

Defending Civic Space: When are Campaigns against Repressive Laws Successful?

Cheeseman, Nic; Dodsworth, Susan

DOI:

[10.1080/00220388.2022.2162882](https://doi.org/10.1080/00220388.2022.2162882)

License:

Creative Commons: Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)

Document Version

Publisher's PDF, also known as Version of record

Citation for published version (Harvard):

Cheeseman, N & Dodsworth, S 2023, 'Defending Civic Space: When are Campaigns against Repressive Laws Successful?', *Journal of Development Studies*, pp. 1-18. <https://doi.org/10.1080/00220388.2022.2162882>

[Link to publication on Research at Birmingham portal](#)

General rights

Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

- Users may freely distribute the URL that is used to identify this publication.
- Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
- User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
- Users may not further distribute the material nor use it for the purposes of commercial gain.

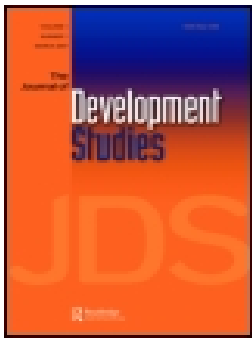
Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

Take down policy

While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact UBIRA@lists.bham.ac.uk providing details and we will remove access to the work immediately and investigate.



Defending Civic Space: When are Campaigns against Repressive Laws Successful?

Nic Cheeseman & Susan Dodsworth

To cite this article: Nic Cheeseman & Susan Dodsworth (2023): Defending Civic Space: When are Campaigns against Repressive Laws Successful?, The Journal of Development Studies, DOI: [10.1080/00220388.2022.2162882](https://doi.org/10.1080/00220388.2022.2162882)

To link to this article: <https://doi.org/10.1080/00220388.2022.2162882>



© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.



Published online: 22 Jan 2023.



Submit your article to this journal [↗](#)



Article views: 931



View related articles [↗](#)



View Crossmark data [↗](#)

Defending Civic Space: When are Campaigns against Repressive Laws Successful?

NIC CHEESEMAN*  & SUSAN DODSWORTH** 

*Professor of Democracy, International Development Department, University of Birmingham, Edgbaston, Birmingham, UK, **Honorary Senior Research Fellow, International Development Department, University of Birmingham, Edgbaston, Birmingham, UK

(Original version received September 2020; final version accepted December 2022)

ABSTRACT *Many civil society organizations (CSOs) are fighting for survival as governments introduce legislation to curtail their activities. This article examines how domestic civil society campaigns can persuade parliamentarians to reject 'anti-CSO' legislation. We employ pairwise comparisons in two regions – East Africa and Central Asia – as well as process-tracing within four cases: two successful campaigns waged by CSO coalitions against repressive legislation in Kenya and Kyrgyzstan, and two unsuccessful campaigns in Uganda and Kazakhstan. We find that traditional structural explanations – most notably the degree of international linkage and leverage and the quality of democracy – play an important role in creating greater opportunities for domestic actors, but are not determinative. CSOs also need to take advantage of the more conducive environment to defend democracy. Doing so is more likely when campaigns: are pre-emptive and sustained, frame the issue in a manner that resonates with the electoral incentives facing parliamentarians, coordinate with influential international actors, and engage pragmatically with both the informal political rules that shape legislators' behaviour and the formal procedural 'mechanics' of legislatures. The article therefore demonstrates the significance of both political structure and agency, and of international actors using their influence to create space for domestic groups, 'leading from behind'.*

KEYWORDS: Development; democracy; civil society; parliaments; East Africa; Central Asia

1. Introduction

Civil society, broadly understood as the set of associations and groups operating outside of the state, has come under considerable pressure during the global democratic recession. This is concerning, because while Civil Society Organizations (CSOs) – a category that includes, but is not limited to Non-Governmental Organizations (NGOs) – do not always generate transformative results (Banks, Hulme, & Edwards, 2015), recent research suggests that they deliver considerable benefits for domestic populations.¹ In particular, NGO interventions have been shown to have positive, if modest, effects in the areas of health and governance (Brass, Longhofer,

Correspondence Address: Nic Cheeseman, Honorary Senior Research Fellow, International Development Department, University of Birmingham, Edgbaston, Birmingham B15 2TT, UK. Email: n.cheeseman@bham.ac.uk
Professor of Democracy, International Development Department, University of Birmingham, Edgbaston, Birmingham B15 2TT, UK.

© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.

Robinson, & Schnable, 2018). There is also robust evidence that civil society has played a central role in advancing forms of development that promote gender equality (Htun & Weldon, 2010) and give marginalized groups a louder voice (Horton, Rydström, & Tonini, 2015; Wachira & Karjala, 2016).

Partly as a result, civil society is a popular channel for aid delivery. From 2012 to 2016, OECD DAC donors delivered more than 40 per cent of their bilateral aid to Nicaragua and Zimbabwe in this way. Donors also work through civil society to strengthen democratic accountability and to ensure that key priorities – such as gender equality – are reflected in the development sector. Not all civil society groups have such positive impacts of course – and the willingness of some CSOs to take up partisan positions has been a consistent source of controversy (Hansen & Sriram, 2015) – but overall the evidence suggests that constraining civil society activities is likely to harm both democracy and development.

Unfortunately, legislation designed to undermine the independence of the sector is increasingly common: more than 120 laws restricting the operation of CSOs were proposed or enacted around the world between 2012 and 2015 (Rutzen, 2015, p. 30). This legislation differs from the normal regulation of civil society, imposing burdensome registration processes, restrictions on foreign funding – often in the form of funding caps or requirements to register as a ‘foreign agent’, onerous reporting requirements, and other mechanisms designed to increase government control. Such rules form part of a larger pattern, in which governments – some already authoritarian, some more democratic – employ a variety of tactics to restrict, control and harass CSOs that pursue more political or sensitive goals (Carothers & Brachenmacher, 2014). On both sides of the Atlantic, policy-makers tend to refer to this as the closure of ‘civil society space’ or ‘civic space’.

This trend is problematic for democracy, as governments typically target human rights organizations in a bid to silence critical voices. The impact on development is less straightforward. A recent review concluded that while this trend was unlikely to undermine economic growth in the short term, it nevertheless represented a serious threat to the pursuit of equitable, sustainable and inclusive development (Hossain et al., 2018). It is therefore not surprising that a significant body of research has examined how Western policy-makers have responded to the closure of civic space. This research shows that development-focussed INGOs and philanthropic foundations have tended to adapt their programs to mitigate the impact of restrictions on civil society, rather than actively resist those constraints (Oram & Doane, 2017). At the diplomatic level, the responses of Western governments have been relatively restrained and often incoherent (Brachenmacher, 2017). As prior research reveals, one challenge for donors is that increasing funding for civil society may trigger the introduction of more restrictive laws (Dupuy, Ron, & Prakash, 2016).

Although much of the literature produced thus far has overlooked the role played by the domestic CSOs targeted by restrictive laws, who are arguably the most important actors, policy reports provide some tentative findings. One by Frankfurt’s Peace Research Institute (drawing in part on the preliminary findings of our project) stressed the importance of strong domestic campaigns rather than international pressure, the efficacy of arguments that emphasize the negative socio-economic effects of proposed laws, and the significance of the political context – resistance has tended to be more successful in more democratic countries (Baldus, Berger-Kern, Hetz, Poppe, & Wolff, 2019). Reflecting on experience from Africa, Godfrey Musila points instead to the importance of leadership and linkages, concluding that efforts to engage with policy-makers are most effective ‘when NGOs coalesce around a common objective and develop a coherent strategy, including the identification of champions within legislative bodies who can carry their message forward’ (Musila, 2019, p. 4).

The limited academic research published to date on these CSO efforts has tended to focus on providing a detailed discussion of domestic campaigns. Consequently, less has been said about how international actors and domestic processes are connected, and the relationship between the agency of CSOs and the political structures within which they operate. This limitation has been compounded by the focus of some research on learning the lessons from successful cases

rather than considering the full universe of outcomes (Berger-Kern, Hetz, Wagner, & Wolff, 2021). Selecting on the dependent variable in this way makes it possible to go into greater depth on the kinds of campaigns that were run, but also risks obscuring the background conditions that made such campaigns possible. Berger-Kern et al. (2021, p. 84), for example, focus on the defeat of anti-NGO laws in Kenya and Kyrgyzstan, concluding it was based on ‘domestic campaigns organized by broad alliances of local CSOs, which were able to draw on pre-existing mobilizing structures and put forward a socioeconomic narrative to lobby against civic space restrictions’. This is a valuable contribution, and one we seek to build upon, but overlooks a number of key points. Most notably, such campaigns were in part possible because Kenya and Kyrgyzstan are relatively open competitive-authoritarian regimes and feature legislatures that can challenge executive policy. Moreover, the assertion that international actors played a significant role in ‘Kyrgyzstan, but not in Kenya’ (Berger-Kern et al., (2021, p. 84) fails to recognise that Western countries strategically chose to operate behind the scenes in Kenya as the perception of western interference could have hardened the government’s position.

This article seeks to develop a more systematic and rounded account of these processes by demonstrating how international context, political structures and domestic campaigns interact. We do this through a combination of within- and cross-case analysis of the ‘successful’ cases of Kenya and Kyrgyzstan with two examples with the opposite outcome: Uganda and Kazakhstan. We find that traditional structural explanations – most notably the degree of international linkage and leverage and the quality of democracy – play an important role in creating greater opportunities for domestic actors, creating space in which civil society groups can coordinate resistance. This is especially the case when greater levels of democracy translate into stronger legislative constraints on the executive, empowering Members of Parliament to act on NGO concerns. Yet CSOs also need to take advantage of the more conducive environment. This is most likely when campaigns are pre-emptive and sustained, frame the issue in a manner that resonates with the electoral incentives facing parliamentarians, coordinate with influential international actors, and engage pragmatically with both the informal political rules that shape legislators’ behaviour and the formal procedural ‘mechanics’ of parliaments. In other words, by demonstrating that limiting their activities will have a negative effect on the lives of ordinary citizens – and hence on the electoral prospects of politicians – CSOs can appeal to rational self-interest as well as moral principles when defending democracy. However, as we discuss in the conclusion, such a strategy comes with certain risks, potentially leaving organizations with no ‘developmental’ function more vulnerable.

Recognizing the significance of civil society campaigns, and how international actors can best support them, is important given the wide range of states that have proposed restrictive civil society laws. Berger-Kern et al are therefore right to point to the importance of CSO campaigns and activities, because overemphasising structural factors such as the quality of democracy can lead to a dangerous complacency: attempts by more democratic states to introduce restrictive civil society laws represent an important component of the ‘third wave of autocratization’ (Lührmann & Lindberg, 2019). But it is also critical not to lose sight of the institutional and international conditions that empower and disempower CSOs. The most effective defence of democracy occurs not when donors and domestic groups with strong mobilizational capacity carry out campaigns in isolation, but when they work effectively together.

2. Research design

The empirical evidence for our argument is generated by leveraging pairwise comparisons in two regions – East Africa and Central Asia – in which restrictions on civil society have become particularly common (Rutzen, 2015). While our argument has been developed inductively, we used paired comparisons as a means of isolating the impact of civil society campaigns. In other words, the paired comparisons provide a basic control for certain structural factors that might

Table 1. Key characteristics of Kazakhstan, Kenya, Kyrgyzstan and Uganda

Country	Quality of democracy in 2013 (0–100) ^a	Parliamentary Powers Index (0–1) ^b	Leg. constraints on executive (0–1) ^c	Leg. electoral system	Overseas dev. aid in 2015 (% gov't expense) ^d	Campaign outcome
Kazakhstan	26	0.38	0.18	Proportional/ party lists	0.3	Failure
Kyrgyzstan	39	0.47	0.81	Proportional/ party lists	24.8	Success
Kenya	55	0.31	0.86	First past the post	17	Success
Uganda	40	0.44	0.75	First past the post	47	Failure

Notes: ^aFreedom House, ‘Freedom in the World’. ^bFish and Kroenig (2009). ^cVDEM, ‘Legislative Constraints on Executive Index’. ^dCurrent USD, World Bank, ‘World Bank data’.

have influenced the success – or failure – of campaigns enabling us to draw out the lessons of paradigmatic cases. Our cases were selected because they vary on the outcome of interest while allowing us to approximate a ‘most similar’ approach (Table 1). In short, civil society in Kazakhstan and Uganda failed to prevent the adoption of new laws – or revised versions of existing laws – that increased restrictions on their operations, while CSOs in Kyrgyzstan and Kenya were successful. At the same time, our two pairs of cases share similar electoral systems, which have been shown to influence the lobbying strategies adopted by interest groups (Naoi & Krauss, 2009), and experienced comparable processes of state formation. Kenya and Uganda, for example, are both former British colonies in East Africa. Meanwhile Kyrgyzstan and Kazakhstan are post-communist states that emerged from the breakup of the Soviet Union. At the same time, our cases vary in important ways relevant for our argument. Most notably, Kenya and Kyrgyzstan were both more democratic and featured stronger legislative constraints on the executive in 2013.

Looking more closely at our East African cases, Kenya and Uganda have both enjoyed ‘special’ (if sometimes complicated) relationships with Western aid donors, partly due to their shared history as British colonies. Uganda has tended to be more aid dependent (Table 1), though the shrewd approach of President Yoweri Museveni means that this has not always provided donors with political leverage (Fisher, 2013). Both countries combine a direct election for the presidency with first-past-the-post constituency-based elections for the legislature. Kenya is usually rated as being more democratic, and as having a legislature more capable of checking the executive, but it is important not to exaggerate these differences (Cheeseman & Klaas, 2018).

Moving to Central Asia, Kyrgyzstan is the country more reliant on foreign aid, and has sought to establish positive relationships with the West, although Russia remains influential in Kyrgyz politics. For its part, Kazakhstan’s natural resource wealth means that it has had fewer reasons to invest in relationships with Western governments. The two countries have similar electoral systems, with a directly elected President and legislatures whose members are elected under a proportional system from a single nation-wide electorate using party lists. There are some differences with respect to the broader political system, as Kyrgyzstan formally adopted a parliamentary system of government in 2010. However, in practice executive-legislative relations tends to operate much closer to a presidential system, with the President remaining the primary locus of political power. Kyrgyzstan is generally regarded as being more democratic than its neighbour, and as having a significantly stronger legislature, but growing repression means that – like Kazakhstan – it is often described as a competitive-authoritarian state (Levitsky & Way, 2020).

The comparative leverage offered by these paired comparisons is reinforced by within-case analysis in the form of process-tracing. Here, we follow James Mahoney (2010) by ‘presenting qualitative evidence, expressing the basis for causal inference’ and then ‘assessing the likelihood that the [suggested] causal process is at work’ (Paget, 2018, p. 20). This process-tracing is important, not only because close scrutiny of causal mechanisms helps to compensate for the inevitably imperfect control provided by paired comparisons, but also because it allows for the possibility of equifinality; multiple causal paths that produce the same outcome. This feature of process tracing is valuable here because it is unlikely that there is a single set of circumstances that produce the outcome of interest: a successful campaign against anti-CSO legislation.

Our analysis draws on a wide variety of sources including reports published by CSOs, parliamentary transcripts, parliamentary committee reports and local and international media. In the cases of Kenya and Kyrgyzstan this material is supplemented by twelve interviews carried out with leading civil society activists, staff at donor agencies and INGOs, and parliamentarians who engaged more closely in the relevant debates.² Interviewees were selected purposely based on advice from local experts about which organizations and individuals played a leading role in relevant campaigns. These interviews constitute only a small component of our evidence, but provide greater insight into our two ‘success stories’.

3. Resisting repression in Central Asia

Attempts to curtail civil society have become relatively common in Central Asia. Several governments appear to have drawn inspiration from Russia, which, in 2012, introduced a series of amendments to existing laws that required organizations that engage in ‘political activities’ to register as ‘foreign agents’ if they receive foreign funding. But while legislative proposals constraining the operation of civil society sailed through the Kazakh parliament in 2015, a year later the Kyrgyz Parliament rejected the ‘Foreign Agents Law’.

3.1. *Kyrgyzstan: the foreign agents law*

Kyrgyzstan adopted a new constitution in 2010 in the aftermath of the ‘revolution’ that saw the increasingly authoritarian President Kurmanbek Bakiyev deposed in favour of a more democratic government. Although the 2010 constitution formally introduced a parliamentary system, the President – Almazbek Atambayev, in this period– remained the centre of political power in practice. Civil society was relatively active, and among the strongest in the region, though NGOs remain concentrated in the capital, Bishkek. Kyrgyzstan’s elections did not take place on a level playing field, but were more competitive than those in Kazakhstan. Significantly, higher levels of democracy translated into a less one-sided form of executive-legislative relations, with a score of 0.81 on VDEM’s 0–1 index of legislative constraints on the executive.

In September 2013, several deputies in the Supreme Council (*Jogorku Kenesh*, Kyrgyzstan’s unicameral parliament) proposed a series of legal changes, primarily to the Non-commercial Organizations Law, under which CSOs are registered. Though cast as a parliamentary initiative, civil society activists report that the changes had been encouraged by the State Committee on National Security. The proposal became known as the ‘Foreign Agents Law’ because it appeared to be modelled on the Russian example. As in the case of Russia’s law, the most problematic provisions required organizations receiving foreign funds to register as ‘foreign agents’ – a highly pejorative term generally synonymous with ‘spies’. This provision had the potential for far-reaching impact because the majority of CSOs in Kyrgyzstan are heavily reliant on funding from foreign sources (ICNL, 2017b). The draft law also provided for the introduction of onerous reporting requirements, some so costly that they would have made it difficult for smaller organizations to operate. In addition, the proposals granted the agency responsible for

registering organizations as ‘foreign agents’ extensive powers to oversee (and potentially interfere with) their activities.

A small core of CSOs mounted a spirited campaign against the Foreign Agents Law. Though they did not organize into a formal coalition, several CSOs took on more prominent roles in the campaign, including Interbilim, a CSO focussed on strengthening civil society in Kyrgyzstan, which acted as a focal point in the early stages of the campaign. In 2014, Interbilim took on a coordinating role, initiating a petition against the Foreign Agents Law that was ultimately signed by 231 organisations. The petition, published in 2014, appealed to the Supreme Council, as well as other government institutions, to reject the legislation. Interbilim also teamed up with prominent international NGOs, including Freedom House, to lobby influential government actors.

Initially, the campaign struggled to get traction with legislators and it became clear that progressive parliamentarians lacked the numbers to defeat the bill. Even those parliamentarians sympathetic to civil society avoided promises to directly oppose the bill, instead telling activists they would attempt to delay it. As a result of this strategic delay, the second reading debate was not held until April 2016, having been first considered in 2013. In the meantime, parliamentary elections took place in October 2015 and the party associated with the President, the Social Democratic Party (SDPK), won the largest number of seats but lacked a majority. Given the presence of several pro-Russia parties in new legislature, who were expected to back the SDPK, many civil society representatives expected the Supreme Council to pass the Foreign Agents Law. Yet during the second reading debate in April 2016, the bill was pared down to leave only the new reporting requirements. To the surprise of many, the Supreme Council then rejected the bill completely at the third (and final) reading in December 2016.

This unanticipated outcome was facilitated by the ability of deputies in the Supreme Council to operate independently of the executive, but they may have lacked the motivation to do so had it not been for CSOs efforts to frame the Foreign Agents Law as a threat to development, and pressure applied by international donors. In a public letter to the Supreme Council, dated 29 September 2014 and signed by more than 100 civil society leaders, CSOs warned legislators that the proposed law would have a serious negative effect on charitable and humanitarian organizations. This, the letter explained, would ‘lead to a reduction in the number of social services that the population of the country desperately needs’. Statements made by deputies who later rejected the Foreign Agents law, indicate that this framing had the desired impact. For example, in 2016, Janar Akayev, a member of the ruling Social Democratic Party (SDPK) stated:

Many international organizations expressed their concern. We get financial assistance from them in many fields, including healthcare, education and agriculture among others. We need this money. (quoted in Lelik, 2016)

This strategy may have been unsuccessful, however, in the absence of support from international donors. Kyrgyzstan’s legislators are elected under a proportional party-lists system, using a single nation-wide electorate. This made it hard to convince individual deputies that they would personally be held responsible by voters for developmental outcomes in specific geographic regions. Consequently, many of the activists we interviewed lamented that deputies were more focussed on maintaining the support of their factional leaders, who determined the composition of the party lists, making it difficult to persuade them to ‘break ranks’. Against this backdrop, pressure from international donors was significant, not so much because it changed the preferences of deputies, but rather because it encouraged the government to take a step back and in the process empowered deputies to make up their own minds. Western actors – who enjoyed considerable traction because the United States, EU and DAC-EU member states provided between a quarter and one third of Kyrgyzstan’s Official Development Assistance (ODA) between 2010 and 2014 – made their concerns known to the government behind closed doors.³ This appears to have had a strong effect: following a trip to Brussels during which the President was reportedly warned of a significant cut in aid if the Foreign Agents

Law was adopted, civil society interviewees reported a notable decline in the Executive's enthusiasm for the legislation.

In turn, this empowered domestic efforts to lobby parliament: once the President's position became more ambivalent, a direct rejection of the law was less politically costly for progressive legislators. CSOs campaigning against the law found that deputies previously unwilling to challenge directions from factional leaders were more willing to take a critical stance, while proponents of the law were less vocal. Thus, diplomatic pressure created space for legislators to more honestly express their preferences – shaped by the prior civil society campaign – by reducing the cost of opposing the executive. Even at this point, however, activists believed that the success of their efforts continued to hang in the balance, and so utilized the window of opportunity created by the President's Brussels trip to make new allies.

Bolstered by statements from INGOs and multilateral institutions, local CSOs made the Joint Opinion issued by the Venice Commission and the OSCE's Office for Democratic Institutions and Human Rights a focal point for their campaign (European Commission for Democracy Through Law & OSCE Office for Democratic Institutions & Human Rights, 2013). That opinion, issued in October 2013, had been formally requested by the Chairman of the Human Rights, Constitutional Legislation and State Structure Committee of the Supreme Council. This lent it a degree of legitimacy that interventions by 'outside' actors lacked; many Kyrgyz legislators appear to have felt some degree of ownership of the Joint Opinion. According to the activists we interviewed, this made it a far more effective tool for motivating previously supportive Kyrgyz legislators to reject the Foreign Agents Law. Such sentiments help to explain why the proposal was defeated at the final reading stage, when 65 of the 111 legislators present voted against it. By this point, voting the law down was not seen so much as bowing to international pressure, but rather as a rational economic decision consistent with democratic principles that Kyrgyzstan itself had pledged to uphold.

3.2. *Kazakhstan: the operator law*

Kazakhstan is clearly more authoritarian than Kyrgyzstan – a challenge for any attempt to defend civil society. Politics is dominated by a small group of political elites, many of whom are related to (former) President Nursultan Nazarbayev. Nazarbayev held power from the fall of the Soviet Union until March 2019, when he formally resigned as President but declared he would continue to serve as the head of both the ruling political party 'Nur Otan' (Light of the Fatherland) and Kazakhstan's Security Council. Harassment of political activists and independent journalists is common, with several individuals jailed for organizing protests, alleged corruption, or 'disseminating false information' in the last few years (Lillis, 2017). The ruling party, Nur Otan, has a comfortable majority in the Mazhilis (lower house), while the Senate is nominally non-partisan. This situation is compounded by the weak formal powers of the legislature to constrain the executive, with the country scoring just 0.18 on the legislative constraints index – the lowest of any country in our sample.

When the government proposed the law 'on the Question of the Activities of Nongovernmental Organizations' in 2015, several aspects of the law had the potential to restrict the political space available to CSOs (ICNL, 2017c). The most notable of these increased government control of NGO funding via the establishment of a single state 'Operator' responsible for determining which NGOs would be given funding, and for what purposes. NGOs and INGOs expressed fears that the law would allow the government to starve more critical groups of funds, though the extent to which it would affect foreign funding was (and remains) unclear. The law also introduced requirements for NGOs to submit detailed documentation, including sensitive information about employees, to a government database, and imposed a registration process with the potential to restrict NGO activity to the social sphere. Despite not being uncontroversial, parliament passed the legislation remarkably swiftly: the lower house approved

it in back-to-back first and second readings in late September 2015 (Central Asian News Service, 2015). The Senate took slightly more time, but President Nazarbaev had signed the legislation into law by December 2015 (ICNL, 2017c; Lillis, 2017).

Against the background of his rushed timetable, local CSOs struggled to persuade parliamentarians to defend them. In addition to a weak legislature, this task was made more difficult by the fact that diplomatic pressure did far less to open up space for dissent within the parliament than in Kyrgyzstan, in part due to the lower degree of leverage enjoyed by Western governments. Criticism from Western ambassadors and IGOs typically stressed human-rights-based arguments that did not resonate strongly with legislators, and rarely framed the law as a potential threat to development. For example, the US Ambassador to the OSCE raised the issue in the OSCE Permanent Council in January and May 2015, calling for greater clarity around the role of the Operator, and cautioning against attempts to use it as a means of controlling civil society (U.S. Mission to the OSCE, 2015a, 2015b). While this was partly a strategic mistake, it also reflected the fact that local CSOs are less significant in delivering development: ODA at this time was only worth 0.3\$per capita and the country's oil and gas wealth mean that it is now an upper-middle income country that receives virtually no development aid. As a result, international actors may have calculated that arguments framed in terms of development would have been ineffective, even if they did target an issue of concern to legislators.

One human rights activist who heads a prominent NGO, described their attempts to engage with parliamentarians:

There were parliamentarians who initially supported us ... The rest didn't listen ... Maybe their minds were already made up. One could see many of them didn't quite know what the NGO sector was about, and didn't care. Whenever they don't care, they follow the state line – control everything. (quoted in Grishin, 2015)

Several local CSOs employed boomerang tactics (Keck & Sikkink, 1998), making joint statements with INGOs such as the International Federation for Human Rights (FIDH, 2015). Yet many of these statements targeted the President, not the legislature, perhaps in recognition of its subservient stature. Nor were they particularly timely: most appeared to implore the President not to sign the law only *after* it had been passed by the Parliament (for example, FIDH, 2015). Thus, poor quality democracy, weaker legislative checks on the executive, lower levels of international traction, and less effective coordination between CSOs and donors all undermined the ability of civil society groups to defend civic space.

4. Resisting repression in East Africa

As in Central Asia, East Africa has seen substantial variation in how effective campaigns to protect CSOs from greater government control have been. In Kenya, international actors supported a locally led campaign that was successful in blocking repeated attempts to introduce repressive amendments to the Public Benefits Organizations Act. In Uganda, activists had less success in blocking a revised NGO law that significantly increased the government's ability to restrict their activities.

4.1. Kenya: defending the public benefits organizations act

Civil society is an important political actor in Kenya, one that has helped to push the country towards democracy at several critical junctures. Kenya also has a parliament that, at 0.86, scores the highest of our cases on the legislative constraints on the executive index. Moreover, the National Assembly occasionally demonstrates considerable independence (Barkan, 2009), and has begun to emerge as an independent and genuine check on executive power.

In 2012, that legislature passed the Public Benefits Organizations (PBO) Act, which President Mwai Kibaki signed into law in early 2013. Many – including Kenyan CSOs – regard the PBO

Act as representing ‘best practice’ in the regulation of the sector. Yet the government, led by President Uhuru Kenyatta (Kibaki’s successor), delayed the implementation of the Act while making several attempts to amend it in a way that would convert it from a progressive law into one far more restrictive. This took place against a backdrop of growing tension between human rights CSOs, many of whom campaigned for those responsible for post-election violence in 2007/8 to be prosecuted, and the Jubilee Alliance government of President Uhuru Kenyatta and Deputy President William Ruto, who came to power in 2013 despite allegations they had directed much of that election violence. This tension came to a head in the form of the Miscellaneous Amendment Bill of 2013, which included a proposal to cap the amount of foreign funding that organizations registered under the PBO Act could receive at 15 percent. Given the heavy reliance of most Kenyan CSOs on foreign funds, this would have forced many to seriously curtail their activities. Other proposed amendments significantly expanded the discretionary powers of the body responsible for the registration of PBOs, with the potential to substantially increase the government’s control over their activities.

The planned changes triggered a robust and co-ordinated response from local CSOs. Though several INGOs – including Human Rights Watch and Amnesty – made statements criticizing the proposed amendments, domestic organizations – spearheaded by the Civil Society Organization Reference Group (Reference Group) – assumed the leading role. Established in 2009, the Reference Group was an alliance of around 200 CSOs working in Kenya with the express goal of improving the legal, institutional and operational environment for civil society. Though it sought to build a constructive relationship with the government, that relationship has often been adversarial; at times, the Reference Group has been vocal in calling out government ‘attacks’ on civil society and in its criticism of the NGO Board, the government regulator.

The Reference Group’s campaign was politically smart, clearly framing the issue in terms of the potential developmental, rather than democratic, impact of the amendments. This tactic was employed in a very strategic manner: CSOs deliberately targeted their lobbying efforts at those MPs – elected to represent single-member constituencies on a First-Past-The-Post (FPTP) basis – whose electorates were most reliant on non-government actors to provide basic services. These legislators, many representing remote and semi-arid areas such as Garissa, were sent messages that highlighted how the proposed funding cap would dramatically reduce the ability of CSOs to provide services. Civil society activists targeted these MPs in meetings, and through a text message campaign that urged voters to contact their MP. Significantly, the Reference Group’s lobbying of MPs was grounded in a series of regional consultation meetings between national CSO leaders and local ‘grass-roots’ organizations. These pre-emptive consultation meetings (discussed in more detail below) helped to ensure that CSO’s warnings regarding the impact of amending the legislation were seen as credible.

Legislative debates demonstrate the success of this framing strategy. As one would expect, members of the opposition Coalition for Reforms and Democracy (CORD) made the strongest objections, but even here MPs focussed less on the threat to democracy and more on the potential impact of a funding cap on service delivery in their constituency. John Mbadi Ng’ongo, the MP for Suba and the Chairperson of the Orange Democratic Movement (ODM, a member of CORD) explained his objections in this way:

World Vision is carrying out a massive project in my constituency, distributing water to almost a whole sub-location. You are now telling me that I should sit in this House and legislate to restrict funding to certain organizations to just a mere 15 percent of the budget. You are telling me that my people in Suba, who have not been drinking clean, that I should stop them from getting clean water ... It is immoral and unacceptable. (National Assembly of Kenya, Official Report, 4 December 2013)

Others spoke in more general terms but emphasized the potential impact on more remote parts of the country.

International actors played a supportive but subsidiary role. Though Kenya is not aid dependent, foreign aid flows theoretically gave Western governments some degree of leverage: between 2010 and 2015, Kenya received ODA equivalent to around 5 per cent of its GNI each year, an amount that correspondent to roughly a quarter of government expenditure. Political circumstances, however, rendered this leverage difficult to use effectively. In the wake of the 2013 elections, donors had been accused of infringing on Kenyan sovereignty, creating a real risk that forceful interventions in defence of civil society would harm the campaign by exposing CSOs to the accusation that they were the mouthpiece of foreign governments. Thus, while donors helped on strategy, and INGOs provided logistical and financial support that facilitated the regional consultation meetings between national CSO leaders and smaller ‘grass-roots’ organizations, and made engagement with the Parliament possible, Western governments were careful to ‘lead from behind’. In other words, they exerted diplomatic pressure cautiously and in a way that did not embarrass or directly antagonise the government. Several Ambassadors attended and made statements at meetings held between civil society and parliamentarians, for example, keeping the issue on the agenda, but avoided making high profile public comments that would have taken the spotlight away from national CSOs.

Ultimately, the success of local CSOs in winning over MPs likely to be impacted by the law forced the government to abandon its attempt to amend the PBO Act after it failed to pass the second reading stage in Parliament in December 2013. This did not take the form of an outright rejection of the proposal. Instead, more progressive MPs (including some from the ruling party) took a pragmatic approach that made use of the formal procedural rules governing the legislature: they deliberately absented themselves from the chamber when the relevant vote was due to be held. This meant that the Parliament lacked a quorum, and so no votes could be taken.

Subsequent efforts to amend the PBO Act – in late 2014 and again in 2015 – have also been unsuccessful, largely because Kenyan CSOs did not simply wind down their campaign after their apparent success in December 2013. Instead, national civil society leaders continued to hold regional consultations with local CSOs in different parts of the country and kept lobbying the government and MPs. This sustained advocacy has successfully defended civic space to date: though Kenyan media reported that the government planned to amend the Act in both 2014 (Mwere, 2014) and 2015 (Njugunah, 2015), in neither instance did the proposals reach the stage of a vote in Parliament. The victory of Kenyan civil society remains incomplete, however: the original PBO Act is not yet in force, despite several court rulings directing the relevant Minister to gazette a date for its commencement.

4.2. Uganda: the Non-Governmental Organisations Act

Although Uganda has a proud tradition of a strong women’s movements and dynamic associational life, civil society faces many challenges (ICNL, 2017a). Having removed both term limits and age limits, President Museveni has demonstrated a distinct disinclination to relinquish power, and the country is typically rated as being less democratic than Kenya. Similarly, although the Ugandan parliament has often been vibrant and does not score that low on the Parliamentary Powers Index overall, when it comes to legislative constraints on the executive it is weaker than its Kenyan counterpart and the country has yet to experience a transfer of power (Abrahamsen & Bareebe, 2016). Harassment of political activists and intolerance of dissent has increased in the last few years, and the Public Order Management Act 2013 has been used to prevent opposition critical CSOs from holding protests and meetings (Freedom House, 2016).

In April 2015, the government gazetted a new Non-Governmental Organisations Bill (NGO Bill), designed to replace a previous NGO Act that, while imperfect, was clearly less repressive. CSOs immediately raised concerns about the new Bill, arguing that it would close political space by requiring them to seek permission from new District NGO Monitoring Committees to operate in each area of the country. The Bill also included a vaguely worded prohibition on

engaging in activities ‘prejudicial to the interest of Uganda and the dignity of the people of Uganda’ (Section 44(f) in the Act) and gave the NGO Bureau power to ‘black list’ NGOs (Section 7(b)(iv)). Despite the efforts of civil society to rouse parliamentarians to their defence, the Parliament passed the bill in November 2015. MPs made some progressive amendments to the law, removing a requirement for NGOs to be non-partisan, and placing some constraints on the ability of government officials to inspect NGO offices. Yet the most problematic provisions remained. The President signed the Bill several months later, and it became the NGO Act 2016.

So why did Ugandan CSOs not succeed in the manner of their Kenyan counterparts? In terms of international factors, aid flows theoretically gave Western governments some leverage over the Ugandan government: between 2010 and 2015, Uganda received ODA totalling about 7 per cent of its GNI each year, equivalent to around half of the central government’s annual expenditure. However, there is little evidence of donors seeking to make use of this leverage, though the presence of their representatives during parliamentary debates clearly constituted a symbolic statement of concern. This is not entirely surprising; prior research shows that Uganda is far less vulnerable to donor pressure than aid flows might suggest (Fisher, 2013). A number of factors contribute to this state of affairs, including President Museveni’s efforts to position Uganda as a key strategic partner in the war on terror and a guarantor of stability in East Africa (Fisher, 2012), which insulate his regime from criticism.

Lower levels of democracy were also significant, as was the dominance of the ruling National Resistance Movement within parliament – following the 2011 general elections the NRM held more than two-thirds of the seats. This meant that CSOs had to find a way to persuade significant numbers of ruling party MPs to be successful, and in contrast to Kyrgyzstan, international allies did not create a window of opportunity to make this task easier. Against this backdrop, Ugandan CSOs needed a particularly effective strategy, but do not appear to have learned the key lessons from the Kenyan experience. The National NGO Forum (an umbrella group) convened a Civil Society Leaders Strategy meeting that sought to develop a joint engagement strategy in April 2015, and there was a flurry of formal consultations between civil society leaders, who sought to develop a common position on the Bill – as well as between civil society and the NGO Board, donor community and MPs in May 2015 (Chapter Four Uganda, *n.d.*). This fed into the public hearing of the parliamentary Committee on Defense and Internal Affairs, at which several NGOs made statements in broad national terms. Yet although CSOs campaigning against the Bill framed their arguments by reference to potential negative impacts on both advocacy and service delivery, they did not target their efforts at the constituency level. Consequently, this utilitarian framing did not resonate with MPs’ electoral incentives as it did in Kenya.

The report of the Committee, for example, suggests that CSO statements had little impact on its members, and endorsed the (flawed) narrative that groups who criticized the government ‘were more likely to hide information and be dishonest’ (Committee on Defense & Internal Affairs, 2015, para. 5.3). Speaking in Parliament during the second reading debate, the Chair of the Committee, Benny Namugwanya, repeated the sentiment that NGOs were a security threat, and cast donors as part of the problem, stating that ‘excessive and unrealistic donor demands were an obstacle to openness and transparency’ (Parliament of Uganda, Hansard, 19 August 2015).

Many NRM MPs echoed these sentiments during debates, no doubt under considerable pressure to toe the party line. While they typically acknowledged the value of the work of NGOs, they also raised concerns about security risks, support for terrorism, and a lack of transparency. Several gave examples of ‘bad’ or ‘fraudulent’ NGOs. While the government was aware that it was operating in full view of the international community – at several points during the debate, the Speaker noted the presence of officials from Western embassies and at one point the Danish Ambassador – the lack of a coordinated strategy targeting the core interests of MPs meant this had little effect.

Some independent and opposition MPs expressed more sympathy for NGOs, and suspicion of the Government's motivations. Latif Ssebagala, the Democratic Party MP for Kawempe Division North stated:

It is very important that NGOs are regulated, but the spirit in which this Bill has been brought is questionable.... I know of some NGOs that have had big struggle with the government ... There have been conflicts here and there with Government asking funders why they fund the NGOs directly instead of passing the funds via Government ministries. (Parliament of Uganda, Hansard, 19 August 2015).

Beatrice Anywar the Woman Representative for Kitgum District, and a member of the opposition Forum for Democratic Change (FDC), cast the bill as a threat to the independence of NGOs. She argued 'the NGOs in our constituencies are under great threats and this makes us think that this law has come up in a manner of controlling the NGOs' (Parliament of Uganda, Hansard, 19 August 2015). Later in September, when the relevant Minister sought to justify new registration requirements, another MP from the FDC called on the Minister to 'just accept that you are not interested in the emergence of a very strong civil society and civic community. By so doing, we will know that the dictatorship reigns' (Christine Bako Abia, Parliament of Uganda, Hansard, 1 September 2015).

Ultimately, however, the Parliament of Uganda passed the NGO Bill unanimously. Its provisions have since been used to sharply constrain the activities of many CSOs. In late 2019, for example, the government used the provisions of the new NGO Act to de-register more than 12,000 NGOs (Mukhaye, 2019), demonstrating the high cost failing to block (or more substantially amend) anti-NGO legislation.

5. Characteristics of effective campaigns

A greater degree of political openness and stronger legislative constraints on the executive meant civil society groups in Kyrgyzstan and Kenya faced an easier task in mobilizing legislators than their counterparts in Kazakhstan and Uganda. Yet such structural elements do not, on their own, guarantee that legislators will defend civic space. Moving away from our pairwise comparisons to consider all four cases, it is clear that the quality of democracy is a supportive but not determinative factor: during the period under review, Uganda was rated as more democratic than Kyrgyzstan, yet still passed anti-NGO legislation. This point is also demonstrated by a number of other cases – the Hungarian parliament supported a new law on Transparency of Organisations Receiving Support in 2017, despite the country being rated as 'free' at the time; meanwhile the low level of democracy in Myanmar in 2013 did not stop CSOs and their allies within the legislature from effectively mobilizing to amend – though not overturn – the Draft Law on Associations.

Similarly, while donors' financial clout enabled them to create space for CSOs in Kenya and Kyrgyzstan this was not simply a product of the degree of aid dependency; Uganda received more aid dollars per capita than any of our cases, but donors did not prioritise the defence of civic space or creating a more facilitative environment for national-level campaigns. It is therefore essential to consider both structure and agency, the way that international actors can create space for national campaigns – but only if they choose to – and the importance of the strategies and framing devices adopted by CSOs.

The evidence presented above suggests that effective campaigns have four main characteristics. The first is cohesive coordination between local and international actors. In both Kenya and Kyrgyzstan, Western governments and INGOs helped to keep their plight on the agenda via statements and public appearances that demonstrated solidarity with civil society. In both cases, international actors helped to create political space for campaigns led by local CSOs, making use of the leverage generated by the foreign aid they provided. However, the manner in which they employed that leverage varied. Western governments wielded influence more overtly

in Kyrgyzstan, with major donors threatening a sizeable cut in aid if the Foreign Agents Law was adopted. In Kenya, a similar group of international actors took particular care to 'lead from behind' due to the risk that overt attempts to intervene would play into the government's hands, validating its claims that foreign funded CSOs constituted a threat to national sovereignty. In contrast, President Museveni's success in positioning Uganda as a key strategic partner neutralised Western leverage, while in Kazakhstan the country's economic independence meant no such leverage existed. Thus, in those cases, international actors did not facilitate and amplify the campaigns launched by local CSOs to the extent they did in Kenya and Kyrgyzstan.

The second key characteristic of effective campaigns is that they are pre-emptive and sustained. This is most apparent in the case of Kenya. A critical feature of Kenyan civil society's campaign against the amendments to the PBO Act was that it did not begin when those amendments were first proposed in October 2013, but well before. Between June and August 2013, the Reference Group, with support from several INGOs, held a series of regional meetings with CSOs in different regions. These consultations educated local groups about the PBO Act and how it would benefit them. It was not entirely coincidental that these meetings took place before the first attempt to amend the PBO Act. After the change of government in 2013, Kenyan CSOs anticipated an attempt to amend the PBO Act was likely, in part because of their earlier support for the International Criminal Court's (ICC) indictment of the incoming President. This foresight proved valuable; the existence of a constituency already motivated to defend the PBO Act increased the electoral costs of amending the legislation for MPs. Moreover, civil society did not cease its advocacy around the PBO Act after Parliament rejected the proposed amendments in December 2013. Instead, between March and May 2014, the Civil Society Reference Group held another round of regional meetings, in part because 'We [civil society] knew they would come back, because they said they would'.⁴ Again, this foresight proved valuable; civil society was able to leverage this to ensure that subsequent attempts to amend the PBO Act – in late 2014 and again in 2015 – failed.

In contrast to the case of Kenya, in both Uganda and Kazakhstan CSOs' efforts to win over legislative 'champions' were far more reactive. This is most clearly apparent in Uganda, where CSOs' mobilization against the NGO Act only picked up steam in April 2015 when the draft Bill had been gazetted. As explained above, it was at this point that the National NGO Forum convened a meeting of CSOs to develop a joint engagement strategy, triggering a flurry of consultation meetings with stakeholders – including parliamentarians. Arguably, however, the draft NGO Bill should have come as no surprise: in 2013, local media had reported plans to draft a new NGO Act as well as the government's intention to use this as a means of increasing its control over the activities of CSOs (Athumani, 2013). Waiting until April 2015 to plan a response meant CSOs had a much shorter window in which to build a campaign against the law, ultimately limiting the impact of that campaign.

The third characteristic is that effective campaigns are framed in a manner that resonates with the electoral incentives of parliamentarians. In both successful campaigns – Kenya and Kyrgyzstan – these incentives were heavily influenced by the nature of the country's electoral system, albeit in different ways. MPs elected under proportional representation systems typically owe their seats to the Executive, who decides how to rank individuals on the party list (Golosov, 2013), and are more distant targets for blame by vulnerable constituents adversely affected by the repression of civil society. By contrast, MPs elected under the FPTP model owe their seats to the support of their constituents – at least where elections are competitive – and so can more easily be given incentives to vote against the executive (Carey & Shugart, 1995).

In Kenya, an FPTP system made MPs a clear target for blame should constituents be adversely affected by reforms they had endorsed such as amendments to the PBO Act. Kenyan MPs were thus vulnerable to arguments that framed the amendments as a potential threat to

development. In turn, CSOs emphasized the impact the amendments would have on the most aid-dependent constituencies. This included carefully targeting lobbying activities on MPs from those areas, using regional consultations with grass-roots CSOs – during which grass-roots organizations were advised about the importance of the PBO Act – to make their prediction that voters would punish MPs at the ballot box for not protecting key services more credible.

A similar framing strategy was not available in Kyrgyzstan, where a proportional electoral system blurs the chain of accountability between voters and representatives. This difference influenced how CSOs framed their appeals to legislators in Kyrgyzstan, leading them to focus more on the impact the Foreign Agents Law would have on the nation. Such a strategy was important for reducing the impression that rejecting the law would be seen as doing the bidding of foreign powers, but may have lacked the full impact of the more targeted strategy employed in Kenya.

Finally, effective campaigns tend to engage pragmatically with the both the informal political rules that govern the behaviour of legislators and the formal procedural mechanisms of legislatures. In both Kenya and Kyrgyzstan the defeat of anti-CSO legislation required persuading at least some MPs from the ruling party to act against their own bloc – either by voting against it, or through strategic absence from the legislature. Voting against one's own party or coalition is a daunting prospect in states where political fortunes are often dependent on maintaining the leader's good will. It is therefore extremely valuable for MPs and CSOs to be aware of and to utilise formal parliamentary rules and procedures that make it possible to block government initiatives without openly opposing government leaders. In our cases, this involved MPs finding ways to delay or abstain from voting, but in other contexts the formal rules might provide different options. In Kyrgyzstan, more progressive MPs used formal parliamentary rules to delay debates, buying time for both diplomatic interventions from donors to occur, and for local actors to seek an opinion from the Venice Commission and ODIHR. As detailed above, these interventions created essential space for progressive legislators to oppose the Foreign Agents Law more openly in the final vote.

In Kenya, opposition MPs spoke against the amendments to the PBO Act, but it was government MPs who tipped the balance in favour of defending civil society by absenting themselves from the chamber when the time came for a vote, making it impossible to secure the quorum needed to pass the amendments into law. Such a strategy was possible in Uganda, where the absence of a parliamentary quorum has foiled repressive laws in the past: in 2014, Uganda's Constitutional Court declared the controversial (and highly discriminatory) Anti-Homosexuality Act 'null and void' because the Parliament had passed it in the absence of a quorum. It does not appear to have been used in the case of the NGO Act, however, perhaps in part because CSOs struggled to make significant inroads into the NRM caucus.

In short, our cases show that the varying success of campaigns against repressive civil society laws is the product of both structure and agency. Structural factors, such as a very low levels of democracy or the absence of international leverage, intensify the challenges facing CSOs. But the opportunities created by a more favourable context – be that a higher level of democracy or the existence of greater international leverage – must be utilised by local actors, through campaigns that are pre-emptive and sustained over time, frame the issue in a manner that resonates with the incentives of legislators, and engage pragmatically with both the formal and informal rules that govern parliaments.

6. Conclusion: the challenge of sustaining success

Our analysis provides some reasons for optimism; it is possible for CSOs to defend themselves and their contributions to development and democracy by persuading legislators to block repressive laws. Yet there is bad news as well; victories are often partial or temporary. In Kenya, for example, the original PBO Act has yet to enter into force. It is also important to

keep the ‘big picture’ in mind. Laws that directly restrict the funding, registration and operation of civil society are just one tool among the many available to executives seeking to curtail political space. Presidents or governments that find these tactics unavailable may resort to other, more subtle methods including intimidation, prosecutions for defamation, and surveillance of activists working on particularly sensitive issues (Cheeseman & Klaas, 2018). These more insidious methods of constraining civil society are harder to fight back against, often because they do not provide clear focal points around which civil society can mobilize opposition.

The findings presented above have important implications for the strategies of both civil society groups and international donors. While it is clear that engaged and focussed pro-democracy donors can create valuable space for civil society campaigns, this does not mean that Western actors should always adopt high profile public positions. These often prove difficult to sustain, and may undermine the claim to independence of CSOs, hence triggering a damaging backlash. Our research demonstrates that where the role of the international community is controversial and sensitive, a more viable alternative for donors is to apply pressure behind closed doors and use international influence to convene meetings, broker relationships and offer safe spaces to civil society groups. The challenge for donors is to do this without prescribing a particular approach. While we can identify some of the ingredients of a successful strategy, exactly what a ‘good’ campaign looks like will depend heavily on local context, in particular the nature of the electoral system and the formal and informal rules that shape behaviour within the legislature. This means that a campaign that worked in one location – such as Kenya – cannot simply be replicated elsewhere, though there may well be scope for borrowing ideas and adapting them to suit local circumstances. Allowing domestic groups to lead the way when it comes to strategic design will be far from straight forward. While most international donors are quick to reject the idea of ‘cookie cutter’ solutions, the idea of promoting ‘best practice’ remains popular – and can lead to a tendency to transplant solutions from one context to another (Andrews, 2008).

Working to short time-frames and indicators of success also presents additional challenges for international donors. We found that the most effective campaigns tended to be pre-emptive and sustained. Moreover, as noted above, ‘success’ is often partial or (potentially) temporary. Taken together, this suggests that donors may need to support campaigns against repressive civil society laws in a way that is not just long-term, but potentially open-ended. To date, donors have fared much better in responding to sudden crises that threaten civil society activists than in supporting sustainable alliance and coalition building (Youngs, 2017). One reason for this – highlighted by Mariz Tadros (2011) in her study of women’s coalitions in Egypt and Jordan – is that coalitions of CSOs ‘do not function well’ within the standard three-to-five year funding cycle. Another challenge is that donors tend to emphasize the attainment of measurable results, something that is particularly difficult when it comes to the closure of civic space. As the case of Kenya demonstrates, ‘victory’ is rarely complete or final; the government can come back with new legislative proposals after the initial danger has passed. Thus, donors may need to adopt a more flexible approach, both with respect to the duration of projects and the manner in which they are expected to demonstrate results.

A further challenge for both civil society groups and international actors is the tension between protecting democracy and development. In line with prior studies (Baldus et al., 2019), we find that campaigns have been particularly successful at defending democracy when they highlight the development contribution of CSOs. Demonstrating to political leaders that voters are likely to be disadvantaged by cuts to healthcare and education services if civil society groups suffer a decline in funding is one of the most effective ways to mobilise them to defend civic space. Yet while effective in the short-term, this strategy may cause problems in the long-term. A common tactic among governments seeking to constrain civil society is to divide-and-rule, arguing that the activities of ‘bad’ CSOs – that is, those with more explicitly political agendas – are a threat to the work of ‘good’ CSOs dedicated to the nation’s development. This was precisely the argument employed by the government in Uganda with respect to the NGO Act, for example.

A similar process has occurred in Kenya, where civil society has divided since the ICC cases against Uhuru Kenyatta and William Ruto, crystallised previous schisms among CSOs into a ‘peace’ and ‘justice’ cleavage (Bosire & Lynch, 2014). The open hostility of government leaders to ‘justice’ groups that supported the prosecution further intensified these divisions. This included the spreading of rumours that certain civil society groups were part of an international conspiracy with opposition leaders and foreign governments – branded ‘evil society’ – to undermine the country’s sovereignty. It also included government efforts to manipulate campaigns for peace around elections to constrain the ability of political leaders and civic groups to complain about poor-quality polls on the basis that this represented a threat to peace and stability (Lynch, Cheeseman, & Willis, 2019). This had far-reaching consequences for the sustainability of democracy and human rights focussed civil society groups, as Kenyan CSOs lost the support of some of the middle-class, as ‘the very people they had fought for rejected their cause’ (Opalo, 2013).

Campaigns that seek to resist anti-CSO laws by highlighting the contribution of civil society to development may therefore have unintended consequences, encouraging authoritarian governments to formalize the distinction between development- and democracy-focussed CSOs, and allowing only the former to operate. The successful defence of civil society’s contribution to development at the cost of their contribution to democracy would be a pyrrhic victory. Unfortunately, there is no straightforward solution to this challenge. At the very least, however, domestic campaigners and international donors seeking to defend development from the closure of civic space should take care to explain *how* civil society contributes to development: it is not just by delivering services, but by holding governments accountable for their choices and amplifying the voices of marginalized communities.

Notes

1. In this paper, we use ‘NGO’ when prior research or relevant laws have focussed specifically on NGOs, and ‘CSO’ when referring to research or laws that relate to civil society more broadly.
2. Interviews were carried out by [Author 2] in Nairobi in March 2017, and in Bishkek in May 2017.
3. Authors’ calculations, based on the OECD-DAC Dataset, ‘Aid (ODA) disbursements to countries and regions [DAC2a]’.
4. Interview, civil society activist, 17 March 2017, Nairobi.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This research was supported by the Westminster Foundation for Democracy (WFD). It forms part of the research partnership on the ‘Political Economy of Democracy Promotion’, co-led by Professor Nic Cheeseman (University of Birmingham), Dr Graeme Ramshaw (WFD) and Professor David Hudson (University of Birmingham).

ORCID

Nic Cheeseman  <http://orcid.org/0000-0002-0922-7514>

Susan Dodsworth  <http://orcid.org/0000-0002-3413-2963>

References

- Abrahamsen, R., & Bareebe, G. (2016). Uganda’s 2016 elections: Not even faking it anymore. *African Affairs*, 115(461), 751–765. doi:10.1093/afraf/adw056

- Andrews, M. (2008). The good governance agenda: Beyond indicators without theory. *Oxford Development Studies*, 36(4), 379–407. doi:10.1080/13600810802455120
- Athumani, H. (2013, July 25). *Minister wants tighter law on NGO activities*. Uganda Radio Network. Retrieved from <https://ugandaradionetwork.net/story/minister-wants-tighter-law-on-ngo-activities>.
- Baldus, J., Berger-Kern, N., Hetz, F., Poppe, A. E., & Wolff, J. (2019). *Preventing civic space restrictions: An exploratory study of successful resistance against NGO laws*. Frankfurt: Peace Research Institute.
- Banks, N., Hulme, D., & Edwards, M. (2015). NGOs, states, and donors revisited: Still too close for comfort? *World Development*, 66, 707–718. doi:10.1016/j.worlddev.2014.09.028
- Barkan, J. (Ed.). (2009). African legislatures and the “third wave” of democratization. In *Legislative power in emerging African democracies* (pp. 1–31). Boulder, CO: Lynne Rienner Publishers.
- Berger-Kern, N., Hetz, F., Wagner, R., & Wolff, J. (2021). Defending civic space: Successful resistance against NGO laws in Kenya and Kyrgyzstan. *Global Policy*, 12(S5), 84–94. doi:10.1111/1758-5899.12976
- Bosire, L. K., & Lynch, G. (2014). Kenya’s search for truth and justice: The role of civil society. *International Journal of Transitional Justice*, 8(2), 256–276. doi:10.1093/ijtj/iju002
- Brass, J. N., Longhofer, W., Robinson, R. S., & Schnable, A. (2018). NGOs and international development: A review of thirty-five years of scholarship. *World Development*, 112, 136–149. doi:10.1016/j.worlddev.2018.07.016
- Brechenmacher, S. (2017). *Civil society under assault: Repression and responses in Russia, Egypt, and Ethiopia*. Washington, DC: Carnegie Endowment for International Peace.
- Carey, J. M., & Shugart, M. S. (1995). Incentives to cultivate a personal vote: A rank ordering of electoral formulas. *Electoral Studies*, 14(4), 417–439. doi:10.1016/0261-3794(94)00035-2
- Carothers, T., & Brechenmacher, S. (2014). *Closing space: Democracy and human rights support under fire*. Washington, DC: Carnegie Endowment for International Peace.
- Central Asian News Service. (2015). *Human Rights Watch concerned over Kazakhstan’s new NGO bill* [Newswire]. Bishkek: Central Asian News Service. Retrieved from <http://akipress.com/news:567058/>.
- Chapter Four Uganda. (n.d.). *The NGO ACT timeline*. Chapter Four Uganda. Retrieved June 11, 2017, from <http://chapterfouruganda.com/timelines/ngo-bill-timeline>.
- Cheeseman, N., & Klaas, B. (2018). *How to rig an election*. London: Yale University Press.
- Committee on Defense and Internal Affairs. (2015). *Report on the Non-Governmental Organisations Bill 2015*. Kampala: Parliament of the Republic of Uganda.
- Dupuy, K., Ron, J., & Prakash, A. (2016). Hands off my regime! Governments’ restrictions on foreign aid to non-governmental organizations in poor and middle-income countries. *World Development*, 84, 299–311. doi:10.1016/j.worlddev.2016.02.001
- European Commission for Democracy Through Law & OSCE Office for Democratic Institutions and Human Rights. (2013). *Joint interim opinion on the draft law amending the law on non-commercial organisations and other legislative acts of the Kyrgyz Republic* (Venice Commission Opinion No. 738/2013). Strasbourg: Venice Commission.
- FIDH. (2015, November 24). *A call to the President of Kazakhstan not to sign into law the*. International Federation for Human Rights. Retrieved from <https://www.fidh.org/en/issues/human-rights-defenders/a-call-to-the-president-of-kazakhstan-not-to-sign-into-law-the-ngo>.
- Fish, S., & Kroenig, M. (2009). *The handbook of national legislatures: A global survey*. Cambridge: Cambridge University Press.
- Fisher, J. (2012). Managing donor perceptions: Contextualizing Uganda’s 2007 intervention in Somalia. *African Affairs*, 111(444), 404–423. doi:10.1093/afraf/ads023
- Fisher, J. (2013). The limits – and limiters – of external influence: Donors, the Ugandan Electoral Commission and the 2011 elections. *Journal of Eastern African Studies*, 7(3), 471–491. doi:10.1080/17531055.2013.809206
- Freedom House. (2016). *Uganda* [Freedom in the world – country report]. Washington, DC: Freedom House.
- Goloso, G. V. (2013). Proportional representation and authoritarianism: Evidence from Russia’s regional election law reform. *Representation*, 49(1), 83–95. doi:10.1080/00344893.2012.751050
- Grishin, A. (2015, December 12). *Dismay as NGO law goes through Kazakhstan*. Kazakhstan International Bureau for Human Rights and Rule of Law. Retrieved from https://bureau.kz/en/news/kibhr_information/dismay_as_ngo_law/.
- Hansen, T. O., & Sriram, C. L. (2015). Fighting for justice (and survival): Kenyan civil society accountability strategies and their enemies. *International Journal of Transitional Justice*, 9(3), 407–427. doi:10.1093/ijtj/ijv012
- Horton, P., Rydstrom, H., & Tonini, M. (2015). Contesting heteronormativity: The fight for lesbian, gay, bisexual and transgender recognition in India and Vietnam. *Culture, Health & Sexuality*, 17(9), 1059–1073. doi:10.1080/13691058.2015.1031181
- Hossain, N., Khurana, N., Mohmand, S., Nazneen, S., Oosterom, M., Roberts, T., ... Schröder, P. (2018). *What does closing civic space mean for development? A literature review and proposed conceptual framework*. IDS. Retrieved from <https://opendocs.ids.ac.uk/opendocs/handle/123456789/13962>.
- Htun, M., & Weldon, S. L. (2010). When do governments promote women’s rights? A framework for the comparative analysis of sex equality policy. *Perspectives on Politics*, 8(1), 207–216. doi:10.1017/S1537592709992787
- ICNL. (2017a). *Civic freedom monitor: Uganda*. ICNL. Retrieved from <http://www.icnl.org/research/monitor/uganda.html>.

- ICNL. (2017b). *ICNL: Kyrgyz Republic*. ICNL. Retrieved from <http://www.icnl.org/research/monitor/kyrgyz.html>.
- ICNL. (2017c, January 5). *Civic Freedom Monitor: Kazakhstan*. ICNL. Retrieved from <http://www.icnl.org/research/monitor/kazakhstan.html>.
- Keck, M. E., & Sikkink, K. (1998). *Activists beyond borders: Advocacy networks in international politics*. Ithaca, NY: Cornell University Press.
- Lelik, A. (2016, May 12). *Disputed "foreign agent" law shot down by Kyrgyzstan's parliament*. The Guardian. Retrieved from <https://www.theguardian.com/world/2016/may/12/foreign-agent-law-shot-down-by-kyrgyzstan-parliament>.
- Levitsky, S., & Way, L. (2020). The new competitive authoritarianism. *Journal of Democracy*, 31(1), 51–65. doi:10.1353/jod.2020.0004
- Lillis, J. (2017). *Kazakhstan* [Nations in transit - country report]. Washington, DC: Freedom House.
- Lührmann, A., & Lindberg, S. I. (2019). A third wave of autocratization is here: What is new about it? *Democratization*, 26(7), 1095–1113. doi:10.1080/13510347.2019.1582029
- Lynch, G., Cheeseman, N., & Willis, J. (2019). From peace campaigns to peaceocracy: Elections, order and authority in Africa. *African Affairs*, 118(472), 603–627. doi:10.1093/afraf/adz019
- Mahoney, J. (2010). After KKV: The new methodology of qualitative research. *World Politics*, 62(1), 120–147. doi:10.1017/S0043887109990220
- Mukhaye, D. (2019, November 14). Government closes 12,000 NGOs. *Daily Monitor*. <https://www.monitor.co.ug/News/National/Government-closes-12-000-NGOs-Obiga-Kania-verification/688334-5349062-681x55z/index.html>.
- Musila, G. M. (2019). *Freedoms under threat: The spread of anti-NGO measures in Africa* (p. 24). Freedom House. <https://freedomhouse.org/report/special-reports/freedom-under-threat-spread-anti-ngo-measures-africa>.
- Mwere, D. (2014, October 22). New government bill may cut NGO foreign funding to 15 percent. *The Star*.
- Naoi, M., & Krauss, E. (2009). Who lobbies whom? Special interest politics under alternative electoral systems. *American Journal of Political Science*, 53(4), 874–892. doi:10.1111/j.1540-5907.2009.00406.x
- Njugunah, M. (2015, May 22). *Kenya: Wide-ranging changes proposed to PBO Act*. AllAfrica.Com. <https://allafrica.com/stories/201505220983.html>.
- Opalo, K. (2013, May 28). Which way forward for Kenya's Civil Society? *African Arguments*. <https://africanarguments.org/2013/05/28/which-way-forward-for-kenyas-civil-society-by-kennedy-opalo/>.
- Oram, J., & Doane, D. (2017). *Why shrinking civil society space matters in international development and humanitarian action*. Brussels: European Foundation Centre and Funders' Initiative for Civil Society. <http://efc.issuelab.org/resource/why-shrinking-civil-society-space-matters-in-international-development-and-humanitarian-action.html>.
- Paget, D. (2018). *The rally-intensive campaign: Electioneering and political parties in Tanzania* [D. Phil]. Oxford: University of Oxford.
- Rutzen, D. (2015). Civil society under assault. *Journal of Democracy*, 26(4), 28–39. doi:10.1353/jod.2015.0071
- Tadros, M. (2011). *Working politically behind red lines: Structure and agency in a comparative study of women's coalitions in Egypt and Jordan* (Research Paper No. 12). University of Birmingham, Developmental Leadership Program.
- U.S. Mission to the OSCE. (2015a, January 22). *On draft legislation in Central Asia impacting NGO operating space: Statement to the PC*. U.S. Mission to the OSCE. https://osce.usmission.gov/jan_22_15_central_asia/.
- U.S. Mission to the OSCE. (2015b, May 21). *Response to head of the OSCE Programme Office in Astana: Statement to the PC*. U.S. Mission to the OSCE. https://osce.usmission.gov/may_21_15_response_to_head_of_osce_astana_programme_office/.
- Wachira, G. M., & Karjala, T. (2016). The struggle for protection of indigenous peoples' rights in Africa. In D. Short & C. Lennox (Eds.), *Handbook of Indigenous peoples' rights* (pp. 394–413). Boca Raton, FL: Routledge. doi:10.4324/9780203119235-26
- Youngs, R. (2017). *Shrinking space for civil society: The EU response* [Paper requested by the European Parliament's Subcommittee on Human Rights]. Brussels: Directorate-General for External Policies, European Parliament.