin Kragh, “Resilience Against Influence Operations in the Eastern Partnership Countries,” Swedish Institution of International Affairs, Number 5/2018, 2018, p. 3, <https://www.ui.se/globalassets/ui.se-eng/publications/ui-publications/2018/ui-brief-no5-2018.pdf>.
- <sup>v</sup> See, e.g., Lada L. Roslycky and Olena Tregub, “Why It’s Too Soon to Celebrate Ukraine’s New National Security Law,” Atlantic Council, July 30, 2018, <https://www.atlanticcouncil.org/blogs/ukrainealert/why-it-s-too-soon-to-celebrate-ukraine-s-new-national-security-law>.
- <sup>vi</sup> Prague Security Studies Institute, “Cooperation Between Civil Society and State Sector: Problems and Solutions,” Summary of expert panel discussion.
- <sup>vii</sup> Ghi Nodia, et al., “Democracy and its Deficits: The Path Towards Becoming European-style Democracies in Georgia, Moldova, and Ukraine,” CEPS, No. 2017/12, December 2017, p. 23, [http://aei.pitt.edu/92800/1/WD2017\\_12\\_GNodia\\_DemoAndDeficits.pdf](http://aei.pitt.edu/92800/1/WD2017_12_GNodia_DemoAndDeficits.pdf).
- <sup>viii</sup> *Law of the Republic of Armenia on Non-Governmental Organizations*, No. HO-22-N, February 4, 2017, art. 7.
- <sup>ix</sup> European Center for Not-for-Profit Law, “2% Law: A Milestone Towards CSO Sustainability in Moldova,” <http://ecn.org/moldova-launches-new-financing-mechanism-for-civil-society/>.

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## Appendix A: Symposium Agenda



**JUSTRAC**  
JUSTICE SECTOR TRAINING, RESEARCH  
& COORDINATION PROGRAM

### *Promoting the Rule of Law in the Post-Soviet Region through State and Non-State Collaboration*

A JUSTRAC (Justice Sector Training, Research and Coordination) Symposium  
The Rule of Law Collaborative at the University of South Carolina  
in cooperation with the U.S. Department of State (INL)

June 12-14, 2019  
Tbilisi, Georgia

Independent states established from the breakup of the Soviet Union have worked to create stable environments for their citizens and to promote foreign investment. One of the challenges across the region in this effort has been the willingness and ability of governments to create climates of state transparency and accountability favorable to robust civil society engagement. Civil society organizations (CSOs) play an important role in checking government power, promoting transparency and accountability, and bringing to light corruption and inefficiency that undermines state institutions and weakens the rule of law. Symposium participants will explore how these important change agents can harness social accountability mechanisms and can pursue more formal government partnerships, like those provided for through the Open Government Partnership (OGP), to promote government accountability, transparency, and the rule of law in the region, which ultimately support SDG 16.

This three-day, invitation-only symposium will host up to 40 experts from Armenia, Georgia, Moldova, and Ukraine to explore how CSOs can be both agents and beneficiaries of a strengthened rule of law without undercutting their own footing in restrictive environments. Representatives from governments and CSOs working on related justice sector and rule of law issues will explore how actors have been constrained and how they can expand their freedom to operate. Participants will also be asked to identify ways that these important change agents as well as international actors should take account of local conditions and local solutions in their efforts to promote the rule of law. Similarly, participants will consider how space for independent voices has been both promoted and constrained, with an eye towards developing prescriptions for expansion of freedoms of expression, association, and assembly across the region and elsewhere.

This event will employ a mix of plenary discussions and working group breakout sessions, with all participants divided into one of three working groups. The working groups will meet at least three times during the course of the symposium and will draft concrete recommendations that will be

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recorded by a rapporteur and reported back to the full group for reactions and comments. Those recommendations will be incorporated into a white paper to be drafted by the Rule of Law Collaborative (ROLC) for circulation within the U.S. Government and to government officials and non-governmental actors within the region and elsewhere through the invitees.

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