False dichotomy: transparency as an excuse to undermine civic space

We recently talked to Luben Panov, Senior Program Advisor at the European Center for Nonprofit Law (ECNL), which is based in The Hague (Netherlands), and works to ensure an enabling environment for civil society.¹ He discussed about some transparency-related actions undertaken by governments as excuses to restrict the enabling environment for civil society, in particular, regarding fundraising of foreign funds.

GS: In February 2023, a group of parliamentarians introduced the draft Law of Georgia on Transparency of Foreign Influence. Under the draft law, organizations that receive funding or other support from foreign funders that make up at least 20% of their annual revenue will be labeled “agents of foreign influence.” To what extent new type of legislation such as the bill on Transparency of Foreign Influence in Georgia² can affect CSO operations and the civic space?

LP: By looking at recent trends concerning the shrinking of civic space, we can observe some governments making use of transparency not as a real argument but more as an excuse to limit the enabling environment for civil society, because greater transparency is not the real goal pursued. Instead, governments seek to target critical voices. In the case of Georgia, the Draft Law on Transparency of Foreign Influence, which was finally not approved, targeted civil society organizations and media outlets with more than 20% of their income coming from foreign sources of funding. However, this bill did not cover business companies which were owned by foreigners or financed from abroad. The narrative underlying this type of legislation is that foreign funding is equivalent to foreign influence. This narrative, which is being promoted by some governments, becomes a

¹ The enabling environment for civil society encompasses actions and activities where people can come together and protest peacefully, register easily as an organization, have access to resources and operate without state interference and participate in decision making in their own countries.
problem since foreign funding tends to be the major source of funding for CSOs in developing countries; thus, delegitimizes everything CSOs stand for. In this way, any opinion expressed by a CSO practitioner can be portrayed as not her/his true opinion and, consequently, not being in the interest of the country. So, if one accepts this kind of narrative, a variety of additional restrictions could follow later on. For instance, in Azerbaijan, there is a need for CSOs to request permission for accessing foreign funding. In Belarus, foreign funding is only allowed for specific goals or entities.3 Meanwhile, in Russia, the government has come up with a list of non-desirable organizations which can be expelled from the country. So, once the first step is taken, additional steps will follow to restrict the way CSOs operate. In this regard, Georgia is only one example of a trend being observed in different places around the world.

In other cases, some governments can make use of existing standards to discourage civil society operations, for instance, by misapplying the Financial Action Task Force (FATF) standards on fighting money laundering and countering the financing of terrorism.4 The FATF standards speak of a risk-based approach. Yet, FATF has noticed that there can be unintended consequences on how countries implement the FATF standards, specifically, recommendation #8 for nonprofit organizations5. For example, in 2020, Turkey adopted restrictive legislation affecting the CSOs’ operations, including among others their possibility to raise funds by introducing a requirement to get government’s prior permission to engage in online fundraising campaigns. The FATF specifically highlighted that Turkey should “fully implement a risk-based approach to supervision of non-profit organisations to prevent their abuse for terrorist financing, taking steps to ensure that audits conducted are risk-based, that supervision does not disrupt or discourage legitimate NPO activity such as fundraising, and that sanctions applied are proportionate to any violations.”6 Serbia is another example where government authorities citing the counter-terrorism and anti-money laundering standards sought to get information on the bank accounts of 50 CSOs and individuals. This was brought to the attention of the FATF which issued a statement indicating that FATF standards are designed to protect CSOs from terrorism-related financing, so this measure would be in direct contradiction to the FATF standards. Further, FATF stressed that any measures used to oppress human rights under the pretext of counter-terrorism would be categorically unacceptable.7

GS: In July 2021, the OECD’s Development Assistance Committee (DAC) unanimously adopted the DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance. How can CSO

4 Please see Global NPO Coalition on FATF https://fatfplatform.org/
5 The FATF has launched a project to study and mitigate the unintended consequences resulting from the incorrect implementation of the FATF Standards, including de-risking, financial exclusion and undue targeting of NPOs. You can learn more at https://www.fatf-gafi.org/en/publications/Financialinclusionandnpoissues/Unintended-consequences-project.html
7 See FATF Statement on Serbia case available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35813
transparency and accountability measures - proposed in the OECD DAC Recommendation, as well as by the Global Standard for CSO Accountability - confront some government’s narrative which seeks to pursue delegitimizing CSOs in some countries?

LP: First, transparency and accountability are very important for fulfilling CSOs’ missions, as well as for confronting disinformation. Thus, CSOs must be open and engage with people, listen to them and involve them as volunteers, supporters, members, donors, etc. This is particularly important when governments seek to introduce restrictive measures or launch negative campaigns against CSOs. These tactics are doomed to fail if people know what CSOs stand for and do. If one works or engages with a particular civil society organization and shares its mission, s/he won’t believe the government accusation that it represents foreign interests.

For this, CSO self-regulation and constituency building – although both take time – are crucial elements. For instance, in the Netherlands, some banks have used self-regulation when conducting risk assessments of certain type of customers or clients. That is, if an organization is certified or follows the standards set by an umbrella association made up by peers, then the risk factor tends to be lower when conducting the due diligence process, and the bank can operate more easily with such organization. So, a certified CSO can get a lower risk level than a non-vetted organization.

That’s why the OECD DAC Recommendation also calls for donors to support voluntary CSO efforts around self-regulation. However, in more sensitive environments, it is important to strike a balance between regulation and self-regulation, as well as to determine the extent to which transparency is needed and/ or privacy must be protected.

GS: To what extent can the locally-led development agenda prevent government efforts to delegitimize CSOs benefiting from foreign sources of funding?

LP: First, I would like to underline the difference between locally-led processes and government-determined priorities. Sometimes, there is pressure on donors to support government priorities or restrict funding which does not support government priorities. Yet, in jurisdictions characterized by closed civic space, government priorities usually do not include protection of human rights, promotion of democracy, etc. Second, priorities must be determined by organizations working on the ground because they know best the local situation. Yet, there are some topics which are important and need to be introduced and supported by larger international organizations (by providing examples, sharing good practices, explaining the importance and giving strong arguments in favor of it) and transparency is one of those topics.

In order to prevent government equating CSOs’ raising of foreign funding to serving foreign interests, it is crucial that CSOs keep engaging individuals and communities on the ground so that their needs and priorities drive CSOs’ mission and programs. Therefore, one way to confront this argument is for CSO to demonstrate that they are accountable to their primary constituents, that is, to the people with whom they work on the ground and to whom they provide services.
GS: What can donors and international cooperation do to support CSOs and strengthening the civic space when they are under attack?

LP: Bilateral aid agencies, multilateral and international organizations and donors must not only provide support when restrictions are put in place but even before then. It is important to build CSOs capacities to monitor regularly the environment in which they operate and identify possible threats before they actually materialize; to invest in the capacity of CSOs to cooperate and react by supporting coalition-building.

Donors are usually eager to report on quick results derived from their financial support, and building coalitions and networks is not the best approach to showcase a good investment in the short term. However, it is crucial for donors to put in place mechanisms for CSO cooperation, so organizations can monitor and react to threats, as well as provide technical assistance for analysis of legislation to prevent such restrictions while also developing advocacy strategies. It is also key for civil society to share information as these actions are part and parcel of global trends. CSOs can be stronger by working together.