

FARA's Double Life Abroad

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

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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 organizations (CSOs) that receive international funding. In this brief, we provide examples of how political leaders from Latin America to Eurasia have used the U.S. Foreign Agent Registration Act (FARA) to help justify this new restrictive legislation.

FARA was originally enacted in 1938 to counter Nazi propaganda. It requires "agents" of "foreign principals" to register with the Justice Department. After World War II, the Justice Department's enforcement of the Act has historically concentrated primarily on lobbyists of foreign governments. After Russian attempts to influence the 2016 U.S. Presidential election, enforcement was broadened and strengthened, focusing on combatting foreign interference in U.S. elections.

While FARA has traditionally been relatively narrowly enforced in the United States and 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. For example, FARA's definition of "foreign principal" captures not only foreign governments and political parties but also nonprofits and foundations from countries like Canada and Japan.

These expansive elements of FARA mean that a wide range of U.S. nonprofits with cross-border connections or partnerships that have nothing to do with electoral politics or lobbying can be, and occasionally have been, swept up in the Act's net.¹ As a result of this harmful impact, a diverse group of CSOs and policymakers in the U.S. have advocated for comprehensive FARA reform.²

Russia

In 2012, Russia adopted a far-reaching "foreign agent" law. The Russian government has repeatedly argued that their law was designed to achieve the same purposes as FARA.³ For example, at the time of its adoption, President Vladimir Putin defended the law by claiming:

"I believe that in Russia, we can have a law similar to that adopted in the United States back in 1938. Why have they protected themselves this way from external influence and have been using this law for decades? Why can we not do the same in Russia?"⁴

Like FARA, the initial Russian law was facially a transparency statute with reporting requirements.⁵ However, 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.⁶

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, and many others have been forced to change their activities.⁷ Those who have registered have seen their funding and credibility undercut, and many have had their employees intimidated and harassed.⁸

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.⁹ This enables 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.¹⁰

In October 2022, the European Court of Human Rights ruled that the "foreign agent" law violated Russia's human rights commitments, but by that point, Russia had withdrawn from the Court's jurisdiction over fallout from its invasion of Ukraine.¹¹ In December 2022, Russia adopted even broader and stricter foreign influence legislation, which included new prohibitions on what activities those covered by the law could engage in.¹²

Since Russia passed its foreign agent law in 2012, several countries, including China, Egypt, and Ethiopia, have used it as inspiration for their legislation targeting civil society.¹³

Nicaragua

Nicaragua's government, led by President Daniel Ortega, enacted a "foreign agent" law in October 2020. At the time, the U.S. State Department released a statement reacting to the new legislation and its negative effects on Nicaraguan civil society:

"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 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."*¹⁴

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 pushback 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...."¹⁵

The government has since used the "foreign agent" law, along with other laws enacted to target civil society, to shut down over 3,000 civil society organizations.¹⁶

Hungary

In June 2017, Prime Minister Victor Orban's government passed the LexNGO law, which 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 repeatedly responded to U.S. criticism of its law by comparing it to FARA.¹⁷

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 NGO financing.¹⁸ Hungary repealed the law in April 2021.¹⁹ However, the government quickly introduced replacement legislation allowing 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.²⁰

El Salvador

In November 2021, President Nayib Bukele of El Salvador proposed a new "foreign agents" law, which human rights and other organizations argued would be used by the government to target dissenting voices.²¹

In a series of tweets responding to critics, President Bukele posted a link to the Justice Department's FARA page and declared the proposal was "basically the same law that they have in the United States." The President continued:

"If that law is good for the United States, why wouldn't it be good for us?"²²

The Legislative Assembly of El Salvador has yet to enact the bill. However, officials continue to use the possibility of its enactment to threaten and silence critical voices from civil society organizations.

Georgia

In February 2023, the ruling party in the Republic of Georgia introduced a "foreign agent" law that critics claimed would be used to target civil society organizations. At the time, the U.S. ambassador to Georgia stated, "we remain deeply troubled by the introduced foreign agents law, precisely because it would stigmatize and silence independent voices and citizens of Georgia who are dedicated to building a better country for their fellow citizens, for their communities."²³

However, supporters of the bill repeatedly pointed to FARA for justification for their proposal and claimed U.S. criticisms were hypocritical. For example, the leader of the majority party in Parliament claimed that "[t]he draft law is far more lenient than its American version."²⁴ Amidst criticism of the initial bill, some lawmakers introduced a second bill they claimed was a verbatim copy of FARA.²⁵

The initial proposed "foreign agent" law passed a first vote in Parliament. However, it failed a second vote after thousands of pro-democracy protesters took to the streets in March 2023, demanding it be scrapped, who feared its passage would cripple Georgian civil society and draw the country closer to Russia.²⁶

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.²⁷ When criticized for how similar it was to Russian "foreign agent" registration, then President Almazbek 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."²⁸

The Parliament of Kyrgyzstan rejected the proposed legislation in 2016 because it was viewed as anti-democratic. However, an almost identical version was reintroduced into Parliament in May 2023.²⁹

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.³⁰ The final bill enacted 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 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.³¹

Establishing Strong U.S. Leadership

When the U.S. has overbroad laws that can be used to target dissent, it provides cover to other countries to do the same. 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 governments and political parties and
2. Modify the definition of agency to cover only true principal-agent relationships.³²

Reforming FARA domestically would allow the U.S. to demonstrate strong international leadership. In recent years, the United Kingdom and Australia enacted laws that responded to concerns about foreign influence in their politics. They initially considered adopting laws closer to FARA's language but ultimately rejected this approach as not sufficiently targeted for a democracy.³³ A broad range of other countries are currently considering new foreign agent laws, including well-established democracies like the European Union and Canada, but also many countries with more mixed democratic records.³⁴ 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 other nations can follow.

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

²See, for example, Coalition letter to the Justice Department FARA unit from set of nonprofits, Feb. 11, 2022, <https://www.icnl.org/wp-content/uploads/FARA-ANPRM-Sign-On-2022.pdf>

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-foreign-agent-ngos>

⁴ NGO law protects Russia from foreign influence – Putin, RT, July 31, 2012, <https://www.rt.com/russia/putin-seliger-forum-power-496/>

⁵ Unlike FARA, the initial 2012 Russian law only targeted nonprofits.

- ⁶ Russia: Government vs. Rights Groups, Human Rights Watch, June 18, 2018, <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle#>
- ⁷ 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>
- ⁸ 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/>
- ⁹ The initial law 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.
- ¹⁰ 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>
- ¹¹ Case of Ecodefense and Others v. Russia, European Court of Human Rights, Nos. 9988/13 and 60 others, Oct. 10, 2022.
- ¹² International Center for Not-for-Profit Law, Civic Freedom Monitor: Russia, Sept. 2023 (last updated) <https://www.icnl.org/resources/civic-freedom-monitor/russia>
- ¹³ 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. 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).
- ¹⁴ 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/>.
- ¹⁵ 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>
- ¹⁶ Cinco años de Estado policial en Nicaragua: Prohibido reunirse, marchar, opinar, y elegir, Nacion, Sept. 27, 2023, <https://confidencial.digital/nacion/cinco-anos-de-estado-policial-en-nicaragua-prohibido-reunirse-marchar-opinar-y-elegir/>
- ¹⁷ 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>
- ¹⁸ 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>
- ¹⁹ Civic Space Watch, HUNGARY: Retraction of the LexNGO: important step, but more is needed, April 21, 2021 <https://civicspacewatch.eu/retraction-of-the-lexngo-important-step-but-more-is-needed/>
- ²⁰ 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#>.
- ²¹ Marcos Aleman & Christopher Sherman, 'Foreign' agents pitch has El Salvador civil society on edge, AP, Nov. 17, 2021, <https://apnews.com/article/media-united-states-navib-bukele-el-salvador-san-salvador-fbc5b491ccb9289719765e9a7aea1>
- ²² Nayib Bukele, Twitter Account, Nov. 9, 2021, <https://twitter.com/navibbukele/status/1458254648595386372?s=20>
- ²³ Ned Price on Foreign Agents Law, U.S. Embassy in Georgia, March 2, 2023 <https://ge.usembassy.gov/ned-price-on-foreign-agents-law/>
- ²⁴ Giorgi Lomsadze, Far from FARA? Georgia's foreign agent law controversy, March 6, 2023, <https://eurasianet.org/far-from-fara-georgias-foreign-agent-law-controversy>
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²⁵ International Center for Not-for-Profit Law, A Second Restrictive Foreign Agents Law Introduced in Georgia, March 24, 2023, <https://www.gmfus.org/news/whose-foreign-agent-law-georgians-reject-russian-import>

²⁶ Elene Kintsurashvili, Whose “Foreign Agent” Law? Georgians Reject a Russian Import, GMF, March 24, 2023, <https://www.gmfus.org/news/whose-foreign-agent-law-georgians-reject-russian-import>

²⁷ On Making Additions and Amendments to Certain Legislative Acts of the Kyrgyz Republic (2014)

²⁸ BBC Interview with Almazbek Atambayev, President of Kyrgyzstan, Nov. 19, 2013 http://www.bbc.com/russian/international/2013/11/131118_kyrgyz_president_interview.shtml

²⁹ Kyrgyzstan, Reject Law to Curb Civil Society, Human Rights Watch, June 13, 2023, <https://www.hrw.org/news/2023/06/13/kyrgyzstan-reject-law-curb-civil-society>

³⁰ 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/>

³¹ 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>

³² 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).

³³ The United Kingdom enacted a Foreign Influence Registration Scheme (FIRS) in July 2023. The initially introduced draft legislation was more closely modeled on FARA, but was criticized for being overbroad, requiring, like FARA, “registration for work with foreign businesses, charities, and other bodies.” A narrower, more tailored version, was ultimately enacted that focused on political lobbying work for foreign governments or political parties. The FIRSt Step? The UK Launches its Own FARA-like Foreign Influence Law, Morrison Foerster, Aug. 9, 2023, <https://www.mofo.com/resources/insights/230809-the-first-step-the-uk-launches> When Australia enacted the Foreign Influence Transparency Scheme Act in 2018, 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>

³⁴ A number of countries have proposed or enacted “foreign agent” type legislation that are not highlighted in this brief. For example, in Ukraine, a set of laws responding to widespread protests, that included foreign agent registration, initially was enacted in 2014, but was repealed only 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>). In 2022, Kazakhstan made changes to their tax code that authorities claim were modeled on FARA that enabled them to publish a list of organizations that receive foreign funding. Transparency International, Transparency International Expresses Concerns over the Release of Kazakhstan’s “Foreign Agents” List, Oct. 10, 2023, <https://www.transparency.org/en/press/transparency-international-concerned-kazakhstan-foreign-agents-list>