

INTERNATIONAL ANTI-CORRUPTION CONFERENCE 2024

Vilnius, Lithuania 18-21 June 2024

SESSION REPORT

Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.

Session Title Whose interest do we serve? Foreign Agent laws and their impact on anticorruption efforts.

Date: 20 June 2024

Time: 06:00 PM – 07:00 PM (GMT +3)

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Moderated by:

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Panelists:

- Eka Gigauri
Executive Director
TI Georgia
- Nicholas Miller
Senior Legal Advisor and Coordinator for Multilateral Engagement
International Center for Not-for-profit Law (ICNL)
- Tara Petrovic
Civic Space Research Officer
Civicus
- Janet Zhou
Executive Director
Zimbabwe Coalition on Debt and Development (ZIMCODD)
- Carlotta Besozzi
Executive Director
Civil Society Europe

Share the thematic focus of the session, its purpose and corruption risks?

The panel brings together the foremost groups working on civic space (Civicus, ICNL, CSE) and corruption and good governance globally and nationally (TI, TI Georgia, ZIMCODD). Through the exploration of FA laws and their impact on anticorruption, the panel will address two key issues, namely the tension and possible reconciliation between transparency as a key anticorruption measure and its potential abuse against civil society, and how measures adopted in the Global North may legitimise civil society restrictions elsewhere. It will also provide an opportunity for joint action on the EU Defence of Democracy package. Some of the questions explored are below;

- Different types and variations of Foreign Agent laws we are seeing around the world
- 'Foreign rhetoric' that often precedes Foreign Agent laws, its negative consequences, and how can we affect this narrative
- How foreign rhetoric plays out in Zimbabwe, and the Foreign Agent law in Georgia
- The EU Defense of Democracy package, whether it is a Foreign Agent law in disguise, and civil society proposals to limit its negative impact
- Strategies against Foreign Agent laws, and what international allies – including governments and multilateral bodies - should do.
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- Other strategies that can be used when outside support can play into the foreign agent rhetoric?

Summary of panelists' contributions & discussion points (please be as detailed as possible)

Eka Gigauri on the Foreign Agent law in Georgia:

- Georgia has been in the news again due to the Foreign Agents law. Last year we managed to push back but this year they changed the title of the law and is going ahead.
- The first one is that this law is not about transparency, even though the govt is trying to frame this issue as such. Because exactly these groups (*working against the FA*) do not have problems with transparency, as these are the groups that are dealing with sensitive issues and *their* transparency is their strength.
- This is about the stigmatization of the groups that are fighting for transparency, free media and so on. The government's intention is to undermine their reputation in the public's mind.
- Very often the government takes, as example, the laws in other countries like the EU *Defense of Democracy package* and the US FARA Act and they (*the NGOs*) can't really criticize *this*.
- This did not start overnight, the campaign to undermine these groups started with coordinated smear campaigns against these people so that the public can identify/*target* these 'problematic' people, mainly anti corruption activists and investigative journalists.
- What they are saying is that these people are unpatriotic and *they* hate their countries and their culture and that they are spies who work against their own homeland. The government is trying to win the hearts and minds of less informed people through this propaganda. This is hard for civil society people emotionally as we identify ourselves as patriots who are fighting to clean up our countries.
- In the case of Georgia we did some things differently, we never call it Foreign Agents law, we call it the Russian law, as this is a Russian law that we are being forced to adopt.

Our audience should not only the donor community, we have to explain this to the *general* public.

- We were extremely successful in this and we have been able to persuade the general public that whatever is happening *here* is bad, It is very important to resist and we have decided not to comply with these laws. The defense line will be withing these ours including TI Georgia, by October, we will be a target due to out work in the elections. We expect our assets to be frozen.
- Georgian public has now understood how important it is to have civil society, they see so many people who are working together to make the country better.

Nicholas Miller on the different types of Foreign Agent laws seen around the world:

- Is the FA law the US FARA indeed the same? This example that we saw in Georgia is the latest in a long series of similar proposals.
- First what is a FA law? It is a law that creates an obligation to register if you receive foreign funding or are acting on behalf of a foreign influence.
- The US Foreign Agents Registration Act (FARA) was passed to combat Nazi propaganda in 1938. It has only infrequently been used to require NGOs to register; more frequently applied to lobbyists.
- Russia passed a foreign agents law in 2012, not too soon after we see Ukraine and Kyrgyzstan laws, 2016 we saw Slovakia and Kazakhstan and 2016 in Israel where they have been accused of using the law selectively against Palestinian groups. In 2020 Canada had a proposed foreign agents law and it is now in its third iteration. In 2022 Russia adopted a new law that superseded their previous one and in 2023 UK passed one. Pending ones include EU, France, El Salvador, Myanmar, Republic of Srpska in Bosnia and Slovakia. Acceleration is the take-away.
- Diversity is also a take away. Ask who does this law affect? In countries whether civic space is shrinking – it is mainly against NGOs; in others it is more general, e.g. applying also to private actors and individuals.
- What is the threshold of triggering the law? Is it *the mere fact of receiving funding* or the type of activities *funded*? *The first case typically is more restrictive approach. Some more narrowly crafted laws focus on engagement with political decision-making processes.*
- Which foreigners? In more restrictive laws, limitations often apply to receipt of funding from any foreigners; in narrower laws it is more specific, often limited to governments, political parties, and their agents
- What are the penalties? Minor, administrative *and* scaled? Or draconian, including jail time?
- These laws are often vulnerable to the argument that are neither narrowly tailored nor do they resolve the problem they purport to address.

Tara Petrovic on ‘foreign rhetoric’ and narratives used against civil society and often preceding Foreign Agent laws:

- What we have seen since we began monitoring in 2018 is that almost one third of the world population live in countries where civic space is closed. Only about 2% live in countries where space is open, which is half as much as five years ago. This backsliding is specifically from Europe and Central Asia where we have many mature democracies.
- What we are also seeing is that the most common tactic employed by State and non-State actors is intimidation and it is often connected to public vilification. We recorded over 80 incidents of public vilification and smear campaigns against civil society and media in 2023 alone. Often those targeted are civil society organizations performing

specific tasks such as watchdogs, environmental activists, LGBTQI activists and democracy activists.

- The common narrative is to frame them as agents or spies and repackage their work as an attack on the state and the country itself as opposed to criticism of the government.
- These laws are proliferating quickly, a couple of days from the Georgia announcement, Rep Srpska and Kyrgyzstan announced their laws.
- In all three countries - Bosnia and Herzegovina, Georgia and Kyrgyzstan, immediately surrounding these laws, there were proposals or announcements of laws against LGBTQI 'propaganda'.
- This shows that FA laws are part of an anti-rights narrative which is very common in the post-communist space, that dismiss human rights as contrary to 'traditional' or 'national values' and coming from outside country and foreign forces. This narrative is very commonly used against CSOs.

Janet Zhou on how the 'foreign rhetoric' has played out in Zimbabwe:

- We have seen two laws come in through the legislative process. Known as Patriotic Act in 2023, this controls how the civil society engages with the outsiders/foreigners. There is also the NGO bill that defines the registration, how NGO boards are formed and so on that gives sweeping powers to the responsible minister. This also grays what is defined as civil society work and its definition.
- Civil society organizations have also raised the issue of increased surveillance of the work of civil society orgs.
- In 2019 Zimbabwe was put in the grey list of the FATF, and the government put in some mechanism to curb funds flow but one of the laws was a civil society *focused* law. This has the features Nikolas has outlined, such as hefty fees and other draconian measures.
- It becomes very difficult to organize citizen engagement as people become afraid to work with you as they may be identified as working with an enemy of the State.
- The funders and donors also don't want to jeopardize their diplomatic relationships.
- The expansion of *such laws* in jurisdictions such as EU and Canada have been an excuse as well. The government says that it is happening everywhere, the EU itself is passing these laws!

Carlotta Besozzi on the EU Defense of Democracy package:

- Intent and how the law *is* shaped itself, there we have a proposal at the end of last year, the EU Defense of Democracy package doesn't have an intent to stigmatize civil society but to target foreign influence. The question is this the right time, as you know the EU has been having discussions on whether to regulate the political party funding, but the proposal is blocked by EU member States . So in order to show action ahead of the elections the President of the Commission presented this proposal.
- There were big divergences within the EU because of its impact on fundamental rights Also the European Court of Justice obliged Hungary to repeal the law in Hungary iin foreign funding to NGOs In this judgement you can see that you have clearly limits to regulating foreign funding and you must respect the freedom of association.
- The legislation has not been very well drafted, as the focus is on foreign funding and the definitions of what is an interest service representation activity (lobbying) for a non-EU country are extremely vague, no financial thresholds, so you can have a 100 euros that need to be registered, and registration number that you are given under this law has to be shared in all meetings with public officials at all levels of the State or the EU, even meetings not related to the lobbying activity .

- Impact outside the EU, civil society organizations including media and academia, if they have a third country funding they will have to register and have legal representation.
- Thirdly the EU and member states also carry this kind of activities outside Europe to support democracies and these can be “covert”. For example the European Endowment for Democracy falls under this, so what is the future of this organization and what impact on NGOs funded by the EU?
- The risk of confusion between what are legitimate advocacy actions and what is paid lobbying is totally unclear.
- The alternative we are pushing for is a general transparency register with lighter requirements, but it would be difficult to amend it (*the law*) as it is.

Eka Gigauri on what supportive international actors should do:

- This is about the quality of democracy and also about which countries are our friends. It is also about the decision of the (*Georgian*) government to distance themselves from the EU. We are extremely lucky as we are going to apply to the EU court of Human Rights and also apply for temporary measures. What we expect from the outside world is that they should acknowledge that this is a problem. They all thought that this was about transparency, and we had to explain that it wasn't! Another question is what kind of active measures can be taken to stop the government, including targeted sanctions. They would like their families to enjoy their lives in the EU and other countries, but they don't want this for the citizens of Georgia. And to do it (*sanctions*) before it is too late, if it is too late it will be too late to roll back this decision.

Nicholas Miller on what supportive international actors should do:

- Governments and donors, both governmental and non-governmental, should 1) engage, coordinate with, and consult civil society in countries that are affected; 2) support civil society organization around foreign agents laws and their resilience where such laws are adopted; 3) engage in bilateral dialogue with countries considering adoption of foreign agents laws (El Salvador is a good example where this may have had a positive effect); 4) be cognizant of the international norms around these dialogues, as well as the misuse of international norms to erroneously support adoption of foreign agents laws (e.g. FATF R8); and 5) use multilateral mechanisms, such as the EU court case in Hungary.

Janet Zhou on alternative strategies when outside support can be counter-productive:

- Outside support is very important but it can also play into the rhetoric of the government. Two things on national engagement, first, for example in FATF we ask, what mischief are we trying to cure? Second we're saying we have sufficient laws to deal with these mischiefs. I want to talk about the NGO bill that didn't pass, the work was from a coalition which included the clergymen and the initiative was local. The second is the use of multilateral platforms. Links to other foreign funding for e.g., linking to development projects. We have used the High Level Debt Resolution Forum as an opportunity to advocate for civic space.

Tara Petrovic on how to change narratives

- these narratives are weaponized against civil society- interesting that all these laws came together at the same time, we saw mass public mobilization in Georgia but *this* did not happen in Bosnia or Kyrgyzstan. Talking to activists and trying to figure out how they are responding to *this*, we see two main strategies. First, the issue of access to resources is not going to bring people together on the streets but you can frame it as a basic issue of human rights and expose the underlying intent behind the law which is to silence the

critics. The second one is to highlight the role played by NGOs and society *in these countries*.

Questions from the audience

1. The US FARA Act, and now the EU Defence of Democracy package, are used to justify Foreign Agent laws. Why is the US law so forgotten in the US but being enhanced in other countries? Should we not work towards repealing the FARA Act?
2. Bulgaria, there is no pending FA law, what is the distinction between advocacy and lobbying?
3. Rwanda, the law is a copy paste from Zimbabwe, provisions restricting civil society including a clause on approving the Board and Management of civil society organizations, we had to campaign on TV and Radio. This is a global trend and we need global coordination.
4. We (civil society) say we are transparent, but in many countries we are not, CSOs do not publish annual reports or financial information, how can we improve?
5. In the UK we see an entirely different problem, where PR companies are used by foreign governments to target journalists.

Responses

1. In the recent years there have been more frequent use of the FARA law in the US to combat Russian misinformation.
2. Most organizations are in favor of a general lobbying regulation and not a foreign agents law.
3. The message is that we need to do more, stronger partnerships and work on prevention on what's coming.
4. What's the justification to ask only foreign funded NGOs instead of all NGOs for the sake of transparency?
5. In Georgia there are about 10 laws that affect NGOs, so there are laws that make NGOs accountable. The moment the Ministry of Justice starts monitoring an NGO they can really start approaching staff to get personal information such as political and sexual preferences etc. that has nothing to do with transparency.
6. A better way to strengthen transparency and avoid its misuse to target CSOs is through self-regulation, an approach widely used and accepted for professions and the private sector.

Main outcomes of the session (include quotes/highlights and interesting questions from the floor)

- The importance of calling out the law for what it is. For example in Georgia they started calling it the Russian law instead of the FA law. We need to avoid play into the government rhetoric and reclaim the narrative.
- Features of an FA law; Acceleration is the take away. Diversity is also a take away. Ask who does this law affect? In countries whether civic space is shrinking – it is mainly against NGOs in others it is more general. What is the threshold of triggering the law? Is it the mere fact of receiving funding or the type of activities funded? The first case is more dangerous. The narrow laws include political decision making strategies. Which foreigners? In draconian laws, it includes any foreigners, in narrower laws it is more specific. What are the penalties? Minor, administrative and scaled? Or draconian including jail time?
- The EU legislation has not been drafted very well, it is not a good solution to the problem it seeks to address.

- The key to successfully combatting the proliferation of these laws is to work together. We need concerted action by local civil society as well as international bodies. Use all opportunities, even those that do not appear of immediate relevant to civic space issues.
- The announced use of sanctions by the US to support civil society in Georgia is a notable development, it is the first time sanctions are used to advance civic space issues.

“These laws are often vulnerable to the argument that they fail to address the problem that they are supposed to resolve!” Nicholas Miller

“In the case of Georgia we did some things differently, we never call it Foreign Agents law, we call it the Russian law, as this is a Russian law that we are being forced to adopt.” Eka Gigauri

“The government says that it is happening everywhere, the EU itself is passing these laws!” Janet Zhou

Key recommendations for the future and concrete follow-up actions

- Governments and donors, both governmental and non-governmental, should 1) engage, coordinate with, and consult civil society in countries that are affected; 2) support civil society organization around foreign agents laws and their resilience where such laws are adopted; 3) engage in bilateral dialogue with countries considering adoption of foreign agents laws (El Salvador is a good example where this may have had a positive effect); 4) be cognizant of the international norms around these dialogues, as well as the misuse of international norms to erroneously support adoption of foreign agents laws (e.g. FATF R8); and 5) use multilateral mechanisms, such as the EU court case in Hungary.
- Outside support is very important but it can also play into the rhetoric of the government. Two things on national engagement, first, for example in FATF we ask, what mischief are we trying to cure? Second were saying we have sufficient laws to deal with these mischiefs.
- Initiatives have to be local: the NGO bill that didn't pass in Zimbabwe, the work was from a coalition which included the clergymen and the initiative was local.
- The use of multilateral platforms. Links to other foreign funding for e.g., linking to development projects, private sector and so on.

What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

See above.

Rapporteur's name

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Date submitted

28 June 2024

Action! This report needs to be emailed to iacc-av@transparency.org within 24 hours of the session. If you wish to update the report, please do so by 21 July. Thank you.