

Distract, Divide, Detach:

Using Transparency and
Accountability to Justify
Regulation of Civil
Society Organizations



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Executive Summary

■ This briefing and discussion paper analyzes how governments refer to transparency and accountability to argue for tighter regulation of civil society organizations (CSOs). Invoking transparency and accountability, governments around the world typically propose regulation in three areas: transparency of funding, and especially of foreign funding; income and asset declaration of CSO leaders; and democratic accountability and governance. While calling for transparency, governments impose regulations with, in many cases, wide-ranging restrictions. Moreover, governments often use transparency and accountability to frame CSOs as foreign and unrepresentative, and their leadership as a privileged elite. It appears that governments welcome a protracted debate to distract CSOs from their advocacy, divide CSOs, and detach them from potential public support. Yet there are also real gaps in CSO transparency that could easily be addressed, allowing CSOs to proactively position themselves for debate.

Various recommendations stand out, including the need to better prepare CSOs to respond to public attacks. Donors can help CSOs by providing flexible modes of assistance. Additional research would help to understand how CSOs can mobilize public support for their causes. Those are three out of 18 recommendations at the end of the report. Potential follow-up studies may well add to these recommendations, as the understanding of CSO resilience will evolve in the coming years.

This research, funded by the Transparency and Accountability Initiative (TAI), was supported by analysis and resources made available by Publish What You Pay, the European Center for Not-for-Profit Law, and the International Center for Not-for-Profit Law. Arpine Porsughyan provided analysis on trust in nongovernmental organizations around the world, some of which is cited. This report also integrates suggestions received from the TAI team and partners.

The conclusions and interpretation in this report are the author's alone.

How Do Governments Invoke Transparency and Accountability Against CSOs?

■ Section 1:

Reversal and Rhetoric of Transparency and Accountability: Introduction

Many democracies are experiencing a reversal, and there is a shrinking space for civil society, as long-term observers have noted. This trend, as Thomas Carothers and Saskia Brechenmacher have pointed out, is global.¹ In 2016, Freedom House highlighted a “protracted democratic slump [that] represents a major break from the steady and at times spectacular gains registered from 1975 to 2000.”² Similarly, the International Center for Not-for-Profit Law (ICNL) documented that “between 2004 and 2010 more than 50 countries considered or enacted measures restricting civil society.”³ The trend toward more restrictions has continued.

One aspect of this trend that has drawn attention is that governments have invoked transparency and accountability when explaining their proposed restrictions.⁴ The government of Azerbaijan, which has been egregious in its crackdown on civil society organizations (CSOs), justified restrictive legislation thus: “The changes and amendments to the national legislation on NGOs have been made with a view of increasing transparency in this field.”⁵ Similar arguments have been made by many governments that seek to constrain civil society, from Russia to Ethiopia, from Ecuador to Hungary.

This briefing and discussion paper analyzes how governments use transparency and accountability to justify CSO regulation. It highlights three regulatory

1. Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support under Fire* (Washington, DC: Carnegie Endowment for International Peace, 2014), http://bit.ly/Closing_Space.

2. Arch Puddington, “Q&A: 10 Years of Decline in Global Freedom,” January 2016, <http://bit.ly/10yrsDecline>. All case descriptions reflect the developments for June 2017; some issues and cases have developed further since.

3. Douglas Rutzen, “Civil Society under Assault,” *Journal of Democracy* 26, no. 4 (October 2015): 31, http://bit.ly/Rutzen_Assault.

4. Maina Kiai, *Report on Rights to Freedom of Peaceful Assembly and Association* (New York: United Nations, 2013), <http://bit.ly/Kiai-2013>.

5. Gabrielle Gould, “Maina Kiai’s Second Thematic Report Focused on Foreign Funding Restrictions,” *International*

Journal of Not-for-Profit Law 15, no. 2 (December 2013), http://bit.ly/Gould_ICNL. For brevity, country names are used to represent a government’s position or action.

Emphasizing transparency and accountability allows governments to frame CSOs as foreign, with little legitimacy, and their leadership as a privileged elite

arguments focused on transparency and accountability, and shows where those arguments have been used. Emphasizing transparency and accountability allows governments to frame CSOs as foreign, with little legitimacy, and their leadership as a privileged elite. It also appears that some governments may welcome a polarized debate, to rally their populist base and otherwise reinforce widespread apathy. The report highlights that some existing gaps in CSO transparency could easily be addressed, allowing CSOs to proactively position themselves for debate.

This briefing paper is based on desk analysis; interviews with practitioners; a mini-survey to obtain qualitative comments from respondents in different parts of the world; and previous research on civil society, civic engagement, and political research with the Caucasus Research Resource Centers (2006–2012). The author also engaged 100-plus institutions around the world in arguing for more transparency in policy research via Transparify (since 2014). ICNL, the European Center for Not-for-Profit Law, and Publish What You Pay provided useful material for analysis.⁶

For the purposes of this briefing paper, CSOs are defined as voluntary organizations that seek to present citizen concerns across a broad range of issues, typically with a degree of formalization. In some contexts, they also are referred to as nongovernmental organizations (NGOs). The primary foci of this study are organizations that are active in politics and advocacy.⁷

As pre-publication discussions of this study have shown, the research touches on additional issues. Though those issues are beyond the scope of this study, it is useful to recognize that broader questions are involved. These include whether competent CSOs should receive core rather than project-specific funding, as the former would allow CSOs to react flexibly in a dynamic environment; how to make advocacy as local as possible; how to build locally sustainable forms of policy and advocacy engagement; and how to promote trust in CSOs in low-trust environments. These are topics of ongoing debate, and this study suggests that some of these questions can take on new urgency in a context of government pushback.

6. ICNL and ECNL are undertaking further analysis of the subject, to be released in late 2017.

7. The wide focus reflects that, often, distinctions are hard to draw. Organizations working on rights and governance, for example, also are interested in issues of accountability, yet from a particular vantage point. For a note on terminology, see <http://bit.ly/UNDP-Definition>.

Three Lines of Argument on Transparency and Accountability

When proposing CSO regulations, governments appear to have developed three main lines of argument, which refer to transparency and accountability.⁸

FUNDING TRANSPARENCY, ESPECIALLY FOR FOREIGN FUNDING

Transparency of funding, and especially foreign funding, is one key demand that governments make of CSOs. Most recently, in March and April 2017, the government of Viktor Orbán in **Hungary** used this line of argument. Under proposed legislation, CSOs receiving more than \$24,700 from non-European Union (EU) countries will have to declare their foreign funding on their websites and in their communications. The government of Benjamin Netanyahu in **Israel** has passed a law under which CSOs that receive more than half their funding from foreign governments will need to declare the foreign funding prominently in all their communications. **China, India, and Russia** are other major countries in which foreign funding is tightly regulated. Several countries—including **Azerbaijan, Bolivia, Cambodia, Ecuador, and Tajikistan**—seem to have followed “Russia’s bad example,” as one report put it, in focusing on CSO disclosure of foreign funding.⁹ Kyrgyzstan’s parliament rejected a foreign agent law in mid-2016.

In the EU, too, there is an ongoing debate on how to improve the transparency of CSO funding. One of the main reasons for this discussion in the European Parliament is that EU funding for CSOs is hard to trace. A comprehensive report found that EU funding to CSOs often appears uncoordinated and on occasion funding advocacy runs against established EU policy.¹⁰ More recently, this debate has been joined with a newer discussion on how to deal with suspected Russian funding for politically active groups.

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8. Rutzen, “Civil Society under Assault,” 31. The author describes 10 types of measures to curtail international funding to CSOs. Some of these are not directly related to transparency and accountability. Others have been condensed for accessibility.

9. Melissa Hooper, *Russia’s Bad Example* (Washington, DC: Free Russia Foundation, 2016), http://bit.ly/Russia_Example.

10. Roderick Ackermann, Elsa Perreau, and Malin Carlberg, *Democratic Accountability and Budgetary Control of NGOs Funded by the EU Budget* (Brussels: European Parliament’s Committee on Budgetary Control, 2016), http://bit.ly/EU-funded_NGOs.

Legal Initiatives Against Civil Society



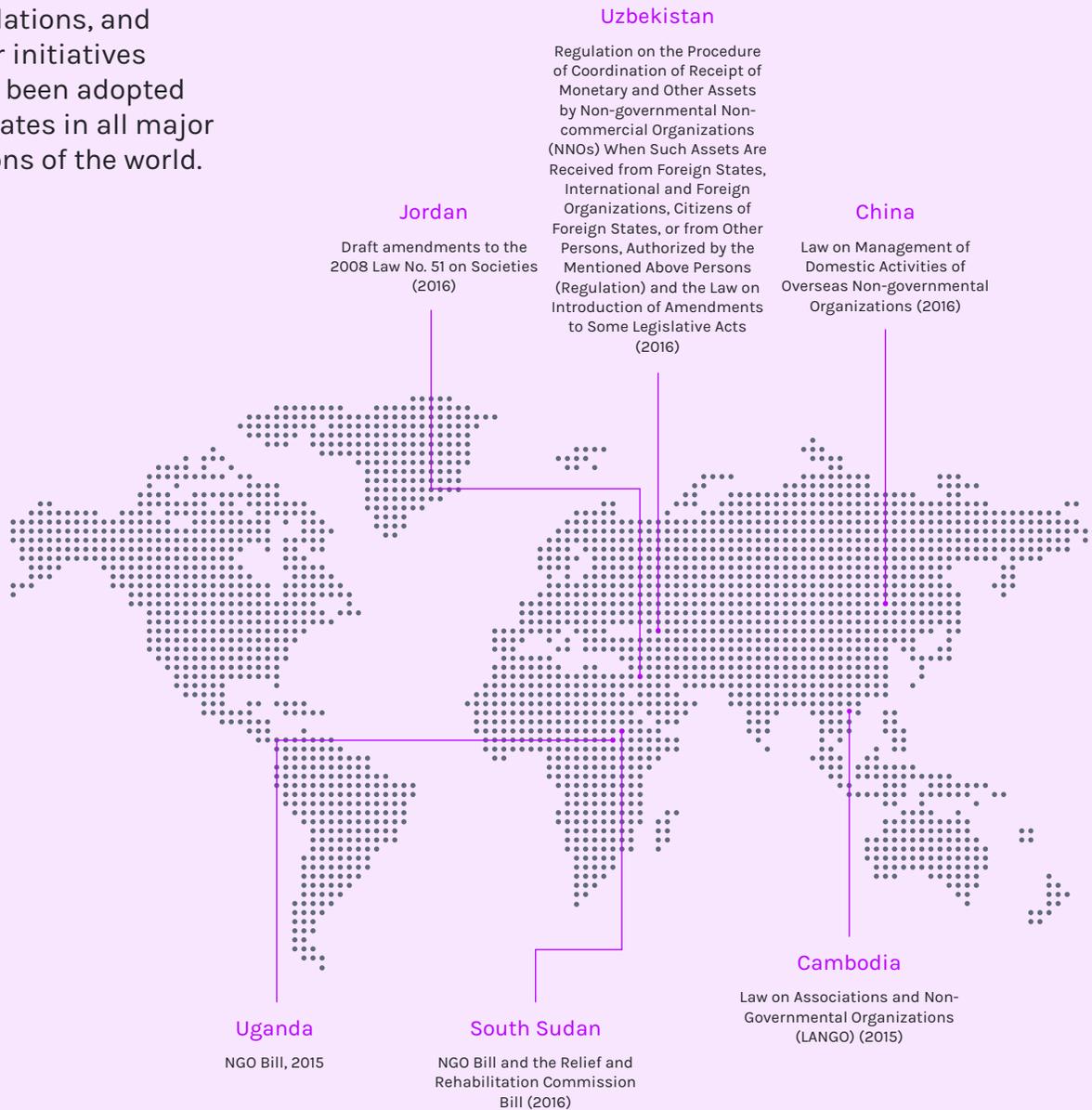
Testimony by Douglas Rutzen, President and CEO of International Center for Not-for-Profit Law, speaking before the Human Rights Commission, March 21, 2017

We are not talking about mild bureaucratic burdens on civil society organizations or “CSOs.” Governments are using the law to restrict the right of people to work together to make the world a better place. For example:

- In Eritrea, a citizen seeking to establish a relief organization must have access to \$1 million. This is the amount the average Eritrean would earn in 750 years.
- In Bahrain, an association can be denied registration (i.e., incorporation) if the government decides that society does not “need” the association. The government has arrested human rights activists who continue with human rights activities without being registered.
- In Cuba, the Criminal Code establishes penalties of one to three months in jail for membership in an unauthorized association, and the penalty is tripled for association leaders.
- In Equatorial Guinea, CSOs are prohibited from undertaking human rights activities and must obtain government approval before joining international networks.
- In Russia, a CSO that receives international funding and engages in broadly defined “political activities” has to publicly identify itself as a “foreign agent,” a term which is synonymous with “foreign spy” in Russian.

Douglas Rutzen, “Threats to Civil Society Around the World,” March 21, 2017, http://bit.ly/Lantos_Commission_Testimony.

Since 2015, 64 restrictive laws, regulations, and other initiatives have been adopted by states in all major regions of the world.



International Center for Not-for-Profit Law, "Survey of Trends Affecting Civic Space: 2015-16," Global Trends in NGO Law, (September 22, 2016), <http://bit.ly/ICNL-Trends-2016>.

Transparency of funding, in this context, also remains a topic of discussion in the **United States** (US), with an extensive debate on foreign funding to major think tanks and, more recently, foreign funding to presidential advisers (this debate is often in reference to the US Foreign Agents Registration Act [FARA]).

ASSET AND INCOME DISCLOSURE FOR CSO LEADERSHIP

Asset and income disclosure of CSO leaders has become another line of regulation that governments have pursued. **Ukraine** is the most prominent recent case. The government of President Petro Poroshenko passed a law in March 2017 stating that the leaders of anti-corruption groups need to declare their incomes and assets through the same e-declarations system that public servants use. Similarly, in **India**, the Lokpal anti-corruption legislation in mid-2016 was extended to define the officers of CSOs as public servants, who thus need to declare assets and incomes. In **Hungary**, members of the governing party have repeatedly said that they plan to introduce asset disclosure for CSOs.¹¹ In **Bulgaria**, the government attempted to require income and asset disclosure from CSO leaders in 2013, but the proposal was dropped after strong protests.¹²

In this area, too, there is Western precedent. In the US, charitable and 501(c)(3) organizations need to disclose their tax filings, which include information on leadership compensation.

ACCOUNTABILITY AND GOVERNANCE

Several governments have developed detailed requirements with regard to accountability. **Ethiopia**, since 2009, has demanded that human rights organizations receive 90 percent of their funding from local sources, arguing that they should be membership based. The government also tasked the agency overseeing charities, societies, and associations “to create a situation in which the operation of Charities and Societies is transparent and accountable.”¹³

11. Transparency International Hungary et al., *Timeline of Governmental Attacks against Hungarian NGO Sphere*, February 2017, <http://bit.ly/HU-Timeline>.

12. European Center for Not-for-Profit Law, “Restrictive Draft Amendments Withdrawn from Bulgarian Law,” March 2013, http://bit.ly/Bulgarian_NGO_Law.

13. For the Ethiopian law, see http://bit.ly/Law_Ethiopia.

Proposed regulatory measures often come with intrusive requirements and enforcement mechanisms

Egypt, since 2002, has detailed requirements on CSO governance, including the advance submission of the agenda of the organization's general assembly to the Ministry of Social Affairs. Government authorities in **Nigeria** have used anti-money-laundering legislation to regulate CSO activity. International organizations have documented a broader trend of using intergovernmental agreements—including agreements on anti-terrorism, anti-money-laundering, and aid coordination—to regulate civic space, often constraining the activity of CSOs. One 2012 study reported that anti-money-laundering regulation has been used to constrain civic space in **Burma/Myanmar, Egypt, Tunisia, India, Indonesia, Cambodia, Russia, Colombia, Uzbekistan, Saudi Arabia, and Sierra Leone**.¹⁴ Other authors have described measures put forward by governments in **Nepal** and **Sri Lanka** to regulate funding with reference to aid coordination.¹⁵

Moreover, the governments of **India** and **Gabon** (speaking for a group of African countries at a 2013 United Nations [UN] forum), as well as several others, have repeatedly made the point that they are the democratically elected representatives. Thus, the argument goes, the governance and regulation of CSOs is a matter of sovereign decision making, as governments are accountable to their voters.

Countries with strong civil society traditions also often have extensive regulations on how active organizations, including CSOs, can be in politics.¹⁶ The EU, to highlight one example, has a transparency register for lobbying. The register is mostly popular with transparency advocates, though there are concerns that its governing provisions are not being followed consistently.¹⁷ A tightening of enforcement could potentially affect some of the CSOs that seek to engage with the European Commission.

INTERMINGLING TRANSPARENCY WITH A CLAMPDOWN

Many of the arguments on transparency and accountability appear reasonable at face value: Governments appear to ask of CSOs, in many cases, what CSOs ask of governments.¹⁸ Moreover, CSOs often enjoy tax privileges as nonprofit institutions. Thus, a degree of regulation to ensure that these are organizations working for broader charitable purposes is sensible and even necessary.

14. Ben Hayes, "CounterTerrorism, 'Policy Laundering,' and the FATF: Legalizing Surveillance, Regulating Civil Society," *International Journal of Not-for-Profit Law* 14, no. 1-2 (April 2012), <http://bit.ly/FATF-Hayes>. Countries listed in order provided by Hayes.

15. Rutzen, "Civil Society under Assault," 33.

16. One response can be to highlight that CSOs focus more on policy than politics. Yet this distinction of politics

(parties) versus policy (CSOs) is hard to draw in many contexts, not least since many languages (French, German, Russian, Spanish, and many others) do not have a separate word for "policy."

17. See the website of the Alliance for Lobbying Transparency and Ethics Regulation for more detail on this issue (<http://bit.ly/Alter-EU-TransparencyReg>).

18. As described by a Ukrainian respondent in the mini-survey: "[S]ince anti-corruption NGOs advocated for a number of anti-corruption laws over the past 3 years, some parliamentarians suggest to apply the same anti-corruption legislation to these NGOs.

However, proposed measures often come with intrusive requirements and enforcement mechanisms. In **Egypt**, a 2007 study noted that the law “intermingles proper transparency and accountability measures with overreaching controls and modes of interference.”¹⁹

Reporting obligations, for example, can be used to bring a criminal prosecution against the representative of a CSO in **Egypt**, or to close down an organization in **Belarus**, as Maina Kiai, tasked by the UN to assess freedom of assembly and association, has noted. In such cases, Kiai points out, processes should be designed to rectify the situation if these countries seek to stay within “the spirit and letter of the freedom of association.”²⁰

In **Russia**, proponents of a far-reaching 2012 law to regulate foreign funding of CSOs proclaimed “otkritnost” or “openness” as their main goal.²¹ At the same time, the government introduced many hurdles and enforcement mechanisms, greatly reducing the ability of CSOs to operate. According to Human Rights Watch, about 30 organizations have decided to dissolve rather than submit to the “foreign agent” designation.²² The foreign agent legislation was one part of a broader clampdown on civic space that also included the closing down of organizations funded by foreign donors. Openness may have been used in the justification of the law, but it was not a principle that appeared to govern the law’s implementation.

In **Azerbaijan**, too, the government of Ilham Aliyev invoked transparency when legislation to regulate CSOs was introduced. In 2013, the government stated at a UN forum that its NGO legislation “should only disturb the associations operating in our country on a non-transparent basis.”²³ The actual legislation reached far beyond transparency, as the bank accounts of most CSOs were frozen. Many CSOs closed, and others could restart operations only after demonstrating loyalty to the government. Several human rights defenders were arrested and held in prison for months, some of them under charges of tax evasion and fraud related to their CSOs. Most independent observers viewed the charges as fabricated.²⁴

In other words, transparency and accountability often play a role in the rhetoric that accompanies a broader clampdown. In the mini-survey, respondents’ main concerns were mechanisms for enforcing regulations, which placed ahead of

19. Gould, “Maina Kiai’s Second Thematic Report Focused on Foreign Funding Restrictions.”

20. Kiai, *Report on Rights to Freedom of Peaceful Assembly and Association*. Note that 2016 legislation constrained space for NGOs in Egypt even further. Criminalization of administrative transgressions can be a flag of oppressive intent, though a sea of administrative troubles on its own can hamper CSO operation.

21. “The Law Obliges to Inform, not to Prohibit,” United Russia, November 2012, <http://er.ru/news/93621/>.

22. For the analysis by Human Rights Watch, see http://bit.ly/Russia_HRW_List.

23. Gould, “Maina Kiai’s Second Thematic Report Focused on Foreign Funding Restrictions.”

24. Front Line Defenders, *Case History Yunus*, 2017, <http://bit.ly/AZE-Yunus>.

regulation of foreign funding. Governments have at their disposal, of course, many other tools to constrain civic space, including the enactment of libel laws (in some instances, **Brazil; United Kingdom; and Poland**), restriction of publication of information (**Tanzania, Russia, and others**), and limiting or prohibiting of political activity for many CSOs (in some instances, **Canada**, before 2016; **Algeria; Egypt**, especially after 2016; **Venezuela**; and others).²⁵ Moreover, Douglas Rutzen, a longtime observer of international nonprofit law, notes that in restricting civil society, governments can resort to other lines of argument, including protecting state sovereignty, enhancing aid effectiveness and coordination, and promoting national security.²⁶ Also, in the context of **Hungary**, many observers wonder why additional legislation is needed, when existing laws already require organizations with nonprofit status to disclose all their income and to provide information on their leadership's salaries.²⁷

So why would governments argue via transparency and accountability? As the next section will demonstrate, transparency and accountability are attractive arguments for governments, as they can put CSOs on the defensive.

25. For an overview of many repressive mechanisms, see Publish What You Pay and Civicus, *Against All Odds: The Perils of Fighting for Natural Resource Justice*, 2016, <http://bit.ly/PWYP-CIVICUS-2016>.

26. Rutzen, "Civil Society under Assault," 31. Anti-terrorism can be an additional aspect of the national security angle.

27. Goran Buldioski, "Hungary's Opaque Aims at Civil Society," *US News & World Report*, March 22, 2017, http://bit.ly/Buldioski_NGOLaw.

Distract, Divide, Detach: How Governments Put CSOs on the Defensive

■ Section 2:

Framing the Debate: Putting CSOs on the Defensive

■ Governments can use transparency and accountability to isolate CSOs in public debate and detach them from their potential supporters in the population. The chance to distract the public from issues and direct their attention toward CSOs and their supposed shortcomings may be an additional attraction of this approach. Governments and their proxies can use transparency to place CSOs into three negative frames: foreign, unrepresentative, and privileged. By design or intuition, populist governments use the same rhetoric to cast themselves as patriotic, “of the people,” and anti-privilege.

■ "THEY ARE FOREIGN"

A consistent theme accompanying demands that CSOs be more transparent about their funding is that they represent foreign interests. Political parties, the reasoning goes, cannot receive foreign funding. “NGOs, however, even though they engage in political activity, are not prohibited from receiving foreign funding and are not necessarily reporting it. New Hungarian draft legislation aims to address this problem of transparency,” wrote Zoltán Kovács, international spokesman of the Hungarian government.²⁸

28. Zoltán Kovács, “Hungary’s Draft Legislation Would Require NGOs to Improve Transparency,” *About Hungary*, April 11, 2017, http://bit.ly/NGOs-Transparency_HU.

In response, governments often put forward legislation that requires a comprehensive declaration of income. “Hungarian citizens must be given the right to know about all public actors, who they are and who pays them. We have the right to know. [...] So we want transparency” is how Viktor Orbán, prime minister of Hungary, put it.²⁹ In Israel, Ayelet Shaked, the justice minister, similarly explained, when questioned about CSO legislation that the *Washington Post* characterized as “super-controversial”: “First of all, it’s called the ‘transparency bill.’ The purpose of this bill is the right of the public to know which NGOs are receiving most of their support from foreign governments and therefore representing foreign government interests.”³⁰

Legislation in many countries seeks to mark CSOs that are foreign funded. In Hungary, reports and the website of foreign-funded CSOs would need to highlight that the CSO is foreign funded. In Israel, the law requires human rights groups that receive more than half of their funding from foreign governments to declare this prominently in all their interactions with officials and to display that they are funded by foreign governments on TV, newspapers, and billboards, and online.³¹ In Russia, institutions accepting foreign funding are put on an official list, and according to Human Rights Watch, to date, 158 organizations have been designated foreign agents.³²

In making the case for disclosing foreign links, governments typically point to Western precedents. Shaked, for example, says, “[I]n the U.S. there is a foreign agent law, which I know is different—in some ways it is tougher and in some ways it’s easier—but the basic values of the law are the same: transparency. The principles of the U.S. laws and guidelines share the same values as my law.”³³

Similarly, when introducing its restrictive NGO law, the ruling party in Russia invoked the FARA, noting that this was a “harsh law to solve the problem of foreign funding on its territory.”³⁴ The new law will “ensure the most important thing—the openness of non-profit organizations towards society.” Such laws, the article says, are “logical for any self-respecting country.”³⁵

Since early 2017, an additional point of reference for transparency rhetoric is the discussion on NGO transparency inside the EU. The EU discussion has several external and internal aspects. One core point in which these aspects intersect is in the search for practical and workable ways of increasing accountability.

29. Ibid.

30. William Booth and Rush Eglash, “Israel Doesn’t Trust NGOs That Get Money from U.S. and Europe. Here’s Why,” *Washington Post*, January 31, 2016, http://bit.ly/Shakeled_NGOs.

31. Peter Beaumont, “Israel Passes Law to Force NGOs to Reveal Foreign Funding,” *Guardian*, July 12, 2016, http://bit.ly/Israel_NGO_Gdn.

32. “Russia: Government vs. Rights Groups,” Human Rights Watch, September 8, 2017, http://bit.ly/Russia_HRW_List.

33. Booth and Eglash, “Israel Doesn’t Trust NGOs That Get Money from U.S. and Europe. Here’s Why.”

34. “Закон не запрещает, а обязывает информировать,” United Russia, November 21, 2012, <http://er.ru/news/93621/>.

35. For the significant differences between the laws, see Vladimir Kara-Murza, “FARA and Putin’s NGO Law: Myths and Reality,” Institute of Modern Russia, May 9, 2013, <http://bit.ly/FARA-Russia-Reality>.

A protracted public discussion on foreign funding can be used to reinforce a negative framing of CSOs

A recent concern in the EU is that Russia may be funding CSOs in some EU countries. The worry that some of these CSOs advance a divisive and perhaps even anti-democratic agenda has intensified the calls for regulation, or at least transparency. Any regulation of funding could create a precedent that applies well beyond the EU. The ongoing EU debate on such regulation is connected to other concerns. Along with the existing transparency register to provide insights on lobbying, there also are attempts to increase the transparency of the EU's own funding.³⁶ One flagship report recommends consistent visibility rules, including a "requirement to display a standard, highly recognizable 'EC-funded' logo on every web page of direct and indirect grant beneficiaries (e.g., in the header, footer, or in menus)," and a "web page linked to the above-mentioned logo showing all EU funding the entity has received over a five-year period, instruments that the funding came from, and the actions for which the funding was provided."³⁷ Any government looking for precedents to draw on when regulating CSOs and their political activity can find many points of reference in the current EU debate.

Using a reference to the EU discussion, Kovács in Hungary cites members of the European Parliament who are "calling for the EU to cut public funding for NGOs 'demonstrably disseminating untruths' or campaigning for 'objectives [that are] contrary to the fundamental values of the European Union.'" Commenting on some of the transparency measures discussed in the European Parliament, and on one specific case, Kovács writes:

"I grew worried that Brussels institutions are plotting an NGO crackdown. But, no, of course not. It's not a crackdown, if it's about some Syrian-Lebanese businessman carrying out a crusade against the European Commission. That's about NGO transparency and proper disclosure of foreign funding. But if it's Hungary and Prime Minister Orbán and NGOs receiving foreign funding, including from George Soros? That's an NGO crackdown."³⁸

In framing CSOs as foreign, governments may be interested in making inaccurate claims—for example, in comparing their proposed legislation with FARA. A protracted public discussion on the issue can reinforce two claims: that the legislation in principle follows good precedent and that potential adjustments

36. For a discussion on the current transparency register and some concerns, see Quentin Ariès, "Five Things We've Learned from the Transparency Register," *Politico*, May 15, 2015, <http://politi.co/2rwFlmD>.

37. Ackermann, Perreau, and Carlberg, *Democratic Accountability and Budgetary Control of NGOs Funded by the EU Budget*.

38. Zoltán Kovács, "Is the European Union Carrying out an NGO Crackdown?" *About Hungary*, April 10, 2017, <http://bit.ly/EU-NGO-Precedent>.

are technical details.³⁹ More importantly, an ongoing comparison reinforces the narrative that the CSOs are foreign agents in the first place and that the main discussion is on how to treat them.⁴⁰

Provisions in draft legislation that can appear outlandish may serve the same purpose: to prolong a debate that casts CSOs as alien intruders on local contexts. In Israel, an initial proposal would have required representatives of foreign-government-funded CSOs to wear differently colored badges when in the Knesset. The proposal was ultimately not included in the law, but not before extensive national and international debate on the significance of marking individuals. Commentators suggested that NGOs should bear their “badge of shame” with pride. Others accused opponents of the law of being “almost hysterical” and concluded that the reaction by CSOs showed that restrictions were long overdue.⁴¹ The final laws often drop measures that are particularly excessive, after the framing is solidly established.⁴²

"THEY ARE SELF-APPOINTED"

Demands for accountability also play on the fact that in many contexts, CSOs do not draw on a large membership base. While many Western CSOs have developed extensive member networks over many decades, for issues ranging from civil rights to bird-watching, membership numbers in other countries remain comparatively low, as the literature on social capital has shown.⁴³

The demand for accountability thus often is packaged with the charge that CSOs do not have an authentic local constituency. The insinuation is that such organizations present the views of a narrow elite that enjoys less democratic legitimacy than the government.

Kovács is one of the most unabashed proponents of that view:

“[A] clear distinction must be made between grassroots organizations made of ‘volunteers, trying to advance their neighborhood, the society’ and ‘international networks, which call themselves civilians,’ as the prime minister has said, those

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39. For a discussion of the differences, see Samantha Laufer, “A Difference in Approach: Comparing the US Foreign Agents Registration Act with Other Laws Targeting Internationally Funded Civil Society,” *International Journal of Not-for-Profit Law* 19, no. 1 (April 2017): 9–10.

40. Along these lines, see Zoltán Kovács’s riposte to an NGO letter: “That’s Exactly What We’re Talking About,” *About Hungary*, March 29, 2017, http://bit.ly/TalkingAbout_HU.

41. See Steve Klein, “Labeling Jews: Left-Wing NGOs, Wear a Yellow Star in the Knesset,” *Haaretz*, December 30, 2015, http://bit.ly/Badge_Knesset; Mira Sucharov, “Left-Wing NGOs in Israel: Wear Your ‘Badge of Shame’ with Pride,” *Haaretz*, December 31, 2015, http://bit.ly/Haaretz_NGOBadge.

42. For a defense of the NGO law, see Eugene Kontorovich, “Why Critics of Israel’s New NGO Transparency Law Are Wrong,” *Tablet Magazine*, July 13, 2016, http://bit.ly/AgainstCritics_NGOLaw.

43. See primarily Mark Morjé Howard’s *Weakness of Civil Society in Post-Communist Europe* (New York: Cambridge University Press, 2003) for numbers and analysis.

Some of the Arguments CSOs Face

Senior government representatives in various contexts refer to transparency, and foreign precedent, when proposing tighter CSO regulation.



Viktor Orbán, Prime Minister of Hungary, speaking before the European Parliament on April 26, 2017

"Prime Minister Viktor Orbán's Speech in the European Parliament," April 26, 2017, <http://bit.ly/PM-Orban-EP-Speech-2017>.

The third issue is the regulation on non-governmental organizations. The currently discussed Hungarian proposal—I mean the proposal discussed in Hungary—follows the American example. Many countries of the Union and if I am correct, even this Parliament, in the framework of the Pieper Report is dealing with the complicated question of how we can make the operations of financially strong foreign external lobbies, willing to influence democratic decision-making, transparent to everyone. The Hungarian legislation builds on the principle of clarity and transparency. We want nothing else but to be able to know of NGOs what kind of money and what kind of interests are behind them. This does not undermine their constitutional rights to have their voices heard, represent their interests and be able to organise themselves freely.

Ayelet Shaked, Minister of Justice, Israel, 2016

Booth and Eglash, "Israel Doesn't Trust NGOs That Get Money from U.S. and Europe. Here's Why."

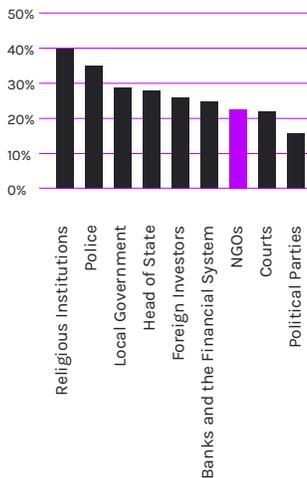
First, Israel is a very strong and vibrant democracy. I don't see how this bill will hurt that. The bill does not affect any liberties, it does not hurt freedom of speech or freedom of organization.

Second, in the U.S. there is a foreign agent law, which I know is different—in some ways it is tougher and in some ways it's easier—but the basic values of the law are the same: transparency.

groups that ‘open up local offices in certain countries, hire activists, usually even pay them and ... propagate international interests.’”⁴⁴

Trust in Institutions

Percentage of respondents reporting some or complete trust in a given institution.



Emphasizing a similar line of argument on the lack of legitimacy of nongrass-roots CSOs, Ethiopia stated at a 2013 UN forum on human rights that it is the government’s “firm belief that associations will play their role in the overall development of the country and advance their objectives, if and only if an environment for the growth of transparent, members based and members driven civil society groups in Ethiopia providing for accountability and predictability is put in place.”⁴⁵

India’s government, too, argued against “blanket legitimacy” to CSOs at the same 2013 human rights forum: “Governments are legitimate representatives of the people with greater responsibility and obligations while civil society organizations are only a sub-section of the society with particular ideology and agenda.”⁴⁶

The charge of limited legitimacy can have an impact, especially in contexts where CSOs suffer from low levels of public trust. Consistently, comparative cross-national surveys have shown that in many less consolidated democracies, only a small percentage of the population trusts CSOs. Though they are meant to represent citizens, CSOs in Eastern Europe, for example, on average enjoy lower levels of trust than religious organizations, local governments, and courts, as the Life in Transition Survey of the European Bank for Reconstruction and Development found in 2016. In 2010 (a wave for which detailed data is available), the survey found that there were more people who completely distrusted NGOs in Russia, Romania, and Ukraine than who somewhat or completely trusted them.⁴⁷

External donors in some contexts have had a mixed impact on how CSOs connect with a broader local constituency. When donors implement projects with and through successful local CSOs with a strong network, this should, at least in principle, increase participation and thereby the chances of uptake. At the same time, the direction of the funding stream reverses accountability of the CSO and its leadership toward donors and away from the membership base, as many researchers have found.⁴⁸

44. Note the well-packaged spike of “usually even pay them.” Kovács, “Hungary’s Draft Legislation Would Require NGOs to Improve Transparency.”

45. Gould, “Maina Kiai’s Second Thematic Report Focused on Foreign Funding Restrictions.”

46. Ibid.

47. See “Life in Transition,” European Bank for Reconstruction and Development, <http://bit.ly/LiTS-2016>. The fix is often harder than just to engage in some tweak of CSO programming, as many countries display low levels of trust in most political institutions in the first place.

48. See Hans Gutbrod, *An Assessment of Social Capital in Georgia* (Washington, DC: US Agency for International Development, 2010), http://bit.ly/SocialCapital_GEO. This reversal of accountability is less of a challenge when CSOs receive core support. More on what CSOs and donors can do to increase trust is listed in the “Recommendation” section.

"THEY ARE PRIVILEGED"

In domestic debates, the leadership of CSOs is often framed as entitled. A government demand that officers of CSOs reveal their incomes and assets—as was done in Ukraine and Hungary—can be an attempt to focus the attention on how well off they are in comparison to the general population, as Goran Buldioski and Peter Nizák from the Open Society Foundations have highlighted.⁴⁹ (While salary disclosure is routine for CSO leadership in the US, for example, such disclosure takes place in a broader context of salary transparency and safeguards. This example underscores that context is important in determining what level of disclosure is reasonable.) Though Nizák notes in an interview that in Hungary, salaries at “the leading NGOs are a little lower than in the business sector” and that he does “not see big salaries,” governments play upon the perspective of the many voters, including state employees, who earn even less.⁵⁰

Comparatively high salaries result from CSOs drawing on international-level capacity. Mobilizing funding requires skills that are sought after in Bucharest, Brussels, and Boston. In Africa, too, some CSOs effectively compete with UN agencies for their staff. Some prominent institutions offer commensurate six-digit salary packages to their leadership.

An extended public discussion of such pay scales will almost inevitably frame the CSOs as the privileged elite. Stanley Greenberg—who has undertaken political research for Bill Clinton, Nelson Mandela, Tony Blair, and many others—repeatedly found around the world that “for everyone, not just the privileged few” framing mobilizes large segments of the electorate against elites, even if that argument is made by one elite against another.⁵¹

In another twist, regulation demanding asset and income declarations can deter people from working with or for CSOs in the first place, as Buldioski has pointed out.⁵² Individuals valuing their privacy, and not just the well-off, in such contexts may have little incentive to associate with or volunteer for CSOs.

Demand for asset declarations can hamper localized fund-raising strategies. Following Western and US examples, many CSOs recruit wealthy individuals onto their boards to mobilize domestic sources of funding. When legislation is broadly phrased, all officers of CSOs, including board members, can be

49. Miklósi Gábor and Janeeskó Kata, “Satan’s Hungarian Prefect Speaks Out: Interview with Goran Buldioski, Peter Nizák,” *Index*, March 27, 2017, http://bit.ly/Buldioski_Nizak. In Hungarian—informal translation via social networks.

50. *Ibid.*

51. Stanley Greenberg, *Dispatches from the War Room: In the Trenches with Five Extraordinary Leaders* (New York: Thomas Dunne Books, 2009).

52. Gábor and Kata, “Satan’s Hungarian Prefect Speaks Out: Interview with Goran Buldioski, Peter Nizák.”

The charge of limited legitimacy can have an impact, especially in contexts where CSOs suffer from low levels of public trust

required to declare their incomes and assets. This scenario has been a concern in India, where NGOs and charities were brought under the same disclosure regulation as public servants in 2016. As noted by one representative of the Center for Advancement of Philanthropy in India: “Nobody is against transparency, but board members of NGOs are afraid they would be vulnerable to extortionists if they disclose their personal assets online.”⁵³

To attempts to cast CSO leadership as privileged, there is an appropriate rejoinder. There are plausible reasons why what is good for the political goose isn't always right for the civic gander. Yet any such explanation requires sophisticated countermessaging.⁵⁴

FRONTING FOR ENFORCEMENT MECHANISMS

With the public distracted and CSOs divided as a group and often detached from their supporters, it is easier for governments to introduce enforcement mechanisms that, with a few tweaks, can be used to harass or even close CSOs. Hungary's proposed Law on the Transparency of Organizations Receiving Foreign Funds, for example, carries a provision in its Article 3 that tasks a public prosecutor to fulfill its obligations within 30 days and allows for a repeat request with a 15-day deadline, whereupon a fine can be imposed. After continued non-compliance, the public prosecutor can initiate proceedings for the dissolution of the CSO. This measure may not look unreasonable, as there are three stages to this process, with appropriate periods of response. Yet the provision brings CSOs under the gaze of public prosecutors, potentially leaving it to the prosecutors' discretion to determine whether institutions are deemed to be compliant.

Similarly, while the Russian law, before passing, was advertised as a law that gave citizens more information, it has since been used to effectively crack down on many CSOs. Several environmental NGOs, for example, received fines in what one Russian human rights advocate called a “witch hunt.”⁵⁵ Others decided to shut down.⁵⁶ Across contexts, once CSOs are on the defensive, it is relatively easy to make legislation appear to be grounded in sensible principle, and then put the complications into the implementation, and thus restrict or even repress CSO activity.

53. Aarefa Johari, “Indian Government Is Targeting NGOs yet Again, Claim Non-profit Workers,” *Scroll.in*, July 9, 2016, <http://bit.ly/LokPal-India>.

54. What adjectives are used to attack CSOs in your country? The answers from the mini-survey show a consistent framing: antipatriotic, destructive, pro-Western; foreign agents, threats to national security, imperial missionaries; “grant-eaters,” incompetent; grantoedy (grants-eaters); against development, anti-people;

mercenaries (implementers of foreign agenda), rent seekers, anti-peace elements, parasites; foreign, corrupt, unpatriotic, slanderous, traitors; opposition, serving to foreign governments, anti-nation. (In the order received, with semicolons setting off the statements made by contributors.)

55. Alec Luhn, “Russian Green Group Labelled ‘Foreign Agent’ in Crackdown on NGOs,” *Guardian*, January 14, 2016, http://bit.ly/Guardian_RU-NGO.

56. See “Russia: Government vs. Rights Groups,” Human Rights Watch.

Yet here, too, official sources in Russia, sympathizers of the NGO law in Israel, Kovács in Hungary, and many other proponents of tightening NGO regulation point out that the FARA in the US has harsh provisions. Section 618 of the FARA states that willfully false statements, or omissions, can, upon conviction, “be punished by fine of not more than \$10,000 or by imprisonment for not more than five years, or both.”⁵⁷ The fact that the FARA has not been applied consistently over many years and that few successful criminal prosecutions appear to have been brought in recent decades are not advantageous framings of the debate against regulations, since they implicitly accept the premise of the original charge.

57. 22 U.S.C. Section 618 (2012), <http://bit.ly/GPO-FARA>.

Politics of Spectacle: Reactions Welcome

In the recent government pushbacks against CSOs, it appears at least possible that a kind of politics of spectacle was at play. In such politics, drama is the intended result, rather than a by-product of policies. While this interpretation is tentative, it provides a plausible explanation for why governments engage in strategies that seem costly in prestige.

DISTRACT, DIVIDE, AND DETACH

Attacks on CSOs are successful if they distract, divide, and detach. The attacks distract CSOs by putting them on the defensive regarding the issues they want to advocate and by making a drawn-out spectacle of the process of CSO regulation. The attacks divide CSOs by targeting them selectively (for example, in Israel, only foreign-government-funded NGOs were subject to the transparency law, whereas those funded from private foreign donations remained exempt). The attacks detach CSOs from their potential supporters by undermining their credibility and by breaking any emotional connection that may bring out people who would support the CSOs.

In reacting to the government, CSOs face significant positioning risks and must not inadvertently play the part allotted to them. The reactions of outrage and of mobilizing international support may illustrate this.

Anger and outrage can have their political uses, but typically, they mobilize additional support only if there is a previous emotional connection or if they speak to a grievance that is felt by ordinary citizens. By themselves, anger and outrage can often detach and turn off citizens, as focus groups consistently show. The anger expressed by CSOs at perceived government harassment engages broader segments of society only if the messaging skillfully connects to everyday concerns. Anger thus can further detach CSOs from potential

In the context of spectacle, international protests are not always a cost for a government. Sometimes, they are a benefit

supporters and can play into the narrative that CSOs are in it for themselves, concerned with their own advancement, and not in tune with the lives of ordinary citizens.

Similarly, expressions of international solidarity can cut in two directions. Although international support can give courage to beleaguered protesters, it can fit into the theme that CSOs are foreign, privileged, and connected to networks that average citizens are not.

Moreover, governments can earn credibility by facing down international protestations. Following Charles de Gaulle's example, governments can look strong by taking on a prominent list of international figures whose concerns they casually dismiss.⁵⁸ The exact mechanisms depend on the context and can be better understood through local focus group and survey research. Some leaders with autocratic tendencies use such opinion research to calibrate what they do.⁵⁹ Even when governments do not conduct such research, the actions of those in power are often very intentional. They have attained power through an accurate reading of their own political constituency.

None of this is to suggest that there should not be international solidarity or that governments and institutions should not speak up. The point is that in the context of spectacle, international protests are not always a cost for a government. Sometimes, they are a benefit.

58. De Gaulle's approach, often savvy rather than obstinate, is illuminated in Don Cook, *Charles de Gaulle: A Biography* (New York: Putnam, 1984).

59. Vladimir Putin, for example, says he used survey research to decide actions in Crimea. "Putin Says Crimeans Were Surveyed before Annexation Vote," *Radio Free Europe*, March 10, 2015, <http://bit.ly/Putin-Crimea-Poll>. Georgia's Mikheil Saakashvili, not always patient with democratic procedure, undertook detailed polling

with experienced international pollsters. See "Ruling Party-Commissioned Poll," *Civil.ge*, August 25, 2012, <http://bit.ly/UNM-Poll-2012>. One pollster working in the region has suggested (in private conversation) that the government of Turkey uses extensive message polling.

Generating Apathy: Politics as Dirty Business

Attacks on CSOs do not just constrain civic advocacy. They also invalidate hope

To fully understand the attacks on CSOs, it helps to put the attacks in the context of the emerging practice of “managed democracy,” or soft authoritarianism. In this increasingly sophisticated practice, many of the attributes of democracy—such as elections, the press, or the courts—are controlled in a top-down manner. They operate within constraints set from above and fulfill many procedural requirements.⁶⁰

Soft authoritarianism runs on the apathy of citizens. It seeks to delegitimize democratic politics, including citizen participation. CSOs are a threat precisely because they suggest that bottom-up politics and citizen engagement are worthwhile and can produce results. In response, governments seek to drag CSOs down into the morass of cynicism. The playbook of outrage serves that goal: a contentious and vicious debate, accusations of lies and hypocrisy, mobilization of unpopular opposition figureheads, and reverse accusations of hysteria. In such contexts, revulsion at politics is a common sentiment in focus groups.⁶¹

Broadly similar mechanisms are at work in electoral politics. Promising opposition candidates, often new to politics, are delegitimized with the same strategies used against CSOs. Through consistent harassment (or, in modern parlance, trolling), they are distracted from developing a political alternative, divided from potential allies, and detached from their potential supporters in the electorate. As with CSOs, the harassment often is low-level and hard to discern for bystanders, yet easy to deploy with mostly legal measures and a few extralegal jabs.⁶²

Attacks on CSOs do not just constrain civic advocacy. They also invalidate hope. In semi-authoritarian contexts, these attacks fit into a broader strategy of signaling to voters that: their views do not matter; there are no credible alternatives; within this dispiriting mess the government will broadly provide order, basic services, and pensions, as long as you comply; yes, we’re watching; and you better privatize your liberalism, or go abroad.⁶³

60. This analysis draws on observations of politics in the former Soviet Union, within Organization for Security and Cooperation (OSCE/ODIHR) electoral observation missions since 1999, and on oversight of more than 200 focus groups and dozens of surveys, primarily in Georgia, Armenia, and Azerbaijan, but also in Central Asia and in other countries.

61. An example from one of many focus groups can be found at http://bit.ly/FG_NDI-Georgia. The sentiments expressed on page 14 recur in practically all focus groups in such settings.

62. My analysis of some of these aspects in Georgia, in 2016: “Making Do with the Crew,” *Open Democracy*, October 10, 2016, <http://bit.ly/OD-GeorgiaElections>.

63. The idea of “privatizing liberalism” in repressive contexts has been put forward by Justin Burke, editor of *EurasiaNet*. He has covered the region since the early 1990s (personal conversation, not yet published at *EurasiaNet*).

Following this strategy, it can make sense for representatives of the ruling party to make demonstrably untrue statements and to be charged with lying. In Hungary, for example, commentator after commentator has suggested that if the government really cared about transparency, it could start by being more transparent itself.⁶⁴ Yet the government proceeds. Politics as a sphere of petty lies, in which everything is dirty, appears to be part of the message many governments want to convey.

Politics of spectacle, as described here, is an ideal type. Describing it in this form can exaggerate its coherence. Many of the governments executing such strategies remain clumsy, myopic, and prone to major errors of judgment. At the same time, there is an overall equilibrium, functionality in dysfunctionality, and CSOs need a nuanced strategy in response.

REFLEXIVE RATHER THAN LINEAR: CSO RESPONSE

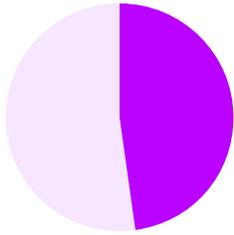
CSOs are not necessarily well prepared for an onslaught in a context of ill will. In the mini-survey, not one respondent thought that CSOs were well prepared, and most said “organizations like theirs” were badly prepared. Moreover, the skills and practices that help in value-based advocacy may not be the ones that are needed to do well when on the defensive.

When on the defensive, CSOs no longer operate in the linear context of established advocacy. Such advocacy typically starts from an issue; builds on international precedent; and involves a coalition, a search for allies, and persistent work to promote change. Some CSOs, in this context, are familiar with framing issues to appeal to nonengaged citizens, but many are not, as the implicit models of advocacy often are driven by broadly rational approaches to policy. The politics of clampdown, by contrast, typically seek to disrupt and undermine.

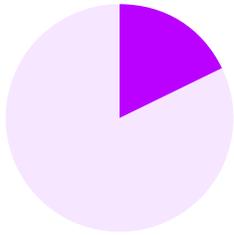
64. Buldioski, “Hungary’s Opaque Aims at Civil Society.”

Trust in Civil Society Organizations

In a study in Armenia, it was shown that CSOs greatly overestimate the trust they enjoy.



NGO leaders believed that 48% of the population fully or somewhat trusted NGOs.



The actual number was 18%.

There is some research to suggest that CSO leaders misjudge their support in the population. In an insightful study in Armenia, Yevgenya Paturyan showed that CSOs greatly overestimate the trust that they enjoy. According to her 2013 study, NGO leaders believed that 48 percent of the population fully or somewhat trusts NGOs. The real number was 18 percent, according to the Caucasus Barometer. It is at least possible that this pattern holds in other countries as well.⁶⁵

In heated debates on the responsibility of CSOs, organizations working on transparency and accountability may have a special role. They have a chance to contribute and to potentially even shape public debate, as they are an authority on the subject. In this context, too, they need to make sure that their contribution and advocacy cannot easily be twisted to attack the CSO sector more broadly. Lastly, CSOs working in the accountability field ideally should behave as role models regarding CSO practices and, as the representative of a development think tank put it, “walk their talk.”⁶⁶

65. Yevgenya Paturyan, *Continuous Detachment, Decreasing Trust: Should Armenian NGOs Worry?* (Fribourg, Switzerland: Academic Swiss Caucasus Net, 2013), http://bit.ly/Trust_NGOs_ARM.

66. "What Think Tanks Say about Us," *Transparify*, <http://www.transparify.org/what-think-tanks-say-about-us/>.

More Context on Civil Society in Hungary

Does the proposed regulation serve its proclaimed transparency purpose? One CSO advocate expresses his doubts.



Goran Buldioski, Director of the Open Society Initiative for Europe, March 2017

The fact is, NGOs in Hungary already publish financial records. The funding sources of organizations like the Hungarian Helsinki Committee and Transparency International Hungary are matters of public record. The Open Society Foundations lists its grantees on its website so the "foreign funding" should come as no surprise. The government will already know other information it says it would like to have—the salaries of NGO officials—through their tax returns.

... The government is very selective when it criticizes foreign sources of domestic spending. Hungary accepts more than 5.5 billion euros (about \$5.9 billion) in EU funding and it is one of the major net beneficiaries of aid from Brussels. Nor is it squeamish about accepting a \$10 billion loan from Moscow. If we use the same logic, should not these funds be labeled as foreign, or will this label be reserved only for those who operate independent of the government and dare to have a different opinion? And this leads us to see through the smoke and to discern the real motivation behind the Hungarian government's actions.

While true transparency is only to be encouraged, it clearly is not the goal. The government may say that it wants to expose the foreign sources of funding in Hungarian civil society, but its real target is civil society itself.

Goran Buldioski, "Hungary's Opaque Aims at Civil Society," *US News & World Report*, March 22, 2017, http://bit.ly/Buldioski_NGOLaw.

Transparify's Experience: A Real Transparency Gap

Yet how transparent and accountable are CSOs, really? While transparency of funding is only one dimension of a complex issue, Transparify's assessments showed that many CSOs are not as transparent as they could be and that proactive transparency may present an opportunity to get ahead of the debate.⁶⁷ Donors can play a helpful role in that context, by nudging CSOs to be transparent at the point of application.

LOW LEVELS OF CSO TRANSPARENCY: BASELINE FINDINGS

When it comes to their donors, many CSOs are not acting transparently. Transparify's assessment illustrated this gap regarding the transparency of funding, asking, Can a citizen identify who pays for the policy agendas that are being advanced? In its 2013 baseline survey, Transparify found that only 12 out of 169 think tanks were fully transparent about who funded their institution, with how much money, and for what purpose. The low rate of transparency—less than 10 percent—is striking, as think tanks typically require governments to be at least somewhat transparent so that the think tanks can access information they need to work.⁶⁸

Equally striking was the low level of transparency of the organizations participating in the high-profile International Open Data Conference in Ottawa, in 2015. Transparify found that only 12 out of 34 organizations provided comprehensive information on their funding.⁶⁹ Many open-data advocates were opaque.

67. This section builds on work the author has done with Transparify, separately, since 2014. Transparify engaged with dozens of organizations in Latin America, Africa, and South Asia, and in the US and Europe. While the reports on CSO and think tank transparency are available, less has been written on why institutions are not transparent about funding sources. Transparify's experience addresses only one of the dimensions of potential criticism of CSOs, but the organization can do so in

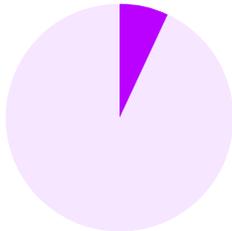
depth, across contexts. I would like to thank Transparify colleagues Till Bruckner, Tinatin Ambroladze, Jenn Lappin, Dustin Gilbreath, Ian Goodrich, and Kristie Evenson in this context.

68. See *How Transparent Are Think Tanks about Who Funds Them 2016?* (Tbilisi, Georgia: Transparify, 2016), http://bit.ly/Transparify2016_report. A previous British effort, *Who Funds You*, came to similar conclusions and was focused on the UK context. "UK Think Tanks

and Campaigns Rated for Funding Transparency," *Who Funds You?* <http://whofundyou.org/>.

69. See "IODC15—How Transparent Are Pro-Transparency Advocates?" Transparify, <http://www.transparify.org/ioc15/>.

Transparency Levels in Policy Research



In a 2013 study, Transparify found that only 12 out of 169 think tanks were fully transparent about their sources of funding.

Follow-up efforts have repeatedly shown similar numbers, whether it be for think tanks in Spain, France, or Indonesia; for Think Tank Initiative grantees (funded by two TAI partners); or for advocacy organizations active in other fields. Overall, levels of transparency remain low. Efforts for self-regulation of CSOs have tried to increase disclosure but seem to have had limited purchase, possibly because some of the demands are resource-intensive and such initiatives may be hard to fund and sustain.⁷⁰

Thus, many CSOs, especially advocacy organizations, indeed are vulnerable to the charge that they demand transparency without providing it themselves. The inconsistency puts CSOs on the defensive and makes for good headlines, as illustrated in Hungary, where several pro-government media outlets in 2015 seized on the low levels of disclosure of several think tanks critical of the government.

OPPORTUNITY: GEORGIA, KENYA, THINK TANKS

Yet Transparify's experience also illustrates how organizations can use disclosure to frame the debate to their advantage.⁷¹ On Twitter, a Kenyan think tank highlighted that being recognized as transparent underlined its legitimacy in demanding transparency from the government.⁷² In Georgia, five organizations invited national media to the launch of Transparify's report, to proactively promote that they had been assessed as highly transparent, emphasize that they were excelling and doing well in an international comparison, show that they had nothing to hide, and receive coverage in the evening news in major TV outlets. Organizations in various countries—from Montenegro across Namibia and Pakistan to Sweden—have similarly highlighted the positive assessment of their own transparency, sometimes displaying Transparify's five stars on their websites.

Publicly highlighting an organization's high level of transparency is not enough to ward off a crackdown by a determined government. As the previous section highlighted, governments have a broad range of legal and extralegal tools to constrain CSOs.⁷³ Yet being transparent about an organization's funding, especially if it is externally certified, can help CSOs to enter any debate with

70. European Center for Not-for-Profit Law, *Current Trends in Self-Regulation of Civil Society Organizations in Europe: A General Overview*, 2015, http://bit.ly/Trends_Regulation. Accountability Now is currently working to develop baseline standards for CSOs. Tentative findings for CSOs not working in policy or advocacy do not seem to return better results, perhaps because there is no large-scale debate on this issue.

71. "Why Transparency Matters, According to the Think Tanks," Transparify, July 19, 2016, <http://www.transparify.org/blog/2016/7/14/why-transparency-matters-according-to-the-think-tanks>.

72. Kwame Owino (@IEAKwame), "@IEAKenya ranked as 5 Star think tank on financial transparency. Joint first in Africa with the @AERCAFRICA," Twitter, February 17, 2015, 6:10 a.m., at <https://twitter.com/IEAKwame/status/567687608277291008>.

73. The catch-all argument against journalists, and transparency or human rights advocates usually is "security."

Transparify's experience illustrates how organizations can use disclosure to frame public debate to their advantage

messaging that is easy to understand, rather than having to contest charges that are at least partially credible. Entering the debate from the high moral ground may help organizations to mobilize support.

Gaining public support matters, as massive protests have repeatedly managed to stop governmental attempts to constrain civic space. In Bulgaria, large protests in 2013 against government corruption also seem to have headed off legislation intended to constrain CSOs. In Romania, large protests in 2016 prevented legislation that would have made government less accountable. In Kyrgyzstan, the parliament voted down a controversial foreign agent law in 2016.⁷⁴ Moreover, many governments with authoritarian tendencies appear to move tactically in their attempts to constrain civic space, proceeding step-by-step to test what they can get away with. The focus of recent public debate on the resurgence of authoritarianism may, falsely, suggest that this reversal is historically inevitable. The examples above, and many others, show that such reversals can be contested on multiple levels.

WHY NOT BE TRANSPARENT?

Yet if transparency of funding seems like a sensible and even necessary move for CSOs' public positioning, why is it still the exception rather than the rule?⁷⁵

From Transparify's engagement with 100-plus institutions (not all responded to engagement) across more than 40 countries, four main reasons for lack of transparency stand out. These may be indicative of other reasons behind additional shortcomings that can put CSOs on the defensive.

Not Wanting to Be Transparent

Some organizations do not want to be transparent. At the extreme on this spectrum, some organizations actively advertise their "donor privacy" in response to calls for transparency. Those organizations often take positions that are closely aligned with industry interests against regulating tobacco or sugary beverages.⁷⁶

74. Public mobilization seems to play at least some role in Kyrgyzstan, see "Shrinking Space for Civil Society in Pre-Election Kyrgyzstan," *Civicus Monitor*, January 5, 2017, <http://bit.ly/CIVICUS-Kyrgyzstan>.

75. One nonprofit whose website provided extensive information for this report illustrates that transparency is not yet the norm. The organization's annual report highlights that \$6.8 million of its funding comes from "US and other government grants," whereas \$1.4 million

is derived from "foundation and corporate grants." Funding, in other words, could come from pretty much anywhere.

76. Transparify, *Think Tanks in the UK 2017: Transparency, Lobbying and Fake News in Brexit Britain*, February 2017, <http://bit.ly/TransparifyUK-2017>.

At the same time, there may be good-faith reasons for not wanting to be transparent. Some institutions worry about being perceived as too small and want to hide how threadbare they are. In a twist on this rationale, one think tank representative commented in a private 2015 conversation that “we would prefer that the government in Turkey believe we are funded by the government of Germany, so that they take us more seriously.”

Protection can be a concern. In 2014, a leader of a Hungarian think tank commented that in his view, there was the atmosphere of a witch hunt in which association with some donors carried a risk for an organization. In 2017, the head of a nonprofit media outlet said that they believed that their journalists in Russia would be targeted if it was known that some of their projects are funded from the Open Society network.

Yet the protection argument has limited reach, as many CSOs in comparatively free environments also remain opaque. In those cases, three other reasons stand out.

Novel Debate and Websites Not Leveraged

In at least some cases, the leadership of CSOs genuinely do not understand the debate about their transparency. They derive their sense of legitimacy from engagement with the issues on which they work. Receiving positive feedback and in contact with beneficiaries, they take as novel the idea that they may be challenged to be explicitly transparent.

Proactive transparency can be even less on activists’ minds if some degree of disclosure is mandated by law. When asked about transparency, some US organizations responded that their IRS 990 sheets—providing details on their financials, including executive salaries (though not on funding sources)—are widely available. Similarly, nonprofit legislation in Australia, Hungary, and the United Kingdom puts much information in the public domain, suggesting to organizations that they already are in full compliance.

Another challenge is that websites are not always understood as tools for engagement and accountability. The leaders of some CSOs appear to experience

Transparency, in many cases, also is not anyone's job

their work through personal engagement and seem to see their websites as secondary, rather than as the primary way through which many citizens will engage with the organization. Transparify's review of more than 200 websites showed this as a distinct pattern. For approximately 15 percent of institutions, the organization of the website for public engagement apparently was not a priority. Consequently, the CSOs will not use the website as a tool to demonstrate transparency to a broader constituency.

No One's Job

Transparency, in many cases, also is not anyone's job. The diversity of team members that Transparify interacted with illustrated that the issue often cuts across departments. Communication professionals see their task, and their metrics, as outreach, prominent media citations, and clicks. The development office does not want to release the donor list they worked hard to cultivate. A representative of a major human rights watchdog in the US mentioned donor poaching as the main reason why the CSO doesn't disclose its funding in detail. Financial managers don't interact much with the communications team and don't have any real estate on the website, as became clear when Transparify found its most enthusiastic allies in transparency among chief financial officers. Institutional leaders are both lonely and harried, having to raise funding to keep their organizations going. On other dimensions, they are primarily in reactive mode.

There is no natural constituency in an organization to promote accountability to the outside. In recent years, some organizational job descriptions have begun to catch up, but for less experienced institutions, such workflows have not yet been established. Many institutions thus described an outside nudge as useful, to remind teams to address an issue they cared about.



DONORS LAG

A nudge from donors could help to make transparency the default, thus putting many organizations ahead in this debate. The Knight Foundation asks applicants to list the web page detailing funding disclosure, at the point of application.⁷⁷ This reminds organizations to keep their donor information updated when they are seeking more funding (organizations that do not wish to disclose their funding to the Knight Foundation can link to a page that explains their policy to the public). If more major donors included this nudge in their application procedures, transparency of funding could soon become the norm and, in the process, facilitate donor coordination. Such nudges could be a model on other relevant dimensions, too.



⁷⁷ See "Informed and Engaged Communities," Knight Foundation, <http://bit.ly/Knight-Fndtn-Transparency>.

How to Increase CSO Resilience — 18 Recommendations

■ Section 3:

Eighteen Recommendations for Donors and CSOs

Seeing CSOs, grantees, and sometimes friends under attack is a jarring experience. Advocates may be particularly troubled when some of their arguments or initiatives are repurposed to constrain fellow CSOs.⁷⁸ What, then, can one do? Does it make sense to continue pushing for tools that may be used for reverse purposes? Overall, this report suggests that it remains sensible to continue to promote transparency and accountability globally, though the tactics should be localized as much as possible. There are four reasons:

- Continuing to promote transparency and accountability keeps the discussion where it should be—firmly on the policies—and pushes back against the attempts to reframe these discussions as being about the CSOs.
- Many of the governments that push transparency are not transparent themselves and use rhetorical tactics (sometimes referred to as “what-aboutism”) to distract. The discussion should engage the governments and boomerang their arguments back to them. The Hungarian government, for example, has made transparency-based criticisms of CSOs while being opaque about many of its own endeavors.

⁷⁸ See, for example, Hayes, “CounterTerrorism, Policy Laundering,” and the FATF: Legalizing Surveillance, Regulating Civil Society,” on how anti-money-laundering conventions were used against CSOs.

- Measures have value based on their own merits, not on how they can be abused. Building codes often are used to extract bribes, yet properly applied, they save lives, especially in earthquake zones. Similarly, suggesting that governments enforce taxes on the affluent as consistently as they do on their middle class remains a sound argument, even if tax legislation has often been abused to harass the political opposition.
- The most promising strategy is to ensure that arguments for transparency and accountability are presented in terms that are attractive to a non-elite constituency in the respective countries. Those arguments may often be made in local terms and with less focus on an international agenda. In contrast, putting transparency and accountability on the back burner because of uncertainty about potential abuse would hand victory to the governments that engage in rollback.

Thus, the overall pro-transparency strategy remains sound, though continuously adapting the tactics to context will help achieve greater impact. The language that grantees use with donors likely is not the language that always appeals to local constituencies.⁷⁹

More specifically, below are several recommendations that follow from the research. Some of these suggestions come from the respondents to the mini-survey. The recommendations are not exhaustive, as additional insights on how to proceed will derive from increased practical experience.

The 18 recommendations are categorized as short, mid-, and long term.

SHORT-TERM RESPONSES

1. **Prepare for rollback:** Ideally, CSOs should prepare basic responses and a communications plan. Attacks, when they happen, often are swift. Once a crisis hits, preparation speeds up the response, allows CSOs to focus on organizing political support, allocates team roles, and helps to reassure team members. Preparations could include talking points, press releases, internal

79. What language appeals locally is best tested empirically, with focus groups and surveys. (Sample sizes can be small for such messaging surveys, keeping them inexpensive.) Provisionally, based on focus group results across a few countries, it appears that local constituencies obviously want to have impacts described in tangible ways and, less obviously, that they are attracted to notions of justice such as reciprocal fairness. So far, they are less taken by a language that focuses on

rights, especially less so if these rights are universal, as they do not necessarily see global rights working in their favor. Minority rights are often seen as a threat, as rights can be viewed as a zero-sum game: More for you is less for me. There is extensive research to be done on messaging to those who feel left behind.

communications and information security, social media policy, and lists of potential supporters, as well as plans for continuation in case the rollback escalates. Basic ideas could be brainstormed in a leadership retreat in one afternoon. Several techniques can be useful, including scenario-planning, pre-mortems, and red-team–blue-team exercises. The team could also be asked which aspects outlined in this report might be relevant to their local context, to inspire discussion. Though doing so is a sensitive topic and hard to undertake for some organizations, planning for a crisis can be liberating and reduce the psychological toll of finding one’s organization on the defensive.

2. **Audit and reduce vulnerabilities:** Several respondents suggested that organizations “keep their paperwork in order,” “be clean and responsible,” and “introduce good governance.” Coming from donors, this admonition may seem intrusive. However, it also seems to be a genuine concern expressed by CSO peers. In the midterm, donors could support and facilitate peer audits, from across countries or contexts, to help reduce exposure while emphasizing lateral support.
3. **Train for debates:** Many CSO leaders have a good understanding of how to advocate issues, yet they are less familiar with how debates can be framed and the very notion of framing as it has been used in examples from the election consultant Stanley Greenberg. An understanding of these approaches, and practice in applying them, can help CSOs to hold their ground and to connect with the citizens whom they need to mobilize to foil challenges to their space. Focus group research with local constituencies may help CSO leaders understand what kind of framing has appeal and which approaches inadvertently undercut the support they seek to mobilize. Experienced trainers can convey basic concepts in three hours, and trainings could be included in other training packages or events, to make them easier to deliver. CSOs could then follow up, as is useful for them.
4. **Lawyering up:** The mini-survey suggested that few organizations are aware of legal resources that may be available to them. Some respondents referred only to multinational conventions, rather than to local and practical resources. A clearer awareness of legal advice and its availability—as it pertains to CSOs and their issues—may be useful. Though some organizations are well funded, many others will not be able to afford quality legal advice. Organizations that receive

The overall pro-transparency strategy remains sound, though continuously adapting the tactics to context will help achieve greater impact

project funding, especially, will struggle without legal support, as only core funding can be rededicated to nonproject purposes. To be clear, legal support will be relevant only in some contexts. As one respondent to the mini-survey commented: “[N]o rule of law—restrictions are the result of palace concerns about stability (and continued impunity) versus countervailing foreign donor and ‘street’ pressure, not by legalistic ins and outs.”

5. **Flexible public relations (PR) support:** In a crisis, it is essential to get PR materials right. Flexible PR support for grantees—perhaps by an external provider who is on standby—could help ensure appropriate positioning. This support could be relatively inexpensive and could be free for a set number of hours of support per grantee. An experienced external professional could help CSOs avoid a range of mistakes. The recent months have shown that even established institutions have buckled under strain when relying on their own resources.⁸⁰

Donors or donor networks could undertake the following specific activities, in the short term:

6. **Discussion and workshop:** A workshop could help to develop some of these recommendations. It could be useful to convene a range of participants with diverse experience. Many donors already have strategies or funding instruments that could be tweaked to be effective in a context of rollback. CSOs have experience operating in adverse circumstances. Sharing that experience should be worthwhile for all groups interested in the underlying questions. To lower the organizational load, it would make sense to integrate this discussion and workshop as part of other events, rather than offer it as a stand-alone event.
7. **Undertake a broader survey:** The mini-survey undertaken for this study provided valuable information but had a limited reach, due to time and distribution. An expanded version—ideally in Spanish for Latin America and possibly French for Francophone Africa—could deepen the insight on current trends, offer some segmentation, and collect further ideas on how to increase the resilience of CSOs and what an assistance package could look like.⁸¹
8. **Test assistance package:** Donors could test a support package in two or three countries in the short run, to provide support to CSOs in the form of training, self-assessment tools, mentoring, and some flexible legal and PR support.

80. I discuss this in detail in a chapter on crisis communications in "Handbook for Professional Communication", BoD, Norderstedt, 2017, bit.ly/Handbook_BoD.

81. Readers who still want to add their views to the ongoing collection can do this at <http://bit.ly/NGO-Pushback-Survey>.

9. **Positive deviancy and “how it fell apart” case studies:** Three or four case studies could be useful, especially if they are rolled into a highly readable report. Two or three case studies could focus on cases in which CSOs successfully organized a response to pushback and kept their spaces open in difficult contexts, to highlight lessons that may be transferable.⁸² It would be useful to include one or two cases in which prominent and well-resourced CSOs miscalibrated their responses. Though this is a sensitive issue, a compelling narrative may help readers understand how such situations can play out. Such case studies could be executed by different actors in different regions who want to gain a more comprehensive understanding of the challenge.

MID- AND LONG TERM

Some recommendations call for a medium- to long-term perspective, since they require discussion and engagement (though agile CSOs and donors may be able to move quickly). These recommendations include the following:

10. **Advocate replicable approaches:** Stakeholders developing regulations for CSOs in Western contexts should be aware of how they influence the development of regulations in other countries. Combining policy concerns (from opaque funding to fake news) with legal measures that may be expedient in the short term can set tricky precedents. This risk is particularly relevant to the current EU debates on the transparency of CSOs, which likely will have an impact beyond the EU’s own borders. Similarly, a tightening of the EU transparency register—popular with many transparency advocates—to constrain lobbying could have inadvertent effects on CSOs too. CSOs, in turn, may want to contribute practical suggestions to these debates and lead by example.
11. **Flexible funding mechanisms:** The CSOs themselves are well positioned to decide how to navigate their terrain. Experience from other countries will be helpful in inspiring ideas, but within countries, the CSOs need to adapt what will work for them. Even organizations working in the same issue areas in the same countries may face situations that are different, based on their history, relationships, and approaches. Thus, it will be good to have a range of tools that can be tweaked to context. To be clear, partners should still challenge CSOs to

82. The Pew Research Center has also documented instances where CSOs enjoy high levels of trust in difficult environments. Richard Wike and Caldwell Bishop, “Opinions on Human Rights Organizations: India, Indonesia, Kenya and Mexico,” Pew Research Center, October 3, 2017, <http://pewrsr.ch/2gJFp20>.

reflect on how they can position themselves. The “we are from here and know how this works” viewpoint, taken to an extreme, can be a recipe for complacency. The interlocutors on these conversations need to bring tact and credible experience.⁸³

- 12. Provide tools and facilities from outside:** Some donors have succeeded in providing core tools and facilities from the outside. For example, in some repressive contexts, meeting spaces have been provided by donors through their own funding, making it possible for civil society groups to meet under the aegis of a foreign flag and making it harder to curtail engagement. Other platforms, including dedicated project websites, could be provided through other flexible instruments and beyond the reach of host governments.
- 13. Support hybrid advocacy and engagement:** Often, civic engagement is thought of as either a full-time or non-serious activity. Yet single-issue advocacy may be carried forward with few resources in hybrid careers, where small grants can support enough activity to reach a worthwhile goal. Fellowships are another form of support, and they seem to work well in various cross-border contexts.⁸⁴ Fellowships allow individuals to focus on an issue for an extended time period and can be used flexibly. Such fellowships are harder for governments to interdict than institutional funding. Also, they can potentially connect individuals to existing international host institutions, providing additional support.
- 14. Develop assessment frameworks and exercises:** Based on pilot audits, an organizational assessment may be useful for CSOs to assess (and self-assess) how ready they are to deal with rollback. These assessments could help to structure the discussion on positioning and preparedness. Post-assessment feedback would improve the assessment tool over time. Moreover, Transparify developed one practical exercise on reputational risk that is based on scenarios, exploring how various actions can put an organization at risk. This exercise was well received, is freely available, and could be adapted to reflect on risks and preparation more broadly.⁸⁵
- 15. Take resilience seriously:** One respondent in the survey highlighted the need for safety protocols for daily work, including e-security and “psychological readiness to work in an aggressive environment.” Resilient organizations typically undertake stress tests and train in team exercises. Scenario-based training that

⁸³ One organization, seeking to strengthen local partners' resilience, scheduled yoga lessons and psychological counseling, both mandatory, during a strategy retreat. This appears to have appealed to some participants. Others were livid.

⁸⁴ A well-known fellowship for those under threat is Scholars at Risk. Other fellowships may need to be somewhat discreet about this aspect of their design, to protect their fellows.

⁸⁵ Enrique Mendizabal, Hans Gutbrod, and Till Bruckner, “The Transparify Think Tank Integrity Check,” *On Think Tanks*, February 21, 2017, <http://bit.ly/IntegrityCheck>.

lasts 36 hours, with escalating crises to test team responses and procedures in a context of exhaustion, may be a good complement to existing training formats. Currently, significant amounts of existing CSO training typically is participatory or lectures. CSOs need to train under stress to be ready for stressful environments.

- 16. Be clear and consistent:** For donors in this context, it is important to be clear and consistent. For example, some donors publish extensive details on the projects they support. In many contexts, this is appropriate, but it may not be so when it can result in organizations or individuals drawing unwanted attention. Being clear on expectations, and being consistent, allows organizations to decide which donors are suitable partners. A sensible approach is to be transparent by default and to provide succinct and accessible explanations for variations from the norm.

Primarily for CSOs, the following recommendations, though familiar, take on an added urgency in a context of pushback. They are primarily long-term recommendations, since such a reorientation may well take three to five years.

- 17. Connection to grassroots and consistency:** Several respondents to the mini-survey emphasized that CSOs could do more to “build a strong local constituency,” to “demonstrate relevance to real people,” to “create networks,” to “combine efforts,” to “find local grassroots sources of funding,” and to “overcome the silo attitude,” as it “is harder to come after collectives than individual organizations.” Donors could support tools, including digital organizing tools and platforms, that help to connect with grassroots efforts.
- 18. Reaching across the aisle:** In Western contexts, for example, in Canada, under a polarizing government, organizations that were politically exposed often brought moderates of the opposing political camps into their boards or advisory structure to obtain an early warning. This strategy is not feasible in all contexts but may be a sensible depolarization strategy, itself a contribution to the political culture. While strident advocacy can be an effective strategy, there also is merit in reaching across political divides. Following such a strategy may help to revive CSO governance structures, which often remain underdeveloped.

Conclusions: Prepare, Be Mindful of Precedent, and Close Gap

This briefing paper was intended as a mapping of the government arguments and mechanisms of using transparency and accountability to argue for regulating CSOs. Its key point is that transparency and accountability seem particularly useful as arguments for governments to undercut public support for CSOs. Once public support is undermined, it is much easier for governments to introduce measures to stifle civic engagement. This presents a challenge to which CSOs (especially those working on transparency and accountability), donors, and governments need to adapt.

Central to the recommendations is the need to better prepare CSOs to respond to public attacks in a challenging context and to develop countermessaging strategies.⁸⁶ Empirical research and testing help to understand how CSOs can mobilize public support and to illustrate to CSO leaders how some responses are more likely to succeed than others. Democratic governments need to be mindful of what kind of precedents they set, given how reference to Western regulations is used in other countries. CSOs, too, may want to ensure that their advocacy does not inadvertently constrain fellow advocates. Closing the existing transparency gap seems a simple and sensible step, an effort to which donors could contribute. Adapted support strategies would allow CSOs to respond flexibly. Moreover, an analysis of bright spots in which CSOs effectively won the debate and pushed back against legislation may be instructive.

A follow-up report in two to three years could take stock of how practice has evolved in response to this challenge and highlight which strategies have proven promising in slowing down or even reversing rollback. Likely, a focus will be on winning the public debate to create a context in which CSOs enjoy widespread support and thus strengthen their positions within their respective political systems.

⁸⁶ Stanley Greenberg's focus groups with anti-elite voters may be a model for such a study. "Macomb County in the Age of Trump," Democracy Corps, March 9, 2017, http://bit.ly/Greenberg_Macomb.



TRANSPARENCY & ACCOUNTABILITY INITIATIVE

Transparency and Accountability Initiative (TAI) is a collaborative of leading funders of transparency, accountability and participation efforts worldwide. Our members envision a world where citizens are informed and empowered; governments are open and responsive; and collective action advances the public good. Towards this end, TAI aims to increase the collective impact of donor interventions through deeper learning and collaboration, influencing grant making practice. TAI focuses on the following shared priorities: data use for accountability, strengthening civic space, taxation and tax governance, and learning for improved grantmaking.

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