



POLICY BRIEF

Civic Space in Afghanistan

Introduction

Civil Society Organizations (CSOs) have made significant contributions to the inclusive and equitable development of Afghanistan. CSOs are providing critical services and support to Afghans in hard-to-access parts of the country that the government and other actors cannot reach. CSOs also play a key role in advocating on behalf of the Afghan people to their government for promotion and protection of human rights, access to basic services and good governance, among other issues. However, despite major progress during the last 15 years in their activities, capacity and reach¹, shrinking civic space² for CSOs continue to be a challenge in Afghanistan.

Civil society faces worrying levels of restriction in the world. As per CIVICUS 2017 report, attacks by state and non-state actors on the core civic freedoms – of association, peaceful assembly and expression are becoming increasingly brazen. Civic space is being seriously constrained in 106 countries with six in ten countries seriously restricting people's fundamental freedoms of association, peaceful assembly and expression³. Some of the worst conditions appear in Africa and Asia. Afghan people are among the 45% of the global population who live either in closed or repressed civic space.⁴

This policy brief discusses civic space in Afghanistan, including the overall situation of freedom of expression⁵, freedom of association⁶ and freedom of assembly⁷ as well as their associated challenges and opportunities. It provides relevant recommendations to CSOs, the Afghan government and donors. AICS, an Afghan CSO focused on promoting an enabling environment for Afghan civil society, prepared the brief based on field research conducted in Kabul and key provinces as well as desk review specifically the State of Enabling Environment for CSOs in Afghanistan (SEECA) report published by AICS in 2017 and 2018.

Context Analysis

CSOs are significantly influenced by the legal environment in which they operate. Formal laws and policies, including the international treaties to which Afghanistan is signatory, as well as domestic laws and policies, govern the degree to which civil society activities are recognized and protected. This includes the protection of rights and freedoms necessary for a thriving civil society, including freedom of expression, freedom of assembly, freedom of religion and access to information. CSOs are also affected by specific laws and policies designed to monitor and regulate the civil society sphere. These include regulations around the registration of organizations, (e.g. the necessity, benefits, drawbacks and process of registration) as well as taxation.⁸

This policy brief lays out three major factors that influence civic space including freedom of expression, freedom of association and freedom of peaceful assembly.

Freedom of Expression

Media experts consider Afghanistan's Media Law to be one of the best laws of its kind in the South Asia. The Government of Afghanistan has termed a free press to be one its biggest achievements.

However, despite the favorable legal environment and legally free press, CIVICUS Monitor noted that Afghanistan continues to be a dangerous place for journalists and media workers. The World Press Freedom Index ranked Afghanistan 122nd out of 180 countries on the degree of freedom for journalists.⁹

The 2017 Afghanistan Human Rights report highlighted that at times authorities used pressure, security regulations and threats to silence critics particularly at the provincial levels. Provincial officials and power brokers have exerted significant influence and authority to intimidate or threaten their critics both private citizens and journalists.¹⁰ In the provinces, many Afghan journalists go through a process of self-censorship and avoid reporting on sensitive topics such as corruption, drug smuggling, poor governance and atrocities committed by armed groups. Journalists prefer (understandably) to protect themselves and their families rather than covering precarious topics.¹¹

The past 3 years were particularly deadly for journalists in Afghanistan. In 2018, the Afghan Journalists Safety Committee (AJSC) recorded 121 cases of violence against journalists and media workers (11 cases against women journalists), including cases of murder, injury, threats, temporary detention, abduction and many more. In 2018, around 17 journalists and media workers were killed which placed Afghanistan as the most dangerous country for journalists last year. In addition to 17 cases of murder, AJSC registered 15 cases of injury, 21 cases of physical assault, 38 cases of threats and intimidation, 23 cases of insults and mistreatment, 1 case of

inappropriate expulsion of journalist by a media manager, 5 cases of temporary detention, and 1 case of abduction. ISIS and the Taliban perpetrated 41% of these incidents, government perpetrated 37%, unknown individual perpetrated 13%, powerful individuals 5%, and media owners perpetrated 4% of them.¹² Even though the central government has vowed to investigate all cases of threats and violence by security personnel, members of parliament and other officials, and in some cases has launched investigations, it has consistently failed to prosecute the perpetrators.

In addition to the targeting of journalists and the press with violence, lack of implementation of the Law on Access to Information is also a challenge for journalists and the media¹³. The law on paper is again positive -- the Canadian Center for Law and Democracy ranked Afghanistan's Law on Access to Information as the best such law globally. Yet more than half of journalists were dissatisfied with the level of access to government information.¹⁴ In addition to the threats and violence outlined above, journalists report that government officials frequently invoke the national interest exception in the Access to Information law to avoid disclosing information.¹⁵

Freedom of Association

The legal framework for forming formal associations is relatively improving. 30% of the CSOs found the process difficult – this includes associations' perceptions of the Ministry of Justice (MoJ).¹⁶ There are varying mechanisms in Afghanistan for regulating different type of civil society organizations. The current registration mechanisms are not entirely systematic and efficient in terms of transparency, accountability, and regular assessments of the organizations. It is more of a technical system to ensure that a government institution has a record of the projects, finances, and staff of each organization. Different types of organizations register with different ministries, with different systems and guidance. For example, NGOs (including civil society network and coordination bodies) register with the Ministry of Economy (MoEc) while political parties and social organizations register with MoJ.¹⁷

Unlike at MoEc, the absence at MoJ of written reporting guidelines or an electronic and publically available database for registered associations to smoothen the registration process is a challenge. MoJ's centralized management structure is another challenges that further inhibits the Ministry's efficiency. While better than the MoJ system, MoEc's registration process is a heavily bureaucratic process. The MoEc has promised measures to make reporting more streamlined, including online registration and submission of reports.¹⁸ In addition, the government has been developing mechanisms for centralization of all processes for delivery of certificates to CSOs under the authority of a single government institution, an initiative for which CSOs have advocated.¹⁹

While it is not very difficult under the law to establish and register a CSO, there is limited space for CSOs to operate beyond providing essential services and distributing humanitarian aid. CSOs routinely receive threats against their staff and their operations from a range of unofficial actors, including the Taliban and other insurgent forces.²⁰ According to the International NGO Safety Organization (INSO), a total number of incidents reported in Afghanistan for Jan-Dec 2018 is 29450 (63.2% by AOG ²¹, 21% by GOA ²², 6.4% IMF ²³ and 4.7% ACG ²⁴). Among this, the NGO incident rate comprises a gross count of all incidents that involved an NGO is about 242 which

includes arrest, abduction, robberies, intimidation and improvised explosive devices (24.2% robberies, 22.1% threat, 18.3% direct fire, 12.9% abduction, and 10% IED²⁵).²⁶

In addition, in early 2017, the Afghan parliament approved several restrictive amendments to the Law on Associations without any consultation with civil society. By the end of the year, the MoJ published the amended law that included fifteen of the eighteen recommendations submitted by the CSO-Government working group in response to the law's approval. As a result of CSOs work, positive changes were made in the law including changes to ease registration and reporting and extension of registration validity from one to three years.²⁷

In addition to registered CSOs, there are also numerous informal, traditional and unregistered CSOs working in and for communities.²⁸ Traditional civil society includes religious groups and institutions, water management committees, local community councils of elders (*shuras*), tribal assemblies of elders (*jirgas*), youth movements, and cultural and literature organizations such as reading groups.²⁹ Traditional civil society groups are less targeted by insurgents. Afghans put the highest level of confidence in *shuras/jirgas* compared to government ministries and parliament. Afghan government has neither applied any legal restrictions on forming such informal civic groups nor has provided any kinds of support to these groups so far.

Freedom of Peaceful Assembly

The right to freedom of peaceful assembly is an essential prerequisite to effective civil society work which require states to respect, protect and fulfil the right without discrimination. CSOs and individuals use it as a tool to influence social change and communicate unrest or dissatisfaction with the authorities.³⁰

The right to peaceful assembly is guaranteed in Afghanistan Constitution. The new Law on Gatherings, Strikes and Demonstrations requires notification but express permission from the authorities is not required. CSOs and citizens believe the new Law has limited the rights to freedom of association and expression by introducing restrictions on the organization of demonstrations and strikes. CSOs are also concerned about an article that authorizes the police to stop demonstrations when required, depending on the security circumstances.³¹ They believe that the law gives police enhanced authority to stop or prevent demonstrations or strikes, further undermining the right to peaceful assembly. Referring to human rights acts, CSOs and citizens claim that freedom of peaceful assembly is their right and not a privilege given by the government and the government should not stop them to exercise this right. They also say that the government should facilitate the exercise of the right and take measures to protect public safety. Any notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation.³²

In last couple of years, several public demonstrations were also targeted by security incidents. For example, in September 2018, 68 demonstrators were killed and 168 wounded during a political gathering in Nangarhar, where residents were demanding the removal of a local police commander. Besides, there is now rise in fear for personal safety may be due to the rising number of recent attacks on gatherings. According to The Asia Foundation "A Survey of the Afghan People 2018", the fear for personal safety remains at the high level as (71.1% in 2018) and fear of participating in a peaceful demonstration has risen to 73.1%, its highest level in last two decades. More females (77.9%) report fear of participating in a peaceful demonstration than males (68.3%).³³

Conclusion

In Afghanistan, despite repeated emphasis on the importance of civil society for conflict resolution and peacebuilding, its space for action and freedom to act are becoming increasingly restricted.³⁴ A strong legal framework for civic space in Afghanistan is undermined in practice by persistent insecurity and attacks on civil society by state and non-state actors, including extremist groups and terrorist organizations. Peaceful protests are generally allowed by the authorities, although

continuing conflict and intolerance mean that citizens are less able to gather in public in some remote parts of the country. While some media organizations can express views openly, journalists also face threats, harassment and violence. Freedom of association is enshrined in law and it generally creates an enabling framework for the formation and operation of civil society organizations. However, there are some barriers to their free operation, as well as invasive supervisory oversight.³⁵

Recommendations*

CSOs and media organizations should train their staff on “Safety and Security Guides” prepared by AJCS as per the requirements of CSOs’ security needs and local security threats. In order to meet international standards, media organizations should upgrade their production and dissemination services.

The government should also train security and judiciary personnel to ensure cases of violence against CSOs and journalists are fairly treated without delays. The government must ensure that cases of violence against CSOs and media personnel are addressed without unnecessary delays.

Government should analyze obstacles in government administrative processes for CSOs including registration, project authorization process, tax declaration, signing MoUs and conduct corruption vulnerability assessment.

The government should continue consultation with CSOs while centralizing all processes for delivery of certificates for various CSOs, currently split between different ministries under the authority of a single government institution.

Government should jointly review the new Law on Gatherings, Strikes and Demonstrations with CSOs and media organizations and amend the law in light of international laws as well as recommendation of CSOs.

Government should safeguard freedom of speech and press freedom by removing all the obstacles which limit freedom of speech.

The Afghan government must take meaningful measures to respond to the changing nature of threats against journalists and media, review the current security measures and create effective security coordination mechanism with media and journalists.

The international community has played an important role in the growth of free media and the promotion of freedom of expression in Afghanistan. The International community must prioritize supporting (financially and technically) media and freedom of expression as well as create development plans to support media.

The peace process with the Taliban is an ongoing agenda of Afghan government and international community. The government of Afghanistan and international community should not scarify freedom of expression in peace negotiation.

The signed Access to Information Law needs to be operationalized through government initiatives, which will allow civil society and the general population to be aware of the relevant information for decision-making, accountability mechanisms and policy formulations at national and subnational levels. Afghan government should significantly increase their efforts to improve access to information, centrally and in the provinces in order to improve coverage of vital issues, including upcoming presidential elections, security and peace negotiation with Taliban.

The Afghanistan National Peace and Development Framework states the importance of protecting the operating space of civil society organizations. Government should safeguard CSOs operating space. The MoU signed between government and CSJWG should be reinforced, monitored and reported and if needed timely upgraded by the parties.

Ministry of Economy (MoEc) and Ministry of Justice (MoJ) should expedite the revision process of the NGO Law and the accompanying implementation mechanism.

About Afghanistan Institute for Civil Society

To Support a credible and competent civil society sector in Afghanistan by linking CSOs, donors, government and capacity building services through culturally appropriate certification schemes. The institute will encourage the growth of a vibrant civil society, promoting pluralism and participatory, non-discriminatory development in Afghanistan.

AICS's Objective

1. Raise credibility of the civil society sector by certifying local organizations against locally defined and internationally recognized standards;
2. Systematize capacity building efforts of local organizations by coordinating initiatives against measurable performance indicators;
3. Strengthen the role of civil society in Afghanistan's development through collective efforts of policy dialogue and active engagement with government, donors, the private sector and the broader civil society sector;
4. Provide a channel for resources for civil society by strengthening philanthropic and corporate social responsibility efforts.

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- 1 Afghanistan Civil Society Assessment, published by Counterpart International in 2014: http://www.langerresearch.com/wp-content/uploads/I-PACS_II_Report_Web_Final.pdf
 - 2 Civic space is the bedrock of any open and democratic society. When civic space is open, citizens and civil society organizations are able to organize, participate and communicate without hindrance. In doing so, they are able to claim their rights and influence the political and social structures around them. This can only happen when a state holds by its duty to protect its citizens and respects and facilitates their fundamental rights to associate, assemble peacefully and freely express views and opinions. (CIVICUS). The term 'shrinking civic space' refers to formal and informal measures that aim to restrict civil society engagement. Among the most common indicators of shrinking space are limitations on the freedoms of speech, the press and assembly, legislation that limits the activities or financing of civil society organizations (CSOs) or that would classify their staff as terrorists or foreign agents, the detention of civic actors without due process, or slander and intimidation. (CIVICUS)
 - 3 People Power Under Attack 2018: <https://monitor.civicus.org/PeoplePowerUnderAttack2018/>
 - 4 Civic space is significantly constrained. Active individuals and civil society members who criticize power holders risk surveillance, harassment, intimidation, imprisonment, injury and death. Although some civil society organizations exist, their advocacy work is regularly impeded and they face threats of de-registration and closure by the authorities. People who organize or take part in peaceful protests are likely to be targeted by the authorities through the use of excessive force, including the use of live ammunition, and risk mass arrests and detention. The media typically reflects the position of the state, and any independent voices are routinely targeted through raids, physical attacks or protracted legal harassment. Websites and social media platforms are blocked and internet activism is heavily monitored. (CIVICUS). And People Power Under Attack 2018 - CIVICUS - Tracking conditions for Citizen Action- <https://monitor.civicus.org/PeoplePowerUnderAttack2018/>
 - 5 The right to the freedom of expression includes the right to access information, critically evaluate and speak out against the policies and actions of state and non-state actors, and publicly draw attention to and carry out advocacy actions to promote shared concerns, without fear of retribution from any quarter. Civil society organizations should be assured the freedom to carry out investigations and document their findings under this right. (CIVICUS)
 - 6 The right to freedom of association is the right to join a formal or informal group to take collective action. Associations can include civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations or even online associations. There is no requirement that the association be registered in order for freedom of association rights to apply. The right to freedom of association also includes the right of groups to access funding and resources. (CIVICUS)
 - 7 An "assembly", generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations (see A/HRC/20/27, para. 24). The right to freedom of peaceful assembly includes the right to plan, organize, promote and advertise an assembly in any lawful manner. Any restrictions on such activities should be considered as a prior restriction on the exercise of the right. (CIVICUS)
 - 8 The State of Enabling Environment for CSOs in Afghanistan 2017: <http://www.acbar.org/upload/1509511098944.pdf>
 - 9 Reporters without Borders, data of press freedom ranking 2018: https://rsf.org/en/ranking_table
 - 10 Afghanistan 2017 Human Rights Report: <https://www.state.gov/documents/organization/277519.pdf>
 - 11 Freedom of Speech in Afghanistan- A decade after the fall of the Taliban Regime 2011: <https://www.dissidentblog.org/en/articles/freedom-speech-afghanistan-decade-after-fall-taliban-regime>
 - 12 Afghan Journalists Safety Committee Annual Report 2018: <http://ajsc.af/2018-annual-report/>
 - 13 Center for Law and Democracy (2018) - <https://www.law-democracy.org/live/afghanistan-jumps-to-top-position-on-ri-rating/>
 - 14 Afghanistan 2017 Human Rights report: <https://www.state.gov/documents/organization/277519.pdf>
 - 15 Afghanistan 2017 Human Rights report: <https://www.state.gov/documents/organization/277519.pdf>
 - 16 The State of The Enabling Environment for CSOs in Afghanistan 2017: <http://www.acbar.org/upload/1509511098944.pdf>
 - 17 Additionally - labour unions register with the Ministry of Labour and Social Affairs, teachers' associations with the Ministry of Education, and religious councils also have their own system of registration through the Ministry of Hajj and Religious Affairs.
 - 18 The State of The Enabling Environment for CSOs in Afghanistan 2018: https://aicsafg.org/wp-content/uploads/2018/10/AICS-SEECA-2018_English-2.pdf
 - 19 Afghanistan Country EU road map for engagement with civil society: 2018-2020- <http://appro.org.af/publication/afghanistan-eu-country-roadmap-for-engagement-with-civil-society-2018-2020/>
 - 20 KII
 - 21 Armed Opposition Groups
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 - 23 International Military Forces
 - 24 Armed Criminal Groups
 - 25 Improvised Exploding Device
 - 26 INSO Annual Report 2018: <https://www.ngosafety.org/country/afghanistan>
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 - 29 The State of The Enabling Environment for CSOs in Afghanistan 2017: <http://www.acbar.org/upload/1509511098944.pdf>
 - 30 KII
 - 31 SEECA 2017
 - 32 FGD, Herat 2019
 - 33 A Survey of the Afghan People 2018: https://asiafoundation.org/wp-content/uploads/2018/12/2018_Afghan-Survey_fullReport-12.4.18.pdf
 - 34 Shrinking Spaces for Civil Society: <file:///D:/Atasal/Desktop/CIVIC%20SPACE%20in%20Afghanistan/download.htm>
 - 35 CIVIC Monitor Afghanistan 2018: <https://monitor.civicus.org/country/afghanistan/>
- * Supported by reference documents of this policy brief.

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