



Community
of Democracies

Best practice in
Community of Democracies' member
states' engagement with,
and protection of, civil society

Report

September 2018



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Introduction

How can democratic governments best protect and engage civil society? Civil society space is currently under threat in many countries around the world, as governments are increasingly adopting restrictive laws and policies that constrain civil society organization (CSO) operations, while also employing new tactics of harassment, intimidation, and violence against organizations (Rutzen 2015; Carothers 2017). For instance, Bangladesh requires that organizations have government approval to receive foreign funds, while Vietnam prohibits foreign NGOs from engaging in activities considered to be irrelevant to the country's interests, security, and national unity. This change does not bode well for the global gains that have been achieved in civic participation and democratization since the end of the Cold War. However, in the face of this trend, many democratic governments have mechanisms in place to protect, support, promote, and engage civil society, uphold fundamental freedoms, and safeguard basic human rights. This report highlights good examples of protection and engagement mechanisms and practices in government-civil society relationships in the member states of the Community of Democracies Governing Council.

The report begins with a definition of the key concept of this report – *civil society* – and proceeds with a discussion of civil society's role in a democratic society, reviewing the functions of civil society in a democracy. The second section discusses the report's methodology. The third and fourth sections present evidence about best practice in how the member states of the Community of Democracies Governing Council protect and engage civil society. The report concludes with summary reflections as well as recommendations on what states can do to protect civil society space.

Civil society's role in a democracy

“Civil society” is a broad concept, and the expression “civil society organizations” covers many types of organizations, such as informal/grassroots groups, formal non-governmental organizations, labor organizations, and professional groups (Edwards 2011). Civil society is defined as the realm outside of state, market, and family that involves “citizens acting collectively in the public sphere to express their interests, passions, preference, and ideas to exchange information, to achieve collective goals, to make demands on the state, to improve the structure and functioning of the state, and to hold state officials accountable” (Diamond 1999, p. 221). South Africa’s 2017 national report for the Human Rights Council’s Universal Periodic Review (UPR) states that civil society “operat[es] outside of the State and independent of the market, [and]...is often referred to as the third sector. CSOs are varied in their character and in their purpose. However, there is a common thread that holds them together, which is that they exist in public life to promote public good” (p. 17).

As that same report points out, “the strength of a country’s civil society is often used as a measure to determine the strength of its democracy” (p. 17). “Democracy” entails a political entity characterized by participation and contestation, wherein leaders are awarded political authority through elections that are free, fair, and capable of being won by an opposition. In a democracy, citizens have political equality, meaning that ordinary citizens have the right and ability to choose who governs them, and the government exists to benefit the interests of the population (Acerola and Robinson 2006; Bratton and van de Walle 1997; Przeworski et al 2000; Dahl 1971). Civil society functions to aggregate and collectively convey citizen preferences to the state, hold government accountable, provide local public goods, and enhance social capital (Putnam 1995; Edwards 2011).

The Community of Democracies (CoD) recognizes the important role that civil society plays in democratic societies. An active, pluralistic, independent and vibrant civil society is an essential element in a strong democracy. Civil society is the primary vehicle through which people can organize themselves, convey their interests, raise public concern about abuses of power, exercise their rights and take part in decision making processes in their countries, that aim at social and economic development, thus ensuring more stable and strengthened democracies. The *Warsaw Declaration*, the Community’s founding document adopted at its 2000 first gathering in Poland, recognizes the universality of democratic values and commits to respect and uphold 19 core democratic principles, including “the promotion and protection of all human rights – civil, cultural, economic, political and social, as set forth in the Universal Declaration of Human Rights and other relevant human rights instruments”. The CoD’s belief in the valuable role played by civil so-

ciety in democratic consolidation and in the institutionalization of universal human rights and fundamental freedoms was further reaffirmed in the *Civil Society Standards*, adopted by its Governing Council in March 2016¹. The CoD facilitates dialogue with civil society through the Civil Society Pillar, consisting of a Civil Society Assembly composed of member civil society organizations of the International Steering Committee (ISC), Civil Society Focal Points in Community of Democracies Governing Council member states, and individual members of the Advisory Council.

Civil society is a fundamental building block of democracy, essential to its functioning and sustainability. CSOs enable various groups of people (particularly vulnerable and marginalized groups) to claim their rights and help to protect those rights, facilitate citizen participation in public life, provide information and expertise, ensure that policies are inclusive and effective and that political decisions are informed and representative, contribute to social cohesion, highlight policy gaps, and help deliver services (UNGA HRC 2016 & 2017). A 2017 report produced for the Community of Democracies by Partners Global, outlined 10 roles for CSOs in development, though these extend to democracy as well: watchdog, advocate, service provider, expert, capacity builder, idea incubator, representative, citizenship champion, solidarity supporter, and definer of standards. CSOs “can be powerful agents for change as partners in the delivery of better services, enabling social inclusion and making governments more effective, accountable, and transparent” (AusAID 2012). Responses to a survey collected for this study (see the next section of this report) highlighted five key roles that CSOs play in a democracy:

- **Monitoring role:** Act as a watchdog in relation to government activities (including programs and policies); provide checks and balances to government power; speak truth to power; monitor compliance with international agreements; serve as an early warning mechanism.
- **Participation role:** Engage in consultation processes for legislation and strategies; cooperate with public administration on advisory and opinion making bodies to create and implement public policies; participate in decision-making processes.
- **Expertise and information role:** Provide alternatives to prevailing practices of governance; offer views and positions on different topics; provide expertise and analysis.

¹ See https://community-democracies.org/?page_id=681

- *Activity role*: Provide services and cultural activities; provide a sense of community and civic self-help.
- *Representative role*: Engage in advocacy; channel citizen voices, views, concerns, and needs into government decision-making; promote human rights; represent and work in solidarity with the most vulnerable in society.

While civil society is a fundamental building block of democracy and critical to the functioning of any democracy, civil society cannot function unless government provides the conditions to allow it to do so. This is because government, as the sovereign legal authority over a given territory, creates the rules or the institutional environment for civil society to operate via a legal framework. The government further creates the enabling conditions for CSOs to carry out their activities through implementation of the legal framework as well as through government behaviour towards, and attitudes about, civil society (Dupuy, Ron, and Prakash 2015, 2016). Thus, in order to understand whether and how civil society contributes to democracy, we need to know how democracies empower civil society (or fail to) via the legal framework and government actions towards CSOs.

Best practice for protection of, and engagement with, civil society

General trends in civil society space in CoD Governing Council member states

Recent quantitative data for measures of the quality of civil society space and the protection of fundamental freedoms show that Community of Democracies Governing Council member states generally protect and engage CSOs. Figure 1 shows trends in the degree to which all Governing Council member states control entry and exit of CSOs, with the red line indicating the average score for all the member states while the dots indicate individual country scores. Figure 2 shows the degree to which all member states repress CSOs. Figures 3 and 4 depict the quality of CSO participation in all member states, with Figure 3 showing whether women are able to participate in CSOs and Figure 4 demonstrating the degree to which all member states consult with CSOs. However, member states do less well in consulting CSOs and in guaranteeing full protection of the freedoms of association and assembly, as shown in Figures 4 and 5². It should be noted that nearly all of the member states have legal measures in place that guarantee the freedoms of association, assembly, and expression.

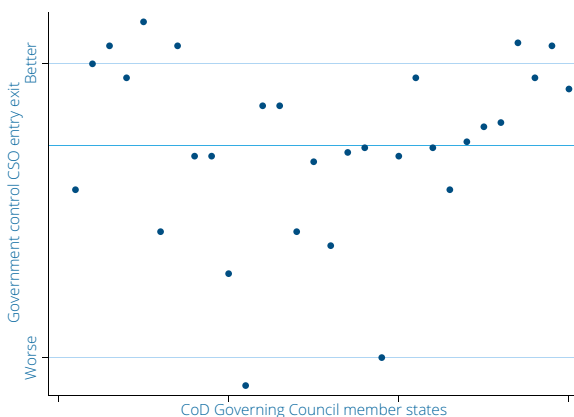


Figure 1: Degree to which government controls entry and exit of CSOs into public life

² The data source for Figures 1 to 4 is the Variety of Democracies dataset. The data source for Figure 5 is the International IDEA Global State of Democracy Indices dataset. The red line in each graph shows the mean value for the variable depicted.



Figure 2: Degree to which government attempts to repress civil society

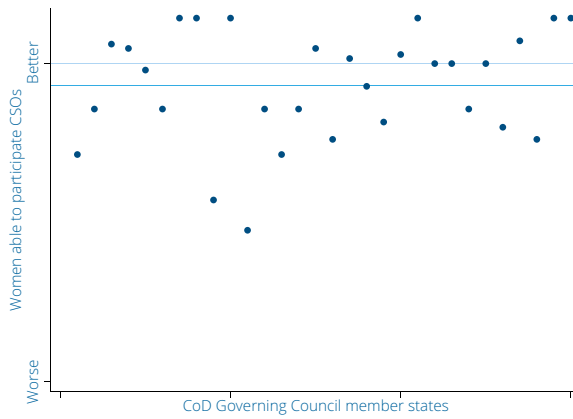


Figure 3: Degree to which women are prevented from participating in CSOs



Figure 4: Government consultation with civil society organizations on relevant policies



Figure 5: Freedoms of association and assembly for political and civil groups

Other measures of the quality of civil society space in Community of Democracies Governing Council member states support the mixed picture depicted in Figures 1 to 5. The Civicus Monitor evaluates nine countries of the Governing Council as having “open” civil society space, ten as having “narrowed” space, nine as having “obstructed” space, and one as having “repressed” space³. Country reports from the Bureau of Democracy, Human Rights and Labor of the United States Department of State reported that international and domestic human rights organizations are able to operate without government restriction in nearly all the member states and are able to carry out investigations and publish their findings. Moreover, many of the member states’ governments are cooperative and responsive to the views of these groups.

As seen in Table 1, the survey responses paint a generally optimistic picture of government-civil society relations in the Governing Council member states.

Table 1: Survey responses about government-civil society relations⁴

QUESTION	RESPONSES
How would you generally characterize the attitudes and behaviour of Community of Democracies Governing Council member states towards CSOs?	80% of CSO and 80% of government respondents felt member states generally have a somewhat positive view on, and behaviour towards, CSOs.
Has there been an overall change in member states’ relations with CSOs in the past two years?	43% of CSO respondents felt that member states’ attitudes and behaviour towards CSOs has generally become more negative, while 57% felt that there has been no change. 60% of government respondents felt that government’s behaviour has become more positive, and 40% felt attitudes had become more positive.

³ <https://monitor.civicus.org/>

⁴ See Appendix 1 for more information about the methodology of the study, including the survey that was conducted to gather additional data for this study.

Protection of civil society

Definition and measurement

As discussed in the methodology section (see Appendix 1), protection of civil society is measured in two ways. The first is the *de jure* protection of civil society by government through the legal framework of the six basic freedoms and rights that civil society needs to operate: the freedoms of association, assembly, and expression, and the rights to operate without state interference, to communicate and cooperate, and to seek and secure resources (ICNL no date; AidWatch 2014). This means that the legal framework enables organizations to form and operate without cumbersome restrictions, including when engaging with government. The second is *de facto* government behaviour and practice towards CSOs – that is, whether the government actually respects and upholds the legal framework for civil society, or instead violates the rights of organizations and activists, preventing their functioning through harassment, intimidation, or violence.

Legal frameworks for CSOs generally regulate three domains of activity: 1) *entry into, and exit from, the sector*; 2) *operations*; and 3) *resource base*. Entry and exit requirements govern organization formation and cessation, registration, and pre-activity approvals. They also include requirements about who can establish an organization and other registration rules; whether government must be notified or approve of an organization's activities, programs, or projects prior their commencement; and who can dissolve an organization. Operations requirements govern the types of activities organizations can, and must do, to operate within their organizational category. This includes whether organizations can meet without restriction and whether government is allowed to attend organization meetings; the specific issue areas, social groups, and regions that organizations are allowed to work on and with; hiring of staff; reporting to government on activities; and rules for interactions with other organizations as well as with government. Finally, resource base requirements govern how organizations can generate and use financial resources. This includes rules about whether organizations can receive funds from other countries, organizations, and individuals domestically and internationally; whether they can engage in fundraising; whether there are limits to the amounts and types of funding they can receive; whether there is government oversight and control of funding flows; requirements about how funding is to be received and used; and requirements about paying taxes and reporting on funds.

Protective and enabling legal frameworks

Based on a review of each country's legal framework and secondary documents, the member states that are evaluated as having legal frameworks that best protect and enable civil society space are: Cape Verde, Chile, Estonia, Finland, Italy, Japan, Lithuania, Mongolia, Norway, Philippines, Portugal, Romania, South Korea, Sweden, the United States, Uruguay, and the United Kingdom. In particular, the Civicus Monitor notes that Estonia's legal framework governing the formation of organizations "has been praised as best practice". There is some variation between the states previously mentioned, in that some place light restrictions on the three domains of organization formation (Cape Verde, Finland, Philippines), operations (Japan, Lithuania, Mongolia, Sweden), and resources (Chile, Lithuania, Mongolia, Philippines, Sweden, Uruguay). The survey data supports these findings, with CSO respondents identifying these countries as having a legal framework in place that generally allows CSOs to operate freely, without cumbersome restrictions.

The remaining countries in the sample were evaluated as having moderately restrictive legal frameworks for civil society. The most dramatic developments in legal restrictions have occurred in Hungary and Poland, while there have been discussions about adopting new and negative legal restrictions in South Africa and Nigeria. Moderate legal restrictions on CSOs tend to fall into the following categories: 1) heightened and burdensome registration restrictions, including mandatory registration and strict requirements about who, and how many people, can form an organization; 2) restrictions on the purpose of an organization, and the types of social groups that CSOs can work with; 3) restrictions on engaging in political activities; 4) restrictions on organizational participation in government decision-making processes; 5) heightened and burdensome requirements for government approval of particular activities, and for activity reporting; 6) government control over, and approval of, the flow of funds to organizations; 7) reporting requirements for funding receipt and use; and 8) burdensome taxation requirements.

Specific examples of protective legal measures

In addition to these broad trends, several specific examples of best legal protection practice can be mentioned. First, three of the Governing Council member states have adopted legal mechanisms protecting human rights defenders, following a growing adherence

among states to this international norm⁵: Mali, Mexico, and Italy. Additional countries have legal measures in place that require government to cooperate with civil society, including requirements for establishing specific institutions to facilitate that cooperation. The International Center for Not-for-Profit Law (ICNL) notes that El Salvador's Municipal Code is aimed at "promot[ing] effective CSO engagement at the local level to address public policy priorities". Municipal governments are required to encourage citizen participation and address citizen concerns⁶. The Constitution of the Philippines mandates CSO participation in decision-making, and the country's Local Government Code of 1991 requires national agencies to consult with local government and NGOs in the planning of projects and programs (CODE-NGO 2016). Chile's Act No. 20500 on Associations and Civic Participation in Public Affairs requires local governments to establish advisory civil society councils.

De jure practices: Trends in government protection of civil society

A systematic review of data collected between 2015 and 2017 revealed that there were no reports of government harassment, intimidation, or violence towards CSOs and human rights defenders in Cape Verde, Canada, Estonia, Finland, Italy, Japan, Lithuania, Mali, Norway, Portugal, Sweden, the United Kingdom, and Uruguay. In other words, these states upheld organizational rights and freedoms of association, assembly, and expression.

In the states where negative government behaviour towards civil society were noted, this included the following practices: violent harassment and detention of protestors; systematic state monitoring of organizations and activists; impunity for government attacks on organizations and activists; negative discourse about, and stigmatization of, civil society and activists; discrimination by state security forces against organizations, including by the police; travel restrictions; legal harassment; raids by authorities; and intimidation and threats. It should be noted that negative government behaviour towards CSOs occurs even in states that have a protective and enabling civil society legal framework in place.

In the following 18 member states, the respective government was consistently open and responsive to human rights reporting during the time period of analysis: Argentina, Canada, Chile, Costa Rica, Estonia, Finland, Guatemala, India, Italy, Japan, Lithuania, Mali, Mongolia, Norway, Portugal, Sweden, the United Kingdom, and Uruguay. Nine states were somewhat or occasionally open and responsive to human rights reporting: Cape Verde, El

5 See the Model National Law on the Recognition and Protection of Human Rights Defenders developed by the International Service for Human Rights: <http://www.ishr.ch/news/model-law><http://www.ishr.ch/news/model-law>

6 <http://www.icnl.org/research/monitor/elsalvador.html>

Salvador, Mexico, Morocco, Nigeria, Philippines, South Korea, Romania, and South Africa⁷. Several UPR country reports describe how governments actively investigate complaints of human rights violations against journalists and activists, such as in El Salvador, Guatemala, India, and Lithuania. In some cases, these investigations have resulted in criminal trials or in the adoption of new protection measures. In particular, the Lithuanian government created an inter-institutional cooperation mechanism to better protect human rights defenders.

⁷ Based on data from the U.S. State Department.

Engagement of civil society

Definition and operationalization

This section reviews both *de jure* and *de facto* measures of government engagement with civil society: that is, the legal requirements for engagement as well as actual government engagement practices in the form of established institutions, mechanisms, and processes that facilitate cooperation, collaboration, interaction, and participation. Based on the evidence collected for this report, these requirements and practices can be grouped into the four basic categories below. These largely mirror the categorizations made in other reports, such as those by the ICNL (no date), International Service for Human Rights (2015), and the United Nations General Assembly Human Rights Council (UNGA HRC) (2016)⁸.

- Financial support mechanisms
- International institution mechanisms
- Formal engagement mechanisms
- Ad-hoc and informal mechanisms

Financial support mechanisms

CSOs generally require funding in order to operate, which they can generate in many ways, for instance through donations, membership fees, fundraising, and grants. In many countries, government is an important source of funding for civil society activities. Many of the CoD Governing Council member states provide some kind of financial support to CSOs, particularly to groups that provide services either domestically or internationally. In some cases, member states also fund CSO advocacy work and research activities.

⁸ The ICNL report outlined 8 ways in which public authorities have facilitated the development of civil society and its participation in policy-making: 1) policy documents for cooperation; 2) government offices for cooperation; 3) contact persons or department for CSOs at ministerial level; 4) contact person in the parliament; 5) councils for civil society development; 6) other cross-sectoral advisory bodies focusing on specific areas or issues; civil society funds/foundations; 7) codes/regulations on citizen participation. The ISRH report adds high level support and genuine understanding of the value of civil society. The UNGA HRC report adds the importance of having a political environment in place that recognizes the value of civil society and encourages its engagement.

Several states – for example, Canada, Finland, Norway, Romania, Sweden, the United States, and the United Kingdom – channel development and humanitarian assistance through local and international CSOs to help achieve those states’ foreign policy objectives. Sweden, Finland, and Canada have official policies and guidelines in place for civil society partnerships in international assistance and development policy, in order to enhance the effectiveness of government-civil society cooperation. Additionally, in 2014, Finland adopted a set of guidelines for how to protect and support human rights defenders around the world, and the United Kingdom Foreign and Commonwealth Office also has put in place Guidelines on Working With Human Rights Defenders, which are used by the UK’s diplomatic network. The Ministries of Foreign Affairs of several of these countries reportedly meet regularly with CSOs (c.f. Sweden’s 2015 UPR national report as well as Finland’s 2017 UPR national report).

Member states also provide funding to CSOs for domestic activities, including service delivery and advocacy work. In some cases, this appears to involve direct transfers in the form of government grants to CSOs. For instance, Chilean CSOs receive an estimated 70% of their funding from various levels of government for use on social welfare projects (Pousadela and Cruz 2016). A similar situation is found in Uruguay, where 60% of CSO funds come from government (Civicus 2015). The Mongolian Government has provided financial support to domestic CSOs to implement trainings for domestic violence perpetrators, and to CSOs working on promoting the interests of disabled persons (c.f. Mongolia’s 2015 UPR national report). In Romania, local governments also channel funding to domestic CSOs providing social services (USAID 2016a).

In other countries, special financial mechanisms exist to fund civil society activities (c.f. ICNL 2010). For example, the Estonian government has a National Foundation for Civil Society⁹ that funds a wide variety of activities, while in 2003, Hungary established the National Civil Fund¹⁰ to support the operational costs of CSOs. South Africa’s National Development Agency provides grants to CSOs working on poverty alleviation and organizational capacity building (USAID 2016b). Member state survey responses from Poland and Finland provided further evidence of government funding mechanisms for CSOs in those countries. This includes the Civic Initiatives Fund as well as the Civil Society Support and Development Fund in Poland. While government funding for CSOs has recently declined in Poland, the latest (2016) USAID CSO Sustainability Index report for Central and Eastern Europe and Eurasia notes that “all local governments [in Poland] provide funds to CSOs

9 <https://kysk.ee/nfcs>

10 <http://ceetrust.org/article/111/>

carrying out public tasks” (p. 182). In Finland, government funding for CSOs includes the Funding Centre for Social Welfare and Health Organizations (STEA), as well as separate government budget lines for women’s organizations in Finland. Finally, Chile created the Fund to Strengthen Public Interest Organizations to finance regional and national projects implemented by these groups.

International institution mechanisms

Several international institutions, treaties, and initiatives require member governments to provide avenues for CSOs to participate in regular reporting and decision-making processes. For example, each of the Governing Council member states have participated in the United Nations Human Rights Council Universal Periodic Review (UPR) process, wherein they report on specific actions and steps they have followed to fulfill their human rights obligations. Some of the national reports outline the process by which the state and CSOs prepare the national reports in consultation. For instance, El Salvador’s 2014 national report states that the government organized consultations with a broad range of CSOs, including LGBTI groups and organizations working with indigenous peoples, women, refugees, and disabled persons. Finland’s 2017 report describes an iterative process to prepare the country’s National Action Plan on Fundamental and Human Rights. This involved the Finnish government using suggestions it received from civil society groups to improve the country’s human rights performance, drafting the Action Plan, and then holding several consultation meetings with CSOs. Finally, the United Kingdom held a series of stakeholder and bilateral meetings in 2016 to engage civil society in preparing its UPR report.

In some countries, the consultative nature of the UPR process has resulted in the creation of formal engagement mechanisms and institutions. For example, the Costa Rican government created the Permanent Body for Consultation with Civil Society (EPCSC) to engage in dialogue with civil society in the UPR process. Hungary’s 2016 national report states that the government created an inter-ministerial Human Rights Working Group to observe implementation of the recommendations advanced in the UPR process, with over 50 CSOs serving as members of the group. Likewise, the Nigerian government convened a National Committee on Universal Periodic Review for its 2013 national report that included two civil society representatives, and Uruguay reported setting up a similar group in its 2014 UPR national report.

Another prominent example of government-civil society engagement within an international initiative is the Open Government Partnership (OGP), a multilateral initiative

aimed at enhancing government transparency and good governance¹¹. Participating countries (which include many of the Governing Council member states) are required to develop a country action plan through public consultation. In Canada, civil society groups called for the establishment of a permanent dialogue mechanism to co-develop the country's OGP action plan; this was finally adopted in January 2018 as a Forum that includes eight civil society and four government representatives¹². One of Estonia's national OGP commitments is to "increase the engagement capacity of state authorities and participation capacity of nongovernmental organizations in policy-making"¹³.

Formal engagement mechanisms

Several member states have formally established institutionalized mechanisms for regular government-civil society engagement, sometimes through legal provisions. These types of mechanisms facilitate regular contact between government and civil society. This includes the following types of arrangements, with member state examples in brackets:

- Participation requirements for, and mechanisms in, government decision-making at local or national levels, including as a part of decentralization processes [Argentina, Philippines, Italy, Guatemala]
- Civil society councils and bodies attached to local or national government units [Chile, Costa Rica]
- Government-established, multi-stakeholder consultative and advisory bodies consisting of civil society representatives [Costa Rica, El Salvador, Finland, India, Lithuania, Mongolia, Mali, Norway, Nigeria, Romania, Uruguay]
- Legislative groups for engaging civil society [Argentina, Mexico, Mongolia, United Kingdom]
- Government executive branch posts and entities for managing civil society relations [Estonia, Morocco, Romania, Sweden, United Kingdom]

11 <https://www.opengovpartnership.org/>

12 <http://www.opengovdialogue.ca/en/about.html>

13 See <https://www.opengovpartnership.org/current-commitments/24-24-increase-of-engagement-capacity-of-state-authorities-and-participation>

- E-democracy mechanisms: online platforms and portals for citizen engagement [Finland]

Examples of participation mechanisms include participatory budgeting and processes to facilitate input into government decision-making such as into proposed legislation. In Argentina, Buenos Aires' 1996 Constitution includes a provision for participatory budgeting in Article 52. Several other Argentine cities have adopted similar requirements for participatory budgeting, with some cities restricting participation to CSOs (Nelson Dias 2014). CSO participation in government decision-making is specifically mandated in the Philippines' 1987 Constitution, and the country's 1991 Local Government Code requires national government agencies to consult with CSOs in project and program planning that could cause environmental harm (Civicus 2016). In Italy, the Tuscany Regional Participation Policy promotes civil society participation in government decision-making at regional and local levels¹⁴. Guatemala's 2017 UPR report states that, since 2014, CSOs have participated in budget proposals for department development councils and civil society is allocated 5% of departmental budgets to spend on strategic projects.

Examples of other formal mechanisms for civil society engagement in government processes and entities include Chile's Act No. 20500 of 16 February 2011 on Associations and Civic Participation in Public Affairs, which legally institutionalized civic involvement in the country. According to the country's 2011 UPR report, the Act called for several things to strengthen civil society's involvement in government decision-making, including requirements for: 1) municipal governments to establish Councils of CSOs to provide advisory input into local planning; 2) each state-level administration to determine how organizations can participate; and 3) each state-level administration to collect, evaluate and consider views submitted to them by the public on matters of public interest (see also OECD 2017). Costa Rica, too, has similar legally institutionalized entities for government-civil society engagement. As discussed in the country's 2014 UPR, Costa Rica's Executive Decree No. 36776-RE established the EPCSC to create a forum for dialogue with CSOs. This body has assisted in the review process for several treaties and helped to formulate national policies on discrimination, including for the country's indigenous peoples. Examples of civil society advisory bodies or government advisory bodies with civil society representation include Costa Rica's National Migration Council; El Salvador's National

14 See <https://participedia.net/en/cases/tuscany-regional-participation-policy-italy>

Council for Persons with Disabilities, which was restructured in 2001 to ensure better presentation of civil society, as well as the National Council for the Protection and Advancement of Migrants and their Families¹⁵; and Finland's Advisory Board on Civil Society Policy (KANE), as well as advisory boards for several other government commissions like the National Council on Disability (UN civil society space report). India has a multi-stakeholder National Advisory Council, which helps to draft legislation such as the country's Right to Information Act; and Lithuania has national- and municipal-level NGO Councils, which act as government advisory bodies (OECD 2015). Then there is the Advisory Board of Mongolia's National Human Rights Commission; Mali's Truth, Justice, and Reconciliation Commission as well as the Central Office for the Fight Against Illicit Gains (USAID 2016b); and Norway's KOMpakt committee, which is composed of representatives from government, private sector, civil society, and academia and serves to advise government on corporate social responsibility matters. The Nigerian Police Force has a specific forum for information and idea sharing regarding human rights issues, while in Romania, CSOs participate in the Steering Board of the National Council for Combating Discrimination. Finally, Uruguay has an inclusive National Council on Gender and National Advisory Council Against Domestic Violence.

Some member states have established special government agencies and offices to engage with civil society, such as the United Kingdom's Office for Civil Society (under the Department for Culture, Media, and Sport) which is responsible for government policy relating to CSOs. Argentina's Ministry of Foreign Affairs created the Consultative Council of Civil Society in 2003 as a way to formalize discussions that had been occurring between government and civil society on regional and global public policies and their impacts both nationally and internationally. Mongolia established the Civil Society Council in 2008 to act as a liaison between the government and CSOs, and the country's President furthermore has a special policy advisor on civil society and human rights. In 2004, Mexico created the Commission for the Promotion of Activities of Civil Society Organizations, which defines public policies to promote the activities of CSOs and encourages dialogue between the public, private, and CSO sectors. According to a survey respondent, Commission members include several national institutes and ministries.

¹⁵ See page 35 of El Salvador's 2016 report for the International Covenant on Civil and Political Rights for a more complete list of the various government agencies in which civil society is represented.

Member states have also created special executive and legislative positions and bodies for civil society relations, such as the former Minister for Civil Society in the United Kingdom (now a junior minister in the Department for Culture, Media, and Sport). Likewise, Sweden's Agency for Youth and Civil Society advises government on issues relating to civil society policy so as to improve conditions for CSOs, which is achieved through distributing funds to CSOs, collecting and disseminating knowledge about CSOs, and forming connections with CSOs. In 2015, Romania started a Ministry for Public Consultation and Civic Dialogue to create a framework for public participation in government decision-making and increase transparency through enhanced information access. According to ICNL's Civic Freedom Monitor, Morocco's Head of Government for Relations with the Parliament and Civil Society works to strengthen the role of civil society and CSO capacities (including funding systems), in cooperation with CSOs¹⁶. In the 1990s and early 2000s, Hungary had special government offices at the legislative and executive levels to facilitate government engagement with civil society, including a special unit within Parliament to enable CSO participation in legislative decision-making. The country also had a Department for Civil Relations within the Office of the Prime Minister, which was tasked with ensuring a favorable legal framework for civil society and drafting government policies regarding the sector (BCNL 2009)¹⁷. The "Estonian Civil Society Development Concept", adopted by the Estonian Parliament in 2002, is a formal communications entity that guides government-civil society relations, and its implementation is overseen by a committee composed of ministerial representatives and CSOs (USAID 2016a).

Finally, Finland provides a good example of the use of electronic web-based platforms for civic participation, as reported both in the UNGA HRC (2016) and by the Finnish government's response to the survey for this study. The country's e-participation program allows citizens to participate in the different phases of the policy process at national and local levels. Citizens can raise and discuss issues, provide input into draft policies, and propose legislation via government online participation venues.

¹⁶ See <http://www.icnl.org/research/monitor/morocco.html>

¹⁷ See also http://www.icnl.org/research/journal/vol10iss4/art_1.htm

Ad-hoc and informal measures

Member states have also created a number of ad-hoc and informal measures to engage with civil society. These are mechanisms that may not be enshrined in law, that occur as one-time or irregular phenomenon, and/or that serve a special function related to a particular event, process, or need. Examples of these measures are found below. Most of the Governing Council member states have government agencies that engage with CSOs via one or all of these five mechanisms, though they may not be legally required to do so.

- Dialogue and debate with CSOs
- Government agencies that choose to consult CSOs on particular issues
- Drafting and implementation of new legislation, policies, Constitutions, and action plans
- Partnerships to take action on some issue
- Service delivery

Dialogue and debate, of course, is not only an ad-hoc or informal measure, but occurs as part of international institutional mechanisms as well as formal engagement mechanisms. Some examples of ad-hoc dialogue measures include the National Dialogue that the Argentine government convened with CSOs in 2015 to revise the legal framework governing CSOs, as well as dialogue forums that took place as part of a justice program. Chile held a civic dialogue in January 2010 to draw up the third “Plan for Equality Between Women and Men 2010-2020”, and the country’s police force reportedly engages in dialogue with CSOs in order to ensure their practices meet international human rights obligations. Dialogues were also held in Chile to address prison reform. In 2012, Moroccan CSOs participated in a Commission on National Dialogue to reform the justice system, and an additional dialogue mechanism was created in 2013 to feed into the constitutional reform and address civil society’s constitutional rights. In 2008, South Africa held a National Social Dialogue, which convened government and civil society representatives to discuss strategies for promoting social cohesion. Finally, Uruguay reported in its 2014 UPR nation-

al report that the government there has convened several debates and dialogue forums with civil society to develop social policy reform agendas and to discuss the establishment of the National Care System in the context of improving gender equality in the labor force.

Government agencies in many of the Governing Council member states consult CSOs on particular issues and/or legislation, and/or involve CSOs in drafting, revising, and implementing legislation, policies, constitutions, and action plans. One example of active consultation on issues is how the relevant government human rights agency in several member states engages with CSOs to advance protection of human rights, such as in India, Portugal, South Korea, and Uruguay.

Further cooperation on legislation, policy drafting and implementation has occurred in nearly every member state. For instance, the National Commission for Refugees in Argentina has worked closely with CSOs to develop a work plan on refugee support, while the Chilean government cooperated with civil society to draft new migration legislation in 2012, design a new policy on civic participation in 2011, draft text for a new Constitution, and develop and implement both a National Action Plan to combat Domestic Violence as well as a new policy for inclusion of persons with disabilities. Malian and Moroccan CSOs were actively involved in the constitutional reform process in those countries, and the 2011 Moroccan Constitution reportedly strengthens civil society (USAID 2016c)¹⁸. Costa Rica also consulted with civil society to draft a national policy and corresponding action plan for preventing discrimination. El Salvador has also engaged civil society to help implement its Safe El Salvador Plan to address violence and to help draft several pieces of legislation and policy, including for the rights of women and media.

CSOs are regularly involved in government decision-making in Estonia and provide input and expertise, and the government there has also adopted a set of Good Engagement Practices in 2011 to guide and enhance civil society participation (TASCO 2015)¹⁹. The same is true in Finland, where the government consults NGOs about legislation and reports, and ministries are expected to have a strategy in place for how to promote civil society participation (UNGA HRC 2016). In India, the government consulted CSOs on a proposed national law to protect domestic workers.

18 <http://carnegieendowment.org/sada/62417>

19 <https://riigikantselei.ee/en/supporting-government/engagement-practices>

CSOs in the UK were consulted during an update of the country's National Action Plan on business and human rights, and CSOs are involved in implementing the UK's Human Trafficking Strategy. In Norway, the government invited civil society to provide input into a strategy against hate speech, and created a reference group composed of various social actors for this strategy, including CSOs. Portugal has involved CSOs in designing its National Strategy for the Integration of Roma Communities. Romania envisions partnering with civil society to implement its own strategy for the inclusion of Roma citizens and has furthermore consulted with civil society to change disability legislation and to formulate and implement anti-corruption policies (USAID 2016a). In other cases, such as in the United States and South Africa, avenues exist for CSOs to provide input into legislation and policy-making through public hearings.

Government and civil society enter into partnerships of different types, usually in order to take action on an issue and/or to deliver services. In Argentina, the National Council for Women collaborates with CSOs to disseminate information on women's rights, while the Ministry of Human Rights and Cultural Pluralism works with civil society to strengthen mechanisms to prevent torture. In Estonia, CSOs partnered with the government to plan a national administrative reform effort, under which CSOs would be engaged in service delivery (USAID 2016a). Estonian CSOs provide a wide variety of services to a diverse range of social groups (ibid). Member states with uneven socio-economic development levels and that face difficult humanitarian situations, such as India, Mali, and Nigeria, or that have experienced large-scale disasters, such as Japan, often rely on civil society to assist with providing services to citizens during times when government capacity to deliver services is stressed (USAID 2016a and b; Leng 2015).

The Mongolian government has partnered with CSOs to address issues of violence, human trafficking, disabled persons' employment, and stigmatization of LGBT persons. In past years, the efforts of Mongolian women's organizations have resulted in the adoption of the National Program for Advancement of Women in 1996 and the National Policy on Gender Empowerment in 2002 (Tseden 2012). The 2016 USAID report on CSO Sustainability in sub-Saharan Africa noted that CSO-government partnerships at the state level in Nigeria are particularly strong, and that government is increasingly willing to collaborate with civil society for advocacy and service delivery purposes (USAID 2016b). Uruguay involved CSOs in the development of strategies and activities to prevent violence against women, and has collaborated with CSOs to operate centers for victims of domestic vio-

lence. In the United Kingdom, the multi-stakeholder Age Action Alliance has worked to improve the lives of disadvantaged older people.

The United Kingdom organized National Democracy Week in July 2018, with the active collaboration of civil society groups the length and breadth of the country. The objective was to refresh interest and enthusiasm for democratic processes amongst hard-to-reach elements of society.

Finally, it should be noted that government and civil society also work together as partners in international, multi-stakeholder voluntary initiatives, such as the Extractive Industries Transparency Initiative (EITI), a publish-what-you-pay campaign to improve transparency in the mining, oil, and gas sectors. Nigeria, Norway, the United Kingdom, Mali, the Philippines, Mexico, Mongolia, and Guatemala are all EITI members.

Discussion: Protecting civil society space

How can states protect civil society space at home? The existing literature on this topic provides several suggestions and further empirical examples that are useful starting points for thinking about how Community of Democracies Governing Council member states can best protect and engage CSOs within their countries. To ensure full protection of civil society, several reports emphasize the importance of states having a legal framework in place that fully respects the six fundamental freedoms and rights required for civil society to function effectively – and to repeal domestic laws that are not consistent with international human rights law (c.f. UNGA HRC 2016; AidWatch 2014; INCL no date; Trocaire 2012; Act Alliance 2014). Tillemann (2015) suggests ten principles for how governments can help safeguard civic space in their foreign activities, but some of the principles can be applied domestically, such as formulating and adopting policies on the importance of safeguarding civic space; coordinating efforts across government to protect civil society; providing funding related to civic space and assisting CSOs to acquire resources; engaging in international efforts to support civic space; conducting regular dialogues with CSOs at home and abroad; and requiring government institutions to report on how their actions help to strengthen civil society. A 2016 report by the United Nations High Commission for Human Rights calls for governments to ensure access to information, provide avenues for participation of CSOs in policy development and decision-making processes, grant long-term financial support to civil society, and avoid using negative discourse about civil society. An Act Alliance report from 2014 recommends states to increase the number and quality of participation mechanisms for CSOs to contribute to designing and implementing policies, and to further ensure that CSOs and minority groups in particular are able to exert real influence in decision-making processes. Finally, AidWatch (2014) states that there are three main indicators of an enabling civil society environment: 1) a legal framework that recognizes the six freedoms and rights for civil society, that protect the rights of vulnerable groups, and that permit access to information; 2) the creation of spaces for policy influence; and 3) donor-CSO relationships that are supportive of CSOs' role in development.

Conclusions

Challenges in protecting and engaging civil society

This report has highlighted a range of protection and engagement mechanisms created by Community of Democracies Governing Council member states to protect and engage civil society domestically. This report is intended to provide an overview of these mechanisms, rather than go into detailed and comprehensive analysis and assessment of them within each country. The report does not, therefore, speak to the implementation and quality of these mechanisms, and the degree to which they provide forums for meaningful participation, consultation, collaboration, and interaction²⁰. It is likely that the quality of the mechanism depends on both its design (including who takes the initiative in establishing them) and the attitudes and beliefs of both government and civil society actors about them. Several documents reviewed for this report highlighted instances of participation mechanisms and engagement forums where there are low rates of participation by CSOs, or where CSO participation is not very meaningful. For instance, an ICNL report from 2015 on the Argentine Consultative Council on Public Policies stated that the Consultative Council on Public Policies was barely operational, and pointed to survey data that suggested that there is low knowledge among CSOs about consultative spaces at the national or provincial level. The same report also reported that just 25% of surveyed Argentine CSOs had served at some point on a commission or other organ with representatives of civil society and government (versus 64% in Bolivia, 53% in Chile, and 51% in Mexico), while only 13% had participated in a public hearing (Nieva and Guadamuz 2015). A 2016 Civicus report on the CSO enabling environment in the Philippines reported that “many government agencies conduct token consultations in order to comply with requirements for CSO participation. The degree of openness still depends to a large extent on the leadership of the concerned office, national agencies, or local governments” (p. 73). Thus, a key first challenge in protecting and engaging civil society is to create meaningful spaces for civil society engagement.

20 See ICNL (no date) for details on the factors that make it more likely for specific engagement practices to be successful. There are two areas of future research that would be useful in any further work on the quality of protection and engagement mechanisms. First, analysis should be carried out of the independent effects of protection and engagement mechanisms on state-civil society relations. Any such effects are likely to depend on the design of the mechanisms and the way in which they are implemented, but also on the capacity of government and CSOs to participate in them. Second, more examination could be carried out on how protection and engagement mechanisms have evolved over time, how they compare across countries (and perhaps even within countries), and the conditions under which they either deteriorate or improve.

A second challenge is the documented increase in, and spread of, government restrictions placed on civil society in some Community of Democracies Governing Council member states, manifested in legal as well as extra-legal, informal forms of repression. A few states have heightened legal restrictions on CSOs, which include the types of issues that organizations can work on, as well as the funding sources from which they can receive support. Extra-legal, informal practices – well documented across the range of sources consulted for this report – include use of violence, threats, intimidation, and negative discourse against, and about, civil society. Any uptick in repression threatens the ability of citizens to enjoy basic freedoms of association, assembly, and expression.

Recommendations

This report has presented evidence about a range of protection and engagement mechanisms that the Community of Democracies Governing Council Member States have adopted and implemented. There is variation among the members as to what type of mechanisms they have in place, but many examples of good practice were identified. Several countries have fully enabling legal frameworks in place that do not unduly restrict or repress CSOs in their operations, while at the same time they refrain from negative behaviour towards CSOs. Examples include Estonia, Cape Verde, Chile, Finland, Italy, Japan, Lithuania, Mongolia, Norway, Philippines, Portugal, Romania, South Korea, Sweden, the United States, Uruguay, and the United Kingdom. Most, if not all, of the Governing Council member countries have established both formal and informal engagement mechanisms that promote the full participation of CSOs in government processes and institutions. Recommendation 1 of this report is that states learn from these good examples of protection and engagement, and implement similar mechanisms.

This report has also provided evidence that protection and engagement occur in many ways, and not only via formal mechanisms but also via discourse and informal behaviours. Recommendation 2 of this report is that states and CSOs continuously monitor states' behaviour towards, and discourse about, civil society to ensure that states positively protect and engage with civil society, and take corrective action if and when practices turn negative. It is recommended that states take active steps to reduce all forms of government repression of civil society.

The nature of state-civil society relations is historically, culturally, and socially specific, and as a result even organizational forms and functions differ considerably from country

to country. What “works” in terms of positive practices in one place may not necessarily produce the same outcomes in a second location or time. Legal frameworks, socio-economic factors, and history vary such that context is key to understanding when, how, and why governments meaningfully protect and engage civil society actors, both *de jure* and *de facto*. Recommendation 3 of this report is that states must ensure that protection and engagement mechanisms are contextually appropriate, without overlooking practices that may be justified for reasons of security and sovereignty but that actually seek to limit civil society’s critical roles as a government watchdog, defender of fundamental human rights and freedoms, and promoter of democratic institutions.

Finally, looking at the types of mechanisms that have been adopted by Community of Democracies Governing Council member states, there are some clear, broad patterns in the types of practices that seem to support civil society protection and engagement. Many of the survey responses support these patterns. Recommendation 4 is that states consider adopting some mechanisms that reflect these trends, including ensuring that legal frameworks and contractual requirements governing civil society allow organizations to carry out advocacy and other “political” activities like lobbying; that both the regulatory authorities governing CSOs as well as CSOs themselves are provided with sufficient financial support for their development and activities, and that this funding does not unduly restrict organizations’ independence and voice; that governments work to enhance organizations’ ability to cooperate with other organizations and to engage at regional and international levels; and that civil society is more frequently incorporated into government decision-making in ways that are regular, consultative, transparent, and accountable.

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Appendix 1: Methodology of the study

The aim of this report is to identify best practice in the Community of Democracies Governing Council member states' protection of, and engagement with, civil society. Protection was measured largely by examining *de jure* information in the form of the legal framework governing civil society in each member state as well as *de facto* information about government behaviour towards CSOs (that is, whether government respects the legal framework). Engagement was measured by looking at legal requirements as well as practices in the form of established institutions and mechanisms that enable government and CSOs to cooperate, collaborate, engage, and interact, and that allow CSOs to participate in government decision-making processes. Data collected for these two variables (protection and engagement) consists of 1) member states' legal frameworks governing CSOs and fundamental freedoms and human rights; 2) evidence about government behaviour towards civil society actors; and 3) institutions and mechanisms in place in member states that facilitate government-civil society cooperation, collaboration engagement, interaction, and participation.

To answer the research questions of this report, emphasis was placed on creating a systematic, comprehensive evidence base about patterns and trends in government-civil society relations across the member states. Data was collected primarily through document analysis and a survey. Data compiled by Dupuy, Ron, and Prakash (2016) on laws governing CSOs served as the starting point for further data collection on legal frameworks governing government-civil society relations in each Governing Council member state. This data was collected with a focus on assessing the degree to which the legal framework in each state allows CSOs to carry out their work largely unhindered by cumbersome bureaucratic regulations. Additional information was gathered on the institutions and mechanisms that member states have established in law versus in practice for government-civil society engagement, cooperation, participation, and interaction, as well as on government behaviour towards civil society. A matrix was used to structure this data collection, and was organized into the following broad areas: registration requirements; operational requirements; funding regulations; protection of fundamental freedoms; engagement institutions and mechanisms; and other government practices and behaviours.

Data on each country's legal framework and practices was collected primarily from the following sources:

- The International Center for Non-Profit Law's NGO Civic Freedom Monitor
- The Council on Foundations
- United States Agency for International Development's (USAID) NGO Sustainability Index country reports
- The Civicus Monitor
- Amnesty International country reports
- Human Rights Watch country reports
- The Business Anti-Corruption Portal country reports
- Freedom House
- The United States Bureau of Democracy, Human Rights, and Labor country reports
- UPR country reports documenting the human rights records of all United Nations member states
- Country monitoring reports on the implementation of the International Covenant on Political and Civil rights

Quantitative information on the state of civil society in each member state was also compiled from the Varieties of Democracy dataset and the International IDEA Global State of Democracy Indices dataset.

A systematic literature search was undertaken using an evolving list of search terms to identify academic and policy literature on government-civil society relations for each Governing Council member state using academic search engines, Google Scholar, and Google. The list of search terms used is found in Appendix 1.

Finally, a survey was developed and sent to Governing Council member states as well as members of the Civil Society Pillar and members of the CoD Working Group on Enabling and Protecting Civil Society (WG EPCS). The survey asked respondents to evaluate the enabling environment for civil society in Community of Democracies Governing Council member states and to provide examples of how member states protect and engage civil society. Member state respondents were also asked to provide detailed information about the legal framework governing civil society in their respective state. In total, seven member states and 15 CSOs responded to the survey.



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