RESPONDING TO THE GLOBAL CRACKDOWN ON CIVIL SOCIETY

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Since the end of the Cold War, human rights and individual freedoms have become – at least rhetorically – pervasive global concepts. Civil society organisations (CSOs) have played a vital role in promoting these concepts on both the national and international level. CSOs encompass a wide range of groups, from local community-based organisations and social movements to highly professionalised international non-governmental organisations (INGOs). The latter have grown substantially in number since the late 1980s and they have become increasingly active in political processes, from agenda-setting through to implementation, evaluation, and monitoring.[1]

The growing scope and visibility of CSOs have spurred discussions about their role in global governance, in particular their potential to enhance the bottom-up legitimacy of transnational policy making. These discussions have given rise to the concept of a transnational civic space or 'global civil society' within which individuals mobilise across borders on issues of global public interest.[2]

Research suggests that transnational civil society activism is indeed consequential for domestic and international policy making. Where states are inaccessible to the demands of domestic actors, CSOs can make strategic use of transnational coalitions and intergovernmental organisations to build up pressure from 'above' in addition to pressure from 'below'.[3] The collection and mobilisation of information is central to these efforts and there is evidence that practices such as 'naming and shaming' do have an influence on state behaviour.[4]

However, in many countries, CSOs are themselves under significant pressure as states deploy a range of formal and informal strategies to undermine their credibility, financial security, and legal protection. State restrictions on civil society are widespread and prevalent and yet, to date, there is little empirical research on why states crack down on civil society actors, when they are more likely to do so, and what form this crackdown takes.

This Policy Brief serves as a summary of a workshop on 'State Restrictions of Civil Society and the Free Flow of Information', hosted by the Global Governance Institute (GGI) at University College London (UCL) in May 2017. The workshop, which was organised by Professor Kristin M. Bakke, GGI Thematic Director for Global Security, brought together an international group of academics, practitioners, and policy-makers to discuss both the scope and types of state restrictions and how non-state and state actors respond to them. This report does not necessarily reflect the views of all workshop participants.

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[1] In the first decade after 1989, the number of INGOs more than doubled. See: Kaldor, Moore, and Selchow (2012), p. 20.
[2] Anheier, Glasius, and Kaldor (2001), Keane (2003).
[3] See, for instance: Keck and Sikkink (1998), Risse, Ropp, and Sikkink (1999), Simmons (2009), Brysk (2013).
[4] Existing studies suggest that 'naming and shaming' can be effective in improving the human rights practices of states under certain conditions. However, the dynamics at play are complex and some 'shamed' governments continue or even ramp up certain types of human rights abuses. See, for instance: Hafner-Burton (2008), Murdie and Davis (2012).

SHRINKING CIVIC SPACE?

In 2014, the United Nations (UN) High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, voiced deep concern over the situation for civil society around the world. Speaking at the 30th session of the UN Human Rights Council he stated: '[F]or several years, I and my predecessor have enumerated at this Council States that have taken extremely serious steps to restrict or persecute the voices of civil society. While I will continue to list them, I am devastated to have to report that there are now too many countries on that list for me to name them here today.'[5]

Concern over the 'shrinking' or 'closing' space for civil society has been echoed in a number of recent statements by other UN representatives and policy makers, as well as reports by CSOs, think tanks, and the media.[6] Maina Kiai, the former UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, has even argued that, in many places around the world, civic space is no longer shrinking but 'already gone'.[7] Despite the high level of attention and concern, however, our empirical knowledge of the restrictions CSOs face remains limited. Anecdotal evidence suggests that states as diverse as Russia, India, Israel, Thailand, Uganda, or Venezuela increasingly crack down on civil society. However, there is little comprehensive and systematically comparable data on the measures states employ to demobilise civil society and how this might have changed over time.

On a very general level, indices that attempt to measure levels of democracy, civil liberties, and press freedom can provide some insights into the environment that CSOs operate in. The 'Freedom in the World' index, for example, which is compiled annually by Freedom House, has recorded a continuous decline in global political rights and civil liberties over the past decade.[8] Media freedom around the world has also deteriorated significantly in recent years, according to the Press Freedom Index, published by Reporters Without Borders.[9] While these are worrying trends, both indices are not uncontroversial and they tell us little about restrictions specifically directed at CSOs.[10]

Freedom in the World Index: Number of countries with net decline/improvement in aggregate scores (2005-2016)
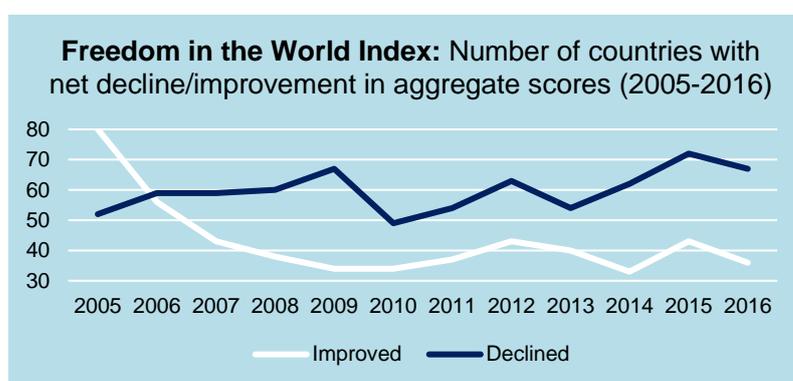
Data source: Freedom in the World 2017 and Freedom in the World 2015.

An index that focuses explicitly on the CSO sector is the Civil Society Organization Sustainability Index (CSOSI).[11] Published by the US Agency for International Development (USAID), it rates the overall strength or 'sustainability' of civil society in 71 countries. The latest available data (dating from 2015) does not point to a radical deterioration in global CSO sustainability but rather to a more complex picture with diverging trends within most regions.[12] The index, however, is limited in its geographical and temporal scope, with long-term data only available for Central and Eastern Europe and Eurasia. In addition, CSOSI ratings do not just reflect the level of state restrictions in a given country but also a range of other factors, such as the quality of CSOs' internal management practices.

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[5] OHCHR (2014).

[6] Examples include: Sekaggya (2013), UNDEF (2015), Kiai (2017), RFE/RL (2016), Youngs and Echagüe (2017), Carothers and Brechenmacher (2014), Amnesty International (2017a), Sherwood (2015).

[7] Kiai (2015), p. 246.

[8] Freedom House (2017a). Freedom House is a US-based not-for-profit pro-democracy organisation. Its 'Freedom in the World' index provides a comparative assessment of political rights and civil liberties in 195 countries and 14 territories based on annual expert surveys. See: Freedom in the World (2017b).

[9] Reporters Without Borders (2017a). Reporters Without Borders is a France-based NGO, dedicated to promoting freedom of information. Its annual Press Freedom Index ranks media freedom in 180 countries based on a combination of expert surveys and quantitative data on abuses and acts of violence against journalists. See: Reporters Without Borders (2017b).

[10] Both indices have been accused of a political and ideological bias. See for instance: Steiner (2014), Giannone (2014).

[11] Published since 1997, the CSOSI focuses on seven dimensions of CSO sustainability: legal environment, organisational capacity, financial viability, advocacy, service provision, infrastructure, and public image. Scores for each dimension are determined by expert panels comprised of CSO practitioners and researchers. The CSOSI originally focused on 18 countries in Europe and Eurasia and now covers 71 countries in Central and Eastern Europe and Eurasia, Sub-Saharan Africa, the Middle East and North Africa, and Asia. See: USAID (2015a).

[12] USAID (2015a, 2015b, 2015c, 2015d, 2015e, 2015f)

By contrast, the International Centre for Not-for-Profit Law (ICNL) has a specific focus on the legal restrictions affecting CSOs. According to a recent ICNL publication, 64 new restrictive laws and regulations have been adopted by governments worldwide in 2015-16, leaving global civic space 'severely narrowed'.[13] On its website, the ICNL also provides detailed information on the legal issues currently affecting civil society in some 50 countries. Yet, this database does not contain systematic information on non-legal repressive state practices, such as media smear campaigns, harassment, spying, or extrajudicial killings.

Some of these practices are documented in Frontline Defenders' 'Annual Report on Human Rights Defenders at Risk'.[14] The latest edition finds that '[m]ore than 1000 human rights defenders were killed, harassed, detained, or subjected to smear campaigns and other violations in 2016.'[15] Latin America is by far the deadliest region for activists, according to the report: 217 human rights defenders were killed in the region in 2016, accounting for more than 75% of all killings.

The CIVICUS Monitor is one of the most comprehensive efforts to document the enabling conditions for CSOs worldwide.[16] Published by CIVICUS, a global network of CSOs and activists, it combines qualitative and quantitative data from a range of sources to assess the openness of civic space in every country of the world on an ongoing basis. This data suggests that only 3% of people currently live in countries where civic freedoms are fully respected, with some clear regional patterns (see page 4).[17] Launched in October 2016 as a beta version, the CIVICUS Monitor is still a new project, though, and as such, does not offer insights about long-term trends.

Given the lack of systematic longitudinal data, researchers at University College London (UCL) have developed a new cross-country database that documents restrictive laws and practices in 177 countries from 2000 to 2014.[18] The database forms part of a research project that investigates when, why, and how states seek to silence civil society voices (see page 6). The data is based on country reports produced by the US Department of State (Bureau of Democracy, Human Rights and Labor) and contains information on a range of restriction types, from formal legal barriers to informal, less visible practices.[19] A comparison of average numbers of restrictions per country and year suggests that restrictions against CSOs are pervasive and widespread, with certain regions at particular risk. However, contrary to the 'shrinking space' narrative, data for the 2000-2014 period provides little evidence of a global increase in restrictions over time, though data collection for a longer time-span is underway, suggesting a long-term increase in restrictions.

This non-exhaustive overview of existing data sources suggests that our empirical understanding still lags behind observations made by UN officials, civil society activists, and others.[20] The indices and databases surveyed above each monitor different aspects of the enabling environment for CSOs, using different methodologies, sources, and geographical and temporal scopes. A consistent finding, however, is the pervasiveness of restrictions and the existence of regional patterns. These patterns might be an indication that states copy the repressive behaviour of neighbouring states or, conversely, feel more pressure to refrain from repression if their neighbours do so. This is congenial with academic studies which suggest that regional imitation is an important factor in explaining how states engage with the international human rights regime.[21]

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[13] ICNL (2016).
[14] Frontline Defenders is an Ireland-based NGO. Its annual reports, available since 2013, highlight global and regional trends affecting the work of human rights defenders. The data is based on activist reports, though it is not entirely clear what methodology is used to gather and interpret these reports. See: Frontline Defenders (n.d.).
[15] Frontline Defenders (2017).
[16] CIVICUS is an international alliance of civil society organisations. The CIVCUS Monitor is designed to provide up-to-date information on civic space on a global scale. More specifically, it measures the extent to which three civil society rights - freedom of association, peaceful assembly, and expression - are being respected and upheld in a given country. The CIVICUS Monitor uses various sources of data, including: interviews with local activists; information provided by citizens; analyses and data from regionally-based research partners; key scores from other indices; qualitative analyses produced by national, regional or international CSOs or academic institutions; and qualitative research produced by CIVICUS itself. See: CIVICUS (n.d.).
[17] CIVICUS (2017a).
[18] Bakke, Mitchell, and Smidt (2017).
[19] More specifically, these include: banning certain CSOs, curtailing travel, restricting CSO visits to government sites, limiting domestic funding sources, restricting foreign funding, creating difficulties in obtaining visas or denying visas, creating difficulties in registering as a CSO, censoring publications, harassing activists, and surveilling CSO activities.
[20] For an overview of more tools to assess the enabling environment for CSOs, see, for instance: ICNL (2014).
[21] See, for instance: Simmons (2002, 2009), Creamer and Simmons (2015).

CIVIC SPACE BY REGION: INSIGHTS FROM THE CIVICUS MONITOR*

- ● Closed
- ● Repressed
- ● Obstructed
- ● Narrowed
- ● Open
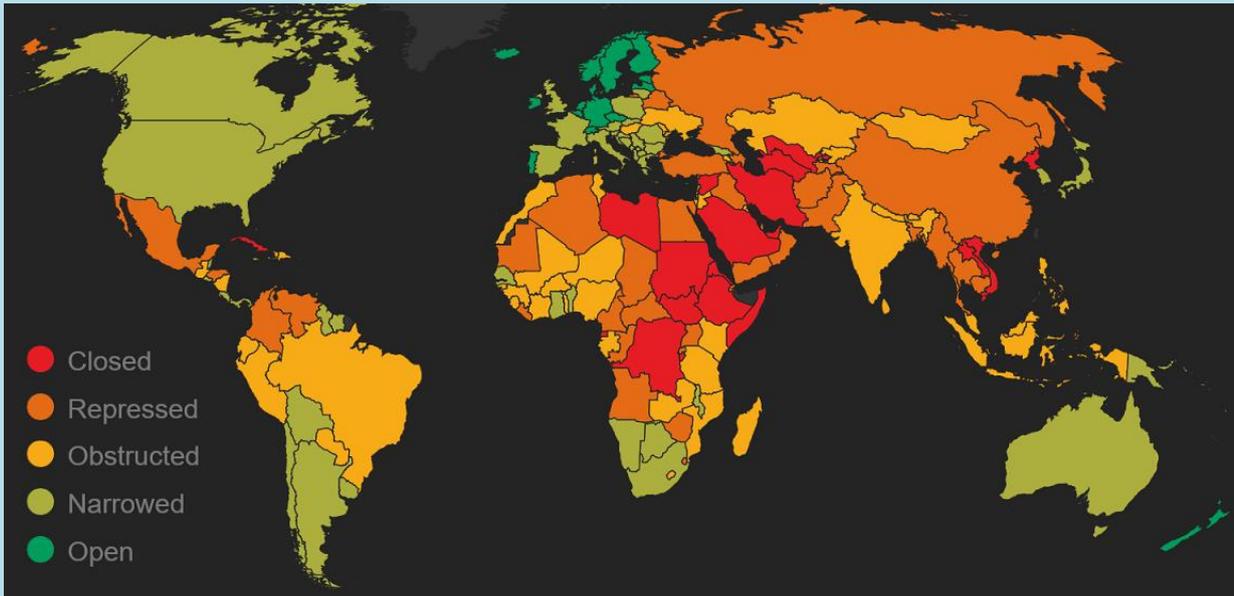
Image source: CIVICUS Monitor (CC BY-SA 4.0)

According to the CIVICUS Monitor, Africa and Asia host most countries with heavily restricted civic space. Almost 20 countries, from the Democratic Republic of the Congo (DRC) to North Korea, are considered 'closed', meaning that 'it is next to impossible for activists to conduct human rights advocacy or peacefully oppose the state without the very real risk of attack, imprisonment or death'.[22]

In the Americas, civic space is considered 'narrowed' in 60% of all countries, including the US and Canada. The US ranking reflects, among other things, concerns over the excessive use of force against protesters, racial discrimination, and the impact of anti-terrorism measures.[23] In Latin America, although few countries have fully cracked down on civil society, civic space is considered to be seriously restricted in more than a third of the countries in the region.[24]

Europe hosts the lion's share of countries with 'open' civic space. Yet, civil society is under pressure in a number of European countries, especially (but not exclusively) in Eastern Europe. Hungary, in particular, has experienced a notable decline in civic freedom under the Orbán government, making it the only EU country with 'obstructed' civic space. In the UK, civic space is currently rated 'narrowed', given concerns about the impact of counter-extremism policies on associational life and 'violent policing tactics in the management of public assemblies'.[25]

Oceania is the only region in the world that does not feature any country where civic space is 'closed' or 'repressed'. However, only New Zealand and Tuvalu are rated 'open'. In Australia, civic space is currently considered 'narrowed', reflecting, among other things, concerns over the treatment of asylum seekers.[26]

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*This overview is based on findings from the CIVICUS Monitor, published in April 2017. See: CIVICUS (2017a).
[22] CIVICUS (2017a), p.3.
[23] CIVICUS (2016a).
[24] CIVICUS (2017b).
[25] CIVICUS (2016b).
[26] CIVICUS (2016c).

WHY DO STATES CRACK DOWN ON CIVIL SOCIETY?

Given the limited availability of comprehensive empirical data, our understanding of why and when states seek to demobilise civil society remains limited as well. While a variety of potential drivers have been identified, few have been empirically tested. In addition, these accounts focus predominantly on *legal* barriers for CSOs, with little systematic analysis of the more elusive, non-legal practices that states use to clamp down on civil society.

Restrictions on foreign funding for CSOs have received particular attention. When adopting such restrictions, policy makers have repeatedly invoked the need to protect national sovereignty and security.[27] For example, in 2004, Zimbabwe's President Robert Mugabe introduced a bill to ban foreign funding for CSOs, stating: 'We cannot allow them to be conduits or instruments of foreign interference in our national affairs.'[28] Russia's President Vladimir Putin has argued that the 'only purpose' of the 2012 Russian foreign-agent law is to 'ensure that foreign organisations representing outside interests, not those of the Russian state, would not intervene in [Russia's] domestic affairs.'[29] And, more recently, Hungary's Prime Minister Viktor Orbán has suggested that foreign-funded CSOs could threaten the 'sovereignty and national security of Hungary.'[30]

Restricting foreign or foreign-supported CSOs, however, comes at potentially significant costs, especially for low and middle income countries. Their governments do not only risk being 'named and shamed' on the international stage but they might also lose access to international aid. Dupuy, Ron, and Prakash argue that governments are more likely to take such risks during times of domestic political competition, when their political survival is threatened.[31] Similarly, Christensen and Weinstein find that governments are more likely to crack down on foreign funding when they feel vulnerable to domestic challenges.[32]

Putin at a meeting of the Council for Civil Society and Human Rights. Source: 'President of Russia' (CC BY 4.0)

In some countries, concerns over the loss of domestic political control may have been heightened in the wake of the Arab Spring and the 'colour revolution' in the post-Soviet region. Although the success rate of non-violent mass resistance campaigns has actually declined over the past decade, these events have demonstrated the power that civil society movements can (sometimes) exercise.[33] According to Rutzen, governments around the world 'took notice of these mass movements and initiated measures to restrict civil society in the hopes of preventing similar uprisings on their own soil.'[34]

Another development that has had far-ranging implications for civil society around the world is the ongoing 'war against terrorism'.[35] In some countries, the counter-terrorism discourse has been deliberately abused to discredit and restrict CSOs; in others, restrictions on human rights and personal freedoms have been framed as an unintended but necessary side-effect of maintaining public security. As Alston argues, these 'side-effects' have often been met with rather muted protests from the wider population: 'People are now widely convinced that security can only be achieved through making enormous trade-offs, whether in terms of freedom of movement, privacy, non-discrimination norms, or even personal integrity guarantees.'[36]

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[27] Rutzen (2015a).
[28] IRIN (2004).
[29] President of Russia (2012).
[30] Amnesty International (2017b).
[31] Dupuy, Ron, and Prakash (2016). In fact, this study finds that foreign aid flows increase the probability that restrictive laws (targeting foreign-funded CSOs) are adopted. In contrast, Bakke, Mitchell, and Smidt (2017) find no relationship between the receipt of official development aid and restrictive laws and state practices aimed at demobilising CSOs.
[32] Christensen and Weinstein (2013).
[33] Chenoweth (2017).
[34] Rutzen (2015a), p. 30.
[35] See, for instance: Howell et al. (2008).
[36] Alston (2017), p. 4.

Protesters in front of the US Embassy in London. Source: 'Human rights trump trade deals' (CC BY-SA 2.0) by Alisdare Hickson.

The presidency of Donald Trump may also have implications for civil society and human rights around the world. Trump has shown little concern for other countries' human rights and democracy records and his policies and stated beliefs (e.g. his support for torture in interrogations) indicate that human rights do not feature high on his domestic political agenda either. In addition, he has repeatedly questioned US engagement in multilateral treaties and institutions, including the UN Human Rights Council.[37] US retreat could have substantial repercussions for the human rights regime, including in financial terms (the US is the largest voluntary contributor to the Office of the High Commissioner for Human Rights [OHCHR]).[38] All of this indicates that repressive states have less reason to worry about their human rights record in the future, especially if they are of strategic importance to the US.

WHEN STATES CRACK DOWN ON HUMAN RIGHTS DEFENDERS: NEW INSIGHTS FROM A UCL RESEARCH PROJECT

CSOs that monitor human rights abuses provide important information to both domestic constituencies and third parties, including other states, international human rights institutions, and treaty bodies. In doing so, they act as 'informal auditors', imposing costs on states that would prefer to keep such information private. A hitherto empirically unexplored implication is that states have an incentive to reduce these costs by demobilising CSOs.

Bakke, Mitchell, and Smidt put this implication to the test, using a new global cross-country database that documents different types of restrictions for 177 countries from 2000 to 2014 (see page 3).[39] They find that states which commit severe human rights abuses – i.e. those that have a lot to hide – have a strong incentive to silence civil society voices. This incentive is even stronger if these states have signed human rights treaties as they face more external pressure to stick to their commitments. These findings suggest that human rights treaties have indeed an effect on deviating states albeit with unintended consequences: they may place CSOs in these states at higher risk from repression.

Regarding the domestic dynamics at play, the study finds that hybrid regimes – those that are neither consolidated democracies nor full autocracies – are more likely to impose restrictions on civil society actors. Unlike fully autocratic regimes, governments in hybrid regimes do not suppress opposition and civil society altogether, yet, unlike democratic governments, they do not face strong constitutional constraints that limit opportunities to impose restrictions on CSOs. The study also finds some evidence that, when faced with threats to domestic security – such as terrorism or insurgencies – states are more likely to restrict CSOs.

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[37] Manson (2017).
[38] OHCHR (2015).
[39] Bakke, Mitchell, and Smidt (2017).

STATE STRATEGIES TO SILENCE DISSENT AND RESTRICT CIVIL SOCIETY

Many states have developed a sophisticated playbook to repress civil society, often combining legislative restrictions with targeted delegitimisation campaigns. CSOs with week governance and accountability structures and those reliant on foreign funding are especially vulnerable to governments' efforts to stigmatise them as 'elitist', 'undemocratic', or 'anti-national'. In Russia, for example, all NGOs that engage in political activities and receive foreign donations are required to register as 'foreign agents', a term with extremely negative connotations in Russia as it is historically associated with the notion of 'spy' or 'traitor'.[40] Civil society actors with foreign connections are also routinely portrayed in the Russian media as advancing foreign, 'anti-Russian' interests.[41]

These delegitimisation campaigns do not just result in reputational costs. They also come with additional bureaucratic and administrative hurdles, the risk of fines and other sanctions in case of non-compliance with new reporting requirements, difficulties to access and engage with target groups, authorities and alternative national funders, and significant psychological pressure for the individuals involved.[42]

In addition to stigmatising externally supported CSOs, many governments are regulating or cutting their funding, for instance, by making it dependent on government approval, implementing a cap, prohibiting funding by certain donors or for certain kind of activities, making it mandatory to channel donor funding through government banks, or banning foreign funding altogether.[43]

Legal restrictions enacted globally between 2012 and 2014 by type*:

- ■ Framework legislation
- ■ Foreign funding
- ■ Freedom of assembly
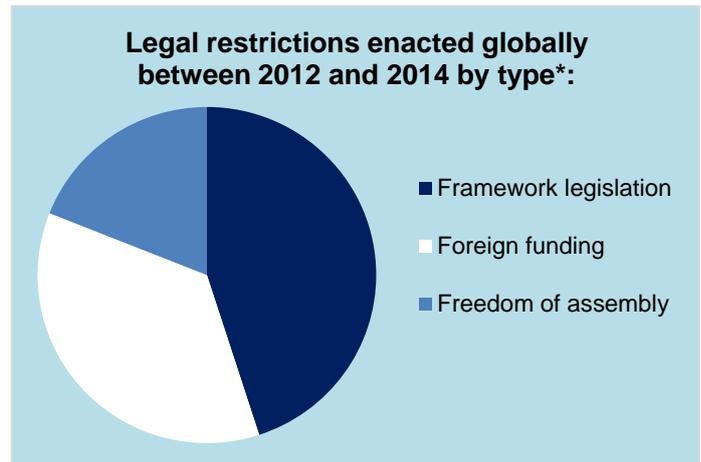
Targeting foreign funding is one of the most popular – and effective – strategies to curb civil society activity, employed by governments around the world. In Russia, for example, almost a fifth of the organisations included in the 'foreign agents' registry closed down between 2012 and 2016, while others had to substantially restrict their activities and services.[44] In India, at least 30 CSOs, including Greenpeace India, were refused a government license to receive foreign funding last year because their activities were not deemed to be in the 'national interest'.[45] In Ethiopia, following severe restrictions on foreign funding introduced in 2009, 25% of local groups shut down within three years.[46]

When justifying new funding restrictions and reporting requirements, governments often point to an agenda that has long been championed by CSOs themselves: the need for transparency. In Israel, for example, Prime Minister Binyamin Netanyahu recently defended a new bill that puts extra requirements on foreign-funded CSOs, claiming that 'the law's approval will increase transparency' and 'strengthen democracy'.[47] Similar claims have been made by the Hungarian government about the recently approved 'Bill on the Transparency of Organisations Financed from Abroad', which requires CSOs receiving foreign donations above a certain threshold to register with the authorities.[48]

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* This diagram is based on data collected by the International Centre for Not-for-Profit Law (ICNL). More than a third (36%) of all restrictive laws, enacted globally between 2012 and 2015, target foreign funding. Nearly one fifth (19%) restrict freedom of assembly. Most restrictive laws (45%) fall into the 'framework regulation' category. These laws govern the 'lifecycle' of CSOs, including their incorporation/establishment, operation, management, and dissolution. See: Rutzen (2015b), pp. 4-5.

40 Brechenmacher (2017), p. 10.
41 Council of Europe Commissioner for Human Rights (2017), p. 11.
42 Taubina (2017), Brechenmacher (2017).
43 ICNL (2010), Rutzen (2015b).
44 Amnesty International (2016).
45 Amnesty International (n.d.).
46 Dupuy, Ron, and Prakash (2015). The overall mortality rate was even higher, with the number of registered local and international NGOs dropping by 45% between 2009 and 2011. It is likely, however, that a significant number of these NGOs were inactive 'sham' or 'briefcase' groups.
47 Beaumont (2016).
48 The Economist (2017a).

In addition to targeting funding, many governments are creating additional administrative hurdles for CSOs, such as the need to file all planned activities in advance with the government. Burdening CSOs with tedious bureaucratic requirements is a strategy that is difficult to challenge, because there are no clearly defined human right norms in this area. Equally hard to challenge is the selective support of loyal NGOs or GONGOs (government-organised non-governmental organisations) in an attempt to crowd out critical voices.[49] Other less visible, 'deniable' strategies to demobilise CSOs include, for example, harassing activists or making it difficult for them to travel and obtain visas.[50]

In many countries, civil society actors do not just face legal disadvantages, bureaucratic hurdles, harassment, and stigmatisation, but also the very real danger of imprisonment, deportation, torture, or death. Physical attacks on activists and journalists are not always carried out by state security forces. Data collected by Gohdes and Carey on journalists killed worldwide between 2012 and 2013 shows that non-governmental actors are responsible for a substantial amount of all killings.[51] In Russia, civil society activists are increasingly subjected to attacks by so-called 'patriotic groups' that largely enjoy impunity.[52] And in Latin America, a steady rise in killings of environmental activists has been linked to the expansion of extractive industries, the influx of associated multinational corporations and criminal enterprises, and a prevailing culture of effective state-sanctioned impunity.[53]

Mural in Sydney, Australia. Source: 'Free Speech. Conditions Apply by Fukt' (CC BY-NC 2.0) by wiredforlego.

Finally, governments are targeting the free flow of information in an effort to control, monitor, or silence civil society. While in fully authoritarian states an independent press might be virtually non-existent, in hybrid regimes journalists and media outlets are often pressured into self-censorship or else face costly lawsuits or significant personal risk.[54] In fact, some of the most dangerous countries for journalists (outside of war zones) are semi-democratic states, such as Turkey or Russia.[55]

The rise of the new media has helped civil society actors to mobilise, connect, and share information in new ways. However, at the same time, governments are becoming savvier in controlling digital technologies and social media platforms, including by spreading 'fake news', surveilling civil society actors, or by simply shutting down the internet when facing intense resistance.[56] Again, this is not just an issue in authoritarian regimes, where the internet is usually already tightly controlled. In 2015, for example, a tribunal in the UK confirmed that the British surveillance agency had been intercepting and retaining the communications of several human rights groups.[57] More recently, Mexico, which is considered to be 'one of the most hostile environments in the world for online journalists and bloggers',[58] made headlines by using spyware to target journalists and human rights lawyers.[59]

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[49] Gershman and Allen (2006), pp. 44-45.

[50] Bakke, Mitchell, and Smidt (2017).

[51] During armed conflict, most non-state perpetrators are political groups (e.g. rebels or extremist groups). During peace times, more journalists are killed by non-political actors (e.g. criminals, mobs, or gangs). See: Gohdes and Carey (2017).

[52] Taubina (2017). See also: Litoy (2015).

[53] The Economist (2017b).

[54] See, for instance: Levitsky and Way (2012), pp. 8-9.

[55] Committee to Protect Journalists (n.d.).

[56] See, for instance: Hankey and O'Clunaigh (2013), Lannon and Halpin (2013), Romero (2014), Gohdes (2015).

[57] The Investigatory Powers Tribunal (IPT), which is responsible for handling complaints about surveillance by public bodies in the UK, found that two human rights organisations, including Amnesty International, had been subjected to interception by the Government Communications Headquarters (GCHQ). The IPT ruled that the interception was lawful and proportionate but that the data had been retained for too long. See: Bowcott (2015).

[58] Freedom House (2016).

[59] Ahmed and Perlroth (2017).

KEY INSIGHTS: STATE STRATEGIES TO RESTRICT CIVIC SPACE

- **Stigmatising CSOs:** State-sponsored smear campaigns targeting certain types of CSOs (especially those that are foreign-funded) are often employed to justify legal restrictions and/or violent repression. Delegitimation narratives may portray CSOs as anti-national, elitist, undemocratic and corrupt, or even as terrorist organisations.

- **Tightening legal restrictions:** States around the world have enacted laws that restrict CSO activities and funding. In some states, CSOs have to register as 'foreign agents' or seek advance permission to receive foreign funding. In others, CSOs are not allowed to receive foreign funding at all – or only with serious limitations. Restrictions on CSOs are frequently combined with broader legislative measures that limit civic freedom, e.g. anti-protest laws. These laws often use deliberately vague language, increasing states' discretionary authority.[60]

- **Employing non-legal repressive strategies:** While legal restrictions directed at CSOs have received much attention, states are also seeking less visible ways of demobilising civil society actors. For example, CSOs and individual activists might be subjected to repeated audits and investigations, intimidation, harassment, and surveillance, or face travel obstructions and difficulties obtaining visas.

- **Creating loyal voices:** Some states have set up so-called GONGOs (government-organised non-governmental organisations) that are specifically designed to imitate authentic, grassroots CSOs. While GONGOs have different forms and functions they generally serve to legitimise government policies and crowd out critical voices.

- **Resorting to violent repression:** In many countries with heavily restricted civic space, civil society actors are at constant risk of deportation, detention, imprisonment, torture, or even execution. Even in countries that are considered relatively open (especially in Latin America), human rights activists and journalists often find themselves at danger of physical attacks.

- **Restricting the free flow of information:** According to Reporters Without Borders, media freedom around the world 'has never been so threatened.'[61] Even in supposedly stable democracies, media freedom is increasingly inhibited, largely as a result of the spread of 'fake news' and the populist anti-media backlash. The Internet and the new media can help support civic engagement and mobilisation, however, they also provide new opportunities for governments to control public opinion and monitor civil society action.

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[60] Brechenmacher (2017), pp. 93-94.
[61] Reporters Without Borders (2017).

RESPONDING TO STATE REPRESSION

Given the global prevalence of state restrictions on CSOs, and especially human rights defenders, what can be done? First, it is important to recognise that there are no one-size-fits-all solutions. The effectiveness of responses may depend on national and local political contexts, the types of restrictions that are being employed, and the particular characteristics and functions of CSOs themselves.[62]

It is also important that concerns over the legitimacy, transparency, and accountability of CSOs – although often abused by repressive governments to discredit and restrict unwanted organisations – are not dismissed out of hand. In order to build and maintain vital public trust and support, CSOs need to make sure that they are representative of the people they claim to speak for. As heavy reliance on external funding often results in weak links to local populations, some CSOs may find it necessary to rethink funding models.[63] This may involve, for instance, experimenting with crowdfunding, providing paid services, reaching out to corporate or high net worth individual sponsors, seeking in-kind contributions, or shifting to a membership model.[64]

Funders have also started to respond to state efforts to crack down on civil society, for example, by pushing back against restrictive laws, developing stronger ties with local funding partners, increasing flexible funding and 'emergency' assistance, helping CSOs identify alternative funding sources, and supporting a wider range of groups in addition to the traditional NGO partners (e.g. social enterprises or social movements).[65] Despite these efforts, in some cases, funders have been forced to scale back funding for groups or activities that are considered 'politically sensitive'.[66]

Similarly, some CSOs have responded to heavy state restrictions by abandoning certain programs or refocusing their overall activities to areas that are considered less 'political' and confrontational, such as social service delivery.[67] Although not explicitly working on human rights issues or democracy promotion, these organisations might still be able to push for change in these areas, even if progress is likely to be small and incremental.

In some instances, litigation may be an effective way to challenge restrictive laws, regulations, and practices.[68] In Botswana and Kenya, for example, LGBT rights groups have successfully challenged government refusals to allow them to register.[69] In 2014, (then) UN Special Rapporteur Maina Kiai launched a project specifically designed to support strategic litigation in domestic and regional courts on cases related to the right to freedom of peaceful assembly and of association.[70] However, litigation can be costly and the likelihood of success is dependent on the independence of the judiciary. Even if litigation is successful, states might simply refuse to follow court orders.

Practitioners have also highlighted the importance of peer-to-peer support, joint capacity building, international solidarity, and networking.[71] Networks enable CSOs to share best practices, identify new avenues for protecting civic space, and engage in collective advocacy action. Network support may be especially important for activists at particular risk, such as women human rights defenders.[72]

Under certain conditions, civil society actors may also profit from partnering with unlikely allies. International businesses, for example, may have a stake in maintaining an open civic space in the countries they operate in and be able to exert significant pressure on governments. Business associations may even be directly affected by some funding restrictions targeted at NGOs.[73]

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[62] Van der Borgh and Terwindt (2012).
[63] Mendelson (2015).
[64] Rekosh (2017).
[65] See, for instance: Carothers (2015), Funders' Initiative for Civil Society (2016), Youngs and Echagüe (2017).
[66] Carothers (2015).
[67] Taubina (2017). See also: Banks, Hulme, and Edwards (2015).
[68] International Service for Human Rights (2015).
[69] Reid (2015).
[70] The project seeks to support relevant cases by providing technical assistance and advisory services to litigants, attorneys, and CSOs, as well as by submitting amicus curiae briefs to judicial bodies. See: Kiai (2015).
[71] Nah et al. (2013), East and Horn of Africa Human Rights Defenders Project (2013).
[72] Marland (2015).
[73] Carothers (2015), p. 22.

In some cases, civil society actors can also turn to their own governments for protection. Several countries in Latin America have established national protection mechanisms in reaction to the rise in assaults and attacks on journalists and human rights defenders.[74] Such efforts have been reinforced by developments within the Inter-American Human Rights System, for example, the issuing of protection orders (precautionary measures) on behalf of human rights defenders in situations of extreme gravity and urgency.[75] Even though many of these programmes have been criticised for being weak or ineffective, they establish a clear legal responsibility for the state to offer protection.[76]

Third-party states can voice concern over civil society restrictions and exert pressure on repressive governments, for example, through quiet bilateral diplomacy, 'naming and shaming', and the use or threat of sanctions. The international human rights regime also offers multiple venues to address concerns over the situation of civil society actors. These include the UN Human Rights Council and its Universal Periodic Review mechanism, which examines the human rights record of every UN member state. In addition, National Human Rights Institutions (NHRIs) can potentially play an important role in the protection of civil society actors. NHRIs are (nominally) independent bodies, established by national

Human Rights Council in Geneva. Source: 'Human Rights Council -31st session' (CC BY-NC-ND 2.0) by UN Geneva.

governments to promote and protect human rights. Provided that they are able to retain their independence, NHRIs may be able to forge close relationships with domestic CSOs, voice concern about civil society restrictions, and investigate and report on human rights violations, thereby helping to leverage domestic and international pressure.[77]

The effects of international pressure, however, may not always be positive. Repressive governments may indeed worry about potential reputational costs and international retaliation – but that does not necessarily mean that they will refrain from repressive activities. In fact, they may choose to reduce reputational costs by tightening CSO restrictions, thus silencing those that 'sound the alarm' in the first place.[78] Whether or not putting countries into the spotlight has unintended negative consequences for CSOs may depend on a range of factors, such as the level of external pressure, the political environment and the structure of civil society in the 'shamed' state, and its relationships with other states.[79]

Finally, there is a need to pay more attention to early warning signs. For instance, Gohdes and Carey find that the killing of journalists is a strong precursor to deteriorating human rights conditions, especially in countries where repression is currently limited.[80] A recent study, requested by the European Parliament's Subcommittee on Human Rights, suggests the establishment of an EU 'Shrinking Space Early Warning' mechanism that would allow Member States to respond to new restrictive legislation before it gets passed.[81]

Importantly, Western democracies should not just pay attention to early warning signs elsewhere. Perennial data from the World Values Surveys shows that in many consolidated democracies people express declining faith in democracy and are increasingly open to anti-democratic alternatives.[82] These findings are also reflected in the rise of right-wing populism in Europe and the US.

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[74] Joloy (2013).
[75] OAS (n.d.).
[76] Amnesty International (2017c).
[77] See, for instance: ODIHR (2014), pp. 126-127. However, NHRIs might also have demobilising effects on civil society if they discourage, crowd out, or redirect resources from grassroots human rights groups. See: Goodman and Pegram (2011), p. 18.
[78] Bakke, Mitchell, and Smidt (2017).
[79] Franklin (2015), p. 48.
[80] Gohdes and Carey (2017).
[81] Youngs and Echagüe (2017).
[82] Foa and Mounk (2016).

Other polls, however, paint a more positive picture. The 2015 United Nations MY World Survey asked almost one million people from 194 countries to vote on the issues that matter most to them. 'An honest and responsive government' came in fourth place, ahead of priorities such as affordable food, protection against crime and violence, or access to clean water. While 'political freedoms' were not a main priority for people in countries with a high Human Development Index (HDI), they were ranked significantly higher by people living in countries with a low HDI.[83] This result strongly contradict claims that human rights and political freedoms are a luxury only people in rich countries care about.

Healthy democracies depend on a functioning civil society. Dwindling support for democratic principles, civil liberties and human rights (in at least some parts of the world) is a source of grave concern. At the same time, the global crackdown on civil society is also testament to the resilience and power of these concepts which, while contested, continue to resonate among those who share a deeply-held concern for progressive political change, the protection of human life and liberty, and an end to the arbitrary abuse of power.

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[83] United Nations, Overseas Development Institute, and Ipsos Mori (2015).

KEY INSIGHTS: RESPONDING TO STATE REPRESSION

- **Strengthening local trust and support:** CSOs with strong local links, solid accountability and transparency mechanisms, and genuine community participation are less vulnerable to state restrictions and delegitimation campaigns.

- **Diversifying funding:** Some CSOs may choose to reduce dependence on external support, e.g. by making greater use of digital platforms for fundraising purposes, reaching out to new corporate or individual supporters, charging for certain products and services, seeking in-kind contributions, or shifting to a membership model. Funders can support CSOS in restrictive environments, e.g. by providing more flexible and ad-hoc funding, making application procedures easier, and helping CSOs find alternative or additional sources of funding.

- **Using strategic litigation:** Under certain circumstances, litigation may be an effective way to challenge restrictive laws and raise awareness of the barriers CSOs face. If unsuccessful, however, litigation risks setting negative precedents and stimulating a government backlash against CSOs.

- **Increasing peer-to-peer support:** Peer-to-peer exchange, joint trainings and capacity building initiatives can help CSOs navigate restrictive environments. External partners (e.g. donors, consultancies, pro-bono lawyers, or international organisations) can provide important legal advice and technical know-how.

- **Forging unconventional partnerships:** CSOs might find unlikely partners in international businesses which have an interest in preserving civic space in the countries they operate in. In some cases, civil society activists might even be able to turn to the state for protection against intimidation, harassment, or attacks.

- **Leveraging international pressure:** Sympathetic states can use bilateral and multilateral channels to put pressure on restrictive governments and express solidarity with CSOs. Working closely with local civil society actors might be a way to minimise the potential unintended consequences of these efforts.[84]

- **Turning to human rights institutions:** The international human rights system offers several avenues for intervention, such as the UN Human Rights Council. On the national level, National Human Rights Institutions (NHRIs) can potentially play an important role in monitoring conditions for civil society and protecting human rights defenders.

- **Paying attention to early warning signs:** As states around the world employ aggressive tactics to silence civil society voices and anti-democratic sentiments are on the rise in the West, CSOs, funders, and the international community should take early warning signs seriously and increase investment in preventive action.

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[84] Terman (2013).

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