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**Article — Published Version**

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Global Policy

**Provided in Cooperation with:**

John Wiley & Sons

*Suggested Citation:* Berger-Kern, Nora; Hetz, Fabian; Wagner, Rebecca; Wolff, Jonas (2021) : Defending Civic Space: Successful Resistance Against NGO Laws in Kenya and Kyrgyzstan, Global Policy, ISSN 1758-5899, Wiley, Hoboken, NJ, Vol. 12, pp. 84-94, <https://doi.org/10.1111/1758-5899.12976>

This Version is available at:

<https://hdl.handle.net/10419/240952>

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# Defending Civic Space: Successful Resistance Against NGO Laws in Kenya and Kyrgyzstan

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## Abstract

Since the turn of the century, an increasing number of governments around the world has introduced or tightened restrictions on civil society organizations (CSOs). Attempts by local CSOs and external actors to counter this trend of shrinking civic spaces have been mostly unsuccessful. In a few notable cases, however, civic space restrictions have been reversed or even prevented from being adopted in the first place. Focusing on resistance to so-called NGO laws, this paper explores the strategies, causal mechanisms and scope conditions that help explain the successful defense of civic space. In a first step, the paper develops a theoretical framework by drawing on research on the diffusion and promotion of international norms, civic resistance and social movements. Second, it looks at two cases – Kenya (2013) and Kyrgyzstan (2013–2016) – in which governmental attempts to impose legal restrictions on foreign-funded NGOs were effectively aborted. The analysis finds that successful resistance in both cases was based on domestic campaigns organized by broad alliances of local CSOs, which were able to draw on preexisting mobilizing structures and put forward a socioeconomic narrative to lobby against civic space restrictions. In Kyrgyzstan, but not in Kenya, external actors also played a significant role.

## Policy Implications

- A rapid and concerted domestic response by civil society organizations (CSOs) seems crucial when it comes to preventing the adoption of legal civic space restrictions.
- Domestic resistance campaigns benefit from the inclusion of a broad range of CSOs that goes beyond a narrow set of advocacy NGOs. Local and international actors should consider to further invest in CSO alliance and network building as well as in institutionalized exchange.
- Arguments that resonate with both the general public and politicians are crucial when it comes to lobbying and advocating against civic space restrictions. Activists should pay attention to identifying context-specific and effective counter-narratives and integrating them in their respective communication strategies. Evidence-based assessments of the tangible consequences of the (planned) legal restrictions are a good starting point for those considerations.
- External actors should investigate if and how they can best lend targeted support to domestic CSO campaigns. Close consultations with local actors are key to meet their needs.

In 2013, the Kenyan government submitted a legislative proposal to parliament that included serious restrictions on nongovernmental organizations (NGOs), including a 15% cap on foreign funding. In response, Kenyan NGOs initiated a large-scale campaign and, in December 2013, brought parliament to reject the governmental proposal. Since then, four more attempts to introduce restrictive NGO norms in the country have failed in the face of local resistance. In the same year, in Kyrgyzstan, parliamentarians presented what would become to be known as the Draft Law on Foreign Agents, a legal initiative that contained a series of restrictions on foreign and foreign-funded NGOs. After then-president Atambayev explicitly endorsed the initiative in 2015, it received a parliamentary majority in the first reading. Following a campaign from local NGOs supported by international actors, however, parliament first significantly modified and then rejected the law.

In a global context, which has been characterized by a wave of increases in civic space restrictions (see below) as

part of a broader trend of ‘democratic recession’ (Diamond, 2015) or ‘autocratization’ (Lührmann and Lindberg, 2019), these experiences from Kenya and Kyrgyzstan are remarkable. Politically, they remind us that governmental attempts to impose restrictions on civil society organizations (CSOs) are not always successful, and that resistance is possible, even under the current conditions of a general trend of deterioration of civic freedoms.<sup>1</sup> Academically, they raise the important question of the reasons that explain successful resistance. This paper, which is of an exploratory and theory-building nature, contributes to answering this question by focusing on the ‘why’ and ‘how’ of successful resistance against so-called NGO laws. It does so in two steps. First, we combine research on the diffusion and promotion of international norms with insights from the study of civic resistance and social movements in order to develop a theoretical framework that identifies the key actors, strategies, causal mechanisms and scope conditions of successful resistance. Second, we probe the plausibility of this framework

by looking at the two cases of successful resistance mentioned in the beginning.

Kenya and Kyrgyzstan have been selected because they are two of very few countries worldwide in which recent attempts to introduce restrictive NGO legislation were effectively frustrated. Most other cases of successful resistance against legal NGO restrictions that we could identify are less unambiguous: In Azerbaijan (2009) and Cambodia (2010–2015), planned legal restrictions were mitigated, but still adopted (and followed by further legal civic space restrictions); in Zambia (2009–2014), resistance was successful in suspending the implementation (not the adoption) of the respective law; in other cases such as Israel (2011), Russia (2005–2006) or Venezuela (2006), resistance could only temporarily halt the adoption of severe legal restrictions (see Baldus et al., 2019; Carothers and Brechenmacher, 2014, p. 37; ICNL, 2020). Given the exploratory and theory-building nature of our study, we deliberately combine two qualitative case studies (within-case analysis) in a ‘no-variance design’ (Brady and Collier, 2004). Studying two cases that are very different in many regards, including in terms of representing two different regions (sub-Saharan Africa and the post-Soviet space), but share the ‘positive’ outcome that is to be explained is useful in order to probe the plausibility of the causal mechanisms and conditions proposed by our theoretical framework, as it enables us to control for country or region-specific features. Both studies trace successful resistance by drawing on an analysis of publicly available primary sources, existing assessments by academic experts, NGOs and international organizations as well as media reports.<sup>2</sup>

While speaking to the overall debate on shrinking civic spaces, the following analysis centers on a specific form of resistance against a specific type of civic space restriction. First, we are interested in the *defense* of civic space, i.e., in resistance that aims at (and succeeds in) preventing restrictive measures from being adopted in the first place. Arguably, the forms of resistance and the conditions for success are quite different when it comes to attempts to *reverse* – or to stall the implementation of – existing restrictions. Second, we focus on resistance against *legal initiatives* that constrain the foundation and/or registration, the operation and/or the funding of voluntary, non-state and non-profit organizations. This focus is motivated both by pragmatic reasons – as NGO laws represent the most formalized, overt and, thus, visible type of civic space restrictions (see Carothers and Brechenmacher, 2014, pp. 7–16) – as well as by the observation that the adoption of NGO laws is the most prominent means by which governments since the early 2000s have limited the autonomy, the capacity and/or the space of CSOs in their country.<sup>3</sup> In the concluding section, we reflect on the limitations that our focus on NGO laws has for the overall question of the (successful) defense of civic space.

## 1. Strategies, mechanisms and conditions of resistance

Research on the current wave of civic space restrictions largely focuses on assessing the patterns and explaining the

spread of restrictive measures (see Christensen and Weinstein, 2013; Dupuy et al., 2016). To the extent that scholars have started to look into responses of local and/or external actors to governmental attempts to restrict civic space, the focus has very much been on responses after the fact. Studies have analyzed, for instance, how local and international NGOs (INGOs) adapt to the implementation of civic space restrictions (Dupuy et al., 2015) or how such restrictions shape ‘naming and shaming’ campaigns by INGOs (Smidt et al., 2020). Up to now, evidence on successful attempts to prevent the very introduction of civic space restrictions mainly comes from policy-oriented reports by and for civil society activists (see, for instance, Brechenmacher and Carothers, 2019; Dodsworth and Cheeseman, 2018; ICNL, 2010).

Given the lack of systematic, theory-oriented studies on the specific topic at hand, we draw on research that focuses on related issues, namely studies on international norm promotion and diffusion as well as on civic resistance and social movements. The aim is to develop a preliminary set of strategies, causal mechanisms and scope conditions that may help explain successful resistance against civic space restrictions. Due to the limited space, we will primarily present the key elements of our theoretical framework and can only very selectively refer to the (vast) scholarship.

In order to systematize the causal process we are interested in, the theoretical framework summarized in Table 1 connects actors, strategies, and mechanisms. The overall logic is that (1) different types of local and external actors respond to an attempt at imposing legal civic space restrictions by individually or jointly adopting (2) one or more strategies to prevent the restrictions from being adopted. In doing so, they – deliberately or not – activate (3) one or more causal mechanisms which may produce the desired outcome, that is, prevent the restrictions from being adopted. With a view to the actors, we distinguish between local actors, which particularly include CSOs and opposition parties, and external actors, which include foreign governments, international organizations as well as INGOs and transnational CSO alliances. In terms of the strategies and the underlying causal mechanisms, we differentiate between three dimensions. First, actors can influence the cost-benefit calculations of governments that aim at restricting civic space. Local actors can impose additional material costs by threatening with or engaging in potentially disruptive protests (Giugni, 2004, pp. 23–24; Kolb, 2007, pp. 73–76); external actors can do so by threatening with or actually adopting economic sanctions (Risse and Ropp, 2013, p. 14).<sup>4</sup> Second, actors can also try to impose social (audience) costs on political decision-makers by mobilizing public pressure on their behalf. In terms of local public opinion, such strategies may affect the domestic support and empirical legitimacy of the government at hand (including parliament) (Kolb, 2007, pp. 76–80). At the international level, ‘naming and shaming’ activities (Smidt et al., 2020) target the international standing or reputation of the government. Third, actors can also try to persuade political decision-makers by presenting (material and/or normative) arguments with the aim to influence and/or change their preferences vis-à-vis

**Table 1.** Actors, mechanisms and strategies

	Cost-benefit mechanism	Public pressure mechanism	Persuasion mechanism
Local actors (CSOs and opposition parties)	(Threat of) disruptive protest	Public statements and campaigns to mobilize national public opinion and/or international support	Lobbying, consultations
External actors (governmental, inter- and nongovernmental)	(Threat of) sanctions; external support of local protest	Public statements to 'name and shame' internationally and/or to shape local public opinion; external support of local campaigns	Lobbying, diplomatic dialogue; external support of local lobbying

Source: Own elaboration.

civic space restrictions. In International Relations, this strategy has been conceptualized in terms of arguing (as opposed to bargaining) or persuasion (see Risse and Ropp, 2013, pp. 14–15). In domestic politics and social movement studies, it refers to strategies of gaining and then using political access through means of lobbying (Kolb, 2007, pp. 80–85; see also Giugni, 2004, pp. 139–142). Across these three dimensions, external actors can also lend support to – and thus try to amplify – local strategies.

The main aim of the empirical case studies presented in the next section is to explore whether and how these strategies and causal mechanisms actually come into play and help explain successful resistance against NGO laws. Neither the strategies nor the mechanisms, however, operate in a vacuum. As research on both international norm promotion and social movements amply shows, context conditions shape the choice and success of strategies of resistance as well as the operation of the underlying causal mechanisms (see Kolb, 2007, pp. 93–94; Risse and Ropp, 2013, pp. 16–22). In order to assess the potential replicability of strategies that are successful in a given case as well as the potential generalizability of the respective causal mechanisms, it is therefore important to consider the scope conditions as defined by the specific context of the individual country. Given our empirical focus on two cases of successful resistance and in line with the exploratory nature of this paper, the aim here is to identify plausible candidates for necessary conditions. These can, then, serve as hypotheses for future research.

In order to systematically assess the potentially relevant scope conditions, we distinguish between three general features characterizing the context in which resistance emerges:

1. Political opportunity structure: In line with the political opportunity structure approach in social movement studies, the characteristics of the political regime in place can be expected to constrain and enable resistance (see Chenoweth et al., 2017, p. 9; Giugni, 2004, pp. 27–28). More specifically, by determining the risk of repression as well as the types and extent of access to the political arena, the political context shapes the respective costs and chances of success associated with the different strategies.
2. Mobilizing structures: In line with the resource mobilization approach, domestic resistance campaigns as well as

external interventions that aim at supporting them depend on 'mobilizing structures' (see Giugni, 2004, pp. 148–150). In particular, the capacity of local CSOs to wage resistance can be expected to be shaped by the organizational strength and diversity of pre-existing CSO networks as well as by their national and international interconnections.

3. Governmental vulnerability: As argued by Risse and Ropp (2013, pp. 16–17), the vulnerability of the given government or regime has a material and a social (or ideational) dimension. In material terms, an asymmetric dependence on trade, investment and/or aid defines 'incumbent governments' vulnerability to external pressure' (Levitsky and Way, 2006, p. 382), while the leverage of local actors is shaped by governments' domestic strength or weakness in terms of both elite and popular support (Poppe et al., 2019, p. 784; see also Nepstad, 2015, p. 418). Ideationally, for the topic at hand, governmental vulnerability is shaped by the extent to which the planned restrictions clash with or can be justified in terms of the legal and/or societal norms that predominate at the national and international level (see Poppe and Wolff, 2017). While a government's material vulnerability shapes the chances of success when it comes to the imposition of costs or the use of public pressure, tensions between the planned restrictions and international and/or domestic norms facilitate strategies that use (international) public pressure and/or aim at persuading policy-makers.

## 2. Kenya and Kyrgyzstan in comparison

### 2.1. Kenya

Since 1990, the rights and obligations of NGOs in Kenya have been regulated by the NGO Coordination Act, which in the eyes of many CSOs and even some politicians contains arduous and complex conditions for the sector (CSORG, 2014, pp. 14–16; ICNL, 2020). In an attempt to replace the 1990 Coordination Act with a more transparent and efficient legal framework for NGOs, the Public Benefits Organizations (PBO) Act was drafted during almost four years of highly participatory negotiations with a variety of stakeholders and approved by the National Assembly in January 2013 (OBS, 2018, p. 3). Although then-president Mwai Kibaki signed the PBO Act into law a few days later in January 2013, it did not

enter into force, because general elections in March 2013 prevented the responsible minister from publishing the Act in the Kenya Gazette.

After these elections, government-NGO relations quickly deteriorated. A key element driving this deterioration was the role of Kenyan human rights NGOs, which had provided evidence against the new president Uhuru Kenyatta and his vice president William Ruto to the International Criminal Court (ICC) because of their alleged responsibility for the post-election violence in 2007–2008.<sup>5</sup> The new government, therefore, refrained from enforcing the PBO Act and instead decided to tighten the regulation of NGOs. In October 2013, it introduced a set of harsh amendments to the Act to parliament, which at its core included a 15% cap on foreign funding to all NGOs operating in the country, regardless of their field of activity (Republic of Kenya, 2013). As in 2013 99% of funding to Kenyan NGOs was provided by western donors (Ochido, 2013, p. 69), the cap would have had devastating consequences for the entire sector. After strong protest and large-scale campaigning by local NGOs, the proposed amendments to the PBO Act were, however, ultimately rejected by the majority of present parliamentarians during the second reading in the National Assembly in December 2013. Remarkably, not only MPs from opposition parties, but also from the governing parties voted against the amendments. This section analyzes the actors, strategies, mechanisms and conditions that explain this exceptional outcome.<sup>6</sup>

Immediately after the proposed amendments were published, a diverse group of NGOs formed a protest coalition under the umbrella of the already existing Civil Society Organizations Reference Group (CSORG), which had been created in 2009 to contribute to the drafting of the PBO Act. From November to December 2013, more than 50 NGO representatives from different fields, such as human rights and governance, development and service delivery, regularly came together to discuss and coordinate their activities to resist the planned restrictions. During an initial meeting on November 7, they decided to adopt a two-track approach that combined lobbying of members of parliament (MPs) with a public mobilization campaign (Dodsworth and Cheeseman, 2018, p. 7; Houghton and Muchai, 2014, p. 341). In the following days, the NGOs carried out two impact assessments of the amendments, which in particular identified vast negative socioeconomic consequences (Houghton and Muchai, 2014, p. 341). These findings quickly became the focal point of the communication strategy informing both lobbying efforts and the public mobilization campaign. From then on, the narrative used by the CSORG members focused on the critical role of the NGO sector for the Kenyan economy and service delivery and emphasized the devastating socioeconomic consequences of the planned foreign-funding cap.

In terms of the persuasion mechanism outlined above, the NGOs' lobbying activities in the first track aimed at convincing MPs that the proposed amendments would do harm to their constituencies. The CSORG members began with the publication of an open letter to the MPs, which stated that

the amendments, if implemented, would 'not only constrain the civil society's contribution to national development but also make the attainment of socio-economic rights that much more difficult' (CSORG, 2013a). Throughout November 2013, several CSORG members handed out leaflets to the parliamentarians (Houghton and Muchai, 2014, p. 342), urging MPs to reject the amendments. The leaflets emphasized that the proposed funding cap would have devastating consequences for the entire NGO sector 'as the 8,500 PBOs in the country are heavily donor reliant for most of their activities where 1,757 of these are delivering 47% of Kenya's public health services'. Highlighting the adverse socioeconomic effects of the amendments, the NGOs argued that 20 million people would lose access to basic health services and that up to 240,000 Kenyans would lose their job (Health NGO Network, 2013). In an appearance before the Justice and Legal Affairs Committee of the National Assembly in late November, CSORG activists again urged the parliamentarians to withdraw the amendments, arguing that they 'were anti-developmental' (Houghton and Muchai, 2014, p. 342).

By trying to influence public opinion, activities in the second track clearly sought to activate the public pressure mechanism. The CSORG used a mix of social media campaigning, media statements, petitions as well as personal meetings to mobilize the public to pressure MPs on their behalf (Houghton and Muchai, 2014, p. 342). In an online statement on Facebook in November, the group highlighted the serious negative social and economic impacts of the amendments (CSORG, 2013b). Other statements and interviews of CSORG members followed this line of argumentation, e.g. by stating that the amendments 'will immediately cut off vital services provided by NGOs in crucial areas such as health, education and water' (Ochieng, 2013).

This local resistance against the amendments also gained some, although rather limited, support from external actors. To varying degrees, these engaged in strategies of public naming and shaming of the Kenyan government (public pressure mechanism) and/or arguing (persuasion mechanism).

Regarding the former strategy, INGOs were most vocal. In November 2013, Freedom House criticized the Kenyan government for proposing the funding cap, as it 'would violate Kenya's obligations under international treaties' such as the UN Declaration on Human Rights Defenders, which would codify NGOs right to receive funding from abroad (Freedom House, 2013). The International Federation for Human Rights (FIDH) in another statement similarly stated that the amendment bill 'blatantly violates regional and international standards' and urged the Kenyan authorities to comply with the provisions of the above-mentioned UN Declaration (FIDH, 2013). On December 3, one day before the amendments were to be discussed in parliament, three UN Special Rapporteurs criticized the bill as evidence that the Kenyan authorities were 'trying to exert more control over independent groups using so-called NGO laws' and called on them 'to immediately suspend the legislative process of the Bill, and to re-evaluate it in line with international human rights norms and standards' (OHCHR, 2013).



Regarding attempts at persuasion, external actors explicitly took up and thereby lent support to the socioeconomic narrative used by the Kenyan NGO alliance. The most visible action in this regard included a statement published in a local newspaper. In this open letter, 21 'development partners of Kenya' including high-level representatives from the EU and several of its member states, Australia, Japan, the US, the African Development Bank and the World Bank, encouraged the Kenyan government to review the amendments. The main argument put forward was the concern that the amendments 'restrict or even prevent delivery of assistance in areas such as humanitarian aid, health, education, agriculture, implementation of the Constitution and other areas targeting marginalized groups', which would 'ultimately risk curtailing Kenya's economic progress' (Ambassadors et al., 2013). Similarly, a group of 20 Kenya-based INGOs urged political decision-makers to reject the amendments since they 'will do more harm than good to Kenya's PBOs and the interests of the Kenyan people they serve' (quoted in Migiro, 2013).

## 2.2. Kyrgyzstan

In September 2013, three national-conservative MPs introduced a draft Law on Foreign Agents to the Kyrgyz parliament. Inspired by the Russian Foreign Agents Law, this draft contained a series of amendments to existing laws targeting all foreign and foreign-funded NGOs that engaged in 'political activities'. All these NGOs would have to register as 'foreign agents' and mark their publications with a respective label. Additional regulations included the mandatory submission of financial records as well as far-reaching governmental powers of supervision, interference and dissolution of foreign-funded NGOs (Glushkova and Poméon, 2016, pp. 19–20; ICNL, 2014b). The supposed aim of the legislation was to increase the transparency of NGOs (Lelik, 2016), allegedly protecting national interests 'from Arab Islamists and gay-loving Americans' (Trilling, 2014).<sup>7</sup> Initially, leading Kyrgyz politicians expressed their reservations about the draft law and, during a visit to Brussels in September 2013, then-president Almazbek Atambayev argued that there was no need for it (Putz, 2016). Two months later, while refraining from taking a position on the draft law, Atambayev dismissed international criticism by arguing that the first law introducing the terminology of foreign agents 'was adopted in the cradle of democracy – the USA' (quoted in ICNL, 2014b, p. 9). Later events, including the 2014 Maidan protests in Ukraine, reinforced skepticism towards foreign-funded NGOs among the Kyrgyz political elite (Podolskaya, 2016; USAID, 2014: 120). When president Atambayev visited Brussels again in April 2015, he explicitly supported the law arguing that 'under the guise of human rights organizations,' NGOs were 'trying to destabilize the situation in the country' (quoted in Putz, 2016).

Following public hearings on the draft law in 2014 and discussion in parliamentary committees in early 2015 (USAID, 2014, p. 122), the law was adopted by parliament in

its first reading in June 2015 (HRW, 2015). In response, the minority group of MPs who opposed the law reportedly 'used parliamentary procedures to secure a delay' (Dodsworth and Cheeseman, 2018, p. 10) and, as a result, the second reading took place only after a new parliament had been elected in October 2015. In these parliamentary elections, Atambayev's Social Democratic Party (SDPK) failed to secure a majority (Sikorskaya, 2016; Standish, 2016). Even if the new legislature was generally seen to be in favor of the law, given 'the presence of several pro-Russia parties' (Dodsworth and Cheeseman, 2018: 10), MPs were split in their position towards the law, with criticism also coming from within the governing SDPK. Following further discussions in parliament, including 'a round table with MPs, international and local civil society organisations', the draft law was 'extensively revised', most notably by entirely removing the term 'foreign agents' (Glushkova and Poméon, 2016, p. 21). This revised version was adopted in a second reading in April 2016 but, surprisingly, in the third and final reading in May 2016, a majority rejected the law. As we argue in this section, available evidence suggests that the combined efforts of local CSOs and external actors played a crucial role in contributing to this unexpected outcome.

In contrast to Kenya, resistance against the draft law from the outset was characterized by close collaboration of local and external actors. In the context of an ongoing USAID-funded program, ICNL and its local partner, the Association of Civil Society Support Centers (ACSSC), immediately responded to the introduction of the draft law by mobilizing 'the CSO community to develop a strategic plan against the adoption of the draft law' (ICNL, 2014a, p. 3). Initially supported by a small group of organizations only (Dodsworth and Cheeseman, 2018, p. 10), this campaign eventually managed to unite 'hundreds of organizations [...], including business associations' (USAID and ICNL, 2017, p. 27, footnote 13). This externally supported CSO campaign combined efforts to mobilize public opinion and international backing with attempts to persuade politicians through public hearings and providing critical assessments of the draft law. During the discussion of the draft law between September 2013 and May 2016, Kyrgyz CSOs almost continuously 'advocated against the law, by organizing public hearings, roundtables, TV and radio debates and by formulating and publishing nine appeals' (Pierobon, 2018, p. 123).

As in the case of Kenya, parliament constituted an important target of the CSO campaign. In line with the persuasion mechanism, CSOs and their external supporters prepared and submitted critical assessments of the draft law, sent letters to and met with MPs, and pushed for and participated in public hearings (CIVIVUS, 2016; ICNL, 2014a, pp. 3–4). These lobbying efforts were combined with a public awareness-raising and advocacy campaign that aimed at putting pressure on both parliament and the government. Kyrgyz NGOs collected signatures and submitted petitions and appeals against the law, 'organised more than 10 protest actions and a major awareness campaign in the media and social networks' (Sikorskaya, 2016). A key argument that was used both in their lobbying efforts and vis-à-vis the

general public focused on the socioeconomic importance of the NGO sector. According to Dinara Oshurahunova from the Kyrgyz NGO Coalition for Democracy and Civil Society, the campaign responded to the vilification of NGOs by creating 'a brief with information on the sector, the NGO contribution to the state budget, the number of employees in the sector and success stories'. In addition, the campaign 'organised a forum in which the business sector, the media and religious organisations were invited, to showcase the role and work of NGOs in the country' (Oshurahunova, cited in CIVICUS, 2016). Similarly, at a campaign in parliament, a broad range of organizations working 'on a large package of educational, health, and outreach projects in Kyrgyzstan' tried 'to convince legislators that the new law would harm the implementation of necessary social programmes' (Sikorskaya, 2016). A further argument that was put forward explicitly targeted Atambayev's justification of the law as merely a copy of the US Foreign Agents Registration Act (FARA), highlighting the fundamental differences between the Russian and the US Foreign Agents laws (ICNL 2014b, pp. 8–9).

In addition to lending direct support to the domestic CSO campaign, external actors also engaged in an international campaign that combined naming-and-shaming with diplomatic efforts. In contrast to the local resistance, this international response focused on 'international human rights standards and the potential damage to Kyrgyzstan's international reputation' (Dodsworth and Cheeseman, 2018, p. 10). Already in October 2013, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued a joint interim opinion which concluded that the draft law would contravene 'relevant human rights standards' (Venice Commission and ODIHR, 2013, p. 4). At a parliamentary hearing in November 2014, representatives of the OHCHR, UNDP, the OSCE, and the EU Delegation in Kyrgyzstan emphasized that the law 'does not comply with international human rights standards' (HRW, 2015). In the course of 2015, the draft law was also criticized by various state and non-state actors during the UN Human Rights Council's Universal Periodic Review (UNGA, 2015, pp. 8, 25), by the OHCHR (2015), the US Mission to the OSCE (2015) as well as during the EU's Human Rights Dialogue with Kyrgyzstan (EEAS, 2015). Several international NGOs and NGO alliances publicly reiterated these claims (see Civic Solidarity, 2015; HRW, 2015).

### 2.3. Comparative analysis

Taken together, the case studies on Kenya and Kyrgyzstan show a set of key similarities in terms of actors, strategies and mechanisms, but also some notable differences. Local CSO campaigns were essential in both cases. In Kenya, successful resistance was primarily shaped by a powerful local campaign put forward by a diverse and well-organized coalition of locally operating NGOs under the banner of the CSORG. External actors, by serving 'as conveners as well as leveraging influence over individual government officials' (ICNL, 2014a, p. 4), plausibly played a supportive role (see

also Dodsworth and Cheeseman, 2018, p. 8). But, overall, their engagement remained rather limited (see Wood, 2016). In Kyrgyzstan, observers similarly agree that the concerted and sustained CSO campaign contributed significantly to the revision and then rejection of the draft law in parliament.<sup>8</sup> Yet, the role of external actors was much more pronounced in this case – both in terms of direct support to the domestic CSO campaign and in the form of independent efforts.

In both cases, local and external actors primarily aimed at influencing political decision-making via the causal mechanisms of *persuasion* and *public pressure*. Assessing the relative importance of the different strategies and the respective underlying mechanisms is difficult. Yet, available evidence suggests that persuasion was key, while public pressure had a subsidiary role at best. In both cases, observers and studies agree, the persistent lobbying efforts carried out by the local NGOs proved crucial in successfully convincing the majority of parliamentarians to drop the amendments, including members of the respective governing parties.<sup>9</sup> An important difference concerns the *cost-benefit mechanism*. In the case of Kyrgyzstan, pressure by international organizations and major donors, which reportedly included the threat of reductions in aid, arguably did play a decisive role (see Dodsworth and Cheeseman, 2018, p. 10; Standish, 2016). In fact, in justifying his rejection of the law, a member of the ruling SDPK explicitly referred to the concerns expressed by international organizations on whose financial assistance the country would depend (Lelik, 2016). By contrast, this mechanism was entirely inoperative in Kenya. To the best of our knowledge, local NGOs and external actors did not even try to directly threaten or impose costs on the government.

When it comes to the substantive arguments used to convince the governments, including parliaments, the use of a socioeconomic narrative proved particularly effective. This is very clearly the case in Kenya, where the CSO campaign primarily pointed to the significance of the foreign-funded NGO sector for Kenya's economy, development and service delivery systems and emphasized the correspondingly far-reaching adverse effects of the envisioned funding cap. In fact, during the second reading of the amendments, several MPs directly referred to this narrative and explained their rejection in terms of the risks for the social and economic development of Kenya and their respective constituencies.<sup>10</sup> In Kyrgyzstan, a remarkably similar socioeconomic narrative was used. In this case, the much more forceful international criticism, including by major donors, reinforced the notion that the foreign funding restrictions could have significant negative consequences. Indeed, during the final parliamentary debate, MPs explicitly voiced concerns about the loss of financial assistance in areas such as "health care, education and agriculture" (Lelik, 2016; Standish, 2016). In addition, according to our interviews, the counterargument that the Kyrgyz draft law could actually not be justified as merely a copy of the US FARA also proved important.

Regarding the overall context, successful resistance in both cases was based on two conditions: a preexisting *mobilizing structure* and a facilitating *political opportunity*

structure. First, in Kenya, the CSORG, which brought together a diverse group of NGOs from different sectors, enabled the local NGOs to quickly coordinate a joint response. In a similar vein, the rapid and united local NGO response to the draft Foreign Agents Law in Kyrgyzstan was enabled by a pre-existing NGO network, which included the Association of Civil Society Support Centers (Pierobon, 2018, p. 118). Observers agree that the breadth of the Kyrgyz CSO campaign, which included NGOs from different areas – from human rights to health and education – as well as trade unions, business associations and political parties and could rely on previous experiences with the defense of civic space, was a key ingredient of the successful campaign (see Sikorskaya, 2016; Erkina Ubysheva, interview). Yet, in contrast to the Kenyan experience, in Kyrgyzstan, the formation of a local NGO coalition and the development of a joint response strategy benefited much more significantly from ongoing foreign support, including in the context of the above-mentioned USAID program implemented by ICNL.

Second, the strategies of targeted lobbying in both countries were enabled by the relatively open nature of the political regimes and the existence of accessible parliaments with some independence vis-à-vis the executive.<sup>11</sup> More specifically, as Dodsworth and Cheeseman (2018, p. 7) have emphasized for the Kenyan case, the electoral regime – with single-member constituencies and a First-Past-The-Post logic – made MPs particularly sensitive to constituency-level arguments. In Kyrgyzstan, the strengthening of parliament with the 2010 constitutional reform (Bleck and Logvinenko 2018, p. 809) meant that CSOs could wield political influence despite the ‘unwillingness of government officials to meet with NGOs’ (CIVICUS, 2016).

With a view to the relevance of *governmental vulnerability*, the picture is more complex. In the Kenyan case, the limited success of the public mobilization campaign and the absence of either local protest or external threats of sanctions suggest that the material vulnerability of the government was not particularly high and permissive. The Kyrgyz government was certainly not weak at the domestic level either, but the country's dependence on international aid played a role when it comes to external pressure and threats. More specifically, while related concerns were explicitly voiced in the Kyrgyz parliament (Standish, 2016), Dodsworth and Cheeseman argue that ‘diplomatic pressure’ mainly worked ‘by eroding the Executive's enthusiasm for the law’, which made it much easier for legislators from the governing party to openly oppose the law (2018, p. 10; see also Glushkova and Poméon, 2016, p. 20).

In both cases, ideational vulnerability proved important, but in quite peculiar ways. In Kenya, some external actors emphasized that the proposed restrictions would violate international human rights norms, but local NGOs did not focus on such normative arguments. Such a framing would have had to compete with the government's claim that foreign-funding restrictions were necessary to prevent external interference with domestic politics. By contrast, the socioeconomic framing used instead offered a highly resonant counter-narrative to the recurrent governmental attacks

on NGOs, which also directly tied in with the rhetoric of government officials and MPs. The phrase ‘empowering citizens to participate in the development of Kenya’, for example, resonated much easier with officials than ‘defending the rights guaranteed to CSOs in international law’ (ICNL 2014a, p. 4). This entire narrative, however, was only possible because the proposed foreign-funding cap was designed to apply to the *entire* Kenyan NGO sector, rather than, for instance, to a narrow subset of advocacy NGOs only. It is, thus, the clash between the proposed legislation and a societal practice in which a significant share of social services is effectively provided by foreign-funded NGOs that offered the discursive opportunity for the successful campaign. In the case of Kyrgyzstan, the country's membership in the OSCE, its relations with the EU and the self-image as a democracy arguably facilitated normative claims, uttered primarily by external actors, that emphasized the tensions between the proposed restrictions and international norms and referred to the international image and the legal commitments of Kyrgyzstan. The fact that relations with Russia, which had re-intensified in previous years, became more ambivalent around 2016 arguably also increased Western influence (see Esenaliev and Asylbek kyzy, 2017; Lelik, 2016; Standish, 2016).

### 3. Conclusion

This exploratory and theory-building paper aims at advancing a research agenda on the strategies, causal mechanisms and scope conditions that explain successful resistance against legal CSO restrictions. In order to do so, we have developed a theoretical framework and studied two cases in which attempts to introduce restrictive NGO laws were effectively frustrated. Comparing the cases of Kenya and Kyrgyzstan, a couple of overarching findings can be identified.

Successful resistance in both cases was based on a rapid and concerted domestic response by a broad alliance of local CSOs. This local response primarily used a combination of targeted lobbying (persuasion mechanism) and a public advocacy and awareness-raising campaign (public pressure mechanism), with disruptive strategies (cost-benefit mechanism) playing no role at all. Key conditions enabling this strategy include a preexisting CSO network (mobilizing structures) and a relatively open and accessible political regime (political opportunity structure). Both local campaigns emphasized the potentially significant socioeconomic consequences that restrictions on foreign funding would have for the broader NGO sector and the countries at large. The effectiveness of this counter-narrative was, again, based on the ability to mobilize a broad CSO alliance, which also included social service delivery NGOs, trade unions and/or business associations.

The response and relevance of external actors were much less uniform. In Kenya, donor governments, international organizations and INGOs generally supported the local CSO campaign, but played a marginal role only. In Kyrgyzstan, donor governments and international organizations were



much more vocal in their rejection of the planned restrictions, combining attempts at persuasion with international naming-and-shaming (public pressure mechanism) and even the implicit/non-public use of threats (cost-benefit-mechanism). In addition, external actors – such as USAID via ICNL – lent direct support to the local CSO campaign. In contrast to the local resistance, the narrative employed by external actors primarily aimed at the international vulnerability – in terms of social reputation or standing – implied by Kyrgyzstan's membership in the OSCE (which comes with fairly strong and explicit liberal human rights norms).

In order to confirm these preliminary findings, future research will have to systematically investigate the precise operation and interplay of the different causal mechanisms and context conditions. This could include in-depth studies to reliably trace the causal mechanisms at work as well as qualitative and quantitative studies comparing cases with varying outcomes in order to identify necessary and sufficient (configurations of) strategies and scope conditions and assess the (individual and combined) explanatory power of the different variables. On the basis of our two case studies, we expect that different paths exist that lead to successful resistance. That is, viable strategies and relevant causal mechanisms will probably differ depending on context conditions. Just as the combination of persuasion and public pressure in the two cases at hand required relatively open political opportunity structures, a successful imposition of costs might depend on a high degree of governmental vulnerability as a necessary condition. Yet, social movement studies also tell us that context conditions are not simply given, but change during episodes of contention. In this sense, whereas we have focused on the agency of those resisting NGO laws, future research should pay more attention to the interactive nature of the dynamics at play, including to the governmental response to resistance. In our case studies, we found no evidence of a decisive attempt on the part of the respective executive to push through the planned legislative initiative. In other countries, however, governments have been much more eager to see legal civic space restrictions adopted by parliament.

The question of how governments respond to resistance to NGO laws brings us to a final issue that merits further investigation. Instead of trying to push through planned legal restrictions, governments may also turn to non- or extralegal measures (see also Honari and Muis as well as Pousadela and Perera, in this issue). In fact, the two cases studied in this paper offer some unpleasant evidence in this direction. In Kenya, after several attempts to push through legal restrictions had failed, the government launched a series of targeted attacks against human rights NGOs. These attacks included smear campaigns, office raids and multiple waves of asset freezes and de-registration (see ICNL, 2020). In Kyrgyzstan, developments since 2016 have been ambivalent, but reports suggest, for instance, that human rights defenders and CSOs have come under increasing surveillance by the national intelligence agency (IPHR, 2019).<sup>12</sup>

## Acknowledgments

This paper draws on research conducted by the authors jointly with Jana Baldus and Annika E. Poppe, which received generous support of the Leibniz Association (Baldus et al., 2019). It has greatly benefited from the discussion during a virtual author workshop organized by the editors of this special issue. We particularly thank Kendra Dupuy, Luc Fransen and Aseem Prakash as well as two anonymous reviewers for their immensely helpful comments and suggestions.

## Data availability statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

## Notes

1. We use the term CSOs to refer to the broad range of formal and informal associations that are neither part of the state, nor of the market economy or the private sphere. This includes the specific type of formally established, non-profit or public benefit organizations that are commonly referred to as NGOs.
2. For Kenya, our analysis was verified through discussions and background talks in the context of the International Consortium on Closing Civic Space (iCon) in 2017 and 2018. For Kyrgyzstan, we conducted two expert interviews with Nookat Idrisov (ICNL Kyrgyzstan) and Erkina Ubysheva (Association Smart Zharan) between July and September 2020.
3. See Christensen and Weinstein, 2013; Dupuy et al., 2016; Poppe and Wolff, 2017; Rutzen, 2015.
4. In the most extreme cases such pressure may take the form of coercion, e.g., when external actors use military force (Risse and Ropp, 2013, p. 13) or when domestic actors shift towards violent tactics (Giugni, 2004, pp. 23–25; Nepstad, 2015, pp. 419–420).
5. In the aftermath of the post-election violence in Kenya in 2007–2008, a number of NGOs collected evidence that contributed to the opening of charges of crimes against humanity by the ICC against Kenyatta and Ruto (see CIPEV, 2008, pp. 5–6). In 2013, a spokesperson of president Kenyatta called the involved NGOs and donors a “civil society web of evil” (quoted in Migiro, 2013), and ever since their role in the ICC trials, Kenyan NGOs have come under increasing fire.
6. It has to be noted, however, that the PBO Act itself has not been implemented to this day, despite several orders of the Supreme Court. Also, as noted in the introduction, since 2013 the Kenyan government has tried four more times to introduce restrictive NGO norms – but, so far, all attempts have failed in the face of local resistance.
7. Advocates of the draft law, for instance, accused the Kyrgyz NGO sector as threatening “national values, cohesion and security” (IPHR and Legal Prosperity Foundation, 2017, p. 6).
8. See Bir Duino, 2016; Rittmann, 2016; Sikorskaya, 2016; Standish, 2016.
9. Dodsworth and Cheeseman, 2018, pp. 6–8; ICNL, 2014a, p. 4; Nookat Idrisov and Erkina Ubysheva (interviews).
10. One MP, for example, stated that NGOs ‘are providing 47 per cent of the health services in Kenya today [...]: Does the government want us to die after the NGOs are removed from the country?’ (National Assembly, 2013, p. 49).
11. According to international democracy and freedom rankings (Bertelsmann Transformation Index, Freedom House, V-Dem), both

Kenya and Kyrgyzstan, during the years under study, oscillated between an electoral (and partially free) autocracy and an electoral (and partially free) democracy (see Baldus et al., 2019, pp. 10, 14).

12. Also, since December 2019, a draft with new restrictive amendments to the existing NGO law has been discussed in the Kyrgyz parliament (ICNL, 2020).

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