Responding to the Contested Space for Civil Society

Paper based on a Learning Journey in 2018-19[1]

Members of the Social Accountability Monitoring Committee, Gairo District, Tanzania © Foundation for Civil Society

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What? A general trend of contested space for civil society

Around the world – including in established democracies – we observe a contestation of the civic space. Fundamental freedoms of expression, association and peaceful assembly are repeatedly challenged. Hence the scope for civil society to operate and engage in policy processes and as a watchdog, without fear of official disapproval, violence and judicial pursuits, has narrowed in the past two decades. The CIVICUS Monitor reports that in 2019, 40% of the world's population now live in countries with repressed civic space[2].

The types and patterns of challenges faced by civil society organisations can be clustered under four broad categories[3], which shall help us informing adapted responses towards a more enabling environment. Although a sort of "playbook" is clearly visible, the extent of these restrictions vary across countries, also depending on the types of organisation concerned.

1) Regulatory environment: Changes in legislation affect CSOs. Restrictive legislation and legislative interpretation as well as administrative hurdles typically regarding recognition and registration of NGOs; criminal laws regarding defamation disproportionately restricting freedom of expression; entry restrictions to international NGOs or working permits for international staff, etc.

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1   The joint learning journey organized by the DDLG and FCHR networks involved a working group including staff from SENAP, ALAK, SASIA, IP, FCHR and DDLG.
2   https://monitor.civicus.org/PeoplePowerUnderAttack2019/

3   See European Union Agency for Fundamental Rights, 2017, Challenges facing civil society organisations working on human rights in the EU. These categories also apply globally with at times more acute degrees of challenges.

2) Funding and Accountability: While CSOs should be able to seek funding from public and private sources as well as generate income from their activities, they increasingly face **hurdles to accessing and ensuring sustainable finances**. Changes in tax laws, new requirements for detailed data concerning their donors, cumbersome reporting and accounting rules put additional compliance burden on CSOs. In some regions, public funding to CSOs shifts away from watchdog, advocacy and litigation functions concentrating on funding service provision. In other instances public funding is simply discontinued. Moreover, measures initially meant to fight against money laundering and organised crime, such as asset freezing or seizure and financial controls can also inadequately be targeted as a blanked strategy towards CSOs. Finally, over-reliance on single sources of funding makes CSOs vulnerable to shifting priorities of their main donors.

3) Right to participation[4]**:** Who participates and on what terms? **Civil society advocating on rights-based and development agendas is increasingly disregarded by decision-makers** and denied the opportunity to provide input into law- and policy making. Where access to decision-making processes occurs, it is often ill-timed and limited to mere information or consultation with a lack of transparency regarding how input is analyzed and taken into account. Public officials lack skills and methods to involve stakeholders in meaningful and effective ways. Resistance to inclusive democratic dialogue is also observed online with internet shutdowns, disinformation and control of the public debate. Other times, government-sponsored NGOs fill the space of seemingly inclusive policy making processes, while more critical stakeholders are kept away from the process.

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4   The right to participation in public affairs is recognised in Article 25 of the International Covenant on Civic and Political Rights

At the same time, the civic space since the early part of the 21th century is increasingly occupied by emerging illiberal groups (including xenophobic and sexist) or exclusionary faith-based groups. These mobilizations are partly nurtured by anxiety and respond to the inequalities and volatilities in the global economy. They also reflect the (re-)emergence of different worldviews and values and the legitimacy crisis of democratic institutions.

4) Safe space: Increasingly civil society and the media are the object of negative public discourse and smear campaigns, being delegitimized as "paid political activists" or "anti-state agents" pursuing alien interests. In more and more contexts, civil society also faces threats and intimidation up to physical attacks, enforced disappearances and murder. The failure of states to protect and investigate promptly and impartially violations provides impunity for those attacking Human Rights Defenders and encourages self-censorship.

Affecting whom?

The civic space has been shrinking for some groups, depending on the role and stances taken[5]. The public discourse delegitimizing rights-based advocacy and watchdog CSOs often remains hospitable towards CSOs which keep in the realm of providing basic services without exercising pressure or questioning public policy. Self-help in directly providing goods and services to those in need remains a valued contribution to development.

Among the most contentious issues we count land rights and environmental protection, extractive industries governance, labour rights, minority and indigenous groups rights, women's and LBGTQI rights, anti-corruption and more generally civil and political rights.

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5   Hossein et al. in IDS Working Paper no515, 2018, argue that civic space has changed more than shrunk

Foreign-funded formal NGOs and international NGOs in developing and transitioning countries as well as social movements and grass-roots organisations of smallholder farmers, minority groups, women or workers are mostly restricted from operating, directly putting a strain on the effectiveness of aid.

Finally, it is important to recognize that in a global context of democratic erosion, other critical actors of democratic accountability are under pressure. The judiciary, independent state institutions (f.eg. anti-corruption agencies, etc) and the media are similarly put into question and struggle to preserve their independence from political and business powers.

A representative of the Civil Society Organisation eSigurnost (information security) speaking at a public event of the Programme For an Active Civil Society Together, December 2019, Serbia. © SDC

Why? Determinants

Motivations behind the hurdles put on civil society vary, depending among others on the recent history of a country, the political settlement in place, advances of digital communication and the international leverage and influence.

» **Competing worldviews and values**, challenging the paradigms of Human Rights, Democracy and how to achieve economic, social and environmental progress. The influence of China, Russia and Turkey among others offer appealing models for what is, at times, perceived as a more effective way towards growth. In a certain conception of governance, governments argue that they are elected and only legitimate to act on behalf of citizens, fundamentally putting the right to participation into question.

» **Rapid growth of the digital public sphere** and its multiplier effect on the outreach of critical voices, contestation and accountability claims, contribute to governments backfiring by restricting access and freedom of expression online.

» **Elites aiming at consolidating political power** easily calls for suppression of criticism and competition. Especially in contexts of political transition with unsettled or shifting settlements, governments cannot count on wide political support and trust and tend to take bold stances towards those with different agendas, including opposition forces, civil society and the media.

» **Business interests and their alliance with political elites** for defending particularly lucrative operations, especially in matters like the extraction of natural resources, access to land, environmental protection and corporate taxation.

» **In post-conflict and divided societies freedom of expression and association can be perceived as an open door to divisive discourses and hate speech**, fueling new waves of (ethnic) violence. Concerns of appeasement and social cohesion justify, in the eyes of certain leaders, a tide grip on civil society and freedom of expression in general.

» Further concerns about organisations registered as charities being actually part of criminal networks serving money laundering and terrorism financing purposes are sometimes among the motivations behind restrictive laws and tide controls over the NGO sector.

» **A number of endogenous factors and paradoxes proper to the NGO sector** provide further arguments to delegitimizing discourses. A strong donor-dependency for financing their operations has a skewing effect on the accountability of CSOs. Weak constituencies for CSOs operating based in capital cities and disconnected from the people they claim to represent; or, inefficiencies and abuses count among this criticism and should be carefully assessed in future engagement with civil society.

So what? Consequences

Impacts on human rights and development outcomes

In 2016, the United Nations High Commissioner for Human Rights noted that civic space was 'not optional' under international human rights law, but that it was also necessary for societies to work out their differences peaceably, for citizens to participate in public life, to widen contributions to public policymaking, and even to cooperate with business to defend basic freedoms.[6]

The problem of civic space is one in which civic and political rights are closely intertwined with economic, social and cultural rights, to livelihoods and land, jobs, food security, recognition and dignity, personal security, education, health, and shelter. As a consequence, shrinking civic space adversely impacts development outcomes to do with most of the Sustainable Development Goals[7]. Despite big differences in how this plays out in different political systems, shrinking civic space is overall highly likely to halt or reverse progress towards reducing inequality, ensuring inclusion and improving sustainability of development[8]. This is particularly problematic for excluded and marginalized groups in society, who will lose protection, resources and voice. It ultimately works against the Agenda 2030's overarching principle of "leaving no one behind".

Operational consequences

Restrictions on the civic space also bear direct operational consequences for international development agencies. It has direct hindering effects on possible partnerships and modalities of work in several priority countries of SDC. Lengthy negotiations with governments delay development programmes as well as their flexibility in addressing community priorities. When NGOs are de-registered, programmes are discontinued. These lead to tensions and degraded bilateral relationships with partner governments.

Some CSOs feel the need to figure out different strategies to maintain relationships with policy-makers at different levels. They are pulled into closer relationships with political elites in order to continue to operate. In certain contexts this might foster a meaningful and pragmatic dialogue able to elicit policy response, while at the same time the risk of cooptation increases. Relationships between civil society organisations are also at stake as self-censorship and mistrust emerge hampering cooperation and joint action.

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6   SDC, 2019, Donor responses and tools for responding to shrinking space for civil society: a desk study

7   See Act alliance, 2019, Development Needs civil society – The implications of civic space for the Sustainable Development Goals

8   ibid

Now what? Formulating Responses

All discussions related to coping strategies for donors highlighted the need to craft a multidimensional response to this multidimensional problem. The response measures are best classified into four different dimensions as proposed below[9].

1) Policy and strategic efforts: **Use bilateral, multilateral or regional policy channels to engage with governments in favor of an enabling environment for civil society**. A convincing narrative shall show evidence of the positive role played by civil society for sustainable development including examples in the same country. When arbitrating between different foreign policy interests, strive towards policy coherence and coordination.

Make full use of political instruments including International Human Rights Mechanisms. Regional organisations such as the Council of Europe, the OSCE, the African Union or the Organisation of American States are key partners to exert international pressure and advance the visibility of the issue. The Global Partnership for Effective Development Cooperation recognised civil society as a development actor in their own right[10]. Its Monitoring Framework measures "the extent to which governments and development partners contribute to an enabling environment for CSOs". It thus offers a national and international platform to dialogue on the issue. The OECD-DAC and the UN are further relevant global platforms taking a normative stance in favor of civic space.

2) Operational and programmatic responses: **Adapt civic engagement programming** as the context evolves, at times lowering expectations and **recognizing that preserving the civic space (a non-event) is a result in itself**. Put emphasis on citizenship education and CSO's constituency building to preserve and reinforce representative and well rooted CSOs. Moreover, evidence-based advocacy skills and robust CSO internal governance contribute to (restoring) legitimacy of civil society. Programmes shall put more emphasis on the resilience of CSOs and civic movements (risk analysis and management, data-, legal- and emergency protection for human rights defenders[11]). Increasingly online civic space requires dedicated attention, considering its outreach and potential in specific contexts as a channel to foster citizenship mobilization. However research[12] and observed instances of manipulation increasingly call for greater realism and tampering expectations about this evolving field and its ability in creating space for deliberative dialogue and for public accountability.

A wider systemic perspective of accountability also points to other important institutions to consider in

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9   Under each dimension you find a non-exhaustive view of possible responses.

10   The Task Team CSO Development Effectiveness and Enabling Environment is a multi-stakeholder coalition engaging with the GPEDC on this area.

11   In especially risky situations for Human Rights Defenders following organisations may provide individual support: Front Line Defenders; OMCT; PBI ; Protect Defenders.eu; Access Now. The FDFA has guidelines for the protection of Human Rights Defenders : https://www.eda.admin.ch/eda/fr/dfae/services-publications/publications/alle-publikationen.html/content/publikationen/fr/eda/menschenrechte-humanitaeres-migration/Leitlinien-zum-Schutz-von-HRD.html

12   Mc Gee et al., 2018, Appropriating technology for accountability: messages from Making all Voices count

programming including the **media, independent state institutions** (such as national Human Rights Institutions or the Auditor General) as well as the **judiciary and parliaments**. These often represent natural allies to civil society for seeking accountability of the bureaucracy. Continuing working with executives at national or sub-national levels to support their capacities to engage with civil society and increase accountability also remains key in many contexts in order to avoid a mismatch between increasing demand for participation and low capacity and understanding to respond to it.

Finally, modalities of engagement with the civil society are a key consideration. Core funding as opposed to project-funding enables CSOs to follow their proper strategic direction and adapt to fast changing circumstances, maintaining reporting requirements leaner and fostering account-ability towards constituencies. An evolving civil society also calls SDC to explore ways to better engage with other types of civil society groups beyond classic NGOs including civic movements, social enterprises, academia, Human Rights Defenders in exile and arts.

The role of International NGOs shall increasingly evolve towards an enabler for domestic civil society to develop its potential. INGOs being donors in many instances, requires them recognizing and responding to the contested space for civil society.

3) Alliance-building: A key element of re-silience and effective voice for civil society is the building of alliances and networks and wider multi-stakeholder initiatives at the national, regional and international levels. SDC shall encourage civil society to pool forces for advocacy and foster regional and international networks. In certain contexts this requires for NGOs overcoming competition for funding and building sufficient trust to each other, especially in view of a mounting fringe of illiberal civil society.

4) Evidence-generation and monitoring: Finally, for evidence-based advocacy in favor of an enabling environment for civil society, the international community and CSOs themselves need knowledge on trends and concrete challenges posed to the civic space in single countries and an understanding of particularly sensitive topics. A certain number of international initiatives provide key information to keep track of the issue, including for example CIVICUS, the International Center for Non-Profit Law, or more broadly The Global State of Democracy Indices compiled by International IDEA. These initiatives are also costly and require core funding to sustain.

Village participatory planning process, Savannakhet, Lao PDR. 2012 © SDC / Nithsa Vongphanakhone