

The Right Tools For The Right Job

How OGP can help win the
fight for civic space

Open
Government
Partnership



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Summary

Open Government Partnership (OGP) was founded on the idea that public policy reform is better when government officials engage with civil society actors. Because of this, OGP cannot succeed without the ability of people to freely organize, participate, and communicate about policy. This is referred to as “civic space.”

Yet, based on an analysis of documented events over the last five years, freedom of association, assembly, and expression are under threat in many OGP countries. The most common problems are:

- attacks on journalists and human rights defenders,
- failure to respect and protect public assemblies, and
- barriers to independent and efficient operation of formal civil society organizations.

Is OGP focusing on the right problems and using the right tools? OGP action plans currently do not address the most pressing civic space problems in OGP countries. There is a significant number of commitments addressing formal operation of civil society organizations. The gap between the scale of problems

and the number of commitments is widest in freedom of assembly (where there are two commitments) and the defense of human rights defenders and journalists.

OGP has tools to address the problems. In order to rise to the challenge, the OGP community can improve civic space with the following five action points:

1. **Do no harm:** Action plan commitments should not introduce undue burdens and restrictions on civic space.
2. **Increase volume:** OGP needs more civic space commitments.
3. **Improve scope:** Commitments should cover the breadth of civic space problems, including emerging issues in the digital realm.
4. **Find the right fit:** OGP needs more civic space commitments that match a country’s problems.
5. **Aim for net impact:** OGP should measure its impact in part on whether it is contributing to more civic space in the country through collaborative dialogue.

Two of OGP’s partner organizations have prepared companion papers to this one. Civicus, in its paper “Closing Space, Open Government? Civil society response to restrictions in OGP countries”, provides a landscape of civic space trends and drivers around the world. The International Center for Not-for-Profit Law (ICNL) has provided suggestions of commitments that OGP stakeholders can make in their action plans in their paper “The Guide to Opening Government An Enabling Environment for Civil Society Organizations”.

1. Open Government Partnership and civic space in the global context

Open Government Partnership (OGP) has expanded from eight to seventy-five national and twenty local governments in the last six years. Thousands of civil society members are now active in OGP. From this growth—and the concurrent growth of the open government movement more broadly—two related but opposing trends have become visible. The first is clear progress on access to information,¹ civic participation, and public accountability. The second trend is a shrinking of space in several countries for civil society to freely operate. This can be seen in the dangers faced by civil society activists, the curtailment² of freedom of press laws,³ and funding restrictions on civil society organizations (CSOs).

What is civic space?

Global organizations working on civic space⁴ issues define it as *the place, physical, virtual, and legal, where people exercise their rights to freedom of association, expression, and peaceful assembly. By forming associations, by speaking out on issues of public concern, by gathering together in online and offline fora, and by participating in public decision-making, individuals use civic space to solve problems and improve lives. A robust and protected civic space forms the cornerstone of accountable, responsive democratic governance and stable societies.*⁵

Another conception of civic space is the capacity for citizens to participate in the different stages of the policymaking process. For purposes of OGP action plans, either definition is adequate. For the purposes of OGP action plans, either understanding is sufficient.

Civic space is important for everyone

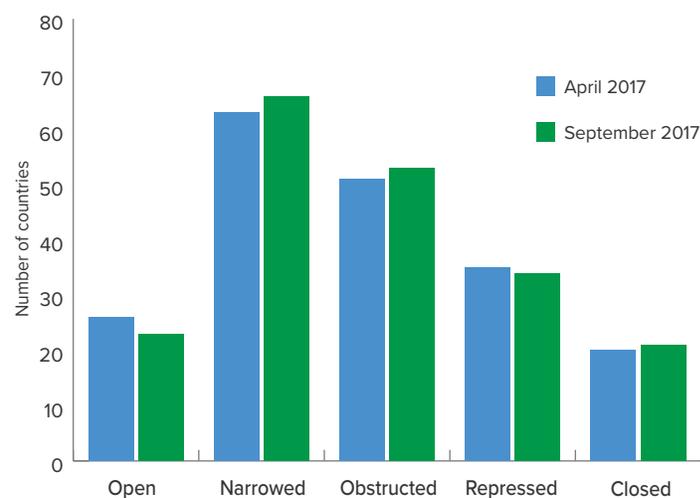
Civic space does not only impact civil society. Restricted civic space negatively affects the social stability and economic growth of a country. Civic space promotes creativity and innovation through constant partnership between the public, private, and third (i.e. non-governmental and non-profit organizations) sectors. Restricting civic space is also bad for business.⁶ Thus, a robust space for civil action is essential for a dynamic political culture and an innovative open government agenda. Conversations on civic space are typically in reference to civil society—to gauge the scale of civic space violations and to campaign against violations of fundamental freedoms by the

state. While there is an important role and need for civil society to form strategic coalitions to address shrinking space, there is an equal need to engage government and other voices that might be left out of these conversations.

Yet, civic space is threatened worldwide

Shrinking space is a worldwide trend, as CIVICUS⁷ and other organizations tracking civic space trends have noted. Figure 1 shows that, over the last year, the number of “open” countries on CIVICUS’s five-point scale has decreased, while the number of “narrowed,” “obstructed,” and “closed” countries has increased.

Figure 1. The last year has seen a decline in “open” countries



Additionally, the International Center for Not-for-Profit Law (ICNL) has shown that, since 2010, more than 50 countries have introduced laws⁸ to restrict the operation of non-profit organizations.

Open government cannot work without civic space

Shrinking civic space poses a challenge to the very values and principles of open government, and, therefore, the work of OGP. People must be able to associate, assemble, and express themselves freely so as to inform and influence their governments. Many of the reforms that are most common in OGP action plans depend on adequate civic space for success:

- Open data cannot effect a change of government behavior without a free press to use that data to hold the government accountable.
- Right to information laws cannot function when citizens are afraid of reprisal.
- People cannot participate in government decision-making where restrictions on speech exist.
- The public cannot hold governments accountable or discuss public interest issues freely when there are restrictions on public assembly.

OGP cannot work without civic space

OGP is based on open dialogue and exchange between government and civil society. Each country co-creates a two-year action plan with representatives from government and members of civil society. Ideally, this is a process of dialogue, feedback, and compromise. Unnecessary restrictions on that process limit who can participate, what they can say, how they can organize themselves, and how governments respond. The way in which OGP is structured and functions requires civic space. Civic space is needed for civil society to leverage the OGP platform, and for the open government reform agenda to be implemented.

Promotion of civic space is a key OGP goal

Upon joining OGP, each government signs the Open Government Declaration,⁹ committing to support civic participation:

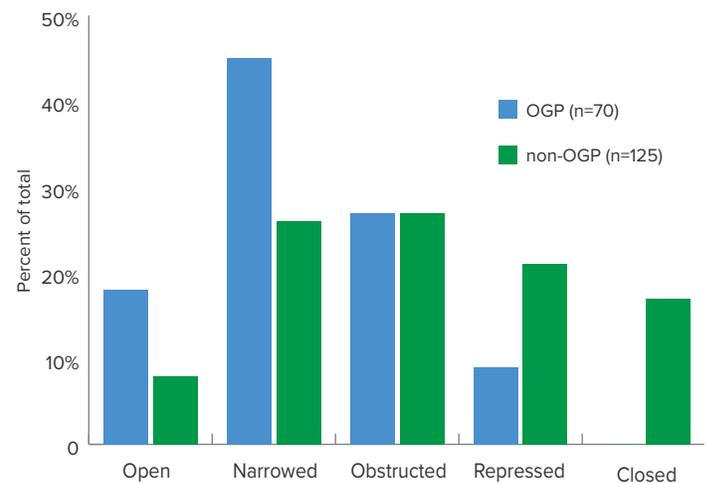
We value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people’s knowledge, ideas and ability to provide oversight. We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion.

In the 2016 Paris Declaration,¹⁰ all OGP governments publicly reiterated their promise to “protect and defend civil society’s space to operate, to support mechanisms to ensure civil society engagement, and to keep civil society participation and the practice of co-creation at the core of our work.”

OGP countries have better civic space than non-OGP countries

On average, OGP countries are better on allowing requisite space for civil society than non-OGP countries. Nearly half of “open” countries (12 of 23) are OGP countries, and OGP has no “closed” countries. Figure 2 shows a comparison of OGP and non-OGP countries. The mean, OGP-country CIVICUS designation was “narrowed,” while the mean non-OGP country was “repressed.”

Figure 2. OGP countries are more open than non-OGP countries—Civicus ratings for OGP and non-OGP countries



But OGP countries are not immune to the trend

Global trends are not positive. According to analysis by the Economist Intelligence Unit (EIU) in its Democracy Index, civic space as an indicator of civil liberties (one of the five categories evaluated in the index), has declined over the last six years. The rate of decline has increased over the last three years as well. This is shown in “Figure 3. Comparative percent change in EIU Civil Liberties indicator.”

Figure 3. Comparative percent change in EIU Civil Liberties indicator

Group	Last 6 years	Last 3 years
Global (165)	-3%	-5%
Non-OGP (93)	-2.9%	-6.9%
OGP (72)	-2.3%	-1.9%

In the last six years, OGP countries have seen a slightly lower rate of decline than non-OGP countries. In the last three years, civil liberties scores have continued to decline in OGP countries, but at a lower rate than their non-OGP counterparts and even slightly improving over the last six years. Non-OGP countries' civil liberties scores declined at three times the rate of OGP countries. This slower rate suggests that OGP does function, to some extent, as a "coalition of the committed," but is only worth some comfort when OGP countries, as a whole, are still declining.

How does OGP address civic space in its structure and processes?

OGP's unique model puts civil society at the heart of the policymaking process. It is the practice of bringing together civil society and governments, to collectively determine and implement concrete policy commitments, that promotes transparency, accountability, and public participation across sectors. The OGP model is in itself structured to create and safeguard civil society's equal seat at the table with government to co-create open government reforms. Hence, a vibrant civil society at the country level is key to maximizing the potential of this model.

The OGP Theory of Change¹¹ positions civil society engagement in OGP countries as one of the four elements that catalyze open government reform, along with high-level political engagement, empowering reformers within government, and an independent accountability mechanism. The requirement to submit a biennial national action plan, with concrete commitments reflecting the priorities of civil society and citizens, distilled through a thorough and detailed consultation process, and assessed by an independent review mechanism, presents "an opportunity and an obligation to governments to engage with civil society and citizens" through all phases of the OGP cycle—development, implementation, and assessment.

OGP countries have a clear responsibility to lead globally and, as the data show, may have work to do to clean their own houses. This report maps three channels of action to expand civic space:

- Channel 1: Through the OGP action plan process at the country level,
- Channel 2: Through commitments made in the OGP action plans, and
- Channel 3: Beyond the action plan process, through OGP mechanisms operating at the global level

Channel 1. Action planning process

OGP participation and co-creation standards

By creating and strengthening ongoing dialogue around the action plan, OGP is promoting civic engagement in policymaking. In 2017, OGP launched an ambitious set of OGP Participation and Co-Creation Standards.¹² The new standards promote dialogue across and throughout all phases of the OGP action plan cycle—development, implementation, and monitoring. According to the most recent independent analysis, almost all OGP governments had some form of consultation with civil society, in which civil society actors could propose commitments.¹³

Multistakeholder forums

At the heart of these standards is the creation of a multistakeholder forum. Both civil society and government comprise these forums, with well-defined roles to draft and implement the action plan. Thus, civil society has a mandated place in the OGP process. Currently, according to OGP's internal data, about half of the OGP countries have a multistakeholder forum in place to foster permanent dialogue between civil society and government throughout the OGP process.

Independent Reporting Mechanism (IRM)

IRM is an independent entity within OGP with researchers located in each participating country. Researchers evaluate the relevance, ambition, and completion of OGP commitments, the quality and depth of dialogue between stakeholders, the OGP multi-stakeholder forums, and the national context for open government, including civic space. Annual reports are required to take civil society feedback into account, and to undergo a review by civil society. The reports are also designed to be used by civil society for the purpose of advocacy.

Channel 2. Action plan commitments

The national action plan is a key lever of the OGP Theory of Change. OGP countries commit to concrete policy reforms on top domestic priorities. Governments can endeavor to expand civic space through these commitments to respect and protect the public's ability to associate, assemble, and express itself. For this paper, the authors examined action plan commitments

from the first 60 OGP action plans to determine their relation to civic space and found:

1. As of mid-2017, there were 100 commitments related to civic space out of a total of 2,733 OGP commitments. There are relevant commitments in the majority of OGP action plans (40 out of 60).
2. There are not enough civic space commitments to address the civic space problems in OGP countries.
3. Civic space commitments are not always relevant to the areas of most apparent need (as determined by third party analysis), such as protection of human rights activists or journalists and freedom of assembly.

See Section 2 for a comprehensive overview of civic space problems within OGP countries, the commitments the governments are undertaking to address those problems, and how those commitments can better align with country-specific challenges.

Channel 3. Beyond action plans

Eligibility criteria and values check

Before they can join OGP, governments must meet OGP eligibility criteria.¹⁴ The founders of OGP recognized the necessity of citizen participation and engagement for openness in government, of which protection of civil liberties is inherent. Evaluation of civil liberties as a proxy measure of citizen engagement was therefore included as a component part of membership eligibility criteria. The civil liberties score is based on the EIU Democracy Index “civil liberties” sub-indicator.

There has been a long-standing demand¹⁵ from civil society to strengthen the eligibility criteria. In September 2017, the OGP

Steering Committee adopted an additional “Values Check,”¹⁶ which examines the extent of control and repression of CSOs by governments that intend to join.

Policy on upholding the values and principles of OGP

Also known as the OGP Response Policy,¹⁷ this measure gives the public the right to present concerns around civic space to the OGP Steering Committee and requires the Steering Committee to take corrective actions against the government in question when appropriate. By adopting the Response Policy, the Steering Committee acknowledged that “there may be issues outside the scope of national action plans that have a major impact on successful participation in OGP, and [this policy] creates an opportunity to address them. [These issues] may include restrictions on basic freedoms, access to information, and the overall enabling environment for civil society.”¹⁸ (See “Box 1. OGP Response Policy in Practice”)

Civil society representation at the global level

The OGP Articles of Governance²¹ specify that the OGP Steering Committee is composed equally of government and civil society representation, led jointly by a co-chair from each stakeholder group.

Peer exchange

OGP supports government-to-government exchange and expert exchange. While this has been strong in areas such as civic participation, anti-corruption, and open data, OGP can improve its exchange activities with regard to civic space.

International political leadership and diplomacy

OGP is one of the world’s premier forums for discussing issues of civic space. There is precedent for addressing issues in the past that arose: OGP Steering Committee members and civil society participants have used high-level OGP events, diplomatic exchanges, and communications to speak up about threats to civic space, including in OGP-participating countries.

Technical support and partnerships

OGP supports initiatives to introduce stronger commitments into action plans and to support the co-creation process through two primary channels: the OGP Trust Fund²² and thematic partnerships. Beginning in 2018, OGP partners may apply for funding to carry out activities to promote and research civic space in OGP through the Trust Fund. Further, OGP is exploring more formalized partnerships²³ with international networks that can support country-level activities to secure and promote civic space.

BOX 1. OGP RESPONSE POLICY IN PRACTICE

In May 2016, Azerbaijan became the first OGP country to be designated as inactive under the OGP Response Policy.¹⁹ Similarly, the Response Policy was initiated against Hungary after a Letter of Concern was drafted by civil society in July 2015 regarding the deterioration of space to operate in the country. Following submission of this complaint to the OGP Steering Committee and the resultant responses, the government of Hungary announced its withdrawal from the partnership in December 2016.²⁰

2. Analysis of civic space commitments in OGP action plans

OGP provides a number of channels to expand and improve civic space, but action plan commitments may be the most powerful. This section details commitments in action plans that have significant potential to create change at the national level.

The analysis comprises: (1) Determining the scope of the problem; (2) Identifying how OGP action plans are currently addressing problems around civic space, and (3) Examining to what extent the commitments contextually reflect that country's problems. The evaluation and findings are intended to diagnose deficiencies within the OGP action plan process, in order to provide a roadmap to increase and strengthen OGP commitments relative to civic space.

Expanding the scope of civic space

Within OGP, civic space as a concept is often referred to in the abstract, with a great deal of focus on the operations of formally registered non-governmental organizations. This is reflected in two of OGP's more recent policy formulations. The first is the OGP Values Check, which looks at state interference in the operations of civic organizations. The second policy introduced

is the OGP Response Policy, which aims to hold participating entities accountable to the OGP values and principles that they committed to. In the cases of Azerbaijan and Hungary, this policy was initiated primarily in response to restrictions on civil society's ease to register, operate, and access funding.

The current emphasis on the operations of formal organizations, while absolutely critical, falls short in addressing the most common restrictions on civic space. According to findings from the CIVICUS Monitor,²⁴ the three most commonly reported violations that threatened civic space in 2016 were:

- Unlawful and arbitrary detention of human rights defenders,
- Use of excessive force by state security forces, and
- Attacks on journalists

OGP staff carried out an analysis of this data for all OGP countries that were participating in 2017. It found that many OGP countries have issues in these, and other domains relevant to civic space. (See "Box 2. Method for action plan analysis" on the next page).

BOX 2. METHOD FOR ACTION PLAN ANALYSIS

The analysis in this paper had four principal phases.

- 1. Typology development:** The authors identified key domains (and sub-domains) of civic space relevant to the analysis of OGP countries and commitments, based on the third-party analysis of OGP. The typology went through several iterations while working through the qualitative and quantitative data below during “problem-identification” and “commitment tagging.”
- 2. Problem identification:** For each civic space domain, every OGP country was tagged with a “1” where it had a documented issue or with a “0” where it had none. This binary system is good for identifying the prevalence of problems within OGP. It is limited in assessing the intensity of problems in a country. For instance, one country may have a problem with NGO registration whereas another may ban all LGBTQ groups. Both would be designated as “1” in data. A better analysis of severity will need to be subject of future research.
- 3. Solution identification:** The authors read through 2,800 commitments to identify commitments that directly affect the operating environment for civic space. Of around 2,800 commitments, roughly 100 dealt directly with civic space.
- 4. Congruity analysis:** For the 60 countries with action plans, the authors compared whether countries with problems in each domain of civic space also had had commitments pertaining to the same domain of civic space. This approach is limited in that it is not adequately granular to assess whether the commitment was well-matched (in terms of scope or adequacy) to the problem. It also does not assess whether the commitment was implemented or what the effect was.

Third-Party Sources:

- *CIVICUS Monitor*: <https://monitor.civicus.org/>
- ICNL’s *Non-Profit Law Research Monitor*: <http://www.icnl.org/research/monitor/index.html>
- Freedom House’s *Freedom on the Net*: <https://freedomhouse.org/report-types/freedom-net>
- World Bank’s *Regulatory Governance Indicators*: <http://rulemaking.worldbank.org/>

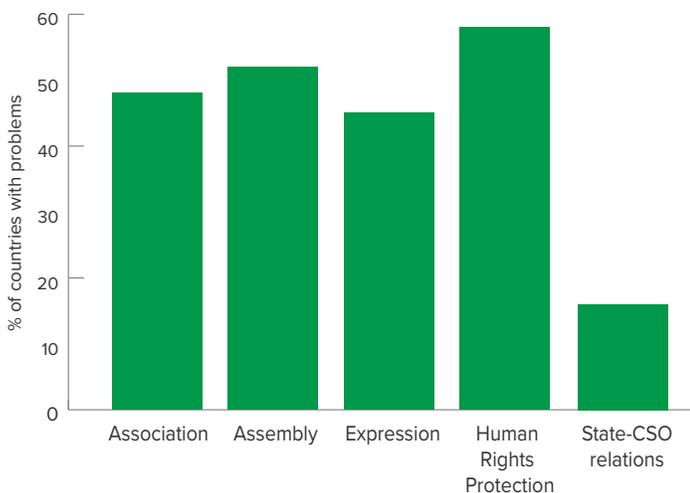
The developed typology classifies civic space problems and commitments into one of the following five domains (sources cited below are linked in Box 2 on this page):

- 1. Association:** Countries coded with problems in association were found to have excessive interference, delay, or costs associated with the formation of non-commercial organizations. Specifically, countries were coded based on incidence of the following problems with non-profit operation (source: International Center for Non-Profit Law and *CIVICUS Monitor*):
 - Barriers to entry and legal status
 - Excessive interference in operation (activities, structure, and governance)
 - Restrictions on access to resources (fundraising, tax preferences, foreign funding)
 - Excessive demands on reporting, supervision, and enforcement
- 2. Assembly:** Countries coded with problems in assembly exhibited interferences with people’s ability to come together to collectively express, promote, pursue, and defend their ideas. Specifically, countries coded for problems of assembly had the following issues:
 - Restrictions on assembly (restrictive permitting processes, or excessive responses to unpermitted assembly)
 - Incidence of police violence, or failure to protect assemblies from violence by non-state actors (Source: *CIVICUS Monitor*)
- 3. Expression:** Countries coded with problems in expression were found to have interferences with people’s ability to voice opinions and share and impart ideas across various mediums. This coding is characterized by:
 - Censorship of media (source: *CIVICUS Monitor*)
 - Web blackouts, including closing down the internet or various social media platforms during major protests or controversies (Source: Freedom House, *Freedom on the Net*)
 - Online discrimination, and blocked political content (Source: Freedom House, *Freedom on the Net*)
 - Spying, surveillance, and intrusive government requests for organizational membership and participation (Source: Freedom House, *Freedom on the Net*)
- 4. Human rights protection:** Countries with problems in human rights protection were found to have either taken part in the harassment of individuals and organizations, failed to prevent killing and other violence, or failed to prosecute such attacks when they occurred (Source: *CIVICUS Monitor*).

5. **State-society relations:** Countries with these problems often have major restrictions on how and who among the public can access officials (Source: World Bank Regulatory Governance Indicators).

After determining whether each participating OGP country “had a documented problem” or “did not have a documented problem” in regard to civic space, it became clear that problems relating to civic space are more multifaceted than often described. The most common problems among OGP countries are restrictions on freedom of assembly and peaceful protest, and lack of protection against human rights violations. Figure 4 illustrates in which category civic space problems occur in OGP countries.

Figure 4. Civic space problems in OGP countries



- **Association:** Freedom of association issues in OGP countries are less frequent than problems with assembly and human rights violations. It remains an issue, however, in 48 percent of OGP countries. Freedom of association requires a robust legal framework to allow citizens to organize and civil society organizations to operate. In this subset of OGP countries, access to funding, tax regulations, barriers to entry, and legal status are the main obstacles to exercising the right to association.
- **Assembly:** In 52 percent of OGP countries, the authors found reports of excessive use of police force during public protests, regulations to limit freedom of assembly, and use of surveillance and personal data to target civil society organizations, journalists, and human rights defenders.
- **Expression:** 45 percent of OGP countries have problems related to censorship or online discrimination.

- **Human rights protections:** 58 percent of OGP countries have civic space problems related to harassment of activists and journalists. In these countries, governments have either taken part in the harassment of individuals and organizations, failed to prevent killing and other violence, or failed to prosecute such attacks when they happened.
- **State-civil society relations:** Interestingly, more than 80% of the countries evaluated do not legally restrict which civil society members can participate in policy-making decisions. Of course, this does not mean that there are not barriers at other levels or in other types of decision-making.

Current OGP action plan approaches

The authors tagged each of the 100 relevant OGP commitments with the domains and subdomains (analogous to the problems above) that were relevant below:

- **Freedom of association**
 - Reducing barriers to entry and legal status (registration, association, and form)
 - Reducing interference in operation, governance, and function
 - Increasing funding, aid assistance, and access to resources
 - Addressing CSO accountability and reporting
- **Freedom of assembly**
 - Public assembly
- **Freedom of expression**
 - Media freedom and independence
 - Freedom online and digital rights
 - Privacy
- **Protection of human rights**
 - Strengthening HR institutions
 - Protection for HR defenders, activists
 - Compliance with international HR conventions
- **State-civil society relations**
 - Target specific organizations for participation in decision-making (e.g. Free, Prior, and Informed Consent regulations for indigenous communities).

Of 2,733 commitments in the database at the time of analysis, 100 OGP commitments were appraised as relevant to one or more of the categories above.

Freedom of association

Commitments that relate to freedom of association aim to improve the legal framework to allow civil society organizations to form and operate. Commitments range from promulgating NGO laws, creating public funding opportunities for NGOs, revising tax laws and policies that apply to nonprofits, and establishing accountability mechanisms for aid transparency and public funds destined for civil society organizations. Forty-four out of 100 commitments relate to freedom of association. Some of the countries with commitments in this area include Bulgaria, Canada, El Salvador, Lithuania, Norway, and Ukraine. (“Box 3. Continuous recognition of civic space”, on page 12, describes some of the action plans with the most civic space commitments.)

Examples of commitments from OGP action plan that relate to freedom of association:

- **Canada:** The Canada Revenue Services sought to provide more information on the regulation of charities to the public in a timely manner and ensure engagement with the charitable sector in support of tax rules that are fair, open, and easily accessible and understood.
- **El Salvador:** The government proposed a reform of the Civil Associations Law to reduce barriers to entry and simplify legal requirements to register NGOs.
- **Ukraine:** The government aimed to introduce legal amendments to facilitate registration of community associations, expand their financial and material resource base, and safeguard their operations.

Freedom of assembly

Commitments related to freedom of assembly were the least common type of commitments found. Only two out of 100 commitments aimed to improve the right to peaceful protest. In Ukraine, the government committed to adopting a law on peaceful assembly, following recommendations from the Venice Commission, the Council of Europe’s advisory body on constitutional matters.

Freedom of expression

Thirteen out of the 100 commitments related to freedom of expression. Countries such as Italy, Jordan, Mongolia, Norway, Ghana, Croatia, Georgia, and the United Kingdom are using their OGP action plans to improve legal frameworks for independent media, to promote transparency in public media contracts and concessions, and to protect online privacy and personal data.

Examples of commitments related to freedom of expression:

- **Italy:** The government committed to establishing an inter-regional task force to promote the Charter of Internet Rights. This would analyze the level of citizens’ enjoyment of digital rights, increase citizens’ awareness of digital rights, and support the removal of obstacles to online freedom.
- **Mongolia:** The country aimed to amend the Law on National Broadcasting to meet international standards, and ensure political and financial independence of the media. The commitments also sought to consult the media and civil society on the current limitations in the legal environment for a free media.
- **Georgia:** The Supreme Court sought to publish surveillance statistics quarterly to ensure transparency and accountability of law enforcement activities.

Human rights protections

Commitments aimed at guaranteeing protection against human rights violations are also scarce. Seventeen commitments seeking to strengthen human rights institutions, monitor and comply with recommendations from international human rights conventions, and protect activists, journalists, and human rights defenders from harassment were found. Some countries with these types of commitments are Uruguay, Mexico, Azerbaijan, and Cote d’Ivoire.

Examples of commitments on human rights protection:

- **Uruguay:** The government created consultation mechanisms to engage civil society in monitoring the government’s compliance with human rights conventions aimed at protecting minority groups.
- **Mexico:** The country sought to publish and produce data on public resources allocated to protect journalists and activists, as well as results from government activities and efforts to protect activists and journalists.

State-civil society relations

Most of the civic space commitments in OGP action plans concerned state-CSO relations. These types of commitments establish formal frameworks to enable citizens and civil society organizations to organize themselves and exert influence over issues of public interest.

BOX 3: CONTINUOUS RECOGNITION OF CIVIC SPACE

There is a consistent group of countries that make commitments related to civic space. Eight countries account for a significant number of the civic-space-related commitments in OGP. Countries such as Bulgaria, Macedonia, Serbia, and Ukraine have consistently included commitments on freedom of association, and the legal operating environment of civil society organizations in all of their OGP action plans.

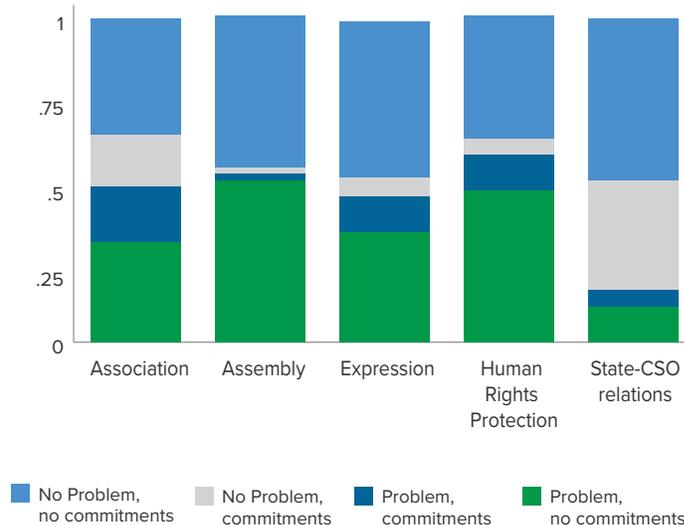
- Bulgaria has focused on CSO development from different angles—from amendments to its Non-Profit Legal Entities Act, to setting up a Council for the development of the sector, to regulating financing organizations.
- Over the span of two action plans, Ukraine has incorporated six different commitments. These include drafting a law on peaceful assemblies, introducing legislation to facilitate procedures to establish community associations and safeguards for their operations, and amending cabinet resolutions on public consultations and civil society engagement.
- Macedonia, with eight commitments over three action plan cycles, focuses primarily on building a strategy and regulations for state-civil society cooperation. One of its most recent commitments acknowledges the key role of non-governmental actors in supporting government service delivery. It seeks to develop a favorable legal environment for organizations and government to establish contracts on social service delivery.
- Serbia’s approach, with seven commitments across two OGP action plans, has focused broadly on a national strategy for enabling CSOs. Although the strategy is a comprehensive framework, additional commitments deal with CSO accountability, and reporting on expenditures and allocations they receive from public funds.

Action plans rarely match civic space problems

Half of OGP countries face problems guaranteeing freedom of assembly and protecting human rights defenders. Excessive use of force, restrictions on peaceful assembly, and harassment of journalists and activists are the most common problems OGP countries face. However, they are not using OGP and the action plan process to address those issues. There are few civic-space-related commitments related to freedom of assembly and human rights protections.

Figure 5 shows the relationship between problems and civic space commitments in OGP countries. There is a clear gap, highlighted in green between problem areas with no commitments and non-problematic areas with commitments.

Figure 5. Match between civic space problems and commitments



The biggest gap between need and commitment (in green) is in promoting and protecting Freedom of Assembly. Protecting human rights defenders and journalists comes in second, followed closely by Freedom of Expression and Freedom of Association. The reverse is true for Freedom of Expression, where the proportion of commitments exceeds the need.

The broad finding of incongruity has strong implications for OGP. The implications for each country category in figure 5 is discussed below:

- **Need commitments [Green]**—This group would benefit from a variety of OGP services in order to get civic space commitments into the action plan. The critical time period is during action plan formation and would include technical support as well as support to get the correct civil society participants into the room.
- **Need support [Navy]**—This group of countries has demonstrated that they are interested in improving a relevant domain of civic space in their OGP action plan. To advance civic space, this group will need the support of the OGP community, including the monitoring and implementation

support of the Independent Reporting Mechanism and Support Unit.

- **The committed [Grey]**—This subset of countries is working to address systems with few documented problems. This energy can be used in OGP to enhance international sharing and peer inspiration.

- **Potential champions [Blue]**—This subset of countries has generally good systems to protect civic space, but is not currently using their OGP action plan to promote these principles. Channels outside of the OGP action plan, such as peer exchange and support for colleagues above may be the most productive channel for their participation.

WHEN TRANSPARENCY AND CIVIC SPACE COLLIDE

In the name of transparency and anti-corruption measures, some commitments are potential threats to the operating environment of CSOs. Such is the case in the United Kingdom (UK) and Ukraine.

The UK's 2013–15 national action plan included a commitment for an anti-corruption strategy. Part of the strategy included “transparency in the lobbying process” the “Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.” The act was controversial trade unions were concerned it would curtail campaigning efforts, and give the government access to membership records, while failing to tackle secrecy in the lobbying industry.²⁵ The UK's IRM Progress Report from stakeholders.²⁶

In response to the United Kingdom's “Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act,” the UN Special Rapporteur on the rights to freedom of peaceful assembly and association stated:

the work of some of these [civil society] organisations is political by definition, which is protected by the international covenant on civil and political rights. This is, in fact, part of the reason they constitute such a crucial component of a free and democratic society, for engaging in political activity should not and must never be left to politicians and political parties alone. Civil society engagement in political activities promotes and influences focus on issues, principles and ideology, rather than seeking political power. Independent civil society is one of the best vehicles we have for dialogue, pluralism, tolerance and broad mindedness. It is a prerequisite for a legitimate democracy. In the UK, civil society groups perform a vital function by promoting political participation, undertaking voter education, campaigning for good governance reforms and providing vehicles for the expression of different interests. They also act as platforms that cut across ethnic, linguistic and other barriers, and catalyse public debate on issues that affect them. Shutting down this debate wholesale does nothing to advance democracy. It only threatens to indelibly mar future elections with the stain of silenced voices.²⁷

In Ukraine, there has been pushback on a recent amendment to an “e-declaration law” that purportedly targets anti-corruption organizations. The amendment imposes burdensome reporting requirements and excessive oversight.²⁸ Ukraine's current action plan (2016-18) includes a commitment “Introduction of the system for filing and publication of declarations of entities authorised to perform the functions of national or local government, in accordance with the Law of Ukraine, ‘On the prevention of corruption’” It goes on to describe the activities as: “Filing of declarations of the subjects to be declared as specified in article 3 of the Law of Ukraine, ‘On the prevention of corruption.’” At this point, an IRM assessment of this action plan is pending, as it is unclear whether the amendment to the law on e-declarations is directly linked to the commitment in the action plan. Nonetheless, the commitment does reference an electronic filing system for declarations, and the questioned amendment was pursued in light of anti-corruption efforts that the commitment cites as the overarching aim.

Fortunately, universally endorsed guidance exists to help policy reforms achieve their goals without infringing on free association. The International Covenant on Civil and Political Rights (1966) sets standards for legal frameworks on freedom of association:

1. Restrictions on CSOs be explicit in the law—the language needs to be precise. A CSO must be able to know whether its conduct would violate the law.
2. Restrictions are limited to exceptions under international law: protection of national security, public safety, public order, public health, and the protection of the rights and freedoms of others. Where national security is construed to protect a nation's existence or independence.

For specific guidance on application of these principles please refer to the open government guide to an enabling environment for civil society organizations prepared by the International Center for Not-for-Profit Law (ICNL).

3. Looking ahead: Collective action on civic space

Based on the analysis in this paper, five main goals to improve civic space within OGP have been conceived:

1. **Do no harm:** Action plan commitments should not introduce undue burdens and restrictions on civic space.
2. Increase **volume:** OGP needs more civic space commitments.
3. Improve **scope:** Commitments should cover the breadth of civic space problems, including emerging issues in the digital realm.
4. Find the right **fit:** OGP needs more civic space commitments that match a country's problems.
5. Aim for **net impact:** OGP should measure its impact in part on whether it is contributing to more civic space in the country through collaborative dialogue.

Short and medium-term activities that can be completed to achieve these five goals and thereby support civic space efforts through OGP include:

Do no harm

- **Tool development:** Expert organizations, such as CIVICUS and ICNL could develop analytical tools or provide technical assistance to OGP governments and civil society organizations to spot potentially problematic transparency commitments quickly.
- **Country support:** Expert organizations could deploy these tools in select countries in coordination with the OGP Support Unit and at OGP global and regional events through a series of workshops and specific interventions in particular action plans. OGP Support Unit can help civil society and governments developing action plans to connect with these relevant experts to better inform commitment design.

Volume

- **Lead by example:** OGP Steering Committee members should lead by example, integrating commitments into their action plans or providing technical leadership where civic space falls outside of the scope of their action plan.

- **Inspire others:** Further, Steering Committee members should publicly encourage other countries to include commitments into their action plans.
- **Forge partnerships:** OGP should encourage and seek stronger partnerships with human rights organizations, human rights defenders, and activists to leverage action plans in favor of civic space commitments in the key problem areas. Governments and civil society actors in OGP multi-stakeholder forums in their countries should actively include these new groups.
- **Set the agenda:** Civil society organizations already involved with OGP in their countries should advocate for more civic space commitments.
- **Build on expertise:** A good starting point to introduce civic-space-related commitments in OGP action plans is the ICNL civic space commitments guide published alongside this paper. The guide aims to provide civil society, governments, and OGP staff ideas to draft commitments that streamline the establishment and functioning of civil society organizations.
- **Take stock:** During the co-creation process, stakeholders should use the CIVICUS Monitor to map the type of problems their country has. Scoping the type of problems will help stakeholders find opportunities or areas where commitments in the OGP action plans could help highlight or initiate dialogue with government on key civic space problem areas in the country.

Scope

- **Close the gaps:** In order to increase awareness, inclusion, and, ultimately, completion of a wider range of commitments, members of the Support Unit and Steering Committee should seek out partnerships with international networks or NGOs with strong national presence in OGP countries and technical expertise in civic space (including but not limited to organizations such as CIVICUS, Oxfam, or Human Rights Watch). These would presumably help get commitments into action plans and help implementation, particularly in the domains with fewer commitments relative to concerns.
- **Address OGP's assembly problem:** With regard to peaceful assembly, which is an acute problem in OGP, OGP countries should consider including commitments in their actions plans

that incorporate and implement guidelines for freedom of peaceful assembly, such as those developed by the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (ODIHR).²⁹

- **Tackle emerging issues:** More work is needed to bring in emerging issues, especially around digital rights, surveillance, and big data as it pertains to civic space. OGP governments and civil society developing action plans could partner with organizations working on these issues such as Tactical Tech, Access Now, among others.

Fit

- **Do a national diagnostic:** Building on existing analyses (including IRM reports) and the knowledge of domestic actors, the OGP Support Unit and international partners can help identify the key problems in the country as they relate to civic space, and work with national OGP multi-stakeholder forums to prioritize reforms.
- **Engage relevant agencies:** Following on this, each country can include high-impact commitments to improve their civic space. In order to have feasible, but ambitious commitments, national forums will need to include the relevant national actors and agencies tasked with regulating and promoting civic activity.

- **Align international resource and programmatic support:** Donors should consider allocating specific funding for relevant civic space commitments in OGP action plans. This includes the World Bank OGP Trust Fund, which supports World Bank client countries and local entities that participate in OGP, or intend to become eligible to participate in OGP. International partners working on civic space should prioritize programmatic support to help national actors design and implement country-appropriate commitments.
- **Seek international recognition:** Global leaders, donors and partners should take special steps to publicly celebrate innovative commitments and accomplishments in action plans that promote civic space. Further, civil society could work with allies in business and media to cast a spotlight on action related to protection of civic space. OGP partner The B Team has been working with business leaders to engage in these conversations.

Net impact

- **Expand research:** The Support Unit, research partners (especially through the OGP Trust Fund research window), and academics should prioritize research on the overall impact of OGP national processes in countries with contested civic space. In particular, carry out analyses in countries where OGP participation might be used as a cover or distraction to shrink civic space.

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