ICNL

PROTECT

Open Government Partnership, Civic Space, and COVID-19

This piece outlines the OGP system and explores how an open government approach can help protect civic space during the COVID-19 pandemic.

What is the Open Government Partnership?

OPEN GOVERNMENT PARTNERSHIP (OGP): A partnership between government leaders and civil society representatives that aims to promote accountable, responsive, and inclusive governance.

OGP MEMBERSHIP: Members include national and local governments and civil society organizations (CSOs). To join OGP, governments must endorse the Open Government Declaration, meet the Eligibility Criteria, and pass the OGP Values Check.

National members from Sub-Saharan Africa include Cote d'Ivoire, Kenya, Liberia, Malawi, Nigeria, Senegal, Seychelles, Sierra Leone, and South Africa.

OGP PROCESS: Government and civil society members co-create two-year country-specific action plans with concrete commitments across a broad range of issues, and commit to independent and public evaluation of progress on these commitments.

IMPORTANCE OF OGP: The OGP's model requires government members to work with civil society members to create and implement joint commitments, thus enhancing the partnership between governments and their people. Furthermore, the multinational structure of OGP facilitates peer learning among its members, who can share success stories and lessons from national and local-level initiatives on target issues. Broad participation in OGP helps to guarantee representation of diverse views and experiences when the partnership drafts commitments on pressing policy areas, such as health, anti-corruption, digital governance, and civic space.

Civic Space and its connection to OGP

CIVIC SPACE: The political, legislative, social and economic environment enabling individuals to come together, share interests and concerns, and act individually and collectively to influence and shape policy-making. Three fundamental rights that contribute to a healthy civic space are the freedom of association, the freedom of assembly, and the freedom of expression.

CONNECTING OGP TO CIVIC SPACE: The open government model and civic space have a symbiotic relationship. A thriving civil society fortifies the collaborative nature of OGP because consistent and thoughtful participation of civil society in OGP ensures that OGP commitments truly reflect the needs and concerns of people in addition to government interests. Meanwhile, the open government model contributes to a healthy civic space by holding members accountable to the principles of transparency and citizen engagement, two governing principles that enable civil society to keep abreast of and share inputs on government initiatives.

CURRENT CHALLENGES TO CIVIC SPACE: Civic space has come under attack globally: over 50 percent of OGP countries have reported issues related to restrictions on civil society, including the harassment of activists and journalists, barriers to access to funding and tax benefits, excessive use of force by police during demonstrations, and the targeted use of surveillance and personal data against organizations, journalists, and human rights defenders. Additionally, 45 percent of OGP countries report issues with censorship and online discrimination.

What are existing OGP projects aimed at promoting an enabling civic space?

The OGP has centered its response to closing civic space in three areas: defending journalists and activists, the freedom of assembly, and the freedom of association.

DEFENDING JOURNALISTS AND ACTIVISTS

Journalists and activists act as watchdogs to keep the government accountable, inclusive, and responsive to its people's needs. The OGP is currently working to define best practices to defend journalists and activists based on successful commitments in a few member countries.[1] The OGP has also issued the following recommendations to defend journalists and activists:

(1) Protect activists and journalists from unwarranted police investigations, provide access to legal counsel, guaranteed due process, and witness protection. Essential to this is an independent and impartial judiciary, non-susceptible to political pressure.

(2) Collect and share data, including reports on killings, harassment and other forms of violence.

(3) Train individuals and CSOs about their rights and the need to actively defend activists and journalists, including online.

---

[1] One such success is Ireland's whistleblower law, which was developed in close cooperation with civil society and was assessed to have an "outstanding" effect on opening up government by mitigating the reluctance of employees to speak up against wrongdoing in private and public workplaces.

(4) Understand that repression, harassment, and violence impacts women and minority groups (including sexual, racial, and religious minorities) differently. Take this difference into account when planning action steps.

PROTECTING THE FREEDOM OF ASSEMBLY

The right to the freedom of peaceful assembly protects individuals and groups' ability to express, promote, pursue, and defend common interests and concerns. The OGP is gathering best practices from countries performing well on the freedom of assembly, and has shared the following recommendations:

(1) Expand who protects and promotes the right to freedom of assembly beyond state actors, including the police.

(2) Provide for adequate security and safety for assemblies, including clear guidance on the use of force.

(3) Decriminalize assembly activities and focus on proportionate application and use of civil and administrative fines and penalties for violations.

(4) Ensure proper and transparent use of digital technologies, including cybersecurity, online surveillance, and facial recognition software

PROTECTING THE FREEDOM OF ASSOCIATION

The freedom of association protects the right of individuals to connect with others who have similar interests, and amplifies their ability to voice their concerns to the public and to the government. OGP is promoting positive reform commitments and pushing back against the abuse of transparency and accountability principles to over-regulate civil society. OGP has issued the following recommendations to protect the freedom of association:

(1) Publish and share information on financial reporting and regulations.

(2) Limit or eliminate restrictions that make it challenging to establish a new organization, especially for those working on sensitive issues.

(3) Ease requirements on registration and access to funding.

OGP and COVID-19

HOW HAS COVID-19 IMPACTED CIVIC SPACE?

Measures responding to the pandemic, particularly those that restrict the freedom of movement and public gatherings, have undermined the everyday operations of CSOs. These types of restrictions, while often necessary to curb the spread of the coronavirus, impact the ability of CSOs to implement core activities such as holding meetings and workshops, lobbying, protesting, and fundraising.

However, the pandemic is also an opportunity for civil society to demonstrate the benefit of having an open civic space. Civil society has actively responded to the pandemic through helping to publicize information about the virus, and analyzing COVID-19 measures to ensure the protection of fundamental rights. Civil society can use its role in responding to the pandemic to push for more transparent and inclusive decision-making processes that will ensure that the response to and recovery from the pandemic are in accordance with human rights norms, and lay the foundation for a more open civic space moving forward.

HOW IS OGP RESPONDING TO COVID-19?

Following the World Health Organization's declaration of a global pandemic, the OGP established a crowdsourcing forum where users can submit examples of incidences where public and private actors have tackled the virus using open government approaches such as citizen participation, transparency, and accountability. The submissions are publicly available. The OGP also continues to update its State of Open Government During COVID-19 page, which summarizes key insights on how the COVID-19 pandemic has affected various areas of open government in OGP member countries, collected in the COVID-19 OpenGov Tracker.

The OGP has also published a Guide to Open Government and Coronavirus, which recommends open government approaches to addressing the virus, covering civic space, inclusion and gender, misinformation and protecting freedom of expression, and protecting participation and deliberation, among other topics. The OGP stresses that an open government approach to promoting a healthy civic space entails "open response" and "open recovery and reform" measures, which place transparency, accountability, and participation at the center of immediate and medium-term government efforts to curb contagion and provide emergency assistance, and rebuild in a post-pandemic world. The guiding principles are:

- **Legal basis:** Ensure that measures affecting the freedom of assembly and association are based in law while also clearly articulating the reasons for the measures. Measures must be precise enough to permit individuals to determine what behavior is permitted and prohibited.

- **Non-discrimination:** Measures affecting freedom of assembly or association must be evenly applied and not target specific groups.

- **Scope of restrictions:** Measures affecting freedom of assembly or association must be necessary, narrowly tailored, and proportionate in their efforts to respond to the pandemic. Measures must be of short duration and require affirmative review and re-authorization by the legislature.

- **Public:** Measures affecting freedom of assembly or association must be disseminated widely and promptly to the public.

- **Multi-stakeholder advisory council:** Organize an inclusive council of stakeholders to co-design and review measures related to civic space in the COVID-19 response.

- **Enabling resources:** Support civil society organizations that provide vital support whose funding is at risk as a result of the crisis.

- **Digital civic space:** Avoid interference with online spaces used by civil society for assembly or association, and create new online spaces and mechanisms to permit civil society to participate in policy development, implementation, and review.

- **Independent oversight:** The legislature and courts should retain the ability to exercise close oversight and review over measures affecting freedoms of assembly or association.

- **Reporting and transparency:** Ensure financial and reporting transparency requirements for nonprofits are not more restrictive than those for other entities, and create a common registry for all nonprofits.

EXAMPLES OF OPEN GOVERNMENT APPROACHES TO COVID-19 IN SUB-SAHARAN AFRICA

Public databases and widely accessible participatory mechanisms enhance government transparency, accountability, and dialogue with civil society. These open government approaches enable individuals and organizations to review and comment on COVID-19 measures and statistics, sharing insight and concerns directly with law and policymakers to ensure that COVID-19 measures address their needs and continue to protect fundamental human rights while controlling the pandemic. Some examples of open-government approaches to addressing COVID-19 in Sub-Saharan Africa:

- TRANSPARENCY INTERNATIONAL KENYA has established a database that tracks sources and amount of aid given to Kenyan governments (local and national) to support COVID-19 response efforts; number of confirmed cases, deaths, and recoveries and their locations; and useful links. The platform also includes an open survey which Action for Transparency will use to inform strategies for enhancing transparency and accountability in the mobilization and utilization of resources to deal with the COVID-19 pandemic.

- KENYA LAW BLOG continues to update a page tracking evolving jurisprudence and laws in Kenya related to COVID-19.

- MALAWI'S MINISTRY OF HEALTH continues to update its COVID-19 National Information Dashboard, which includes statistics on COVID-19 cases, and links to the Public Health Institute of Malawi's situational reports and other COVID-19-related resources.

- THE SOUTH AFRICAN GOVERNMENT has set up a Coronavirus Resource Portal, which publishes COVID-19 statistics, relevant legislation, public statements from government officials, guidelines for physical and mental health during the pandemic, and other relevant resources. South Africa's National Treasury also publishes Government wide COVID-19 Transactions.