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Adapting to New Pressures

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ACKNOWLEDGMENTS

This research was conducted through the CSIS International Consortium on Closing Civic Space (iCon), a network of experts whose insights helped shape the vision for this report. CSIS would like to thank all of those who were interviewed. We would also like to thank Andrzej Kostek for his contribution. Their invaluable contributions and perspectives informed the analysis and findings of this report.

This report was made possible by the generous support of the Oak Foundation and the Charles Stewart Mott Foundation.

EXECUTIVE SUMMARY

Amidst democratic backsliding globally, Poland has experienced a retreat from tolerance, inclusion, transparency, and government accountability. During interviews with some twenty individuals and groups in government, the private and non-profit sectors, and academic institutions, significant concerns about the future of Poland's democratic institutions were expressed. In particular, respondents cited issues regarding the independence of the judiciary, a lack of tolerance by the ruling party as reflected in perceived xenophobic and discriminatory language, a growing deficit in transparency, and a lack of inclusion with respect to political processes. Finally, interviewees noted the government's increasingly centralized control and perceived politicization of funding for Civil Society Organizations (CSOs), especially with respect to traditional human rights CSOs.

As a result, civil society's role as a check on government has been weakened in recent years. CSOs are still able to pursue activities somewhat freely, fundraise, and to a large extent exercise free speech, but some operations have been impacted by new restrictions on civil and political rights. In environments where legal, civil, and political space is shrinking, signaling by government institutions can also weaken the CSO sector. Signaling can come in the form of diminished financial support to human rights CSOs, public criticism of representatives from these organizations, or reduced willingness to engage in dialogue and issue-based discussions with the broader human rights and advocacy community. These actions can serve to chill speech. Moreover, the Polish government has engaged in intimidation tactics against some civil society actors. For example, according to published reporting and in-person interviews, the Center for Women's Rights was subject to search by local police after protests in defense of women's rights. In addition, the stalling or termination of criminal investigations into attacks against the lesbian, gay, bisexual, and transgender (LGBT) community is reportedly having an intimidating impact on LGBT activism. Finally, those with whom we spoke mentioned a rise in xenophobic attacks against Ukrainian citizens living in Poland who have participated in protests.¹ Such tactics typically discourage CSOs from taking positions inconsistent with signals from government sources.

Funding from the government for advocacy CSOs has declined in recent years. Moreover, the government has indicated that CSOs that are critical

1 Civic Solidarity, "Polish Authorities Reduce the Space for the Activities of NGOs Including Human Rights Organizations in the Country," *CIVIC Solidarity*, April 2018, <http://www.civicsolidarity.org/article/1545/polish-authorities-reduce-space-activities-ngos-including-human-rights-organizations>.

of the government or work on issues that are contrary to governmental priorities, such as CSOs providing refugee assistance or legal aid, will no longer receive public sector funding.

Despite these challenges, Poland's vibrant civil society, which has thrived for decades, is continuing to evolve and adapt to the changing environment. During interviews in Poland and externally, we learned of evolving funding models, creative uses of technology and social media, and a strong sense of mission and purpose by determined civil society actors. There is also an important window of opportunity for the United States and the European Union to support CSOs in Poland, both politically and as donors.

INTRODUCTION

In the period from 1989 to 2014, Poland acceded to the European Union, joined NATO, hosted the EURO Cup Soccer championship in 2012, and experienced significant economic growth. More recently, as in nearby Hungary, politicians have won hearts and minds by downplaying common European values, such as human rights, freedom, democracy, equality and the rule of law, and seizing instead on fears stoked by the refugee crisis and the prospect of increased terrorism. This propelled the more conservative and nationalist leaning Law and Justice Party (PiS) into power. From the perspective of one university professor with whom we met, Poland is experiencing a crisis of liberalism or loss of confidence in the liberal democratic order. He argued that Poland is still dealing with the so-called “escape from freedom syndrome,” whereby Polish citizens are searching for a more ordered society that will reduce the current degree of uncertainty.

After more than a decade of progress in developing democratic practices widely considered to be among the most impressive in Central and Eastern Europe, recent years have seen a decline in overall scores for Poland on governance and democracy indicators from both the Bertelsmann Stiftung Transformation Index (BTI) and Freedom House Nations in Transit Scores.² The 2017 Nations in Transit ratings for Poland saw an overall drop in its democracy score from 2.32 in 2016 to 2.57 on a scale of 1 to 7, “where 1 represent highest levels of democratic progress and 7 the lowest.”³ In the more recent 2018 BTI for Poland, its governance score fell from 7.2 in

2016 to 6.25 in 2018 (dropping its overall ranking amongst countries from 5 to 18) and democracy status from 9.5 in 2016 to 8.55 in 2018 (declining within country rankings from 4 to 11).⁴

In its 2018 Poland Country Report, BTI described a number of governmental measures that led to the downgrading of Poland’s score. Specifically, BTI reported that recent changes to the law on the Constitutional Court, public media control, and public administration “undermined the quality of democracy in Poland and contributed to even further divisions in Polish society.”⁵

Amplifying the decline in governance and democracy scores, interviews conducted for this report reflect concerns from inside and outside Poland regarding its overall democratic trajectory. While many of those interviewed cautioned that Poland should not be seen as the equivalent of Hungary or Turkey, almost all agreed that there were reasons to be worried about Poland’s democratic institutions, rule of law, and social sectors. Furthermore, according to think tank, NGO, and academic experts interviewed for this project, these vulnerabilities may also weaken or disrupt economic stability. While this report focuses on closing civic and political space and the ability of civil society to operate in such an environment, there also appears to be some impact on economic investment, which is explored below.

This paper will provide a brief overview of the state of Poland’s democracy, examine how the current political context has impacted civic space, and detail how civil society has responded to shifts in civic freedom and democracy. Finally, this report

2 Bertelsmann Stiftung, *BTI 2018 Country Report- Poland* (Gütersloh: Bertelsmann Stiftung, 2018), <https://www.bti-project.org/en/about/project/methodology/>. The Bertelsmann Stiftung Transformation Index (BTI) analyzes and evaluates whether and how developing countries and countries in transition are steering social change toward democracy and a market economy.

3 Piotr Arak and Andrzej Bobiński, “Nations in Transition 2017,” Freedom House, 2017, <https://freedomhouse.org/report/nations-transit/2017/poland>.

4 The BTI scale ranges from 1 as worst with 10 as best or highest score.

5 Stiftung, *BTI 2018 Country Report- Poland*.

will discuss the operating environment for CSOs in terms of funding, operational innovations, evolution of the civil society space, and changes in donor practices. The report will conclude with recommendations for Poland and other countries in similar situations.

The report is based on a desk study of reporting on the state of Polish democracy, economic, political and security contexts, as well as twenty interviews conducted during the month of August 2018 in Poland and abroad with civil society actors, academics, donors, and government representatives.

POLITICAL CONTEXT: CURRENT RESTRICTIONS ON CIVIL SOCIETY

Since 2015, observers of Polish politics have been worried about democratic backsliding. More specifically, analysts have cited actions by the governing Law and Justice Party (PiS) that infringe on the rule of law, restrict political and parliamentary processes, and limit freedom of assembly and speech, as well as enable an increasingly discriminatory environment. The following sections describe these actions.

Rule of Law

In its 2017 “Nations in Transit” report, Freedom House noted a general decline in Poland’s “Judicial Framework and Independence score.”⁶ The slump is attributed to a series of government measures that have “seriously

undermined” the independence of the judiciary.⁷ Specific measures include concentrating greater powers in the executive to appoint and dismiss judges, as well as merging functions of the General Prosecutor and Justice Minister. In addition, the government failed to implement rulings of the constitutional tribunal and introduced new rules allowing for forced retirement of supreme court judges.⁸ In response to these measures, the European Commission triggered Article 7.1 of the EU Treaty in December of 2017. More recently, the European Court of Justice (ECJ) suspended the aforementioned retirement law, as it “threatened judicial independence.”⁹ In the long run, this could in theory lead to more severe sanctioning of Poland by the European Union, including the suspension of the country’s EU voting rights.¹⁰ In reality, such sanctions are unlikely, as it requires all EU governments except Poland to agree, and other EU countries that are also backsliding democratically are expected to protect Poland. Similar concerns over the weakening rule of law in Poland have been echoed by various international human rights organizations, as highlighted in Amnesty International’s 2017/2018 report.¹¹

In addition, observers expressed concerns related to revisions of the election law in December 2017. Modifications included changes to the way the State Election Commission and the electoral management body are elected, as well as changes to the way ballots are marked. Interviewees expressed concern that voters did not receive sufficient civic education to understand the implications of some of the procedural changes, thereby making the system vulnerable to manipulation. Poland’s Freedom House score remained constant

6 Ibid.,4.

7 Ibid.

8 Lydia Gall, “Eroding Checks and Balances,” *Human Rights Watch*, October 24, 2017, <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>.

9 Ibid.

10 Maria Fletcher, “Article 7 Sanctions: A Legal Expert Explains the EU’s Nuclear Option,” *The Conversation*, July 28, 2017, <https://theconversation.com/article-7-sanctions-a-legal-expert-explains-the-eus-nuclear-option-817244>.

11 Amnesty International, *Poland 2017/18: Legal, Constitutional or Institutional Developments* (Washington, DC: Amnesty International), <https://www.amnesty.org/en/countries/europe-and-central-asia/poland/report-poland/>.

and positive for electoral processes and political pluralism and participation, but transparency and fairness in the context of elections are a source of concern.

Despite these concerns, voters turned out in recent local elections in numbers not seen since the country's first elections immediately after the fall of communism in 1989.¹² The results for the ruling party varied, with PiS performing well in rural areas and poorly in urban areas. According to one interviewee, the election indicates that "Poles are still able to mobilize themselves on the local level, and the supremacy of PiS, although real, is much more fragile than most expected."

POLITICAL AND PARLIAMENTARY PROCESSES AND ACCESS TO INFORMATION

According to Freedom House's 2017 "Freedom in the World" report¹³, Poland has experienced a number of worrying events related to the functioning of the government and perceived inappropriate interference in the political process. Specifically, the report highlights a decline in Poland's score due to the "irregular adoption of the 2017 budget bill and influence exerted by PiS chairman and parliamentary deputy, Jaroslaw Kaczynski."¹⁴ In December of 2016, the chamber's PiS leadership allegedly illegally passed the 2017 budget bill, after moving the session to a room to which journalists and members of the opposition were denied access. After the bill was signed by President Duda in 2017, the PiS chairman continued to play a vital role in government, despite not holding an executive position. He met with foreign leaders, gave authoritative

interviews, and appeared to drive the formulation of new legislative proposals. He was perceived as the driving force behind a cabinet reshuffle, which resulted in the replacement of Prime Minister Beata Szydlo with Mateusz Morawiecki.¹⁵

These incidents reflect a general trend towards diminished transparency in legislative processes, reiterated by interviewees on the ground, who also noted that public consultations for proposed legislation are unduly rushed. They cited several instances in which laws were allegedly voted on during late hours or without adequate consultation periods. The lack of public consultations regarding legislation has limited the ability of CSOs or the "third sector" to perform its traditional watchdog function of monitoring the legislative process.

"Freedom in the World" also noted that obtaining records and data from public institutions can be increasingly difficult, despite guarantees in the Constitution and the Act on Access to Public Information. The change was corroborated by several groups and individuals interviewed for this report who noted frustration with obtaining responses to requests for information, which impedes the CSOs' work. One organization commented on the fact that they have filed motions to obtain legal opinions by the courts, but the government has not responded to many of these requests. Furthermore, reversing a common practice in earlier years, government officials have increasingly refused to participate when invited to speak or attend events about legislation.

Restrictions on Freedom of Assembly and Speech

According to Amnesty International's 2017/2018 Country Report, during protests against judicial re-

12 Joanna Berendt, "Poland Elections Reveal a Deeply Divided Nation," *New York Times*, November 5, 2018, <https://www.nytimes.com/2018/11/05/world/europe/poland-elections-law-and-justice.html>.

13 Freedom House, Poland Profile, *Freedom in the World 2017*, (Washington, D.C.: Freedom House, 2017), <https://freedomhouse.org/report/freedom-world/2017/poland>.

14 Freedom House, Poland Profile: *Freedom in the World 2018*, (Washington, D.C.: Freedom House, 2018), <https://freedomhouse.org/report/freedom-world/2018/poland>

15 Freedom House, *Poland Profile: Freedom in the World 2018*.

forms which took place in July of 2017, “law enforcement officials responded with heavy-handed security measures in the area around Parliament and at the Presidential Palace, inhibiting the demonstrators’ ability to protest.”¹⁶ Amnesty International, along with other human rights groups, government entities, and observers, has expressed concern about police detentions and intimidation of protesters.

Others have cited the more subtle negative impact of an amendment to the Law on Assemblies, which placed a priority on regular gatherings in a move by the government to favor monthly pro-government rallies over other demonstrations. The government justified the change as a means for preventing conflicts between protest groups, but many CSOs believe the measure is intended to make it harder for them to obtain a permit to protest when needed.

Many groups interviewed for this report have continued to organize protests since the passage of the law, so it is difficult to determine the degree to which the limitation has had a negative impact in practice. At least one advocacy group stated that mobilization of broadly representative groups was sometimes difficult because of other factors such as apathy or a lack of enthusiasm to protest among certain age or other demographic groups, and not necessarily due to intimidation or the behavior of law enforcement.

Media Freedom

Interviewees noted that centralization and increased government control over media, funding for civil society, and electoral administrative bodies may con-

tribute to the closing of democratic space by favoring those whose positions align with government policies.

The U.S. State Department 2017 Human Rights Report for Poland notes concerns related to media freedom, including bias of the state media and politicization of the National Television and Radio Broadcasting Council. For example, the report cited a fine issued by the Council against a privately-run media channel for its coverage of protests and a sit-in which occurred in parliament.¹⁷ The government also has been openly hostile to media outlets which criticize it, and it interacts primarily with state-run media.

Finally, political rhetoric amplified by the media has arguably fueled anti-Semitic behavior and, more broadly, has lowered levels of tolerance and inclusion in the country.¹⁸

Enabling Discrimination

The frequency of attacks against foreigners has risen since 2015 and correlates to the dismantling of bodies formerly created to address and prevent hate crimes.¹⁹ One group working on anti-discrimination matters cited anti-foreigner rhetoric by government-controlled media as a contributing factor in the rise in attacks. Examples include six Turkish and Bulgarian students physically assaulted in Northern Poland and a student from India being beaten in the center of Warsaw. Although CSOs did not indicate they had themselves been targeted, they did emphasize increasing difficulties finding housing and job placements for refugees. Multiple groups interviewed for this report relayed concerns related to an annual nationalist and far-right gathering which has traditionally coincided with and

16 Ibid.,11; Amnesty International, “Poland 2017/18

17 Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights for 2017* (Washington, D.C.: Bureau of Democracy, Human Rights and Labor, 2017), <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

18 Bureau of Democracy, Human Rights and Labor, 2017 Country Reports on Human Rights Practices, *Poland Human Rights Report 2017*, April 20, 2018, <https://www.state.gov/documents/organization/277449.pdf>

19 Rights, Equality and Citizenship (REC) European Union, Article 19: Poland: Responding to ‘hate speech’ 2018 country report, April 13, 2018, <https://www.article19.org/wp-content/uploads/2018/04/Poland-Hate-Speech.pdf>

co-opted the November holiday to celebrate Polish Independence.²⁰ There was less violence at the protests this year than in prior years, but it is disturbing that PiS, for the first time, joined the event alongside far right groups that espouse racist views.²¹ The growth of xenophobia and racism creates challenges in particular for CSOs that work on those issues.

Several of those interviewed, including academics and constitutional experts, felt that the Polish people are suffering from a crisis of identity: that Poles still are working to come to terms with legacies of World War II, including those associated with the Holocaust, which were left to fester under the Communist rule. Moreover, the experiences of the Communist rule itself have also not been explored or addressed sufficiently. Another factor enabling discrimination may be the high degree of homogeneity of Polish society. According to the official Main Statistics Institute's 2011 survey data, 96 percent of Polish citizens self-identify as one nationality: Polish.

In any case, the current Polish government is taking measures that exacerbate these trends. For example, the government recently passed a law making it illegal to accuse Poland of complicity in Nazi crimes, going so far as to criminalize the use of the term "Polish Death Camps."²² Some months later, the Parliament softened the bill by removing criminal penalties, apparently because of mounting external pressure. Nevertheless, the remaining limitations on speech negatively im-

pact the ability of CSOs to advocate and address difficult issues from the past and combat anti-Semitism.

Deteriorating Investment and Rising Corruption

Despite Poland's high level of domestic consumption and improvement of family finances, an anticipated overall slower growth rate in the coming year of around 3 percent GDP raises valid concerns and calls for closer monitoring of the country's overall economic environment.²³ Specifically, Poland's strong economic performance since 2000 has faltered, especially as it pertains to non-donor foreign investment. Foreign direct investment fell by more than 50 percent from 2016 to 2017.²⁴ Foreign investment in Poland saw an apparent decline between April and July of 2016 (4.9 percent lower compared to the previous year).²⁵ Various factors have contributed to this. For example, general tax reforms on banks and supermarkets that never took place and the general unstable judicial landscape in the country seem to have played a detrimental role. This rings true, especially as it pertains to the relationship between the Constitutional Court and the media. As stated in the BTI 2018 strategic outlook for Poland during the period of review:

Aside from debates on appropriate social policies and economic development tools, even more harmful for the development of Poland are the measures taken against the Constitutional

20 Matthew Taylor, " 'White Europe': 60,000 Nationalists March on Poland's Independence Day", *Guardian*, November 12, 2017, <https://www.theguardian.com/world/2017/nov/12/white-europe-60000-nationalists-march-on-polands-independence-day> and Avi Selk, "Poland Defends Massive far-Right Protest that Called for a 'White Europe,'" *Washington Post*, November 13, 2017, https://www.washingtonpost.com/news/worldviews/wp/2017/11/12/pray-for-an-islamic-holocaust-tens-of-thousands-from-europes-far-right-march-in-poland/?utm_term=.1df0e38b9986.

21 Joanna Berendt, "Poland's Leaders March with Far Right Groups on Independence Day," *New York Times*, November 11, 2018, <https://www.nytimes.com/2018/11/11/world/europe/poland-far-right-independence-day.html>.

22 Genevieve Zubrzycki, "New 'Holocaust Law' Highlights Crisis in Polish Identity," *The Conversation*, February 12, 2016, <http://theconversation.com/new-holocaust-law-highlights-crisis-in-polish-identity-91283>.

23 Stiftung, *BTI 2018 Country Report: Poland*.

24 According to the UNCTAD 2018 World Investment Report, FDI inflows to Poland declined drastically in 2017 and stood at \$6.4 billion (as opposed to \$14 billion in 2016). SantanderTradePortal, "Poland: Foreign Investment," September 2018, <https://en.portal.santandertrade.com/establish-overseas/poland/foreign-investment>

25 *Ibid.*, 18.

Court and the media. They undermine democratic standards and principles and make the country less reliable internationally, politically, and in terms of economic integration. A decrease in foreign investment is already evident.²⁶

High levels of corruption have seemingly played their role in creating an unfavorable economic environment for investors as well. According to the GAN Integrity Report, corruption, primarily in the form of bribes and irregular payments in return for favorable judicial decisions, has caused problems for companies operating in Poland: “The public procurement, justice, and land administration sectors carry high risks. Political corruption constitutes a challenge to fair businesses as politicians use their positions to gain benefits, and practices of nepotism and cronyism are widespread.”²⁷ In addition, changes to foreign and domestic ownership rules have impacted the investment climate. Overall, declining space for civil society, corruption, and other deteriorations in the rule of law appear to be among the factors affecting the willingness of foreign investors and donors to operate in Poland.

CURRENT AND HISTORICAL DONOR PRACTICES: CHALLENGES TO SUSTAINABILITY AND CSO ADAPTATIONS AND RESPONSES

Researchers often note that Polish civil society developed concurrently with the political transition of the post-1989 era. Financial support from North American foundations in the 1990s assisted this develop-

ment. However, as funding from American donors declined as Polish democracy progressed and Poland became a member of the European Union, the more limited funding available to CSOs from the European Union has not been sufficient to meet CSO needs. Meanwhile, the government has been reversing prior policy by centralizing control of public funds available to CSOs, further exacerbating the financial pressures felt by CSOs not aligned with the government.

Historic Donor Practices

A 2007 study on democracy development and civil society in European post-communist states conducted by Andrew Green²⁸ examined the pattern of international development assistance in the period of post-communist transition, from approximately 1990 to 2004. He found that the United States dominated democracy assistance, especially with respect to civil society support, providing some 80 percent of all such assistance. Funding by the United States helped support organizations focused on civic engagement, or what Green called “society-oriented assistance.” He defined this as support to civil society, freedom of information, and electoral and human rights assistance. In contrast, EU donor funding at the time was largely focused on improving state institutions with a view to EU accession—or what Green terms “state-oriented” — activities such as administrative reform, legal-judicial institutional support, and public finance.

Green suggests that after 2004, the overall funding mix changed. The European Union became a more dominant donor beginning in 2003, as American bilateral assistance sharply decreased when the U.S. Agency for International Development (USAID) “graduated” Poland. Notably, U.S.-based foundations maintained support for Polish CSOs, and the United States remained the largest donor for society-ori-

26 *Ibid.*,18

27 “Poland Corruption Report,” GAN Business Anti-Corruption Portal, January 2018, <https://www.business-anti-corruption.com/country-profiles/poland/>.

28 Andrew Green is now a technical director with Management Systems International.

ented programs. Indeed, Green notes the important role of foundations such as the Mott Foundation, the Ford Foundation, and Open Society Institute (OSI). Green observes that these organizations either “continued their lead role or stepped up their efforts as official donor agencies closed out activities.”²⁹ EU assistance provided to candidates and new member states continued to be state-oriented, and less focused on civic engagement. He also notes the rise of state-based grantmaking schemes for indigenous civil society organizations during the period covered by his report, funded via taxpayer contributions or state budgets, an approach that continues today in Poland.

Green’s report speaks to the resource challenge advocacy organizations face when CSO funding becomes more service-oriented. He asks, “As funding from these donors for one sort of civil society organization winds down . . . what will happen to the advocacy organization?”³⁰ Without resources from the United States, and with fewer funds from EU governments, foundations, and the state, advocacy organizations that have not diversified revenue streams face cuts in programs and limitations in their ability to continue third sector activities.

Many current-day Polish advocacy organizations are still dealing with the fallout from this shift and continue to struggle to develop new sources of funding. Some of these groups have chosen to broaden their activities in order to develop revenue-producing products and services to address this funding gap.³¹ For example, one advocacy CSO with whom we spoke now

offers training for private-sector companies, providing an important source of income for the group.

Over the past decade, Poland has experienced a number of political developments that have put democratic institutions under pressure and forced CSOs to find new funding models. These have included increased refugee flows into and within Europe that have prompted xenophobia, and democratic backsliding within the region itself. Coupled with a continued decline in democracy assistance from major donors, this has put additional pressure on civil society organizations to change their organizational and funding models in order to become sustainable.

Current CSO Landscape and Funding

According to the latest available data, about 20,000 foundations and 106,000 associations were registered in Poland at the beginning of 2016.³² The vast majority of them work in areas such as sports, tourism, education, culture and social services and health. Survey results in the 2016 Report on the State of Civil Society in the EU and Russia indicate that only some 13 percent of CSOs support civil initiatives and approximately 8 percent work on law, human rights and political activity. Of those surveyed, about half rely solely on volunteers, something that was noted as a challenge in interviews conducted for this report.³³

Several laws govern the operations of Polish NGOs, including the Law on Foundations, passed in 1984, and the Law on Associations, passed in 1989. Foundations and associations that meet certain criteria can receive special status as a Public Benefit Organization, which

29 Andrew Green, “336. Democracy and Donor Funding: Patterns and Trends,” Wilson Center Global Europe Program, July 7, 2011, <https://www.wilsoncenter.org/publication/336-democracy-and-donor-funding-patterns-and-trends>

30 Ibid.

31 Ibid.

32 USAID, *2016 CSO Sustainability Index For Central and Eastern Europe and Eurasia*, 20th ed., (Washington, D.C.: USAID, July 2017), https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf.

33 Civil Society Forum, *2016 Report on the State of Civil Society in the EU and Russia (Berlin: EU-Russia Civil Society Forum, April 2017)*, https://eu-russia-csf.org/fileadmin/State_of_Civil_Society_Report/18_05_2017_RU-EU_Report_spaudai_Hyperlink_Spread.pdf.

exempts them from paying.³⁴ According to the Council on Foundations, public benefit organizations do not have to pay corporate tax on income aligned with statutory goals of the organization.³⁵ As of October 2018, almost 10,000 organizations hold PBO status.³⁶

National Freedom Institute: In October of 2016, the Government of Poland passed a controversial law creating a new body to oversee funding for civil society, the so-called National Institute of Freedom—Center for Civil Society Development. This Institute is mandated to determine which civil society organizations receive public funds.

Government officials interviewed for this paper emphasized that the new body is meant to be cross-departmental and break the silo effect within the government and among recipients. They plan for funds to be allocated to a broader group of non-profits than in the past. According to government representatives, 85 percent of funding in recent years went to just 4 percent of organizations. The government also argues that preference in recent proposal rounds was given to organizations from smaller communities due to a criticism that in the past, urban-based NGOs received the majority of funding.

However, several international organizations, NGOs, and members of civil society expressed concern over the creation of the Institute. In particular, they worried about the significant power of the executive branch over the Institute's governance, as only 5 out of 11 seats on the Board are held by NGO activists.³⁷

The role of the government in the Institute's work may also mean that its policies are susceptible to change every time the political landscape alters. The Organization for Security and Cooperation in Europe (OSCE) also expressed concern over the allocation of funding and the lack of clear guidelines within the bill to ensure that the Institute abides by EU and international regulations on how the funds are spent.³⁸

Furthermore, international and domestic critics of the Institute assert that the decision making process for selecting NGOs to be funded is opaque and biased and favors organizations that support the ruling party. According to the 2016 Report on the State of Civil Society in the European Union and Russia, through which some 200 CSOs in Poland were interviewed, there have been a number of reported irregularities in the public grants award process. These include suspension or cancellation of calls for proposals, and the awarding of grants to new NGOs with little experience in a given area, as opposed to NGOs with more significant expertise.³⁹

Representatives from both the PiS administration and conservative Warsaw-based think tanks stated that distribution of funds from other governments would not be required to go through any centralized vetting. They specifically noted that there had been a misunderstanding with respect to CSO funding from Norway.⁴⁰ Freedom House's 2017 report, however, noted a move to centralize distribution of funds from Norway, but representatives from the Freedom Institute

34 Ibid.

35 Ibid.

36 Council on Foundations, *Poland*, October 2018, <https://www.cof.org/sites/default/files/Poland-201810.pdf>

37 Helsinki Foundation for Human Rights, "HFHR Opinion on the National Freedom Institute Bill," August 2017, http://citizensobservatory.pl/wp-content/uploads/2017/08/hfhr_opinion_national-freedom-institute.pdf.

38 OSCE, "Opinion on the Draft Act of Poland on the National Freedom Institute," August 22, 2017, <https://www.osce.org/odihr/336551?download=true..>

39 Ibid.

40 Pawel Marczewski, "Freedom to Exclude: Conservative CSOs in Law and Justice Poland", Carnegie Europe, October 4, 2018, <https://carnegieeurope.eu/2018/10/04/freedom-to-exclude-conservative-csos-in-law-and-justice-poland-pub-77377>

dispute this claim.⁴¹ Overall, the Freedom Institute is perceived as a worrying instance of the government exerting more influence over CSO funding, and thus CSOs themselves.

CSO Innovation

Modifications to legislation and the shifting dynamics described above have prompted a number of changes in CSO behavior. These include increasing self-censorship, new approaches to funding, and greater attention to physical and data security. In the following sections, each of these themes will be described in greater detail.

There was a marked difference in financial concerns expressed by CSOs in Poland who have been able to expand fundraising beyond public sector funding versus those who have not. One CSO interviewed for this project even noted remarkable savings they had been able to achieve due to successful online campaigns and other marketing. Other factors influencing success included the ability to significantly broaden membership, to identify sustaining members who were willing to make longer term commitments to provide repeated and consistent funding, and to attract larger contributions from individual donors. Organizations also cited products or services which could also serve as revenue sources, such as gender training for corporations.

According to the aforementioned 2016 report on civil society, the CSO sector used membership fees, local administration and private, institutional, and business donations the most frequently as sources of financing. However, the largest share of revenues collected by CSOs was from EU funds, followed by local and central administration or the government. During interviews, CSOs worried about a potential drop in EU funding and also how recent elections might impact revenue. Given the survey data, it is not surprising that CSOs would

express these concerns. CSOs receive, for example, reduced rent on property through local governments. Advocacy organizations who have been critical of government policies worry about losing this accommodation depending on who controls local politics.

Other CSOs which traditionally relied on public sector funding and had not broadened their donor base noted that they were forced to close programs because of budget cuts and loss of international and domestic public sector funding. The perception is that a shift in international funding away from Poland over the past decade occurred because there was a sense that Poland's democracy was fully consolidated and not vulnerable to backsliding. As discussed earlier, the government claims that public funding is simply being allocated to a broader set of organizations, while advocacy organizations and democracy advocates abroad worry that the shifting of resources away from certain entities is more deliberate and pernicious.

Meanwhile, CSOs interviewed indicated that corporate social responsibility (CSR) is not yet well-understood or resourced in Poland, although it is attracting increased attention. The government states that, "CSR continues to feature a number of challenges that will need to be faced up to. Remaining crucial are further increases in transparency, as well as the building of more broad-based public support for the corporate social responsibility concept, this going hand in hand with the development of civil society."⁴² CSO funding from the corporate sector may become more common in Poland, but such support tends to avoid controversial topics and advocacy in most countries.

Contributions 1 Percent

Under the Polish Personal Income Tax Act or Lump Sum Income Tax Act, Polish citizens can designate 1 percent

41 Freedom House, 2017 Report.

42 Ministry of Economy of the Republic of Poland, National Reform Programme Europe 2020, *Corporate Social Responsibility in Poland* (Poland: Ministry of Economy of the Republic of Poland, 2017), <https://www.employment.gov.sk/files/slovensky/ministerstvo/spolocenska-zodpovednost/csr-in-poland.pdf>.

of their tax contributions to civil society organizations which participate in the program, so long as the groups go through the process of registering and meet the requirements to obtain status. They can select only one beneficiary and those organizations must be published in the *Official Journal of Poland*.⁴³ Many organizations with which CSIS spoke to for this paper, regardless of whether related to social welfare or rights-based, noted they had received support via this fund. However, there was a sense that individual philanthropy was weak in part because citizens may feel they have given sufficiently if they have contributed via this 1 percent mechanism.

Other tactics and strategies to improve sustainability were identified by CSOs with respect to organizational structure, strategic planning, and outreach. As the 2016 CSO Sustainability Index reports, “There is growing discussion in the CSO sector on self-regulation. The sector developed the Strategic Roadmap for the Polish Third Sector and a charter of principles, which CSOs can adopt.”⁴⁴ CSOs also spoke about developing their own internal strategies; making hard choices about what activities they will emphasize and which ones will be eliminated; and developing, mobilizing and engaging constituencies and broader society for support. Specific programs which have been eliminated or whose activities have been reduced because of decreases in funding include advocacy activities by women’s organizations to advance women’s rights, refugee assistance, and legal aid for LGBT groups.

CSOs also discussed the importance of strengthening domestic advocacy networks between CSOs in order to better respond to legal, financial, political and social challenges. For example, the Polish So-

ciety for Anti-discrimination coordinates some 70 advocacy networks.

Technology can play a role in supporting organizations’ work. Some organizations such as E-Paristwo, which works on issues related to tech for good, belong to regional or global networks such as Code for All and the Public Democracy Forum.⁴⁵ Groups monitoring publicly available government websites note that, recently, some supreme court cases have been deleted from government sites.

Several NGOs have used technology and social media to support fundraising, including organizing on platforms such as justgiving.com.

Polish NGOs are also strengthening their data security. Some have taken significant steps to improve protection of digital information so they are less vulnerable to hacking and attacks. Conversely, international organizations and the private sector have also engaged in raising matters related to negative aspects of online platform use. For example, Facebook met last year with the Polish government to discuss issues around hate speech.⁴⁶ There may be opportunities for Polish CSOs to coordinate their messages against hate speech online with technology companies.

THE ROLE OF THE EUROPEAN UNION AND THE UNITED STATES

While there is substantial uncertainty about the trajectory of Poland’s democracy, for the moment, civil society remains vibrant in Poland. Both the Europe-

43 Helmut K. Anheier and Stefan Toepler, *International Encyclopedia of Civil Society* (New York: Springer, 2009), 1110.

44 Ibid., 17.

45 Code for All is an international network of organizations which believe digital technology opens new opportunities for citizens to more meaningfully engage within civic space.

46 Joanna Kuleza, “Facebook’s New Role in Europe: Protecting Poles from Hate Speech Since 2016,” *Open Democracy*, January 25, 2017, <https://www.opendemocracy.net/joanna-kulesza/facebook-s-new-role-in-europe-protecting-poles-from-hate-speech-since-2016>.

an Union and the United States have important roles to play in guarding against further decline of Poland's democratic health, and in supporting a strong and resilient civil society.

To this end, the European Union has continued to move forward with Article 7 proceedings, holding a hearing most recently in mid-September and suspending Poland from the European Network of Councils for the Judiciary.⁴⁷ The European Union could also help support capacity building of CSOs in Poland, as is permitted under EU law. In addition, the Justice, Rights and Values Fund proposed in the 2021-2027 EU Commission budget would provide funding to protect rights and sustain open, democratic, and inclusive societies, central goals of many CSOs' work.⁴⁸ This type of assistance could be very helpful to sustain civil society's work to advance tolerance, inclusion, participation, and democracy in Poland over the past few decades.

Similarly, the United States could and should play a critical role in tackling the closing civic space in Poland, given historically close relations between the two countries. Some interviewees, however, suggested that the current emphasis that the United States places on national security, construed narrowly, has enabled the loss of democratic space in Poland. For example, they suggested that Poland's relationship with the United States is currently based on narrow geopolitical concerns, without recognition of the role

that values can play in supporting national security in the long run. As a result, the Polish government is less likely to feel pressure from the United States to adhere to democratic standards and norms. Although President Trump, during his visit to Warsaw in July 2017, stated that we "treasure the rule of law and protect the right to free speech and free expression,"⁴⁹ the speech was given against the backdrop of recent actions by the government of Poland shrinking the political space for such freedom of expression. Critics felt the speech didn't go far enough to admonish the Polish government for its actions, and that the United States has not sufficiently expressed concerns about democratic backsliding in Poland.⁵⁰

The meeting between the president of the United States and the president of Poland in September 2018 was another chance for the United States to express concern over closing space, yet reports indicate the meeting was largely focused on security and military matters.⁵¹ The government of Poland might see this as a further indication of the hands-off approach of the United States when it comes to internal matters in Poland, even when civil and political rights are threatened.⁵² As a global champion for democratic principles, values, and space, the U.S. government should speak up now, in a deliberate and consistent manner, to help prevent further backsliding in Poland, as well as other countries. Such statements need not detract from the United States'

47 Jan Strupczewski and Garbiela Baczynska, "EU Ministers Question Poland over Rule of Law Concerns," *Reuters*, September 18, 2018, <https://www.reuters.com/article/us-eu-poland/eu-ministers-question-poland-over-rule-of-law-concerns-idUSKCN1LY1OQ>.

48 Eszter Zalan, "EU Keen to Strengthen NGOs, Lacks Money," *EuObserver*, May 30, 2018, <https://euobserver.com/political/141944>.

49 Associated Press, "Remarks by President Trump to the people of Poland," *Foreign Policy*, July 6, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-people-poland/>.

50 Lydia Gall, "Trump Avoids Warsaw's Failure to Uphold 'Shared Values'," *Human Rights Watch*, July 7, 2017, <https://www.hrw.org/news/2017/07/06/trump-avoids-warsaws-failure-uphold-shared-values#>

51 Remarks by President Trump and President Duda of the Republic of Poland in Joint Press Conference, Washington D.C., September 18, 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-duda-republic-poland-joint-press-conference/>

52 Associated Press, "Statement from the Press Secretary on the Official Visit of President Duda of Poland," *Foreign Policy*, August 28, 2018, <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-official-visit-president-duda-poland/>.

focus on national security but would, in fact, strengthen that focus by addressing a key element of long-term national security: domestic political health and vibrant democratic engagements within Poland.

Even if the White House continues to base its policy towards Poland on a narrow understanding of national security, and does not act, Congress should do so. Congress should signal that the United States still cares about political and civil rights, as well as national security, and is concerned about shrinking political space in Poland. It could do so, for example, through resolutions, spending bills, and hearings.

KEY FINDINGS AND RECOMMENDATIONS

Overall, the consensus was that CSOs perceive that their situation is worsening over time on at least three fronts: (1) a declining fundraising environment and financial stability vis-à-vis legacy foundations and international donors; (2) dwindling public financial support for advocacy activities; and (3) increasing regulatory, political and social constraints on CSO operations and activities.

At the same time, they noted that creating space for open and honest political dialogue between CSOs on the left and right and between CSOs and government is important. Interviewees on both the left and right side of the political spectrum emphasized that there is still a strong willingness for dialogue regarding political, economic and social issues. Equally important was the ability of these parties to come together in a safe and off-the-record environment where participants could feel free to voice opinions without being cited by media. This environment still exists for discussion of some more neutral issues, such as the security sector, but many of those interviewed agreed that it would be good to encourage greater dialogue on issues of contention or disagreement across the political divide.

Based on interviews conducted for this study and a review of literature available about the state of civil

society in Poland, the following are key findings and recommendations for civil society and donors interested in supporting CSOs and mitigating the erosion of civil and political rights in Poland

Recommendations for Donors

Donors should help recipient organizations become more autonomous and sustainable. They could employ a number of strategies in this effort.

Donors should help recipients develop new funding streams, including through building capacity that supports:

- The use of social media, including crowd-funding and the use of meta-platforms such as Just-Giving.com;
- Corporate funding and individual giving; and
- A transition to new operational and business models to enable diverse funding streams, which may necessitate legal assistance.

Donors should provide appropriate funding via:

- Both core and flexible funding;
- Multi-year funding;
- Funds for advocacy activities, not only service activities; and
- Capital available for project start-up, similar to angel investing.

Donors should help CSOs operate more securely and in coalition, including by:

- Supporting the development of internet and financial security protocols;
- Fostering global and regional networks like Code for All to help organizations build their own networks and exchange lessons learned and ideas for local fundraising; and
- Speaking out when government institutions inappropriately interfere with donor-funded CSOs, if those CSOs support this tactic.

Recommendations for CSOs

CSOs also can take a number of steps to protect or expand their existing space to operate.

They should develop new funding strategies by:

- Creating electronic platforms to enable individual giving as well as donations from the private sector or Polish foundations in order to diminish dependence on large foreign donors;
- Establishing feedback loops for donors so they feel invested in assistance, whether through reporting, on-line surveys, or engagement in activities and decision-making processes;
- Diversifying activities so funding for less controversial activities can help support the organizations in order to allow other more controversial activities to continue; and
- Capitalizing on domestic corporations that are interested in providing funding for activities intended to benefit society or other CSR activities, or pay a fee for training or other activities that do not compromise the mission of the CSO.

CSOs should mobilize broader constituencies and raise their profiles by:

- Diversifying support or membership through the use of broad-based campaigns, such as social media and grassroots outreach; and
- Raising the organization's profile through partnership with celebrities, professional athletes, and other non-traditional partners.

CSOs have an opportunity to develop internal capacity and networks to enhance resilience through:

- Building staff capacity to protect the organization through cybersecurity measures;
- Supporting staff capabilities to use social media to conduct fundraising and outreach;
- Implementing strategic planning processes which allow for reassessment of operations and

activities as organizations and their political environments evolve; and

- Strengthening domestic advocacy networks between CSOs in order to better respond to legal, financial, political, and social challenges.

Recommendations for the European Union

The European Union has a vital role to play in addressing the political situation in Poland. Supporting civil society should help enable domestic pushback against democratic backsliding. Specifically, the European Union should:

- Continue to express concern about efforts to deteriorate Poland's institutions, including its courts;
- Make EU funding contingent on the strength of democratic political institutions, including space for civil society to operate; and
- Approve the Justice, Rights, and Values Fund and use this to support civil society in Poland and other countries facing democratic backsliding.

Recommendations for the United States Government

The United States has meaningful influence over Poland, and should exert it so that this ally remains ideologically aligned with the United States. Both the administration and Congress have roles to play, including:

- Raising concerns in bilateral meetings with Polish leadership;
- Increasing bilateral financial support for Polish CSOs, including advocacy CSOs; and
- Integrating concerns about political developments into security discussions.

CONCLUSION

For the moment, civil society in Poland is able to receive foreign funds, crowd-source funding, and de-

velop their programs and processes to increase CSO sustainability. Nevertheless, some CSOs are worried. CSOs have had to cut vital programs supporting the protection of vulnerable populations such as women and refugees, and limit legal aid and outreach, due to political and funding pressures.

Some of the CSOs seemed to be reassuring themselves as much as their foreign guests that Poland would not go the way of Hungary or Turkey. How could this country, which gave birth to the Solidarity movement in the 1980s, where support for civil society remains vibrant and strong, be allowed to suffer such a fate?

ABOUT THE AUTHOR

Barbara Smith is a senior associate (non-resident) with the Human Rights Initiative at CSIS. She has over 20 years of experience in international development and is a subject matter expert in democracy, human rights, and governance with significant experience designing and implementing programs in conflict-prone countries. She has had direct and substantial involvement in policy development and strategic planning within the U.S. government, the nongovernmental community, and international organizations. Ms. Smith has held a number of positions with the U.S. Agency for International Development, including deputy assistant to the administrator for policy, planning and learning; senior policy analyst; deputy coordinator for Middle East transition response; and senior field adviser for democracy and governance. In addition, she served on the National Security Staff at the White House as a director for Afghanistan and Pakistan affairs and at the Asia Foundation as senior director for governance and law. She has also held senior positions with various organizations overseas, including as spokesperson for the UN high commissioner for refugees in Bosnia and as deputy country representative for the Asia Foundation in Afghanistan. Ms. Smith received a BA in government from the University of Texas at Austin and an MA in political science from Texas State University.

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