

THEMATIC OVERVIEW:

CIVIL SOCIETY AND
THE PRIVATE SECTOR





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CIVIL SOCIETY AND THE PRIVATE SECTOR CIVICUS OVERVIEW

ABOUT THIS REPORT

Each year the State of Civil Society Report addresses a different theme: the 2017 report focuses on civil society and the private sector. To gather a range of informed views on this wide-ranging topic, CIVICUS asked 27 different stakeholders to write about an aspect of the theme on which they have expertise.¹ We also conducted a series of interviews, and surveyed members of our Affinity Group of National Associations (AGNA), a network of national and regional-level civil society coordination and membership bodies.² Most of the perspectives come from civil society, but we also sought the views of people working in government and the private sector.

This section of the 2017 State of Civil Society Report brings together those perspectives and considers what they say as a whole about the relationships between civil society and the private sector, and how in the light of these views civil society can respond better to the growing power of the private sector.

Part one of this thematic overview highlights some current key issues in civil society's relations with the private sector. This includes the growing roles being played by the private sector, its impacts on human rights and civil society rights, and its involvement in critical spheres of development and governance in which civil society is also engaged. Part two looks at some of the major responses of civil society towards the private sector. Part three sets out some learning about partnerships between civil society and the private sector, and proposes some key principles for engagement.

PART ONE: KEY ISSUES WITH CIVIL SOCIETY AND THE PRIVATE SECTOR

INTRODUCTION: THE CHANGING BUSINESS LANDSCAPE

The first question to ask is why civil society should concern itself with the private sector. It might, at least in theory, be possible to argue that civil society, as a sphere with values and ways of working distinct from those of business and the state, makes a unique contribution to social, political, economic and cultural life, and best does so by focusing on its own role and advantages. But the world we live in defies any attempt at working in isolation; to do so would risk irrelevance.

¹Each of the authors was asked to write in a personal capacity, and the views presented are not necessarily those of their organisations.

²Sixteen responses were received from AGNA members, from Argentina, Bolivia, Colombia, Finland, Jamaica, Japan, Kyrgyzstan, Latvia, Mexico, Nepal, Nicaragua, Pakistan, Tanzania, Togo, Turkey, Venezuela.

This is because business matters now more than ever. The private sector plays an increasingly important role in economic, political, social and cultural life. A tipping point has been passed where the largest companies economically outweigh most states: of the world's top 100 largest economies by revenue, [69 are companies](#) rather than states. There has been a startling burgeoning of transnational business, as companies have globalised, grown and consolidated into larger, multifaceted and complex entities. Global value chains now make up [80 per cent](#) of world trade, as Sameera Mehra of the Charities Aid Foundation outlines:³

The spread of neoliberal policies and large scale globalisation in the 20th century has resulted in an unprecedented increase in the number of businesses operating across borders. During the 1990s approximately 35,000 parent multinational corporations owned roughly 170,000 foreign affiliates. By the end of the decade, 60,000 parent companies had [more than 500,000](#) foreign affiliates, accounting for a quarter of global output at the time.

As Chip Pitts, an attorney, academic and human rights activist, puts it:

Businesses today often affect us as much or more than nations do; if Facebook were a country, with over 1.5 billion users it would be the most populous nation in the world. Business influence, for good or ill, extends not only to whether and how we consume information, but also to vital issues such as spiralling inequality, discrimination, exclusion, health and the human rights impacts of climate change, and whether human rights and the rule of law will prosper or perish.

The growing global importance of business is a phenomenon that has been broadly accepted and encouraged by political leaders. As David Logan of Corporate Citizenship suggests, compared to the Cold War era, most countries are now organised in roughly the same way, with the private sector expected to play a strong role. Even avowedly communist states encourage commercial enterprise. Elite political consensus has made economic neoliberalism an enduring global orthodoxy.

This means that the private sector increasingly takes on roles once played by the state, including the provision of essential services, bringing them into new forms of contact with citizens. Corporations are playing a growing role in transnational governance, invited into important spaces by international institutions, and are expected to deliver key parts of the Sustainable Development Goals (SDGs). Meanwhile the growth of new technologies has created new types of business, and new relations with citizens who rely on those technologies to communicate, organise and live their lives.

³All quotations unless indicated otherwise are edited extracts from guest articles, interviews or AGNA survey responses. Quotations may have been edited from the original contributions for reasons of brevity and clarity. Full versions of guest articles are published on the State of Civil Society Report webpages. All inferences and conclusions drawn from the guest contributions are those of the report's editorial team and do not necessarily represent those of the individual contributors.

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From a civil society perspective, it could be argued that the growth of business need not be intrinsically harmful. David Logan traces the current pro-business orthodoxy to the end of the Cold War, which also saw a civil society boom as support grew for mixed models of governance, in which the state was no longer assumed to have a monopoly of power and other spheres were recognised as having a role to play in decision-making. This suggests it should be possible for both civil society and business to grow together and develop productive relationships with each other, and with states; it need not be a zero sum game.

In their joint contribution, Phil Bloomer of the Business and Human Rights Resource Centre (BHRRRC) and Vicky Dodman of Corporate Benchmark acknowledge some positives of the business boom:

International business has created a billion jobs in Asia. Around the world, a billion people have escaped absolute poverty in the last 20 years, with two thirds of this attributed to the growth of economies, particularly in East Asia. Women in countries such as Bangladesh have obtained jobs in global supply chains, often gaining some economic empowerment within their families as a result.

But something is wrong. After decades of pro-business policies, the world faces huge problems such as climate change, economic inequality and political unrest. As Phil Bloomer and Vicky Dodman continue:

The neoliberal extreme of global markets that are deregulated, privatised and liberalised has brought too much inequality, often in the form of precarious employment and poverty wages, and too much environmental destruction to be sustainable.

Rajiv Joshi of the B Team characterises the situation as a crisis:

The world is presently at a crossroads, with significant volatility, uncertainty and risk. Inequalities have reached frightening levels... Human activity is destroying the very ecosystems on which all life depends. We also face a moral crisis. Rising populism, discrimination and discontent has led to surprise election outcomes in many advanced economies, leading to a decline in the values and principles that have long been the hallmark of inclusive, environmentally conscious and democratic societies.

Alison Tate and Theo Morrissey of the International Trade Union Confederation (ITUC) assert that the essential promise made on behalf of neoliberal globalisation, that wealth would be created to benefit us all, has not delivered for many:

Gains have failed to 'trickle down' and the conditions for economic, environmental and social justice have not been secured. We are faced with the greatest ever levels of inequality within and between countries, and production and consumption systems are testing the limits of our finite planet.

Rajiv Joshi goes on to suggest that current emergencies expose deep-seated failures, including failures on which business has failed to act:

In 2008 when the world experienced the global financial crisis, and food and fuel prices spiked, 130 million people fell back below the poverty line. It was a perfect storm and we had no formulated response. There was no space to convene leaders from business and social movements to see how we might use the opportunity of the crisis to change the structural failures in our system that led to this collapse... A year later in Copenhagen, as business and civil society stood largely at odds, world leaders failed to come to an agreement to limit greenhouse gas emissions, and climate change was costing the lives of our most vulnerable.

The current stakes are high. Businesses cannot sit by and count the profits as current emergencies play out; they must take their social role seriously. Otherwise, they may be accused of passive culpability in the urgent problems of the day. But beyond this, questions are being asked about the ways that businesses actively contribute to major challenges. Roberto Bissio of Social Watch outlines a range of egregious practices of which several large companies have been guilty:

Over the last months multinational corporations have jumped from the 'economy and business' pages of world newspapers to the sections on 'crime and police': Volkswagen was found guilty of programming its cars to cheat on emission tests and contaminate the streets way beyond the acceptable limits... Goldman Sachs helped the Greek government in 2001 to lie about the state of its economy, in order to be admitted into the Eurozone... Many banks have been actively helping people in government around the world hide their assets, as widely exposed by the publication of the Panama Papers.

Meanwhile, problems such as child labour and forced labour are as well-known as they are seemingly intractable. International Labour Organization (ILO) statistics estimate that [21 million](#) people are involved in forced labour, generating US\$150 billion a year in illegal profits, and [168 million children](#) work in child labour. Informal labour remains the norm rather than the exception in many countries, particularly in the global south, meaning that people cannot access labour rights. Women's rights are persistently denied in the workplace, including through lower pay and practices of discrimination. Phil Bloomer and Vicky Dodman cite, as further challenges, poverty wages, the impacts on essential services of corporate tax avoidance and a surge of land and water grabs, which affect indigenous peoples in particular.

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Business-fuelled economic growth has created growing gaps between rich and poor in many societies. Even the [World Economic Forum](#) (WEF) has acknowledged that rising income inequality is a problem that cannot be averted by more economic growth alone. Further, while some global south states – notably Brazil, China and India – have seen the rise of a new, relatively affluent [middle class](#), this has fuelled demand for [raw materials](#) for infrastructure and consumer goods, often extracted from the world’s poorest states at considerable [human rights costs](#).

Transnational companies in particular are often highlighted for their negative impacts. Transnational companies may treat global south countries differently to global north countries: they may dump products onto global south markets, undermining the ability of local producers to sell their goods and services, or they may exploit the less rigorous regulatory regimes of many global south states to sell or manufacture hazardous products that are tightly regulated in the global north, as Carolijn Terwindt and Christian Schliemann of the European Center for Constitutional and Human Rights indicate in their contribution.

One of the key relationships between citizens and business is that of employee and employer, and this is changing, with labour becoming increasingly contract-based and casual. When large companies have little direct employment in complex global supply chains, it makes it harder for people to claim labour rights, and to hold companies to account for abuses. This practice has now become commonplace: [ITUC research](#) of 50 of the world’s largest companies shows that they only directly employ six per cent of the workforce involved in their supply chains. Meanwhile new technology is enabling the ‘gig economy’, a less secure form of employment in which people are positioned as flexible suppliers of labour, without the employment rights that come with salaried work. But as Alison Tate and Theo Morrissey note, the problem with the gig economy is that:

All the expenses and all the risk associated with the work are heaped onto workers.

When businesses transcend national boundaries, it becomes harder for states to regulate them, or get them to pay taxes to pay for public services; companies may be nimble in basing key functions in low-regulation, low-taxation states. The private sector can therefore be complicit in practices that deny the resourcing of development. Roberto Bissio points to research that shows US\$50 billion, far exceeding the inflow of Official Development Assistance (ODA), leaves Africa illegally each year, with business playing a key enabling role in this:

Contrary to public perception, the bulk of illicit flows is not done by corrupt government figures, smugglers of arms or diamonds or drug traffic... but through tax-evading transfers originating from legally-established multinational corporations, particularly, but not exclusively, in the extractive sector.

Corporate tax avoidance points to a broader issue, of a shift in the balance of power between businesses and states: Patrick Bond of Witwatersrand University in South Africa points to the great influence that three credit rating agencies – Fitch, Moody’s and Standard and Poor’s – have over the decisions of states. They can downgrade a state’s credit rating unless it introduces pro-business policies, including social-spending cuts. A rating change can further inhibit a state’s social spending.

Part of the challenge here is that governments may lack the resources and expertise to keep up with the pace of corporate change. Frank Vogl, co-founder of Transparency International and the Partnership for Transparency Fund, outlines how this enables corruption:

In many global south countries, as well as countries in Central and Eastern Europe, there is neither the will to ensure that justice systems end impunity for leaders of the political and business establishments, nor the resources to build and sustain police forces and judges that ensure the security of citizens, rather than extort citizens. Many advanced industrial countries also have vast gaps in their law enforcement systems when it comes to business corruption.

But beyond this, Alison Tate and Theo Morrissey suggest, states may use the rising power of business as an excuse to abandon their duties to citizens. States can be complicit in enabling the growing power of big business by competing to encourage companies to operate in their economies. They may do this by lowering tax rates and offering preferential deals, abolishing regulations and waiving employment rights, in a race to the bottom. As Alison Tate and Theo Morrissey express it:

Countries are in direct competition with each other to attract investment, resulting in de-regulation and social dumping – the practice of lowering labour, environmental and other standards – in order to attract investment.

New treaties aim to entrench the power of transnational business. This report's year in review section documents a battery of attempts to enshrine economic neoliberalism as decisively superior to national laws across a range of countries, through the proposed Transatlantic Trade and Investment Treaty (TTIP) between the European Union (EU) and USA, the Comprehensive Economic and Trade Agreement (CETA) between the EU and the Canada, the signed but still contested Trans Pacific Partnership (TPP) between the USA and a number of Pacific Rim states and the Trade in Services Agreement (TISA) involving 22 states and the EU. The negotiation of these treaties has focused attention on the growing use of legal systems by companies to overrule state regulation, and sparked considerable civil society campaigning.

As Alison Tate and Theo Morrissey point out, it is not that challenges of business power and corporate malpractice exist in isolated contexts: they are systemic and transnational, because of the globalised nature of business. Further, challenges may be worsening. Across several contributions, a clear sense emerges that, as big business has come to

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the fore, there has been an aggressive shift in practice; what once might have been considered fringe behaviour has become normalised, increasing negative impacts. Frank Vogl suggests that investor pressure has driven down standards:

In recent years, the increasing pressures by private equity firms and hedge funds on publicly-listed companies to maximise short-term profits has dominated the actions of too many corporate leaders. The tone at the top of many multinational corporations is set by the determined effort to boost bonuses. No wonder that corporate corruption flourishes.

This point is echoed, in their joint contribution, by Michael Ineichen of the International Service for Human Rights and Mauricio Lazala and Ana Zbona of BHRRC:

Current business models prioritise short-term returns for shareholders, which inhibits companies from fully respecting human rights throughout their operations.

The fear, suggest Phil Bloomer and Vicky Dodman, is of a downward spiral in which companies that want to behave better feel unable to because of competition:

The dominant neoliberal ethos and policies of the past 35 years have made it hard even for ethical companies to sustain their position when they are undercut by unscrupulous companies combing the planet for the cheapest labour or lowest corporation tax, and when there are few or weak legal and regulatory obligations.

This apparent race to the bottom is driving popular anger, with many citizens feeling economically less secure and more distant from wealthy elites as a result of the actions of large corporations and the political leaders closely associated with them. As this report's year in review section outlines, much of that anger has been focused by neo-fascist political leaders into narrow nationalism and right-wing populism, entailing a rejection of human rights and internationalism, a point Patrick Bond also makes:

Political uprisings were manifest in 2016 in the Brexit vote, in the rejection of Renzi's reforms in Italy, and in the USA the election of Donald Trump... Other authoritarian turns were recently made in Erdogan's Turkey, Orban's Hungary and Duterte's Philippines. Within the BRICS (Brazil, Russia, India, China and South Africa) bloc, two parallel leaders are Russia's Vladimir Putin and India's Narendra Modi, both of whom continue to consolidate power. The revolt becomes more intense in part because of the racist, xenophobic, Islamophobic and misogynistic 'populism' that blames other poor and working-class people for troubles caused by neoliberal capitalism.... The right-wing critique of the 'globalists', as pro-Trump Breitbart journalists term the neoliberal elite, continues partly because multilateral institutions are 'state-captured' by multinational corporations and the world's wealthiest elites, to the detriment of the working class of the global north.

Something urgently needs to change, suggests Frank Vogl:

The goals of business should not only be the maximisation of profits in honest and ethical ways; they should also embrace supporting the broad interests of all those stakeholders who make the business viable: shareholders, employees, customers and suppliers. Business owners should see themselves as being accountable to their stakeholders. Many do not. Many owners of many businesses cheat their stakeholders by taking for themselves and their co-owners an excessive portion of the profits and so short-changing those who have made their businesses possible.

Present policies cannot be sustained. While they prevail, it is hard to see how the SDGs and the Paris Agreement on climate change can be realised, or serious progress made on realising rights, combating exclusion and building social justice. This makes the role of business a legitimate and pressing concern of civil society.

But given the changing and growing role of business, the ways that states, the international system and civil society ourselves work may not have kept up to date. For civil society, key questions include those of how we are affected by the changing shape of the private sector, and how we can react. We need to ask whether our existing models of engagement - which could be [characterised](#) as cautious, resource-dependent partnerships on the one hand, and active suspicion and hostility on the other - are sufficient, and what other responses are needed?

IMPACTS OF BUSINESS ON CIVIL SOCIETY

As a global civil society alliance, a key question for CIVICUS is that of how changes in business practice are impacting on civil society and the potential for citizen action, as well as on human rights more generally.

One impact of the growing presence of business is that it can become harder for citizens to exercise accountability over key areas of economic, political, social and cultural life. Privatisation, for example, can reduce accountability: when services that were once delivered by the state are provided by private companies, citizens become customers, and as such can struggle to claim their rights. It also becomes harder to exercise accountability when transnational corporations create complex ownership and management structures, which they may do to evade scrutiny and avoid taxation. Frank Vogl suggests that some companies are actively fostering climates of corruption and poor accountability by paying bribes. The [Panama Papers](#) revealed how the financial industry is complicit in laundering the wealth of political leaders, demonstrating how corporate corruption goes hand in hand with political corruption that makes the exercise

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of accountability harder. Further, when private companies are granted privileged access to forums of international governance, it can reduce the scope for civil society influence and oversight.

Other impacts are experienced by communities who are harmed by business operations, and the civil society that seeks to defend them.

HUMAN RIGHTS IMPACTS

[Past editions](#) of the State of Civil Society Report have tracked how civil society activists who are seen as obstructing business interests or who work to expose business malpractice encounter a heightened threat of repression, with extractive industries offering a special threat. In 2016, [CIVICUS and Publish What You Pay](#) documented how the space for civil society, including environmental, land and indigenous rights activists and journalists who report on related issues, is [shrinking fast](#) in most resource-rich countries. As natural resource exploitation is intensifying, so are practices such as surveillance, arbitrary detention, intimidation and violence towards activists.

In many cases, states are enabling these repressive practices by passing new laws to restrict legitimate civil society activity, criminalising dissent and putting their security forces at the disposal of private sector interests. In the last year, CIVICUS has reported on some of most egregious violations of corporate human rights abuses against activists who have taken a stance against extractive industry projects. These include the killing, in March 2016, of South African activist [Sikhosphi Rhadebe](#) of the Amadiba Crisis Committee, which resists titanium mining development in its community; the murders in 2016 and 2017 of several indigenous peoples' rights activists, including Berta Cáceres and Nelson García, who stood against a large dam project in [Honduras](#); and security force violence and judicial harassment of activists against the [Dakota Access Pipeline](#) project in the USA in 2016.

A number of contributors draw attention to the clash between poor business practice and human rights defence. Michael Ineichen, Mauricio Lazala and Ana Zbona observe:

Human rights activists who ask questions about or confront business interests are often the most harshly silenced and most in the firing line.

While Adam Shapiro of Frontline Defenders suggests that tactics of restriction are being shared:

ONE IMPACT OF THE GROWING PRESENCE OF BUSINESS IS THAT IT CAN BECOME HARDER FOR CITIZENS TO EXERCISE ACCOUNTABILITY OVER KEY AREAS OF ECONOMIC, POLITICAL, SOCIAL AND CULTURAL LIFE

Human rights defenders who confront business have likely never been in more mortal danger all over the world than they are today, and governments seem to be learning from each other about the ways of suppressing opposition to elite corporate interests.

In too many places, the interests of some industries are diametrically opposed to the interests of the communities impacted upon, and businesses, including investors, seek only to implement projects, rather than withdraw due to human rights or environmental concerns.

Arnold Tsunga, of the International Commission of Jurists, highlights that given unequal power, impunity for corporate human rights abuses is a challenge:

Many individuals and entities have economic strength that exceeds whole nations in Africa... The unequal economic power relations between countries and businesses have in many situations translated into ability to manipulate or at least intimidate systems in a way that makes economically strong individuals and entities operate with some degree of impunity for their role in contributing to human rights violations.

Often in such encounters, the power of business proves decisive. Phyllis Omido, of the Centre for Justice, Governance and Environmental Action in Kenya, relates how increasing global demand is causing extractive industries to exploit once-safe territories that excluded groups have long called home. She offers a case study of how these issues have been experienced by excluded communities in Kenya. Because they are excluded, people in those communities are unable to assert their rights: illiteracy is high and access to political power low. People who do not know their rights cannot be expected to give informed consent for projects that exploit their land. In a climate of heavy corruption and weak regulation, unscrupulous companies take advantage and obtain land cheaply, paying little to evict communities who have lived on land for generations and destroying the vital social capital that they have built. While companies may be claiming to act in the interests of economic development and growth, the development setbacks to a community whose rights are denied are profound and long-term:

When this happens, it sets back by decades communities that are already struggling against the scourge of poverty. We are talking about families struggling to educate their younger generations that can no longer do so because of the uprooting of families from the area they had considered

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home and created livelihoods around... Such setbacks mean that the struggle for emancipation from poverty becomes just a pipe dream.

Phyllis Omido relates how, when community members form groups to attempt to resist this displacement, they experience a stern reaction, including from security forces:

In response to these challenges, community members form civil society groups, which are met with violence and force that they did not anticipate, funded by corporate power and backed by state machinery. Their freedoms of association, assembly and expression are constantly infringed upon by the local authorities, serving the interests of corporations.

Adam Shapiro further outlines the risk that extractive and infrastructure industries can pose, while working closely with the state:

Human rights defenders who work to protect land rights, the environment and indigenous peoples' rights are most at risk, as their work often involves trying to stop large-scale projects such as dams, mining operations or other activities that impact on the lives and livelihoods of communities. In part because these communities are often remote and marginalised, it has often been difficult to gain attention for what is happening before it is too late, when communities have been displaced, the environment has been damaged or ways of life have been destroyed. Human rights defenders find themselves exposed with little recourse to protection. Additionally, because large-scale projects almost always have some level of state involvement, as well as that of local and corporate elites, human rights defenders find themselves pitted against not only corporate money and power, but also the entire apparatus of the state: both its formal mechanisms, such as the police and the courts, and informal mechanisms, such as corruption and physical force.

Phil Bloomer and Vicky Dodman set out the ways in which civil society activists seen as standing in the way of corporations may be vilified:

Human rights defenders who expose and oppose abuse by corporations are increasingly being stigmatised as 'economic saboteurs', 'anti-development', 'foreign agents' and worse.

More broadly, Michael Ineichen, Mauricio Lazala and Ana Zbona describe the nature of the threat:

Hundreds of human rights defenders were murdered in recent years for attempting to exercise their right to give or withhold free, prior and informed consent to natural resource projects affecting them and for confronting the interests of companies and the implementation of the economic policies of states.

As reported by the United Nations (UN) Special Rapporteur on human rights defenders in 2016, the world is facing ‘[a truly global crisis](#)’ in the numbers of killings of environmental human rights defenders; approximately half of those killed were defending their rights against business developments. Women human rights defenders, indigenous activists, defenders living in conflict zones and defenders of land rights and rights related to the environment are particularly vulnerable to gender and identity-specific forms of persecution and violence, rooted in existing discrimination... Problems range from a failure to incorporate the protection of those on the frontline in trade deals or business agreements, to the failure of instituting effective protection mechanisms for environmental defenders.

Such is the level of the challenge that in 2017, the UN Special Rapporteur on the situation of human rights defenders, [Michel Forst](#), stated that he has begun to focus more strongly on the impacts of the private sector on human rights defenders and engage directly with businesses. This is just one of many measures signalling an increased priority being paid at the international level to the human rights impacts of businesses, discussed further below.

BUSINESS AND CIVIC SPACE

As well as specific threats to human rights defenders, business can more broadly impact on the fundamental human rights on which civil society relies - of association, peaceful assembly and expression. The restriction of civil society rights may come as a by-product of a broader curtailment of human rights that occurs when a company impacts negatively on a community, but civil society may also specifically be targeted because of the roles it plays: in working with communities and enabling citizens to access their rights, advocating towards the state and business, and demanding accountability over the actions of business.

The rise of the private sector has come at a time of sustained global attack on civil society: the [CIVICUS Monitor](#) indicates that the space for civil society – civic space – is severely restricted in 106 countries, with only three per cent of the world’s population living in conditions of open civic space. While there are a number of reasons why civil society is under attack, as analysed further in this report’s year in review section, many in civil society would point to the increased role of business as one of the drivers.

States, in seeking to provide the enabling conditions for business, may introduce new restrictions that constrain civil society’s advocacy, accountability and human rights defence roles. There are numerous countries, such as Cambodia, China, Rwanda,

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Saudi Arabia and the United Arab Emirates, where civic space is closed or repressed but an enabling environment for private sector investment has been created. As [repressive](#) Ethiopia's 2015 [9.6 per cent](#) economic growth rate suggests, countries that prioritise economic development may be open for business, but closed for civil society.

Civil society organisations (CSOs) and activists may be restricted because their accountability role threatens to expose business malpractice, particularly when there are corrupt relationships between companies, states and criminal interests. Many political leaders now in power, including the current wave of right-wing populist and neo-fascist leaders that have come to prominence in several countries, have amassed considerable personal fortunes from transnational business connections, which makes them sensitive about scrutiny from civil society. Meanwhile new technology companies may give citizens new opportunities to communicate, connect and organise, but they also provide platforms to spread hate speech, enable state and corporate surveillance and invade privacy.

WORKERS' RIGHTS AND CIVIL SOCIETY

Trade unions are an important part of civil society, and their fundamental rights of association, assembly and expression are under increasing attack. ITUC data points to a rise in restriction, with demonstrations stopped or workers experiencing retaliation for expressing their views in [50 countries](#) in 2016, nine up from 2015; the right to collective bargaining is also denied in more than half of the countries it monitors.

[Shawna Bader-Blau](#) of the Solidarity Center, the largest workers' rights organisation in the USA, outlines the drivers of current attacks on workplace rights:

Workers around the world are confronting serious challenges to whether they can exercise their rights and work with dignity. Among them are labour markets and systems that generate, rather than alleviate, poverty, and governments that fail to protect workers, either through omission or deliberate act. In addition, weak legal environments - national and international - tend to reward exploitative supply chains, permit human trafficking, allow discrimination to flourish and generally disenfranchise workers. The toxic spread of xenophobia, racism, misogyny and fear marginalises millions of migrant workers and refugees, further disenfranchising people whose jobs do not lift them from poverty, afford them safe workplaces or uphold their dignity.

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The drivers she identifies are concerns that run through this report:

I see four key drivers behind these challenges. One is downward pressure on wages along global supply chains combined with greater barriers to workers exercising their fundamental right to the freedom of association - to organise and promote their issues, protect their wages from eroding and exercise their rights. Another driver is the increasing informalisation of work and the gig economy, which limits wages, workplace protections and workers' ability to improve either, as well as strips workers of the benefits that come with full-time jobs. A third is the fact that governments around the world, to attract investment, are taking deliberate actions to weaken worker rights or simply not enforcing laws designed to protect workers. The last would be widening inequality coupled with resurgent authoritarianism, closing space for people to have a voice on the job and in their community, and curtailing worker and human rights.

Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association from 2011 to 2017, gave special focus [in 2016](#) on how workers are being denied their rights of association and assembly in the workplace. He finds the challenges are systemic:

Employers and others who evade the law and disrespect standards gain a competitive advantage over compliant employers, at the cost of workers' rights to freedom of peaceful assembly and of association.

Further, the lack of effective cross-border and national legal and enforcement frameworks rewards and spreads non-compliance, even lawlessness. Violence by state and private actors against trade unionists, rights activists and peacefully striking workers often deals the final blow to workers' attempts to exercise their assembly and association rights.

The question of how civil society connections can be fostered to help address the impacts of these issues on workers is one that is returned to below.

There is a need, Michael Ineichen, Mauricio Lazala and Ana Zbona suggest, to examine the business motivations and state permissiveness that may drive civic space abuses:

The incentive structures of many companies continue to be focused on short-term benefits, and the profit motive often prevails over other objectives, especially when governments lack the will or the institutional and legal frameworks to ensure the protection of defenders, or set the wrong incentives for companies.

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Worse, they continue, some companies see gains in restricting civic space:

At the moment, many businesses continue to see human rights defenders and civic freedoms from a critical point of view: as a hindrance to having a good relationship with states and other businesses, and as obstacles to investments in natural resource extraction in particular. They may also see the shrinking of civic freedoms as an opportunity to sell more of their products or to produce them more cheaply.

Some companies continue to cooperate with, or even encourage, repressive governments to suppress civic freedoms for various reasons, ranging from a perception of self-interest, to a desire not to jeopardise the relationship they have with a government on which they depend for licences and contracts.

When companies instigate crimes against civil society activists, it is often with an expectation of impunity; they believe that given power imbalances, and often with the state on their side, they can get away with abuses. However, civil society's increasing focus on the role of the private sector is starting to challenge impunity. The killing of Berta Cáceres and Nelson García in Honduras in March 2016 provoked international outrage, as Adam Shapiro discusses:

Those who authored the killing were presumably confident that there would be no consequences: the authorities would not launch a legitimate criminal investigation; popular outrage could, they assumed, be easily contained because Berta's community and Honduran civil society are under siege; international investors were unlikely to withdraw financial backing for the dam. After all, they must have reasoned, in all the previous attacks against Berta's colleagues and other community leaders, no such consequences had materialised.

Yet, in this case, Berta's assassination led to the withdrawal of investors from the project, and the fate of the dam is in question... Increased international attention made it possible to pressure investors to suspend involvement in and move to withdraw from the project. Two investment banks... made clear statements in response to the killing.

The challenge, still, is to find ways of engaging that do not have to be triggered too late, once an activist has been attacked or assassinated. There is also a need to increase the business costs of civic space and human rights abuses,

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in order to change the calculations for companies. At present, Frank Vogl indicates, companies may view penalties, such as fines for corporate malpractice, as an acceptable risk and cost:

Banks have settled US cases by paying tens of billions of US dollars in fines. But the banks may well just see this as a routine cost of doing business. After all, despite money laundering, fraud, interest rate and exchange rate manipulations, not a single chief executive of a major bank has been put on trial, let alone sent to prison.

ONLINE CIVIC SPACE AND NEW TECHNOLOGY COMPANIES

As [past editions](#) of this report have established, online civic space, and the opportunities it gives to citizens to express dissent, participate and pursue alternatives, is being keenly contested. New technology companies have a potentially decisive role to play in enabling or resisting restriction. There are examples of them doing both, and there is a need to understand the calculations that can inform the decision to enable or resist the restriction of online space.

J Carlos Lara and Gisela Pérez de Acha of Derechos Digitales examine the ways that new technology companies cooperate with states to restrict civic space in Latin America, including through the blocking and filtering of content. They give the example of a Mexican protest website that was taken down by its US hosting company; the company was requested to do so by the US Department of Homeland Security, which apparently had been contacted by the Mexican government. More broadly, they point to laws that hold online platforms responsible for content hosted by users, which creates incentives for companies to remove content quickly when requested. Intellectual property provisions contained in the USA's nexus of trade treaties give wide scope for dissenting views to be taken down on the basis of spurious claims of breach of copyright; the presidents of Ecuador and Mexico have used US laws to request the removal of critical content on copyright infringement grounds. Companies may find it easier to comply than push back. As J Carlos Lara and Gisela Pérez de Acha state:

Content is being removed from the internet because of alleged copyright violations, without any review or proper analysis of conflicting rights.

However, in other cases they record how new technology companies are targeted by states when they refuse to comply with demands: WhatsApp, owned by social media titan Facebook, was blocked three times in Brazil as a punishment for refusing to share information in relation to a criminal case, which would have broken its promise to users of end-to-end encryption. As well as being blocked, the company was fined and had its vice president detained.

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It can be hard for civil society to scrutinise and respond to the restriction of online civic space because decisions may be opaque, made for obscure reasons and be taken in distant countries. As J Carlos Lara and Gisela Pérez de Acha encapsulate it, private companies can play a complicating and exacerbating role in the restriction of online space:

The experience of the struggle for the freedom of expression and against its threats has proved particularly difficult when the presence of private companies is one of the driving factors behind those threats: whether as bodies compliant with governments, representatives of private interests above the public good, or vendors of technologies to enable surveillance of the population, companies have become a key player in the global human rights landscape, not unlike governments themselves.

New technology companies will be increasingly pressed by civil society to decide whether they are on the side of forces that seek to restrict human rights or those that want to realise rights. They will be urged to speak out against the restriction of internet freedom, or at least make clear when they are complicit in working with states to enable restriction. Here, there is much ground to be made up. The [Ranking Digital Rights](#) project assesses 22 of the world's largest new technology companies for their policies on the freedom of expression and privacy. It reports that across the board, these companies do not disclose enough information to enable citizens to make informed choices about how they use services. Many accused mobile phone network MTN Cameroon of putting up insufficient resistance when the internet was [shut down](#) for four months in Cameroon's Anglophone region from January 2017 following [protests](#). Mobile phone companies were also accused of cooperating with a repressive government for [sending messages](#) to their users warning them of stiff punishments for spreading misinformation.

As awareness grows, companies can expect to face more pressure from citizens when they are suspected of being involved in internet restriction. But there is, J Carlos Lara and Gisela Pérez de Acha conclude, a need for resources and capacity development so that civil society can take on complex cases of online restriction that call for a range of skills:

It is not enough to focus efforts on technology and its rules; there is also a need to examine all aspects of law that may impact on online communications, from infrastructure control to copyright, and from free trade agreements to rules on advertising. These are all, more deeply, struggles for equality and democracy, against often invisible forces that favour neither.

NEW TECHNOLOGY COMPANIES WILL BE INCREASINGLY PRESSED BY CIVIL SOCIETY TO DECIDE WHETHER THEY ARE ON THE SIDE OF FORCES THAT SEEK TO RESTRICT HUMAN RIGHTS OR THOSE THAT WANT TO REALISE RIGHTS

Responding may demand resources and expertise that civil society lacks:

In the digital environment, where power tensions between companies and individuals are more acute, we need to think creatively in order to be able to hold the powerful truly accountable. This requires never-ending work to defend and promote human rights, online and offline. But it also requires greater awareness raising about the rights at risk, and the opportunities for speech that exist and that can be under threat.

As discussed further in the section on response strategies below, which offers examples of actions companies have taken to support embattled civil society activists, the private sector can also impact [positively](#) on civic space. Many business actions need not necessarily harm civic space, and practices that do so can be challenged without confronting the full range of business operations. It is also important to acknowledge the increasing rise of social enterprises and other hybrid forms of organisation that model new forms of collaboration and challenge artificially neat models of a clear divide between civil society and the private sector. But at the same time, it can no longer be enough for businesses to say that they abide by human rights; they need to commit to upholding civil society rights specifically, and this must become one of the things that business is held to account on.

DEVELOPMENT, GOVERNMENT AND THE PRIVATE SECTOR

A key trend discussed across several guest contributions is the private sector's growing role in governance, at both national and international levels. For Patrick Bond, the annual WEF meeting, held in Davos, Switzerland, epitomises the corporate penetration of governance:

Some of the most important forms of corporate influence over global economic governance are to be found in the clubby rooms of the WEF... In 1992, this was where Nelson Mandela was pressured to give up on the idea, from the 1955 Freedom Charter, of better redistributing South Africa's mineral, banking and monopoly capitalist wealth amongst the citizenry. The WEF is where the latest trends in philanthro-capitalism are unveiled, led by the Bill and Melinda Gates Foundation and the Clinton Global Initiative.

Many in civil society take a special interest in the role of the private sector in development, and the related question of the influence of the private sector in multilateral bodies, as these abut strong areas of civil society work. One concern

MANY BUSINESS ACTIONS NEED NOT NECESSARILY HARM CIVIC SPACE, AND PRACTICES THAT DO SO CAN BE CHALLENGED WITHOUT CONFRONTING THE FULL RANGE OF BUSINESS OPERATIONS

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of civil society is that, when the private sector is recognised as having a growing part to play in governance, it can be a privileged role; the private sector may have special access that those from other spheres, including civil society, do not. Roberto Bissio sees this happening at the UN, including in relation to the SDGs:

When it comes to the ambitious 2030 Agenda on Sustainable Development, the notoriously underfunded UN system, the multilateral development banks, and the donor countries that fund the UN and own the development banks, want to trust implementation to vague ‘partnerships’ with multinational corporations. Institutional hopes that business will come to the rescue seem so high that the UN General Assembly granted observer status to the International Chamber of Commerce from 1 January 2017. This is the first time that a business organisation has obtained observer status at the UN General Assembly... Trade unions and other CSOs do not have such status.

Roberto Bissio notes that part of the motivations of international agencies and states, in an underfunded system, are financial: the hope is that partnerships will unlock resources that are not otherwise being provided. With resourcing from states in decline, states are not prepared to fund the international system adequately to pay for the obligations they set for it; the voluntary commitments of businesses are expected to fill the gap. The question for civil society is: what is the price of the private sector’s role?

THE PRIVATE SECTOR’S GROWING ROLE IN DEVELOPMENT

Uwe Gneiting of Oxfam points out that the role of business is assumed and hard-wired in the SDGs. This gives fresh urgency to the question of civil society’s relations with the private sector:

The elevation of business in the context of the SDGs represents both a significant opportunity and a challenge for civil society. It is an opportunity insofar as it allows us to benefit from the private sector’s finance, technology, skills, reach and innovation to support the SDG efforts. But it is a challenge because the SDGs bestow unprecedented power and expectations on the private sector as a development agent. This raises the risk that the private sector will conduct ‘business as usual’, but under the reputational mantle of the SDGs.

As Sam Worthington of InterAction concedes, there is some logic behind the private sector’s growing role: ODA, having plateaued, cannot be expected to deliver on the ambition of the current development agenda, and is far exceeded by the transnational flow of private resources. But the economic logic behind the involvement of the private sector in development – that ways of unleashing more resources must be found – is increasingly being accompanied by a political logic: that the private sector has a unique advantage beyond the scope of other spheres. As Gretchen Gordon of the Coalition for Human Rights in Development expresses it:

The focus on the private sector for the achievement of the SDGs goes beyond the mere overcoming of budget constraints to a belief that the private sector can deliver development benefits the public sector cannot, such as sustained economic growth, job creation, greater tax revenue and better innovation and service delivery. The private sector is now playing a prominent role not just as a financier of development, but as a recipient and executor of development.

As Uwe Gneiting puts it, the private sector is therefore increasingly seen as a central actor in development, rather than simply as a source of funding or driver of growth:

Today, the contribution of business to development is no longer confined to creating wealth, employment, transfer of technology and the provision of goods and services, but is supposed to contribute proactively to sustainable development outcomes through its core business and beyond.

Such thinking has fuelled major recent shifts in development financing, Gretchen Gordon emphasises:

Thirty years ago, development was largely the purview of states and public financial institutions. Financial flows to developing countries were dominated by ODA, largely from Organisation for Economic Co-operation and Development (OECD) member countries, the World Bank and the regional banks. However today, Foreign Direct Investment (FDI) in developing countries eclipses ODA by a factor of five.

Uwe Gneiting notes that FDI is now the [dominant form](#) of capital for middle-income states, and eclipses ODA in around one in three low-income states. This means, Uwe Gneiting continues, that development policy is increasingly oriented around FDI, something that Patrick Bond suggests can only strengthen the power of the private sector:

The power of corporations remains unchecked as every country competes to attract the mythical FDI that will allegedly fix their economic problems.

Gretchen Gordon also reports that the volume of resources flowing from development banks to the private sector has [massively increased](#): from US\$10 billion in 2000 to around US\$70 billion in 2014. The driver of this shift is the commitment to move from 'billions to trillions': from the billions of dollars currently available for meeting the SDGs to the trillions that it will take to achieve them. This means that currently available resources are increasingly used with the aim of leveraging further resources. Uwe Gneiting observes that ODA is being applied to remove barriers to FDI, with the intention of generating a multiplier effect. Similarly, Gretchen Gordon notes that more resources from bilateral donors and development banks are focusing on brokering private sector deals and changing public policy to enable private sector investment. This trend is only likely to continue: major donors have been lobbying the [OECD](#) to change the definition of ODA, to encompass a greater range of aid to the private sector, such as loans to companies and

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the provision of underwriting guarantees to business. The [UK](#) government is one that has been [accused](#) of seeing the private sector as a panacea, having vastly increased its ability to channel ODA into private sector investment, even when this has [questionable impacts](#) on poverty.

The question here should not be whether such development directions generate wealth; it should be whether the end result is that people are lifted out of poverty and exclusion and human rights are realised. These are the true tests of development. And the signs here are concerning. Gretchen Gordon notes, for example, that there is current heavy support for global south countries to develop infrastructure and financial industries, as a way of generating wealth. But this policy prescription might do little to help poor and excluded people:

While there is an urgent need in the developing world for investments in infrastructure, energy and finance, these investments do not automatically translate into positive development outcomes unless they are designed with poverty reduction and sustainability in mind. Much of the energy infrastructure boom in Africa and Latin America, for instance, is geared not toward meeting urgent public needs for electricity, but toward enabling mining and other extractive industries. Centralised large-scale projects may serve large urban areas, but often are not at the right scale for reaching poor or marginalised populations most in need. Studies have shown ‘little direct evidence’ of the poverty reduction impact of development finance institution investments in the private sector. A [review of projects](#) carried out by the World Bank’s International Finance Corporation (IFC) between 2000 and 2010 found that only 13 per cent of projects included an explicit focus on the poor.

The need, therefore, Gretchen Gordon advises, is to look beyond the headlines to focus on the politics of development decisions:

While greater private sector involvement in development may mean more money flowing into developing countries and emerging economies, does it actually mean more development, and is that development socially and environmentally sustainable? And what does the ‘billions to trillions’ paradigm mean for civil society?... The challenge lies in who determines the appropriate role of the private sector, and who sets the priorities and the terms for each nation’s or each community’s development. If the private sector is able to set critical public

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development priorities or to proceed without checks and balances, the voice of civil society and the realisation of human rights are placed at risk.

Roberto Bissio is also concerned about the consequences of ODA going to the private sector. The key danger he identifies is that an international system founded on realising rights and responding to citizen demands is being replaced by a patchwork system based on the willingness of companies to provide charity in areas that coincide with business objectives. The development that the private sector wants is not necessarily the development that citizens need. For Uwe Gneiting, the risk is clear: that the social justice agenda of the SDGs, and those parts of the SDGs that specifically challenge common business practices and impacts, will be downplayed in favour of the goals and targets most attractive to private sector agendas:

A 'business case' approach that looks to the SDGs as commercial opportunities signals alignment between business and society interests. Yet this may not always be the case. A 'business case' approach also entails the risk of business 'cherry picking' SDGs based on their benefits to companies, not people. This does not align with the priorities of most CSOs, whose engagement with the private sector starts by ensuring that businesses' core activities do not have a negative impact on sustainable development outcomes and do not hinder the ability of others, including governments and civil society, to contribute to the SDGs.

Civil society's pursuit of social justice means it must ask the big questions about how power is currently distributed and how poverty is perpetuated, and this means critiquing the economic neoliberal orthodoxy from which the private sector benefits, including by taking on activities traditionally performed by states and CSOs. The growth of economic inequality most clearly illustrates the problem: widening and egregious economic inequality is making our societies more unjust and fuelling exclusion and conflict, but how can the beneficiaries of economic inequality, including very wealthy business leaders, be expected to pay for radical steps to change the system that works for them? Further, how can industries that cause climate harm on the one hand position themselves as responsible agents of sustainable development on the other? The danger is that development discourse will be superficial rather than transformative. As Uwe Gneiting expresses it:

The prioritisation of a partnership role for the private sector within the 2030 Agenda expands the influence of the private sector while side-lining its responsibility in creating and exacerbating many of the problems that the SDGs are supposed to tackle. While there is a clear need for a concerted, multi-stakeholder effort to achieve the SDGs, including from the private sector, partnerships often lack binding elements, risk greenwashing, neglect conflicts of interest and can be marked by significant resource and power imbalances that are often to the disadvantage of civil society participants. Most importantly, the proliferation of SDG partnerships involving the private sector might risk making non-cooperative behaviour appear increasingly radical, thus limiting critical civil society voices and agendas targeting the private sector.

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The danger is that the SDGs, which were developed after incredible civil society participation and mass engagement by citizens, will be constrained and fail to deliver on ambition or meet expectations, causing a collapse of faith in sustainable development itself.

Other risks Roberto Bissio identifies include those of the UN's brand being used to legitimise corporate practices, and the privileging of large-scale actors:

By joining these initiatives, corporations may be winning direct access to ODA monies, with the argument of 'leveraging' them, and indirectly benefit from access to the procurement budgets in ODA recipient countries, to the detriment of local small and medium enterprises. Similarly, the agency of local civil society actors might suffer as only large global CSOs specialising in service delivery may have access to these initiatives.

Roberto Bissio also suggests that there is a need to examine the true extent and quality of development resources provided by the private sector, given that each new private partnership is heralded with impressive headline figures:

What these numbers actually mean is not easy to figure out, as they only add up 'commitments' that in most cases extend over several years, sometimes decades, into the future. These grants, and often also loans, are not received or controlled by any UN agency or developing country governments. There is no demonstrated additionality to ODA and other financial commitments made in inter-governmental fora. Nor is there any proof that those monies add to what those involved would have disbursed independent of any new initiatives.

A related concern is with the policies that are put in place to enable the private sector's role. Roberto Bissio suggests that the urge to move from 'billions to trillions' is accompanied by a neoliberal policy package that tilts in the favour of business:

That promise to multiply grant money by hundreds of thousands comes with the standard neoliberal macro policy advice to provide guarantees and subsidies for private investment, plus a change in the use and nature of public development grants, which now become public-private partnerships (PPPs).

Gretchen Gordon notes that the World Bank's increasingly influential 'Doing Business' indicators can penalise states that introduce protection for rights and the environment; the danger is that only deregulation is recognised and rewarded. The suggestion is of a normative creep that serves business interests.

Given these shifts, a key question is how new forms of private sector partnerships impact on our ability as civil society to play our proper roles. The determination to involve business in development and unlock private investment means that the private sector is in the position of being invited

into development negotiations at an early stage; civil society often lacks such access. Uwe Gneiting suggests that one consequence of the declining importance of ODA compared to FDI is that the stimulus from some donors to engage and respect civil society is lessened. Gretchen Gordon, in urging us to look at what is being financed, points to a resurgence of large-scale projects heavily oriented around infrastructure and extraction.

This trend of a return to infrastructure-heavy development has been tracked by successive editions of the State of Civil Society Report, which have identified some clear problems. Such projects do not necessarily benefit poor and excluded people, and can further poverty and exclusion through displacement and environmental damage. They can also impact on civic space when civil society challenges large-scale projects, seeks to uphold the rights of excluded groups and attempts to assert accountability over development decisions. Phil Bloomer and Vicky Dodman also draw attention to the risk:

Too many businesses and governments are interpreting the role of the private sector in the SDGs as being singularly focused on massive new investment in large-scale projects, often in public-private partnerships. While major infrastructure programmes are needed across poor countries, if human rights are not baked in from the start, then experience tells us that abuse will be common.

Gretchen Gordon adds that the current vogue for lending through financial intermediary institutions makes it harder for civil society to assert accountability and transparency over decisions; with reduced scope for oversight, examples have been seen of such lending being linked to human rights abuses. This is particularly the case when opaque financial institutions such as hedge funds are involved. Transparency may be denied on the grounds of commercial confidentiality:

The involvement of private sector financiers can allow public development institutions to skirt their transparency and disclosure rules, by citing business secrecy.

There is also potential for current pro-business trends to undermine hard-won international agreements that uphold rights, Gretchen Gordon assesses:

A final question to ask about what the ‘billions to trillions model’ means for civil society is what the rules are and who sets them. Over decades, civil society has fought to defend human rights and the environment in development processes and to secure critical social

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and environmental standards and accountability mechanisms within development institutions. These protections include policies on access to information, standards for social and environmental assessment and requirements that governments or companies consult with local communities. They also include independent grievance mechanisms that can help to provide remedy where policies are violated or communities are harmed. These reforms have been critically important where governments or corporate actors are not transparent or accountable or where civil society space is restricted.

There is a growing trend of relying more on countries' domestic social and environmental standards and corporations' internal policies, rather than on the application of international standards. This is a problem where corporate and national systems do not ensure a minimum protection floor for people and the environment, are not enforced, or are being weakened.

At the same time, the SDGs, in their fullest sense, cannot be realised without the constructive engagement of the private sector, and several respondents in the AGNA survey identified the SDGs as having potential to lead to mutually beneficial relationships between civil society and the private sector. There may still be untapped potential to engage with the [many businesses](#) that report they are aware of the SDGs, but are not clear what they should do about them. And, as David Logan points out, the SDGs offer a sound values framework that businesses can follow:

Because corporate values are directly connected to values in the wider society, the emergence of the SDGs is potentially very significant the SDGs give a broad-based framework of ideas for priorities for personal, governmental, civil society and corporate responsibility in the modern world. Companies like to have goals and benchmarks for performance, and while they are not completely comprehensive, the SDGs provide them for critical issues. They have created an agenda that gives priorities for global engagement and action.

But the SDGs need to be pursued to a high standard, and all who engage on the SDGs need to be accountable. Uwe Gneiting provides some pointers on what companies could do differently in relation to the SDGs:

Companies should base their engagement on their areas of highest impact, not the areas most beneficial to their bottom line. This requires the mapping and assessment of direct and indirect impacts on the SDGs to understand the full breadth of connections with the sustainable development agenda.

Meaningful engagement with the SDGs by businesses requires going beyond cherry-picking SDGs based on narrow win-win opportunities, and instead integrating sustainable development concerns into their core business. This requires a willingness to address how commercial practices and business functions such as sourcing, employment, tax practices and corporate strategy affect the SDGs.

The private sector's elevated engagement should be matched with an overriding commitment to transparency and accountability. Just as importantly, it should not distract from the fact that more, not less, government action in agenda and rule-setting will be required to achieve the SDGs. Companies that truly claim to be supporting the spirit of the SDGs should change their approach and actively support greater government action in these areas.

PUBLIC-PRIVATE PARTNERSHIPS

Consistent with the 'billions to trillions' approach, public-private partnerships (PPPs) are increasingly being promoted to finance development projects and deliver infrastructure. Long part of the picture in the global north, such arrangements are booming in the global south, particularly focusing on large-scale infrastructure development. As Mathieu Vervynckt of Eurodad indicates, donor governments, the G20 and financial institutions, including the World Bank and European Investment Bank, are actively pushing changes in national regulatory frameworks to enable PPPs, and there is heavy corporate lobbying to expand PPPs. The introduction of regulatory changes to enable PPPs is something that Roberto Bissio also notes:

With the support of the G20, the International Monetary Fund (IMF) and the multilateral development banks, PPPs have become more and more frequent and laws and constitutions in more than 150 countries have been changed or are being changed to make PPPs possible. Those changes include, in the case of international development agencies, changes in their information disclosure policy to defend the commercial interests of private partners.

And yet the current faith in PPPs rests on an evidence base that is dubious to say the least. Civil society's concerns about PPPs include doubts about their efficiency; Gretchen Gordon notes that data on the benefits of PPPs for poverty reduction is at best mixed, and their impacts on citizens can include increased costs for essential social goods. Roberto Bissio shares efficiency concerns, pointing out that partnership relationships are often complex and difficult to negotiate, even in global north states with highly developed administrative infrastructure, and so are likely to be more challenging still in global south states. Further concerns are about the hidden costs of PPPs, and the way that the state must continue to assume risks to guarantee private profit, as Mathieu Vervynckt states:

Costs can be twice as high as a result of the fiscal implications coming from non-transparent contingent liabilities: potential debts arising in the medium and long term. If a project fails – and this is not infrequent – the costs are shouldered by the public sector, which most times has to rescue the PPP project, or even the company behind it, resulting in private debts being shifted to the public sector. PPPs have [already left](#) lasting fiscal legacies in countries such as Ghana, Hungary, Portugal, Tanzania and Uganda.

The true costs of PPPs can be enormous, because governments are often obliged to guarantee above-average income streams if they want to attract private investors, which include pension funds and insurance companies that are looking for stable cash

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flows following the financial crisis. The few contracts that have come to light indicate that the list of guarantees offered to firms in order to make PPPs look 'bankable' is substantial to say the least, ranging from loan repayments, minimum income streams, guaranteed rates of return, guaranteed currency exchange rates and guaranteed compensation should new legislation affect an investment's profitability.

Given this, there is a need to examine what motivates governments to enter into PPPs. As Mathieu Vervynckt continues, while PPPs might be marketed as models of economic efficiency, in reality powerful political considerations may drive the choice of investment tools:

So why do countries still prefer PPPs over public borrowing when the liabilities that arise can have a detrimental effect on their fiscal sustainability? The reason has little to do with efficiency gains, and much more with non-transparent accounting measures that allow them to keep PPP projects off the public balance sheet. This means that governments do not have to register the costs and liabilities of PPPs in the state accounting books, enabling them to circumvent budgetary constraints. It also explains why PPPs are a particularly attractive financing mechanism in times of public funding cutbacks.

The current push for PPPs has much more to do with the self-preservation of donor country and private interests than with achieving sustainable development and reducing inequality.

Roberto Bissio echoes these thoughts, identifying a moral hazard:

Losses and failures will be 'socialised' and covered with taxpayers' monies from donor and recipient countries, while the profits will only be in the hands of the investor... PPPs are a 'buy now-pay later' form of procurement that usually cost more than any alternative, but are preferred by decision-makers because they conceal the generation of debt. They have frequently been associated with high-level corruption and inefficiency.

Concerns about corruption and inefficiency are rooted in poor climates of accountability around PPPs. While they claim to be partnerships between the public and the private, the public, in the form of citizens, generally have little scope for input or oversight, because the details of deals often remain secrets shared only between states and companies, suggests Mathieu Vervynckt:

PPPs, and the legislative changes that favour them, are usually being negotiated behind closed doors, far away from the public eye. At the same time, the actors advising governments on how such legislation should be structured are often drawn from the private sector. Trade unions, environmental groups and human rights activists are typically excluded.

Worse, Gretchen Gordon observes that some PPPs can give grounds to stimulate governments to suppress civil society action, such as protests and labour strikes, in order to avoid delays on contracts for which governments would be financially liable. In one of the worst recent examples of such a project driving human rights abuses, Patrick Bond points to the massive World Bank IFC loan given to a platinum mine in Marikana, South Africa; while the World Bank positioned this as a socially-responsible investment, the reality was anything but:

Marikana was the site of such social dissatisfaction that a wildcat strike... led to police firing on a crowd of several thousand strikers, killing 34 within a half-hour. Yet the World Bank retained its investment and when visiting South Africa a few days later by coincidence, its president Jim Yong Kim, once a civil society health activist, refused to even mention the incident, much less visit the scene of the massacre.

Patrick Bond points out that these deeply flawed actions have continued, in South Africa and [elsewhere](#), even in the face of human rights abuses, while [Maina Kiai](#), as UN special rapporteur, criticised development banks for not meeting even their own participation guidelines.

In [another recent egregious example](#) from South Africa, the state's delivery of crucial social grants on which millions of citizens rely was outsourced through a PPP with a payment systems company. The awarding of the contract was dogged by corruption allegations, and it subsequently came to light that the company was boosting its profits by persuading poor people to take out loans and then deducting excessive fees from their grants. As these recent cases suggest, the impacts of PPPs on poor and excluded people can be huge.

PRIVATE SECTOR DEVELOPMENT CONTRACTORS

CSOs and businesses may see themselves as competitors for resources, when they both seek to access state funding opportunities. This is observed, for example, by the Colombian Confederation of Non-Governmental Organisations (CCONG), an AGNA member:

The private sector sees the social sector as competition, particularly regarding contracting processes involving public resources and private sector alliances with international cooperation agencies... There are PPPs in many areas in which the private sector does not have much expertise.

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Further, some private companies explicitly position themselves as for-profit deliverers of development services. These are particularly important interlocutors in the delivery of US development aid, which makes them significant, given that the USA is the world's largest donor. Sam Worthington identifies a need to take a nuanced approach to the delivery of development:

It is important to recognise the difference between companies that seek to make a profit by selling a product or service in the market and contractors whose primary goal is to make a profit by delivering a service to the government.

As Sam Worthington describes it, USAID's use of for-profit contractors increased in response to US military action in the Middle East, which caused many CSOs to withdraw or boycott cooperation. This means that the largest recipients of US development funding are now for-profit contractors. Generally, in the USA and globally, this is a trend that is only likely to grow as ODA more strongly becomes linked to domestic security and foreign policy agendas, and donors emphasise a concern with the cost efficiency of development. This can see donors offering funding schemes in which businesses and CSOs compete to win contracts, but where efficiency is conceptualised in ways that give businesses the advantage.

This trend creates some challenges for civil society, not least because many CSOs historically struggle to secure resources, and the resourcing picture for civil society remains [volatile and difficult](#). CSOs that have long accessed ODA can be harmed by increased flows towards the private sector. Beyond this, CSOs, even when based in global north donor countries, generally feel some values-based compulsion to engage with global south CSOs in recipient countries; for-profit companies need have no such concern. When ODA switches from civil society to for-profit agencies, the result can be an erosion of the resilience of civil society and its ability to respond to pressing issues as they occur, including sudden restrictions of civic space, governance crises or humanitarian emergencies. A further challenge, Sam Worthington points out, is around the direction of accountability: for-profit development contractors are likely to see the state donor as their primary accountability focus, rather than citizens in global south countries, because they are motivated to seek repeat business. And while distinct from civil society, the risk for civil society is that such actors could contaminate the civil society brand:

These groups deliver effective development outcomes for their main client, the US government. For these companies, speed and responsiveness to USAID are more important than being responsive to local interests or a changing local context. Private contractors are not part of civil society but some still claim a CSO brand. As donor-driven firms are focused on making a profit from managing development assistance projects, they can create confusion in the minds of local government or civil society actors. A contracting firm should not be confused with a non-profit CSO.

The need, Sam Worthington suggests, is to recognise the limitations of these, and emphasise the roles autonomous civil society can play that private development contractors cannot:

Donor governments have turned to private contracting firms because they want to control the nature and impact of their projects. This may at times make sense, such as when building a road, but it is harmful if the programme is focused on a partnership with civil society to promote rights or democratic practices. However well-intentioned they are, global north donors cannot successfully use for-profit contractors to advance rights or civic institutions.

BUSINESS AND TAXATION

The roles that the private sector is playing in development, and even many of the roles that civil society might urge business to play, may be seen as essentially voluntary: often, businesses are being asked to do something differently, alongside their core concerns, or beyond this, new forms of businesses are being encouraged that have stronger social responsibility dimensions. While any shifts in these directions should be welcomed, there is also a need to focus on the legal, as well as moral, obligations of business. Our [2016 State of Civil Society Report](#) concluded that the single most significant contribution to social good and sustainable development that businesses could make is to pay the proper amount of taxes that are due, so that governments can better meet their obligations to citizens and provide good public services; of course this scenario also demands a strong civil society role to ensure that there is oversight and accountability over how public revenues are used.

Patrick Bond outlines the scale of the problem:

Firms have moved taxes far beyond state borders, with trillions of dollars' worth of 'illicit financial flows' manoeuvred into offshore financial centres, leaving governments with rising budget deficits and their social sectors experiencing permanent cost-cutting pressures.

The scale of global corporate tax avoidance is vast, although necessarily hard to estimate. A recent [Oxfam](#) study suggested that the top 50 US-owned companies were costing the USA approximately US\$111 billion a year, and global south countries US\$100 billion a year, by avoiding taxes. [Others](#) suggest that the scale of lost revenues could be as high as US\$300 billion a year, while another study from [Citizens for Tax Justice](#) indicated a larger problem still, estimating that the top 500 US companies hold US\$2.4 trillion of profits permanently offshore, avoiding up to US\$695 billion in tax. The scale of the figures is staggering, and while more research has been done on US-headquartered companies, the impacts fall on both global south and global north citizens; Patrick Bond points out that the greatest victims of illicit financial outflows overall are global south countries.

THE SCALE
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Transnational companies in particular may take advantage of their presence in multiple locales to swap revenues between multiple subsidiaries, channelling profits through lax jurisdictions. These practices have only become [more widespread](#) in recent years. Methods range from those that exploit legal loopholes, and those that take advantage of legally grey areas, to those that are more covert and illegal. What unites them is an apparent lack of any acceptance that to pay taxes is part of a company's duty.

At the illegal end of the spectrum, Rajiv Joshi describes the particular and growing challenge of the use of anonymous shell companies:

Anonymous shell companies are a key enabler of money laundering. Approximately US\$800 billion to US\$2 trillion – as much as five per cent of global GDP – is laundered globally every year and used to finance a range of illicit and illegal activities, including terrorism. Illicit financial flows deprive communities of the funds needed for essential services such as health and education, undermining the social fabric.

These practices have real-life impacts, Patrick Bond points out: they perpetuate economic inequality, cause essential social services to be cut and even, evidence suggests, ultimately impede economic growth. Rajiv Joshi also points out negative effects for legitimate businesses:

It is bad for businesses because it puts them in the risky situation of not knowing who they are doing business with: risk that can lead to fraud, business failure, fines, reputational damage and large-scale lawsuits.

States struggle to keep up with the scale and ingenuity of the corporate engineering to avoid tax: as one loophole is closed, another is exploited. But states can also be complicit, by cutting deals with companies and lowering tax rates to attract jobs: an [IMF study](#) shows that global average corporate tax rates have almost halved since the 1980s. The logic for states is that jobs are generated, even if taxes are not paid.

One notorious example was exposed in 2016 when the European Commission found the government of Ireland guilty of breaching EU state aid rules, such as the generosity of the terms under which Apple locates its European headquarters there. This led to the company, the [most profitable](#) in the world, paying as little as [0.005 per cent](#) tax on its profits. The Commission ordered Apple to pay over US\$13 billion plus interest to the Irish state, but the Irish state's immediate response was to say that it did not want the money, as it announced its intention of appealing against the deal. This offered the bizarre spectacle of a government turning down a windfall equal to its annual healthcare budget. As Sorley McCaughey of Christian Aid Ireland describes:

The government's immediate response was to defend robustly the entire Irish tax code. The Commission ruling was characterised by government ministers and government party TDs (members of parliament) as an attack on Irish sovereignty,

or as an example of a Commission jealous of Ireland's success in winning FDI from other European member states.

They were joined in this by leading opposition party figures, in a broad party political consensus to defend Ireland's low corporate tax policy. This meant that it was left to civil society to provide the critique and try to open up a broader, non-nationalistic debate about tax policy. The challenge civil society faces in such circumstances is of pushing the debate beyond questions about the best ways to generate jobs, and how a balance can best be struck between attracting business investment and collecting tax; the question should be more one of what kind of society we want, how strongly we value social justice and what the roles of government, civil society and business can be in getting us there. As Sorley McCaughey puts it:

Tax and fiscal policies and their impacts cannot be divorced from broader societal priorities, neither domestically nor internationally. The impacts of tax and fiscal policy therefore need to be subject to a systematic human rights assessment that should include the impact of any policy on a state's ability to guarantee the rights of its citizens - to education, housing, a quality health service and so on. Seen through a human rights lens, it is difficult to consider the efficacy of Irish corporation tax policy without, for example, considering 2016 figures that showed that almost 250,000 children are living in poverty in Ireland.

The ruling shed light on the secrecy around deals that states strike with companies, which makes it hard for civil society to assert accountability: the Irish government's deal with Apple was long-running and one of hundreds of decisions made by the country's Revenue Authority, but had never been subjected to public scrutiny.

There is also a need, Patrick Bond reminds us, to look beyond state-level arrangements and pay attention to the international agencies that are promoting deregulatory policies, which enable the rapid international movement of money essential for international tax avoidance. In particular, he criticises the skewed governance structures and enduring neoliberal and pro-corporate mindset of key institutions, notably the World Bank and the IMF:

The IMF is the main multilateral institution enforcing these outflows, reflecting a dogmatic commitment to property rights even though its founder John Maynard Keynes strenuously supported capital controls. Although IMF economists occasionally offer mildly encouraging words regarding inward-oriented exchange controls against hot-money capital inflows, the

CIVIL SOCIETY IS MAKING EFFORTS TO TRY TO PUT AN ACCURATE FIGURE ON THE SCALE OF TAX AVOIDANCE AND UNDERSTAND THE SOCIAL COSTS OF THE REVENUE THAT IS LOST

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institution has never countenanced regulations that keep funds locked up within a given country. The IMF's deregulatory bias continues, no matter its repeated incompetence when it comes to predicting and preventing financial crises, and the IMF has not reversed its self-confessed class bias when it comes to austerity to 'solve' such crises.

Some powerful global north states have also resisted recent attempts by the G77 group of global south states to strengthen the international governance of taxation, and in particular to push for a [UN global taxation body](#). No progress has been made on this at [key international meetings](#) on financing for development and trade, with taxation regulation remaining within the purview of OECD, a group of the wealthiest states with limited opportunity for global south influence. The suspicion among many in civil society is that the lobbying power of transnational business is being reflected in the intransigent stance of global north states on this issue.

In response, civil society is making efforts to try to put an accurate figure on the scale of tax avoidance and understand the social costs of the revenue that is lost. European civil society is engaging at the EU level to encourage companies to report on a country by country basis, and to make information more publicly available. Civil society is active in putting forward practical suggestions for states on how they can tackle illicit financial flows, if they are willing: for example, in [January 2017](#), CSOs published a 14-point plan to address illegal financial flows in Africa. Civil society is also starting to use international human rights instruments to open up discussion about the human rights impacts of tax avoidance: the Center for Economic and Social Rights, for example, worked with Swiss CSOs to argue at the UN that [Swiss tax avoidance schemes](#) meant that resources were denied to enable women's rights in Zambia. It is campaigning by civil society and citizen anger that has made corporate taxation a bigger political issue. However, civil society remains challenged by a lack of capacity and resources to engage on highly complex, technical issues.

TRADE TREATIES

Traditional understandings of state sovereignty have been eroded by the growth of transnational business. In recent years, there has been a burgeoning of international treaties that remove restrictions on transnational trade and enterprise. This has been accompanied by the use of investor-state dispute settlement (ISDS) mechanisms that enable companies to win legally-binding decisions against states. In their joint contribution, Lorenzo Cotula of the International Institute for Environment and Development and Celine Tan of the University of Warwick, UK, indicate that there have been many such cases, and they have much higher compliance standards than international human rights norms:

Most investment treaties allow investors to bring disputes to international investor-state arbitration if they consider that the state has breached its treaty obligations. This means that an investor can bypass national courts if they have a dispute with a government and, instead, have it settled by an international arbitral tribunal. Over the years, investors have brought some 700 such arbitrations to challenge state conduct, including in policy areas as diverse as industrial strategy, taxation, environmental protection, planning regulations and public health.

Widely ratified multilateral treaties, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, make it easier to enforce pecuniary arbitral awards globally. Under these treaties, if a state fails to comply with an award, an investor may seek enforcement in any signatory country where the state holds commercial interests. So while many international arrangements suffer from enforcement problems, ISDS systems have legal bite.

Such mechanisms have become more controversial as their use has grown and they have been given prominence in the new wave of wide-ranging trade treaties, note Lorenzo Cotula and Celine Tan:

The openly-worded investment protection standards contained in many investment treaties delegate considerable power to the arbitral tribunals interpreting those standards. And the growing number of actual arbitrations has extended the reach of international investment law to a wide range of public policy areas.

One area of concern is the lack of transparency that typically surrounds such mechanisms, with decisions often made in secrecy and with little scope for civil society access. A further concern is with the potential for 'regulatory chill', in which the possibility of being involved in an ISDS dispute may act as a deterrent against states taking action, particularly for small or global south states that can lack the capacities to fight cases, or which fear the financial impact of fines. The process of contesting a claim can be onerous. In 2016 the government of [El Salvador](#) won a claim brought to a World Bank tribunal by a mining company after it was denied permission to mine for gold, but the case took seven years, during which time the country's development of mining policy was effectively put on hold; only after the case was concluded was the state, where [90 per cent](#) of surface water is now polluted, able to introduce a ban on metal mining.

The increasing use of ISDS mechanisms can indicate a broader challenge for conventional civil society advocacy and accountability approaches, because these have tended to focus on articulating demands towards the state and holding the state, as the locus of power, to account. The increasing roles being played by such mechanisms and transnational business more broadly may demand a change of focus, and raise the question of whether civil society has the capacities and resources to mount an effective response. It can also be hard to sensitise citizens about the challenges these issues present, because trade deals are complex and highly technical matters. However, as covered further in the year in review section of this report, and as Lorenzo Cotula and Celine Tan note, civil society advocacy on ISDS mechanisms has grown, in response to recent negotiations:

Some recent investment treaty negotiations involved significant public mobilisation, especially where investment provisions were folded into more encompassing - and as such, more visible and potentially impactful - trade and investment treaties. These developments are particularly evident in high-income countries. Civil society conducted public awareness campaigns and promoted mobilisation around major treaty negotiations, and lobbied for greater parliamentary and public oversight of negotiations.

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Civil society advocacy has achieved some impact. In response to European civil society advocacy on CETA, an investment court system was proposed as a new mechanism that would improve legal standards and give greater recognition to the regulatory role of states. Although many in civil society believe that the change does not go far enough, it would not have happened without civil society advocacy to make ISDS mechanisms a matter of public concern. Lorenzo Cotula and Celine Tan offer other examples of advocacy:

Over the years, the strength and increasing professionalisation of civil society advocacy has promoted incremental changes in some arbitration rules, including greater public disclosure of documents, public access to hearings and third-party submissions in arbitral proceedings. Civil society have also increasingly taken advantage of access to arbitral proceedings by submitting *amicus curiae* ('friends of the court') briefs as non-disputing parties. These submissions not only highlight the public interest dimension of the case in question, they also contribute expertise and alternative perspectives to the substantive claims made by the investor and state parties to the dispute.

However, although Lorenzo Cotula and Celine Tan highlight examples of civil society advocacy in Malaysia and Myanmar, they suggest that much of the advocacy on ISDS issues to date has concentrated in global north countries. There is also no guarantee that civil society's voice will be heard:

Opportunities for meaningful citizen influence are often particularly constrained in low and middle-income countries where awareness of international investment law issues tends to remain low, capacity constraints may be particularly hard... and political space for genuine dialogue is often limited.

Despite openings, space for civil society influence in investor-state arbitration remains constrained. When deciding whether to accept civil society submissions, arbitral tribunals enjoy considerable discretion, and have in some cases refused them. Also, making a written submission does not amount to full-fledged participation in the proceedings, and civil society petitioners face significant restrictions when drafting submissions; for example, they may have no access, or limited and restricted access, to case documents or hearings.

As with taxation, while the issues around ISDS mechanisms may seem complex and arcane, there is need to connect advocacy to a larger debate about what kind of world we want, and whether such mechanisms are consistent with that vision:

International investment law provides a test case for wider efforts to design systems of democracy that are able to deliver, at scale, bottom-up policy-making in relation to politically and economically sensitive issues.

The reaction to the rise of ISDS mechanisms should not be a retreat into narrow notions of state sovereignty; the choice should not be a binary one between corporate or state power. The need is to assert progressive notions of popular sovereignty, in which citizens are seen to have agency and civil society a right to demand the exercise of accountability, including over transnational business. Further, as Lorenzo Cotula and Celine Tan suggest, and as the pan-European mobilisation on trade treaties demonstrates, civil society's responses cannot be confined to national borders; the response to the increasingly transnational nature of business has to be greater international working by civil society:

There is considerable room for lesson sharing and alliance building across national borders. As a result, the sites of civil society action transcend the confines of nation states, and CSOs can deepen their work to develop transnational alliances among groups that have common objectives and different skill sets.

This question of what response networks are needed is one that will be returned to below.

PART TWO: KEY CIVIL SOCIETY RESPONSES

Civil society is increasingly active in responding to the growing role of the private sector. As Phil Bloomer and Vicky Dodman indicate, scrutiny traditionally focused on the state is turning its attention towards business:

Traditionally, human rights discourse focused on the responsibilities of the state to uphold the rights of citizens, and was dominated by legal and constitutional experts. But the growth in power and influence of business over workers and the communities they operate in, around the world, has brought the issue of business and human rights to the fore.

Adam Shapiro outlines the growing civil society scrutiny of corporate practice:

Companies used to be the targets of human rights campaigns only when they violated the rights of labourers, such as when they provided poor working conditions or restricted their workers' freedom of association. Now this has expanded to a much larger concern about the impact of corporations and the roles they play, directly or indirectly, in the suppression of human rights, including violence towards, threats against and the harassment and intimidation of human rights defenders. From global north companies providing spyware and other digital surveillance technologies to repressive governments to local, private security companies hired by mining operations, and from international development banks to green energy technology projects, virtually all commercial activities are being scrutinised for their impacts on land, the environment, communities, workers and indigenous peoples.

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With more information available, more awareness among local communities, and more interconnectivity between international civil society, a new-found power in organising and confronting business is gaining unprecedented attention, and in some cases, winning concessions.

Civil society has used this new-found power to achieve some impact. Frank Vogl recognises the strides that civil society has taken in holding business to account, on the issue of corruption:

It has exposed scandals; forged multi-stakeholder partnerships with business and government; initiated transparency pacts and integrity pacts with groups of enterprises bidding on public procurement; set high standards of business ethics and campaigned for their adoption by the world's largest companies; challenged banks over their money-laundering operations; documented the degree to which companies pursue in-house anti-corruption compliance training with their employees; led the charge for new international conventions and national laws and regulations to curb bribe payments by firms to foreign government officials; forged new technologies to improve transparency and honesty in public procurement; and worked closely with investigative reporters and editorial writers to successfully raise public awareness across the world of the intense damage that business corruption does to economic well-being and security.

The scale of most of the different types of anti-business corruption actions pursued by CSOs has increased significantly over the last two decades. Many civil society leaders have worked with great dedication at international and national levels on these topics.

And yet, as Frank Vogl continues, many challenges remain:

In many respects the multiple efforts by civil society to reduce business corruption have proven to be far from sufficient. We may be losing the battle today as increasing numbers of businesses become more sophisticated, using new technologies and creating multiple secret companies sheltered in offshore havens to assist them. Tax evasion and avoidance is an increasing aspect of global corporate corruption.

Given the scale of the challenge, there is a need to ask what civil society could do more and differently. As Uwe Gneiting indicates, the increased range of private sector actions has added to the complexity of civil society response:

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Today we are seeing a much more diverse set of interactions between civil society and the private sector, including an increasing number of collaborative arrangements, ranging from formal partnerships to policy dialogues. This more diverse universe of engagements with the private sector has presented a test for civil society. Opportunities to engage have exposed different theories of change and complicated civil society's ability to coalesce around certain positions or initiatives. From labour rights to climate change, and from global health to fair trade, CSOs have taken different approaches about how to engage with the private sector.

If all these responses could be said to have one minimal advocacy aim, it might be expressed as a 'first do no harm' principle for business when it comes to human rights, including civil society rights. This is consistent with what David Logan suggests, that most companies will abide by laws, once these have been passed, but may not go further than minimal compliance:

Companies are often passive in the face of social and environmental issues that do not have an immediate, bottom line impact on their business. Also, they may not want to take on more responsibilities than they already have. In addition, there is a widespread belief that these issues are more the responsibility of governments and inter-governmental bodies, and that trade associations, rather than individual businesses, are there to deal with shaping the corporate response. Once a law is passed, most companies are pleased to have a level playing field and abide by it. However many issues, such as slavery, are clearly covered by laws that are not kept, and for many other great issues, such as carbon use and executive pay, have no clear legal framework.

As the many examples of corporate malpractice provided by the various contributors suggest, a 'first do no harm' principle will be hard to establish. But even then, this will not be enough, and not something that should be settled for. Civil society must go further to try to assert a positive influence on corporate behaviour, and ratchet up ever higher standards.

The challenge civil society faces here is that, as David Logan identified above, for many businesses, engagement with civil society is not a core concern; it may rather be seen as an add-on, something that Adam Shapiro also points out:

Businesses usually do not have mechanisms to engage with civil society until after they are already established on a project, and often only then do so in an effort to meet corporate social responsibility (CSR) goals. CSR goals are typically not informed by human rights standards or framed with input from human rights defenders.

The need this suggests is for ongoing engagement with the aim of shaping and shifting business priorities and attitudes towards civil society. But to do this, civil society needs to try to understand the motivations and drivers of business behaviour. Phil Bloomer and Vicky Dodman set out some of the key levers that civil society may try to engage with:

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- legal risk and regulation, because most businesses are careful to implement laws and regulation where these are enforced by governments;
- reputational risk and reward, among investors, customers and potential employees, because most businesses are concerned about having a good reputation;
- the threat of disruption, including protests and strikes, because most businesses will ultimately negotiate to try to avoid these;
- market incentives, such as access to new markets and contracts, because exemplary businesses will see a reward;
- peer pressure, exerted by leading businesses, to encourage other businesses to follow their lead.

STABILITY AND
THE RULE OF LAW
ARE GOOD FOR
BUSINESS

Phil Bloomer and Vicky Dodman further suggest that a mix of approaches is needed:

Effective strategies to pull on these levers of influence usually involve some combination of these factors, the use of both insider and outsider strategies, and an ability to shift between various fora to demonstrate persistence.

The use of these different levers and approaches can be seen in the key response strategies highlighted by contributors.

MAKING THE BUSINESS CASE FOR CIVIC SPACE

As the contributions to the report make clear, more and more CSOs are working on issues of business, human rights and civil society rights. They are increasingly involved in efforts to engage with the private sector and convince it that it is in its interests to uphold civic space. In short, they are making the business case for civic space.

Many civil society efforts try to do so by locating the respect for civic space within broader questions about the rule of law, because the rule of law is something that most businesses say they value. As [Maina Kiai](#) has stated:

The presence of a robust, vocal and critical civil society sector guarantees, almost without exception, that a state also possesses a good business environment... The rule of law is stronger, transparency is greater and markets are less tainted by corruption. In other words, when civil society does well, business does well too.

The business case for civic space is therefore partly made on the grounds that [stability](#) and the rule of law are good for business. Most businesses are relatively risk averse and value stability over volatility, as stability enables them to plan and make longer-term investments. In contrast, the conflict, volatility and extremism that can break out when civic space is restricted, when people are denied the space for open and safe debate and dissent, and when political leaders act against the public interest, are bad for many businesses. As Rajiv Joshi expresses it:

When governments use violence and excessive force to suppress protests and free speech, it can lead to a breakdown of the rule of law and a rise in overall instability. This uncertainty impacts on markets and has a negative impact on the bottom line. Companies that are more deeply in touch with day to day life on the ground in the countries in which they operate and are able to promote and support the development of an engaged and empowered citizenry are more capable of mitigating risks.

If businesses value the rule of law, then it needs to be made clear that this is weakened by attacks on civil society, as Michael Ineichen, Mauricio Lazala and Ana Zbona put it:

Businesses need functioning markets and the rule of law to thrive. Where states fail to protect human rights defenders and space for civil society, but on the contrary attack, restrict and stifle them, the rule of law is often weakened... Business thrives in open societies and open civic space. Among the first victims of the closing of civic space are critical thought, creativity and innovation. These values are crucial for business, so companies lose out too.

Further, as Sameera Mehra sets out, the rule of law can only be guaranteed by a strong and autonomous civil society:

Undermining civil society undermines society as a whole. An independent civil society that acts as a critical friend is necessary for maintaining the rule of law, strengthening a system of checks and balances and giving voice to the diverse populations that live in today's globalised cities and countries.

A good governance premium can be identified for business, suggesting that the business case for civic space can also be made on the basis of the costs and risks for companies. As Rajiv Joshi points out, UN Global Compact [research](#) suggests that poor governance and corruption adds on average 10 per cent to the cost of conducting business, and the difference between operating in a low corruption climate to operating in a context with higher levels of corruption can be 20 per cent of profit. Bribery is estimated to account for around US\$1 trillion a year, which impacts on a company's bottom line and reputation. Companies involved in the worst abuses may also struggle to recruit and retain talented staff. Civil society action to realise rights and uphold good governance should therefore be welcomed by businesses, and suggest mutual interest in bringing about greater accountability and transparency.

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Michael Ineichen, Mauricio Lazala and Ana Zbona suggest that civil society can work to make clear to companies the costs they incur by conflicting, rather than cooperating, with their communities. Adam Shapiro points out that part of the civil society response to the killings of environmental activists in Honduras was to put pressure on the business project's international funders and change their calculations of risk:

Business decisions can be impacted on when three things happen: extreme violence is carried out against human rights defenders; this is followed by targeted international solidarity efforts; and this is coupled with sustained local protest.

International funders and businesses need to begin to set clear limits on what sort of behaviour they are willing to accept from local partners, including dam builders, security companies and local authorities, by establishing consequences for the targeting of human rights defenders.

If international businesses did this, it would signal to local actors – local businesses, politicians and other interested parties – that any calculation of targeted violence would need to consider the implications for investment. If investment in their project was at stake, the reason for targeting a human rights defender would be challenged. Preventing the targeting of human rights defenders in cases where business interests are at stake is a question of information pertaining to calculated risk. And it is incumbent on, and socially responsible, for corporations and development banks to make explicit these parameters to any and all local partners and contractors, such as security firms, at local levels.

Key in Adam Shapiro's example was international-level working, to get to the point where international partners could no longer ignore the evidence of the local-level partners' complicity in abuse. The potential of this is explored further below.

Michael Ineichen, Mauricio Lazala and Ana Zbona point to the need to articulate the benefits companies can realise from respecting civic space, as well as the business costs of poor quality civic space:

Human rights defenders can assist companies in navigating human rights laws and establishing risk management procedures, setting the foundation for an operation's long-term security and effectiveness. Engaging with defenders helps businesses prevent and mitigate negative human rights impacts, build relationships with local stakeholders and design effective grievance mechanisms, proactive mitigation strategies, and remediation processes.

This approach can also reduce costs and operational obstacles by minimising the risk of community conflict which often results in interrupted production, security costs and the costs of human resources lost to crisis management and litigation. Financial markets and consumers tend to reward businesses and brands that proactively and effectively manage social, environmental and governance risks.

Adam Shapiro further suggests there are ways in which civil society can convince businesses of a civic space bonus:

When corporations, banks and investors take positions to demand the safety and security of human rights defenders in countries where their business operates... it does not necessarily impact negatively on corporate profits or profit margins. There are even indications that asserting principles of support for human rights defenders can have a positive impact on corporate reputation and profits, as exemplified by the public support generated for the numerous corporate actors around the world that have taken positions supportive of LGBTI rights.

For Phil Bloomer and Vicky Dodman, the advent of the SDGs provides a new opportunity to make the business case for civic space:

The single greatest contribution that businesses can make to the achievement of the SDGs would be to respect and promote human rights in their core business practice: this approach could ensure that all investment pays a living wage; avoids land and water grabs and pollution events, including carbon emissions; and protects civic freedoms and human rights defenders.

But even if businesses support the rule of law passively or tacitly, the question remains of how to encourage them to move to a more active position in which they recognise the value that civil society can add to their work and contribute to the rule of law by actively upholding civic space, and human rights more generally. Far more needs to be done in this regard. It is clear that in countries around the world, the legal, regulatory and political environment is [far more enabling](#) for business than it is for civil society. There is a need to encourage businesses to use this greater freedom to uphold civic space in their business operations, and particularly, to use their relationships with governments to put the case for civic space, including when states restrict civic space on the grounds of making business operations easier. Their contribution here could be critical, as Rajiv Joshi suggests:

As traditional accountability mechanisms, including the judicial system, legislatures and the media are undermined, the role of business in influencing positive change has become paramount.

There has been some recent progress. There is growing international recognition of the business case for civic space. The WEF, in its 2017 [Global Risks Report](#), recognised declining rule of law and civic freedoms as a major economic risk. The [Community of Democracies](#) in 2017 held a discussion on the private sector and civic space, putting the issue on the mainstream intergovernmental agenda.

At the country level, Sameera Mehra provides examples of successful partnerships between civil society and business to defend civic space. In Angola, civil society worked with diamond companies to campaign successfully for the release of an investigative journalist exposing the state's role in abuses in the diamond industry. In Cambodia, garment retailers with supply chains in the country supported civil society calls to seek a peaceful resolution to violently repressed wage protests, through open and private letters to the government. In Pakistan, when the government issued a tender for

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technology firms to enable internet restriction, CSOs engaged with companies and won a commitment from several that they would not bid for work that harms the freedom of expression. In Thailand, when an activist was detained for exposing human rights abuses against migrant workers, key industry associations provided his bail bond and spoke out against his arrest.

Of course, each of these examples is [subject to critique](#) and further examination, and it may not be possible to isolate the contribution of business to these cases, compared to that of civil society, but they highlight the different ways that businesses may be encouraged to recognise the value of civil society and engage on civic space issues, including through public recognition of the validity of civil society and quiet diplomacy towards their government contacts.

PRIVATE SECTOR PERSPECTIVES ON CIVIC SPACE

We also sought the views of private sector companies that have committed to defending civic space. Nicholas Patrick of global law firm DLA Piper, which is part of a business network on civil society and human rights defenders, describes some of the ways that his company has worked to uphold civic space:

We provide pro bono legal support and high level strategic advice. We assist with registration in high risk jurisdictions, and on de-registration and other attacks by governments. We support CSOs when senior staff are arrested in certain jurisdictions. We have also undertaken research and contributed to a report on the rights of association across Europe.

Nicholas Patrick also sets out the motivations of his firm in working to defend civic space, and the value it sees in working with civil society for businesses:

Ultimately, businesses can only succeed where there is strong rule of law. Civil society is both an indicator and a facilitator of a strong rule of law. Civil society also plays an important role in monitoring and keeping accountable democratic institutions and businesses. Also, civil society is increasingly monitoring supply chains in high risk jurisdictions where monitoring and enforcement of regulations by authorities is weak. By working closely with civil society businesses can become aware of salient issues early. Conversely, if civil society is stifled by governments the costs of monitoring are passed back to businesses.

Bill Anderson of Adidas points to his company's track record of engaging with civil society:

Adidas Group has a long history of engagement with civil society groups, be they international human rights organisations, such as Amnesty International and Human Rights Watch; labour advocacy groups, including Maquila Solidarity Network, Worker Rights Consortium, Clean Clothes Campaign, China Labor Watch, the Centre for Research on Multinational Corporations and

the Responsible Sourcing Network; poverty alleviation CSOs, such as Oxfam UK and Oxfam Australia; international and local trade unions; environmental interest groups, including Greenpeace, Natural Resources Defense Council, International Chemical Secretariat (ChemSec) and the Institute of Public and Environmental Affairs; and of course sports-related CSOs.

Engagement has usually followed one of two paths, either as a response to advocacy campaigns, or as part of our own outreach around topics of shared interest, in particular global supply chains, workers' rights, occupational health and safety, environmental protection, sports and health. We are also engaged with a range of civil society groups with respect to our philanthropy and corporate responsibility programmes. These are often executed at a country level, such as our current efforts with local organisations in Germany to address the refugee crisis in Europe.

We have [published](#) our approach to human rights defenders and the interventions we have taken in the past to defend them.

We also asked Bill Anderson to outline the value of civil society, and the reason his company supports it:

Civil society thrives where there are open and tolerant societies, and where governments commit to upholding the rule of law. These are also pre-conditions for the long-term success of business.

Civil society offers unique insights and can help guide and advise business on potential strategies to tackle the most complex social and environmental issues. Often, CSOs represent the voice of the most vulnerable, or least represented, sections of society. It is important these voices are heard, if business is to operate in an open and inclusive way.

More generally, Michael Ineichen, Mauricio Lazala and Ana Zbona see some strides being made, noting:

...the heightened attention given by investors to a company's engagement with and protection of defenders, and a growing appreciation by businesses of the contribution of human rights defenders and open civic space to sustainable business operations. It is becoming more and more obvious to many businesses that the protection of human rights defenders and civic freedoms is as much in their interest as it is in the interest of defenders and citizens.

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Investors are growing more aware of the legal, reputational and other financial risks of not considering human rights issues in their investment decisions. Important initiatives, such as the [Corporate Human Rights Benchmark](#), [Know the Chain](#) and [Behind the Brands](#), are making it easier for them to do so. This makes it increasingly possible for investors to choose their potential portfolio companies based on their human rights performance. One of the indicators in these initiatives is the companies' commitment to respect the rights of human rights defenders.

This question of how investment calculations can be influenced is returned to below. More generally, what the above suggests is that in any efforts by civil society to bring business onside in the fight for civic space, the first step is to distinguish between those companies that can be won over and partnered with, and those that simply cannot; to split off the good from the bad. This chimes with Frank Vogl's suggestion to work with the good and try to amplify it, but to understand that exemplary companies may be the exception. Michael Ineichen, Mauricio Lazala and Ana Zbona also speak to the need to make this distinction, and to work with the most amenable companies while seeking to broaden out from that base:

While some companies are still lagging behind, and are continuing to contribute to human rights abuses and to the marginalisation of human rights defenders and the closing of civic space, others are starting to grapple with trying to ensure that their operations do not contribute to the closing of space for CSOs and human rights defenders.

A modest but increasing number of companies are coming to realise the value of going the extra mile, and are using their leverage to keep the enabling environment open, not just for business, but also for the defence of rights. As the political tone becomes more aggressive, and intolerance increases, these businesses are willing to assume a more overt role of advocates for civic freedoms and non-discrimination.

Many companies are increasingly concerned about crackdowns on protesters who demand better labour conditions, and are willing to stand up for them or even to testify in court when activists are arbitrarily detained for uncovering abuses in supply chains. However, other suppliers and international brands are still turning a blind eye to crackdowns by police and security forces on protests, particularly against labour unions and labour rights CSOs.

Recent volatile politics have surely added to the potential costs and risks for business, and made matters more urgent. As this report's year in review section outlines, right-wing populist and neo-fascist politicians have come to prominence in multiple countries by harnessing public anger about the consequences of economic globalisation, including for jobs and livelihoods. They have won elections on populist tickets of nationalism, nativism and xenophobia, and they tend to govern by decree and personal edict rather than respect the rule of law. Such political leaders tend to be pro-big business, but those businesses that associate with them surely do so at considerable risk. One risk is of alienating the many who stand against the

current regressive politics. Further, businesses should be concerned that when the new wave of political leaders fail to deliver on their exaggerated and contradictory promises, citizen anger will focus more sharply on large companies, if they do not show that they understand and are acting to address people's grievances. In societies that are becoming more polarised, businesses will be asked, by civil society and citizens standing against regressive politics, whether they are for demagogues who attack human rights, or against them.

By splitting off the better companies from the worst, CSOs can work to reduce the rewards and competitive advantages that companies may expect to obtain from poor behaviour. The key need this then creates for civil society is for standards and tools to help identify the exemplary companies that it wants to engage with. This implies trying to understand the motivations and drivers of businesses, taking time to learn how companies work and, when we understand why companies may be reluctant to act, consider how they can be encouraged to change. This is not easy; Sameera Mehra cites an estimate that 70 per cent of private sector advocacy is pursued through quiet channels, without publicity. Businesses may work this way because they see it as the best way of leveraging their connections to governments, without damaging their relationships with states and their reputations. This then raises the challenge for civil society of how to engage with and complement quiet advocacy styles alongside more vocal civil society campaigning strategies.

It is also important to understand which companies are the most significant in any given context, including at the local level. This suggests that international civil society, in particular, needs to do its research and work with local civil society to identify the key corporate players that affect civic space, suggests Sameera Mehra:

Identifying business areas that have a greater economic impact on the country and targeting them could be a useful strategic starting point for civil society to engage businesses in holding governments to account... A deep dive into the complexities and drivers surrounding different sectors, such as retail, mining and IT, could be very useful in understanding how best to work across different fields in preserving civic space.

Sameera Mehra also sets out some key challenges to engagement that may need to be overcome:

Challenges that persist include those of language and a lack of a shared understanding of the different drivers and challenges, including contextual, geographical and sectoral challenges. These challenges need to be leveraged and overcome in order to realise a shift towards companies defending civil society.

When it comes to overcoming these challenges, Sameera Mehra points to [recent research](#) by the Charities Aid Foundation and the London School of Economics on factors that may bring businesses to tipping points where they are prepared to support civic space. One important factor identified by their research is networking: cross-sector business networks can bring different companies together and into contact with civil society, develop social

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capital that can be mobilised rapidly to respond to civic space emergencies, and mitigate fears that prevent individual companies from damaging their standing with states by speaking out. Networks, Sameera Mehra notes, give civil society, particularly community-level civil society that may be at the sharp end of civic space restriction, something to connect with:

By identifying and engaging in such networks, local, grassroots CSOs can leverage key players within these structures who they can work with to amplify the volume on issues.

David Logan suggests that business networks can help civil society to engage on an industry level, rather than at the level of individual companies, something that can help to mitigate issues that arise from competition between individual companies:

CSOs, and indeed governments, need to be able to engage directly with individual companies and sometimes whole industries, because many issues are industry issues rather than brand issues, in order to understand issues and promote solutions.

Michael Ineichen, Mauricio Lazala and Ana Zbona also point to a need to invest in spaces that bring civil society and business together:

Mutual trust among business and civil society actors is a critical ingredient if we want to create new alliances. Creating a space for informal, trusted exchange among like-minded companies, civil society and human rights defenders is critical for that, as is a change in mindset among all involved.

This implies that bodies such as professional networks, industry associations and chambers of commerce have a role to play as spaces for reflection and interaction between businesses, and as makers of links with civil society. The key is to have the kind of ongoing conversations and connections that can be mobilised that networks enable. Of course, networks need to be real, need to go beyond discussion to act and need to be tested on hard cases; they cannot exist only to make participants feel good or to launder business reputations.

Company types also matter, Sameera Mehra reports. Family-run businesses may be more rooted in values and quicker to respond to civic space emergencies. Companies strongly rooted in values, generally led by leaders who understand

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and sympathise with civil society, can play a lead role in convening and shaping advocacy and support networks. Their role as network leaders may compensate for the relatively smaller size of such businesses. Similarly, David Logan suggests that it is useful to start by looking for companies with distinct characteristics, values and leaders. [Recent research](#) from the University of Denver, USA also identifies some factors that may be decisive when civil society seeks to influence corporate behaviour, including making multiple, coordinated engagements over time – something that networks can help to achieve – and mobilising towards companies when they are undergoing leadership change, indicating a further need to understand and engage at the leadership level.

By taking a differentiated and nuanced approach to companies, we can also recognise when there is a need for targeted advocacy towards specific sectors. For example, there is a need for close scrutiny of companies that sell the tools and systems that enable civic space restriction, such as security and surveillance companies, and they need to be held to strong due diligence standards. There is also a need to make sure that companies know they will be held responsible for private security contractors they may hire, as these are often a source of violations. Meanwhile [financial institutions](#), particularly those involved in international transactions, may actively enable the [restriction](#) of the flow of financial resources to CSOs, including on spurious grounds such as combating extremism, terrorism and money laundering. For example, [two-thirds](#) of US-based CSOs that work internationally report that they have faced challenges in accessing financial services. Financial institutions should therefore be another focus for specific advocacy.

The challenge is that there will always be unscrupulous business people who can find a way of turning a profit from repression, note Michael Ineichen, Mauricio Lazala and Ana Zbona:

Some businesses seem to see the shrinking of civic freedoms as an opportunity to sell their products and services, which enable such shrinking.

Further, there are sectors that are not public-facing, such as extractive industries, where it is harder to mobilise pressure, a challenge Sameera Mehra identifies:

A company's motivation to respond and ability to influence a government varies from industry to industry. Consumer-facing industries are impacted on more greatly by trends towards ethical consumerism and public 'naming and shaming' campaigns, and their work is more easily visible.

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Competition can drive problems, if a business believes that by not respecting civic space it can obtain a competitive advantage over a business that does. However, these conditions do not always apply. For example, Sameera Mehra points out that, while fashion brands compete on the high street, they often have common supply chains, because their garments are made in the same global south factories. This means that they have common, rather than competitive, interests in ensuring successful and non-disrupted supply chains, which could make them open to argument about the need to respect civic space. An informed response can therefore try to identify those industries most amenable to common working and leadership by targeted businesses.

If family-run businesses can play a significant leadership role, then a challenge is that in many sectors they are in decline, as big business consolidates, grows and becomes ever more distant from its origins. This suggests as an alternative that new technology companies, which tend to be more strongly oriented around hands-on, charismatic founders, may be key for advocacy, particularly given the rise in the online restriction of civic space. As before, the need in response is to split off the good from the bad, and reward the pioneers while finding ways of penalising companies that do little for civic space.

A business case can also be made about the cost of online restriction. Knowledge among citizens that technology companies are complicit in censorship and surveillance can damage consumer confidence and lead to users switching to more secure platforms. [Recent research](#) that puts the economic cost of internet shutdowns at US\$2.4 billion over a single year helps to make the case: it puts a clear price on the failure to defend online civic space.

There are many examples of citizens withdrawing trust from technology companies when they do not match their values. For example, when [Uber](#) promoted its services during a January 2017 New York airport taxi strike, one of a string of protests that greeted President Trump's imposition of a travel ban on a number of Muslim-majority countries, the company was seen as engaging in strike-breaking and shirking the progressive fight-back against toxic politics, compared to a number of other new technology companies that [came out clearly](#) against the ban. The consumer response was rapid: around 200,000 Uber accounts were deleted in protest, alternative companies positioned themselves as supportive of activist responses and the company's CEO was forced to perform a rapid about-turn and step down from Trump's business advisory council. The potential to change the calculations for new technology companies was made clear.

There is however a further challenge in making the business case for civic space. The growing literature on business and civic space offers examples of how businesses are upholding civic space, but the examples are often the same

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ones, suggesting that the pool is quite small. This provokes the troubling question of whether in civil society, when we try to reach out to the private sector, we are trying to infer good practice from an insufficient number of atypical examples rather than this being the norm. Certainly, Sameera Mehra suggests, with few examples to hand, more effort is needed to understand practice:

While there are a number of cases where businesses have taken action, publicly available information about such cases is very limited. This could be for a number of reasons, such as sensitivities around businesses challenging government policies; a desire by businesses not to come across as being seen to be lecturing the host country; a need to safeguard an investment; and a lack of institutional memory.

In response, Michael Ineichen, Mauricio Lazala and Ana Zbona call for a greater emphasis on documentation:

Further concrete cases of collaboration among civil society and business to defend civic space will be instrumental in deepening the ‘proof of concept.’ The documentation of such collaboration, both publicly and informally, will enable different actors to learn across industries and contexts about successful action, improve their working methods, and come together in coalitions to limit potential negative exposure.

To assist, BHRRRC has now established a dedicated business and human rights [portal](#) that documents both attacks on activists working on corporate accountability and positive actions by companies to uphold civic space.

LEVERAGING REPUTATIONAL RISKS AND REWARDS

As previously suggested, strategies that offer reputational risks and rewards for companies can be effective. Campaigns that mobilise citizens and influence their attitudes and choices towards businesses can therefore be an effective tactic by which civil society engages with the private sector to influence civic space, human rights and corporate behaviour.

As the example of Uber indicates, there is existing consumer concern; when asked straightforward questions about the responsibilities of companies, many people will say that they think companies ought to respect human rights, pay tax and treat their workers responsibly. For example, a 2016 [ITUC poll](#) in G20 countries found that 82 per cent of people think companies should be accountable for the actions of their subcontractors, and 77 per cent want companies to be transparent about their supply chains. Similarly, as Phil Bloomer and Vicky Dodman express it, most people respond to stories of modern slavery with a straightforward humanitarian reflex. Growing consumer interest in fair trade products has seen the global fair trade market standing at an estimated [US\\$6 billion](#). Rajiv Joshi also sees increasing consumer concern:

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Consumers are increasingly concerned with how products are made, and what they stand for, pressuring brands to take action or face losses, while the best talent is attracted to brands that have a strong ethical reputation.

The instinctive sense of natural justice many citizens share is something civil society can work with to seek to improve corporate behaviour by exposing poor practice and rewarding better practice. The key notion here is of a [social licence](#) to operate – that business actions ultimately cannot be sustained without the broad consent of the communities in which they take place, and that citizens can withdraw that social licence, causing serious reputational harm, if sufficiently outraged at corporate malpractice. Michael Ineichen, Mauricio Lazala and Ana Zbona indicate that international public-facing companies are particularly amenable to consumer pressure:

The role of international brands is critical. Particularly in the case of consumer-facing products, CSO should highlight to a company the market and reputational risks to which it might be exposed if consumers become widely aware of supply chain issues.

Exposure causes reputational damage. Phyllis Omido outlines how civil society works with the media in Kenya to expose the environmental impacts of malpractice by extractive industries. In Ireland, Sorley McCaughey observes that the exposure of corporate tax avoidance harms the reputations of companies, and also governments that provide excessively lenient tax arrangements:

The public impression remains of a country prepared to engage in a form of tax competition that pushes the bounds of legality to the maximum. The effects of reputational damage are felt at multiple levels. For individual taxpayers, faith in the entire taxation system is undermined when a significant sector of the economy is seen as not paying their fair share.

Part of civil society's response must be to expose malpractice wherever it exists, but, counsels Frank Vogl, efforts must be based firmly in sound research:

Reform must start with evidence. In no area of activity involving civil society has there been as much success in the fight to curb corporate crime than in building research, marshalling the incriminating facts and then exposing the misdeeds. CSOs, combining or working with investigative reporters, have been particularly active and effective in exposing corruption related to natural resources.

There are indeed many CSOs, including several contributors to this report, that are working to expose issues such as human rights and environmental abuses in corporate supply chains, labour rights issues, corruption, poor corporate governance and corporate tax avoidance. But as well as exposing malpractice, there is a need to offer reputational reward. The essence of a successful response, Phil Bloomer and Vicky Dodman put forward, is to combine the stick and carrot:

Increasingly, civil society is recognising that alongside hard-hitting campaigning to expose abuse, the most effective models of change require that leading companies are given a reputational reward for their efforts. This serves both to encourage further positive innovation, and to increase the reputational risk for companies in the same field that are doing little or nothing to eliminate human rights abuses. Like any other institution and individual, companies are encouraged to go further if they receive praise for doing the right thing. Civil society needs to be alert to corporate whitewash and greenwash, but to give praise where praise is due and change is being advanced.

Civil society will need to be bold and assertive in the face of great inequalities of power, but also complement campaigning with collaboration with powerful actors we may be less comfortable with, particularly progressive investors and companies... Civil society is more effective when it differentiates between leading and laggard companies regarding their respect for the human rights of workers and communities.

Rajiv Joshi suggests that there are even instances in which civil society scrutiny can be welcomed by companies, in helping them to avoid reputational damage that may arise from failure to undertake adequate due diligence; the relationship therefore need not be antagonistic:

Civil society can play a crucial role in improving corporate practice. By supporting due diligence processes to identify any potential human rights risk through on the ground monitoring, civil society can provide early warning signals of abuse or corruption and ensure increased accountability for delivering results. Given businesses' responsibility to inspect their supply chains and make sure their operations are not violating human rights or harming civic space, it is essential that businesses maintain strong working relations with civil society to ensure comprehensive and credible due diligence.

One way of offering and underpinning risk and reward strategies is by collecting and disseminating evidence and setting benchmarks by which companies can be measured. Phil Bloomer and Vicky Dodman point to recent benchmarking exercises offered by civil society that distinguish between companies that are leading practice and those that are dragging:

Benchmarks and rankings can help to highlight better practice, encourage further respect from progressive companies, sharpen the reputational risk for the majority of companies that are doing far too little, and open space for governments to regulate a minimum floor of acceptable corporate behaviour.

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The [Know the Chain](#) initiative benchmarks corporate adherence, in the elimination of forced labour, in the clothing, new technology and food and drink industries. More broadly, the [Corporate Human Rights Benchmark](#), first developed in 2015, will grow to measure the human rights performance of the world's largest 500 companies. Benchmarking can be a powerful tool, Phil Bloomer and Vicky Dodman continue:

The power of this ranking was confirmed by an Economist Intelligence Unit survey of business leaders, in which over 40 per cent stated that benchmarking their companies on their human rights performance would make the biggest difference to the human rights commitments of their companies.

It will allow more investors to assess a company's due diligence towards the human rights risks of employees and communities, and build this into their investment decisions; enable talented potential employees to choose employers that reflect their values and make a fuller contribution to society; empower civil society campaign leaders to make quicker, evidence-based decisions on strategies and targets for key sectors; allow consumers to make informed choices about their purchasing decisions; and indicate to governments where national and international laws, regulations and incentives need to be strengthened to set a minimum floor of corporate behaviour... The Benchmark should drive a 'race to the top' on human rights by providing a reputational reward for leading companies and a reputational risk for laggards.

Offering recognition to companies can of course cause civil society some discomfort. CSOs may fear being seen to confer a legitimising seal of approval on a business that exhibits some good behaviour, but still also has some problems. Many CSOs will be more comfortable adopting an oppositional position, being wary of engagement and more inclined to decry bad news than celebrate good news. Having high quality benchmarks with standards around which there is broad civil society buy-in, at a network rather than individual CSO level, is one way to mitigate this challenge.

SHAREHOLDER ACTION AND DIVESTMENT CAMPAIGNS

Michael Ineichen, Mauricio Lazala and Ana Zbona point to a need to engage with companies' governance and accountability structures:

Civil society can [call on shareholders](#) to use their power as owners of companies to raise human rights concerns. Other tools can include [lobbying](#) directors, parent companies and investors, and the home governments of companies, [map corporate structures](#) and understanding the motivations of a company in each specific scenario.

There are growing campaigns to use shareholder power to advance change, including by raising key issues at company AGMs and encouraging pension funds to commit to responsible investments. For example, ShareAction has [called on shareholders](#) in BP and Shell to use their binding votes on executive pay to incentivise business leaders differently, to reward them for working towards the Paris Agreement commitments rather than for

extracting more oil. As Sunniva Gautvik and Friederike Hanisch of ShareAction note in their joint contribution, when citizens who have savings and pensions that are invested in businesses engage in advocacy, they are taking direct action:

You have every right to be in touch to express your view on how your money should be invested. You can contact your pension fund or insurance provider to ask how they are living up to their social and environmental responsibilities, or any other issues you would like to draw their attention to. Reaching out to funds directly as a saver is a great way to start a discussion on what they are doing on an issue you care about, or where you want to see change.

Asking questions at an AGM is a powerful form of activism that allows you to raise issues directly with those at the top of a company, in front of a large audience of their shareholders, whose interests they must represent. It can also be the start of ongoing dialogue with a company.

In particular, there is a need to focus on the big investment holders, given the power they wield; Patrick Bond points out that ownership of a huge swathe of businesses is concentrated into fewer than 20 huge funds. This means, indicate Sunniva Gautvik and Friederike Hanisch, that we need to engage with those who make investment decisions:

The world's capital flows through the global investment system. The savings of over a billion people are invested through it and the impact of these investments affects us all... Too often, investment decisions are driven by considerations of short-term financial gain, and ignore the profound and sometimes disastrous effects that companies can have on individuals, communities and our shared environment, exacerbating global problems. Due to the powerful role the investment system has in society, through allocating capital and influencing companies that it invests in, it is vital to engage with investors to achieve a more sustainable and just world.

Further, targeting engagement with individual investors can work, suggest Sunniva Gautvik and Friederike Hanisch:

If you manage to convince an investor of the importance of a problem and this investor starts engaging a company on it, dynamics can change even more drastically.

Recent campaigns towards investors have focused strongly on climate change, to encourage investors to divest from companies that do climate harm. Ellen Dorsey of the Wallace Global Fund and Clara Vondrich of Divest-Invest Philanthropy, in their joint contribution, set out the thinking:

Finance can be used to direct capital away from industries and companies implicated in human rights abuses and environmental damage and towards innovative solutions to the world's most pressing problems.

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May Boeve and Brett Fleishman of 350.org outline the advantage of their organisation's campaign: it has a single focus on climate change and works on an issue about which there is wide concern, particularly among young people. The aim is to withdraw the fossil fuel industry's social licence to operate because it causes climate harm. Its means of doing this has been a campaign to urge holders of investments in fossil fuel industries to divest. The carbon divestment movement imitates earlier and successful tactics in which investors in apartheid South Africa were pressured to give up their investments as a way of putting economic pressure on the racist regime; this was acknowledged by anti-apartheid campaign leaders as having made a significant contribution towards bringing about the end of apartheid. Fittingly, South Africa is one of the countries where the campaign has been enthusiastically supported.

The fossil fuel divestment campaign has been underpinned by a strong voluntary response, in which students in particular are active, arguing for their universities to divest their funds. The key to this, as May Boeve and Brett Fleishman describe it, was building a broad-based, locally adaptable and multi-faceted citizens' response, around a simple and clear ask:

Each campaign is run by a group of committed volunteers who each have a stake in the institutions in question about their investments. The rallying cry has been that if it's wrong to cause climate change, it's wrong to profit from it.

As divestment from fossil fuels spreads throughout the globe, the campaign has evolved into different forms in order to adapt to a particular country's social norms and financial structures. For example, the divestment movement launched in Japan in 2016, and given the history and context of civil society movements in the country, organisers transformed the model into a campaign directed at banks called [My Bank, My Future](#). An additional unique feature of the Japan divestment adaptation is that they looked at support for nuclear energy companies as well as fossil fuel companies.

May Boeve and Brett Fleishman also draw attention to the divestment movement's rapid growth, and its connection to other forms of civil society activism:

When we started working on fostering campus campaigns back in 2012, we expected a dozen or so student groups to engage. Today, only four and a half years into the movement, there are thousands of students that have worked or are working on divesting their institutions. Some campaigns are won, many students graduate before their campaigns are won, and some campaigns are beaten back by their institution's administration. In most cases, students and alumni whose hearts were in divestment campaigns are now dedicated climate activists. The divestment movement provided an accessible launching pad to active social movement engagement.

There are now powerful networks of divestment students and divestment alumni groups organising around justice and climate justice issues. We expect to see this trend grow as the movement spreads through Europe, North America, East Asia, South Africa, Australia, New Zealand and elsewhere.

Further pointing to the link between the campaign and other forms of activism, Ellen Dorsey and Clara Vondrich show how the divestment campaign helped to revive a climate change movement that was flagging:

Before it began, hopes for a solution to climate change were at a 20-year low, the economic and political challenges too daunting to produce international agreement. The UN climate conference held in Copenhagen in 2009 ended without a meaningful agreement and efforts to pass a comprehensive climate bill collapsed in the US Senate in 2010. The combination of setbacks left a demoralised climate advocacy community adrift in its wake... Each step of the way, civil society and philanthropic resources were eclipsed by those poured into climate denial and lobbying by the fossil fuel sector. Climate advocacy needed a new way forward, beyond policy debates and back room negotiations by politicians and corporations. It was at that moment of profound reassessment that the divestment movement was born.

Ellen Dorsey and Clara Vondrich also report on the quick growth of the movement and the broad support base it has grown:

In a very short period, the movement has built an unprecedented global grassroots base targeting one of the world's most powerful industries, challenging its moral status and rogue business model in a climate-constrained world. Under activist pressure, investors with assets of over US\$5 trillion have committed to divest from fossil fuels.

A fire was lit, moving from dozens of schools to hundreds overnight, and from the USA to Europe, Australia and beyond. And it spread to other sectors, as community-based activists called on faith groups, cities, pension funds and retirement accounts to divest... By activating campuses, congregations and community leaders, a broader-based constituency for action on climate action is being built, to embolden politicians and governments to act with increased ambition for real policy solutions.

Part of what is smart about the fossil fuel divestment campaign is that it can make arguments in financial terms, in order to convince investors. As Ellen Dorsey and Clara Vondrich indicate, the business argument is that the valuation of fossil fuel companies depends on reserves that cannot be utilised if the targets of the Paris Agreement are met. This suggests that fossil fuel companies are over-valued and therefore a bad investment:

The movement has exposed weaknesses in the business model of the fossil fuel sector, as well as problems with how its value is measured, exposing real risks to investors. The curtain is being pulled back on the hundreds of billions of dollars still being spent by the industry in search of new sources of fossil energy, both more extreme and more costly, which [add further](#) to reserves that can never be burned. Bank lending to the companies is also being challenged.

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The movement has both a moral and financial edge, May Boeve and Brett Fleishman report:

The financial case for fossil fuel divestment, backing up a moralistic fight waged by civil society, made this divestment movement unique. While pensioners, students and other parts of civil society are primarily energised by the moral call to divest, the financial community is rapidly analysing the question of divestment from an investment risk perspective. From Standard and Poor's to Deutsche Bank, the largest financial institutions in the world are now talking about climate risk and the carbon bubble.

The impact of the movement has been seen at national levels: in 2015, the government of [France](#) announced that financial institutions would be mandated to report on how they are managing carbon risks. In [South Africa](#), companies listed on the Johannesburg stock exchange are now required to produce sustainability reporting. It is no longer unusual to bring questions of sustainability into the scrutiny of investments.

A further aspect of the financial argument is to show that alternate investments can perform well. Many of the members of Divest-Invest Philanthropy are tracking and documenting the success of their carbon-free portfolios. This has the benefit of refuting claims that divestment campaigns are anti-business; investment is encouraged in companies that play a positive role, rewarding their position. Those investments can have social value, attest Ellen Dorsey and Clara Vondrich:

Investments that deliver a social benefit can meet needs left by gaps in government funding, build new enterprises that benefit those with the least access to capital, or even offer sustainable sources of funding for CSOs. 'Impact investing' is increasingly cited by private donors, philanthropists and other mission-driven investors as the newest tool to address basic human needs and pressing global problems. Increasingly it is seen as a major tool to help in delivering on the SDGs, supplementing governmental and international aid.

Large philanthropic institutions, which invest considerable endowments from which they disburse funds, have been a key target for advocacy. The Divest-Invest Philanthropy coalition brings together over 140 philanthropic organisations, which between them hold over US\$12 billion in assets. They have pledged to divest from fossil fuel companies and invest in climate solutions. These institutions are ensuring that their investing does not contradict the aims of their grant-making, and are now being asked to invest in grassroots renewable energy alternatives. This is part of a growing interest in mission-related investing which, for philanthropic institutions, closes gaps between the uses of their endowments and their grant-making functions; for example, in April 2017, the [Ford Foundation](#) announced that it would invest US\$1 billion in mission-related investments.

As Ellen Dorsey and Clara Vondrich point out, divestment can only be a part of the response, working best when blended with other approaches, and on its own cannot solve the climate crisis. Profound challenges remain: Patrick Bond draws attention to the strong lobbying power of climate-harming corporations, particularly in the USA, as consolidated in the Trump administration's appointment of an oil chief executive as Secretary of State.

Further, any notion that mission-driven, impact investing can be a cure-all should be resisted. A challenge is that such approaches can work well in industries where there are high profile issues and clear alternatives, but less so in other cases. The growing role being played by privately managed funds can make it harder to engage in dialogue and scrutiny. But the value of the divestment movement has been in shifting the terms of the debate and giving an outlet for practical action rather than despair. The movement was cited by Christiana Figueres, Executive Secretary of the UN Framework Convention on Climate Change (UNFCCC), as a key stimulus to the success in reaching the Paris Agreement in 2015. Where possible, the model developed to fight the fossil fuel industry has potential to be extended into other spheres.

PUBLIC CAMPAIGNING

As well as the divestment campaigns highlighted above, several contributors point to the value of engaging citizens in debate, campaigning and the exercise of accountability. Gretchen Gordon points to a need to strengthen accountability mechanisms so that citizens can play a stronger role in holding business to account. Mathieu Vervynckt underlines the need for more transparency in PPP arrangements, so that citizens and civil society can have an informed debate about the costs and risks of PPPs. There may also be a need to develop the capacity of citizens to understand highly complex issues. Phyllis Omido records a need to reach out to excluded citizens who are being denied their rights and educate them on how better to defend their rights, including in her context to assert shared traditional ownership of ancestral land that is threatened by business, and to participate more fully in consultation opportunities.

There are also examples of successful campaigns where civil society combined focused advocacy with the mobilisation of public pressure to achieve change. Patrick Bond, and Phil Bloomer and Vicky Dodman, point to the success of the campaign on access to HIV/AIDS medicines, in which civil society succeeded in significantly reducing the price of antiretroviral drugs within three years, saving millions of lives as a result. Big pharmaceutical companies are generally seen as extremely powerful, but the campaign developed its own formidable power. CSOs, from local to global, joined forces with those companies that wanted to manufacture cheap generic drugs but were blocked by patents, and pressed the largest manufacturer to break ranks with the companies that were holding out. Public campaigning and citizen pressure were a key component in the campaign. Phil Bloomer and Vicky Dodman describe an essential lesson of the campaign, which was once again to distinguish between the most and least amenable companies, and build alliances with the most forward-looking ones:

A tough lesson for much of civil society to swallow from this campaign is that leading companies that are ahead in integrating human rights into their operations and supply chains can also play a fundamental role in driving systemic change. If done right, there can be a genuine synergy between civil society campaigners and leading companies that seek to respect human rights. These companies demonstrate that human rights in business is not only an ethical imperative; it is also commercially viable.

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In their description, relationships can build gradually over time: gains can become bridgeheads for future progress, while businesses that work with civil society start to experience a benefit that makes them likelier to continue to engage:

Campaigners can use any advances to persuade governments to lift the floor of regulation, such that it describes the minimum standards of corporate behaviour that a state expects in its markets. At the same time, companies can benefit from regulation that prevents less scrupulous companies from undercutting them.

Campaigns can also seek to work with the power of business to exert pressure on states. Alex Farrow outlines how LGBTI campaigners around the world, under the All Out banner, used Russia's hosting of the 2014 Winter Olympics to draw attention to the state's dismal LGBTI rights record, by directing their campaigning towards the event's key corporate sponsors:

Coca-Cola is a major sponsor of the Olympics, giving large sums of money in return for advertising, branding and exclusive rights. All Out's campaign was two-fold. Firstly, it encouraged Coca-Cola to withdraw its sponsorship. Even the threat of ending such a large sponsorship deal could embarrass the host country and the International Olympic Committee (IOC), generate significant attention for the issue and, ideally, force the Russian government to drop its anti-gay propaganda law. The second aim was to hold Coca-Cola accountable for the decisions it was making in sponsoring the event, as well as to call out the double standards of the company promoting LGBTI issues in one country while silently standing by in another.

The response was huge, and achieved impact. Coca-Cola received 150,000 emails urging the company to take a stance against Russia's anti-LGBTI laws, along with social media pressure and publicity at the company's headquarters. In response, the company reaffirmed its support for the LGBTI community in a variety of ways, including by forming a pro-equal marriage business coalition, declaring its opposition to discriminatory legislation and extending health benefits for its LGBTI employees. Meanwhile a partnership by All Out with another company, American Apparel, led to a successful campaign to get the IOC to change its Charter; it now explicitly stands against discrimination on the grounds of sexual orientation. As Alex Farrow reports, the campaign chose its corporate targets and partners carefully:

The ability of the outfitter, as a well-known brand, to produce and distribute clothing rapidly around the world was essential, but this had to be combined with a political strategy that could generate attention, achieve impact and carry a message effectively.

It was a deliberately indirect campaign, not so much targeting businesses as trying to leverage the power of their brands to achieve good. Importantly, Alex Farrow identifies, the campaign managed to be high profile, while bringing little direct risk for Russian LGBTI citizens:

The focus on a corporation as a piece within the puzzle, rather than as a direct decision-maker itself, was a nuanced position. It was arguably more effective than a simple product boycott would have been.

Coca-Cola is a product that individuals use as part of their daily life: it is in their fridges, in their supermarkets and on their TV screens. The political processes of the Russian government are not so easily explained, and don't fit easily within a campaign email or necessarily appeal to an international audience. By focusing attention on Coca-Cola, the campaign generated a story that could be easily understood.

As Alex Farrow describes it, All Out's campaign took a step around civil society's customary qualms about the private sector; it was not interested in making ethical judgements about companies as much as trying to work with the power they have:

The dichotomy within civil society is often simplistic, with many of us believing that CSOs are good and corporations are bad. Whether this is true or not is irrelevant: it simply isn't useful to a campaign. Campaigns are increasingly complicated to run, with overlapping motivations, drivers and stakeholders involved in any decision, and cases are increasingly emerging where the private sector is an ally of civil society. As civil society, we need to seek out opportunities for utilising such partnerships, while continuing to call out mistakes when companies are wrong, in order to succeed in our campaigns.

In more politically polarised times, companies are increasingly being asked by customers where they stand on an issue, and are rewarded and punished by different groups for how they behave. The rapid consumer pressure put on Uber in January 2017, discussed above, is just one example of how the stakes have become higher and anger can be mobilised swiftly. The [outrage](#) that greeted Pepsi's apparent attempt to appropriate US protest momentum in its advertising in April 2017 was another. Fast food chain [Nando's](#) marked the inauguration of President Trump to declare that 'everyone is welcome', speaking to its South African roots, but [risking a backlash](#) from Trump supporters who might object to its embrace of migrants, Muslims and LGBTI people. Several other businesses responded to the Trump election by restating their values. In January 2017, German supermarket chain [Lidl](#) responded to racist complaints after it used a black model in a Czech advertisement to affirm its belief in tolerance and diversity. Companies have started to come under more pressure over their advertising choices: [over 1,000 companies](#) are reported to have committed not to advertise on the far-right website [Breitbart](#) following civil society campaigning, which has in turn sparked threats of a boycott of those companies by [far-right activists](#). In the UK, the [Stop Funding Hate](#) campaign urges companies not to advertise with media that spread hate speech, as this goes against the values those companies publicly proclaim.

Direct action has also been seen as a tactic in recent years, exemplified in the US Dakota pipeline protests, discussed in this report's year in review section. While the protests ultimately broke up after a year of occupation, and incoming President Trump reversed the halt on construction that President Obama had made in response to protests, the direct action against extractive development generated solidarity, connected different communities and massively raised the political visibility of the issue.

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USING THE LEGAL SYSTEM

Sometimes, attempts to persuade companies to adhere to high standards voluntarily are not enough. For this reason, civil society may also take legal action to hold business to account and claim rights. Recent years have seen attempts to bring legal actions against transnational companies in particular, both in their headquarters countries and the countries where malpractice occurs. Even when law suits do not bring successful outcomes in the courts, actions can offer opportunities to highlight issues and win public support, by giving faces and names to otherwise anonymous victims. They can increase public pressure on companies to give ground, and encourage states to strengthen regulatory oversight in response.

Carolijn Terwindt and Christian Schliemann set out some of the roles legal actions can play in exposing poor practice:

When people such as farmers, plantation workers and factory workers act as rights holders, this can trigger new dynamics, while hearings can provide a forum and stimulus for public debate. Legal interventions can draw attention to the ways in which companies disregard the human and environmental impacts of their products, while expanding or outsourcing their businesses abroad.

Carolijn Terwindt and Christian Schliemann offer the example of a fire that took place in a textile factory in Karachi, Pakistan, which left 260 people dead; an association was formed of those affected, and representatives worked with their national trade union federation and European civil society to take an appeal to the German court, as German company KiK was the factory's main customer. In 2016, the German court accepted jurisdiction, and granted legal aid to the claimants. It was only after the court's decision that the company concluded negotiations to pay compensation to those affected, following talks in which civil society played a role; the legal case can be assumed to have helped maintain pressure on the company. The case has continued regardless, because, as Carolijn Terwindt and Christian Schliemann point out, a voluntary corporate response is not enough:

KiK's promised upcoming payment is voluntary. A dependence on the goodwill of companies gives no future guarantees for workers. Where voluntary commitments have failed, the necessary incentive to ensure that proper safety measures are put in place can be provided by making retailers recognise that they are liable for harm occurring in their supply chains. The mere and simple payment of voluntary compensation cannot lead to what [has been called](#) the normalisation of 'unpardonable negligence' through the discourse of compensation rather than rights.

Carolijn Terwindt and Christian Schliemann also highlight civil society-led legal work to ensure that transnational corporations apply the same pesticide labelling standards in the global south as in the global north, and to hold arms manufacturers and state agencies that license arms exports to account for the use of their products in human rights abuses, including in Mexico and Yemen. Part of the value of litigation in this latter case is to try to shift companies' calculations of the risks involved in enabling human rights abuses.

There are other examples currently in play. In 2016 in the UK, Uber drivers won an [employment tribunal](#) ruling that they should be classed as company employees rather than as self-employed, with access to full labour rights, challenging the workings of the ‘gig economy’. World football federation [FIFA](#) has been pursued by civil society for possible legal action in the Swiss courts as a result of the deaths of many [construction workers](#) building the infrastructure for the 2022 World Cup. Arnold Tsunga also cites a court case in which members of the Bodo community in Nigeria took oil company Shell to court in the UK to seek compensation for oil spills, resulting in a significant out-of-court settlement in 2015. Court action is therefore establishing that transnational corporations should not escape accountability.

Despite the progressive international image of the country and its current Liberal Party government, [Canada](#) is home to the majority of the world’s [mining companies](#), many of which stand accused of rights abuses, including in global south countries from which they extract resources. Civil society has [complained](#) that the Canadian government does not do enough to enforce human rights due diligence among mining companies, including in [Latin America](#). In response to alleged abuses, including forced labour, at an Eritrean mine, Eritrean activists brought a court case against the company, Nevsun Resources, in Canada. In [October 2016](#), a Canadian court ruled that the case could proceed.

However, these moves are not always successful: Arnold Tsunga relates how another action by Nigerian citizens brought in the UK was ruled as being outside the court’s jurisdiction, on the grounds that the UK-incorporated company was not responsible for the actions of its Nigerian subsidiary. There are, therefore, risks as well as potential rewards in taking legal action. At the same time, legal actions are also a tool that companies may use to restrict criticism of their actions. In the USA in particular there has been a growing use by companies of strategic lawsuits against public participation ([SLAPPs](#)). These can include defamation lawsuits and claims for economic damage against civil society. For example, [Greenpeace](#) in Canada has in recent years been mired in defamation and racketeering claims brought by Resolute Forest Products, a logging company, in response to a campaign it ran alleging instances of the destruction of forests and habitats by the company. Even if such legal actions are unsuccessful, they can tie civil society up in expensive and time-consuming battles for which large companies have superior resources, and exert a chilling effect, making civil society less prepared to speak out. Civil society is responding to these in turn by advocating for [changes in the law](#) to make it harder to bring SLAPPs.

As Carolijn Terwindt and Christian Schliemann point out, litigation is but one tool, to be used in a complementary and strategic manner alongside other interventions:

Litigation cannot be the only strategy for civil society’s engagement with the private sector, and there are clear limits to what court proceedings can achieve. But ideally, litigation can contribute to placing checks on, and restricting the power held by, transnational companies in global supply chains, such as those of industrialised agriculture, manufacturing and the arms trade. To reach these desired effects, and in order not to disrupt other civil society efforts, such as those of social movements and trade unions, litigation needs to be strategic and coordinated.

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There is also a need, in deploying legal expertise in global north headquarters countries, to ensure that global south voices are represented:

Collaboration should be careful not to reproduce the [power asymmetries](#) that often exist between organisations of the global north and those of the global south. Only in genuine transnational collaboration with social movements, trade unions and farmers' associations on the ground can legal proceedings support the emancipatory struggle of plaintiffs, petitioners and their communities in demanding their rights and realising their vision of sustainable development. With these caveats, strategic litigation can complement and strengthen existing civil society strategies for social justice.

DEVELOPING INTERNATIONAL NORMS

As well as national-level laws, there is growing civil society interest in how international law, which has conventionally focused on holding states to human rights norms, can be applied to the private sector. As Arnold Tsunga puts it:

International human rights standards have traditionally been the responsibility of governments, aimed at regulating relations between the state and individuals and groups. But with the increased role of corporate actors, nationally and internationally, the issue of businesses' impact on the enjoyment of human rights has been placed on the agenda.

Chip Pitts tracks the development of international law in this sphere:

Given the typical status of businesses as 'legal persons' with rights, but few, if any, duties under trade, investment, and other treaties and laws, CSR and business and human rights endeavours may be viewed as attempting to redress the balance by including businesses as good corporate citizens subject to laws and social norms instead of acting as outlaws... As universal human rights values have been defined as laws and norms at the global, regional and national levels, in global treaties as well as customary law, global citizenship demands basic respect for and compliance with such human rights laws and norms.

There is a move gradually to elaborate a system of international norms and instruments to hold businesses to account on human rights standards. Chip Pitts notes that this is a growing area, with a proliferation of codes of conduct at industry as well as individual company levels, and an increasing number of multilateral initiatives, including at the UN, ILO and OECD levels. For example, to existing ILO core labour standards, new ILO Protocols are being added, including on [forced labour](#). Arnold Tsunga also details a range of conventions of the Council of Europe that extend the liability of legal persons to companies. Alison Tate and Theo Morrissey point to the industry-specific due diligence guidance that the [OECD](#) is developing, for garments and footwear, agriculture and extractive industries. Such developments have the effect, notes Chip Pitts, of raising expectations that businesses will comply with human rights standards, indicating a developing consensus that businesses should be subject human rights obligations, and should take due diligence to prevent human rights harm.

These initiatives have not come about by accident; they have resulted from advocacy by civil society to urge higher standards. Rajiv Joshi relates that part of his organisation's approach to challenging shady practices of anonymous shell companies was to work with the G20: a compelling business case against anonymity was developed, which influenced the G20 to adopt principles on transparent ownership. Mathieu Vervynckt underlines a similar need for civil society to engage with the multilateral agencies that push the flawed orthodoxy of PPP. International-level breakthroughs are possible, as Frank Vogl attests in relation to corruption:

Thanks to the leadership of civil society there is a formidable web of conventions, such as the OECD Anti-Bribery Convention, the UN Convention Against Corruption and large numbers of relatively new national laws and manifold regulations, including tough measures in a rising number of countries against money laundering and tax evasion. New laws and regulations against tax avoidance are likely before long.

However, Frank Vogl continues, states still need to take stronger, legally enforceable action:

We cannot rely on business leaders alone to heal themselves of their greedy proclivities. Governments ought to take the lead. To do this demands that they build and sustain powerful systems of justice that have substantial resources to investigate corruption, the full freedom to prosecute even the most powerful political and corporate titans, the independence to hold open and fair trials, and the capacity to enforce meaningful punishments on those who are found guilty.

A NATIONAL NORM WITH TRANSNATIONAL POTENTIAL: THE UK MODERN SLAVERY ACT

A landmark national action, with transnational implications, came in the UK in 2015 with the passing of the UK [Modern Slavery Act](#). While the Act remains [criticised](#) by some in civil society for failing to give sufficient protection to victims of slavery and trafficking, one of its innovations is to compel businesses above a certain level of UK turnover to publish a statement on the due diligence they have taken to ensure that slavery is not present in their business or supply chains. Although there are no penalties for failing to ensure due diligence, it is assumed that reputational damage will offer a sanction. To encourage this kind of reputational oversight, BHRRRC has created a [registry](#) to enable monitoring of the compliance statements that companies file. Significantly, the Act has a transnational reach, applying to any large company that has a presence in the UK market, even if it is headquartered elsewhere. This remit in particular was something that civil society campaigned for and welcomed.

Further, Sameera Mehra suggests that the Act's reporting requirements open potential for businesses to collaborate with civil society:

The Act requires companies operating across borders that have extensive supply chains to prove that their supply chains are free from slave labour. The potential for local grassroots organisations in the host country to help share the responsibility of eliminating abuses in the supply chain could make a very compelling case for businesses to work with civil society.

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The next step, Phil Bloomer and Vicky Dodman suggest, is to grow out from the UK initiative, and others initiated in the USA under former President Obama, into a broader multilateral agreement that pools the highest corporate accountability standards on modern slavery.

THE UN LEVEL

At the global level, the [UN Global Compact](#), launched in 2000, sets out 10 principles which private sector signatories commit to in order to respect and protect human rights. Over 9,000 businesses across 170 countries have now signed the Compact. However, civil society has made a range of criticisms about it: that the principles do not go far enough, that oversight of compliance is poor, and that the engagement of many companies is driven by motivations of promotion rather than principle. In response the Global Compact has taken steps to remove signatories that fail to submit reports, and to improve reporting standards. A further challenge is that the Global Compact still has limited reach: most companies are not members.

Clearly, on its own, the Global Compact cannot be enough to hold companies to human rights norms. To that end, in 2011, the UN's [Guiding Principles on Business and Human Rights](#) were unanimously endorsed by the UN Human Rights Council (UNHRC), incorporating the '[Protect, Respect and Remedy](#)' framework, as first presented in 2008. Its three key principles are that the state has a duty to protect human rights, companies should respect human rights, and citizens should have access to the means of remedy when their rights are not respected. As part of their responsibility, companies are expected to respect human rights, avoid abuses and fix negative consequences as they arise. The intent is to hold companies to standards of due diligence in which they should work continually to mitigate human rights impacts. The Guiding Principles include respect for civil society's fundamental rights, and as part of compliance, each country is expected to prepare a National Action Plan on business and human rights. As Arnold Tsunga notes, it is clear that states have a duty to uphold the Guiding Principles, including by holding errant businesses to account:

Part of the logic behind the Guiding Principles is that states' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory under customary international law. Therefore states may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse within their territory or state.

Civil society broadly welcomed the Guiding Principles as a positive step forward. Alison Tate and Theory Morrissey state that:

The Guiding Principles, for the first time, provide a consensus that businesses have a responsibility for human rights violations in their supply chains. Responsibility is a mandatory provision: it is not optional and cannot be outsourced.

Phil Bloomer and Vicky Dodman point out that the agreement of the Guiding Principles has already had some affect:

The Guiding Principles gave considerable impetus to the business and human rights agenda, generating a substantial up-tick in action by leading companies and states to implement them. The Guiding Principles advocate a ‘smart mix’ of voluntary action, government incentives, regulation and law to drive corporate action to respect human rights. A number of the world’s largest companies have taken unprecedented steps to identify their salient human rights risks, and taken systemic action to embed human rights further into their business practice.

The Guiding Principles have [raised expectations](#) that companies should be held to human rights standards. Civil society has shown that it can use the opportunities the Guiding Principles open up for advocacy. When the UN Working Group on Business and Human Rights visited Mexico in August 2016, over [100 CSOs](#) joined together to document more than 60 cases of corporate human rights abuses in which 99 different companies were implicated. Michael Ineichen, Mauricio Lazala and Ana Zbona suggest that the National Action Plans can offer entry points for civil society dialogue with states on the application of human rights norms to business, while Gretchen Gordon also recommends that civil society should try to open up processes around National Action Plans and use them to begin conversations, assert accountability and strengthen human rights due diligence in the plans.

However, Phil Bloomer and Vicky Dodman continue, much more needs to be done, not least about reporting, which has been modest to date:

It is equally fair to say that the pace of implementation in many companies, outside the leadership group, has been glacial, and governments have been at best timid in their approach, and at worst negligent in implementation. Only 12 states have developed a National Action Plan in the five years since the Guiding Principles were agreed, with a further 27 reportedly ‘in progress’. Every state was expected to have developed a National Action Plan by June 2013. Equally, the ambition of existing National Action Plans is generally low, with few pointing to a strong ‘smart mix’ of normative and regulatory action.

J Carlos Lara and Gisela Pérez de Acha highlight the weakness of the lack of compliance mechanisms here:

The UN Guiding Framework and Principles are an important starting point, but these have been criticised for providing corporations with the responsibility to respect human rights, but not a true obligation to do so. Indeed, it can be difficult to offer effective sanctions, particularly in weaker countries where multinationals can hold more real power than governments.

It is for this reason that interest has grown in measures to advance mandatory human rights compliance.

TOWARDS A BINDING TREATY

Chip Pitts makes the point that existing standards are rooted in both hard and soft (largely non-binding) law:

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The Guiding Principles, along with other existing legal CSR and business and human rights standards, in their individual and cumulative impact interact with and complement traditional harder law civil and criminal legal remedies to provide redress and accountability in certain specific cases.

It may be strongly argued that, contrary to some understandings, this business responsibility to respect human rights is not merely voluntary, discretionary, or aspirational. As noted for example in the [Recommendation to Member States](#) of the Council of Europe's Council of Ministers, member states should require businesses operating or domiciled in their jurisdiction to apply due diligence throughout their operations, and ensure civil liability for human rights abuses within their jurisdiction, as well as consider, in some circumstances, extraterritorial jurisdiction and, for international crimes and serious human rights offences, criminal liability.

The challenge remains that enforcement mechanisms for the various principles and standards are weak, leaving much to the inclination of the individual business. Sameera Mehra notes that:

There is a lack of a global governance system that can enforce compliance with these principles, which creates a vacuum in which the global private sector operates. The issue of transnational accountability, where multinational companies are operating in a global policy space that does not yet have the global framework in place to enforce compliance, is uncharted territory.

Alison Tate and Theo Morrissey make the general point that any non-mandatory business initiatives will face a compliance challenge:

CSR has been hailed by industry as the answer. It highlights when companies 'do the right thing', often validated by a process of social auditing. But this cannot be a substitute for public labour inspections for the simple reason that it does not carry legal responsibility.

Arnold Tsunga also suggests that while companies may have their own procedures, these may not work well enough:

Many large business enterprises and projects have their own internal procedures and mechanisms to address concerns affecting individuals and local communities that arise from their operations. Known as operational-level grievance mechanisms, these are an integral part of responsible business practices and a way to remedy real or perceived wrongs. However, poor design or implementation of these grievance mechanisms can result in further problems, aggravating the harm to individuals and communities and impacting on the company's or project's sustainability.

Chip Pitts states that despite the multiplicity of international human rights initiatives, there remains much bad corporate practice, indicating the need for stronger global-level regulation:

The ongoing human rights harm caused by some corporate activities, exploitative corporate arbitrage of legal standards (the 'race to the bottom'), the imbalanced investor-state dispute resolution process that gives rights to corporations but not victims, and the significant gap remaining between standards and practice all highlight the need for stronger regulation at the global level of these globally active non-state actors.

The relative softness of standards, their emphasis on self-regulation, lagging enforcement and implementation, and the consequent persistent corporate impunity in many cases have rightly been unacceptable to victims, their civil society defenders and many states. The undeniable progress in business awareness of the issues, and in policy frameworks and due diligence procedures, has by no means been matched by progress in actual business compliance in respecting human rights or in effective access to remedies.

Insufficient compliance with existing soft law and voluntary due diligence standards has fuelled growing civil society support for the development of mandatory standards to hold businesses to human rights principles. This is something that Alison Tate and Theo Morrissey call for:

It is time for a change of strategy: mandatory due diligence is one way of ensuring accountability. This would mean that all companies, or at least companies of a certain size, would be required to have a human rights due diligence policy and implement it transparently throughout their supply chains; address adverse impacts on labour rights in consultation with affected workers; and disclose due diligence reports and remediation plans. Due diligence is now increasingly recognised as a vital tool for ensuring that the rights of workers are respected.

Such concerns lay behind a concerted attempt to put in place a new binding international treaty to hold transnational companies to human rights standards. Efforts have been headed by the governments of Ecuador and South Africa and over 1,000 CSOs in the [Treaty Alliance](#). This initiative should be seen as representing an attempt to bring an international system designed around sovereign state power up to date with the reality that large companies are now more powerful than many states. The potential is for a rebalancing of power. Luis Espinosa-Salas, who leads the government of Ecuador's negotiations on the treaty in Geneva, sets out the case for a treaty, pointing to:

...the existence of gaps and imbalances in the current international human rights legal rules with respect to the relationship between human rights and corporations, particularly when dealing with victims' access to justice and effective remedy in cases of human rights abuses perpetrated by corporations. As evidence shows, a large proportion of those abuses remain in impunity, and non-binding rules, while useful, have not been enough to bring justice to victims.

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This reality contrasts with the broad protection provided to transnational corporations and other business enterprises via trade or investment treaties, which allow the corporate sector to claim against states for any measure they consider a real or potential menace to their profits, regardless of whether the measure was taken on behalf of the protection of the rights of the population.

Part of the key value of the proposed treaty, suggests Arnold Tsunga, will be in challenging impunity:

Addressing the legal responsibility of the potential perpetrators of human rights abuses is closely linked to the realisation of the right of victims to an effective remedy and reparation... The most pressing need for action is to make remedies to provide available and effective redress to those who suffer harm as a result of the acts or omissions of business enterprises. This has been made a priority area by civil society groups.

In 2014, a much-contested UNHRC vote established an open-ended intergovernmental working group to develop a binding global instrument. At the same time, the UNHRC decided by consensus to support the strengthening of compliance with the Guiding Principles. This reflects some division between states that support voluntary action and those that seek mandatory compliance, and the debate has been somewhat polarised, notes Chip Pitts:

Feelings ran high at the 2014 session of the UNHRC, with some supporters of the UN Framework and Guiding Principles deeming the states supporting the treaty resolution to be motivated by anti-western or anti-business sentiment, and some supporters of the resolution deeming those opposed to a treaty insincere about genuinely wanting businesses to respect human rights in practice.

The fact that the decision on the proposed treaty went to a vote, with 20 votes for, 14 against and 13 abstentions, rather than being passed by consensus, has been used by some critics to undermine the international working group's mandate. However, as Luis Espinosa-Salas points out, this is a legitimate way through which decisions are made at the UNHRC:

Around 30 per cent of resolutions are adopted by vote at the UNHRC, and they have the same treatment as those adopted by consensus.

Further, Phil Bloomer and Vicky Dodman suggest, the proposed treaty and the Guiding Principles need not be seen as competing initiatives. They could rather be seen as parts of a complementary suite of initiatives to bring international norms up to date:

The threat of a binding treaty can help spur action by states and companies to implement the Guiding Principles; and the successes and failures of the Principles can demonstrate where a binding treaty can focus its efforts to achieve maximum impact in outlawing abuse.

This is a view Luis Espinosa-Salas supports:

There is a growing convergence towards the view that both processes are mutually reinforcing and complementary, as the existence of binding regulations can be complemented by non-binding guidelines.

There are, of course, many challenges the proposed treaty faces, and progress can be expected to be slow. Phil Bloomer and Vicky Dodman outline some of the key points of debate about the treaty's content and scope:

Key questions include which human rights it should cover; whether it will include mandatory due diligence to avoid abuse, or only focus on contexts where abuse occurs; which businesses will be covered by the treaty; and how the challenge can be addressed of achieving remedy when abuse occurs.

Luis Espinosa-Salas also summarises the major issues to be hammered out:

...the scope of the human rights to be included; the obligations of states, including extraterritorial obligations; the legal liability and responsibility of transnational corporations towards human rights; and the need for national and international mechanisms for access to remedy. These are challenges that lie ahead, which will need careful management in the negotiations.

In particular, many in civil society are [criticising](#) the treaty's proposed sole focus on transnational corporations, which while crucial, overlooks the role that large national-level corporations, including state-owned corporations, can play in abusing human rights.

It will also be a challenge to get a treaty adopted. While it has the support of many global south states, states from which the largest corporations originate can be expected to try to block it or water it down. While Luis Espinosa-Salas points to growing participation by states in the second working group meeting compared to the first, the USA's position has hardened. Chip Pitts sets out the formidable barriers that the process of developing the treaty will face:

Any treaty must be realistic, reasonable and attentive to the interests of all stakeholders in order to garner the ratifications needed to come into force, including from powerful states and their transnational corporations. Thus far, the USA has not

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participated in the working group discussions, although the EU fully participated in the second working group meeting, along with almost all EU governments. Under the new Trump administration, the USA remains unlikely to support the process.

Tremendous questions remain regarding the form and content of any treaty, and they will require great care for the project to be achieved in a way that constitutes a genuine advance and not a regression. The complex issues involved affect international trade and investment, which must be harnessed to public benefit consistent with human rights, avoiding paths of neo-isolationism, economic and technological stagnation, and greater poverty, with all its associated human rights harms. Procedurally, this requires that controversial and difficult issues are confronted and the broadest possible range of stakeholders is involved, including powerful businesses, governments, unions and other civil society players, in order to ensure that facts triumph over ideologies and the implementation of positive change is actually accomplished on the ground.

At the same time, a business case for a treaty can be advanced, suggests Luis Espinosa-Salas:

Serious business enterprises are not against a binding treaty, as it is in their interest to play with the same rules, and to avoid unfair competition from those who increase their profits at the expense of child labour, labour exploitation, environmental damage, slavery or semi-slavery working conditions, forced land evictions, menaces, torture and even killings, among many other violations of human rights.

But at a time when regressive politics is attacking internationalism and national borders are being reasserted, the hopes civil society can place in an [already weak](#) international system must be tempered, and the effect of new international norms may not be as powerful as was once hoped. This adds to the challenge that considerable corporate influence at the international level presents. To illustrate that challenge, and indicate how it has hardened, Patrick Bond contrasts the rapid and successful international mobilisation that introduced binding business rules to combat ozone depletion in the late 1980s with the failure to take similar action against the causes of climate change in recent years; instead of binding rules, market-based responses such as carbon trading are prioritised:

Today, to argue for a Montreal Protocol-type ban on greenhouse gas emissions – with binding emissions cuts, accountability and state control of corporate pollution – is practically unthinkable, notwithstanding impending eco-social catastrophe.

For such reasons it will be critical, Chip Pitts suggests, for any treaty to be domesticated and written into national laws:

An attractive path for a treaty could be to provide for domestic legislation hardening the existing business responsibility to respect, under the Guiding Principles and other largely soft law instruments, and to conduct due diligence, into an unambiguous legal duty, with incentives including liability for non-compliance and rewards such as defences and safe harbours for proven compliance.

Civil society has a huge role to play. Chip Pitts notes that both 2014 UNHRC resolutions, on the binding treaty and Guiding Principles, recognise civil society as playing an important role in encouraging corporate accountability, and civil society has [participated](#) in treaty working group meetings. Luis Espinosa-Salas outlines the major role that civil society has played so far:

Civil society, particularly through the Treaty Alliance, has played a crucial and active role on behalf of the process, showing conviction and hope that a legally binding instrument can help to avoid or reduce cases of corporate impunity. In this field, strong attention has been paid to the protection to be provided to vulnerable groups, such as women and girls, children, persons with disabilities and indigenous peoples, among others, as they are usually the most affected by business enterprises' abuses. Among the many actions taken by CSOs on behalf of the process, they have advocated for a binding treaty, raised awareness among governments, and also contributed substantively to the debate with sound legal and theoretical proposals which have been shared publicly in the first and second sessions of the working group, as well as in other events organised on all the continents.

Civil society needs to continue to engage in a sustained manner. The experience of other major international landmarks, such as the landmines treaty and the establishment of the International Criminal Court, shows that while progress is hard and slow, battles can be won, but only when civil society plays a major role and works with supportive states. Chip Pitts highlights the need for continuing strong civil society engagement:

As is usually the case with law at the global level, progress will be incremental and slow. But engagement by civil society representatives presents an important opportunity to keep the treaty process on track in a high-quality fashion, educate all stakeholders and each other, and offer some measure of defence against the treaty endeavour merely becoming a meaningless ideological and political forum to bash global north states and their businesses. Indeed, the international working group [noted](#) the widespread civil society call for participating governments to act in good faith.

Momentum behind the treaty has grown, but it is still some way from becoming a mainstream civil society issue, and many more CSOs would need to give it their backing. Further, barriers to civil society participation, at a time when civic space is being restricted around the world, need to be acknowledged, Chip Pitts indicates:

The acute and growing challenges facing civil society generally at present, including the severe pressures on human rights defenders, CSOs and the rule of law, may make it seem difficult to prioritise a long-term treaty project. Ongoing political changes in the participating states could also significantly impact on the international working group process.

This suggests that questions of civic space should be built into the deliberations on the treaty.

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The debate around the proposed treaty, as it grows, will provide new opportunities to shed light on the human rights practice of companies. Those that already respect human rights surely have nothing to fear from a treaty, and any company that argues that its business model will be affected by being subject to compliance with international law will surely face questions about its human rights impacts, and how it can change its business practices.

PART 3. PARTNERSHIPS

As seems clear from the above, civil society can benefit by taking a nuanced approach towards business, in which civil society distinguishes between exemplary and regressive business practice, and finds ways of rewarding the former and penalising the latter. There is a need for a mix of mandatory approaches, including through the development of new international law and its domestication, and voluntary approaches, in which the best companies are able to demonstrate peer leadership and work more closely with civil society. The question that then arises is how partnerships can be developed that better enable and connect this variety of responses, including funding partnerships and other forms of collaboration.

CORPORATE SOCIAL RESPONSIBILITY AND CORPORATE PHILANTHROPY

Many CSOs already access corporate philanthropy, and the potential to expand this is something that has long been discussed. Urgency is added by some pressing [current problems](#): the plateauing of ODA and volatility of donor support to civil society; the increasing development of contract-based relationships in which resources go to CSOs to deliver projects over which CSOs have little say; the difficulty faced by many CSOs that prioritise advocacy, accountability and human rights defence in developing domestic giving constituencies; and the moves by many states to make it harder for CSOs to receive international support as part of the crackdown on civic space. Although this is an area where engagement has increased, for some CSOs, funding relationships with the private sector remain largely uncharted territory.

There has always been some degree of corporate philanthropy. But as David Logan puts it, while traditional philanthropy, as seen particularly in the USA, has a role to play, it is not a sufficient private sector contribution:

This type of philanthropy is not bad and has its place in the total range of corporate engagement, but by itself, it is a completely inadequate response to the scale and complexity of the challenges that the modern world faces.

CSOs can encounter a number of challenges when seeking to access corporate philanthropy: philanthropy may go principally to causes that are seen as uncontroversial, focusing on the delivery of services and provision of social welfare, rather than the advocacy, accountability and human rights functions of CSOs; CSOs may feel co-opted when accepting corporate philanthropy, and complicit in the laundering of corporate reputations; and corporate philanthropy may be channelled through corporate foundations that become positioned as competitors with CSOs. For many companies, the only relationships they have with CSOs are those mediated through their marketing and advertising departments, with CSR being driven by public

relations (PR) considerations. Increasingly, companies pursue ‘[brand philanthropy](#)’ in which the essential objective seems to be to encourage customers to identify strongly with brands. Such approaches will do little to address the key challenges of CSOs and help them develop their core functions.

Many of these challenges were observed in [India](#) when a law was passed in 2014 to make it compulsory for companies above a certain size to give two per cent of their profits to CSR. In practice, this has not generated significant new support for the rights-oriented actions of civil society. In many other global south countries, corporate philanthropy is not a well-established practice.

Civil society in some countries is working to make corporate support more meaningful. For example, the Argentine Network for International Cooperation (RACI), an AGNA member, points to attempts by Argentinean civil society in this respect:

As initial approaches to CSR were biased towards philanthropy, RACI has long worked on promoting a vocabulary that incorporates the concept of private social investment in place of CSR. The new approach highlights that it is no longer just a question of allocating funds from the for-profit sector to randomly selected social causes, but rather of the private sector and civil society working jointly to produce strategic social investment, with its expected return being a long-term increase in community welfare.

Given the challenges around traditional corporate philanthropy, many hopes are being placed in what might be characterised as ‘new philanthropy’, in which philanthropic giving is generated by new, wealthy business entrepreneurs, often from the global south. However, as Ingrid Srinath sees it, this potential comes with a range of challenges:

On the face of it, it seems there are more billionaires, more pledges and more resources across the board, suggesting real momentum towards solving some of the world’s most persistent problems, and, one would expect, a thriving, vibrant civil society. Alas, this is not always necessarily true.

Something novel is certainly happening. The newly wealthy of the global south, often rich from new technology and financial industries, are giving, and they are giving in distinct, hands-on and personalised ways, Ingrid Srinath continues:

Much of the new philanthropy in emerging economies stems from fortunes built in the technology and financial services sectors that have boomed in the era of globalisation. These philanthropists, to the extent that generalisations are valid, are relatively young, with global-scale vision, experience and networks and an entrepreneurial mindset. Their preference is for market-based approaches and quantifiable outcomes. Their time horizons are relatively short and they are even more highly engaged with strategy, planning, execution and evaluation in their philanthropy than they are in their business ventures.

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Their approaches, Ingrid Srinath goes on, may sit at odds with conventional CSO practice, and with the focus of many CSOs on improving citizens' participation and realising rights. She notes the high premium being placed on innovation:

There is apparently only limited interest among new philanthropists in the global south in investing their resources in existing models, even where these are proven and could possibly benefit from an infusion of greater resources.

The focus on innovation also prioritises technology-driven solutions over more complex political approaches, a distaste for which marks many emerging philanthropists. The often naïve belief that complex social problems that have defied solution for millennia are simply awaiting the application of models and attitudes from the private sector can, paradoxically, limit the realisation of the very scale and sustainability that are most desired.

Equally, an unwillingness to engage with messy human processes and political players can limit the range of thematic areas on which the new philanthropists focus their attention. It is easier, in the short term, to build models without having to negotiate with entrenched interest groups and the power dynamics between them. This privileges fields amenable to such an approach, such as education, healthcare, financial services and livelihoods, over those that necessarily require grappling with political systems, including issues relating to human rights, accountability, governance, electoral and campaign finance reform or patriarchal, casteist or racist power structures. Despite the greater sums of money available, therefore, impact can be considerably diminished. This phenomenon is exacerbated by the clampdown on civil society space and basic democratic freedoms. Most of the new philanthropists in the global south tend to steer clear of issues and organisations that might be construed as politically sensitive or that risk government censure.

Further, solutions heavily oriented around technology can exacerbate exclusion by perpetuating divides between the digital haves and have nots, which may pattern onto other divides, such as those between urban and rural and younger and older people. The challenge can be a familiar one, as seen generally in the involvement of the private sector in development, and it is to do with the fundamental difference between charity and rights: when resources speak to rights, there must be proper processes for citizens to articulate demands, so that people can claim rights and make clear what their greatest needs are; when giving is essentially charitable, it comes at the behest of those who give, and so may speak more to their motivations than the needs of citizens. Giving processes may not need or want citizens to participate. Ingrid Srinath points to the need to interrogate the drivers of philanthropic decisions:

It's important to discern the real distinctions between resources allocated in accordance with the needs and wishes of those whose benefit is sought, versus those allocations of resources that are driven chiefly by the desire to acquire commercial or political advantage, or to launder tainted reputations.

Once again, a nuanced approach is needed. Ingrid Srinath suggests we should identify and work with the most progressive philanthropists, who undoubtedly exist, who understand why rights are important and who are prepared to support work that is edgier or less marketable. New connections are needed that pool the unique advantages both of civil society and new entrepreneurs, and that challenge philanthropists more:

We need to find ways of working together to build a strong narrative about the role of civil society and philanthropy in upholding the core values of our societies and the hard-won rights that are their embodiment.

New philanthropists must face demands to use their individual and collective influence to amplify the concerns of those rendered voiceless, invest in building civil society resilience, foster solidarity and coherence across the many divides, old and new, that confront us, and evolve and uphold exemplary norms of transparency and accountability. Whether or not global south philanthropists rise to these challenges will determine the strength of the social fabric as well as the fate of democracy itself in many countries across the global south.

SOCIALLY RESPONSIBLE COMPANIES AND HYBRID CIVIL SOCIETY

While classical definitions of CSOs tend to position them as non-profit organisations operating in a space distinct from the market, in many instances, the reality can belie clear distinctions. David Logan acknowledges that the difference between the spheres of civil society, the private sector and the state has never been as stark and schematic as neat conceptual models would suggest:

While the three formal sectors have different goals, cultures and indeed types of language, they are not as distinct as people like to think. Governments own and operate major companies while CSOs are very often involved in trading and commercial activity.

There are increasing efforts by CSOs to establish enterprise functions as a way of growing their resource base. Some examples were noted in the [2015 State of Civil Society Report](#), which focused on civil society resourcing, although many of these were assessed to be in their nascent stages:

Inputs to this report reveal numerous examples of CSOs responding to declining state support by pursuing new funding: in Bangladesh, CSOs are branching into consultancy; in Finland, CSOs are making greater fundraising use of social media... CSOs in Ghana are charging fees for services and use of facilities, and running income-generating schemes, while attempts are under way to establish relationships with high net worth individuals and companies, develop endowment funding and connect with potential sources of in-kind support; in both Nicaragua and Norway, CSOs are selling services to other CSOs; in the Philippines, there are attempts to generate service fees.

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When they do this, CSOs are stepping into the marketplace in new ways, and may gain new insights about private sector challenges. At the same time, CIVICUS has seen several recent examples of CSOs in highly restricted conditions taking advantage of the easier operating conditions for the private sector by registering as businesses rather than CSOs. These moves add further nuance to our understanding of civil society and its engagement with the market.

On the other side of crossover, Sam Worthington tracks the rise of social enterprises and other forms of corporate organisation that have strong social principles:

Social enterprises - for-profit entities explicitly set up to drive both a social impact and make a profit - and B-corps - businesses established specifically to pursue social and environmental goals - have captured the imagination of millennial citizens. We are seeing the emergence of a generation that is intent on blurring the lines between profit and non-profit to accomplish a social good.

It may not be too much of a stretch to suggest that millennial citizens, and the following generation, have a more instinctive grasp of hybridity than previous generations, not least because they have grown up with new forms of organising and supporting causes via social media and novel business models offered by new technology companies. For many members of this generation, it may matter less how an entity organises, positions and describes itself than the values it demonstrates and the ends that it serves. They may be more inclined to start social enterprises to respond to problems than join or form CSOs.

IMPACT INVESTING ACROSS SECTORAL LINES: THE EXPERIENCE OF THE OMI DYAR NETWORK

For Martin Tisé of the Omidyar Network, a philanthropic impact investment firm that both invests in for-profit enterprises with a social purpose and provides grants to CSOs, it could also be argued that how an entity is organised is less interesting than what it does. Registered as a company rather than a foundation, Omidyar Network works as a hybrid that above all seeks to invest in organisations with a social purpose. Martin Tisé describes some of the ways they give support:

We're not doing it because we want to make a lot of money out of a company; we're doing it because we believe there are certain cases where companies that have social impacts are able to scale their impacts at a greater speed if they are businesses than if they are not for profits.

We very much prefer to provide core funding to organisations when we give grants. We want the organisation to be able to use the money to grow. This is similar to when you invest in a company through equity shares, and the company can do what they want with the money. In some ways, the way finance works in the private sector has influenced the way we provide support in the non-profit sector.

We focus on trying to understand the quality of a team behind an organisation and find ways we can support that team in the best ways possible. Similar to some venture capital companies, we have a human capital team that provides support, often non-financial, which could be executive coaching or advice on human resource management.

This investment in human capital and non-financial support alongside flexible financial support is a key lesson from the organisation's experience, he suggests, that other philanthropists could adopt. Martin Tisné also points out that, beyond its work as a funder, his organisation engages in policy and advocacy work, to try to improve the environment for CSOs and socially responsible companies:

We encourage the development of for-profit companies that have government transparency and citizen engagement at the core of their business plan. We also target and engage with private sector companies that benefit from open data to drive their core businesses, and encourage them to open up their data. We look for ways to engage financial institutions, such as rating agencies, to provide data on the link between open governance and better investment climates. We also look at how to make the private sector more transparent, including in the governance of natural resources.

Asked what the ideal picture should look like, Martin Tisné suggests the following:

The ideal world would be one where a significant amount of investment is put into companies that have both financial and social returns and where investors are looking at the bottom line, the financial returns, but they're also accounting for the social impact and social returns that that company has provided. In an ideal world investors would consider both. Financial returns are an indicator of the health of a company, and if they are healthy and growing, their financial returns will be linked to their ability to provide social returns.

Rajiv Joshi tracks the rise of companies that put social responsibility at their heart, including companies that make a profit while improving the natural environment and social systems, and those that build their business models around the regeneration of ecosystems, elimination of waste and reuse of resources:

It's inspiring to see an entire generation of what can be characterised as 'new corporate forms', led by purpose-driven entrepreneurs as part of an emerging 'fourth sector' of the economy, including certified 'B-corps', 'for-benefit corporations', 'community interest corporations' and other structures emerging around the world. These entities have a wider definition of fiduciary duty that includes demonstrating social and environmental benefit and integrates a wider set of reporting requirements that enables them to lead for the long run.

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This is a growing field – the [Global Commission](#) on Business and Sustainable Development estimates that sustainable business can create US\$12 trillion in new market value and up to 380 million jobs by 2030 – but Rajiv Joshi believes that still more growth and commitment is needed. He points to the approach of his organisation, the B Team, of recruiting high-profile leaders and seeking to grow out from personal commitment:

We recognised a clear need to grow the field of organisations working to change businesses, to help mobilise a growing constituency of progressive business leaders, willing to drive deep transformation of our economic system, which is at the root of so many of the challenges we face.

In a contribution to the [2015 State of Civil Society Report](#), Tris Lumley of New Philanthropy Capital suggested that part of the value of new forms of social enterprise is that they have direct accountability relationships with citizens, via the marketplace, as opposed to the vertical accountability directions that heavily donor-supported CSOs may have with those that fund them. But at the same time, the problems that many CSOs formed to address are those of severe market failure, which social enterprises cannot address, and there will always be a need for classical, non-profit CSOs to do the things that social enterprises cannot. Social enterprises are, therefore, an important part of the civil society mix, but there are limits to what they can do.

Another valuable model to draw upon here, Alison Tate and Theo Morrissey indicate, are the mandatory and institutionalised processes of social dialogue within companies, such as in Germany, Ghana and Uruguay, in which workers, employers and government representatives cooperate in decision-making. Bill Piper notes how Adidas' status as a German company also places it under special obligations:

As a German-headquartered company we have a very specific governance structure, one which has been built around social dialogue. According to this structure, employees, through our Works Council, and trade unions are represented in our Supervisory Board, which oversees the activities and decisions of the Adidas Group's Executive Board. This informs and frames our approach to broader issues, such as the freedom of association and freedom of expression.

Alison Tate and Theo Morrissey make the point that such structures, in Germany and elsewhere, have not held back economic growth; rather, they have helped to make workers participants in growth, where living standards and wages have kept pace with economies that have remained internationally competitive. These underline the value of structures that bridge sectoral divides.

CIVIL SOCIETY CONNECTIONS

As the global civil society alliance, CIVICUS has a special interest in making connections between different parts of civil society. For civil society to connect better with business, there may first be a need to connect civil society better. As Sunniva Gautvik and Friederike Hanisch put it, networks and coalitions offer a means for civil society to try to match the unequal power of big business:

Compared to the finance lobby, which is incredibly powerful and well organised, CSOs operate with constrained resources. We need a collaborative approach to achieve a shift in Europe's investment system towards better integration of social and environmental concerns.

Gretchen Gordon suggests that international working among civil society is needed to track complex and opaque international financial flows, a point echoed by Sunniva Gautvik and Friederike Hanisch:

The investment system is highly international: without cooperation across borders we would not be able to track the impact of global capital.

Similarly, Mathieu Vervynckt suggests that collective action is needed for engagement on PPPs, which is complex, skills-intensive and needs to be sustained over time:

It remains challenging to fight against such a strongly biased paradigm led by undemocratic institutions, particularly in today's turbulent political landscape where civil society space is shrinking at an alarming rate. Therefore, more than ever, CSOs need to join forces and offer a collective and coordinated campaign to tackle the upward trend of PPPs.

Gretchen Gordon therefore calls for stronger connections, including between larger and smaller CSOs:

Just as the public banks and governments are using their power to bring together new actors and mobilise new resources, civil society will need to leverage our power, by building stronger relationships with frontline communities and grassroots groups, forging new alliances with social movements and CSOs in sectors that traditionally have not engaged on issues of development finance, and cultivating strategic allies within government, the private sector and international institutions. While development has changed dramatically in the 30 years since the adoption of the Declaration on the Right to Development, the fundamental need for civil society to work together to ensure that development processes are accountable and respect human rights remains constant.

Connections between large and small CSOs may be particularly important because larger CSOs [have advantages](#) of scale, resources and visibility that help them form and sustain partnerships with big business. At the same time, broad connections with civil society can help large, international CSOs be held to account by peers regarding the ways they uphold their values in partnerships and indeed in their own actions in the marketplace, including as investors, entrepreneurial fund-seekers and consumers of goods and services.

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There are some existing connections that can be learned from and built on. Shawna Bader-Blau sets out how her organisation has worked to forge new civil society connections:

The Solidarity Center has joined with labour unions and women's rights activists to push for an end to gender-based violence at work. In addition, we are supporting safe migration policies and building networks to support migrant workers and refugees.

Phil Bloomer and Vicky Dodman point to the close connections between trade unions, other forms of CSOs and investigative journalists that have helped to expose forced labour in the production of high street brands. At the same time, they suggest that stronger local to global civil society connections are needed:

Communities and grassroots organisations are on the frontline of struggles and are often the starting points of global campaigns. Civil society should support grassroots and worker-driven approaches to human rights in business to empower those who face the greatest inequality, and will have to sustain and build on changes that any broader campaign achieves.

Part of the challenge can be that CSOs working on private sector issues, including issues of business and human rights, corporate accountability, divestment and taxation, are seen to occupy particular and specialist niches, and the issues they work on are not often seen as mainstream interests by CSOs working in other fields.

New social movements and long-established CSOs often do not connect well, and the same can be said for social enterprises and CSOs that operate entirely outside the market. Human rights CSOs and trade unions are two [long-disconnected](#) communities, with [few links](#) made between efforts to uphold civil and political rights and those to realise labour rights, a theme Shawna Bader-Blau picks up on:

For a long time, workers' rights and human rights have been seen as different issues, by both human rights CSOs and the global labour movement. Because of that, we are all far less effective in confronting the current global human rights crisis perpetuated by the resurgence of authoritarianism, the crackdown on the public sphere and the greatest expansion of multinational and investor rights in modern human history. These three trends have created a perfect storm for workers and citizens, greatly impeding their ability to stand up for their rights, improve their lives and livelihoods, and expand democracy.

An increasing number of human rights advocacy groups have begun to take on worker issues, looking to improve corporate respect for rights. Very often, however, CSOs fail to involve workers, the major stakeholder, in the process or leave workers' rights, including the freedom of association, off the table while focusing on a company's 'social responsibility'. At the same time, they fail to involve unions or labour advocates, who have 30 years' experience with corporate social responsibility efforts.

Workers are up against powerful forces. And while they are the first line of defence against workplace exploitation, it will take a global network of workers' rights defenders - CSOs, human right activists, trade unions - to oppose the stifling of civil society, staunch the erosion of workplace rights and protect human dignity and freedom.

These are some obvious areas where closer connections could be made. Civil society must match the transnational power of business with our own transnational responses that link across different civil forms and join the local to the global.

PARTNERSHIP CHALLENGES

There are many existing successful partnerships between civil society and the private sector. Frank Vogl highlights partnerships that are helping to tackle the scourge of corruption, citing:

...projects in Egypt, Nigeria and Vietnam, where business people, often guided by CSOs, are pushing ahead with joint programmes that explicitly seek to ensure there is public sector contracting where no bribes are either demanded or paid.

But also, there are partnerships that many in civil society are unhappy with. There are potential [costs in partnership](#) for civil society, such as reputational costs that can decrease public support and lower staff motivation, and reduced lines of accountability towards citizens. Some large, international CSOs with strong corporate partnerships may become more risk-averse and less inclined to play the classic civil society role of speaking truth to power. There are also many in civil society who are dubious about any notion of partnerships with the private sector. Always there is the fear among CSOs that they will be co-opted to launder corporate reputations. Sam Worthington points out that CSOs may have differing views on partnerships depending on the areas of work they prioritise: CSOs that work to defend human rights may have different perspectives from CSOs that prioritise the delivery of development programmes.

A number of AGNA members cite similar challenges when asked about partnerships, existing or potential, with the private sector. They identify issues around trust, perceptions and prioritisation. Several respondents indicate that private sector partnerships are simply not a priority for them at present. For the National Union of Institutions for Social Action Work (UNITAS) in Bolivia, the key challenge is the lack of interest by the private sector in working with civil society. In Nicaragua, Coordinadora Civil complains that the private sector tends to align with the state, and receives state funding, to the extent that it acts as an international cheerleader for the state; this makes many in civil society doubt that true partnerships are possible.

The Japan Association of Charitable Organizations notes that businesses may perceive CSOs as lacking professionalism, which offers a barrier to engagement. Mistrust and reluctance to collaborate are also cited as obstacles by the National Consultation of Civil Society of Togo. In Venezuela,

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Sinergia points out that CSOs and businesses tend to have different understandings of and responses to the country's current challenges, which makes it hard to identify shared expectations and common ground.

The Pakistan NGOs Forum reports that businesses tend to engage with civil society on immediate issues that relate closely to shared interests, but civil society struggles to develop longer-term relationships on issues that do relate to business priorities. For CCONG in Colombia, the restricted and weak environment for civil society means that many CSOs find it hard to engage with the private sector. In Argentina, RACI outlines attitudes of fear, mistrust and misapprehension that may stymie partnerships:

A main challenge is the misperceptions that various actors have of each other. While creating spaces for joint projects, we have often seen CSOs afraid of losing their autonomy and becoming dependent on private funding when working with the private sector... There is also fear of losing decision-making capacity: it is erroneously believed that if a corporation directs funds towards an organisation's project, then the organisation will not be able to freely implement the project and will have to make changes that will affect its very identity... On the part of the private sector, there is some ignorance regarding the functioning and internal logic of CSO work.

Similarly, the Third Sector Foundation of Turkey (TUSEV) finds barriers to understanding on both sides, pointing to:

...a language barrier that prevents the private sector and civil society from using a shared language and understanding of each other. Different uses of terminologies cause a problem when trying to form an efficient relationship. There is also a difficulty in aligning priorities and ways of working. While civil society criticises private sector actors for being marketing and PR-oriented, private sector representatives complain that CSOs are not efficient in their ways of working. Businesses usually prefer supporting or financing service-based organisations, while it is very difficult for rights-based issues to be addressed or supported. Moreover, a difficulty appears when trying to form equal relations between the private sector and civil society based on open communications and understanding. Despite these challenges, the private sector has recently become more interested in developing relations and partnering with civil society.

Trust is also a critical issue that Bill Anderson identifies:

Often civil society can be distrustful, or perhaps even hostile, towards a multinational corporation. Indeed the interests and approach followed by a business or corporate entity may not, at first glance, align with a CSO's goals or outlook. Identifying areas of common ground is therefore important, as is developing respect for one another's viewpoints, interests and objectives.

Nicholas Patrick also identifies civil society challenges as including a lack of capacity to engage and a lack of willingness to engage constructively. In his sphere, for example, civil society may lack knowledge of how to leverage the resources a large global law firm can offer to support the work of civil society.

David Logan further suggests there may be mutual gaps of understanding to overcome, along with a range of other concerns CSOs might have about partnerships:

CSOs find it difficult to understand why a for-profit organisation might want to behave responsibly, and for their part companies might see anything other than a focus on conducting its business as a distraction.

Many CSOs are ambivalent at best about engagement. Campaigning organisations in particular may be opposed to the activities of oil companies, spend their time speaking out about child labour in the supply chain of food and garment companies, and be concerned about how corporates use global sourcing opportunities to cut jobs in global north countries. Then there are the big overarching issues such as tax avoidance, growing economic inequality and the environmental threat caused by rampant consumerism. Companies, as the great wealth creators, are absolutely at the centre of these problems... The size, creativity and power of private companies is frightening to many, but that is precisely why they have to be engaged in finding solutions to local, national and global problems.

To help overcome gaps in understanding and trust, David Logan asserts, there may be a need to unpack civil society suspicion of the profit motive:

The profit motive remains widely mistrusted, not least because economic theory tends to say that the main purpose of business is to 'maximise' profits. While short-term profit maximisation is clearly a feature of private enterprise, in reality the large majority of firms are in fact long-term profit 'optimisers'. They take the long view of business life, with a regard to the interests of a wide group of stakeholders, including employees, consumers, suppliers and communities, as well as shareholders, seeking a 'fair' return on their investment, rather than a maximum one... Private companies are often successful because they are tightly focused on their business mission, but the large majority of them know they have wider responsibilities beyond the financial return they can generate.

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BUILDING STRONGER PARTNERSHIPS: EXAMPLES FROM MEXICO AND TURKEY

In Mexico, the Mexico Center for Philanthropy (CEMEFI), an AGNA member, has long sought to bridge the barriers identified above, having formed as a space for interaction between companies interested in supporting social causes and CSOs. CEMEFI discusses its successes, and the challenges encountered:

The main challenge is finding the appropriate message to communicate to private actors the advantages of being perceived as co-responsible for the social situation of our country, and the actions they can take in order to improve it. By following the actions that we propose in order to obtain the badge of being a Socially Responsible Company, Mexican companies of all sizes can introduce simple but substantial changes into their business model. As a result, they can improve the situation of their staff, the environment and the community surrounding them without sacrificing their profits.

Many companies still see no benefit in carrying out corporate responsibility actions. Presenting the advantages of such actions to small and micro businesses has been particularly challenging. Fortunately, however, the number of these companies that are currently committing to corporate social responsibility is also increasing, at an even faster rate than that of large companies.

Approaching each audience with the appropriate information is also a major priority for us. In order to do so, we create specific content and establish arenas for interaction between companies and CSOs in such way that both parties can perceive the benefits of having a relationship. In order to increase our impact, we have also undertaken the task of proposing our model of CSR beyond Mexico City, through the establishment of regional and sectoral alliances with a variety of organisations that are replicating our programme.

In Turkey as well, TUSEV is working to connect the private sector to civil society to encourage better CSR and private sector investment in CSOs:

Turkey has a strong private sector that has the financial means and a growing interest in social investment that makes it an important change agent. Thus, TUSEV sees the private sector as a crucial stakeholder and engages with it on different levels.

When working with the private sector, TUSEV aims to facilitate efficient partnerships across sectors and especially encourage cooperation between the private sector and CSOs. In the case of Turkey, private sector actors hold the power of supporting social investment and CSR programmes, but need guidance for making them more sustainable and impact-oriented. Thus, TUSEV aims to develop and encourage cooperation between the two sectors that will also contribute to a culture of giving in Turkey.

The need in response to mixed civil society views of partnerships is, as ever, to acknowledge that civil society's diversity is a source of strength; some CSOs may see any kind of partnership with the private sector as being incompatible with their mission. Some may see a refusal to accept private sector funding as an essential part of their brand, and something that helps them attract citizen support, as with Greenpeace, and this must be accepted as legitimate, and respected.

As well as pursuing partnerships, we in civil society need our own spaces to hold our own debates and develop our own power. We rightly complain each year when the World Economic Forum convenes global political and business elites in Davos, with select and invited civil society participation that has limited access and little prospect of influence. But can a high-level, focused but civil society-led alternative be envisaged as an effective counterweight to Davos, distinct from and complementary to the sprawling World Social Forum?

TOWARDS PARTNERSHIP PRINCIPLES

Those CSOs that want to partner face critical questions about the quality of partnerships, and what it is they are trying to achieve through partnerships. Sam Worthington sets out a range of possible areas of partnerships between civil society and the private sector. These may include the provision of philanthropy to civil society; collaboration on programme delivery; the sharing of expertise; cooperation on advocacy; advocacy towards other companies and down supply chains; engagement to sensitise consumers; employee engagement, including to encourage employee participation and volunteering; and partnerships to enable the rights and livelihoods of primary producers in supply chains. All of these are valid roles.

Similarly, Rajiv Joshi distils a spectrum of possible private sector forms of engagement with civil society, from minimal engagement, CSR, philanthropy and deeper partnerships, up to full and equal partnerships, and to new forms of business organisation that put social responsibility at their heart. As he puts it, all of these are needed, but new forms of socially-oriented business are currently most lacking.

While partnerships at any part of the spectrum can deliver value and advance progress, it is at the more expansive end of the spectrum that civil society autonomy is respected and our unique contributions can be realised. Partnerships here will go beyond a narrow focus on resources. They can include non-financial dimensions, including access to and sharing of knowledge and expertise, something that Sam Worthington recognises as important. Similarly, Rajiv Joshi urges civil society to see companies as sources of social capital and participation, as well as financial resources:

Business can help improve the level of civic engagement, such as the number of CSO members and extent of volunteering, and the organisational structure of civil society, including aspects such as its human, financial and technological resources and levels of networking, by investing in the communities in which it operates, contributing a percentage of profits to CSOs and encouraging employees to participate actively in the work of CSOs.

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AGNA member Kepa, in Finland, while acknowledging some pressure from civil society's traditional donors to engage with the private sector as part of funding diversification, also reports that engagements with the private sector are moving beyond narrow questions of resources:

Interest among member organisations is increasingly in co-creation over sponsorship and donations, and many want to expand collaboration to their southern partner networks.

The main interests in working with the private sector are to get new ways to improve efficiency and effectiveness, get resources to solve problems through co-creation, and find new ways to innovate around sustainable development. An integral part is also promoting corporate responsibility among Finnish companies working in the global south.

In part the question is therefore one of how to advance partnerships that are currently narrow along a more progressive spectrum, and how to enable knowledge and expertise to be shared in both directions. But in order to make partnerships more expansive, suggests Sam Worthington, there is a need to acknowledge the power dynamics implicit in any relationships, and to examine and unpick the [motivations](#) that lie behind partnerships. We should always ask the question of whose interests a partnership is serving:

Large corporations, particularly if they are working through an associated corporate foundation, are interested in promoting their brand, responding to the interests of employees and having a social impact. When the project involves a company itself or its value chains, increased markets or more sustainable profits are also likely to be considerations. Often all of these considerations play a role... Some key questions need to be asked: when do CSOs actively change the behaviours of a corporation and when and how are they simply co-opted by resources? Can we develop norms that frame the best practices of partnerships with the private sector and government?

Who benefits from a value chain influenced by a CSO: the donor's economy and corporate headquarters, or local communities living in poverty?

This in turn prompts the question of what we in civil society want to achieve by partnering with the private sector. The answer is, surely, to influence it and change behaviour. Sam Worthington is clear that we should bring ambition to our engagement:

If civil society is to maintain and ultimately increase its relevance, we must have the strength and courage to shape global value chains, influence the flows of financial capital, and explore how to better align a profit motive with our values and rights-based approaches. By actively engaging and helping select corporations to evolve we can begin to influence the very fabric of a new global capitalism.

Partnerships should be tested on the goals they advance. If partnerships are not advancing human rights and helping people lift themselves out of poverty and challenge exclusion, then they may be considered as ineffective or inessential, suggests Sam Worthington:

Effective partnerships with the private sector must be based on shared values, best practices and a solid understanding of risks and benefits. Only then can they improve human well-being and realise human rights... If the impact of a partnership does not significantly tilt toward marginalised rights holders it may cause more harm than good.

Clearly, this ambitious vision of partnerships cannot be achieved by partnerships that are only framed narrowly around the delivery of CSR, or CSOs receiving resources to implement contracts.

As for partnership strategy, when civil society engages to influence, there is a need to come back to some good practice ideas identified earlier: civil society needs to do the research and understand the motivations of individual businesses, and business leaders, which may suggest some levers for advancing change. There is a need to understand that even in large corporations, individual leaders can make a difference, and civil society can gain leverage by identifying and working with influential corporate individual actors. As Sam Worthington describes it, this may entail civil society understanding that some people who work in large companies could just as readily work in civil society, and share our motivations:

CSO staff are sometimes surprised that a very strong commitment to advancing social good often exists within a company. When this happens, it offers an important reminder that individuals who work for a CSO do not have a monopoly on social causes.

The need this suggests is to identify the business people who are most amenable to engagement with civil society. It also makes sense to start, when developing relationships, on issues where it is easiest to achieve broad consensus between many businesses and CSOs, but with the intention of working to expand the footprint of collaborations out from these. Consensual issues here may include the realisation of the rule of law, the rejection of racist, sexist and xenophobic discourse, the tackling of grand corruption and the enabling of unrestricted internet access, as these are issues on which progress is clearly beneficial for many businesses and all of progressive, values-based civil society.

Similarly, Arnold Tsunga suggests that civil society can offer value to help companies, by developing capacity to help them carry out environmental and human rights impact assessment and due diligence standards, in order to comply with regulations and position themselves as exemplary companies. This suggests a win-win position that could be used as a launch pad for further cooperation.

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Bill Anderson also suggests that some match-making may be beneficial, to enable companies and CSOs that wish to partner to find the right partners:

Everyone is seeking solutions. It is finding the right partner that counts. In this regard the development of a global internet portal, which brings together and matches private sector and industry players with advocacy or civil society groups, would be of immeasurable value and would find a ready audience of users.

However, Sam Worthington warns that with all the civil society will in the world, there will always be some businesses that simply have no interest in working with civil society:

Only a part of today's globalised private sector is interested in advancing human rights, social good or an environmental agenda. Efforts to work closely with companies can only complement and cannot replace the often very effective 'name and shame' tactics used by CSOs and human rights groups to stop unacceptable, and at times criminal, corporate behaviour.

Often, our experience in civil society tells us, we find it difficult to get businesses to the table. Even when we can bring private sector representatives into conversations, they are often not the key people who have the power to make important decisions; business representatives sent to civil society meetings, for example, often have a tokenistic presence or are preoccupied with PR. Similarly, businesses will often invite the safer, less troublesome civil society voices into their processes. At the same time, our engagement as civil society may be too cautious, and failing to seek through partnerships the fundamental changes we want in society.

The implication of this is that we in civil society need to go into partnerships with the private sector with our eyes open, and aware of the risks, and be prepared to complement partnership strategies with those that call out poor business practice. Civil society should also reserve the right to withdraw from partnerships if they fail to deliver, even when this comes at the cost of losing resources. Honesty is needed: partnerships are complex and will not always work. As Sam Worthington puts it:

Working with the private sector should not be seen as a panacea. It is not hard to find corporations that actively harm human rights, destroy the environment or support corrupt states. Good corporate partners are hard to find. The learning curve to develop shared value in a partnership is often fraught with mistakes, and developing partnerships is something that requires patience and trust on both sides.

There is a need to nurture partnership practice and expertise. This is not necessarily something that develops naturally, particularly for CSOs that are more used to engaging with states or the international system; CSOs may lack the skills, knowledge and connections to engage well with the fast-

changing private sector world. As civil society, we may need to develop new skills to match the times. Sam Worthington outlines how his organisation is responding by enabling peer learning:

In response to member demand, InterAction has instituted a private sector working group where member CSOs can network, learn from peers and exchange tools and approaches to build the capacity needed to become viable partners. By sharing approaches, US CSOs have developed better vetting tools that ensure common data and identify socially responsible corporations. Over time the group's purpose has shifted into helping InterAction members better measure and report on their work. Ultimately, the group aims to help both civil society and the private sector to build more effective partnerships.

Similarly, Bill Anderson discusses the need to acknowledge and learn from partnership failures as well as successes:

It is important to also highlight where projects have failed, and to identify the root causes or reasons for this. Success should be celebrated and shared, but pitfalls or negative outcomes should also be critically analysed, if they are to be avoided in the future. This is what we seek to do at the conclusion of each of our projects or initiatives; to be self-reflective and, in doing so, learn from our mistakes.

The levels at which partnerships occur are important: in particular, partnerships between large CSOs and big business should not perpetuate existing patterns of exclusion or reproduce the elite nature of arrangements such as PPPs. As a principle, they must make space on an equal footing for excluded voices, especially of the global south. If much of the focus of civil society research on successful partnership development so far has been in global north countries, and the USA in particular, then there is also a need to distil, document and adapt learning for a greater range of countries.

In this complex field there is a need to be guided by some key principles that should underpin partnerships. Rajiv Joshi suggests the following:

- Vision: there is a need to identify and align around a shared vision and value proposition, and have transparency around the vision;
- Respect: there is a need for mutual and equal respect and recognition, and an understanding of the diversity of the contributions and leverages that different partners may bring;
- Equal commitment: although the skills and contributions of different parties may be different, each should commit equal energy and priority, including the equal commitment of leadership;
- Honesty: there is a need to be honest about differences, and to create safe space to discuss challenges;

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- Focus: it is important to have an achievable and measurable aim, and have accountability and reporting lines around that aim;
- Transparency: there should be transparency in all of the above, including around the use of any resources involved in a partnership, and an understanding that the receipt of resources cannot compromise autonomy.

For Sam Worthington, willingness to work together on common causes is essential:

Any effective partnership requires strong relationships and openness to collaboration. Partnerships work best when they are based on trust and commitment to common goals.

CONCLUSION AND RECOMMENDATIONS

Civil society's engagement with the private sector, and the partnerships that civil society is able to form with the private sector, will always be something of a work in progress. The relationship calls for constant engagement and updating, and the key, suggests David Logan, will be to find opportunities for sustained interaction to enable mutual learning and the development of shared skills:

Our modern global social system has only been developing for about 25 years, and in real terms it is very new. In large parts of the world both the private sector and civil society are developing together. They are often growing from the bottom up, from the entrepreneurship and creativity of citizens setting up small businesses and CSOs to meet society's wants and needs... We need to focus on making it work as well as we can... This will require a new breed of social entrepreneurs to make the interfaces between the sectors creative and effective. They need to exist in each sector.

For Rajiv Joshi, simply, we do not have a choice: we need to find ways of working together, or the profound problems of the world are not going to be addressed:

It's time for all of us to roll up our sleeves, put aside our differences and work on the solutions. We need more cross-sector athletes working to forge a new contract between business and civil society to help place civilisation back on a safe course. We need business to stand up and speak out when civil society space is threatened and human rights defenders are put in danger. We need to ensure that individual priorities do not pull us away from our collective responsibility. It's time to invest in this new relationship, to pilot new forms of collaboration and connect our struggles.

The territory covered by the contributors to this report has been necessarily wide-ranging, covering many different ways in which the private sector can impact on civil society, civil society can engage with the private sector and the two can work together. While we should respect those in civil society

who rule out engaging with the private sector, for civil society as a whole, that option is no longer available, if it ever was: the private sector's growing reach and power mean that we must engage with it to advance our missions and serve citizens. We must review and adapt our ways of working, where necessary, to engage better with the new reality of private sector power.

Given this, we need to be aware of, apply and mix, the full range of possible interventions with business. As civil society, we should not to be forced into a choice between engagement or protest, in the classic civil society insider vs. outsider dilemma. Civil society needs to be both around the conference table at the meetings that matter and outside channelling the voices of the street; to avoid excessive caution, there must always be a role for civil society's disruptive, challenging, radical voice.

Part of the response here lies in developing connections between different civil society forms that play different roles, so that in any engagement, by mobilising networks that reach across a broad expanse of civil society, both insider and outsider strategies can be applied and a range of different interventions and engagements can be pursued.

We should distinguish between the best and the worst of business practice by offering strategies of both reputational reward and risk. We must partner with a positive mindset when we can find common ground, and when common ground cannot be found, take a bold stance against businesses that impact negatively on human rights, our shared environment and civil society. Our actions need to be nuanced and detailed, based on a constantly refreshed understanding of the motivations and drivers of different business sectors, companies and leaders, reached through ongoing dialogue and networks of intelligence.

We must never be afraid to ask the big questions of business, and we should judge any engagement by the change it brings about, in upholding human rights, protecting our planet, challenging exclusion and advancing social justice. These are the expansive, progressive and forward-looking terms on which civil society stands ready to engage, as an equal, with the private sector.

WORKING WITH CIVIL SOCIETY: SUGGESTIONS FOR THE PRIVATE SECTOR

On the basis of the various inputs to this report, the following are suggested as some potential key commitments for business that could form the basis of dialogue with civil society. We believe these are achievable and practical measures through which business could match its growing power with greater social responsibility:

1. Adopt, as a minimum starting point, a 'first do no harm' principle towards civil society and human rights.
2. Go beyond the 'first do no harm' principle wherever possible to demonstrate an active commitment to upholding and defending the rule of law, human rights and civic space, including the recognition and protection of civil society activists working on private sector issues.

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3. Respect international norms, conventions and human rights instruments, including new ones as they develop, and take active steps to demonstrate compliance with these.
4. Work with civil society to improve transparency and undertake due diligence along supply chains, on key issues such as preventing corruption, upholding labour rights and complying with taxation requirements.
5. Commit to upholding the spirit and social justice focus of Agenda 2030 and the Paris Agreement, and working with civil society to deliver on these, rather than cherry pick aspects of the agreement that most closely fit corporate agendas.
6. Dialogue with civil society on the viability and impacts of actions that entail the private sector taking on roles traditionally played by civil society, including in delivering services and receiving state funding to deliver development projects.
7. Commit to improving partnerships with civil society, including partnering with a wider range of civil society on a greater variety of issues, respecting their independence and moving beyond using CSOs merely as contracted service providers.
8. Identify corporate philanthropy and social responsibility as key business priorities while taking care to delink CSR and philanthropic activities from advertising and marketing budgets, and involve civil society in the making of philanthropic funding decisions.
9. Network with other companies to develop the capacity and willingness of the private sector, and particular industries, to engage with civil society, and demonstrate leadership in working with peer companies, socially responsible businesses and social enterprises to model and encourage best practice.
10. Work with civil society to distil, document and share learning, in a spirit of honesty and transparency, from partnership experiences, drawing lessons both from successes and failures.

WORKING WITH THE PRIVATE SECTOR: SUGGESTIONS FOR CIVIL SOCIETY

It is not enough for civil society simply to ask the private sector to improve its practice. As civil society, we must take the lead and start by asking what we can do, and what we could do differently. It is therefore suggested that as civil society, we should commit to:

1. Develop, communicate, adhere to and continually refresh partnership principles for engagement with the private sector.
2. Be honest about and openly debate our own challenges as civil society that may prevent us from engaging more effectively with the private sector, including challenges rooted in attitudes, perceptions, connections and capacities.
3. Engage with the private sector wherever possible to make the business case for open civic space.
4. Be prepared to recognise and reward exemplary business practice as well as expose and condemn poor practice.
5. Mix insider and outsider strategies that combine engagement in private sector dialogue with the right to protest and organise externally. As part of this, develop our own, civil society-owned alternatives to elite business forums.
6. Engage directly with citizens, including by working to sensitise and mobilise citizens to scrutinise and exert accountability over the private sector, through public campaigns and consumer action.
7. Support and engage with moves to strengthen international law towards the private sector, and in particular the proposed treaty on transnational corporations and human rights, and advocate for the domestication of international norms through progressive national legislation.
8. Work to connect across civil society in its widest sense, including by building new connections between human rights and sustainable development-oriented CSOs, trade unions, social movements, social enterprises, socially responsible companies and industry associations, and connections between the global and local, and the global south and global north. As part of this, show solidarity with and provide protection for civil society activists who are threatened when they work on private sector issues.
9. Document and be honest about our learning from our engagements with the private sector, including documenting our mistakes as well as our success stories.
10. Make progress on achieving fundamental change in upholding human rights and environmental norms, combating economic inequality and challenging exclusion, rather than the gaining of resources, the key benchmarks by which our engagement with the private sector is judged.