

## FARA's Double Life Abroad

### How FARA is Used to Justify Laws that Target Civil Society around the World

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The past decade has witnessed a rise in authoritarianism and tightening space for civil society worldwide. Foreign agent laws have been a key part of that trend, with governments weaponizing both their overbreadth and ambiguity to target civil society and dissent.

The United States has the unfortunate distinction of having passed the world's first foreign agent law: the Foreign Agents Registration Act (FARA). Originally enacted in 1938 to counter Nazi propaganda, in the decades that followed enforcement of the Act concentrated primarily on lobbyists of foreign governments. After Russian attempts to influence the 2016 Presidential election, enforcement was broadened and strengthened with a focus on combatting foreign interference in elections.

Increased enforcement of FARA poses both practical difficulties and dangers to constitutional rights. The Act suffers from both overbreadth and vagueness, making it nearly impossible to enforce the statute predictably and impartially. For example, the Act's definition of "foreign principal" is over-inclusive, roping in not only foreign governments and political parties, but also nonprofits and foundations from countries like Canada, the United Kingdom, and Japan. Additionally, FARA's definition of "agency" is much broader than the standard legal conception of a principal-agent relationship. Under the Act, neither party is required to explicitly consent to the relationship, leading to the strange consequence that a foreign principal may not even be aware that a party is acting as their agent. An entity in the U.S. could become a "foreign agent" for acting at the mere "request" of a foreign party. These expansive elements of the Act mean that a wide range of civil society organizations that have nothing to do with electoral politics or lobbying can be, and have been, swept up in its net.<sup>1</sup> The impact on U.S. civil society has helped lead to a growing movement to reform the Act.<sup>2</sup>

FARA's wide latitude has not gone unnoticed by foreign governments. From Russia to Nicaragua, FARA has been used to justify a wave of legislation that targets civil society groups by either explicitly citing FARA as positive precedent or copying sections of the statute nearly word for word. While FARA has critical differences with these other

laws, the following examples illustrate how FARA has helped shape laws that have been used to silence or chill legitimate political speech, inhibit civil society organizations, and criminalize civic participation.

## Russia

In 2012, Russia adopted a far-reaching “foreign agent” law.

*The Russian government has repeatedly claimed that their law is designed to achieve the same purposes of FARA.<sup>5</sup>*

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Like FARA, the Russian law is facially a transparency statute with reporting requirements, but the law’s implementation has had devastating results for civil society. The ‘foreign agent’ label is highly stigmatizing, in part, because it translates as ‘spy’ or ‘traitor in the Russian language.’<sup>4</sup>

The law’s vague provisions open the door to subjective and punitive enforcement. Since 2012, the law has been used to target human rights defenders and political activists. Since the law’s enactment, hundreds of organizations have been forced to register. Over 30 have had to shut down as a result, and many others have been forced to change their activities.<sup>5</sup> Those who have registered have seen their funding and credibility undercut, and many have had their employees intimidated and harassed.<sup>6</sup>

In late 2020, the law was amended to allow the Russian government to include private individuals, in addition to organizations, on its “foreign agents” list.<sup>1</sup> This allows the government to target the employees of disfavored organizations in their personal capacity with steep fines and possible jail time. Due to these new dangers to staff, one of the oldest and most prominent Russian human rights organizations, For Human Rights, was forced to shut down the day the new amendment took effect.<sup>7</sup>

Since Russia passed its foreign agent law in 2012, several countries have used it as inspiration for their own legislation targeting civil society, including China, Egypt, and Ethiopia.<sup>8</sup>

## Nicaragua

Nicaragua’s Ortega-led government passed a “foreign agent” law in October of 2020. The U.S. State Department released a statement reacting to the new legislation and its negative effects on Nicaraguan civil society.<sup>9</sup>

*“The United States is deeply concerned about the escalating crackdown by the Government of President Daniel Ortega in Nicaragua. The regime’s actions under the so-called ‘Foreign*

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<sup>1</sup> Previous amendments to the 2012 law had included individuals associated with mass media as potential registrants, but the 2020 amendment expanded this group to include all individuals.

*Agents Law' forced closure last week of two [domestic human rights organizations...] These developments further suffocate Nicaraguan civil society [...] Ortega is driving Nicaragua toward dictatorship."*

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Despite the justified criticism of this new Nicaraguan Act by the U.S. Government, significant sections of it seem to be copied verbatim from FARA, and government officials have explicitly pointed to FARA as justification for the new law. In response to push back on the bill, Sandinista lawmaker Wálmaro Gutiérrez said, "There are many countries around the world that have been developing legislation on the subject of foreign agents for many decades [...] the FARA legislation has over 83 years I think, which is the legislation applied by the United States of America on the issue of foreign agents...."<sup>10</sup>

## Hungary

In June 2017, Prime Minister Victor Orban's government passed the LexNGO, a law that imposed strict restrictions on nonprofits receiving international funding. As Amnesty International described, "The passing of a law stigmatizing non-governmental organizations (NGOs) that receive foreign funding is the latest in an escalating crackdown on critical voices and will hamper critically important work by civil society groups." Hungary has repeatedly responded to U.S. criticism of its law by comparing it to FARA.<sup>11</sup>

In June 2020, the European Court of Justice ruled that LexNGO violates European Union rules that protect fundamental rights because it introduced "discriminatory and unjustified restrictions" on financing of NGOs.<sup>12</sup> Hungary repealed the law in April 2021.<sup>13</sup> However, the government quickly introduced replacement legislation that would allow the State to monitor and selectively audit NGOs. Experts are concerned that the new law allows the government to continue to regulate foreign donations while technically complying with the June 2020 ECJ ruling.<sup>14</sup>

## 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.<sup>15</sup> When criticized with how similar it was to Russian "foreign agent" registration, President Atambayev, responded

*"This term [of 'foreign agents'] 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."<sup>16</sup>*

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The Parliament of Kyrgyzstan ultimately rejected the proposed legislation in 2016 because it was viewed as anti-democratic.

## 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.<sup>17</sup> 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 – many of the groups required to register are human rights organizations, groups run by Palestinian citizens of Israel, or research and advocacy organizations associated with the political opposition.<sup>18</sup>

## Establishing Positive U.S. Leadership

When the U.S. makes bad laws that can be used to target dissent, it provides cover to other countries to do the same. However, when the U.S. sets a positive example, the global standard for human rights protection is raised. FARA should be tailored to meet the national security needs of the U.S. without inappropriately sweeping up civil society. Any reforms should:

1. More narrowly define foreign principal to focus on foreign states and political parties, and
2. Modify the definition of agency to cover only true principal-agent relationships.<sup>19</sup>

Reforming FARA domestically would allow the U.S. to demonstrate international leadership. In attempts to respond to foreign influence in their politics, countries including Ukraine and Australia have considered foreign agent laws based on the U.S. model, but ultimately rejected these versions as undemocratic.<sup>20</sup> A broad range of other countries are currently considering new foreign agent laws – including well-established democracies like Canada and the United Kingdom, as well as countries with more mixed democratic records such as El Salvador and Tajikistan. Now is the time to modernize and reform FARA to both better protect civil society in the U.S. and to create a rights-respecting model others can follow.

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<sup>1</sup> Foreign Agents Registration Act, International Center for Not-for-Profit Law  
<https://www.icnl.org/our-work/us-program/foreign-agents-registration-act>  
<sup>2</sup> *Id.*

<sup>3</sup> 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-foreign-agent-ngos>
- <sup>4</sup> Russia: Government vs. Rights Groups, Human Rights Watch, June 18, 2018, <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle#>
- <sup>5</sup> Human Rights Watch, Russia: New Effort to Stifle Independent Groups, November 12, 2020 <https://www.hrw.org/news/2020/11/12/russia-new-effort-stifle-independent-groups>
- <sup>6</sup> Amnesty International, Russia: New ‘foreign agents’ bill further erodes freedom of expression and association, November 19, 2020 <https://www.amnesty.org/en/latest/news/2020/11/russia-new-foreign-agents-bill-further-erodes-freedom-of-expression-and-association/>
- <sup>7</sup> RFE/RL’s Russian Service, Prominent Russian Rights Group Shuts Down over ‘Foreign Agent’ Laws, RadioFreeEurope Radioliberty, March 02, 2012 <https://www.rferl.org/a/russian-rights-group-closed-foreign-agent-law/31129245.html>
- <sup>8</sup> Luke Kelly, Legislation on non-governmental organizations (NGOs) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda, and England and Wales, University of Manchester, August 21, [https://reliefweb.int/sites/reliefweb.int/files/resources/656\\_NGO\\_Legislation\\_East\\_Africa.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/656_NGO_Legislation_East_Africa.pdf).  
Jacqueline Van de Velde, The Foreign Agent Problem: An International Legal Solution to Domestic Restrictions on Non-Governmental Organizations, 40 Cardozo L. Rev. 2 (2018).
- <sup>9</sup> Press Release, Nicaragua’s Foreign Agents Law Drives Nicaragua Toward Dictatorship, Silencing Independent Voices, United States State Department, February 8, 2021, <https://www.state.gov/nicaraguas-foreign-agents-law-drives-nicaragua-toward-dictatorship-silencing-independent-voices/>.
- <sup>10</sup> Carlos Fernando Alvarez, Nicaragua: Exponen detalles sobre la Ley de Agentes Extranjeros a ONG, El 19 Digital, February 20, 2021 <https://www.el19digital.com/articulos/ver/titulo:112747-nicaragua-exponen-detalles-sobre-la-ley-de-agentes-extranjeros-a-ong>
- <sup>11</sup> 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>
- <sup>12</sup> Jack Parrock, Hungary breaking EU law over foreign-funded NGO crackdown, says ECJ, euronews, June 18, 2020. <https://www.euronews.com/2020/06/18/eu-top-court-to-rule-on-hungary-limits-on-foreign-funded-ngos>; Benjamin Novak, Top E.U. Court Rules Against Hungary’s NGO Law, The New York Times, June 18, 2020. <https://www.nytimes.com/2020/06/18/world/europe/hungary-eu-ngo-law.html>
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- <sup>14</sup> Amnesty International, Hungary: LexNGO repealed but replacement very concerning, April 22, 2021, <https://www.amnesty.org/en/latest/news/2021/04/hungary-lexngo-repealed-but-replacement-very-concerning/>. Lydia Gall, Hungary’s Scrapping of NGO Law Insufficient to Protect Civil Society, Human Rights Watch, April 23, 2021 <https://www.hrw.org/news/2021/04/23/hungarys-scrapping-ngo-law-insufficient-protect-civil-society#>.
- <sup>15</sup> On Making Additions and Amendments to Certain Legislative Acts of the Kyrgyz Republic (2014)
- <sup>16</sup> BBC Interview with Almazbek Atambayev, President of Kyrgyzstan, Nov. 19, 2013 [http://www.bbc.com/russian/international/2013/11/131118\\_kyrgyz\\_president\\_interview.shtml](http://www.bbc.com/russian/international/2013/11/131118_kyrgyz_president_interview.shtml)

<sup>17</sup> 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/>

<sup>18</sup> 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>

<sup>19</sup> For example, the Restatement (Third) of Agency defines agency as “the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.” RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. LAW INST. 2006).

<sup>20</sup> In Ukraine, a set of laws responding to widespread protests, that included foreign agent registration, initially passed but was repealed two weeks later when President Yanukovich was forced to flee to Russia. (Oksana Grytsenko and Luke Harding, Ukraine’s president accepts resignation of PM after protest laws annulled, The Guardian, Jan 28, 2014 <https://www.theguardian.com/world/2014/jan/28/ukraine-resignation-pm-protest-laws>) When Australia passed a foreign agent law, it was billed as an improvement on the US FARA. After an outcry from civil society, Australia’s law was amended to better protect “innocent” civil society groups (Paul Karp, Charities, unions and arts bodies win reprieve from foreign influence register, the Guardian, June 25, 2018 <https://www.theguardian.com/australia-news/2018/jun/25/charities-unions-and-arts-bodies-win-reprieve-from-foreign-influence-register>)