



Appendix D: Reform Success Stories

Through a study conducted in 2010, ICNL explored success stories in law reform and lessons learned from progressive NGO legal reform. The results of that study were published in an issue of *Global Trends in NGO Law*, entitled “Enabling Reform: Lessons Learned from Progressive NGO Legal Reform Initiatives” (<http://www.icnl.org/research/trends/trends2-3.pdf>). In this appendix, we briefly examine recent reform (or “push-back”) efforts relating to foreign funding rules in five countries. Highlighted are case studies in which ICNL has been involved, as these are the case studies we (of course) know best.

Israel

In 2011, Members of the Israeli Knesset introduced a series of bills seeking to restrict foreign funding. In November 2011, a hybrid bill emerged, entitled “Bill on Income of Public Institutions Receiving Donations from a Foreign State Entity.”

The bill divided CSOs that receive foreign funding into three categories. The first category encompassed CSOs that promote certain enumerated purposes (e.g., rejecting the existence of Israel as a Jewish and democratic state, inciting racism, supporting the armed struggle of an enemy state, etc.). Under the hybrid bill, these organizations would have been banned from receiving any foreign funding. The second category encompassed CSOs funded by the state of Israel; these organizations would have been permitted to receive unburdened foreign funding. The third category encompassed all remaining CSOs (including many independent human rights organizations). These organizations would have been required to pay 45% tax on all foreign funding.

Israeli civil society played an essential role to address this series of restrictive legislative initiatives, including this hybrid bill. See, for example, the fine work of [ACRI](#). For its part, ICNL mobilized the diplomatic community (including the US Department of State) and worked behind the scenes with civil society colleagues on strategy. ICNL also traveled to Israel, where we gained access to senior officials in the Israeli Government. Specifically, ICNL was asked to lead a seminar for senior officials at the Ministry of Foreign Affairs on the foreign funding of civil society. We also had lengthy, constructive discussions with the Attorney General’s Office about the initiatives’ failure to comply with constitutional provisions and international law, and we noted that passage of the bill would place Israel in the company of certain authoritarian regimes that were restricting the foreign funding of civil society.

In December 2011, Israeli Attorney General Yehuda Weinstein informed Prime Minister Netanyahu that he would not support the bill. In a letter to Mr. Netanyahu, Attorney General Weinstein wrote that the provisions:

deal a harsh blow to a long list of constitutional rights, including freedom of expression, freedom of association and the right to equality. Instead of enabling open discussion in

an efficient “marketplace of ideas, they try to suppress speech. They put Israel on a par with the handful of countries that have taken similar steps, and I doubt the State of Israel should be jealous of these regimes and act like them.¹

The government then ceased promoting the bill, and the hybrid bill was never passed.

We recognize and pay tribute to colleagues in civil society and the international diplomatic community who led efforts to stop this bill. We believe we played a marginal, supportive role, though a senior Israeli official responsible for the fate of the bill told us after the fact that ICNL’s views carried great weight and that we played a critical role in the ultimate decision not to move the hybrid bill forward. In any event, it is an interesting example of how local civil society, allies in the Israeli government, the diplomatic community, and international organizations were able to work together to prevent passage of the hybrid bill in 2011.²

Iraq

On January 25, 2010, the Iraqi Council of Representatives approved a new *Law on Non-Governmental Organizations* (Law 12 of 2010). The new law took effect on March 7, 2010, and represents a significant improvement on previous laws and regulations (under *Coalition Provisional Authority Order 45*) as well as the draft law first prepared by the Iraqi government in March of 2009. The Council of Representative’s approval of the new law was greeted as an enormous success by Iraqi civil society leaders and government officials, and received substantial media coverage inside and outside of Iraq. Among other changes:

- The March 2009 draft prohibited Iraqi NGOs from receiving foreign funding or affiliating with, any foreign entity (including the UN, the European Commission, USAID, International Red Cross/Red Crescent, etc.) without prior approval of the government. These provisions were removed, thus enabling Iraqi NGOs to partner more efficiently with the international community on reconstruction and humanitarian assistance projects.
- Under the March 2009 draft, an application for registration could be rejected for any reason. The new law requires that the denial of registration be tied to a specific provision of law.
- Criminal penalties contained in the March draft, including imprisonment for up to three years for being a member of an improperly registered NGO, were removed.
- Discretion to audit or inspect an NGO’s office is only permissible with cause, instead of at any time and for any reason as under *Coalition Provisional Authority Order 45*.
- Suspension of an NGO and confiscation of its property requires a court order, and can no longer be made at the discretion of government authorities as in *Coalition Provisional Authority Order 45*.

ICNL was able to assist the drafting and passage of the new federal law by preparing comments and legal analysis of preliminary drafts, partnering with the United Nations Office for

¹<http://www.haaretz.com/print-edition/news/ag-to-netanyahu-bills-targeting-israeli-rights-groups-funds-are-unconstitutional-1.400002>

² We also note that a new bill emerged in 2013. This bill is focused on the first of the three categories of CSOs referenced above. ACRI and other organizations are currently undertaking efforts to address this bill as well.

Project Services (UNOPS) to host roundtable conferences on the draft law, distributing proposed amendments to the draft law, hosting a number of civil society consultations for Iraqi government officials and CSO leaders, advising the Civil Society Committee of the Iraqi Parliament on recommended changes, and creating coordination mechanisms for Iraqi CSOs working on CSO law reform. ICNL supported its local partners in building a coalition of more than 6,000 Iraqi CSOs. The drafting process led to a partnership between the government and civil society that bridged divisions between Arab and Kurd, Sunni and Shia – one of the first such efforts in post-Ba’athist Iraq.

Nicaragua

In May 2009, the Nicaraguan government published a draft administrative manual that purportedly consolidated existing norms governing international cooperation with Nicaraguan civil society organizations (CSOs), but in fact would have dramatically restricted access to international funding for informal organizations and those active in public policy matters. Most significantly, the draft manual would have authorized the government to:

- Prohibit the use of foreign funding by either foreign non-governmental organizations (NGOs) in Nicaragua *or their national donees* on any activities that might influence legislation -- regarding any matter at all;
- Deny a foreign NGO permission to establish or continue operations in the country with virtually unbridled discretion and no apparent right to appeal;
- Inspect the documents and premises of a foreign NGO and its national NGO partner;
- Intervene in a foreign NGO deemed to have violated the new rules for as long as the government decides is necessary;
- Prohibit foreign NGOs from providing informal organizations with financial or technical support.

ICNL provided immediate technical assistance to its diverse Nicaraguan CSO partners to assess the draft manual under national and international law. We helped the partners craft technically sound and persuasive talking points appropriate for key audiences including legislators, CSOs, the press, and foreign donors; and to develop a consensus advocacy strategy. ICNL provided technical guidance to foreign funders and diplomats to help prepare them to negotiate with the Government. Ultimately, the Government of Nicaragua withdrew the draft manual.

Kyrgyzstan

In September 2013, two Parliamentary deputies developed a draft law that was almost identical to the Russian “foreign agents” law. In addition, the draft law would have introduced burdensome oversight and reporting obligations for all CSOs, and in particular, for those receiving foreign funding. ICNL and its local partner (the Association of Civil Society Support Centers) immediately mobilized the CSO community to develop a strategic plan against adoption of the draft law. ICNL prepared and distributed its analysis and, at an initial roundtable held in September, participants decided to push for public hearings on the draft law as soon as possible. On September 18, Kyrgyz President Mr. Atambaev said that Kyrgyzstan does not need the law on “foreign agents.” In spite of criticism of the draft by local and international

organizations, and a well organized advocacy campaign against the draft law, President Atambaev seemingly changed his opinion, when he said in a BBC interview on November 19: “Let the Kyrgyz Parliament consider the draft law, and then we will see what will happen. But, once again, I want to highlight, that the primarily analogic law was adopted in the US, the cradle of democracy, not in Russia.” On November 20, the MP and one of the initiators of the draft law also stated that that he would not withdraw the draft law from Parliament and that he and other initiators of the draft were sure that adoption of such draft law would lead to transparency and security of Kyrgyzstan.

On May 26, 2014, Members of the Kyrgyz Parliament registered the draft “foreign agents” law in Parliament. The Kyrgyz Parliamentary Committee on Human Rights and Constitutional Legislation (Committee) had planned to consider the draft law on June 17, but instead decided to delay its consideration until September 2014, in order to receive an opinion from the Parliamentary Committee on Lawfulness, Law Order and Fighting against Crime. Kyrgyz CSOs have submitted their analysis of the draft law to the Chair of the Human Rights Committee and plan to continue efforts to persuade MPs to vote against the draft law if considered in the autumn of 2014.

Kenya

On October 30, 2013 the Miscellaneous Amendments (Statute) Bill was introduced in the Kenyan Parliament. The Bill included changes to over 40 laws, including the Public Benefits Organizations (PBO) Act, 2012, which had been signed into law, but had yet to enter into force. The proposed amendments would have set a 15% cap on foreign funding to PBOs and prohibited the direct funding of PBOs, requiring that all funding be administered through the PBO federation, a regulatory body made up of PBOs. These amendments were extraordinary for their potentially devastating effect on Kenyan civil society and for the fact that such substantive changes were introduced as part of a Miscellaneous Amendments Bill, a tool designed to correct grammatical and other minor errors. Also, the government had recently introduced and passed a law increasing oversight over the media despite widespread criticism.

In response to the introduction of the amendments, a civil society network that had been formed around the drafting of the PBO Act was re-energized. A wide variety of civil society organizations condemned the amendments, highlighting the amendments’ potential effect on civil society and Kenya generally. Arguments emphasizing the importance of civil society to Kenya’s economy and development in sectors such as health and education were especially persuasive. In addition to coordinated public statements, one-to-one lobbying of MPs was critical to defeating the amendments. Civil society representatives also held key meetings with the parliamentary committee reviewing the Bill and convinced them to recommend that it be withdrawn. The international community played a crucial, but mostly quiet role. International partners served as conveners as well as leveraging influence over individual government officials. In the wake of mounting concerns about parliamentary procedure as well as public outcry in defense of civil society, the amendments were voted down.

Key lessons learned include the importance of keeping good contact and relations between government and civil society to head off crises. These relationships were nurtured in 2010-12, but broke down in 2013. It was also very important for civil society representatives to understand the priorities and vocabulary of government officials in order to make their case persuasively. For example, “empowering citizens to participate in the development of Kenya” tended to be more compelling to officials than “defending the rights guaranteed to CSOs in international law.”