

Closing Space, Open Government?

Civil society response to
restrictions in OGP countries



Open
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Partnership



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1. Introduction: Civil society under restriction

What civic space is and why it matters

In order for civil society to function, flourish and play a full role in promoting democracy, development, good governance and human rights, three essential rights must be respected and realised: the freedoms of association, peaceful assembly, and expression. Together, these three rights, recognised in the Universal Declaration of Human Rights and long established in international law and many national constitutions, determine the extent of civic space—the space in which civil society is able to form and act.

When civic space is limited, the essential contribution of civil society is not realised. Civil society organisations (CSOs) cannot fulfill a number of important roles, including fostering citizen participation, exercising accountability in governance, advocating for policy change, and delivering essential services to otherwise excluded people. In open civic space, CSOs are able to act with autonomy to advance democracy, development, good governance, and human rights.

It follows that open civic space is key to successful OGP processes. In conditions of closed civic space, CSOs cannot fully play their role as OGP partners, and citizen oversight and participation will be limited. In open civic space, CSOs can participate as full partners, and citizens are free and able to demand greater accountability and transparency from their governments.

Civic space in OGP countries

Unfortunately, the three fundamental civil society rights are often denied in practice, and over several years CIVICUS, the global civil society alliance, has seen a sustained and widespread assault on civic space. The CIVICUS Monitor, an online platform that tracks and rates civic space conditions in 195 countries, showed that in February 2018 there were serious restrictions on civic space in 109 countries (56 percent of countries), compared to only 44 countries (23 percent) that were classed as having open civic space. As a result, only four percent of the world's population live in countries with open civic space.¹ Moreover,

¹ CIVICUS Monitor ratings, February 2018. The CIVICUS Monitor draws together data from eight different sources, including regular reporting from a range of civil society partners with strong knowledge of civic space conditions on the ground. A standardised methodology weights, verifies and combines data from different sources, with additional verification by an expert panel, to assign a rating to each country on a five-point scale from open civic space to closed. Ratings are regularly reviewed in the light of new information. As well as providing a rating for each country, the CIVICUS Monitor offers updates on civic space conditions in each country. For more on the CIVICUS Monitor and its methodology, see <https://monitor.civicus.org>.

the CIVICUS Monitor data makes clear that violations are occurring in both global north and global south countries, in every global region, and in countries operating under various forms of government. In short, CIVICUS believes there is a global civic space emergency, with the conditions for civil society having been further deteriorated in 2017.

OGP member states are not immune from this global civic space emergency. Of 72 OGP member countries, at the time of writing (excluding those listed as inactive or as having withdrawn), only 18 (25 percent) are rated by the CIVICUS Monitor as having 'open' civic space, with the highest number, 25 (35 percent), assessed as having 'narrowed' civic space, indicating that violations of the rights of association, peaceful assembly, and expression are taking place. Particularly serious restrictions are indicted by the categories of 'obstructed' civic space, into which 23 OGP countries (32 per cent) fall, and 'repressed' civic space, which exists in six (8 percent) of OGP members.

Notably, the data suggests that civic space in OGP member states is somewhat better than in non-member states. While 56 percent of states are classified as having serious civic space restrictions (in which civic space is rated as 'obstructed', 'repressed', or 'closed'), in comparison only 40 percent of OGP members fall into these categories, and no OGP member is in the most restrictive category, of having 'closed' civic space. The data therefore indicate that there is a positive correlation between OGP membership and respect for civic space.

However, there continues to be considerable room for improvement. In spite of its commitments to transparency and participation in governance, 75 percent of OGP member states are currently classed as having less than fully open civic space. Action to defend and broaden civic space is urgently needed, including in OGP member states. Critical among these efforts is improving the effectiveness and impact of OGP processes.

The following sections discuss key drivers and enablers of current civic space restrictions and the tactics through which restriction is being exercised, and provide recommendations to address civic space challenges.

2. Targeting of CSOs by function, form and focus

Recent editions of the annual CIVICUS State of Civil Society Report have explored the question of what is driving and enabling the current wave of civic space restriction, and clear patterns have emerged.² Not all CSOs and activists are restricted equally; they are targeted by form, focus, and function. Restrictions are most often experienced by some types of CSOs when they work on particular topics or when they act in certain ways. CSOs and activists that work on issues that are seen as contentious and engage in advocacy and the exercise of accountability face the greatest risk of restriction and attack. CSOs and activists are most targeted when they raise difficult questions, seek rights, or are perceived as challenging institutions of power or threatening elite political and economic interests.

The ability of CSOs to expose corruption and poor governance, exercise accountability, and advocate for new policies are all essential functions if CSOs are to play the critical roles that OGP envisions.

Targeting by function

Many in civil society believe governments only tolerate CSOs when they are seen to be supporting the delivery of government agendas or providing a public service.³ This is most often seen in instances where governments acknowledge that they are unable to provide adequate services or where CSOs have better reach into communities. This tolerance may be tested if CSOs are seen to be competing with governments for resources or seek a larger voice in shaping government structures and efforts.

As a result, the ability of civil society to play a range of essential roles is being contested. In conditions of open civic space, CSOs will typically seek to respond to a problem in multiple ways, and many CSOs follow an evolutionary trajectory: a CSO, forming to address an urgent need, may first respond by providing services, but as it progresses, will realise that advocacy for policy change is needed to bring about long-term change. CSO advocacy is in turn strengthened when organisations have deep connections in communities they serve. Limiting CSO functions hinders their effectiveness. It also questions the role of CSOs as autonomous actors, if they are

unable to define and pursue their own agendas, guided by the needs of their constituents.

Targeting by form

The general pattern for restriction by form is that national CSOs, and the national arms of international CSOs, face greater restriction than local, community-based CSOs. Legislative restrictions often focus on CSOs that register as non-governmental organisations (NGOs) and independent trade unions, rather than other CSOs more commonly associated with small-scale development activity, such as community-based organisations, cooperatives and faith groups grounded in predominant national religions. New social movements, including protest movements, may be able to avoid many of the bureaucratic restrictions placed on more formal organisations. However, over time they may face challenges if they enjoy visible public support and articulate explicitly political positions.⁴

Targeting by focus

CSOs and activists are attacked and restricted most when their work or the issues they address are deemed to be controversial or sensitive. What is often meant by this is that they call elite power into question. As discussed in the 2016 CIVICUS State of Civil Society Report, the civil society of excluded groups, such as women, LGBTI people and racial minorities, often finds its space is particularly contested. Restriction serves to continue the marginalisation of excluded groups.⁵ This happens because the civil society of excluded groups seeks to assert rights that are denied. In doing so, they implicitly or explicitly criticise prevailing power relations and demand a change in the status quo.

Alongside CSOs and activists that seek women's and LGBTI rights, those experiencing the most repressive restrictions are CSOs and activists that defend environmental, land and indigenous peoples' rights.⁶ In some contexts, independent trade unions are restricted and attacked, as are journalists, particularly when they report on political issues, protests and

² See CIVICUS State of Civil Society Reports, <http://bit.ly/2ls04g8>.

³ 'Contested and under pressure: a snapshot of the enabling environment of civil society in 22 countries', CIVICUS, February 2017, <http://bit.ly/2yUGMVG>.

⁴ 'Keeping up the Pressure: Enhancing the Sustainability of Protest Movements', CIVICUS, April 2017, <http://bit.ly/2q2lCkv>.

⁵ 'Thematic Overview: Exclusion', CIVICUS State of Civil Society Report 2016, <http://bit.ly/2y7U1Dr>.

⁶ 'Defenders of the Earth', Global Witness, July 2017, <http://bit.ly/2vg0dTW>.

corruption.⁷ Often when such activists and CSOs are threatened it is because they are seen as obstacles to the economic goals and activities of political and private sector elites.

Civic space conditions tend to be worse where transnational business interests are being asserted. Particular risks for civil society are associated with the extractive industries, agribusiness and logging concerns, hydroelectric projects, construction, and other heavy infrastructure development. In these instances, CSOs and activists defending the human rights of affected communities and exposing malpractice may find themselves targeted and subject to harassment, violence, or assassination.⁸ These challenges are seen particularly in Latin America and some countries in South East Asia. Similar risks are faced when civil society seeks to improve employment conditions in the global south manufacturing bases of transnational supply chains.

⁷ Between June 2016 and September 2017, the CIVICUS Monitor published 184 reports of attacks on journalists, and 53 reports on the killings of journalists. See 'People Power Under Attack: Findings from the CIVICUS Monitor', CIVICUS, October 2017, <http://bit.ly/2iFV2vj>. In 2017, political reporting was by far the area of work most likely to provoke attacks on journalists. See 'State of Civil Society Report 2018. Year in Review: Top Ten Trends', CIVICUS, March 2018, <http://bit.ly/2FfXYt1>.

⁸ 'Against all odds. The perils of fighting for natural resource justice', CIVICUS and Publish What You Pay, 2016, <http://bit.ly/2g9W6Uq>; 'Thematic Overview: Civil Society and the Private Sector', CIVICUS State of Civil Society Report 2017, <http://bit.ly/2qXYgsp>.

When restrictions and attacks are concentrated on CSOs according to their function, form and focus, the intention is to divide civil society in order to subdue it. CSOs that prioritise advocacy and accountability efforts, certain types of CSOs, and CSOs that work on contested issues, may be characterised as being beyond the acceptable civil society mainstream compared to other more tolerated forms of civil society. Civil society may be divided into camps characterised as supportive and obstructive towards a state. Divisions between different civil society forms may be reinforced through favouritism in government consultation processes and the awarding or withholding of state grants, contracts and other forms of patronage. In some countries it is clear that governments are seeking to support and privilege a pro-government client civil society. Such divisions reinforce and deepen existing challenges of disconnection between different civil society groups and forms.⁹ The attempt is to limit civil society to uncontroversial areas of activity. Restrictions call into question the autonomy and legitimacy of civil society and seek to limit its ability to respond to contemporary challenges.

⁹ 'State of Civil Society Report 2018. Year in Review: Top Ten Trends', op. cit.; 'Bridging the Gaps', CIVICUS, 2011, <http://bit.ly/1OCmsHj>.

3. Drivers and enablers of restriction

Targeting of CSOs by function, form and focus suggests that the national and local-level motivations behind civic space restriction are often political and economic. At the macro level, CIVICUS analysis indicates that contemporary restrictions on civic space are being driven by a range of factors that may be combined and amplify each other. These include: increased global priority given to combating terrorism; geopolitical shifts that see states with serious human rights deficits becoming more powerful; growing discourse associated with these shifts that rejects universal human rights norms and democratic freedoms, and concentrates power in political elites; a negative reaction to recent civil society successes that have proved the power of collective action; and harmful transnational and multinational corporate practices, supported by states pursuing heavily private sector-oriented development efforts.

Any strategy to defend, uphold, and enable civic space needs to take into account the balance of these factors in any given context, informed by localised research to understand the context and the ways in which different drivers impact on the freedoms of association, peaceful assembly and expression.

Counter-terrorism measures

Particularly challenging for civil society are restrictions made in the name of maintaining national security in the face of terrorism and extremism. The restriction of civic space significantly increased following the 9/11 terror attacks in 2001, which were followed by a number of worldwide anti-terrorism initiatives and legislative efforts. While some of these were well-intentioned, many had a considerable impact on the rights of citizens and civil society. For some states, rhetoric around combating terrorism has been used opportunistically to conceal an intent to stifle civil society. The growth of laws that restrict civic space in the name of countering terrorism was described as an “ideological pandemic” by Ben Emmerson, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in 2015.¹⁰ What followed in some instances were legitimate forms of criticism from CSOs being equated with terrorism or attempts at destabilisation of government leaders, and some CSOs even being labelled as terrorists. Activists and CSO staff may find themselves under surveillance or criminally prosecuted under anti-terrorism laws.

¹⁰ ‘Lawful civil society groups ‘are not enemies of democracy, but key allies,’ says UN expert’, UN News Centre, 26 October 2015, <http://bit.ly/1T5IHGU>.

Attacks on civil society in the name of fighting terrorism occur even in cases where terrorist and extremist forces directly threaten civil society personnel. In some situations, this means that CSOs and activists find themselves under attack from two fronts—their government and terrorist and extremist forces—simultaneously.¹¹

More broadly, restrictions are often introduced to protect public order, defend national sovereignty and uphold public morality, national values, heritage, culture, and religious values.

For example, attempts by citizens to hold public protests may be curtailed or deemed criminal with reference to the need to maintain order and security. The civic space of CSOs and activists seeking women’s rights and LGBTI rights is often restricted on the grounds of the defence of morality and national heritage. Growing restrictions on the ability of CSOs to receive international funds, discussed further below, are often made with reference to the importance of upholding national sovereignty and the national ownership of development.

Seldom debated is the question of who is allowed to define national values, decide what is a threat to national security, public order and morality, or determine a country’s national development priorities and approaches. There is rarely an open public debate around the meaning, construction, and ownership of these key concepts, which are often vague and provide few means for civil society to initiate or influence such a debate. In some contexts, to raise these questions is itself dangerous.

Democratic freedoms under attack

In several states a conscious pushback against human rights and participatory democracy is being made. What has resulted could be described as an alternate ideology of “democratic authoritarianism.” Key aspects of democratic authoritarianism include: the rejection of notions of participatory democracy, in which there should be multiple channels for citizens, including excluded groups, to participate and express dissent beyond formal elections; the assertion instead of narrow ideas of democracy, in which elections are seen as conferring untrammelled power on the winning party; and the imposition of top-down approaches to governance, in which the machinery of government is heavily concentrated in the hands of political leaders and constitutional checks and balances, including legis-

¹¹ ‘Year in Review: Freedom of Expression’, CIVICUS State of Civil Society Report 2017, <http://bit.ly/2gO70Iz>.

lative and judicial independence, are compromised. Recent years have seen a related trend, notably in Sub-Saharan African countries, towards the abolition of presidential term limits and the holding of elections that are marred by procedural failings and favour incumbents. Practices of democratic authoritarianism often coincide with the assertion of socially conservative political and moral viewpoints; the rejection of internationalism and a corresponding reassertion of hard national borders; and the questioning of international human rights norms and international laws and agreements.

In part, an increased rejection of more participatory forms of democracy may reflect a cyclical shift in the era of rapid globalisation that followed the end of the cold war. During this time, mixed models of governance came to greater prominence, in which governments were no longer assumed to have a monopoly on power and civil society was understood to have an important role. But in the face of pressing contemporary international challenges—including violent extremism, conflict, economic volatility and migration—practices of globalisation and the participatory models of governance that may be associated with it are being called into question.

For civil society, there is a need to acknowledge that contemporary rejections of participatory democracy come with a degree of public support. In several countries, in both the global south and north, a rejection of politics as conventionally practised can be observed among significant numbers of people. Trust in public institutions, including governments, businesses, the media and CSOs, has declined, and citizens in several countries have shown themselves willing to support political causes and strong-arm leaders that until recently would have been considered extremist or on the fringe.¹²

These shifts have come partly in response to the failures of established political forces to grapple with contemporary challenges. In many established economies, globalisation and economic neoliberalism have weakened the security of livelihoods and increased and made more visible the gaps between the very rich and everyone else. Public spending cuts imposed by governments in response to economic downturn made citizens economically less secure and weakened their trust in political institutions. In several contexts where democratic practices were established during the post-cold war period, a disenchantment with formal political competition and its failure to advance change can be observed. In these instances, citizens may see mainstream political parties as indistinguishable and incapable of meeting their aspirations.

On the positive side, a rejection of conventional politics has seen the growth of some new and inspiring forms of civil society, including social movements and non-hierarchical mass mobilisations that incubate and articulate progressive new solutions to entrenched problems. However, there are also many current examples of citizens embracing more extremist and polarised politics. In response to contemporary challenges, and enabled by the spread of social media (which, while offering new opportunities for civil society, has also provided powerful tools for groups to consolidate around exclusive shared identities and propagate political myths and hate speech), there has been a resurgence of identity-based politics, in which positions that speak to group interests, rather than broader social interests, are advanced; other identity groups, usually minorities or excluded groups, may be identified as the source of problems or as competitors for status and resources, and consciously excluded. Sexism, racism, xenophobia and narrow nationalism have surged.

Taken together, these trends are encouraging the concentration of power into political leaders who take a highly centralised and personalised approach to governance, and the assertion of narrow nationalist positions that reflect the interests of dominant groups.

These trends directly impact on civic space because civil society's work to promote accountability, expose corruption and ensure that human rights are upheld may be at odds with centralised and personalised political power structures, meaning that civil society's work becomes seen as more politicised. In response, the space for dissent and discussion becomes more limited. In contexts of political polarisation, civil society may be attacked for defending human rights, promoting pluralism, and advancing progressive positions. Civil society actors that take progressive positions may be vilified as going against the popular will or characterised as unpatriotic or enemies of the state. Where globalisation and economic neoliberalism are being called into question, civil society may be rejected, inaccurately, as associated with discredited notions of "globalism" and out-of-touch elites. Worldwide, it is clear that restrictions on civic space often increase ahead of elections, even when those elections are flawed and processional.

Citizens may support policies that result in civil society restriction. Citizens may fear crime, violence and terrorism, and support measures that appear to address these, even when they impact on human rights. Further, socially conservative sections of society may be opposed to CSOs that seek rights for excluded groups, such as sexual and reproductive rights and LGBTI rights, and support restrictions introduced by

¹² 2017 Edelman Trust Barometer, <http://bit.ly/2jFe4hp>.

governments, and even attacks by extremist forces against these elements.

A particular concern for civil society is that practices of democratic authoritarianism are spreading and its proponents becoming bolder. In 2017, CIVICUS concluded that civic space in European Union member states was in decline, partly as a result of increasing political polarisation and the rise of far-right movements, as evidenced by several recent election results in European countries.¹³ Further, across several European states, clear currents of inspiration and imitation can be observed between states that are adopting and promoting narrow and exclusionary concepts of democracy.

Changing approaches to development

As part of the same pushback against universal human rights norms, in some global south countries, more narrow approaches to national development are being pursued. Following the end of the cold war, there was some support for broad concepts of development, in which development was understood to entail the enabling of human rights and the realisation of human potential, and was thereby intrinsically linked to democratisation and increased accountability. This implied recognising the legitimate role of civil society in development.

However, there has since been pushback against this. In part this movement was enabled by the advent of the Millennium Development Goals (MDGs) in 2000. Over the 15 years they applied, the MDGs encouraged an intensive focus on achieving progress on a relatively narrow range of quantitative development indicators, along with an accompanying emphasis on private sector development and economic growth as a key engine for human development.

These changes in emphases gave scope for some states to detach human rights from development and pursue highly centralised, top-down development paths. It is right that states should take the core responsibility for ensuring that essential services are available for citizens, and citizens expect states to deliver them. But there are numerous examples of top-down development efforts that have been hailed as successful, including by donor governments and international agencies, but have resulted in reduced levels of accountability and increased governance deficits. Under conditions of intensively state-led development, attempts to express dissent and seek oversight can become viewed as obstacles to progress. For example, CSOs and activists that seek labour rights, or environmental, land and indigenous peoples' rights, may be vilified by governments and political figures as standing in the way of development and initiatives to reduce poverty.

¹³ 'People Power Under Attack', op. cit.

Similarly, the development effectiveness agenda, which has the aim of improving the coordination of development efforts and development spending, as well as assuring national ownership of development, may be misinterpreted to exclude civil society. States may centralise development decision-making and expect civil society to align as part of effective development, even when civil society has little input into authorship of national development plans, and despite the international agreement set out in the Busan Partnership for Effective Development Cooperation, 2011, in which states recognise the important role of civil society as "independent development actors," and agree to uphold "an enabling environment, consistent with agreed international rights."¹⁴ Similarly, there is concern that governments may now be taking a top-down approach to implementing the Sustainable Development Goals (SDGs). Even though these are intended to be more expansive and the primacy of human rights is made clear on the first page of the commitment, there is concern among civil society that government-led monitoring and reporting of the SDGs to date is narrow and excludes civil society.¹⁵

As with the spread of democratic authoritarianism, an international culture of imitation on the narrowing of development can be observed. States that have pursued heavily state-centric economic development paths in which human rights are restricted are seen as models to replicate. This has been amplified as such states have become donors and have encouraged other states to follow similar development paths.

Geopolitical shifts

What is clear is that while the restriction of civic space is experienced most profoundly at the national level, it is also influenced by global trends and geopolitical shifts.

Notably, the conflation of civic dissent with extremism and terrorism, as noted above, is enabled by contemporary global discourse about the urgency of combating terrorism. This has provided states and ruling elites with new levers that can be used to restrict civic space and justify those actions. Some global south states in which extremist groups are based have been able to obtain material support that is used to restrict legitimate civil society as well as extremist groups. Others that border such states have been able to position themselves towards global north states as strategic buffers against regional terrorist threats. This enables them to offset pressure that might otherwise come from states or donors to respect human

¹⁴ 'Busan Partnership for Effective Development Co-Operation', Fourth High Level Forum On Aid Effectiveness, Busan, Republic Of Korea, 29 November-1 December 2011, <http://bit.ly/2zU1chU>.

¹⁵ 'Transforming our world: the 2030 Agenda for Sustainable Development', United Nations General Assembly, 21 October 2015, <http://bit.ly/1Y3D3sN>; 'State of Civil Society Report 2018. Year in Review: July', CIVICUS, March 2018, <http://bit.ly/2FplZwV>.

rights. Some states have used processes of compliance with the Financial Action Task Force (FATF), which works to combat money laundering and the financing of terrorism, to limit the ability of CSOs to receive funds, in ways that go far beyond the FATF's remit and intent.¹⁶

Further, in many global south countries, the influence of global north donors has waned. This has happened partly because global south countries have established new relations with emerging donor economies from rising powers. Many global north bilateral donors are also focusing their aid on fewer states that are deemed to be of strategic importance and are reorienting their aid programmes to focus on the realisation of diplomatic and trade advantages for donor governments or the prevention of terrorism. In several states, once-autonomous aid agencies have now been absorbed into foreign affairs and trade departments, and more closely linked to diplomatic, security and trade agendas.

The consequence of these changes for civil society is that there may be less pressure from donors for civil society participation and the enabling of civic space. Emerging donors tend not to make such conditions. State aid from emerging donor countries more often supports large-scale infrastructure projects that often impinge on human rights and civic space. While the implication that the space for civil society might be determined by external donors was always problematic, lending itself to discourse that rejects civil society as a foreign and imposed concept, the practical consequence of recent changes is that civil society loses potential leverage to uphold civic space.

A demonstration of the impact of changing geopolitical priorities on civic space came with the perception amongst European governments and citizens that they were subject to a refugee crisis in 2015. The result was a rapid shift in policy that made donor governments regard countries that refugees come from or pass through as more strategic. The consequence was that the governments of countries of origin or transit for refugees experienced reduced scrutiny of their human rights records and received some new resources, with weak human rights conditions attached, for such purposes as strengthening national security forces and borders. Measures such as these can have the effect of increasing the restriction of civic space, for example, by helping security forces suppress protests more efficiently or stopping activists fleeing across borders to escape repression.

¹⁶ 'The international antiterrorist financing system's negative effect on civil society resources', Kay Guinane, Director, Charity and Security Network, in CIVICUS State of Civil Society Report 2015, <http://bit.ly/2bXjGyl>; 'Implications of anti-terror and money-laundering regulations on CSOs financing and what CSOs can do', CIVICUS, <http://bit.ly/2zbujhc>. Civil society advocacy led to a change in FATF guidance in 2016 which should make it harder for states to restrict civil society under the guise of FATF compliance. See 'Year in Review: International Governance', CIVICUS State of Civil Society Report 2017, <http://bit.ly/2yZ3A6W>.

A backlash against success

The current pushback also implicitly recognises the latent power and past successes of civil society. Backlash has come to recent civil society breakthroughs and against the potential shown in citizen's mobilisations. This can be seen in the increase in civic space restrictions that were introduced in many countries in the Middle East and North Africa (MENA) region following the mass protests that took place in late 2010 and 2011 and led to political changes, including changes of government. Elsewhere, including in much of Sub-Saharan Africa, restrictions increased as a reaction to the MENA protests as a pre-emptive measure to prevent inspiration leading to action.

International institutions as enablers and bystanders

International level institutions may act as enablers of restriction. When restricted at home, civil society has long looked to the international arena as a source of solidarity, scrutiny and support, but its experiences at the global level are often frustrating. While the international sphere is an essential source of positive norms and values, CIVICUS analysis concluded that CSOs looking to the international arena to uphold civic space experience a double democratic deficit: civic space restrictions at the national level are carried into and reproduced at the international level, where key international institutions are dominated by states. States that repress citizens' voices at the national level assert narrow state interests at the international level, including by holding key roles in institutions such as the United Nations Human Rights Council, serving to stymie the potential for progressive international governance. Contemporary attacks on "globalism" and international standards and human rights norms manifest as attacks on international institutions. 2017 saw states withdrawing from international institutions and agreements, or threatening to do so, as well as ignoring international resolutions and cutting back on international funding.¹⁷

Further, civil society's access to the international governance system is limited, with far less space than that enjoyed by states and the private sector, and skewed towards larger CSOs and CSOs based in the global north. A scorecard exercise of some major international institutions conducted by CIVICUS in 2014 highlighted a civil society concern that it was only allowed to be involved in international decision-making in a superficial way, and states were consistently able to ignore civil society inputs.¹⁸ Growing access by large corporations to key international meetings is a particular civil society concern.¹⁹

¹⁷ 'State of Civil Society Report 2018. Year in Review: Top Ten Trends', op. cit.

¹⁸ 'Towards a Democratic Multilateralism: Civil Society Perspectives on the State of Global Governance', CIVICUS State of Civil Society Report 2014, <http://bit.ly/2gNOI4x>.

¹⁹ 'State of Civil Society Report 2018. Year in Review: Top Ten Trends', op. cit.

The role of non-state actors

While the above analysis has focused mostly on the role of governments in restricting civic space, given OGP's focus on making governments more open and accountable, it is important to be clear that governments are not the only forces that can restrict or attack civil society. Extremist political and religious groups are another source of threat to civil society. While the restriction of civic space may conventionally be associated with the existence of a repressive, authoritarian state, threats and attacks on civil society can also come in conditions where governments have little control: attacks may come in spite of government efforts to uphold rights and protect activists, and demonstrate an absence of the rule of law. Hotspots of harassment and violence against civil society are often found in locales where mechanisms of governance have broken down and crime and venality flourish, such as regions dominated by drug trafficking or illegal extraction.

It is also increasingly necessary to analyse and understand the impact on civic space of private sector forces, and particularly of large national and transnational corporations.²⁰ For example, threats to CSOs and activists who defend labour rights, and environmental, land and indigenous peoples' rights,

often come from the corporations that see their economic interests as reliant on the suppression of rights. The contexts in which the threats are highest are those where there are webs of corruption between politicians, public officials, private companies, organised crime groups and public and private sector security forces. Threats may be localised to particular cities and districts where corrupt political and business leaders hold sway.

More broadly, an increasing emphasis on corporate growth, and rising global demand, fuelled in part by a growing middle class in the global south, have driven large corporations to seek new sources of raw materials or cheap manufactured goods, with corresponding impact on respective local communities. At the same time, transnational corporations have become more adept at navigating and bypassing national laws, avoiding taxation and developing political influence, while many states have adopted increasingly pro-private sector policies, seeking inward investment and industrial growth as routes to development. Increased pressures on civic space can result from these trends, in reaction to civil society's work to encourage accountability, expose corporate corruption, malpractice and human rights abuses, and advance progressive ideas that challenge entrenched economic interests.

²⁰ Thematic Overview: Civil Society and the Private Sector', op. cit.

4. Methods of civic space restriction

There is a need to examine and understand the range of methods that are used to restrict civic space. Any response to civic space restriction should be informed by local research and partnerships and take into account the connection between different tactics of restriction. Analysis of CIVICUS Monitor reports indicates that states most often violate civic space by detaining activists, attacking journalists, censorship, the use of excessive force against protests, other forms of protest disruption, and the harassment of activists and journalists.²¹

Other frequently employed tactics are the imposition of bureaucratic and legal restrictions on CSOs. The legal and regulatory environment for civil society is therefore an area that presents challenges, but also opportunities for governments to take clear steps to improve the quality of civic space and make OGP partnerships more effective.

In recent years, many states have introduced new laws and regulations on the governance of CSOs, alongside laws and regulations on protest, internet use and the freedom of expression. Laws on CSO governance are generally introduced with the stated purpose of improving the accountability and transparency of CSOs, but they often have the effect of making it harder for CSOs to operate and introduce more stringent registration and reporting requirements for CSOs. Consistent with the above analysis, laws and regulations often include terminology on the need to protect national security, order, values and morality as justifications for restricting rights. Such terms are often not well-defined, which introduces opportunity for CSOs to be targeted for political reasons. Similarly, ill-defined prohibitions are often made against CSOs taking part in what are usually termed “political activities.”

In laws and regulations, there is a tendency for the autonomy of CSOs to be challenged. For example, it is international best practice that CSOs should be able to form independently and simply notify state authorities of their formation, but laws recently introduced in several countries require CSOs to obtain prior approval from state authorities before they can be registered and begin operations. CIVICUS worked with national level civil society in 22 countries, nine of them OGP members, between 2013 and 2016 to carry out comprehensive assessments of the environment for civil society, and governments have the power to reject CSO applications for registration in

around half.²² Prior approval may also be required for CSOs to hold assemblies and implement projects, and in some countries, to publish reports.

In some countries, in line with the centralisation and narrowing of development discussed above, governments are requiring that CSOs more closely align with national development programmes and priorities; this may be made as a condition for approving the registration or activities of CSOs, or for the granting of state funding.

An intensifying battle, observed in some OGP member countries among many others, is over the ability of CSOs to receive resources, particularly from international sources. Guidance in international law is clear that the freedom of association cannot be upheld if CSOs are not free to seek and secure resources.²³ However, the ability of CSOs to receive international funding, principally from bilateral and multilateral donors, is worsening. In several states, new laws have been introduced that require CSOs to obtain prior government permission before they can receive international funding, or that limit the activities for which funding can be received. Some governments have introduced special reporting requirements for international funding and, in the worst examples of these, CSOs that receive international funds are forced to describe themselves as “foreign agents.” These moves are clearly intended to foster public suspicion of CSOs and enable governments to vilify them as the proxies of foreign powers. CSOs that engage in activities such as accountability and advocacy are particularly hard hit by restrictions on the receipt of funding, as they typically struggle to secure sufficient domestic resources, which tend to be available mostly for the delivery of services.²⁴

Civil society fights back admirably in the face of these and other restrictive tactics, but even when measures fail, much of civil society energy, time and finances is spent navigating restrictive procedures, ensuring compliance, or resisting attempts to introduce restriction, taking away from the ability of CSOs to focus on their missions. Even when attempts to introduce new laws and regulations fail, the threat of such laws can exert a chilling effect on civil society activity, and cause CSOs and activists to self-censor.

²¹ ‘State of Civil Society Report 2018. Year in Review: Top Ten Trends’, op. cit.

²² ‘Contested and under pressure’, op. cit. It is not possible to give an entirely accurate number because in some federal states varying regulations exist at a sub-national government level.

²³ ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, United Nations Human Rights Council, 24 April 2013, <http://bit.ly/2xs8ci3>.

²⁴ ‘CIVICUS Essay’, CIVICUS State of Civil Society Report 2015, <http://bit.ly/2fdFOH8>.

5. Looking forward and potential responses

While the challenges are many, an encouraging sign comes in the increased interest in and understanding of the importance of civic space among a growing range of organisations, including CSOs at different levels and international organisations that are concerned with issues of human rights, good governance and development. Civil society staged an impressive number of responses in the face of restrictions in 2017.²⁵ An emerging international community can now be seen where the restriction of civic space is recognised as a mainstream issue of concern. This suggests potential for new, concerted action to build international collaboration, uphold civic space and assert the essential value of civil society to efforts to advance shared goals.

There are a number of potential responses that this emerging international movement could pursue:

- When CSOs are targeted, by form, function, or focus, one aim is to split them off from the civil society mainstream, and to divide civil society into two camps. The voices of individual CSOs and activists are easy to ignore, but united voices that reach across a broad sweep of civil society are more powerful. Part of the response should be to support the strengthening of civil society coalitions, at international and local levels, to defend and advocate for civic space. Coalitions should be supported to make new connections between different civil society forms, and CSOs working on different issues, and at different levels in both the global south and global north, and to mobilise rapid support and solidarity for CSOs and activists that find themselves targeted and isolated. Coalitions need to make connections with journalists and academia, which often experience similar attacks, and with progressive companies to make the business case for civic space. It is also important for agencies that consult with civil society, including OGP, to ensure that they are reaching a broad diversity of civil society and different viewpoints, and not reproducing patterns in which depoliticised voices are privileged and civil society groups that work on more contested issues are excluded.
- The role of CSOs as partners, their autonomy, and their legitimacy to work across the full range of civil society responses are being more intensively questioned. In response, there is

a need for civil society to campaign to reassert its value as a partner, and its right to work autonomously across a wide range of fronts. As part of this effort, there is a need to share success stories, document good practice and expose poor practice, and propagate sound standards for civic space and civil society participation. Part of the response from civil society should also be to demonstrate leading-edge quality in adhering to legitimacy, accountability, and transparency standards, as this builds public trust and makes it harder for restrictive measures to be imposed on such grounds.

- CSOs and activists are challenged particularly when they work on contentious or sensitive issues. Yet one of the functions of civil society has always been to challenge opinions and behaviours that deny rights and build public support over time for change. The progress made in some countries on child, women's and LGBTI rights would not have come without sustained civil society campaigning to change perceptions. There is a need to encourage greater understanding about the legitimate role of CSOs in shaping public opinion, and offer new narratives about the value, contributions, and unique leadership roles of civil society.
- CSOs may be simultaneously falsely characterised as extremists and attacked by extremists. Further, while conditions of restricted civic space cause legitimate civil society to struggle, they can enable underground and extremist forces to thrive. Extremism can be fuelled by narratives of exclusion and the inability of groups to express dissent and seek redress openly. There is a need to promote appreciation of and support for the legitimate role of civil society and open civic space in challenging extremism, because it offers room for debate and the negotiation of different identities, and thereby dampens the potential for extremism. Further, in response to growing political polarisation and extremism, civil society needs to understand and engage with the citizen anger that enables this and offer progressive alternatives.
- Large corporations can have a negative impact on civic space. In response, there is a need for further analysis and documentation of the impact of the private sector on civic space, and for civil society action to expose poor practice and share good practice. More light needs to be shed on connections between transnational corporations and national governments. New partnership principles are

²⁵ 'State of Civil Society Report 2018. Year in Review: Top Ten Trends', op. cit.

needed to foster improved relations between civil society and the private sector. At the international level, civil society involvement in current moves to develop a new global convention on transnational corporations and human rights should be enabled and strengthened.

- The SDGs offer both a risk and opportunity for civic space. The SDGs, and the Paris Agreement on climate change, are landmark global commitments that demonstrate the potential of civil society advocacy. The agreements bear the hallmarks of civil society's intense advocacy efforts and engagement in the processes that developed them, within countries and at the global level. However, new development goals could lead to a renewed emphasis on top-down, state-dominated development paths. The opportunity for greater civil society involvement created by the agreement of the SDGs may be a fast-closing window. There is a need to campaign for the national development plans that result from the SDGs to be more inclusive of civil society, and to respect and uphold civic space.
- Civil society's experiences in working at the international level to uphold civic space are often disappointing. Greater and fairer civil society access at the international level could unlock civic space gains at the national level, by helping to develop stronger global norms and monitoring processes on civic space. The value civil society can add to international processes was demonstrated by its positive influence on the SDGs. There is a need now to build on this by investigating

how international institutions and processes can be made more open to civil society and encourage the development and practical application of more progressive norms, stronger monitoring of adherence to international human rights commitments, and greater dialogue between governments, civil society and the private sector on the value of open civic space at the national level. At the time of apparently growing public support for nationalism and rejection of "globalism," civil society needs to be involved in making a new case for the value of internationalism and the potential of global institutions.

- The evident interest of the OGP in civil society and civic space offers an opportunity for the OGP to play a strong role in improving civic space conditions. The OGP could initiate dialogues with governments on the importance of civic space and offer a safe space in which conversations between governments and civil society can be convened. The National Action Plans prepared by OGP companies could more sharply focus on civic space and outline some key steps to be taken to uphold and enhance civic space.
- The launch of the CIVICUS Monitor provides a new, regularly updated and verified evidence base about civic space conditions at the national level, including in OGP member states. It speaks to the need to offer a stronger research and evidence base on civil society, its contributions, and its challenges. OGP member states should be encouraged to make use of the evidence base offered by the CIVICUS Monitor in tracking whether they are fulfilling their obligations as OGP members.