

## Discussion Paper

No. 2017-45 | July 13, 2017 | <http://www.economics-ejournal.org/economics/discussionpapers/2017-45>

Please cite the corresponding Journal Article at  
<http://www.economics-ejournal.org/economics/journalarticles/2017-29>

## Civil society challenged: towards an enabling policy environment

*Helmut K. Anheier*

### Abstract

The roles of non-governmental or civil society organizations have become more complex, especially in the context of changing relationships with nation states and the international community. In many instances, state–civil society relations have worsened, leading experts to speak of a “shrinking space” for civil society nationally as well as internationally. The author proposes to initiate a process for the establishment of an independent high-level commission of eminent persons (i) to examine the changing policy environment for civil society organizations in many countries as well as internationally, (ii) to review the reasons behind the shrinking space civil society encounters in some parts of the world and its steady development in others, and (iii) to make concrete proposals for how the state and the international system on the one hand and civil society on the other hand can relate in productive ways in national and multilateral contexts.

(Submitted as [Global Solutions Paper](#))

**JEL** F5 L31 H7 K33

**Keywords** Civil society; NGOs; G20

### Authors

*Helmut K. Anheier*, ✉ Hertie School of Governance & Max Weber Institute, University of Heidelberg, Germany, [Anheier@hertie-school.org](mailto:Anheier@hertie-school.org)

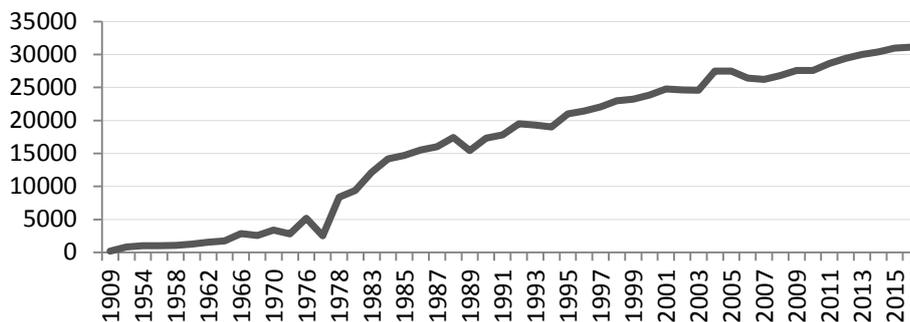
**Citation** Helmut K. Anheier (2017). Civil society challenged: towards an enabling policy environment. *Economics Discussion Papers*, No 2017-45, Kiel Institute for the World Economy. <http://www.economics-ejournal.org/economics/discussionpapers/2017-45>

## Challenge

Civil society has experienced many changes in recent decades. Following a period of rapid growth in both scale and scope (nonprofit organizations account for 5–10% of GDP in most OECD countries; see Salamon et al 2013; Anheier 2014), and carried by growing policy expectations, resources and capacity, the past decade brought about a more complex, challenging environment for nongovernmental organizations including philanthropy:

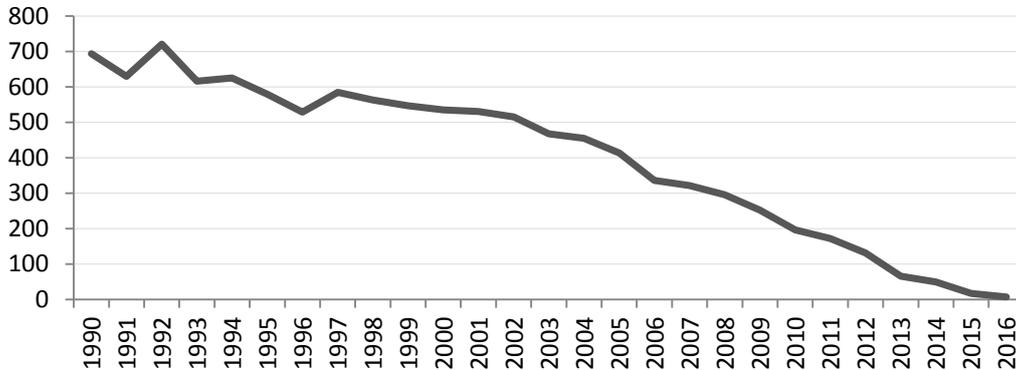
- Domestically and internationally, the rates at which civil society organizations (CSO) are being created slowed down significantly ([www.uia.org](http://www.uia.org); Anheier 2017). In the 1980s and 1990s, international CSOs experienced significant expansion in scale and scope; and whilst their total number continues to grow, the frequency of newly founded organizations has dropped since the global financial crisis and continues to do so (Figures 1a and 1b).
- Competition for financial resources intensified, putting pressure on capacity and sustainability, while at the same time, many countries adopted austerity budgets or shifted priorities and reduced public spending in areas where CSOs are typically active, from social service, health care and education to environmental sustainability or international assistance (OECD Social Expenditure Update). The funding of CSOs, which, according to Salamon et al (2013) relied on a mix of earned income (43% of total annual revenue), government grants and reimbursements (32%), and donations by individuals, foundations and corporations (25%) is changing. There is more pressure on earned income generation, and more demands for fewer public funds (Anheier 2014: 441).

**Figure 1a: Growth in the number of international NGOs (1900–2016)**



Source: <http://ybio.brillonline.com/ybio/v5> 27.06.2017 "©Union of International Associations 1997–present".

**Figure 1b: The number of international NGOs founded, by year**



Source: <http://ybio.brillonline.com/ybio/v5> 27.06.2017 "© Union of International Associations 1997–present".

- While private investments from G20 countries to developing countries has been increasing in the past years, the Center for Global Prosperity (CGP) at the Hudson Institute (2016) estimates for 28 Development Assistance Committee (DAC) countries and 11 non-DAC countries show that philanthropy comprises only \$64 billion of a total of \$513 billion of total private investments flows in 2014. The share of philanthropy has declined in relative terms and remained fairly stable in absolute numbers. The Council of Foundations (2010) sees the reasons for this pattern in greater barriers that have been set up between donor and recipient countries that range from anti-terrorist finance measures to local tax issues.
- Many countries either have or are considering introducing stricter regulations of CSOs, usually around issues of tax exemption and finance as well religion and advocacy (see [www.icnl.org](http://www.icnl.org) for overview). Internationally, changing geopolitics led to more restrictions on the cross-border operations and transactions of CSOs. Some G20 countries have imposed stricter controls of CSO-related financial flows and operations, often in the context of anti-terrorist measures ([www.fatfplatform.org](http://www.fatfplatform.org)). As a result, barriers of entry as well as transaction, regulatory and compliance costs have increased.
- The UN Human Rights Council, concerned that in many countries CSOs face threats (2016:2), emphasizes that “creating and maintaining a safe and enabling environment in which civil society can operate freely from hindrance and insecurity” (2016:3) supports member states in meeting their obligations and commitments, and fears that “without which equality, accountability and the rule of law are severely weakened...” (2016:3).

- Civil society itself is changing: advances especially in information and communication technologies and social innovations facilitated the growth of cyber activism, lobbying and even new international movements (Della Porta and Felicetti 2017; Hall 2017).

## Proposal

### **The Potential of Civil Society**

Civil society is a highly diverse ensemble of many different organizations that range from small neighborhood associations to large international NGOs like Greenpeace, and from social service providers and relief agencies to foundations commanding billions of dollars. It is an arena of self-organization of citizens and established interests seeking voice and influence. Located between government or the state and the market, it is, according to Ernest Gellner (1994: 5) that “set of non-governmental institutions, which is strong enough to counter-balance the state, and, whilst not preventing the state from fulfilling its role of keeper of peace and arbitrator between major interests, can, nevertheless, prevent the state from dominating and atomizing the rest of society.” For John Keane (1998:6), civil society is an “ensemble of legally protected non-governmental institutions that tend to be non-violent, self-organizing, self-reflexive, and permanently in tension with each other and with the state institutions that ‘frame’, constrict and enable their activities.” Taken together, CSOs express the capacity of society for self-organization and the potential for peaceful, though often contested, settlement of diverse private interests.

Civil society organizations (CSOs) represent interests and advance causes that may or may not be deemed in the public benefit by a particular government or political parties, and, indeed, businesses and other CSOs. But by most measures, most CSOs are serving the public good. Yet there are grey areas between advocacy and politics as there are between profit-seeking and nonprofit making activities or between influence and interference. Indeed, regulations are needed to regulate and control the borders between government, business and civil society, as John G Simon et al (2006) argued, and to do so both nationally as well as internationally.

As is the case for all institutions and organizations, political and regulatory frameworks shape the environment for CSOs as well. For several decades, most developed market economies have seen a general increase in the economic importance of CSOs as providers of health, social, educational and cultural services of many kinds. They have also seen new and renewed emphasis on the social and political roles of CSOs, usually in the context of debates about civic renewal. Indeed, these developments are taking place across many countries that otherwise differ much in their economic structures, politics cultures and social fabrics. They are driven, in large measure, by four broad perspectives that position CSOs in specific ways and allocate certain roles to them:

- First, CSOs are increasingly part of new public management approaches and what could be called a mixed economy of welfare with a heavy reliance on quasi-markets and competitive bidding processes. Expanded contracting regimes in health and social service provision, voucher programs of many kinds, and public-private partnerships are examples of this development. In essence, this policy approach sees CSOs as more efficient providers than public agencies, and as more trustworthy than for-profit businesses in markets where monitoring is costly and profiteering likely.
- Second, they are seen as central to building and rebuilding the realm of civil society itself, and for strengthening the nexus between social capital and economic development. Attempts to revive or strengthen a sense of community and belonging, enhance civic mindedness and engagement, including volunteering and charitable giving, are illustrative of this perspective. With the social fabric changing, civic associations of many kinds are seen as the glue holding increasingly diverse societies together. The basic assumption is that people embedded in dense networks of associational bonds are not only less prone to social problems of many kinds but also economically more productive and politically more involved.
- Third, CSOs are part of a wider social accountability perspective that sees these organizations as instruments of greater transparency, and heightened accountability for improving governance of public institutions and business alike. Such mechanisms include citizen advisory boards, community councils, participatory budgeting, public expenditure tracking, monitoring of public service delivery, and consumer protection in many markets and fields. The underlying premise is that conventional accountability enforcement mechanisms like elections, public oversight agencies and the media are falling short; CSOs are to become the social whistleblower and advocates for voices that would otherwise remain unheard.
- Finally, there is the policy perspective that views CSOs as a source of innovation in addressing social problems of many kinds. Indeed, CSOs are assumed to be better at such innovations than governments typically are: their smaller scale and greater proximity to communities affected and concerned makes them creative agents in finding solutions. Governments are encouraged to seek a new form of partnership with CSOs aimed at identifying, vetting and scaling up social innovations to build more flexible, less entrenched, public responses.

While CSOs can bring advantages, they also have inherent weaknesses, including (Anheier and Hammack, 2013; Anheier 2014: 214):

- Resource inadequacy, whereby goodwill and voluntary contributions alone cannot generate resources adequate and reliable enough to cope with many of the problems facing G20 countries.
- Free-rider problems, whereby those who benefit have little or no incentive to contribute, stand in the way of sustainable resourcing, too.
- Particularism, whereby CSOs focus on particular subgroups only while ignoring others, which can lead to service gaps; conversely, if CSOs serve broader segments of the population, they encounter legitimacy problems.
- Paternalism, whereby CSO services represent neither a right nor an entitlement but are at the discretion of particular interests that may not necessarily reflect wider social needs, let alone the popular will.
- Accountability problems, whereby CSOs, while acting as accountability enforcers and pushing transparency, are themselves inflected by such insufficiencies.

The challenge is clear: how can the advantages CSOs offer to society, and indeed to governments, be strengthened while minimizing any disadvantages? What is the right policy framework for governments and CSOs to balance their respective interests while realizing the potential of civil society? What rules and regulations, measures and incentives would be required? What balance between public control and public support is adequate?

Unfortunately, in recent years, many measures and regulations try to control rather than enable CSOs. Governments seem unclear as to what role or roles CSOs can assume in future, and what priorities to set. Some see them primarily as service providers and shun their advocacy potential, others see them as laboratories of new ideas and innovations, and others yet see them interfering the policy process, seemingly trying to influence if not dictate governmental agendas.

As Table 1 for G20 countries and Table 2 for a sample of other countries show in section “Existing Agreements, Policies and Monitoring”, governments send contradictory signals, and it is unlikely that CSOs can be service providers without being advocates and generators of social trust without operating as accountability enforcers. At one level, CSOs become parallel actors that may complement or even counteract state activities, and compete with business. At another, the state and CSOs are part of ever more complex and elaborate public-private partnerships and typically work in complementary fashion with other agencies, public and private.

Both are possible, as traditional notions of public benefit and public responsibilities have shifted from the state to other actors, which bring in the role of nonprofit organizations as private actors for the public good. The role of the state as ‘enabler’ and ‘animator’ of private action for public service has increased, and will continue to do so. This, in turn, will continue to push and pull CSOs in all the four directions illustrated by the various perspectives; amounting, in the end, to a positioning that is

as contradictory as it is dynamic, and as unsettled as it is increasingly recognized vital and important in economic, social and political terms.

In societies with different views of the public good, civil society creates institutional diversity, contributes to innovation and prevents monopolistic structures by adding a sphere of self-organization next to that of state administration and the market. Indeed, as we have seen, economists have suggested that the very origin of the nonprofit sector is found in demand heterogeneity for quasi-public goods — yet it is only now that we begin to understand the policy implication of such theorizing when looked at through a sociological lens: Civil society can become a field of experimentation, an area for trying out new ideas that may not necessarily have to stand the test of either the market or the ballot box. In this sense, CSOs add to the problem-solving capacity of modern societies. Yet these potentials have to be balanced against the weaknesses of CSOs, which also calls for policy responses seeking a balance between controlling and enabling measures in terms of regulation and support.

### **State–Civil Society Relation**

Of course, the relationship between civil society and government is complex and multifaceted. The meaning and magnitude of the relation differ by type of organization (larger international vs. smaller local CSOs), field (social services vs. international development), and levels of government involvement (e.g., national and international). What is more, the relationship involves different aspects such as funding (grants, fee-for-service contracts, concessionary loans, etc.), non-monetary support (goods and services in kind), mandates (legal requirements to involve CSOs in implementing policy), and, of course, regulations and accountability.

What are the theoretical rationales why government and CSOs develop some form of relationship? Economic theory offers three answers to this question, each casting CSOs in a different role: (i) substitute and supplement; (ii) complement; and (iii) adversary (see Steinberg, 2006; Anheier, 2014, Chapter 8, 16).

The notion that CSOs are supplements and substitutes to government rests on the public goods and government failure argument first advanced by Weisbrod (1988): they offer a solution to public goods provision in fields where preferences are heterogeneous, allowing government to concentrate on median voter demand. CSOs step in to compensate for governmental undersupply. Operational independence and zero-sum thinking characterize their overall relation as alternative providers, and neither government nor CSOs have incentives to cooperate.

The theory that CSOs are complements to government was proposed by Salamon (2002), and finds its expression in the third-party government thesis whereby CSOs act as agents in implementing and delivering on public policy. CSOs are typically the first line of defence in addressing emerging social problems of many kinds, but face resource insufficiencies over time that, in turn, can be compensated for by government funding. The theory implies that (i) nonprofit weaknesses correspond to strengths of government, i.e., public sector revenue to guarantee nonprofit funding

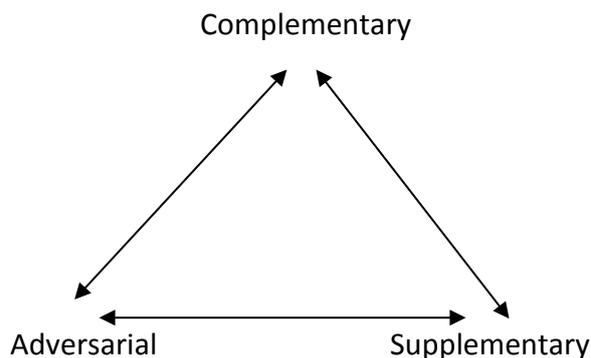
and regulatory frameworks to ensure equity; and (ii) the financing (government) and providing (nonprofit sector) roles are split.

Transaction cost theory, which also supports the complementary role, suggests that it may be more efficient for government to delegate service provision by contracting out non-core functions to nonprofit organizations – a central premise of New Public Management approaches to modernize the public sector. Indeed, Kramer (1994) states that contracting-out brings a number of advantages to the public sector, such as avoiding start-up costs, generating more accurate cost determinants, avoiding civil service staff regulations, and easing the process of altering and stopping programs. Even though there are also disadvantages involved (e.g., difficulty to maintain equal standards, loss of public control and accountability, monitoring costs), both government and CSOs have incentives to cooperate.

The theory that CSOs and governments are adversaries is supported by public goods arguments (see Boris and Steuerle 2006) and social movement theory (Della Porta and Felicetti 2017): if demand is heterogeneous, minority views may not be well reflected in public policy; hence self-organization of minority preferences will rise against majoritarian government. Moreover, organized minorities are more effective in pressing government (social movements, demonstration projects, think tanks) than unorganized protests; however, if CSOs advocate minority positions, the government may in turn try to defend the majority perspective, leading to potential political conflict.

Young (2000) suggests a triangular model of government–civil society relations (Figure 2), and argues that to varying degrees all three types of relations are present at any one time, but that some assume more importance during some periods than in others.

**Figure 2: Government–Civil Society Relations**



Najam’s Four-C’s model (2000) offers a more detailed view of nonprofit–government relations by examining the extent to which their respective organizational goals and means overlap (see Figure 3):

- **Cooperative:** If the goals and means are similar, then government and nonprofit organizations develop a cooperative relationship, for example the cooperation between the Canadian government and the International Campaign to Ban Landmines.
- **Complementary:** If the goals are similar but the means are dissimilar, then a complementary relationship between government and nonprofit organizations emerges. For example, many charities in the field of social service provision and community health care complement basic government services.
- **Co-optive:** If the goals are dissimilar and means are similar, then government tries to build a co-optive relationship with nonprofit organizations. An example would be the humanitarian assistance funds channelled to local grassroots organizations in African countries for programs that are similar to governmental ones. In such situations, government may try to co-opt grassroots organizations and nonprofits to further its own goals.
- **Confrontational:** If the goals and means are both dissimilar, then government and the nonprofit sector are in a confrontational relationship. Examples include the activities of Greenpeace to pressure governments on environmental issues, an advocacy group demanding better welfare services for the urban poor, or the anti-globalization groups demonstrating against the World Trade Organization.

**Figure 3: Four C’s Model of Government – Civil Society Relations**

|       |                   | GOALS           |                   |
|-------|-------------------|-----------------|-------------------|
|       |                   | <i>Similar</i>  | <i>Dissimilar</i> |
| MEANS | <i>Similar</i>    | Cooperation     | Co-optation       |
|       | <i>Dissimilar</i> | Complementarity | Confrontation     |

Source: Najam 2000

### **Government–Civil Society Relations Reconsidered**

Recent developments in government – civil society relation at many national levels as well as internationally suggest another, more geo-political perspective: according to Dahrendorf (1992), in spite of their high potential for conflict modern societies nonetheless command a large repertoire of mediating institutions and organizations. Dahrendorf was fundamentally concerned with the question of how complex societies can resolve conflict without either curbing individual liberty or sacrificing a potential for modernization. His answer lay in a need for institutions that are capable of providing creative solutions. The world today, however, differs from the post-war period. The framework for the economy and the state today is a globalized world and as such is characterized by significant governance issues (Hertie School of Governance 2013). These problems are due to the growing imbalances between the forces of globalized markets on the one hand, and the potential for governance and control on the other.

The policy challenge is clear: how can the advantages CSOs bring be strengthened while minimizing any disadvantages? How can the profoundly adversarial relations transformed into complementary or supplementary ones? How can the goals, ways and means of governments, including international organizations on the one hand, and civil society on the other, be better coordinated and reconciled? What is the right policy framework to balance their respective interests while realizing the potential of civil society? What rules and regulations, measures and incentives would be required? What balance of public control and support is adequate?

### **Recommendations**

Civil society, challenged in many ways yet harboring huge potential, finds itself at a crossroads. It is time to act, and chart a way forward. Fifteen years after then Secretary General Kofi Annan initiated the first ever panel to examine UN-civil society relations (the Cardoso Report, 2004); it seems urgent to revisit the role of CSOs in a geopolitical environment that has radically changed. There is an urgent need to cut through the cacophony of policies regulating CSOs, as Tables 1 and 2 show, and to point to policy options.

Therefore, we propose an independent high-level Commission of eminent persons to examine the contradictory policy environment for civil society organizations, and to review the increasingly complex space civil society encounters domestically as well as internationally. Working closely with, but independently of, the Civil-20 (<http://civil-20.org>), the Commission is to make concrete proposals for improvements.

The charge to the Commission would be to:

- Review the policy environment for CSOs and identify its strengths and weaknesses across the G20 countries.
- Propose model regulations for different legal and political systems, and for the four roles allocated to CSOs in the context of CSO comparative advantages and disadvantages.

- Point to areas for legislative reform as to the regulatory and enabling functions of the state.
- Identify best practices in government–civil society as well as business – civil society relations.
- Explore the possibility of a future observatory of civil society, especially at the international level, perhaps linked to the Civil-20.

We further propose that the process for such an independent commission should be initiated under the German Presidency of the G20, and to be taken up by Argentina, as it prepares to take over the Presidency for 2018. At the G20 summit in Argentina that year, the Commission is to report to G20 member states.

## Implementation Overview

We propose that the process for such an independent commission should be initiated under the German Presidency of the G20, and to be taken up by Argentina, as it prepares to take over the Presidency for 2018.

As part of this transition phase, a group of initiators with representatives of the German and Argentinian governments plus leading academic are to provide an appropriate evidence base, to formulate the charge to the Committee, and to suggest potential members for confirmation by Argentina. Each G20 country should be invited to propose Committee members.

At the G20 summit in Argentina in 2018, the Commission is to submit its final report to G20 member states.

## Existing Agreements, Policies and Monitoring

Independent of the work and documents provided by the Civil-20, we would like to give a broad overview of existing institutions, policies, laws, but most importantly the overall framework in which NGOs/CSOs operate.

Committees on Non-Governmental Organizations:

- 1) United Nations Committee on Non-Governmental Organizations:

<http://csonet.org/?menu=105>

It is responsible for accrediting non-governmental organizations with consultative status at the United Nations. Established in 1946, it reports directly to the Economic and Social Council (ECOSOC).

- 2) OECD Development Assistance Committee (DAC):  
<http://www.oecd.org/development/developmentassistancecommitteedac.htm>  
It is a unique international forum of many of the largest funders of aid. The World Bank, International Monetary Fund (IMF) and UNDP participate as observers. It promotes development co-operation and other policies so as to contribute to sustainable development, including pro-poor economic growth, poverty reduction, improvement of living standards in developing countries, and a future in which no country will depend on aid.
- 3) Civic Solidarity Platform: <http://civicsolidarity.org/page/about-us>  
The Civic Solidarity Platform (CSP) is a network of over 70 human rights organizations from numerous OSCE member states, active within the OSCE. The CSP advocates human rights issues in OSCE bodies and in member states, and organizes NGO conferences and workshops on current policy issues. It is responsible for the annual parallel NGO conference that convenes before the OSCE Ministerial Council, where demands to the OSCE are phrased and recommendations are adopted.
- 4) European Economic and Social Committee:  
<http://www.eesc.europa.eu/?i=portal.en.civil-society>  
Committed to European integration, the EESC contributes to strengthening the democratic legitimacy and effectiveness of the European Union by enabling civil society organizations from the Member States to express their views at the European level.
- 5) Civil Society Policy Forum  
<http://www.worldbank.org/en/events/2017/04/21/civil-society-policy-forum>  
Civil Society Policy Forum happens alongside Spring and Annual Meetings of the World Bank Group and the International Monetary Fund.

Organizations that monitor implemented measures include:

- a) The International Center for Not-for-Profit Law (<http://www.icnl.org/>).
- b) CIVICUS (<http://www.civicus.org/>).
- c) USAID “CSO Sustainability Index” (<https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/cso-sustainability-index-methodology>).

Note: The purpose of these two tables is not to support any argument that only minimal regulations for CSOs would be required in most circumstances; rather they are to illustrate that, frequently, adequate state–civil society policies have not been found and that regulations hinder, obstruct and even contradict the potentials CSOs harbor for economy and society.

**Table 1 – Recent Regulations or Current Proposals Addressing Civil Society Organization in G20 Countries**

| Country   | Legislative Action                               | Description   |
|-----------|--|---|
| Argentina | None   |   |
| Australia | None   |   |
| Brazil    | None   |   |
| Canada    | None   |   |
| China     | The Overseas NGO Management Law                  | The 2017 Overseas NGO Law raises the barriers for international NGOs seeking to work in China. Chinese organizations are sometimes required to report international contacts to authorities and sometimes to seek approval for visits, international cooperation, foreign donations, etc. Chinese organizations, particularly NGOs that collaborate or receive funding from foreign organizations are monitored closely.  |
| France    | None   |   |
| Germany   | None   |   |
| India     | Audits   | On January 11, 2017, the Supreme Court of India ordered an audit of 3 million NGOs and penal action against those not submitting their records on time in accordance with General Financial Rules 2005. It is mandated by March 31, 2017. The targeted NGOs are those receiving funds from the government or foreign sources under the Foreign Contribution Regulation Act (FCRA). According to the Supreme Court bench members, "mere blacklisting of NGOs who do not file annual statements will not suffice but also action must be initiated like criminal proceedings for misappropriation and civil action for recovery of given funds." The order came after a finding was cited that only 10% of NGOs filed annual income and expenditure statements. |
|           | Foreign Contributions Regulation Act 2010 (FCRA) | The government has blacklisted dozens of NGOs for failing to adhere to different aspects of the FCRA, including 69 NGOs in March 2015 alone. In addition, the Ministry of Home Affairs cancelled the FCRA registration of 1,142 NGOs that received funding from foreign sources in one state (Andhra Pradesh) for failure to file annual returns for 2009 to 2012.  |
|           | Foreign Contribution Regulation Rules            | The Ministry of Home Affairs issued a revised version of the Foreign Contribution Regulation Amendment Rules in December 2015. The application process for registration under the FCRA is now completely online and reporting requirements on foreign contributions have increased significantly.   |
| Indonesia | Cyber-related laws                               | The proposed amendments to the Electronic Information and Transactions Law aim to protect children by criminalizing "cyberbullying." Since it was enacted in 2008, the government has used the EIT Law to detain activists by charging the state's  |

|        |   |   |
|--------|---|---|
|        |   | critics with defamation. In 2015, the Indonesian branch of the Southeast Asia Freedom of Expression Network (SafeNet) documented 11 such online defamation cases against activists. The EIT Law has also been reported to have been used to prosecute dozens of people using Facebook, Twitter, and mobile applications such as WhatsApp and Blackberry Messenger.  |
| Italy  | None  |   |
| Japan  | None  |   |
| Korea  | None  |   |
| Mexico | Income Tax Law Reform   | The provisions modified in the Income Tax Law from November 30, 2016, state that CSOs will be subject to forced liquidation if they lose the authorization to receive tax deductible receipts and they are not able to regain the authorization within three months after it has been revoked. CSOs will have to be certified by private organizations that will classify them as one of three types of organization (A, AA, AAA). This certification process is voluntary, but will have different tax incentives for certified CSOs, creating disparate treatment and dissuading donors from supporting the neediest organizations located. However, there will be fewer authorizations required to receive tax deductible receipts for CSOs dedicated to scientific or technological research.   |
| Russia | Federal Law on Public Associations / Federal Law on Noncommercial Organizations | The Amendments to Article 8 of the Federal Law on Public Associations and Article 2 of the Federal Law on Noncommercial Organizations contain a problematic definition of “political activity”, which is relevant because “conducting political activity” is one of the criteria for an NCO to be qualified as an organization carrying out the functions of a foreign agent under Russia’s Law on NCOs. The new definition remains vague and may make it even easier for the government to label almost any activity as “political.”   |
|        | “Yarovaya Package”  | <p>The two federal laws known as the “Yarovaya Package” introduced changes to 21 laws. They were officially designed to provide additional measures to counter terrorism and ensure public safety. However, this package makes it easier to apply criminal and administrative penalties against a broad range of people, while increasing penalties for many crimes and offenses, some of which are loosely defined. In addition, the package requires mobile phone and internet service providers to record and store all communications and activities of all users and make stored records available to authorized government bodies at their request. It also imposes undue restrictions on the missionary activities of religious organizations and their members.</p> <p>Federal Law No. 287-FZ on <b>Amending Federal Law on Non-Commercial Organizations (NCO) in Terms of Establishing the Status of NCO–Provider of Public Benefit Services (PBS)</b> entered into force on January 1, 2017. The law assigns the status of “NCO–PBS” to some Socially Oriented Organizations (SOOs), including those which had the special code “provision of social services” given to them during registration (ОКБЭД). The law also provides a procedure for the assignment and removal of this status, and specifies the priority status of such organizations in</p> |

|              |  |   |
|--------------|--|---|
|              |  | <p>instances of state support of such SOOs.</p> <p>Federal Law No. 449-FZ on <b>Amendments to Article 31-1 of the Federal Law on NCOs</b> (in Terms of Specification of Measures of Support of Socially Oriented NCOs–PBS by the Public Authorities and Local Self-Government)" entered into force on January 1, 2017. The law establishes a two-year term for the provision of state support to NCO-PBS and also expands the list of types of support for SOOs by government bodies (provision of free airtime and print space, training and professional development of employees and volunteers).</p> <p>Federal Law of March 7, 2017 No. 27-FZ on <b>Amendments to the Federal Law on the Prosecutor General’s Office of the Russian Federation</b> entered into force on March 17, 2017. The essence of the law’s purpose is to create legal regulation of the powers of the Prosecutor General in conducting inspections of NCOs and other organizations.</p> |
| Saudi Arabia | Law on Associations and Foundations                                | <p>The law and regulations attempt to cut processing time by obliging the Ministry of Labor and Social Development to complete licensing within 60 days, reduce the minimum number of association founders to ten, widen the scope of permissible activities for associations and foundations to undertake, and clarify “public benefit status.” It also limits CSO registration, including all violations to Islamic Sharia, contradictions to public morals, and breaches of national unity. Further, it prohibits foreign foundations and associations from establishing branches inside Saudi Arabia, and places constraints on the contact of domestic associations and foundations with foreign organizations.</p>  |
| South Africa | None   | <p>Several bills calling for stricter regulation of civil society are being debated</p>   |
| Turkey       | Multiple new laws after the 2016 coup attempt; Constitution reform | <p>In April 2017, through a referendum, the people of Turkey narrowly voted in favor of reforming their constitution and more than 2,000 laws in a way that removes many of the checks on executive power.</p>  |
|              |  | <p>Many instances of direct interference and even closure of CSOs and foundations</p>   |
| UK           | None   |   |
| USA          | None but likely  | <p>Heritage Foundation initiates a comprehensive review of all federal funding directed to non-profit organizations, including universities, to assess whether they pursue partisan goals or advance the common good.</p> <p>President Trump suggests lifting limitations on political activities by religious (Christian) congregations.</p>   |

**Table 2 – Recent CSO Regulation in Other Countries**

| Country  | Law   | Description  |
|----------|---|--|
| Hungary  | No formal law   | Multiple attacks on NGOs that are allegedly involved in sponsoring political activity (like any Soros institutions—"Viktor Orban's government has denounced NGOs funded by George Soros for trying to "illegitimately" influence political life.")   |
|          |   | On September 8th, 2016 Hungarian police raided the offices of two nonprofits, Ökotárs Foundation and DemNet Hungary, as well as the homes of their leaders, seizing documents and data. While no charges have been filed, they are accused of distributing foreign grant money to leftist political parties, which is against Hungarian law.   |
| Poland   | New proposed law on public protests                           | In March 2017 Poland's top court has given the green light to a controversial bill limiting public gatherings, which Polish President Andrzej Duda declined to sign late last year. . The legislation introduces the concept of "periodic meetings" for rallies organized repeatedly in the same place and on the same date, giving such gatherings priority over other meetings. Under the new law, unrelated meetings must take place at least 100 meters away from any meeting designated "periodic".   |
| Malaysia | 2016 National Security Act                                    | The Act allows the National Security Council to designate "security areas" in the country, in which security forces can carry out warrantless searches, seizures of property, and arrests. Deaths caused by security forces in these areas would not need to be judicially investigated. The government states that this law is meant to prevent terrorism, while the international community considers the law to be a threat to democracy and human rights.  |
| Zimbabwe | Computer Crime Bill, Cyber Crime Bill - proposed              | The government is developing a Computer Crime and Cyber Crime Bill that would limit citizens' access to information. The legislation would allow authorities to arbitrarily seize mobile phones, tablets and laptops; monitor private communications; interrupt broadband service; and sentence violators to imprisonment. The legislation comes at a time when the government is responding to anti-government protests that have largely been organized and shared via social media.   |
| Jordan   | Anti-Money Laundering Law and Counter-Terrorism Financing Law | The Government of Jordan announced the withdrawal of the draft NGO Law from the legislative agenda; instead, the government is working on preparing an overarching legal framework for social work, including an NGO Law. In addition, on April 5, 2017, the Council of Ministers issued a decision, which stipulates that the requirements of the Anti-Money Laundering Law and Counter-Terrorism Financing Law of 2007 now apply to CSOs. CSOs are therefore now required to conduct due diligence on resources of funds and vendors, and failure to do so will subject them to penalties that may include detention, suspension or a fine |
| Nigeria  | Cybercrime (Prohibition Prevention) Act 2015                  | The Cybercrime Act 2015 creates a legal, regulatory and institutional framework for the prohibition, prevention, detection, investigation and prosecution of cybercrimes and for other related matters. However, it is said to be "a serious threat" to CSOs and media houses, according to an April 2016 report from African Media Barometer. Three journalists have been jailed since its passing for what they wrote on the Internet, including criticisms of corruption in the banking sector.   |

|          |  |  |
|----------|--|--|
| Cambodia | No new law, but attacks on civil society   | The first half of 2016 saw numerous prominent opposition politicians and civil society leaders arrested on spurious charges. There have also been calls for NGOs to be suspended or shut down due to allegedly violating the “political neutrality” clause of the Law on Associations and NGOs (LANGO). There have been reports that protests have consistently been shut down and protesters detained without legal justification.  |
| Ethiopia | Cyber Crime Law                            | In June 2016, Ethiopia's parliament passed a Cybercrimes Law, known as Computer Crime Proclamation. The law provides for serious penalties for a wide range of online activities and gives authorities greater surveillance and censorship powers that will limit access to information on digital platforms. The adoption of this law followed a shutdown of Facebook, Viber, and WhatsApp in parts of the Oromia region. In addition, more than 1,000 people considered "ringleaders/bandits" were reportedly arrested for participating in anti-government protests in Ethiopia.  |
|          |  | The United Nations High Commissioner for Human Rights visited Ethiopia in the first week of May 2017 and said he would push the government to allow his agency to investigate rights abuses. Ethiopia's Human Rights Commission has said at least 669 people have been killed in protests that began in November 2015  |
| Ecuador  | Ministerial Agreement No. 12               | The Ministry of Economic and Social Inclusion published Ministerial Agreement No. 12 on October 25, 2016. It stipulates that social organizations will only have their statutes approved and obtain legal personality if their aims and objectives are framed as defense of groups of priority attention or populations that are in a state of poverty and vulnerability; promotion of development and social mobility; and strengthening the economy.<br><br>Regulation 180 of April 25, 2016 addresses the "competition for the selection and designation of the main and alternate directors and alternate representatives from civil society to the National Councils for Gender, Intergenerational, People and Nationalities, Disabilities, and Human Mobility". The call to fill the seats for civil society representatives at the National Councils began in January 2017. |
| Pakistan | Prevention of Electronic Crimes Act (PECA) | NGOs expressed concern that their recommendations to bring the Act into a human rights framework were ignored by the government and legislative bodies. Through this Act, the government can force Internet companies to remove or block access to any “speech, sound, data, writing, image, or video,” without court approval. The government could also acquire legal powers to censor and track Internet users, criminalize computer security researchers and hand over personal data to foreign powers.  |

## References

1. Anheier, Helmut K. (2017) Weltversammlung der Zivilgesellschaft. *Vereinte Nationen* (2); extended English version available from the author under the title “Civil Society and the United Nations: Four Theses.”
2. Anheier, Helmut K. (2014) *Nonprofit Organizations: Theory, Management and Policy*, 2<sup>nd</sup> edition, fully revised and expanded, New York, NY, London: Routledge.
3. Anheier, Helmut K. and Hammack, David (2013) *A Versatile American Institution: The Changing Ideals and Realities of Philanthropic Foundations*, Washington, DC: Brookings.
4. Boris, Elizabeth T. and Steuerle, C. Eugene (2006) *Nonprofits and Government: Collaboration and Conflict*, second edition, Washington DC: Urban Institute Press.
5. Council on Foundations. ICNL Report on Global Philanthropy (2010) Legal Framework for Global Philanthropy: Barriers and Opportunities:  
[http://c.yimcdn.com/sites/www.wingsweb.org/resource/collection/3F0EC9A8-2934-454A-A4AA-63DA30CA30A5/ICNL\\_Legal\\_Framework\\_for\\_Global\\_Philanthropy.pdf](http://c.yimcdn.com/sites/www.wingsweb.org/resource/collection/3F0EC9A8-2934-454A-A4AA-63DA30CA30A5/ICNL_Legal_Framework_for_Global_Philanthropy.pdf)
6. Dahrendorf, Ralf (1992) *Der moderne soziale Konflikt: Essay zur Politik der Freiheit*. Stuttgart: Deutsche Verlags-Anstalt.
7. Della Porta, Donatella and Felicetti, Andrea (2017) *Democratic Innovations and Social Movements*, in Hertie School of Governance (ed.), *The Governance Report 2017*. Oxford: Oxford University Press, 127–142.
8. Gellner, Ernest (1994) *Conditions of Liberty: Civil Society and Its Rivals*, London: Hamish Hamilton.
9. Hall, Nina (2017) *Innovations in Activism in the Digital Era: Campaigning for Refugee Rights in 2015–16*, in Hertie School of Governance (ed.), *The Governance Report 2017*. Oxford: Oxford University Press, 143–156.
10. Hertie School of Governance (2013), *The Governance Report*, London, Oxford: Oxford University Press.
11. Keane, John (1998) *Civil Society: Old Images, New Visions*, Cambridge: Polity Press.
12. Kramer, Ralph M. (1994) *Voluntary Agencies and the Contract Culture: Dream or Nightmare?*, in *Social Service Review* 68 (1), 33–60.
13. Najam, Adil (2000) *The Four-C's of Third Sector-Government Relations: Cooperation, Confrontation, Complementarity, and Co-optation*, in *Nonprofit Management and Leadership*, 10 (4), 375–396.
14. OECD Social Expenditure Update (November 2014):  
<https://www.oecd.org/els/soc/OECD2014-Social-Expenditure-Update-Nov2014-8pages.pdf>
15. Report of the Panel of Eminent Persons on United Nations–Civil Society Relations (Cardoso Report) (2004): <https://www.globalpolicy.org/images/pdfs/0611report.pdf>

16. Salamon, Lester M. (2002) *The Tools of Government: A Guide to the New Governance*, New York, NY: Oxford University Press.
17. Salamon, Lester M./Sokolowski, S. Wojciech/Haddock, Megan A./Tice, Helen S. (2013) *The State of Global Civil Society and Volunteering. Latest findings from the implementation of the UN Nonprofit Handbook*. John Hopkins University: [http://ccss.jhu.edu/wp-content/uploads/downloads/2013/04/JHU\\_Global-Civil-Society-Volunteering\\_FINAL\\_3.2013.pdf](http://ccss.jhu.edu/wp-content/uploads/downloads/2013/04/JHU_Global-Civil-Society-Volunteering_FINAL_3.2013.pdf)
18. Simon, John G./ Chisolm, Laura B. / Dale, Havey P. (2006) *The Federal Tax Treatment of Charitable Organizations*, in Walter W. Powell and Richard Steinberg (eds.), *The Non-Profit Sector: A Research Handbook*. New Haven, CT: Yale University Press.
19. Steinberg, Richard (2006) *Economic Theories of Nonprofit Organizations*, in Walter W. Powell and Richard Steinberg (eds.), *The Nonprofit Sector: A Research Handbook*. New Haven, CT: Yale University Press, 117–139.
20. The Index of Global Philanthropy and Remittances 2016. Hudson Institute <https://s3.amazonaws.com/media.hudson.org/files/publications/201703IndexofGlobalPhilanthropyandRemittances2016.pdf>
21. The International Center for Not-for-Profit Law: <http://www.icnl.org/>
22. The Non Profit Platform on the FATF: <http://www.fatfplatform.org>
23. Union of International Associations (UIA): <https://www.uia.org/>
24. UIA Yearbook of International Organizations: <http://ybio.brillonline.com/ybio/v5>
25. United Nations. General Assembly. Humans Rights Council (2016) *Thirty-second session, agenda item 3. A/HRC/32L.29*. New York: United Nations.
26. Weisbrod, Burton A. (1988) *The Non-profit Economy*, Cambridge, MA: Harvard University Press.
27. Young, Dennis R. (2000) *Alternative Models of Government-Nonprofit Sector Relations: Theoretical and International Perspectives*, in *Nonprofit and Voluntary Sector Quarterly* 29 (1), 149–172.
28. <http://civil-20.org>

Please note:

You are most sincerely encouraged to participate in the open assessment of this discussion paper. You can do so by either recommending the paper or by posting your comments.

Please go to:

<http://www.economics-ejournal.org/economics/discussionpapers/2017-45>

The Editor