

Global Inequality and Social Cohesion

Civil Society Challenged: Towards an Enabling Policy Environment

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Abstract

The authors propose 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, (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 G20 countries and civil society can relate in productive ways in national and international contexts.

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 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; Anheier 2017).
- 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).
- 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 (www.icnl.org).

- 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).
 - 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).
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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 Green Peace, 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 argued (2006), 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 mechanism 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):

- 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 CSO, 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.

Recommendation

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, 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.

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13. The Non Profit Platform on the FATF: <http://www.fatfplatform.org>
14. Union of International Associations: <https://www.uia.org/>

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 the authors of this brief are 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 C20 or 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 organises 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.

Organisations that monitor implemented measures include:

- a) The International Center for Not-for-Profit Law (<http://www.icnl.org>)
 - b) CIVICUS (<http://www.civicus.org/>).
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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, regulations hinder, obstruct and even contradict the potentials they 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 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.
	Finance Bill / Union Budget 2016-17	Finance Minister Mr. Arun Jaitley presented the Finance Bill / Union Budget 2016-17 to the Parliament on February 29, 2016. The budget presents three main issues for the voluntary sector in India: 1) Levy of tax where a charitable institution ceases to exist or converts into a non-charitable organization, 2) Phasing out of Deductions and Exemptions, 3) Service Tax.
Indonesia	Electronic Information and Transactions Law (EIT Law or Cyber Law)	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”	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.
Saudi Arabia	Law on Associations and Foundations	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.
South Africa	None	
Turkey	Multiple new laws after the 2016 coup attempt	According to the decree published in the Official Gazette on July 23, 2016, 35 health institutions and organizations as well as 1,043 private education institutions, organizations, dormitories, and hostels were closed for having links with Gülen. A total of 1,125 associations, 104 foundations, 19 unions, federations and confederations, and 15 foundation schools were also closed. Under a decree issued in the State of Emergency, a total of 102 media outlets and 29 publishing houses/distribution firms were closed down. The prosecutor also issued arrest warrants for journalists, media workers and executives. Several dozens of them were placed in police custody.
		In 2016, the minimum endowment amount for foundations was increased to 60,000 TRY (approx. \$20,000).
UK	None	
USA	None but likely	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. President Trump suggests lifting limitations on political activities by religious (Christian) congregations.

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 (or adopted already - not clear) law on public protests	Poland's conservative parliament has passed a law restricting public meetings. 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	Amendments to Law No. 51 on Societies - not approved (yet)	In March 2016, Jordan's Ministry of Social Development released draft amendments to the 2008 Law No. 51 on Societies. If enacted, the draft amendments would significantly restrict the legal environment for civil society organizations in Jordan. Among other constraints, the amendments require at least 50 founders to establish a CSO, provide the government with broad discretion to dissolve a CSO, impose new requirements on branch offices of international organizations, and place new restrictions on the foreign funding of Jordanian CSOs.
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.
Colombia	Law 1801 (National Police Code and Coexistence)	On June 20, 2016, the Senate passed the National Police Code and Coexistence Law. It requires people to receive approval from authorities at least 48 hours before a protest, and the request can be denied. Permits to hold an assembly can be rejected and authorities can prevent assemblies by requiring excessive paperwork from applicants.
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.
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.
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.