

Monitoring/Tracking Tool: Discussion Guide

International Center for Not-for-Profit Law
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Introduction

Laws affecting civil society are often subject to change. States that are democratizing or reconceptualizing the role of the state may enact legislation affecting nongovernmental organizations (NGOs) to promote societal dynamism. However, some states do not desire a strong civil society. Such states often introduce laws, which, at best, do not promote, and, at worst, prevent activities of civil society organizations.

This is not always evident what effect legislation will have on civil society. Often laws, as written, do not contradict international law. Legal analysis of the legislative provisions is not sufficient enough to identify and provide a correct assessment of the problem with such a law, or even whether such problem exists. New legislation often seems *prima facie* legitimate, but the implementation of these laws and regulations could be harmful to the sector. For example, it is the government's responsibility to establish regulations which would prevent money- laundering or financing of extremist activities. Yet such laws can be used as a pretext for interfering with legitimate associational activity.

The international community, host government, and NGO sector often engage on these issues from different positions. For example, NGOs perceive increased reporting requirements as government's intrusion into their internal affairs. Cases of involuntary liquidations of NGOs resulting violations of reporting requirements are perceived as evidence of the repressive nature of the reporting legislation. At the same time, the government might find it positive that it was able to identify law violators through submitted reports. The government, as a positive factor, might perceive the number of liquidated organizations as well, as less organizations conducting illegal activities will still exist. Monitoring possible harassments through press also does not provide for a comprehensive base for a dialogue amongst interested parties. NGOs would initiate articles highlighting harassments, and the government would dismiss them as invented and not representative of the situation with implementation of the law at large.

It is a common practice, that international organizations provide funding to conduct expensive sociological and other assessments of legislation in attempt to understand what is the situation with implementation of the legislation. Beneficiaries of such assessments are often NGOs. However, reports produced resulting such assessments have a limited use to help NGOs in real life. The role of even the top quality assessment report will be limited to posting on several websites and convening a few roundtables. Will such report influence amending legislation? Most likely — not.

How to create a base which would help the interested parties to resolve a debate constructively? What kind of assessment can be helpful in addressing real life needs? We hope that the Monitoring and Tracking Tool (MMT) will help to create such base to planning and implementing most effective assessments.

This paper presents options for developing a MTT to help inform discussions about the impact of newly enacted NGO legislation. At the core, the MTT is a simple and necessary exercise which shall be conducted in order to make the results of the assessment practical and helpful, for example, with promoting legislative changes. We hope that many of the recommendations in the MTT have a broad geographic applicability and can be used in various countries.

The first section provides the conceptual context for the MTT. The second section discusses specific decision points. The goal is to promote stakeholder consensus around key questions; for

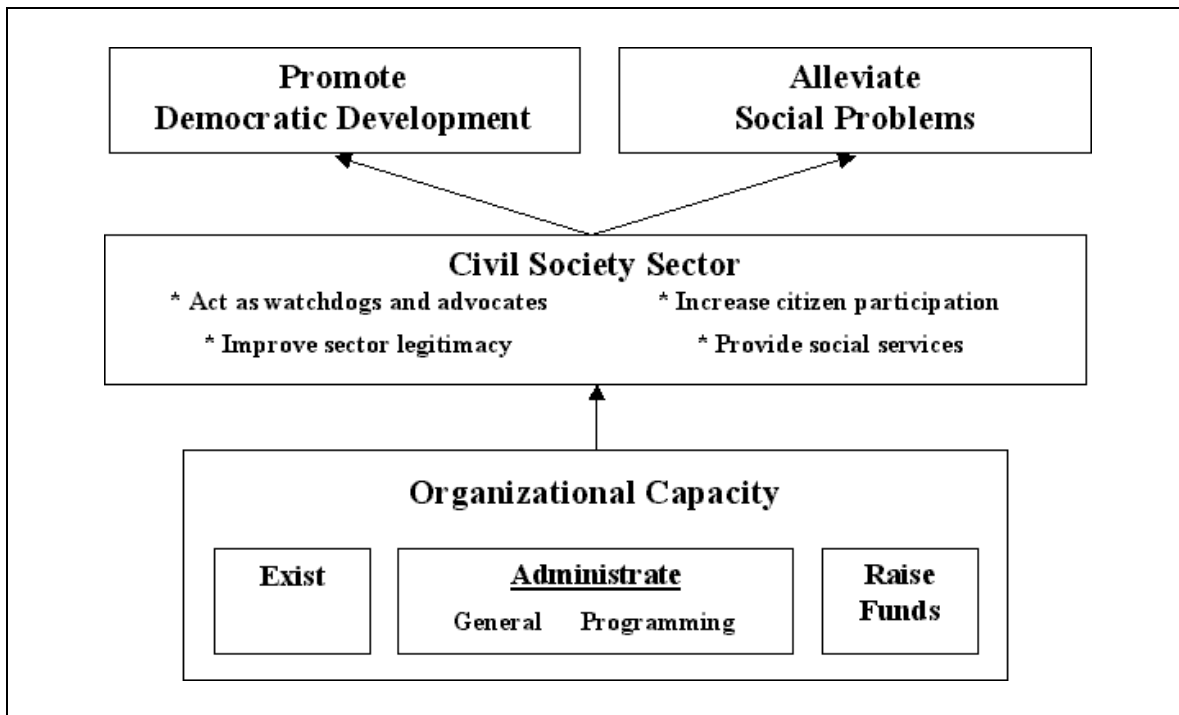
example, “why” are we conducting this exercise, “what” should be the focus, “who” is the target audience, “where” should we focus, “how” should we collect data, and “when” should the assessment take place.

Conceptual Context

The legal framework directly affects the ability of an NGO to form, operate and sustain itself.

Collectively, the NGO sector has the capacity to engage citizens, deliver services, interact with the state, and otherwise participate in social, political and economic life. Elevating this one level, these activities help advance democratic development, service delivery, and other macro-level objectives.

These connections are illustrated in the following graphics; here the *micro* level reflects the impact of laws on individual organizations, the *meso* level reflects the impact on the civil society sector as a whole, and the *macro* level reflects the impact on larger objectives, such as democratic development or service provision.



The MTT is mostly helpful if the goal is to assess the impact from the law at the micro-level. This being said, the results of the assessment conducted with the use of the MTT may be used in further analysis at the mezzo- and macro- levels.

Decision Points for the MTT

Within the above conceptual context, this section discusses decision points to help develop a MTT appropriate to local context.

Decision Point #1: Who is the target audience and how will they use the results of the MTT?

The initiator of an assessment (an interested party, including a donor organization which is planning to sponsor such assessment) shall find an answer to the question above.

This is not a theoretical question, considering that often a donor organization is supporting assessment to benefit the third person (NGOs, government, etc.).

We recognize that the MTT may have multiple audiences and uses, so the answer is often “all of the above.” It is important to rank the objectives, however, to provide a guide post for other decision points.

This is a critical discussion, as it will influence other decision points, including the selection of stakeholders to participate in its design. If the decision is made that NGOs shall be the primary beneficiary (or, primary audience), this is the primary audience who shall be making and participating in making all of the following decisions in MTT. Next decision- what shall be the goal of the assessment- shall be made by the primary audience.

If the goal is to amend legislation, it is critical to keep in mind that amending legislation is not possible without the government. Therefore, it is critical to engage the government into the process of assessing legislation. The government, in such case, is considered the secondary audience, and the following decisions in the MTT shall be made in consultations with the government representatives.

What if consensus between the primary and secondary beneficiaries is not possible? We recommend continuation of negotiating, and perhaps, revisiting the practical goal of the assessment.

While the need to agree on the primary objective for an exercise seems obvious, it is often overlooked as stakeholders focus on more concrete issues. Nonetheless, this step is essential to help promote a common vision for the exercise. Accordingly, for Decision Point #1, key questions include:

- a. *Who is the primary audience of the MTT results?*
- b. *Who is the secondary audience for the MTT results?*
- c. *What is the intended use of MTT results by these audiences?*

Decision Point #2: What laws are to be assessed for impact?

The NGO legal environment consists not of a single piece of legislation, but rather a complex web of civil codes, registration laws, tax codes, labor codes, etc. In some contexts, criminal laws may also be implicated. For this reason, it is essential to determine the legal scope of the MTT. It appears important to define specific laws, and even legal provisions which raise most concern within the primary audience. It is also important that the primary and secondary audience have mutual understanding of the scope for assessment.

In terms of substantive scope, it is also important to prioritize issues for assessment. If there are limited amendments – for example, a series of amendments requiring re-registration of foreign organizations, imposing reporting requirements on foreign funding, and enabling the police to attend NGO events – priorities may be rather clear. In other cases, however, where entirely new NGO registration laws are enacted, the selection process may prove more difficult. The first step

is often to commission an expert analysis of the framework. To facilitate this process, ICNL has prepared a Legal Assessment Questionnaire.¹

The analysis should pay particular attention to potential points of intervention or constraint. Examples include:

- *Registration*: Is the registration body politicized, are the procedures burdensome, do officials have broad discretion to deny registration?
- *Internal Governance*: Does the government have the right to attend the organization's events, including board meetings, can the government replace board members?
- *Activities*: Does the law prohibit undefined "political" or "extremist" activities, are NGOs allowed to engage in service delivery?
- *Sustainability*: Does the law allow organizations to receive foreign funding, fees for services?
- *Regulation*: Does the government have the right to audit organizations – if so, for what reason, and how often; does the government have the right to issue "notices" of correction or to terminate organizations?

The next step is to determine which of these issues should be considered in the MTT. Sometimes interesting issues will be excluded because they are not priorities. For example, some laws prohibit children from founding NGOs. While this may violate the Convention on the Rights of the Child and is therefore interesting, it may not be worth assessing, particularly where resource limitations exist.

In other cases, interesting issues may be excluded if they would be extremely resource-intensive to measure. Take, for example, a provision that places onerous requirements on the receipt and handling of foreign grants may lead donors to utilize contracts or donations, in order to channel funding to organizations as efficiently and expeditiously as possible. Tracing this switch would likely entail gathering key details from every funding transaction, for every organization, for every donor; it might be enough to track at the meso (sector) level what overall level of funding organizations receive by each means.

Accordingly, for Decision Point #2, the key questions are:

- a. *What law or laws are subject to MTT inquiry?*
- b. *Should the MTT address only amendments to legislation or pre-existing laws as well?*
- c. *What specific issues should be included in the assessment, focusing on priority issues that can be measured?*

¹ This may be found at: <http://www.icnl.org/knowledge/pubs/NPOChecklist.pdf>.

Decision Point #3: What level of impact should be evaluated?

Before reaching decisions about which organizations to analyze or specific methodologies to use for data collection, it is important to reach consensus on the level of impact that should be assessed for each issue. Take, for example, a new provision requiring that foreign donors and their grant recipients comply with extensive reporting requirements. It would be possible to examine the impact of these requirements at the organization (or micro) level, for example, the time and resources required to comply with these requirements, the number of organizations sanctioned for failing to comply with these requirements, etc. In other words, the micro-level focuses on the impact of legislation on individual organizations and entities.

In addition, the MTT could examine impact at the sectoral (or meso) level. For example, one could assess whether reporting requirements have concentrated foreign funding in large, capital-based NGOs with administrative capacity to meet reporting requirements, at the expense of smaller, community-based groups. Similarly, one could examine how these reporting requirements have impacted the nature or amount of foreign funding flowing to the sector as a whole.

Finally, the MTT could conceivably assess impact on macro-level objectives. For example, one could examine the extent to which legislative changes have affected citizen participation, social service delivery, or other strategic objectives. It is also conceivable that a host government would want to assess the impact of legislative change on a series of other objectives, such as national security or counter-terrorism. The challenge, of course, is that causation becomes more complex to assess as one moves from the micro to meso to macro level. Using a simple example, it may turn out that foreign funding actually increases in a country after the enactment of a restrictive NGO law. Initiatives such as those in Russia attracted significant publicity and reinforced the need for donors to continue engagement in the country. Accordingly, it is conceivable that funding commitments could actually rise in these circumstances, but it would be incorrect to state that the reporting requirements caused the increase in funding. It is therefore important to distinguish between *correlation* and *causation*.

Additional practical constraints arise when one considers macro-level objectives, such as impact on citizen participation. First, it would be extremely complex to disaggregate the marginal impact of specific legislation from other factors that affect these macro-level objectives. In addition, there are often other sources to gauge these macro-level indicators (e.g., research developed by Freedom House and Polity).

In summary, the MTT is best-suited to assess impact on specific organizations (micro level) rather than on macro-level objectives. It can also help measure sector-wide impact (meso level), complementing other indicators such as those in USAID's NGO Sustainability Index, the Johns Hopkins Comparative Nonprofit Sector Project, or Civicus' Civil Society Index.

Accordingly, the prime questions for Decision Point #3 are:

- a. *What issues should be assessed at the micro (usually, organizational) level?*
- b. *Which issues should be assessed at the meso (usually, sectoral) level?*

Decision Point #4: What groups should be targeted for assessment?

This is perhaps the most critical step for determining the level of effort, cost, and ultimate analytical payoff for an MTT application, primarily because this is the point at which the key parameters for research are set. Segmentation, or differentiation according to certain characteristics, is a powerful analytic tool. It recognizes that legal provisions may have disparate impact on different segments of the NGO sector. The following are a few options for segmentation:

- Organizational form (e.g., foreign vs. local organizations, foundations vs. associations);
- Activities (e.g., advocacy vs. service delivery);
- Geography (e.g., capital, cities, towns, etc.);
- Founders (e.g., women, minorities, religious organizations, etc.).
- Size of organization.

Segmentation is particularly useful if selective use of discretion is suspected; this is the rationale for inquiries on patterns of interaction with regulatory authorities. Take, for example, the case of a human rights organization denied re-registration for technical reasons. On its face, it is difficult to assess whether this denial was based on the fact that the organization was engaged in human rights. But if other organizations – such as service delivery organizations – were allowed to register despite the same “technical violation,” this would move one closer to a finding of political bias. To determine this impact, however, it would be necessary to segment according to organizational purpose.

Geographic segmentation should also be considered. This is particularly important for large countries (e.g., Ukraine, Russia, and Kazakhstan) or small countries with ethnic, religious, and/or political diversity across regions (e.g., Moldova, Armenia, or Georgia). In addition, implementation may vary between the capital and other cities, or between cities and towns.

It is also important to avoid gathering information from only the “usual” suspects. In the case of re-registration, for example, inquiries should be directed not only at those denied registration, but also those granted registration and those that may have chosen not to re-register at all. This will significantly enrich the dataset, informing the assessment team of the impact of legislation not only on those who opted into the system, but those who opted out.

In summary, segmentation is powerful analytically, but it can also significantly increase costs and so should be used only when there is a reasonable basis to suspect disparate impact. For example, when looking at organizational purpose, it is important to consider whether to focus on “advocacy” organizations regardless of advocacy objective, or on a narrower subset such as organizations engaged in human rights and democracy promotion.

Accordingly, for Decision Point #4, key questions are:

- a. Is there a reason to believe that there is disparate impact on NGOs based on organizational form, activities, geography, founders, or other characteristics?*
- b. If so, recognizing that segmentation increases costs, which of these segments are most worth assessing?*

Decision Point #5: What methodology should be used to collect data?

The next step is to determine the appropriate methodology or methodologies to collect data for each area of inquiry. This section provides general considerations for this process.

One overarching consideration is the *ability to make comparisons*. Certainly, comparisons within groups, particularly for segmented characteristics, will be possible in any MTT application. If comparison across *time* is important, then the MTT should be applied more than once. If the concern is about what the situation was like before and after laws came into force, then a tailored MTT should have been implemented beforehand to develop a baseline; if baseline data are not available, it may be possible to include relevant questions in surveys or interviews to gather some sort of picture after the fact. If the concern is about how changes in NGO law affect organizational behavior, then the MTT should be applied subsequently, perhaps every year or two.

A further overarching issue that impacts comparability and data quality alike is that of *selection bias*, which refers to the way in which the data we select for analysis may mislead the ultimate analysis. For example, if we are concerned about the impact of recently enacted legislation we should not speak just with organizations that were denied re-registration but also those that were granted re-registration to ensure that our sample is not limited only to those who were unsuccessful under the new law.

In addition, it is important to *triangulate* data to the extent possible. For example, if an NGO claims that it was closed down for “technical reasons,” it would be useful to see the underlying court documents. Similarly, if NGOs report a decline in donor funding, it is important to speak to donors as well to inquire about funding levels. Also, some *existing data sources* may be sufficient for some data points. For example, if an interested party is looking for the meso or macro level, then the NGO Sustainability Index, Civicus CSI, Freedom House, Polity, Human Development Index, etc., could form the basis for the MTT application. For the micro level, the MTT application could utilize registration lists, financial reporting, employment figures, and so on, usually available from government agencies such as national statistics offices or tax services.²

In terms of specific techniques, at the meso- or macro-level there are *population surveys*, which are an effective means to gauge public attitudes and behavior. Because population surveys draw on a large number of responses, this is an expensive option that requires considerable time and effort; one key advantage is that the data and analysis are much more credible and reliable. That said, while conceivably relevant to an assessment of impact (for example, if we want to know if public image of the sector has become more favorable or not), we assume that it will not be employed all that often in an MTT context.

² Another overarching issue is that there is a *direct trade-off between level of effort and analytical quality*, so care must be taken not to compromise the value of the MTT application in the name of cost savings without recognizing this trade-off. For example, there is often an imperative to move quickly to implement this sort of analysis utilizing existing resources, even if they are not generally involved in this sort of work. While perhaps a reasonable option in some cases, it should be explicitly recognized that if a population survey is called for, limiting the size of the sample will likely limit the rigor of the results.

Organization surveys are similar to population surveys, but the target population is different (likely smaller) and the effort less demanding; credibility and reliability are similarly strong, although response rates tend to be much lower if conducted via post, so some level of in-person interviews should be considered. Here, questions would relate to the impact of changing NGO laws on the activities of organizations. Examples include, “How much staff time does it now take to comply with state regulatory requirements on the distribution of financial assets?” or “How have funding sources changed due to restrictions on foreign grants?” The level of effort and cost would likely be higher than an evaluation, depending on how the survey is to be conducted and the amount of internal travel.

Focus groups are another way to obtain information about the behavior and attitudes of either individuals or organizations, but done properly require more time and effort to develop, conduct, and then analyze than population surveys; in addition, it is difficult to produce quality information from focus groups. If a question was whether citizens viewed service provision groups differently than human right advocacy groups, focus groups comprised of individuals could be conducted in a number of locales to gauge interaction and perceptions of both types of groups. If a question was about how new registration procedures have affected the development of new organizations, focus groups of socially-active citizens could gauge knowledge of the procedures and likely impact.

Finally, a series of *structured interviews* could be conducted to gather impressionistic information from a set of selected respondents much smaller than for a survey. Often done for evaluations in the form of elite interviews, this option has the advantage of being relatively inexpensive and easy to implement; the disadvantage is that the subjective picture that emerges from the interviews may be different from reality. Similarly, a small set of organizations could be selected for in-depth interviews of personnel, with the same advantages and disadvantages of elite interviews.

In summary, the issue for Decision Point #5 is to *determine the appropriate methodology or set of methodologies for each area of inquiry*. Of the various options presented, organizational surveys, focus groups, and structured interviews seem most useful in this context. In some countries, it is also possible to utilize pre-existing data sources, such as public registers, court decisions, databases on funding and organizations, etc. General considerations are presented above, as the specific approach depends on the area of inquiry.

Decision Point #6: Who should be involved in the MTT process?

A final and overarching issue relates to the stakeholders involved in the MTT process, noting that there are at least four stages of the MTT process: design, data collection, data analysis, and dissemination of results. As discussed in Decision Point #1, it is useful to conduct a mapping exercise to determine entities with an interest in the MTT process or its outcome. Possibilities include representatives of the local and international NGO community, donors, the diplomatic community, host government, parliament, academia, and perhaps even the business community. It is then necessary to consider if and when to include these stakeholders in the MTT process. This is context-specific, but a few overarching considerations follow.

Design and Funding Issues. As discussed in Decision Point #1, if a primary goal is to use the MTT to influence the behavior of a specific target audience (ministry officials, parliament,

international diplomatic community), then it may make sense to involve them in the design process to increase the likelihood that they will assume ownership over the results. There is often the hope that other donors would pick up the monitoring process in subsequent years. It is rare, however, that donors are willing to accept another donor's methodology. Accordingly, if this is the aspiration, prospective donors should be included in the project design. A local partner is usually necessary for finalizing translations of survey instruments, developing a sample frame, and perhaps providing training for in-person surveys.

Data Collection. This is driven largely by Decision Point #5, which itself culminates from the other decision points. It would be best if the tool were applied by indigenous or local language-fluent experts, overseen by a team manager with demonstrable training and experience in conducting social science. A local partner is often useful not just for conducting some portion of the in-person surveys, but more importantly for coding all responses into a database. In most cases, MTT application should be done not by the government staff as interviewees are likely to shape their answers according to the perceived position of the government representatives. This is not to say that they should never be part of teams, just that their inclusion should be weighed very carefully.

Data Analysis. In politically complex environments, it is likely best to have an international organization engaged in data analysis, although there is a role that could be played by a local partner and perhaps other stakeholders. A local partner could certainly be involved in the analysis, but for reasons of potential bias and possible negative political ramifications should not be the lead. It would be best if a local partner generated descriptive figures from the collected data, for example, frequencies, correlations, and other basic comparisons.

Dissemination of Results. This stage is perhaps the one most driven by Decision Point #1, and also by the assessment results. For example, if a practical purpose of the assessment was to amend the law, and results of the assessment show that the law does not have significant enough impact on NGOs, it might not be worthy to facilitate a lobbying campaign to amend the law. However, if the results of the assessment show that the amendments are required to improve regulatory environment, the primary and secondary audience shall consider using the results of the assessment as a base for developing an action plan how to proceed with legislative amendments.