

FARA's Double Life Abroad



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Around the world, governments are constraining civil society and dissent. A common tactic of these governments is to enact legislation targeting civil society groups that receive international funding. In this brief, we provide some examples of how the U.S. Foreign Agent Registration Act (FARA) has been used to justify such legislation.

While FARA has traditionally been narrowly enforced in the United States and it has critical differences with legislation in other countries, FARA's broad language has made it easy for foreign governments to draw parallels between their legislation and U.S. law.

Several bills have been introduced into Congress in 2017 to strengthen the enforcement of FARA.¹ The United States should be careful that steps to strengthen FARA are not used as a pretext abroad for constricting civic space. FARA's sweeping provisions also create the danger that FARA – similar to other “foreign agent” laws - could be enforced in a way that undermines pluralistic civil society in the United States itself.

Russia

In 2012, Russia adopted a far-reaching “foreign agent” law.² The Russian government has repeatedly claimed that their law is designed to achieve the same purposes as FARA.³ Like FARA, the Russian “foreign agent” law is primarily a transparency law with reporting requirements. The law's implementation though has had devastating results for civil society.

In a September 2017 report, Human Rights Watch described some of these effects:

For the past four years, the Kremlin has sought to stigmatize criticism or alternative views of government policy as disloyal, foreign-sponsored, or even traitorous. . . . An enduring, central feature has been the 2012 law requiring independent groups to register as “foreign agents” if they receive any foreign funding and engage in broadly defined “political activity.” In Russia, the term “foreign agent” can be interpreted by the public only as “spy” or “traitor.” To date, Russia's Justice Ministry has designated 158 groups as “foreign agents,” courts have levied staggering fines on many groups for failing to comply with the law, and about 30 groups have shut down rather than wear the “foreign agent” label.⁴

Hungary

In June 2017, Prime Minister Victor Orban's government passed a law that imposed strict restrictions on nonprofits receiving international funding. As Amnesty International described, “The passing of a law stigmatising non-governmental organizations (NGOs) that receive foreign funding is the latest in an escalating crackdown on critical

1 Senate Bill 1679 (2017); Senate Bill 625 (2017); House Bill 484 (2017); House Bill 2811 (2017).

2 Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents (2012)

3 Charles Digges, Russia to answer for its “foreign agent” law in European Court of Human Rights, BELLONA, Oct. 5, 2017, <http://bellona.org/news/russian-human-rights-issues/russian-ngo-law/2017-10-russia-to-answer-for-its-foreign-agent-law-in-european-court-of-human-rights>; Miriam Elder, Russia Plans to Register “Foreign Agent” NGOs, THE GUARDIAN, July 2, 2012, <https://www.theguardian.com/world/2012/jul/02/russia-register-for-foreign-agent-ngos>

4 Human Rights Watch, *Russia: Government vs. Rights Groups* (Sept. 8, 2017) <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>

voices and will hamper critically important work by civil society groups.”⁵ Hungary has responded to U.S. criticism of its law by comparing it to FARA.⁶

Ukraine

In the aftermath of widespread protests, on January 16, 2014 the Ukrainian government, led by President Viktor Yanukovich, passed a set of laws known by critics as the “dictatorship laws” that were designed to curtail dissent. As Freedom House describes, “One provision of the ‘dictatorship laws’ enacted on 16 January would have required nongovernmental organizations (NGOs) to register as ‘foreign agents’ if they received any foreign funding or support...” Freedom House notes, “The rule was similar to one pioneered by Russia in 2012, adding to the impression that the Yanukovich government was drawing Ukraine closer to Moscow.”⁷ The law was repealed, along with the rest of the package of laws, two weeks later when President Yanukovich was forced to flee to Russia.

Israel

In discussing Israel’s proposed “foreign agent” bill in 2012, Foreign Minister Avigdor Lieberman argued that the bill was a “direct translation” from English of FARA.⁸ The final bill that was passed in July 2016 was significantly modified, but it requires groups that receive more than half their funding from foreign governments to report that fact in their communications with the public. The law has disproportionately burdened groups critical of the government. According to Israel’s Justice Ministry, the law will apply to 25 groups—most of them human rights organizations, organizations run by Palestinian citizens of Israel, or research and advocacy groups associated with the political opposition.⁹

Kyrgyzstan

In May 2014, members of Parliament in Kyrgyzstan introduced a bill that would require nonprofits receiving international funding to register as “foreign agents” and undertake burdensome and stigmatizing reporting requirements.¹⁰ When criticized with how similar it was to Russian “foreign agent” registration, President Atambayev, responded “This term was first introduced in America. The law on ‘foreign agents’ was adopted in the United States Russia only copied this experience, so this is not a Russian, but an American idea, which came from the West.”¹¹ The Parliament of Kyrgyzstan ultimately rejected the proposed legislation because it was viewed as anti-democratic.

United States

The U.S. Foreign Agent Registration Act (FARA) was passed in 1938 as an anti-propaganda statute in the run-up to World War II. The Department of Justice, particularly in recent years, has pursued a strategy of voluntary compliance and has generally enforced its provisions narrowly.¹²

5 Hungary: NGO law a vicious and calculated assault on civil society, (Amnesty International, June 13, 2017) <https://www.amnesty.org/en/latest/news/2017/06/hungary-ngo-law-a-vicious-and-calculated-assault-on-civil-society/>

6 Pablo Gorondi, Hungary Rejects US Criticism of Law on Foreign Funded NGOs, US NEWS, June 20, 2017 <https://www.usnews.com/news/world/articles/2017-06-20/hungary-rejects-us-criticism-of-law-on-foreign-funded-ngos>

7 FREEDOM HOUSE, UKRAINE COUNTRY REPORT (2015), <https://freedomhouse.org/report/nations-transit/2015/ukraine>

8 Association of Civil Rights in Israel, ACRI to Foreign Minister: Description of Foreign Funding Bill Is Misleading, Nov. 27, 2011 <http://www.acri.org.il/en/2011/11/27/acri-to-foreign-minister-description-of-foreign-funding-bill-is-misleading/>

9 Human Rights Watch, Israel: Law Targets Human Rights Groups (July 13, 2016) Freedom House <https://www.hrw.org/news/2016/07/13/israel-law-targets-human-rights-groups>

10 On Making Additions and Amendments to Certain Legislative Acts of the Kyrgyz Republic (2014)

11 BBC Interview with Almazbek Atambayev, President of Kyrgyzstan, Nov. 19, 2013 http://www.bbc.com/russian/international/2013/11/131118_kyrgyz_president_interview.shtml

12 Office of the U.S. Attorneys, Foreign Agent Registration Act Enforcement (visited Oct. 24, 2017) <https://www.justice.gov/usam/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement>

The text of FARA does differ from that in Russia and other countries, but its sweeping, and frequently vague, provisions make it susceptible to being used to justify restrictive measures abroad. For example, under FARA, an “agent” can include a nonprofit organization. A “foreign principal” can include a foreign government, foundation, donor, or partner organization. And “political activities” under the Act are broadly defined to cover not just lobbying, but also an attempt to influence U.S. public opinion on domestic or foreign policy.

Those covered by FARA are required to register as a “foreign agent,” report their relevant “political activities,” and state in their communications with the public and government officials that they are acting “on behalf of” a foreign principal. There are exemptions in the Act, including for academic and religious activities, but they are relatively limited in the context of the Act’s breadth.

Given the checkered history of “foreign agent” laws elsewhere, observers have raised concerns that FARA’s sweeping language may also be used to require many U.S. nonprofits to register under the Act, undermining the vitality of pluralistic civil society in the United States. Regardless of how it is enforced in the U.S., FARA’s broad language creates problematic precedent abroad, contributing to the spread of “foreign agent” laws around the world.