

Creating an Enabling Environment for Civil Society | Democratic Freedoms Learning Network

12 September 2022

On 12th September 2022, OGP convened the first meeting of the Democratic Freedoms Learning Network focused on the topic 'Creating an Enabling Environment for Civil Society'. Officials and civil society representatives from over 20 OGP countries attended the workshop, drawing on their diverse experiences and approaches to ensuring an enabling space for civil society. The meeting started with several lightning talks to introduce the topic and build the space to discuss and exchange.

Background

The OECD defines civic space as “the set of legal, policy, institutional, and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise, and participate in public life”. Ensuring an enabling space for civil society is a core tenet of OGP’s work. It is one of the criteria for membership and forms the basis of a productive dynamic between civil society and government.

Yet it is also a challenging and subtly contentious area, with insufficient coverage of the benefits of a dynamic civic space. Looking just at OGP commitments, only 122 of a total of 4,900 commitments have focused on civic space, and only eight out of 77 members are currently implementing a commitment on this theme.

The Democratic Freedoms Learning Network grew out of this identified gap and aims to unpack existing caution, understand where gains have been made, and learn from experiences across different regions. By bringing actors together, OGP hopes to elevate the importance of the issues and provide a platform for inspiration and learning. This workshop was the first in a series of meetings that will each delve into a component of civic space. This first meeting touched on three core elements that form part of the enabling environment for civil society:

- the **legal environment** - that governs the creation, operation, and dissolution of civil society organisations;
- **administrative measures** - that can either support or constraint civil society; and
- **funding structures** – that determine the distribution of funds and associated regulations, such as subsidies or tax breaks.

Lightning Talks

The meeting started out with five lightning talks designed to set the scene and give an insight into each of the three sub-topics.

Claire Mc Evoy – OECD

The OECD is in the process of finalising its first global report on civic space, which includes a detailed chapter on the enabling environment for civil society. Claire gave an insight into the findings and recommendations illustrated through a series of charts drawn from data provided by 32 OECD countries and 19 partner countries. Key highlights include:

- **CSO registration**, which according to international guidance should be voluntary, is mandatory in 55% of all respondent countries. The length of time it takes to register ranges from a couple of days to 1 year.
- The **ministry with key responsibility** for civil society varies with the Ministry of Interior (28% of all respondent countries) and the Ministry of Justice (21% of all respondent countries) being the most common – with the former intentionally or inadvertently categorising civil society as a security issue.
- Legal restrictions on CSO engagement in political activities - existent in 41% of respondent countries - in the context of support to political parties, elections, or public policy activities in general, as well as restrictions or specific requirements for public benefit organisations with **vague definitions of political activity** can lead to an insecure or unpredictable environment for CSOs.
- Nearly 70% of OECD countries have a **strategy to protect and promote civil society** and around 80% of all respondent countries provide some type of government **funding to civil society** – though the most common funding modality is short-term and a sizable minority (around 20%) restrict foreign funding in laws governing freedom of association or association laws.

The report contains 10 high-level recommendations to promote and protect civic space focusing on a whole of government, comprehensive approach. It includes related issues to consider on a wide range of topics including registration, access to funding, definitions of political activities, civil society strategies, and protection against Strategic Litigation Against Public Participation (SLAPPs).

One of the overarching conclusions of the report is that even mature democracies need to monitor and take action to safeguard civic space.

Sebastian Raible – European Parliament

To introduce the legal environment, Sebastian outlined current work by the European Parliament to develop a Europe wide association statute. The initiative stems from a long-standing demand for civil society to have an equal footing with businesses. Past initiatives, dating back to 1991, have failed but this latest initiative shows promise.

In February 2022, MEP Lagodinsky tabled a [report](#) that received widespread support in the European Parliament calling for i) a Regulation for a European Association Statute and ii) a Directive setting out a set of minimum rules for the governance of NGOs. The overall aims are to ensure:

- a pan-European platform for civil society engagement;
- **freedom of movement** for civil society organisations under national law;
- the **abolition of obstacles and restrictions**, such as fees and cumbersome formalities; and
- a **level playing field**, including for the receipt of public and private grants and in tax matters.

The European Commission, who hold the power to propose legislation, confirmed that it will bring legislation forward initially for an EU Directive on minimum standards. There is currently a [public consultation](#) open until 28 October 2022, after which the Commission will propose a legislative draft. It is hoped that the Directive will be adopted before the next European Parliament elections in 2024. Further information can be found on the MEP Lagodinsky's [website](#).

Angela Sazdova - Doneva, Government of North Macedonia

Angela outlined the work of the Government of North Macedonia to [develop a central NGO register](#). Currently over 15,000 NGOs are registered with a process underway to de-couple the CSO registry from the Trade Registry to create a more tailored platform.

The register will include searchable open data for each entity compliant with GDPR regulations. It is anticipated that the decoupling of the database will translate into several tangible benefits for civil society organisations including:

- a simplified registration and reporting system;
- financial reporting that is tailored to the NGO sector and multiple sources of funding;
- tailor made services for the NGO community; and
- visibility and availability of data to donors to help facilitate future funding.

The demonstration that services are tailored to facilitate the operations of NGOs and a consultation process on the design and modalities of the platform has been important to fostering trust among the NGO community in North Macedonia, particularly as in many countries central registers and associated reporting tools have been used as instruments of repression.

Nikhil Dutta, International Centre for Not-for-Profit Law, Legal Adviser

Nikhil drew on the global experience of ICNL to highlight the experiences of different funding structures. As background he highlighted that globally the non-profit sector is an important contributor to the economy comprising 5-10% of the workforce and contributing, on average, five percent of GDP. Despite this financial contribution governments have sought over the years to restrict funding for civil society resulting in a significant loss of resources.

Civil society typically receives funding from a combination of three key sources: government, private philanthropy and self-generated funds, all of which can be supported or hindered through government structures:

- **Government sources** are an important source of funding and in some countries, particularly during the Covid-19 pandemic governments sought ways to bolster funding to the sector. Denmark injected 10 million USD of additional funds, North Macedonia promoted local government and civil society through funding for service



delivery and exemptions from income taxes and in 2019, Morocco exempted civil society from import duties on equipment for those working with disabilities.

- **Private philanthropy** is another important source and requires governments to facilitate structures that allow for different forms of philanthropy. For example, in 2021 Morocco established a framework for crowdfunding which had previously been forbidden. Government can also support civil society through Corporate Social Responsibility (CSR) requirements – for example India requires companies to spend 2% of the past three years profits on CSR.
- **Self-generated funds** are a third source of funding coming from the provision of services or income-generating activities. For example, South Korea has now formally recognised that not-for-profit organisations can also be social enterprises.

Sandino Soliman, Caucus of Development NGO Networks (CODE-NGO), Philippines

In a final lightning talk, Sandino provided a civil society perspective from the Philippines where the environment for civil society is severely restricted. In 2016 the Philippines took part in a [national enabling environment assessment](#) supported by CIVICUS and ICNL which yielded some positive results but with ongoing challenges.

Organisations experience significant roadblocks in the NGO registration process. There is no central registry of NGOs and to access government fundings an organisation has to be accredited with both the Securities and Exchange Commission (SEC) and the Department of Social Welfare and Development. In 2020, following a sustained decline in the legal environment for NGOs a new law on terrorist financing, that further restricts the space for civil society was adopted.

Discussion and breakout groups

Several overarching points and questions arose out of the discussion with examples from different countries cited.

- Building **trust and dialogue** between government and civil society is critical to ensuring a basis on which to build an enabling environment for civil society. Examples cited include formal government/civil society platforms designed as a space for learning, exchange and discussion of proposals to more informal spaces facilitated by NGOs.
- Even where several OGP commitments on civic space exist, challenges remain around **implementation**. This also applies to legislation, as even where enabling legislation had been adopted it was not always implemented effectively. Strategies to support and promote implementation need to be built in at an early stage.
- While **strategies** to promote and protect civil society were found to be useful, many urged that civil society can't be seen as a standalone entity and must be integrated into all relevant policy areas and strategies.
- Views differed on the merits of monetizing the field. For some it was seen as an effective strategy which served as one basis for engagement. Others were wary of measuring the **economic impact** of civil society as a significant proportion of civil society's work has broader societal and environmental impacts, but doesn't have an immediate and visible economic impact.



- The forthcoming **OECD recommendations** could provide an impetus for new OGP commitments and form part of a regular checklist for everyday policy making.
- Interest is developing in central NGO registries that support and facilitate the work of civil society. It is useful to note the report of the former UN Special Rapporteur on Freedom of Association and Assembly looking at **equity between businesses and civil society**. This was also the premise of the current European Parliament initiative.
- Concerns were raised over the use of regulations, such as those from the Financial Action Taskforce (FATF) and other money laundering requirements, to ensure that they don't limit the space for civil society. Similarly laborious **transparency requirements** and detailed reporting requirements were being used by many governments to hamper the work of civil society.

Resources

This is a limited selection of useful resources linked to the themes raised during the meeting alongside a series of databases that provide country specific and legal information.

Databases

- [Civic Freedoms Monitor](#)
- [Covid-19 Civic Freedoms Tracker](#)
- [ICNL Digital Legal Library](#)
- [FOAA Online: Resource for Litigation and Advocacy](#)
- [Archived material of the first UNSR on Freedom of Association and Assembly](#)

Publications – NGO Laws

- Freedom of association – [factsheet](#) and UNSR's [report](#)
- [OGP Report on freedom of association](#)
- Legal environment and space of civil society organisations in supporting fundamental rights – [country research](#) from the European Agency for Fundamental Rights
- UNDP and ICNL Legal Frameworks for Civic Space: A Primer and [Toolkit](#)

Publications – Administrative Measures

- [Handbook on Registering Civil Society Organisations](#) (covers 17 countries)
- Comparing businesses and associations – [factsheet](#) and UNSR's [report](#)

Publications – Funding structures

- Civil society and access to resources – [fact sheet](#) and UNSR's [report](#)
- CIVICUS [Access to Resources for Civil Society Organisations in Latin America: Facts and Challenges](#)
- ICNL and ECNL, [Principles for Statutory Regulation and Self-Regulation of Fundraising](#)
- New America, [Virtual currency donations](#)

