



FOREIGN AFFAIRS

The Power of Stigma

How Georgia’s “Foreign Agent” Law—and Others Like It—Can Damage Democracy

BY MAXIM KRUPSKIY August 29, 2024

MAXIM KRUPSKIY is a human rights lawyer and analyst focused on foreign-agent legislation and was previously the Galina Starovoitova Fellow on Human Rights and Conflict Resolution at the Wilson Center.

In May, the Georgian parliament passed a “transparency of foreign influence” law amid large-scale protests. The new legislation requires Georgian media and nongovernmental organizations that receive more than 20 percent of their annual funding from abroad to register with the state as entities “pursuing the interest of a foreign power.” The law has met with intense criticism, spurring tens of thousands of Georgians to take to the streets. Opponents of the law—including Georgian President Salome Zourabichvili, who had attempted to veto it—have called it the “Russia law” for its similarity to the Kremlin’s legislation targeting so-called foreign agents. Since 2012, Moscow has used its own foreign-agent legislation to persecute independent NGOs, media outlets, and citizens who criticize the Russian government’s policies, and many Georgian civil society leaders view the new law as a threat to civil rights and an obstacle to Georgia’s prospects for joining the European Union.

In and of themselves, laws to monitor and prevent harmful foreign influence are not antidemocratic. Indeed, laws that curb covert, destructive interference in domestic politics can act as vital mechanisms to ensure the resilience of democracies. Australia, the United Kingdom, and the United States, for instance, all have well-designed foreign-agent laws that do not provoke public backlash or prevent freedom of association. The problem arises when states exploit vaguely worded legislation to stigmatize dissent and violate human rights. Foreign-agent laws are especially dangerous in the hands of antidemocratic regimes, which use them to suppress criticism and stifle civil society, primarily NGOs and independent media.

Officials in Georgian Dream, the populist coalition that holds a majority in the Georgian parliament and has dominated Georgian politics since 2012, have defended the legislation as an effort to bring Georgian political practices in line with other Western countries: in April, for instance, Georgian Prime Minister Irakli Kobakhidze said that the law “will help to Europeanize NGOs and their donors.” But the truth is that the law more closely resembles legislation passed by governments seeking to repress, not protect, civil society, particularly the so-called transparency act that was in effect from 2017 to 2021 in Hungary.

And there is reason to fear that Georgian Dream will implement the legislation in a way that stigmatizes NGOs. More than 10,000 NGOs operate in Georgia. As a developing country, Georgia is strapped for resources, and according to a 2020 Asian Development Bank study, its civil society groups receive over 90 percent of their funding from abroad. But these NGOs play a crucial role in protecting the environment, promoting the rights of women and children, safeguarding freedom of speech, and leading the fight against corruption.

Compared with some of its post-Soviet neighbors, over the past 20 years, Georgia has made extraordinary strides in its economic and democratic development. In 2016, a U.S. State Department report declared it had moved “from a near-failed state in 2003 to a relatively well-functioning market economy,” and in late 2023, Georgia’s long campaign to join the EU progressed when the European Commission granted the country official candidate status. But the country is also under profound pressure from Russia, which does not want to see another former satellite state drift from its orbit.

More than the staunchly pro-European government that preceded it, Georgian Dream has sought to chart a middle path, pursuing EU candidacy but also striving not to alienate the Kremlin and, at times, trying to mimic the Russian governing style. Concurrently, the freedoms Georgian citizens and civil society groups enjoy have been slowly but steadily dwindling, and unless it is effectively resisted, this law could be a turning point for Georgia’s young democracy. Georgian Dream has been castigating local NGOs and media outlets for years, and unscrupulous politicians are now liable to wield the new law as a weapon to further suppress public criticism and discourage NGOs from seeking financial support abroad. These dynamics risk compromising the effectiveness of civil society in Georgia, destroying Georgia’s chances for EU accession, strengthening Russia’s sphere of influence—and undermining the will of the people.

THE MECHANICS OF STIGMATIZATION

Foreign-agent legislation first appeared in the United States in 1938 as a mechanism to counter Nazi and communist propaganda. These kinds of laws have evolved significantly since then, but such legislation remains essential to protect democracies against covert political lobbying by foreign states and the dissemination of disinformation in the interests of foreign actors.

Whether a foreign-agent law protects or threatens societies hinges on the amount of leeway the law grants the state, as well as the clarity of the law's wording. The U.S. Foreign Agents Registration Act and Australia's Foreign Influence Transparency Scheme Act, implemented in 2018, both oblige federal authorities to provide evidence that the activities of potential foreign agents are carried out on behalf of a foreign principal and are aimed at promoting the foreign principal's interests. Failure to comply with the U.S. FARA law is punishable by a criminal fine of up to \$250,000 or a five-year imprisonment; failure to comply with Australia's foreign-agent legislation can result in fines and prison terms, too.

The Georgian law, however, has more in common with the Russian law and, in particular, the Hungarian law than it does with foreign-influence legislation in the United States or Australia. The Russian law permits the Kremlin to slap a foreign-agent label on individuals and organizations without specifying the foreign principal in whose interests they work—and without supplying any evidence, such as funding information, that links them to any foreign entity. The foreign-agent law imposed in Hungary in 2017 was nearly as draconian. That law was passed in the context of a years-long campaign, launched by the right-wing government headed by Hungarian Prime Minister Viktor Orbán, to undermine trust in Hungarian NGOs, independent media, and civil society in general. It required organizations that drew more than \$27,000 a year in foreign funding to register as “organizations receiving support from abroad.” It also stipulated that groups that failed to register would be fined and possibly dissolved. In 2021, the Hungarian parliament repealed the law after the European Court of Justice ruled that it violated the right to freedom of association and introduced discriminatory and unjustified restrictions on foreign donations to civil society organizations.

Like its Hungarian counterpart—and unlike FARA—the Georgian law allows NGOs to be labeled as “an organization carrying out the interests of a foreign power” solely for receiving foreign funding, without requiring any evidence that they act on behalf of foreign interests. Georgian civil society organizations now face the very risks highlighted by the European Court of Justice in its decision condemning the Hungarian law. In that case, the court noted that restricting the ability of organizations to receive foreign funding rendered them “subject to obligations of declaration and publication such as to create a negative image of them” and that state penalties amounted to interference with the right to freedom of association. Likewise, the Georgian law creates obstacles for NGOs receiving foreign funding—which constitute a majority of NGOs operating in Georgia—as well as media outlets. If Georgia’s thousands of NGOs suddenly lose their foreign funding, it will be impossible to make up for these losses in the short term.

Under the Hungarian law, entities that relied on outside funding were deemed “organizations receiving support from abroad.” The Georgian law goes one step further, tarring such groups with an even more stigmatizing designation: “organizations carrying out the interests of a foreign power.” The implication is that these organizations are devoid of agency and do not act in the interests of Georgian society but are mere puppets in the hands of donors. The ruling Georgian Dream party has long used this kind of rhetoric to smear NGOs. The new law will only reinforce the reputational damage suffered by local NGOs and independent media.

In addition, Georgian organizations will be subjected to administrative burdens and unpredictable inspections, making their work much more difficult. The legislation not only requires these organizations to register with the government. It also imposes additional financial reporting obligations on them and fines of up to approximately \$9,000 for failure to register—a

serious burden for underfunded Georgian NGOs. In addition, the law gives the Georgian Ministry of Justice discretion to conduct arbitrary inspections of potential foreign agents. Unable to carry out stable and effective work, NGOs and media outlets may lose staff as fewer people are willing to bear the career risks associated with working for organizations deemed to be foreign agents. Under such conditions, many may have to fold altogether.

As registered NGOs and media acquire the status of pariahs, the main loser will be Georgian society. The law is deeply unpopular, and an April 2023 poll by the International Republican Institute found that 89 percent of Georgians support joining the European Union. This spring, however, even before the proposed Georgian legislation went to a vote, the European Parliament passed a resolution stating that Georgia's "EU accession should not be opened as long as this law is part of Georgia's legal order."

A LESSON FROM HUNGARY

The brief life of the Hungarian law does offer a lesson for Georgia: resistance to repressive foreign-agent legislation is possible when civil society harnesses its collective strength. From the law's adoption in 2017 until its repeal in 2021, Hungarian authorities did not dare to enforce it. This inaction can be explained by two factors: measures taken by European authorities and public campaigns against the law, at both the national and the international level. Almost immediately after the Hungarian parliament enacted the legislation, the European Commission stated that the law contained "discriminatory, unjustified, and unnecessary restrictions on foreign donations to civil society organizations" and initiated legal proceedings against Hungary in the European Court of Justice.

The European Court found that Budapest had failed to prove that it had fair and proportionate grounds to expand state interference in the activities of

NGOs. That judgment helped efforts to repeal the law because Hungary is part of the European Union; Hungarian authorities could not simply ignore the judgment for fear of certain penalties, such as economic sanctions. At the national level, Hungarian civil society helped pressure the Hungarian parliament to repeal the law by litigating against the law in the Hungarian Constitutional Court, explaining the dangers of the law in the media, and preparing public collective statements to the European Commission, the European Parliament, and the European Council.

Although Georgia's potential accession to the EU is still a long way off, Georgia is a member of the Council of Europe, the continent's main human rights body, and has ratified the European Convention on Human Rights, which grants Georgian civil society organizations the right to file a collective lawsuit against their government in the European Court of Human Rights. The court would likely take years to rule on the case but would almost certainly eventually require Georgia to eliminate laws that violate its citizens' rights to freedom of assembly and association and to pay compensation to the affected NGOs and media outlets.

SUSTAINED OPPOSITION

But entering a complaint now would help bring international attention and pressure on Tbilisi to change course. Just days after the law was passed, a group of around 30 Georgian NGOs stated that they will appeal the law in international courts, as well as the Constitutional Court of Georgia. Many Georgian nongovernmental organizations have already announced that they will not voluntarily accept the label of foreign agent.

Tinatin Khidasheli, the current chair of Civic IDEA, an NGO in Georgia, stated that most NGOs will not comply with the law. "We will make it very difficult for the government to do anything meaningful against us," she told

me in July. “The problem with the law is that it left lots of loopholes, and we will be using those intensively.” In an interview with Voice of America, Eka Gigauri, the executive director of Transparency International Georgia, put it even more plainly. “We will not register,” she said. “This is a matter of dignity for us.”

The struggle waged by Hungarian civil society shows just how sustained opposition to draconian foreign-agent laws must be. In December 2023, two years after the law’s repeal, Budapest adopted a new “sovereignty protection act,” which its critics immediately compared to the Russian law on foreign agents because of its broad language and the threat it poses to human rights. In February, the European Union launched a fresh legal action against Hungary’s government over the law, which allows authorities to investigate and prosecute people accused of undermining the country’s sovereignty.

Statements such as Khidasheli’s indicate that Georgian civil society will not turn the status of a foreign agent into a “badge of honor” or stop its activities. On the contrary, Georgian civil society is determined to convey the value it has for the Georgian public, as well as to make as transparent as possible the falsehood of the official stigmatizing rhetoric of the supporters of the foreign-agent law.

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