

**Introduction to the Donor Working Group on Cross-Border Philanthropy
July 7, 2014**

The past several years have seen an alarming increase in the number of jurisdictions restricting funding for civil society organizations. Few topics are more pressing for international human rights funders as our ability to support organizations is undermined and the activities and influence of our grantees is constricted. The donor working group on cross border philanthropy was established in March 2014 to enable human rights donors to develop a strategic response to this problem.

To date the group has 27 private funders as its members and is led by the a steering committee, which includes the Sigrid Rausing Trust, Fund for Global Human Rights, the International Human Rights Funders Group, the European Foundations Centre, and the Euro-Mediterranean Foundation of Support to Human Rights Defenders.

The goals of the working group are:

- To facilitate other funders to engage in discussion and action on the issue of legal and bureaucratic restrictions on NGOs, with a particular focus on foreign funding
- To explore together a conceptual approach to addressing the problem of restrictions on foreign funding
- To develop vehicles for addressing the problem
- To act as a resource to assist donors navigating the difficult legal environment

Activities of the group include sharing information and strategies on how to lawfully navigate legal restrictions, undertaking advocacy unilaterally and in coalition, and an intention to align grant-making so that we support civil society initiatives challenging restrictions on foreign funding and other legal restrictions on civil society more strategically and effectively.

Specific Issues of Concern

- Foreign funding restrictions are one of several categories of barriers to the enabling environment for civil society organizations. (Other barriers include restrictions on the formation and regulation of civil society organizations, internal interference, and constraints on advocacy and the ability of civil society organizations to speak out on issues of public concern.) While all these restrictions are of serious concern, the issue on which there is greatest momentum is foreign funding. The trend is a global one, specific not only to repressive countries, but also ones deemed to be more democratic. Since January 2012, more than 20 countries had proposed or enacted regulations that would constrain access to foreign funding.
- The main drivers and justifications that governments give include efforts to combat terrorism financing, preventing money laundering, and protecting state security and sovereignty. In addition, the concept of universal values is under challenge by some governments that use traditional values to justify restrictions on NGOs (e.g. Russia).
- In the context of counter-terrorism, NGOs have been accused of channelling funds to terrorists, though there is no evidence of this. The Financial Action Taskforce (FATF, G7 initiative) has been the main vehicle for introducing restrictions, but there is no legal framework through which the proposed regulations (adopted by 153 countries) can be challenged. FATF provides

recommendations for governments, such as Recommendation 8 that deals with abuse of the non-profit sector for terrorism financing. For governments there is pressure to implement these recommendations in order to preserve or improve their credit and business ratings.

- There is a contagion effect: Governments are copying bad practices from each other. For example, Pakistan recently cited Egypt as good model when it proposed more restrictive NGO laws earlier this year.
- Countries that introduce repressive laws or regulations under the pretext of counter-terrorism are often viewed positively; they are seen as contributing toward the global anti-terrorism strategy and international security framework.
- Legal restrictions are underpinned or accompanied by a context in which governments and, in some cases, the media stigmatize and target civil society. NGOs are accused of being a vehicle of foreign interference and posing a threat to internal stability. Accusations rarely have an evidence base, but there is little if any scope for NGOs to challenge accusations raised in state media or court proceedings. Stigmatization in turn undermines political and donor support for those accused, leads to an erosion of domestic/community support and can lead to discrimination, hatred, and at its worst physical attacks. The sum total effect is an erosion of morale, loss of staff within NGOs, and self-censorship. Like restrictions on foreign funding, states appear to be copycatting stigmatization; the two go together hand in hand.

Restrictions on foreign funding fall under several categories:

1. Prohibitions against funding: Most directly, the law may prohibit the receipt of certain categories of funding altogether. Examples include Venezuela (prohibition against foreign funding for the defense of political rights) and India (organizations of a “political nature” are ineligible to receive foreign contributions).
2. Advance government approval: The law allows the receipt of foreign funding, but only with advance government approval. Examples include Egypt, Jordan, Belarus and Uzbekistan.
3. Burdensome procedural requirements: The receipt of foreign funding is impeded by burdensome procedural requirements, including Azerbaijan (the compulsory registration of grant agreements); and the British Virgin Islands (requirement for organizations to hire a money laundering prevention officer).
4. Mandatory routing of funding via the Government: Examples include Eritrea and Uzbekistan.
5. Restricted purposes and activities: The most notorious example is Ethiopia, where organizations pursuing certain activities (including human rights, the rights of children, the rights of the disabled, good governance, conflict prevention, gender equality) may not receive more than 10% of their overall income from foreign sources. Draft legislation with similar funding restrictions for particular purposes/activities has arisen repeatedly in Israel. But in Kenya, similar proposals were defeated as a result of a campaign by civil society.
6. Reporting and state scrutiny: Several countries have introduced or considered the imposition of burdensome reporting requirements for organizations receiving foreign funding. Indonesia requires social organizations that seek to receive or provide donations to or from foreign entities to engage in a detailed approval and reporting process. A draft law in Kyrgyzstan envisioned new reports and government authority to subject organizations to invasive inspections.
7. Stigmatization of foreign funding: The law does not prohibit the receipt of foreign funding, but instead stigmatizes those organizations that receive it by requiring separate registration as a “foreign agent.” Russia enacted a “foreign agents” law in 2012 and other countries, such as Kyrgyzstan, have drafted similar legislation.

For more information on restrictions see:

The April 2013 report of the UN Special Rapporteur on Freedoms of Peaceful Assembly and Association: [Civil Society's Right to Funding and Resources](#) (A/HRC/23/39).

Which funders are being affected by this situation and how are they being affected?

Anecdotally, donors have faced several challenges in continuing their support for human rights activists in Algeria, Ethiopia, Russia, and Egypt. Donors anticipate problems in a number of other countries, including India, where a restrictive NGO law is already in place, and Pakistan, where a similar law is being proposed. Problems have included grantees not receiving permission to receive specific grants; grantees losing their permission to receive foreign funds; and in some cases the media has publicized the sources of foreign funding received by targeted human rights organizations, creating vulnerabilities for funders' programs and their staff. Donors have also reported grantees being targeted in orchestrated defamation campaigns, and this has been the case particularly for grantees who received bilateral funding. For example, in Russia, an organization deemed to be political and in receipt of US government funding is at greater risk of being shut down. Similarly, the draft Israeli legislation was specifically targeted at foreign government funding.

What types of work are being impacted?

Once again this depends on the country context. Governments have used NGO laws to limit the kinds of activities that are deemed to be charitable. Restrictive laws have been used to target organizations that are critical of the state; that challenge the economic interests of states and corporations; that undertake advocacy, litigation and mobilization to hold governments to account on their human rights obligations; and in some cases organizations that work on contested and marginalized issues (such as women's rights and/or LGBTI rights).

Who is working to address these issues?

At the request of a small group of donors, including the Sigrid Rausing Trust and the Fund for Global Human Rights, the International Centre for Not-for-Profit Law (ICNL) produced a mapping in March 2014 on the response of civil society to this issue at the national, regional and international levels. The purpose of the mapping is to inform donors on how they can support effective responses to existing or proposed restrictions on foreign funding.

In summary, ICNL found that while there is an increasing amount of activity taking place at the international level in terms of documenting the trend, standard-setting, and advocacy, there remain huge gaps at the regional and national levels, with the exception of attempts by activists to challenge foreign funding restrictions either unilaterally (Egypt, India) or in coalition using litigation, advocacy and campaigning (for example Israel, Kenya, Kyrgyzstan, and most recently Pakistan).