

Civic Space

# Freedom of Association

**Open Government  
Partnership  
Global Report**

DEMOCRACY BEYOND THE BALLOT BOX

Open  
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# Key points


Freedom of association is one of the rights-based pillars—along with freedom of expression, freedom of peaceful assembly, right to participate in the conduct of public affairs, freedom of movement, and access to information—that underpin civic space. Countries that guarantee freedom of association and other indicators of open civic space do better—politically, economically, and socially!<sup>1</sup> Where freedom of association is restricted, open data and freedom of information are much less likely to translate into accountability.

Restrictions to association include hindering entry or registration, organizational operation, access to funding and resources, advocacy work (e.g., through over-implementation of lobby laws, transparency laws, or electoral laws), and reporting and accountability. Such measures are counter to the principles, mission, and pledges of OGP members.

In its assessment of OGP member activities and freedom of association challenges, the report found the following:

- **OGP countries have mixed results on freedom of association.** While over half are doing well, international indicators show that 40 percent have noteworthy challenges according to a 2018 analysis of CIVICUS monitor by OGP.<sup>2</sup>
- **Freedom of association challenges are largely based in law.** Roughly one in four OGP countries have excessively restrictive laws and limitations on receiving foreign funding or mobilizing domestic funding.<sup>3</sup>
- **Action plans are underused.** Most OGP countries with documented challenges to freedom of association have not undertaken or completed ambitious commitments in their action plans.
- **Strong reforms can support not-for-profit work.** Findings show challenges with cumbersome registrations, securing tax advantages, navigating red tape to justify funding and activities, and accessing sustainable funding sources.
- **In pursuing other aims such as financial transparency, anti-corruption, and other policies,** OGP members need to ensure that reforms also “do no harm” to the legitimate participation of civil society in the policy process and in civic life.





**F**reedom of association is the right to join a formal or informal group to take collective action. Conversely, it also includes the right not to be compelled to join an association. Associations can include civil society organizations (CSO), clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations, and even online associations. There is no requirement that the association be registered in order for freedom of association to apply.<sup>4</sup>

Freedom of association is a universal and fundamental right outlined by the UN Declaration of Human Rights<sup>5</sup> and subsequent international agreements.<sup>6</sup> International declarations on freedom of association aim to:

- Create independent, capable, effective, and vibrant CSOs;
- Ensure organizations are free to form and decide their membership, how they are funded, and what they can work on;
- Establish domestic laws that enable the exercise of freedom of association, including those governing an organization's legal existence, structure and governance, financial benefits and activities, sources of funding, reporting, and taxation;<sup>7</sup> and
- Ensure that policy and practice affecting association meet international standards and the three-fold threshold test (legality, necessity, and proportionality) regarding any restrictions to association.<sup>8</sup>

"Sergels Square, Stockholm Sweden." Photo by Pavel L Photo and Video / Shutterstock.com



“Nicaragua, Newspaper Director Carlos Fernando Chamorro walks through ransacked offices after government raid on newspapers and nongovernmental organizations in December 2018.” Photo by Alfredo Zuniga, AP Photo

Civic space is critical for open and accountable political processes, a strong social fabric, and economic and private sector growth.<sup>9</sup> As B-Team research has shown, freedom of association—and overall civic space—is good for business, not a threat to it.<sup>10</sup> Freedom of association is critical to open government; it is part of the founding principles outlined in the Open Government Declaration and further endorsed by the Paris Declaration.<sup>11</sup>

OGP’s theory of change relies in particular on the free operation of advocates and reformers that are able to form nonprofit, mission-driven organizations, or CSOs.<sup>12</sup>

- CSOs are essential to realizing the objectives of the OGP process: the co-creation of a two-year action plan with commitments collaboratively developed with governments.
- CSOs are a vital component of the OGP’s theory of change to trigger open government reforms.
- CSOs serve as a lever for more transparent governments. By having open access to information, CSOs and other members of civil society are able to engage with government to help inform and influence policy and practice.

- CSOs create more responsive governments, helping create checks on abuse of power. They are able to participate across the policy process from setting policy priorities, to monitoring results and often implementing services.<sup>13</sup>

OGP members must ensure that freedom of association is fulfilled as part of their OGP national action plans (NAPs), both regarding civic space as well as their broader set of commitments. This means ensuring that all commitments, including transparency, accountability, and anti-corruption commitments:

- Do no harm (i.e., do not burden or restrict freedom of association),
- Are expansive (i.e., increase freedom of association and take a whole-of-government approach),
- Are scoped (i.e., cover the full spectrum of related problems),
- Are tailored (i.e., match specific problems), and
- Have impact (i.e., produce measurable, positive change).

# Attacks on freedom of association

Freedom of association faces attacks in OGP countries and around the world. There has been a noted trend of restrictions placed on organizations working in civil society, including restrictive laws, regulations, and practices, as well as notable barriers to access funding and funding cuts.<sup>14</sup>

- Restrictive laws are among the top five causes of reduced civic space in countries in Asia-Pacific, Eastern Europe, and Central Asia.<sup>15</sup>
- The International Center for Not-for-profit Law (ICNL) estimates that between 2015 and 2018, over 72 countries (including several OGP members) have introduced laws restricting the operation of not-for-profit organizations.<sup>16</sup>

Too often, such laws are politically-motivated and security considerations are used to justify limiting freedom of association.<sup>17</sup> Reductions in freedom of association are often gradual but expansive, ultimately undermining democracy, inclusiveness, and accountability.<sup>18</sup>

Based on analysis of data compiled in the CIVICUS Monitor in 2018, nearly 40% of OGP countries experience challenges to freedom of association. The problems are not uniform across countries, but include (in order of most to least common):

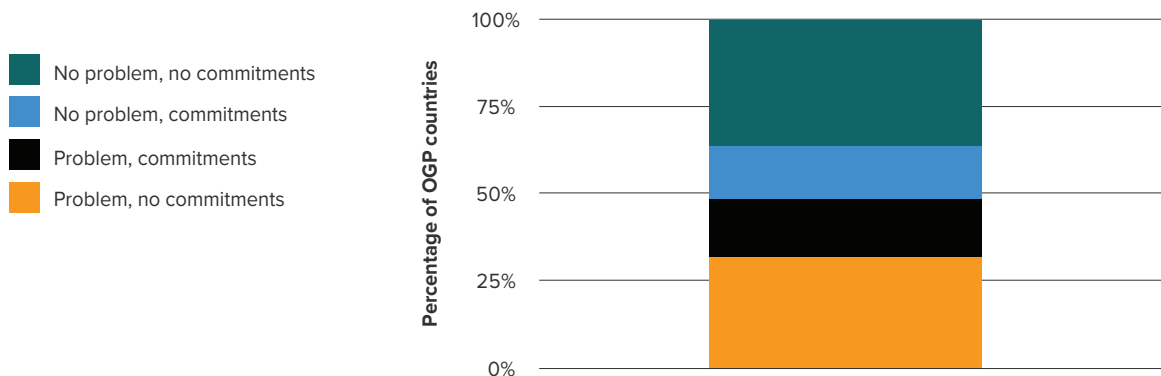
- **Access to funding:** Limits to types of funding (particularly from international sources or by providing low domestic budgetary allocations, mainly for service providers) and obstacles to receive tax exempt status (24%);
- **Legal status and formation:** Burdensome processes to register an organization (22%);
- **Governance and operations:** Burdensome requirements for establishing boards and unreasonable limits on activities and scope of work (e.g., political engagement, human rights advocacy, or commercial areas, 13%); and
- **Reporting requirements:** Onerous obligations to file financial reports and organizational updates (7%).

Freedom of association may rely on literal interpretations of onerous laws or, in other cases, may be based on uneven application of laws to organizations or individuals.

Figure 1 shows the degree to which OGP members have used their action plans to address core issues within freedom of association. Of the countries in OGP that struggle with freedom of association, the majority lack commitments to address the issues.

**FIGURE 1. Most OGP countries with notable problems in freedom of association lack relevant commitments**

*Match between problems in freedom of association and OGP commitments (n=64)*



Source: OGP commitments database and CIVICUS Monitor Data coded by IRM staff.<sup>19</sup>



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# OGP accomplishments: freedom of association

Despite the considerable room for improvement, approaches to improving freedom of association are well-established in some OGP countries. OGP members have made notable advances in promoting freedom of association through their commitments (in contrast to other areas of civic space). Forty-six countries have made commitments related to the right to association in their OGP national action plans. Between 2012 and 2017, OGP's Independent Reporting Mechanism (IRM) assessed the state and success of these efforts and determined that 7 of the 46 countries had ambitious and significantly complete commitments related to association.<sup>20</sup> One additional new commitment is currently under review. These commitments have included pledges focused on the following:

## *Reducing barriers to entry*

- El Salvador's 2016–2018 action plan<sup>21</sup> sought to accelerate the process for creating an organization. It previously took between three and eight years to establish a CSO (with 18 separate steps).<sup>22</sup> At the time of this report's publication (early 2019), a cross-ministerial work plan has been completed, along with a legislative proposal which is expected to be approved.
- Almost two-thirds of the countries in the OGP (including Brazil, Chile, Moldova, Armenia, Bulgaria, and Mongolia) allow unregistered CSOs to operate freely. A few countries in the world have laws explicitly stating that registration is voluntary; however, more frequently, CSO laws do not include a mandatory registration requirement and the state does not attempt to force organizations to register.<sup>23</sup>

## *Strengthening organizational operations (activities, structure, governance)*

- As part of Canada's action plan (2016–2018), the country included a commitment to facilitate information accessibility to CSOs regarding tax rules about allowable political activities for charities. This clarity can prevent arbitrary and unnecessary audits.<sup>24</sup>

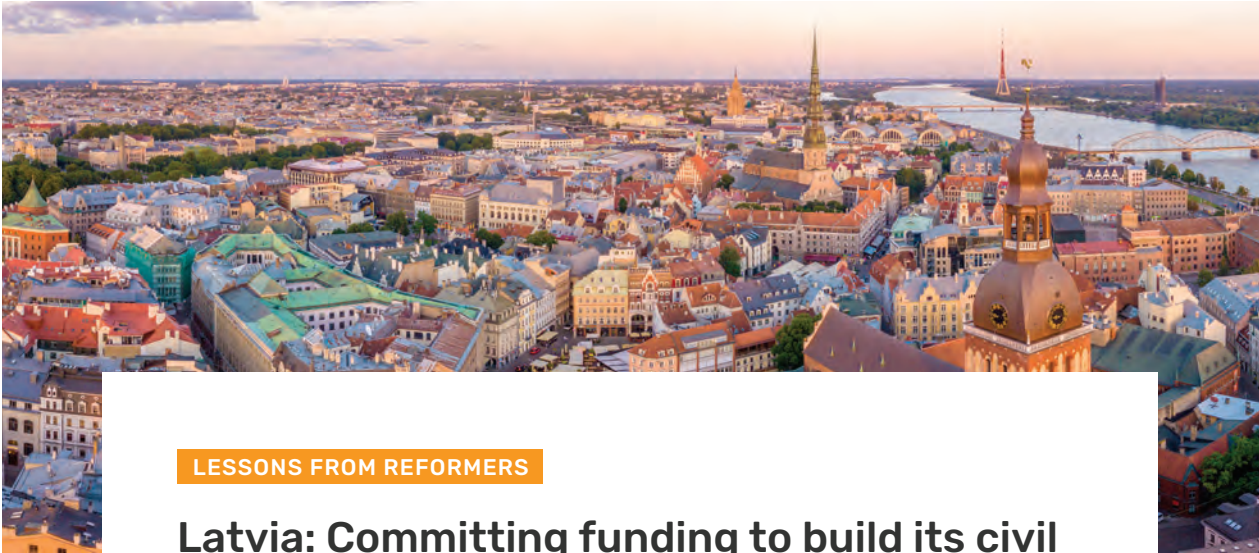
- In Kenya's third action plan (2018–2020), the country included a specific commitment to build more resilient and sustainable institutions to support open government,<sup>25</sup> which is seen as an opportunity to improve the operational and organizational environment of CSOs.<sup>26</sup>

## *Increasing access to funding and resources*

- In Ukraine, a commitment was included in its action plan (2014–2016) to update legislation on community organizations<sup>27</sup> to allow them to receive government funding when they provide social services or perform government tasks (still pending).<sup>28</sup>
- Bulgaria has a starred commitment as part of its first action plan (2012) to establish clearer rules for financing organizations as part of its "Strategy to Support the Development of CSOs."<sup>29</sup>
- Latvia has made concerted efforts prior to and across several action plans to address sustainability and transparent funding of the nonprofit sector. (See the box on the following page.)
- Overall, most OGP member countries across all regions (e.g., Argentina, the Czech Republic, Northern Macedonia, El Salvador, Malawi, Ghana, and Kenya) have no requirements to obtain government approval or register in order to access international funding.<sup>30</sup>

## *Improving reporting transparency*

- Sierra Leone included a commitment in its third action plan (2016–2018) to improve transparency of public funding received by CSOs working in post-Ebola recovery efforts. Reporting was public and in an open data format.<sup>31</sup>
- In its first action plan (2012–2013), Croatia created a new law which made CSO financial reports publicly available through its Non-Governmental Organization Register.<sup>32</sup> The same action plan included creating a grants database about publicly-funded projects implemented by CSOs.<sup>33</sup>



**LESSONS FROM REFORMERS**

## **Latvia: Committing funding to build its civil society**

As part of the Soviet Union, Latvia did not have a tradition of civil society organizations. After becoming an independent country in 1991, while the economy grew and developed, its civil society landscape did not mature at the same rate. In such situations, governments can effectively support the sector and organizations by providing the right mix of incentives. These often include reduced red tape, tax exemptions or reduced tax rates, seed grants, a dedicated financial window (fund) for CSOs, and capacity building through training and other channels.<sup>34</sup> This is what the Latvian government decided to do. As a result, now setting up a CSO is a fairly easy process and is done in a few days.

Another area of concern was CSO funding and capacity. In its first action plan (2012–2014),<sup>35</sup> a specific commitment was included to create an “NGO Fund” to build CSO capacity to engage in policy processes. Such a fund was important as private support to CSOs is low and government grants offer a financial lifeline to the voluntary sector. With support from the European Economic Zone, a fund of 1 million euros was established which included a dedicated financial window for CSOs to access critical capacity building resources.<sup>36</sup>

Despite these successes, recent assessments of the sector suggest that it continues to face financial sustainability challenges. For example, in 2017, the NGO community was challenged following the implementation of corporate tax incentives. Tax breaks were given to encourage the reinvestment of money back into businesses, likely reducing the amounts set aside for charitable donations.<sup>37</sup>

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# Frontiers of freedom of association in OGP

The majority of OGP countries have strong legal frameworks and practices to guarantee freedom of association, with minimal government intrusion. This is to be expected as minimal interference is part of the OGP “values check” before a country can join OGP. (Although the check was implemented in 2018, all but one country meet the current requirements.) Concurrently, many countries have significant room for improvement.

This report combines data from OGP’s Independent Reporting Mechanism (IRM) with CIVICUS Monitor. Among its most concerning findings involve the frontiers of freedom of association within OGP. Data continues to show that most OGP countries are not making commitments to promote freedom of association in their countries. While troubling, this may present certain opportunities for continued work, with peer exchange and support for countries working on relevant issues.

- According to the IRM, 71 countries have weak or no commitments on freedom of association as part of past or current action plans.<sup>38</sup> This provides a real opportunity for positive change, as almost all countries have aspects for improvement through high-level, deeper commitments.
- More than 40% (32 countries) face notable limitations to freedom of association according to the CIVICUS monitor.<sup>39</sup>
- 25% of OGP countries repress or present obstacles to engage in public life (see Figures 2 and 3), including organized labor (Figure 4) according to Freedom House.
- These challenges tend to affect organizations working on sensitive matters related to the promotion and protection of human rights and governance (Figure 5) and membership in political organizations (Figures 6 and 7).
- Of countries with notable challenges to freedom of association, a small number have adopted ambitious

commitments, according to OGP’s Independent Reporting Mechanism (IRM). These include Northern Macedonia, Serbia, and Ukraine. (Serbia and Ukraine are featured in boxes later in this section).

Third-party data generally show that OGP countries are relatively strong with respect to CSOs and their role in civic life. However, many areas continue to raise concern. Indicators from V-Dem, Freedom House, and World Justice Project explore these challenges below for civil society broadly as well as for human rights, labor, and political organizations as well as restrictions on the participation of women in civil society.

## Civil society repression and restriction

OGP depends upon the free operation of citizens in OGP countries to advocate for issues of importance to them. In 2018, OGP adopted the V-Dem indicators to evaluate values of new governments joining OGP. Since May 2018, a government must score “3” or above on “CSO Entry and Exit” and “CSO Repression” in order to join OGP. The V-Dem indicators are a leading dataset which covers many different elements of democracy, led by an institute at the University of Gothenburg. This subsection looks at these broad indicators and what they say about the state of free association in OGP.

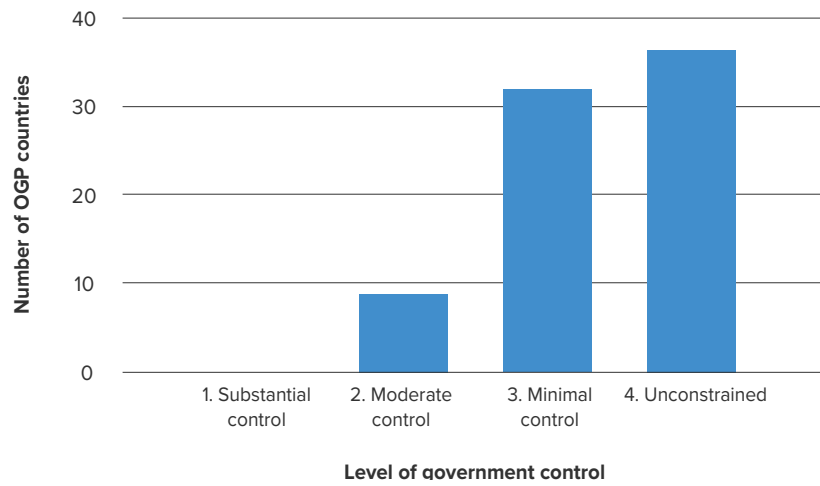
Figure 2 shows OGP members are roughly split between unconstrained and minimal control. A smaller group, which joined prior to the adoption of the 2018 OGP values check, demonstrates moderate control. No OGP countries exercise substantial or monopolistic control on CSO formation (entry and exit).

Similarly, as shown in Figure 3, no countries in OGP substantially repress CSOs; most exercise no repression while some weakly repress and a few moderately repress.



**FIGURE 2. Most OGP countries have minimal or no restrictions on CSO entry and exit**

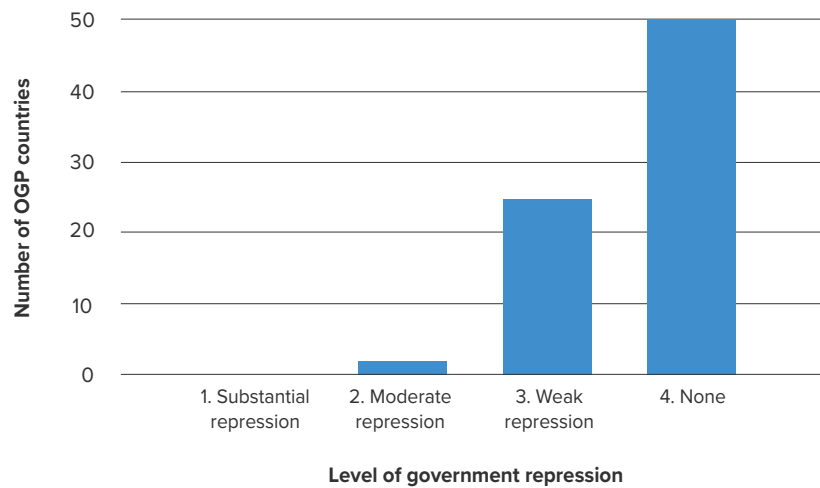
*To what extent do OGP country governments control entry and exit by CSOs in public life? (n=78)*



Source: V-Dem CSO Entry and Exit, Version 8 (April 2018). Level of government control definitions are available in the Key.<sup>40</sup>

**FIGURE 3. A minority of OGP countries have some CSO repression, but most do not**

*Do OGP governments attempt to repress CSOs? (n=78)*



Source: V-Dem CSO Entry and Exit, Version 8 (April 2018). Level of government repression definitions are available in the Key.<sup>41</sup>





“Honduras: Workers participate in Open Gov Week’s, *Honduras Digital Challenge*.” Photo by Comisionado de Transparencia, Honduras

## Human rights and labor organizations

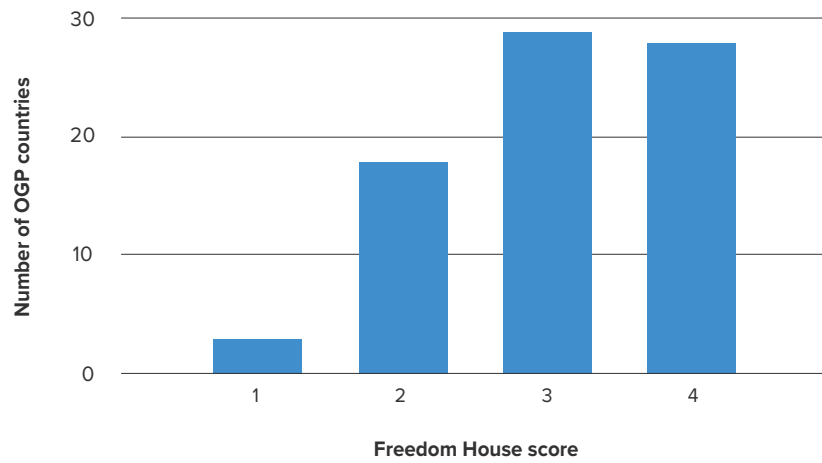
Freedom House data on association tells a slightly different story. Freedom House distinguishes between nonprofit associations and their aims (labor versus non-governmental organizations), rating the freedom for each to associate and organize on a 0–4 scale. Figures 4 (labor freedom) and 5 (non-governmental organization freedom) suggest that experiences are markedly different for different types of organizations. (Freedom House indicators do not include informal social movements or community organizations.) Many OGP members restrict activity of labor organizations, according to the 2018 *Freedom in the World* assessment. While over half of OGP members have the best possible score for non-governmental organizations (particularly those involved in governance and human rights work), only a third attain such a rating for trade unions and similar organizations.

The implications of this difference are twofold. First, many countries need to improve scores for both

types of civic organizations. Secondly, discussions of civic space and freedom of association which limit themselves to professional, human rights nonprofit organizations may miss the larger picture of freedom of association. Research has shown that labor unions and professional organizations are essential to delivering more equal,<sup>42</sup> democratic societies.<sup>43</sup> The right to organize to demand safe, dignified work has been internationally recognized as a core element of empowerment of the poor<sup>44</sup> and achieving dignified work is part of the Sustainable Development Goals.<sup>45</sup> The fact that this gap is largely unexplored also shows the potential for better dialogue on civic space between labor and good governance advocates. In fact, international guidance on trade unions has a long history and is quite developed.<sup>46</sup> (This may also be true of other types of organizations and activist groups such as religious minorities, environmental activists, or indigenous communities. There is currently no analogous data on these particular groups.)

**FIGURE 4. Freedom of association for labor organizations in OGP countries is often constrained**

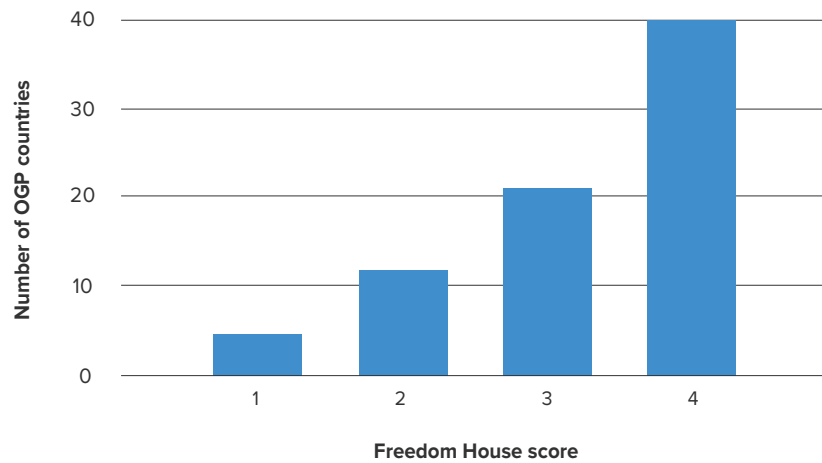
*Is there freedom for trade unions and similar professional or labor organizations? (n=79)*



Source: Freedom House, Freedom in the World 2018, E3.

**FIGURE 5. Freedom for human rights and governance work is unconstrained with notable exceptions**

*Is there freedom for non-governmental organizations, particularly those that are engaged in human rights and governance-related work? (n=79)*



Source: Freedom House, Freedom in the World 2018, E2.



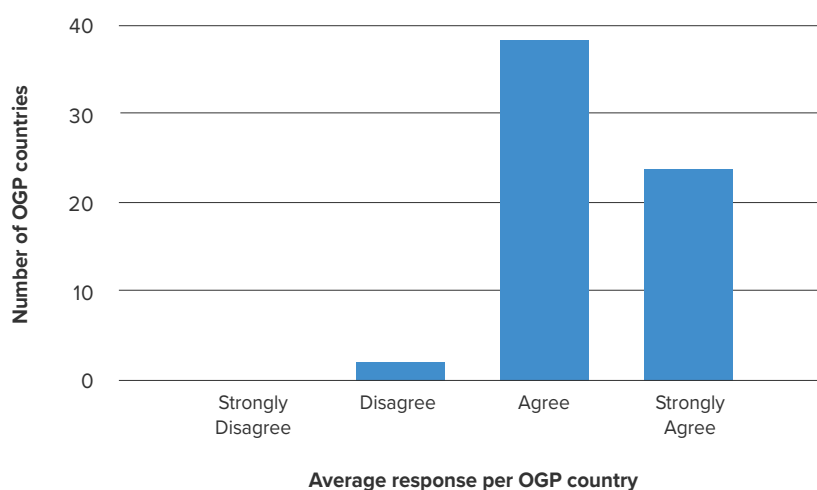
## Membership in political organizations

Experts in a significant minority of OGP countries have identified restrictions on political organizations. The World Justice Project’s Rule of Law Initiative surveys experts on the degree to which people can join political organizations. (It is unclear if respondents interpreted “political organization” as any organization participating in advocacy or more narrowly in terms

of political parties.) In addition, it surveys a large general population from the three largest cities in each country. Figures 6 and 7 show average expert views and general public views respectively on the ability to join political organizations within each country. The general public response is notably more pessimistic; it is unclear if this is due to more direct experience, differences in perception, or different understanding of the question. Within each country, the two scores are highly correlated.

**FIGURE 6. Experts say that people can freely join political organizations in most OGP countries**

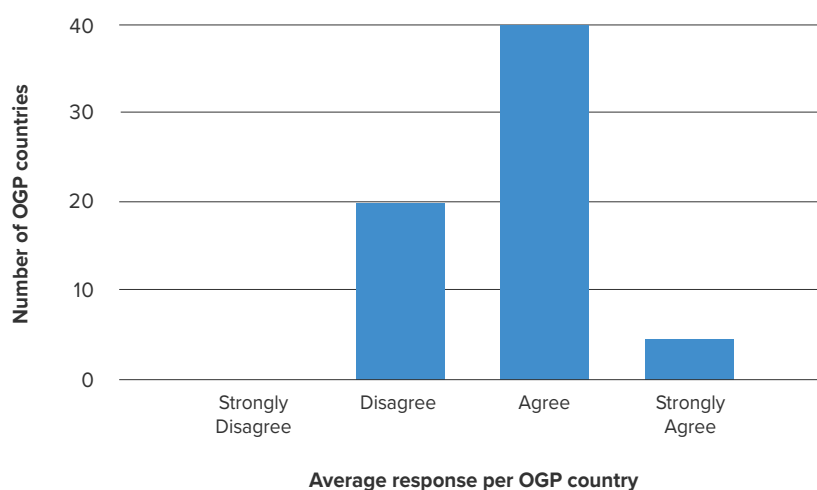
*In practice, people can freely join any political organization they want. (n=63)*



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 139 (expert survey).

**FIGURE 7. Public perception of the ability to join political organizations is less optimistic in OGP countries**

*In practice, people can freely join any (unforbidden) political organization they want. (n=65)*



Source: World Justice Project, Rule of Law Index 2017-2018, GPP 44.



LESSONS FROM REFORMERS

## The state of nonprofit work in Ukraine

Obtaining official not-for-profit status for an organization in Ukraine has long been considered a difficult process. Unnecessary red tape encouraged bribery to expedite the approval process. First, an organization was required to legally register with the Ministry of Justice. Then, a separate application to be a not-for-profit had to be submitted to the Fiscal Service, Ukraine's tax authorities. These requests were often rejected because of missing documentation that had to be requested and provided by the Ministry of Justice.

### *One step forward*

The 2014–2016 action plan committed to streamline the process in a “one-stop-shop.”<sup>47</sup> Under a new law, the Ministry of Justice would be the single point of contact, receiving a CSO's incorporation application and shepherding it to the tax authorities.

The necessary legal changes largely took place in 2015, according to the IRM.<sup>48</sup> Recent assessments of setting up a CSO in Ukraine also show this shift.<sup>49</sup> In 2016, new rules required CSOs to register to be in compliance with the new law.<sup>50</sup> Still in 2017, reports showed that the streamlined process had not been fully implemented.<sup>51</sup>

### *One step back*

Despite this progress, Ukraine continues to see restrictions on CSO activities. There are reports of attempts to intimidate anti-corruption activists and organizations, including an onerous, disproportionate use of asset disclosure regulations.<sup>52</sup> Funding continues to be a challenge as well, with a few organizations receiving the bulk of resources, particularly from international donors.<sup>53</sup>

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Photo by Pyvovarpavlo, Adobe Stock



**LESSONS FROM REFORMERS**

## **Serbia: Fixing past problems with state funding for CSOs**

Serbia's first OGP action plan (2014–2016) had an explicitly ambitious commitment on the transparent funding of CSOs.<sup>54</sup> It aimed to make transparent the public funding that CSOs received from the government.

Outside of public funding, there are diminishing alternative sources of support, particularly from international donors. Consequently, access to state funding was critical and had the potential to promote a more diverse and active local civil society. Existing regulation<sup>55</sup> of state support to CSOs aimed to distribute public support to CSOs fairly, transparently, and without bias.

However in practice, findings showed that regulations were not enforced and state funding was misused for political ends.<sup>56</sup> A media investigation found that a sizable number of CSOs that received public funding opened accounts only in the same year they received the funding and had ties to political party leaders.<sup>57</sup>

The IRM assessed this commitment as substantially advancing transparency of public funding. It required the state to: 1) prepare annual summaries of funds spent and provided to CSOs; 2) publish all public tenders to CSOs on the E-Government Portal (including the evaluation of received proposals and final decisions); and 3) strengthen the capacity of public officials and civil servants to increase the transparency of civil society funding.<sup>58</sup>

The IRM noted that some elements were not completed, especially publishing of tenders. Moreover, some CSOs continue to see the same lack of transparency about funding decisions.<sup>59</sup> This also took place in a context of tightening of civic space. The National Parliament decided, for the first time, to exclude CSOs from its 2017 Parliamentary Week. At the same time, there was a significant amount of negative media on CSOs, particularly those working on anti-corruption, political processes, and human rights.<sup>60</sup>

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Photo by Djoronimo, Adobe Stock

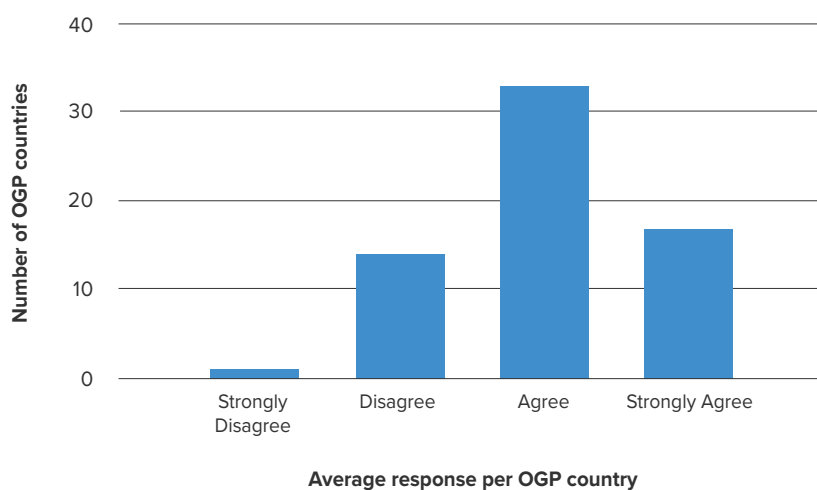
## Freedom of petition

The freedom of petition goes beyond the right of individuals to join a group. It speaks to their ability to act as a group (or individuals), and to bring grievances, questions, and requests before the state. The World Justice Project surveys experts and the public on the

views on their right to petition. Experts were generally positive about the strength of right to petition with a number of notable exceptions. (See Figure 8.) Members of the public were generally more optimistic than they were for joining political organizations, although some countries still had prevalent concerns (See Figure 9).

**FIGURE 8. Experts say that in the majority of OGP countries, people can join together to petition the government**

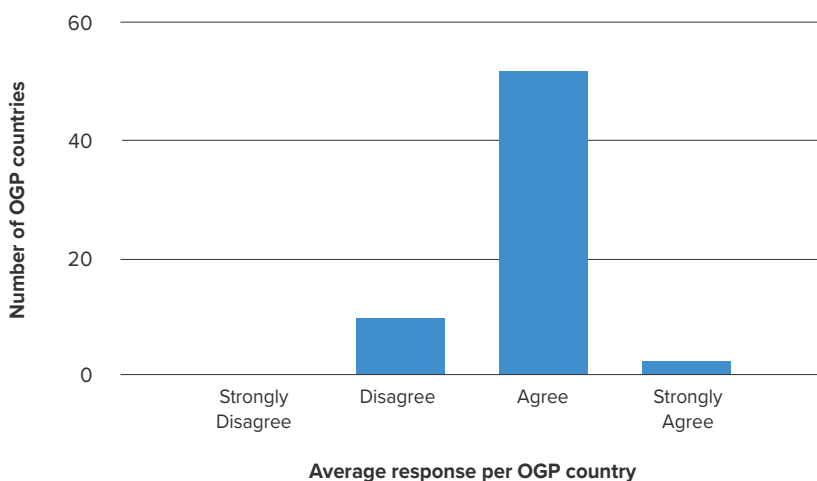
*To what extent do you agree with the following statement: In practice, people in [COUNTRY] can freely join together with others to draw attention to an issue or sign a petition. (n=65)*



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 138 (expert survey).

**FIGURE 9. The general public believes freedom of petition is strong in OGP countries, with some exceptions**

*In [COUNTRY], people can freely join together with others to draw attention to an issue or sign a petition (General survey). (n=65)*



Source: World Justice Project, Rule of Law Index 2017-2018, World Justice Project GPP 43.





“Bolivia: In Plaza Murillo, people protest against a mayor who held the same office for 8 years.” Photo by Danielle Pereira, Flickr

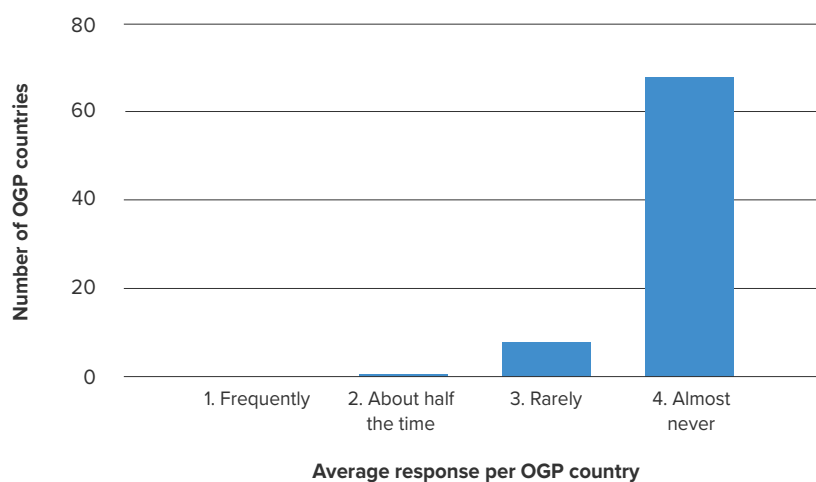
## Gender exclusion in civil society

With notable exceptions, OGP countries are not found to restrict women’s participation in civil society organizations. Figure 10 measures gender parity within civil society. Specifically, it looks at whether women

are (a) prevented from joining CSOs and (b) whether CSOs pursuing women’s interest are prevented from participating in civic life. Nearly all OGP members “never” prevent women from taking part in associations. The remaining few countries require further investigation and action.

**FIGURE 10. In nearly all OGP countries, women are almost never prevented from participating in civil society organizations**

*Are women prevented from participating in CSOs? (n=78)*



Source: V-Dem v2csgender (3.10.7), Version 8 (April 2018).



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# Where to next for OGP countries?

Drawing on the preceding findings and experiences provides a path for possible future actions. Strong commitments would address the common barriers to freedom of association as identified by the above-mentioned UN Special Rapporteur on Freedom of Assembly and Association, CIVICUS, and ICNL. This section is adapted from ICNL's *Guide to Opening Government and Guidelines for Laws Affecting Non-Profit Organizations*.<sup>61</sup>

## *Addressing barriers to entry*<sup>62</sup>

- **Create laws, practices, and contexts that limit or eliminate restrictions in law and practice:** This is particularly important for organizations working on sensitive issues, such as anti-corruption, environment and land, human rights, political reform, and rights and access to services for women, especially with groups most at risk of harassment (including, LGBT+, religious minorities, and indigenous issues).<sup>63</sup>
- **Lower transaction cost for entry and exit:** Ensure CSOs are able to register with a small number of documents through an established process with clear time limits. Eliminate complicated registration processes for CSOs and set up a one-stop-shop if possible. Ensure registration is equally accessible throughout the country.
- **Remove discretion:** Publicize transparent criteria and processes for approval for nonprofit status to ensure that there is minimal abuse within the process. Ensure there is adequate remedy for appealing denials of nonprofit status, including administrative and judicial means.
- **Remove discrimination:** Ensure that rules are fair and transparent to allow minority or unpopular viewpoints to be expressed in advocacy. Verify that any restrictions on association are prescribed by law, evenly applied between individuals, and are consonant with a democratic society, including the right of minorities and minority viewpoints.

- **Foreign branches and subsidiaries:** Clarify rules and minimize restrictions on foreign organizations, in accordance with all domestic rights and regulations.

## *Organizational operation*<sup>64</sup>

- **Internal governance:** Establish a legal operating environment which sets up a minimally restrictive governance structure for a registered civil society organization, including but not limited to requirements for governing documents, appropriate limitations on personal liability, and prohibitions on conflicts of interest.
- **Appropriate governance measures on operation:** Create narrowly defined guidance to assure good governance of the nonprofit sector to minimize abuse or discretion by regulatory authorities. These can reduce corruption and abuse by creating clear prohibitions on direct or private benefit, distribution of profits, private inurement, self-dealing, and reversion of assets.
- **Reporting and transparency:** Ensure financial reporting and transparency requirements, including executive compensation reporting, are consonant with international and human rights standards (including adherence to the principles of “proportionality to a legitimate aim”<sup>65</sup> and “minimal state interference”) and no more restrictive than other legal entities such as corporations, private companies, and religious institutions. A number of OGP countries (or provinces within those countries) have established a single registry of all nonprofit organizations with legal personhood.

## *Access to funding and resources*

- **Promote mechanisms and funding to ensure sustainability:** This facilitates better long-term planning.<sup>66</sup> Eleven OGP countries have undertaken commitments in this area, making it the second most active area within association commitments.<sup>67</sup> Elements of these commitments include:





“Uganda: Employees of Daily Monitor newspaper protest closure of their offices in Kampala.” Photo by James Akena, Reuters

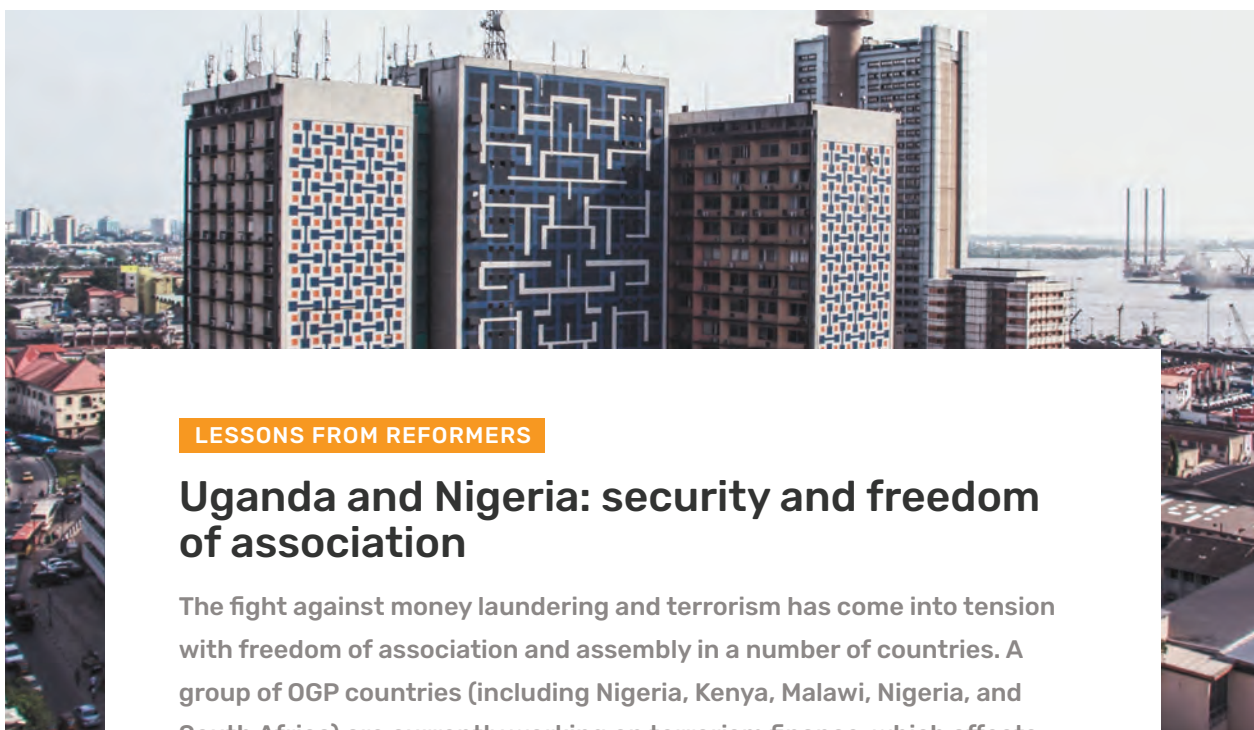
- Make tax benefits easy for nonprofit organizations to access. Provide tax benefits and tax incentives to individuals and businesses that donate to CSOs.
  - Provide access to international funding without the need for prior government registration, permission, or using state-controlled entities as the intermediary.
  - As appropriate, establish or strengthen a transparent, rule-based dedicated state-run fund or funds to support CSO activities and institutional development in priority areas.
  - Ensure legal ability to carry out independent fundraising activities in accordance to the law and to access foreign funding. Allow public fundraising.<sup>68</sup>
  - Where state funding is essential, ensure the availability of core and infrastructure funding, as well as longer-term funding (three years or more).
  - **Political activity:** Clarify which charitable and political activities qualify an organization for different levels of tax benefit. Such approaches must account for rights to free speech, advocacy, and education while maintaining adequate protections for the integrity of elections or legislative and regulatory processes.<sup>69</sup>
- Reporting and accountability*
- **Train officials:** Ensure that public servants and administration officials are well trained and sensitized to the varying capacity and formality of CSOs when providing services. Community-based organizations may have very different needs capabilities from large international organizations.
  - **Establish guidance:** Ensure that reporting regulations (including transparency commitments in OGP action plans) follow international standards, including those pertaining to privacy, legality, proportionality to a legitimate aim, and minimal state interference.
  - **Foster an environment to allow CSOs to self-regulate:** Use accepted and sector-endorsed CSO reporting and accountability mechanisms, which have been noted by CIVICUS and other CSO initiatives as a means to increase CSO effectiveness.<sup>70</sup> In relative terms, more OGP action plans have focused on this issue.<sup>71</sup> With any of the commitments there is a risk of abuse, especially where accounting and auditing standards are non-standard or unevenly applied.<sup>72</sup> To address these concerns, commitments may seek the following:
    - Endorse and implement relevant international and regional CSO accountability initiatives (such as AccountableNow and the Istanbul Principles).<sup>73</sup>
    - Support reporting good practices, including the timely publication of financial and activity reports. Large CSOs can undertake independent audits.
    - State audit agencies should adopt clear audit procedures, including conditions triggering an audit, advance notice, procedures for random audits, restrictions on the use of audit for personal information or harassment, and reporting on use of public funds.
    - Standardize open data reporting of funds and projects, such as through the International Aid Transparency Initiative.<sup>74</sup>

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# Do no harm: balancing free association with other values

Free association and the right to participate in civic life and decision-making are fundamental to democracy. However, governments must balance this right to associate against protecting the public, ensuring the integrity in policy-making and administration, and upholding the public interest in daily operations. These goals are also at the heart of open government. Unfortunately, these protective duties are used to justify restrictions on the nonprofit

sector. At times, this is ostensibly done in the name of transparency. Consequently, the rights of free association and participation come into tension with other open government values, requiring thoughtful navigation of the issues and engagement with affected stakeholders. Here, we feature cases about how freedom of association might be better protected while pursuing other goals.



## LESSONS FROM REFORMERS

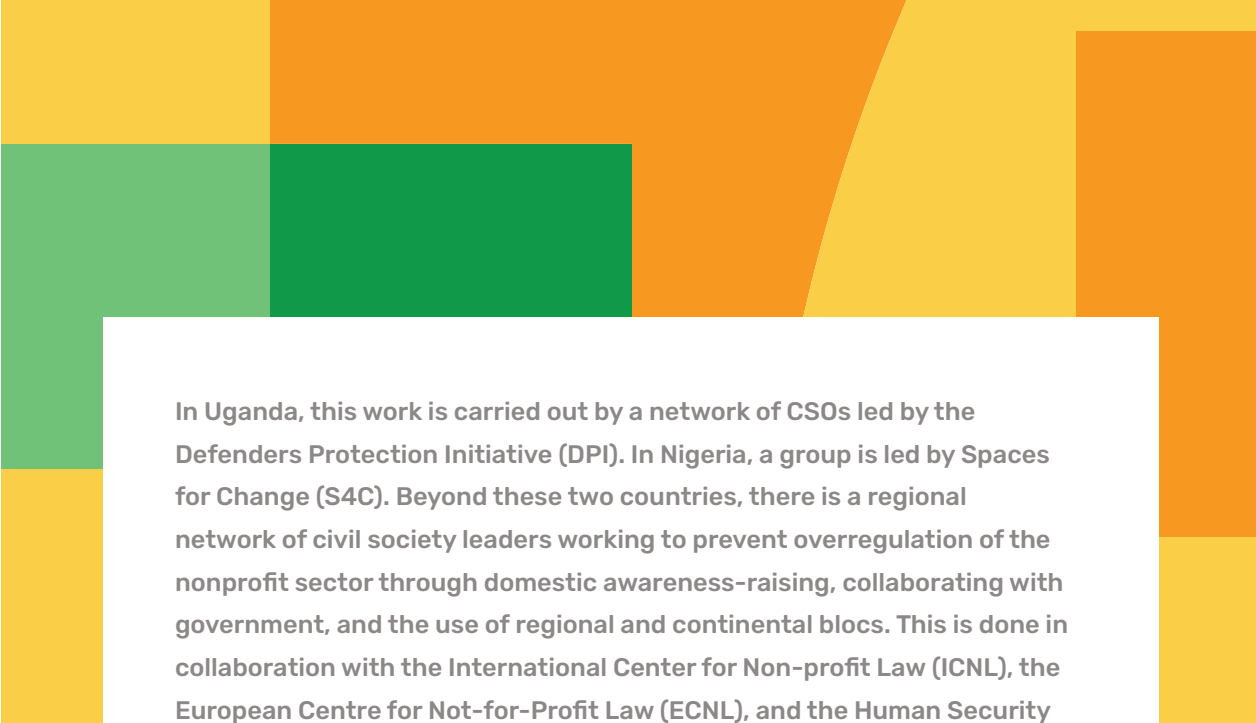
### Uganda and Nigeria: security and freedom of association

The fight against money laundering and terrorism has come into tension with freedom of association and assembly in a number of countries. A group of OGP countries (including Nigeria, Kenya, Malawi, Nigeria, and South Africa) are currently working on terrorism finance, which affects nonprofit organizations.

Using the OGP action plan process to discuss and identify a proportionate response to money laundering that does not also impede civic space could be of considerable value to these efforts.

The advocacy of a number of CSOs in Uganda and Nigeria are highlighted to show how civil society is working to increase dialogue and transparency to ensure that responses to terrorism finance are not disproportionate or wielded as a political tool to suppress legitimate nonprofit activity.





In Uganda, this work is carried out by a network of CSOs led by the Defenders Protection Initiative (DPI). In Nigeria, a group is led by Spaces for Change (S4C). Beyond these two countries, there is a regional network of civil society leaders working to prevent overregulation of the nonprofit sector through domestic awareness-raising, collaborating with government, and the use of regional and continental blocs. This is done in collaboration with the International Center for Non-profit Law (ICNL), the European Centre for Not-for-Profit Law (ECNL), and the Human Security Collective.

#### *Financial Action Task Force (FATF) Recommendation 8*

The Financial Action Task Force Recommendation 8 lays out an approach for proportionate response to countering money laundering in the nonprofit sector:

*That the laws and regulations that govern non-profit organisations be reviewed so that these organisations cannot be abused for the financing of terrorism. The FATF has established best practices aimed at preventing misuse of NPOs for the financing of terrorism while, at the same time, respecting legitimate actions of NPOs...*

*(d) Focused measures adopted by countries to protect NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote accountability and engender greater confidence among NPOs, across the donor community and with the general public that charitable funds and services reach intended legitimate beneficiaries...*

*(e) Countries are required to identify and take effective and proportionate action against NPOs that either are exploited by, or knowingly supporting, terrorists or terrorist organisations, taking into account the specifics of the case.<sup>75</sup>*

While many of the FATF recommendations are not legally binding, they can affect bond ratings and the ability to borrow. Mutual evaluations rate governments and score governments on FATF recommendation compliance, including Recommendation 8.




### *Threats and dialogue in Uganda*

Uganda is not an OGP member, but the work of Ugandan CSOs to undertake dialogue with governments illustrates a dialogue-based approach to developing appropriate regulation.

In 2017, the Government of Uganda, nominally acting under the auspices of FATF Recommendation 8, raided three major CSOs in the country with search warrants claiming the organizations were involved in illicit financial transactions and “subversive activities to destabilize Uganda.”<sup>76</sup> Following this event, the Defenders Protection Initiative, an umbrella organization for human rights activists, held a dialogue with Standard Charter Bank, the head of the Financial Intelligence Authority, and 40 activists from Ugandan CSOs. While the dialogue did not fully explore arbitrary search and seizure, the dialogue did discuss inconsistencies and further steps needed to improve the governance of the Ugandan nonprofit sector.

The dialogue surfaced issues that comported well with the 2016 mutual evaluation of Uganda on compliance with FATF standards:

*The NPO sector in Uganda is still not supported by adequate legal framework to deal with issues of TF [terrorist financing]. The current requirements regulating the NPO sector do not deal with TF or the TF risks associated with the NPO sector. There is no TF risk assessment which has been done in the sector to determine which NPOs are vulnerable to TF risks and consistent with that, no guidance has been given to such NPOs on how to deal with the TF risks they are exposed to. NPOs are not obligated to submit financial statements breaking down the NPO's income and expenditure. The NGO Board has not engaged the NPO sector to raise awareness with them on TF matters and the NGO Board itself is not exposed to the kind of TF risks which some of the NPOs could be vulnerable to. Currently, the NGO Board does not have the capacity to carry out most of its functions and there is no proper coordination and administration of TF information related to the NPO sector.<sup>77</sup>*



Weak institutional environments harm nonprofit organizations and weaken the control of terrorism financing. Unclear rules and processes hinder potential support of nonprofits, can physically endanger nonprofit organizations, and weakens the ability of the government to identify actual risks. Government efforts to strengthen the NGO board (the unit responsible for implementing the recommendations) must include proactive engagement with nonprofit representatives and identify a proportionate response.

*Evidence-based advocacy in Nigeria*

In 2016, as part of its FATF membership candidacy, Nigeria underwent a National Risk Assessment. The assessment aimed to identify threats and vulnerabilities across a number of sectors, including those to nonprofits. The assessment took place in the context of a defeated NGO bill which would have created onerous regulation of the nonprofit sector, especially those which received foreign funding.

With other Nigerian NGOs, Spaces for Change analyzed the results of the National Risk Assessment. The report found that the assessment did not adequately address its goals of (a) identifying the NPO geographies or activities which were vulnerable, (b) identifying the particular vulnerabilities of nonprofit actors for financing (e.g. cash vs. bank transfers), or (c) assessing the adequacy of the regulatory environment. As a result, the response and regulation could overreach without addressing the real vulnerabilities or potential threats within the country.<sup>78</sup>

This type of analysis, as well as advocacy for a targeted approach to risk assessment, can help identify actual risks to ensure that regulation does not overreach and cannot be used arbitrarily to target advocacy or dissent.

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Photo on page 19 by El9th, Adobe Stock

## ICNL Report: HIV/AIDS and Freedom of Association in East Africa



“Ethiopia: Reproductive health center at Gandhi Memorial Hospital, Addis Ababa.” Photo by Saul Loed, Reuters

A recent report from the International Center for Not-for-Profit Law (ICNL) shows how restrictions on civic space impact public health.<sup>79</sup> In East Africa, the HIV/AIDS epidemic remains a critical public health concern, especially for sex workers, people who inject drugs, and LGBT+ people. In countries like Kenya, the HIV prevalence rate among these groups is two to three times higher than that of the general population, reaching 18% in 2011. Often, social and legal stigmatization limit these communities’ access to information and medical treatment. Kenyan CSOs work to mobilize communities in response to HIV. Several organizations educate communities about protection methods and what steps individuals should take if they are exposed to or are living with HIV.

Despite their important work, challenges to civic space in Kenya have limited CSOs from working with certain stigmatized, vulnerable populations. For example, the NGO Coordination Act of 1990 allows the NGO Board, which regulates nonprofits, to refuse to register an organization if its purpose is not in the “national interest,” a term that is at best vaguely defined. Because prostitution, illegal drug use, and homosexuality are criminal

under national law, citizens are unable to collectively act and advocate for themselves by forming associations, legal or illegal. Similarly, organizations specifically working on behalf of these groups can face penalties or license removal should they openly conduct their work.

However, legal challenges to restrictive legislation have begun to turn the tide for Kenyan CSOs. In one 2014 case, the court ruled in favor of Transgender Education and Advocacy, a group which the NGO Coordination Board had previously barred from registering. The court held that the Board had violated the constitution by discriminating against this organization and the individuals it assists. Although restrictions and intimidation still persist in some cases, the decision enabled the organization to register and successfully advocate for transgender people.

Together with CSO public events and awareness-raising campaigns, efforts like these have helped open the door for conversation in the civic sphere. As a result, Kenyan society has become incrementally more open to public dialogue on sexuality, and the media sometimes positively features members of the LGBT community.

## Endnotes

- <sup>1</sup> The B Team, “The Business Case for Protecting Civic Rights” (15 Oct. 2018), <http://www.bteam.org/announcements/the-business-case-for-protecting-civic-rights/>.
- <sup>2</sup> Data assessments are from Freedom House, V-Dem and the World Justice Project. In addition, OGP staff carried out a coding of CIVICUS Monitor data in 2018. Basu and Miranda, *The Right Tools for the Right Job*.
- <sup>3</sup> Based on data from the World Justice Project. This survey covers over 80% of OGP members. Source: World Justice Project. 2019. Current & historical Data. Online database available at: [https://worldjusticeproject.org/sites/default/files/documents/FINAL\\_2019\\_wjp\\_rule\\_of\\_law\\_index\\_HISTORICAL\\_DATA\\_FILE\\_0.xlsx](https://worldjusticeproject.org/sites/default/files/documents/FINAL_2019_wjp_rule_of_law_index_HISTORICAL_DATA_FILE_0.xlsx).
- <sup>4</sup> Former UN Special Rapporteur Maina Kiai, “The Right To Freedom Of Association” (2019), <http://freeassembly.net/about/freedoms/>.
- <sup>5</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A, art. 20, UN Gen. Assem. (10 Dec. 1948), <http://www.un.org/en/universal-declaration-human-rights/>.
- <sup>6</sup> *International Covenant on Civil and Political Rights*, G. A. Res. 2200A (XXI), art. 22. For the European Region, see also the *Convention for the Protection of Human Rights and Fundamental Freedoms*, art. 11, Eur. Ct. H.R. (1 Jun. 2010), [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf%23page=9](https://www.echr.coe.int/Documents/Convention_ENG.pdf%23page=9); Charter of Fundamental Rights of the European Union, art. 52 (3), 2012 O.J. (C 326/02), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=DE>; and Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, ¶ 9.3, Org. for Sec. and Co-operation in Eur. (1990), <https://www.osce.org/odihr/elections/14304>.
- <sup>7</sup> Leon Irish, Robert Kushen and Karla Simon, *Guidelines for Laws Affecting Civic Organizations*, 2nd ed. (Open Soc’y Inst., 2004), [https://www.opensocietyfoundations.org/sites/default/files/guidelines\\_laws\\_english.pdf](https://www.opensocietyfoundations.org/sites/default/files/guidelines_laws_english.pdf).
- <sup>8</sup> As set out by Article 22 of the ICCR, restrictions are allowed if: 1) they are prescribed by law; 2) pursuant to a closed list of legitimate interests under international law; and 3) necessary in a democratic society (i.e., meet a proportionality test between the restriction and the legitimate interest pursued). Margaret Scotti, OGP: *The Guide to Opening Government An Enabling Environment for Civil Society Organizations* (ICNL and OGP) 3, [https://www.opengovpartnership.org/sites/default/files/OGP-ICNL\\_Guide-Opening-Government\\_20180508.pdf](https://www.opengovpartnership.org/sites/default/files/OGP-ICNL_Guide-Opening-Government_20180508.pdf).
- <sup>9</sup> For political processes, see Institute of Development Studies, *Making Space for Citizens*, IDS Policy Briefing, issue 27 (Mar. 2006), <http://archive.ids.ac.uk/drcitizen/system/assets/1052734498/original/1052734498-shankland.2006-making.pdf>. For society benefits, see World Economic Forum, *The Future Role of Civil Society*, World Scenario Series (Jan. 2013), [http://www3.weforum.org/docs/WEF\\_FutureRoleCivilSociety\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf). For economic and business growth, see The B Team, “The Business Case for Protecting Civic Rights.”
- <sup>10</sup> The B Team, “The Business Case for Protecting Civic Rights.”
- <sup>11</sup> OGP, *Open Government Declaration* (Sept. 2011), <https://www.opengovpartnership.org/open-government-declaration>; OGP, *OGP Paris Declaration* (2016), <https://www.opengovpartnership.org/paris-declaration>.
- <sup>12</sup> In this paper, civil society organizations (CSOs) are any private voluntary organization that is independent of government, self-governed, and non-commercial (does not distribute profits). As such, this term include non-governmental organizations (NGOs), charities and other related organizations.
- <sup>13</sup> See the UN SR FOAA report on the essential role associations play in implementing the 2030 Agenda for Sustainable Development: UN Gen. Assem., Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/73/279 (7 Aug. 2018), <https://undocs.org/A/73/279>.
- <sup>14</sup> Transparency and Accountability Initiative, *Closing Civic Space: Grantee Challenges and Funder Responses*, Introduction & Overview (2018), <https://www.transparency-initiative.org/civic-space-compedium/#introduction>. See also the UN SR FOAA report on the eight major trends in restriction of freedom of association and assembly: UN Gen Assem., *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/38/34 (26 Jul. 2018), <https://undocs.org/A/HRC/38/34>.
- <sup>15</sup> The CIVICUS Monitor, *People Power Under Attack: A Global Analysis of Threats to Fundamental Freedoms* (27 Nov. 2018) 8, <https://www.civicus.org/documents/People-PowerUnderAttack.Report.27November.pdf>.
- <sup>16</sup> ICNL, *Global Trends in NGO Law: Survey of Trends Affecting Civic Space: 2015-16*, vol. 7 issue 4 (Sept. 2016), <http://www.icnl.org/research/trends/trends7-4.pdf?pdf=trends7-4>; The B Team, “The Business Case for Protecting Civic Rights.”
- <sup>17</sup> Transparency and Accountability Initiative, *Closing Civic Space: Grantee Challenges and Funder Responses*, Law or Rule-Based Restrictions (2018), <https://www.transparency-initiative.org/civic-space-compedium/#law-or-rule-based-restrictions-strategies>. Civil society organizations often work in networks and alliances but this cooperation is under threat in a number of countries. Recently, in the United States, a number of private companies have used federal racketeering laws (e.g., 18 CFR 96) to accuse CSO networks of criminal conspiracy. While the lawsuits have failed, it represents a new line of targeted harassment of CSOs.



- <sup>18</sup> V-Dem Institute, *Democracy for All? V-Dem Annual Democracy Report 2018* (2018), [https://www.v-dem.net/media/filer\\_public/3f/19/3f19efc9-e25f-4356-b159-b5c0e-c894115/v-dem\\_democracy\\_report\\_2018.pdf](https://www.v-dem.net/media/filer_public/3f/19/3f19efc9-e25f-4356-b159-b5c0e-c894115/v-dem_democracy_report_2018.pdf).
- <sup>19</sup> Tonusree Basu and Denisse Miranda, *The Right Tools for the Right Job* (Washington, D.C.: OGP, 2018), [https://www.opengovpartnership.org/sites/default/files/Right-Tools\\_Civic-Space\\_20180508.pdf](https://www.opengovpartnership.org/sites/default/files/Right-Tools_Civic-Space_20180508.pdf).
- <sup>20</sup> Basu and Miranda, *The Right Tools for the Right Job*.
- <sup>21</sup> OGP, “Ley de Organizaciones Sociales” (2016), <https://www.opengovpartnership.org/14-ley-de-organizaciones-sociales>.
- <sup>22</sup> Jaime David Ayala, *Mecanismo de Revision Independiente (MRI), El Salvador Mid-term Report 2016-2018* (OGP, 2017), [https://www.opengovpartnership.org/sites/default/files/El-Salvador\\_Mid-Term\\_Report\\_2016-2018.pdf](https://www.opengovpartnership.org/sites/default/files/El-Salvador_Mid-Term_Report_2016-2018.pdf).
- <sup>23</sup> Scotti, *The Guide to Opening Government*, 6.
- <sup>24</sup> OGP, “Engage Canadians to Improve Key Canada Revenue Agency Services” (2016), [www.opengovpartnership.org/commitment/22-engage-canadians-improve-key-canada-revenue-agency-services](http://www.opengovpartnership.org/commitment/22-engage-canadians-improve-key-canada-revenue-agency-services); Michael Karanicolas, *Independent Reporting Mechanism (IRM): Canada Progress Report 2016-2017* (OGP, 2017), <http://nsrighttoknow.ca/wp-content/uploads/2018/04/Canada-OGP-IRM-Report-English.pdf>.
- <sup>25</sup> Government of Kenya, *Kenya National Action Plan III 2018-2020* (OGP, 2018), [https://www.opengovpartnership.org/sites/default/files/KENYA\\_Action-Plan\\_2018-2020\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/KENYA_Action-Plan_2018-2020_0.pdf).
- <sup>26</sup> Churchill Ongere, “Grasping Opportunities in Kenya: Using OGP to Improve the Operating Environment of CSOs” (OGP, 15 Jan. 2019), [www.opengovpartnership.org/stories/grasping-opportunities-kenya-using-ogp-improve-operating-environment-of-csos](http://www.opengovpartnership.org/stories/grasping-opportunities-kenya-using-ogp-improve-operating-environment-of-csos).
- <sup>27</sup> OGP, “Financing of Charities” (2014), <https://www.opengovpartnership.org/commitment/02-financing-of-charities>.
- <sup>28</sup> Dmytro Kotlyar, *Ukraine End of Term Report 2015-2016* (OGP, 2017), [https://www.opengovpartnership.org/sites/default/files/Ukraine\\_EOTR\\_2014-2016\\_ENG.pdf](https://www.opengovpartnership.org/sites/default/files/Ukraine_EOTR_2014-2016_ENG.pdf).
- <sup>29</sup> Government of Bulgaria, *Bulgaria National Action Plan*, (OGP, 2012), PLAN-BG-ENGLast\_0.doc.
- <sup>30</sup> Scotti, *The Guide to Opening Government*, 11.
- <sup>31</sup> Several expert reviewers of this report have noted that the operating environment for CSOs in Sierra Leone has a number of restrictive provisions in law and policy. The UN Special Rapporteur on Freedom of Assembly and Association has sent to two communications to the government and received a response. See SLE 1/2018 and SLE 1/2019. For documentation on the specific commitment, see: OGP, “Foreign Aid Transparency” (2016), <https://www.opengovpartnership.org/commitment/02-foreign-aid-transparency> and Charlie Hughes, *Sierra Leone Mid-Term Report*, (OGP, 2016) <https://www.opengovpartnership.org/report/sierra-leone-mid-term-report-2016-2018-year-1>.
- <sup>32</sup> OGP, “Improving Access to Information on Expending Public Resources and Contents of Relevant Registers: Disclosure of NGOs financial statements” (2012), [www.opengovpartnership.org/commitment/069-improving-access-information-on-expending-public-resources-and-contents-of-relevant](http://www.opengovpartnership.org/commitment/069-improving-access-information-on-expending-public-resources-and-contents-of-relevant).
- <sup>33</sup> Aida Bagić, *Croatia Progress Report 2012-13* (OGP, 2012), [https://www.opengovpartnership.org/sites/default/files/Croatia\\_progress\\_report\\_2012\\_Eng.pdf](https://www.opengovpartnership.org/sites/default/files/Croatia_progress_report_2012_Eng.pdf).
- <sup>34</sup> Joseph Foti et al., *Voice and Choice, Opening the Door to Environmental Democracy* (WRI, 2008) 74, [https://pdf.wri.org/voice\\_and\\_choice.pdf](https://pdf.wri.org/voice_and_choice.pdf).
- <sup>35</sup> OGP, “Improving the Quality of the Involvement of Society in Decision Making: NGO fund” (2012), [www.opengovpartnership.org/011-improving-quality-of-involvement-of-society-decision-making-ngo-fund](http://www.opengovpartnership.org/011-improving-quality-of-involvement-of-society-decision-making-ngo-fund).
- <sup>36</sup> Foti et al., *Voice and Choice*, 74.
- <sup>37</sup> USAID, FHI 360 and ICNL, *The 2017 Civil Society Organization Sustainability Index for Central and Eastern Europe and Eurasia*, 21st ed. (Sept. 2018) 4, 114, <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-regional-report.PDF>.
- <sup>38</sup> Based on indicators used by V-Dem, the World Justice Project, and Freedom House.
- <sup>39</sup> Based on indicators used by V-Dem, the World Justice Project, and Freedom House.
- <sup>40</sup> Key:
- 1. Substantial control.** The government licenses all CSOs and uses political criteria to bar organizations that are likely to oppose the government. There are at least some citizen-based organizations that play a limited role in politics independent of the government. The government actively represses those who attempt to flout its political criteria and bars them from any political activity.
- 2: Moderate control.** Whether the government ban on independent CSOs is partial or full, some prohibited organizations manage to play an active political role. Despite its ban on CSOs, the government does not or cannot repress them, due to either government weakness or political expediency.
- 3: Minimal control.** Whether or not the government licenses CSOs, there exist constitutional provisions that allow



the government to ban organizations or movements that have a history of anti-democratic action (e.g., the banning of neo-fascist or communist organizations in the Federal Republic of Germany). Such banning takes place under strict rule of law and judicial independence.

**4: Unconstrained.** Whether or not the government licenses CSOs, the government does not impede their formation and operation unless they are engaged to violently overthrow the government.

(Source: Michael Coppedge et al., *V-Dem Codebook*, ver. 8 (V-Dem, Jul. 2018) 175, [https://www.v-dem.net/media/filer\\_public/64/ad/64ad9308-45fa-473e-8e2b-e1c-0c4e421e6/v-dem\\_codebook\\_v8.pdf](https://www.v-dem.net/media/filer_public/64/ad/64ad9308-45fa-473e-8e2b-e1c-0c4e421e6/v-dem_codebook_v8.pdf).)

<sup>41</sup> Key:

**1: Substantial repression.** In addition to the kinds of harassment outlined in responses 2 and 3 below, the government also arrests, tries, and imprisons leaders of and participants in oppositional CSOs who have acted lawfully. Other sanctions include disruption of public gatherings and violent sanctions of activists (beatings, threats to families, destruction of valuable property).

**2: Moderate repression.** In addition to material sanctions, the government also engages in legal harassment (detentions, short-term incarceration) to dissuade CSOs' actions. The government may also affect CSOs' scope by restricting their association with each other and political parties, barring CSOs from taking certain actions, or blocking international contacts.

**3: Weak repression.** The government uses material sanctions (fines, firings, denial of social services) to deter oppositional CSOs from acting or expressing themselves. They may use burdensome registration or incorporation procedures to slow formation of new CSOs and sidetrack them from engagement. The government may also organize movements or NGOs (i.e., GONGOS) to crowd out independent organizations.

**4: No repression.** CSOs are free to organize, associate, strike, express themselves, and to criticize the government without fear of government sanctions or harassment.

<sup>42</sup> Henry Farber et al., *Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data* (Princeton Univ., 1 May 2018), [https://scholar.princeton.edu/sites/default/files/kuziemko/files/union\\_submitted.pdf](https://scholar.princeton.edu/sites/default/files/kuziemko/files/union_submitted.pdf).

<sup>43</sup> Henry Farber et al., *Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data* (Princeton Univ., 1 May 2018), [https://scholar.princeton.edu/sites/default/files/kuziemko/files/union\\_submitted.pdf](https://scholar.princeton.edu/sites/default/files/kuziemko/files/union_submitted.pdf).

<sup>44</sup> Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, vol. 2 (2008), [http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-ii---english-only/making\\_the\\_law\\_work\\_ll.pdf](http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-ii---english-only/making_the_law_work_ll.pdf).

<sup>45</sup> ILO, "Freedom of Association and Collective Bargaining" (2019), <https://www.ilo.org/global/topics/dw4sd/themes/freedom-of-association/lang--en/index.htm>; Kirsten Newitt, *Freedom of Association and Development* (ILO, 2011), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_160208.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_160208.pdf).

<sup>46</sup> UN Gen Assem., *Rights to freedom of peaceful assembly and of association*, UN Doc. A/71/385 (14 Sept. 2016), [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/385&referer=/english/&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E).

<sup>47</sup> OGP, "Not-for-Profit Status for CSOs" (2014), <https://www.opengovpartnership.org/03-not-profit-status-csos>.

<sup>48</sup> Dmytro Kotlyar, *Ukraine: 2015-2016 End of Term Report* (OGP, 2017) [https://www.opengovpartnership.org/sites/default/files/Ukraine\\_EOTR\\_2014-2016\\_ENG.pdf](https://www.opengovpartnership.org/sites/default/files/Ukraine_EOTR_2014-2016_ENG.pdf).

<sup>49</sup> European Center for Not-for-Profit Law, "Ukraine" from *Handbook on civil society organisations registration and operation* (ICNL and LawTrend, 2016) [http://ecnl.org/wp-content/uploads/2016/04/Rukovodstvo\\_eng\\_fin-web\\_ukraine.pdf](http://ecnl.org/wp-content/uploads/2016/04/Rukovodstvo_eng_fin-web_ukraine.pdf).

<sup>50</sup> Kotlyar, *Ukraine: 2015-2016 End of Term Report*.

<sup>51</sup> USAID, FHI 360 and ICNL, *The 2017 Civil Society Organization Sustainability Index*, 220.

<sup>52</sup> Halayna Korba, "Harassment of Anti-Corruption Activists" [in Ukrainian], *Novoe vremya*, issue 27 (Media-DK Publishing House LLC, 28 Jul. 2017), <http://magazine.nv.ua/article/post/64142-travlya-borcov-s-korrupcyey>.

<sup>53</sup> Kateryna Smaglyi, "A Wake-Up Call for Ukraine's Civil Society," Kennan Cable No. 5 (The Wilson Center and The Kennan Institute, Aug. 2017) 4, [https://www.wilsoncenter.org/sites/default/files/kennan\\_cable\\_25\\_-\\_smaglyi.pdf](https://www.wilsoncenter.org/sites/default/files/kennan_cable_25_-_smaglyi.pdf).

<sup>54</sup> Amanda Orza, *IRM Serbia Progress Report 2014-2015* (OGP, 2015), [https://www.opengovpartnership.org/sites/default/files/Serbia14-15\\_FinalEnglish\\_0\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Serbia14-15_FinalEnglish_0_0.pdf).

<sup>55</sup> These laws are: the Law on Associations, the Law on Endowments and Foundations, and the Regulation on Resources for Supporting Programs or Providing Co-financing for Programs of Public Interest that are Implemented by Associations. Orza, *IRM Serbia Progress Report 2014-2015*.

<sup>56</sup> Balkan Civil Society Development Network, *Monitoring Matrix on Enabling Environment for Civil Society Development: Serbia Report 2013*, (Civic Initiatives), [www.balkanicsd.net/novo/wp-content/uploads/2017/07/12-3d-MM-Serbia-Country-Report-ENG-Final.pdf](http://www.balkanicsd.net/novo/wp-content/uploads/2017/07/12-3d-MM-Serbia-Country-Report-ENG-Final.pdf).

<sup>57</sup> USAID, *The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 18th ed. [https://www.usaid.gov/sites/default/files/documents/1863/EuropeEurasia\\_FY2014\\_CSOSI\\_Report.pdf](https://www.usaid.gov/sites/default/files/documents/1863/EuropeEurasia_FY2014_CSOSI_Report.pdf).

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- <sup>59</sup> Council of Europe, *Civil Participation in the Decision-Making Process, Fact-finding visit to Serbia*, (13–14 Nov. 2017), <https://rm.coe.int/report-visit-of-the-conference-of-ingos-to-serbia/168077c8de>.
- <sup>60</sup> USAID, FHI 360 and ICNL, *The 2017 Civil Society Organization Sustainability Index for Central and Eastern Europe and Eurasia*, 21st ed. (Sept. 2018) 191–192, <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-regional-report.PDF>.
- <sup>61</sup> Scotti, *The Guide to Opening Government* (ICNL and OGP, 2018); Irish, Kushen and Simon, *Guidelines for Laws Affecting Civic Organizations*, 2nd ed. Other helpful regional guidance includes the African Commission for Human and Peoples' Rights (ACPHR) *Guidelines on Freedom of Association and Assembly in Africa* ([https://www.ishr.ch/sites/default/files/documents/guidelines\\_on\\_foaa\\_english.pdf](https://www.ishr.ch/sites/default/files/documents/guidelines_on_foaa_english.pdf)) and, for Europe, the OSCE's *Guidelines on Freedom of Association* (<https://www.osce.org/odihr/132371?download=true>).
- <sup>62</sup> As of December 2018, there were six countries with commitments in this area: Bulgaria, Canada, El Salvador, Lithuania, Norway, and Ukraine.
- <sup>63</sup> Scotti, *The Guide to Opening Government*.
- <sup>64</sup> A December 2018 analysis showed that nine countries have commitments affecting organizational operation: Canada, Croatia, Czech Republic, Denmark, El Salvador, Latvia, Lithuania, Northern Macedonia and Ukraine.
- <sup>65</sup> There is a significant disparity of enabling environments between private business and CSOs, as documented by the UN SR FoAA ([https://nhri.ohchr.org/EN/News/Documents/GANHRI-BackgroundPaper%20-HLPF16-Shrinking-Space\\_publ.com.pdf](https://nhri.ohchr.org/EN/News/Documents/GANHRI-BackgroundPaper%20-HLPF16-Shrinking-Space_publ.com.pdf)).
- <sup>66</sup> Balazs Sator, *International Practices on Funding Civil Society Organizations* (Kyiv, Ukraine: OSCE, Dec. 2010), <https://www.osce.org/ukraine/76889?download=true>.
- <sup>67</sup> As of December 2018, there are 11 countries with commitments in this area: Bulgaria, Canada, Croatia, Estonia, France, Latvia, Lithuania, Northern Macedonia, Spain, Sweden, and Ukraine.
- <sup>68</sup> ECNL, *The Regulatory Framework for Fundraising in Europe* (2018), <http://ecnl.org/publications/regulatory-framework-fundraising-europe/>.
- <sup>69</sup> Katerina Hadzi-Miceva Evans, Expert Council on NGO Law: *Regulating Political Activities of Non-Governmental Organisations* (Conf. of INGOs of the Council of Europe, Dec. 2015), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640fc2>.
- <sup>70</sup> See Open Forum for CSO Development Effectiveness, *A Draft International Framework for CSO Development Effectiveness*, ver. 2 (Nov. 2010), [www.ituc-csi.org/IMG/pdf/International\\_Framework\\_for\\_CSO\\_Development\\_Effectiveness\\_Version\\_2\\_November\\_.pdf](http://www.ituc-csi.org/IMG/pdf/International_Framework_for_CSO_Development_Effectiveness_Version_2_November_.pdf) and Civic Space Watch, “Civil society accountability in times of declining trust: CIVICUS’s journey” (30 Jan. 2019) <https://civicspacewatch.eu/civil-society-accountability-in-times-of-declining-trust-civiccuss-journey/>.
- <sup>71</sup> Based on a 2018 analysis, these countries are: Bulgaria, Croatia, El Salvador, Estonia, Guatemala, Jordan, Latvia, Lithuania, Northern Macedonia, Mongolia, Serbia, Sierra Leone, Spain and Ukraine.
- <sup>72</sup> Transparency and Accountability Initiative, *Closing Civic Space: Grantee Challenges and Funder Responses*, Hostile Local Narratives (2018), <https://www.transparency-initiative.org/civic-space-compendium/#hostile-local-narratives>.
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- <sup>74</sup> International Aid Transparency Initiative is found at <https://www.iatistandard.org/en/>.
- <sup>75</sup> FATF, *Best Practices: Combating the Abuse of Non-Profit Organisations* (Jun. 2015), <http://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html>.
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- <sup>78</sup> Spaces for Change, *Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria* (2019), <https://www.spacesforchange.org/wp-content/uploads/2019/03/EXECUTIVE-SUMMARY-ONLY-1.-UNPACKING-THE-OFFICIAL-CONSTRUCTION-OF-RISKS-AND-VULNERABILITIES-FOR-THE-THIRD-SECTOR-IN-NIGERIA.pdf>.
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