

# PHILANTHROPIC PROTECTIONISM IN THE INDO-PACIFIC

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How Foreign Funding Restrictions Hampered Non-Profit Organizations in the Indo-Pacific Region During COVID-19

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Region During COVID-19



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# I. EXECUTIVE SUMMARY

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Government restrictions on cross-border funding of domestic non-profit organizations (NGOs)<sup>1</sup> are designed to control and limit the resources<sup>2</sup> available to NGOs for use in their charitable activities and operations. This report presents the findings of an empirical study examining the extent and consequences of legal, regulatory and informal measures to restrict foreign funding of NGOs in nine countries in the Indo-Pacific region: Bangladesh, India, Indonesia, Malaysia, Nepal, Pakistan, Philippines, Sri Lanka, and Thailand. In examining the consequences of foreign funding restrictions in these countries, the report focuses on how these barriers have impacted the fundraising capacity, activities and operations of NGOs, particularly during the COVID-19 pandemic when additional restrictions were introduced in some countries.

The key findings are as follows:

- Of the countries surveyed, some countries – India, Pakistan, and Bangladesh – have laws and regulations that specifically target foreign funding with a full range of restrictions, which include: registration requirements and prior government approvals for the receipt and/or use of foreign funds; cancellation of registration and penalties for violations associated with the receipt and/or use of foreign funds; restrictions on the activities and operations undertaken with foreign funds; and reporting requirements for activities supported by foreign funds. These are the countries in which the restrictions appear to have had the most negative impact on NGOs.
- Different forms of informal government harassment and intimidation, such as physical attacks, being labelled “western agents,” physical and online surveillance, cyber-attacks, and threats are impacting NGOs that receive foreign funding in all of the countries surveyed.
- In all countries, the effect of restrictive laws and regulations on NGO funding and activities is determined as much by the manner and extent of implementation of those laws and regulations as it is by the formal letter of these laws and regulations. Even restrictions which are more innocuous on their face, such as reporting requirements, are being implemented in a heavy-handed and onerous manner.

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1 For the purposes of this report, NGOs is used interchangeably with nonprofit organizations (NPOs) and civil society organizations (CSOs), and are defined consistently with other ICNL reports as “non-state actors whose aims are neither to generate profits nor to seek governing power.” See Mark Sidel and David Moore, *The Law Affecting Civil Society in Asia: Developments and Challenges for Nonprofit and Civil Society Organizations* (University of Wisconsin Legal Studies Research Paper No. 1671, 2020) at 2.

2 For the purposes of this report, ‘foreign funds’ is used interchangeably with ‘foreign contributions’ and ‘cross-border funds’ to describe donations to NGOs from any foreign source, including foundations, individuals, corporates, and government.

- Governments across the Indo-Pacific region have been unable to fully respond to the devastating impacts of COVID-19, and NGOs have played a vital role in bridging this gap. Despite this, restrictions on foreign funding of NGOs have increased during the pandemic, negatively impacting the work of NGOs struggling to raise adequate funds.
- Foreign funding restrictions have created complex bureaucratic hurdles which are particularly burdensome when responding to emergencies like COVID-19, both because vital funds and resources must be diverted to comply with the restrictions, and because the restrictions are causing delays which makes rapid response difficult.
- Foreign funding restrictions are limiting the capacity of NGOs to engage in awareness raising, advocacy, and research, all of which are an important part of the response to COVID-19. In addition, although the restrictions are often motivated by a desire to prevent rights-based advocacy, they are having a widespread impact and impeding the ability of NGOs to provide service delivery.
- More broadly, the restrictions are having a three-fold chilling effect on NGOs: posing an existential threat to some NGOs; causing NGOs to leave countries altogether; and silencing individuals and NGOs working on certain issues. An example is provided by this study itself, where the interviewees wished to preserve their anonymity.

These findings highlight the significant impact of foreign funding restrictions on NGOs in the Asia-Pacific region, and the negative consequences these restrictions have had on their ability to respond to COVID-19.

## II. INTRODUCTION

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In the wake of COVID-19, NGOs in the Indo-Pacific region have had to increase their delivery of humanitarian and social services, particularly where government response to the pandemic has been lacking.<sup>3</sup> This report undertakes an empirical study focusing on the extent to which foreign funding restrictions have impacted NGOs in nine countries in the region – Bangladesh, India, Indonesia, Malaysia, Nepal, Pakistan, Philippines, Sri Lanka and Thailand – particularly during COVID-19. In doing so, the report investigates the type and extent of foreign funding restrictions in each of these countries, and how the restrictions have impacted the work of NGOs and their ability to fundraise from foreign sources, as well as any broader chilling effects.

Over the past two decades there has been a dramatic increase on a global scale in restrictions limiting cross-border funding to NGOs. During this time, more than 50 countries representing every region of the world have enacted laws limiting the ability of NGOs to receive and use foreign funds.<sup>4</sup> This phenomenon of “philanthropic protectionism,”<sup>5</sup> frequently introduced under the guise of fighting terrorism and countering money-laundering,<sup>6</sup> has been largely attributed to real or perceived threats to existing political regimes.<sup>7</sup> In particular, the restrictions have been viewed as a growing backlash against foreign influence in the form of the liberal world order.<sup>8</sup> In a 2022 report, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association noted that foreign funding of NGOs has been depicted as “a new form of imperialism, or neocolonialism,”<sup>9</sup> with governments justifying restrictions on national sovereignty grounds, arguing that

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3 Jasmin Lorch and Janjira Sombatpoonsiri, “COVID-19 and Civil Society in Southeast Asia: Beyond Shrinking Civic Space,” (2022) *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 1-13, at 6; Asia Development Bank, “Engaging Civil Society Organizations to Enhance the Effectiveness of COVID-19 Response Programs in Asia and the Pacific” (2021) 42 *The Governance Brief*, <https://www.adb.org/sites/default/files/publication/689831/governance-brief-042-civil-society-covid-19-asia-pacific.pdf>.

4 Patricia Bromley, Evan Schofer and Wesley Longhofer “Contentions over World Culture: The Rise of Legal Restrictions on Foreign Funding to NGOs, 1994–2015” (2020) 99(1) *Social Forces* 281-304; Carrie Oelberger and Simon Shachter, “National Sovereignty and Transnational Philanthropy: The Impact of Countries’ Foreign Aid Restrictions on US Foundation Funding” (2021) 32(2) *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 204-219.

5 See Douglas Rutzen, “Aid Barriers and the Rise of Philanthropic Protectionism” (2015) 17(1) *International Journal of Not-for-Profit Law* 5-45.

6 United Nations Human Rights Council, A/HRC/50/23, “Report of UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule,” May 10, 2022, paras. 19, 37., <https://digitallibrary.un.org/record/3976158?ln=en#record-files-collapse-header>. See also Rutzen, supra note 5, at 32-33 citing examples from India, Nepal and Sri Lanka; Lloyd Mayer, “Globalization without a Safety Net: The Challenge of Protecting a Cross-border Funding of NGOs” (2018) 102 *Minnesota Law Review* 1205-1257, at 1217; Kendra Dupuy, James Ron and Aseem Prakash, “Hands Off My Regime! Governments’ Restrictions on Foreign Aid to Non-Governmental Organizations in Poor and Middle-Income Countries” (2016) 84 *World Development* 299-311, at 302-3.

7 See Dupuy et al, supra note 6; Darin Christensen and Jeremy Weinstein, “Defunding Dissent: Restrictions on Aid to NGOs” (2013) 24(2) *Journal of Democracy* 77-91.

8 Sidel and Moore, supra note 1.

9 United Nations Human Rights Council, A/HRC/50/23, supra note 6.

local NGOs act as agents of foreign donor interference in domestic politics.<sup>10</sup>

However, many of the foreign funding restrictions that have been put in place have been found to be unnecessary, disproportionate and excessive.<sup>11</sup> Moreover, in more authoritarian countries, these restrictions have often been targeted at human rights NGOs, or other advocacy-focused groups who criticize the regime; governments have been particularly swift to attempt new restrictions on foreign funding using interference or counterterrorism justifications where there have been recent democratic or opposition protests.<sup>12</sup> Serious concerns have been raised that restrictions limiting organizations' ability to access resources do not comply with the freedom of association, enshrined in Article 22 of the International Covenant on Civil and Political Rights.<sup>13</sup> COVID-19 and the critical role NGOs have played assisting with the pandemic response further calls into question whether these foreign funding restrictions are warranted.

Countries in the Indo-Pacific region have been part of this wave of philanthropic protectionism, introducing formal and informal measures to restrict foreign funding.<sup>14</sup> This is despite many NGOs in the region being heavily reliant on funding from foreign donors.<sup>15</sup> Foreign funding restrictions in the Indo-Pacific region take many forms, including: mandatory government approvals for the use of foreign funds; registration and reporting requirements; requiring funds be channelled through certain state agencies or bank accounts; capping the amount of foreign funding that can be used for administrative expenses;

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10 See Rutzen, *supra* note 5, at 32-33 citing examples from India, Nepal and Sri Lanka; Mayer, *supra* note 5, at 1217; Dupuy et al, *supra* note 6, at 302-3; Thomas Parks, "The Rise and Fall of Donor Funding for Advocacy NGOs: Understanding the Impact" (2008) 18(2) *Development in Practice*, 213-22, at 218.

11 See discussion in Rutzen, *supra* note 5, at 31-33; Mayer, *supra* note 6, at 1211-1221.

12 See United Nations Human Rights Council, A/HRC/50/23, *supra* note 6, paras 18, 19, 31, and 37.

13 See discussion in Part V below.

14 See Thomas Carothers, "Closing Space for International Democracy and Human Rights Support" (2016) 8(3) *Journal of Human Rights Practice* 358-377, at 361 with reference to Asian NGOs; and Douglas Rutzen, "Authoritarianism Goes Global (II): Civil Society under Assault" (2015) 26(4) *Journal of Democracy* 28-39, at 32, citing Pakistan as an example.

15 See Dupuy et al, *supra* note 6, at 302 with reference to low- and middle-income countries; Parks, *supra* note 10, at 214, noting that advocacy NGOs are particularly dependent on foreign donors.



**Many of the foreign funding restrictions that have been put in place have been found to be unnecessary, disproportionate and excessive.**



restricting funding for certain activities; and constraining foreign funding through the broad application of anti-money laundering and counterterrorism measures. Beyond these formal legal and regulatory restrictions, there are also informal measures that serve as barriers to foreign support of domestic NGOs. These include political pressure, harassment and intimidation of NGOs who receive foreign funding.<sup>16</sup>

This report is structured as follows:

- Part III outlines the methodology of the study;
- Part IV summarizes the characteristics of the organizations surveyed;
- Part V provides the international and domestic legal and regulatory context governing NGOs and their ability to access foreign funding;
- Part VI discusses the study's findings;
- Part VII offers concluding thoughts; and
- The Appendix provides a comprehensive description of the legal and regulatory foreign funding restrictions by country, along with detailed interview data.

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<sup>16</sup> Carothers, *supra* note 14, at 362. See also Kendra Dupuy, Luc Fransen and Aseem Prakash, "Restricting NGOs: From Pushback to Accommodation" (2021) 12 *Global Policy* 5-10, at 6.

# III. METHODOLOGY

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## A. Research Questions

This empirical study on foreign funding restrictions in nine countries in the Indo-Pacific region addresses the following research questions:

1. What laws and regulations are impacting the ability of NGOs in the countries surveyed to receive and use foreign funds?
2. Outside of formal legal and regulatory measures, what informal political or other pressures are impacting NGOs that receive foreign funding in the countries surveyed?
3. To what extent and in what manner have these formal and informal restrictions impacted the work of NGOs that receive foreign funding in the country surveyed, particularly during COVID-19?
4. To what extent have these formal and informal restrictions resulted in a loss of foreign funds for NGOs in the countries surveyed, particularly during COVID-19?
5. Has there been a broader chilling effect on NGOs in the region?

## B. Research Design

In order to answer these research questions, the study was designed to utilize two methods to collect and analyze qualitative data.

The first method involved structured questionnaires which were customized for each country based on the existing laws and regulations affecting foreign funding. The questionnaires consisted primarily of multiple-choice questions to provide data points allowing for comparative analysis of results, as well as some open-ended questions to enable respondents to provide more specific information. The questions were designed to explore: existing and proposed laws and regulations specifically targeting foreign funding in each country; general laws applying to NGOs that indirectly target foreign funding; informal measures used by governments affecting an organization's ability to receive and use foreign funding; and the impact of formal and informal funding restrictions on the work of the respondent organizations. The questionnaire was a self-complete instrument, with responses collected and delivered online using the Google Forms survey instrument.

The second method involved semi-structured in-depth interviews utilizing open-ended questions to collect additional qualitative data. The questions were tailored to the specific interviewee and addressed the relevant country restrictions. The interview

questions focused on understanding the extent to which the respondent organization, and other organizations they worked with, had been personally affected by legal and regulatory foreign funding restrictions and any informal measures, as well as how these restrictions created a broader chilling effect on their ability to operate in a particular country.

## C. Research Methods

The study was conducted from March 2022 through July 2022. Organizations representing a broad cross-section of programmatic areas including health, education, the environment, democracy and governance, and human rights from nine countries in the Indo-Pacific region were invited to complete the questionnaire. Given the high level of organizational knowledge required to complete the questionnaire, the respondent was typically the Executive Director or a senior staff member. Rich qualitative data was obtained through the follow-up in-depth interviews.<sup>17</sup> These semi-structured interviews, conducted in all nine countries, were recorded and transcribed for analysis using a grounded theory approach.<sup>18</sup>

Based on this preliminary research, the initial broad coding categories were progressively refined into the following country-specific sub-categories of legal and regulatory restrictions:

- Registration requirements for the receipt and use of foreign funds
- Prior government approvals for the receipt and use of foreign funds
- Cancellation of registration and penalties for violations associated with foreign funding
- Restrictions on activities undertaken with foreign funds
- Reporting requirements for activities supported by foreign funds
- Restrictions on operations of NGOs who are recipients of foreign funds

The data obtained from the questionnaires was used to inform and shape data collection for the in-depth interviews.

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<sup>17</sup> A list of questionnaire respondents and interviewees is on file with the authors.

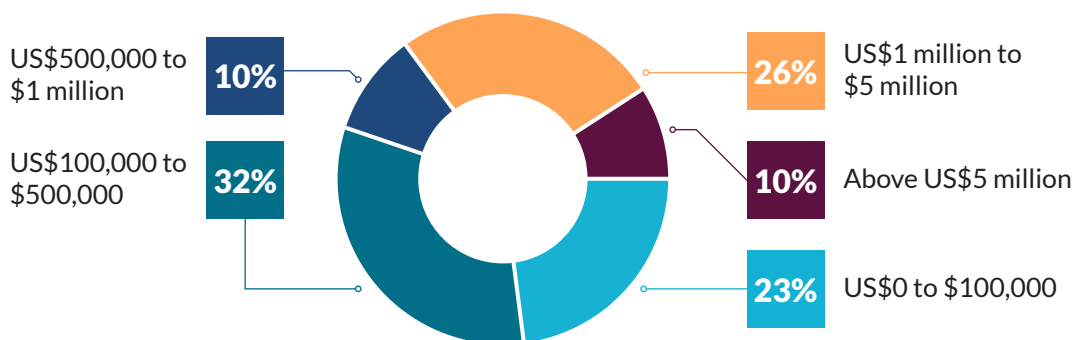
<sup>18</sup> This is a qualitative research method focusing on the development of conceptual frameworks through inductive analysis of data. See Antony Byrant and Kathy Charmaz, *The SAGE Handbook of Grounded Theory* (Sage Publications, 2007).

# IV. ORGANIZATIONAL DATA

This section provides information on the organizations that submitted responses through the questionnaire, including their budgets, programmatic areas of focus, sources of funding, and types of programs for which foreign funding is used.

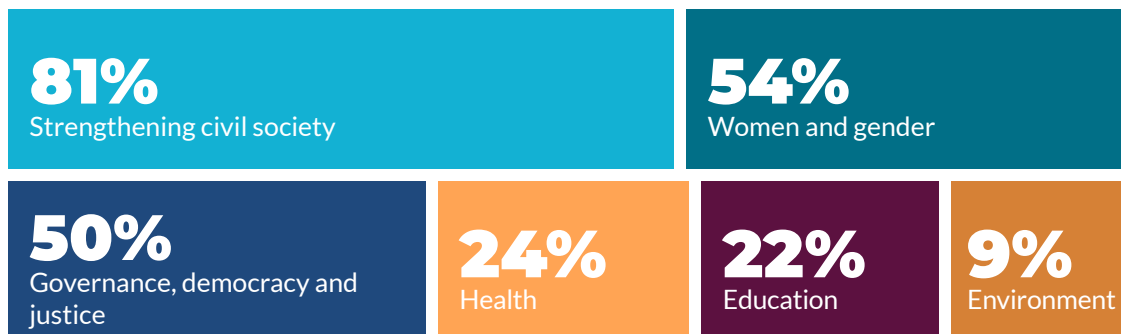
As shown in figure 1 below, the organizations that responded to the questionnaire differed in size, as measured by their organization budget:

**Figure 1. Organization budget**



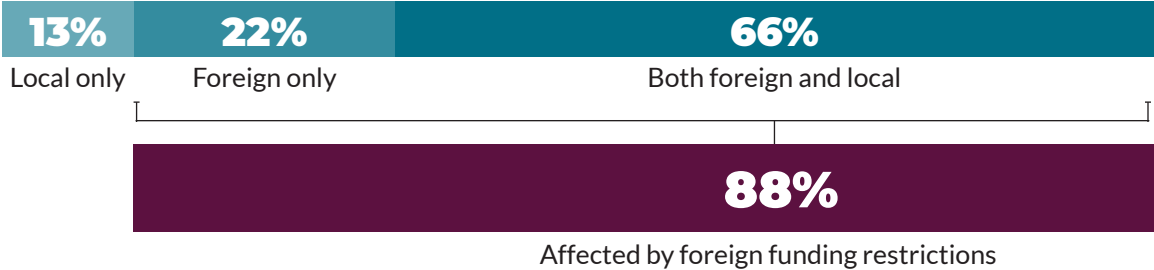
As shown in figure 2 below, respondents focused on a range of programmatic areas:

**Figure 2. Programmatic Areas of Focus**



In terms of sources of funding, figure 3 on the next page shows that the vast majority of respondents received both local and foreign funding (66%), with 22% receiving foreign funding only and 13% receiving local funding only. This indicates that 88% of respondents receive foreign funds and are therefore impacted by foreign funding restrictions.

**Figure 3. General Sources of Funds**



From the interviews, it became evident that many of the organizations that received foreign funding were dependent upon that funding. As one interviewee who worked for a rights-based NGO from the Philippines explained:

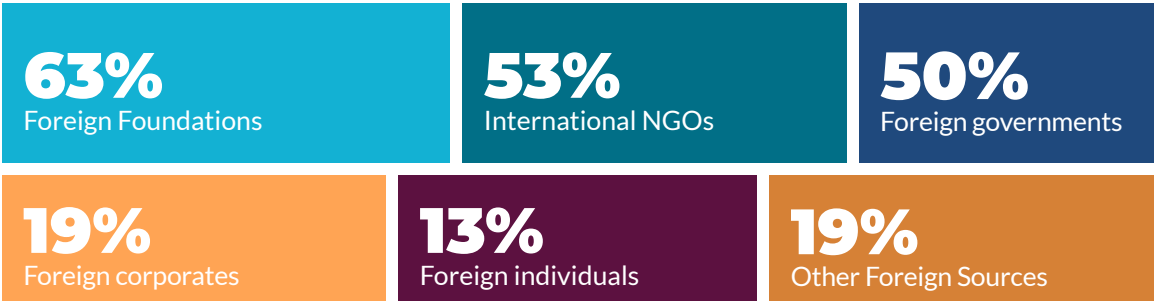
In recent years there was no access to [local] public funds, especially for human rights. In the broad sense, for the whole nonprofit sector in the country, the majority of local funding is more for humanitarian types of organizations, who do good work in providing services. But unfortunately human rights NGOs are not accorded the same regard by the Government and even the private sector. At the international level, we feel that there is a more direct comprehension of the work of human rights NGOs and defenders in general.

An interviewee from India commented that for a particular project involving the provision of pandemic relief, foreign funding was critical and ended up representing 30-40% of the total project budget:

We were near the end of an EU-funded project and luckily we had some residual money that we could use with the permission of the European Union. The European Union had an understanding with the Government of India that some of their funds could be provided for relief services.

Figure 4 shows that of those respondents who received foreign funding, there were several different sources. A number of respondents had multiple sources of foreign funding.

**Figure 4. Specific Sources of Foreign Funds**



# V. LEGAL AND REGULATORY CONTEXT

## A. International Legal Standards

In order to contextualize the restrictions on the receipt and use of foreign funds by NGOs discussed in this report, it is helpful to understand the international legal framework governing NGOs and their ability to access resources.

The right to freedom of association is enshrined in international law, including in Article 20 of the Universal Declaration of Human Rights (UDHR) and Article 22 of the International Covenant on Civil and Political Rights (ICCPR). With the exception of Malaysia, each of the nine countries examined in this study has acceded to the ICCPR.<sup>19</sup> Article 22 of the ICCPR states:

Everyone shall have the right to freedom of association with others... No restrictions shall be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

It is the State's obligation to demonstrate that any interference with the ability of individuals and organizations to associate is justified. Any restriction to the freedom of association is lawful *only* if the restriction is (1) "prescribed by law," meaning it is introduced by a legislative body, not an administrative order;<sup>20</sup> and is sufficiently precise for an NGO to foresee violations; (2) pursued only in the interests of national security, public safety, public order, protection of public health or morals, or protection of the rights and freedoms of others; and (3) "necessary in a democratic society," meaning that restrictions are proportional to the interests listed above<sup>21</sup> and do not harm "pluralism, tolerance and broadmindedness."<sup>22</sup>

19 Bangladesh (2000), India (1979), Indonesia (2006), Nepal (1991), Pakistan (2010), Philippines (1986), Sri Lanka (1980), Thailand (1996). United Nations Treaty Body Database, Ratification Status for CCPR - International Covenant on Civil and Political Rights, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en)

20 United Nations Human Rights Council, Special Rapporteur on situation of human rights defenders, Margaret Sekaggya, "Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" July 2011, at 44, <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

21 United Nations International Covenant on Civil and Political Rights Human Rights Committee ("ICCPR Human Rights Committee"), CCPR/C/21/Rev.1/Add. 1326, "General Comment No. 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant" May 26, 2004, para. 6, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRICAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWoq%>.

22 United Nations Human Rights Council, A/HRC/20/27, "Report of UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai" May 21, 2012, para. 32, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

International law creates a presumption against any state regulation that would amount to a restriction of recognized rights. The ICCPR lists only four permissible grounds for state interference; those grounds are an exhaustive list, and it is the state's obligation to demonstrate that any interference is justified according to the three-part test above. The ICCPR's implementing body, the Human Rights Committee, has stated in its General Comment 31(6):

Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.<sup>23</sup>

### ABILITY TO ACCESS RESOURCES AS A COMPONENT OF FREE ASSOCIATION

In his most recent report of May 2022, the Special Rapporteur on the right to freedom of peaceful assembly and of association stated that:

The right of associations to freely access human, material and financial resources – from domestic, foreign, and international sources - is inherent to the right to freedom of association and essential to the existence and effective operations of any association... **The Committee has recognized that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22.**<sup>24</sup>

Any association, whether registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, NGOs, governments and international organizations.<sup>25</sup>

Article 22 imposes both negative and positive obligations on governments.<sup>26</sup> While governments themselves do not have an obligation to provide funding, they do have an obligation to create an enabling environment for organizations to seek funding, including through tax benefits.<sup>27</sup> Particularly as domestic funding in many countries is limited or non-existent, associations must be able to rely on foreign funding to continue their operations, and “governments must allow access by NGOs to foreign funding as part of international cooperation, to which civil society is entitled to the same extent as Governments.”<sup>28</sup> To this effect, negative obligations require States to refrain from interfer-

23 ICCPR Human Rights Committee, CCPR/C/21/Rev.1/Add. 1326, “General Comment No. 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant” May 26, 2004, para. 6.

24 Emphasis added. United Nations Human Rights Council, A/HRC/50/23, supra note 6, para. 9.

25 Office of The High Commissioner for Human Rights, Info Note By The United Nations Special Rapporteur On The Rights To Freedom Of Peaceful Assembly And Of Association Maina Kiai, “Foreign Contributions Regulation Act 2010 And Foreign Contributions Regulation Rules 2011, April 2016, para. 68, <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteIndia.pdf>.

26 United Nations Human Rights Council, A/HRC/50/23, supra note 6, para. 12.

27 Id.

28 United Nations Human Rights Council, A/HRC/20/27, supra note 22, para. 69.

ence with the ability of organization’s to access funding,<sup>29</sup> and best practice legislation is that which “does not prescribe the approval of the authorities before receiving domestic and foreign funding.”<sup>30</sup> Requirements such as “obtaining a prior authorization from the authorities,”<sup>31</sup> would not be aligned with such best practices.

## SECURITY JUSTIFICATIONS FOR RESTRICTIVE REGULATIONS

The Special Rapporteur emphasized the use and misuse by States of international norms developed by the global, inter-governmental Financial Action Taskforce (FATF) around the prevention of money laundering and terrorist financing.<sup>32</sup> In part, the Special Rapporteur’s articulated concerns related to the failure by FATF itself to “provide for specific measures to protect the civil society sector from undue restrictions to their right to freedom of association by States asserting that their measures are in compliance with FATF recommendations.”<sup>33</sup> The Special Rapporteur noted FATF’s clarification around Recommendation 8, which had originally “required that the laws and regulations that govern non-profit organizations be reviewed so that these organizations cannot be abused for the financing of terrorism,” and which “was being misused by States to crackdown on civil society.”<sup>34</sup> In revising Recommendation 8, FATF clarified that measures aimed at combatting terrorist financing among NGOs must not target the whole sector, but should “oversee and protect the subset of civil society organizations that ‘the country has identified as being vulnerable to terrorist financing abuse’ and that these measures must be ‘focused and proportionate.’”<sup>35</sup>

The Special Rapporteur also highlighted other problematic tactics used by governments to restrict access to resources by NGOs. These tactics include branding NGOs that receive foreign-funding as terrorist organizations;<sup>36</sup> launching disinformation or smear campaigns to discredit the work of NGOs;<sup>37</sup> and subjecting recipients to legal restrictions and stigmatization, such as through foreign agent laws.<sup>38</sup> Use of these tactics is consistent with the findings in this report, which examines the impact such tactics have had on NGOs in the Indo-Pacific region.

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29 United Nations Human Rights Council, A/HRC/50/23, *supra* note 6, para. 13.

30 United Nations Human Rights Council, A/HRC/20/27, *supra* note 22, para. 69.

31 *Id.*

32 United Nations Human Rights Council, A/HRC/50/23, *supra* note 6, para. 33.

33 *Id.*

34 *Id.*

35 *Id.*, para. 34.

36 *Id.*, para. 40.

37 *Id.*, para. 29.

38 *Id.*, para. 25.



## B. Country-Specific Laws and Regulations

Across all nine countries surveyed, there are varying degrees of legal and regulatory restrictions on foreign funding for non-profits. In a number of countries, legal and regulatory measures have been introduced to specifically limit and control the inflow to and use of foreign funding by NGOs, while in other countries there are general laws for NGOs which are not specifically focused on foreign funding, but nonetheless impact many NGOs. Bangladesh, India, and Pakistan have specific laws and regulations targeting foreign funding, while Malaysia and Sri Lanka have no specific laws and regulations, but instead have general laws and regulations that impact NGOs receiving foreign funding. Indonesia, Nepal, the Philippines, and Thailand have a combination of specific and general laws and regulations.

Our interview data show that countries with specific laws and regulations targeting foreign funding across all categories of restrictions tend to be those where the restrictions have had the most severe impact on NGOs.<sup>39</sup> As an interviewee from India explained:

Those receiving foreign contributions do have a lot of anxiety. They never know what will be required next. There have been organizations that have recently been picked up randomly for what is called a “forensic study” of their accounts. This means people from the Comptroller and Auditor General’s Office come and plant themselves at your office ... and ask for all sorts of details.

In countries with no specific laws targeting the receipt and use of foreign funds, the formal laws and regulations appear to have had less impact.<sup>40</sup> Instead, as discussed in Finding #3 below, in these countries informal measures are negatively impacting NGOs’ ability to receive and use foreign funds. An interviewee from Malaysia noted:

There was a period of time that funding from the Open Society Foundation was not preferred, at least in Malaysia, because it was perceived that this funding had a lot to do with reform and elections. So, nonprofits avoided receiving funds from Open Society Foundation because of the fear that the Government would look into their affairs and then portray them on the news as trying to threaten the security of the nation.

Figure 5 below summarizes the legal and regulatory foreign funding restrictions in each country, which have been categorized according to restrictions on the receipt, allocation and use of foreign funds:

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<sup>39</sup> See country reports on India, Pakistan and Bangladesh below.

<sup>40</sup> See country reports on Malaysia and Sri Lanka below.

**Figure 5. Laws and regulations impacting NGOs that receive foreign funding**

Country	Laws and regulations explicitly targeting receipt and use of foreign funds						General laws and regulations applicable to NGOs receiving foreign funding					
Bangladesh	✓	✓	✓	✓	✓	✓						
India	✓	✓	✓	✓	✓	✓						
Indonesia	✓	✓								✓	✓	
Malaysia							✓		✓	✓	✓	
Nepal		✓		✓	✓	✓	✓					
Pakistan	✓	✓	✓	✓	✓	✓						
Philippines		✓					✓		✓	✓	✓	✓
Sri Lanka							✓		✓		✓	✓
Thailand		✓		✓			✓		✓			

All laws and regulations are those in place as of September 30, 2022.

- Registration requirements affecting foreign funding
- Prior government approvals for receiving or using foreign funding
- Cancellation of registration and penalties for non-compliance associated with foreign funding
- Restrictions on activities that can be undertaken with foreign funds
- Reporting requirements for foreign funding
- Restrictions on an organization's operations, including requirements that foreign funds be channelled through certain bank accounts, caps on the funding of administrative expenses, and various compliance requirements.

The relevant laws and regulations in each country are summarized in the chart below. A detailed description of the legal and regulatory foreign funding restrictions by country, along with interview data, is contained in the Appendix.

As shown in the charts below, Bangladesh, India and Pakistan have specific laws and regulations targeting all six categories of restrictions.

 **Bangladesh**

CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING
<b>Registration</b>	Organizations receiving foreign funding must register with the NGO Affairs Bureau (NAB) by providing information including the amount of the donation, its source and how it will be used. <sup>41</sup>
<b>Prior approvals</b>	NGOs must obtain approval for foreign funded projects from the NGO Affairs Bureau. <sup>42</sup>
<b>Cancellation of registration/ penalties</b>	Any violation may result in cancellation or postponement of registration. Where a foreign donation is received without prior approval a large fine may be imposed. <sup>43</sup>
<b>Restrictions on activities</b>	NGOs must not make any “malicious and indecent” comments regarding the constitution of Bangladesh or any of its institutions or engage in any “anti state activities.” <sup>44</sup>
<b>Reporting requirements</b>	Registered NGOs must submit reports of their activities to the NAB. <sup>45</sup>
<b>Restrictions on operations</b>	Registered NGOs must submit to inspections and monthly coordination meetings with NAB representatives. <sup>46</sup> Foreign donations can only be made through a specific bank account with a “scheduled bank.” <sup>47</sup> Administrative expenses using foreign funds are restricted to a 20% cap. <sup>48</sup>

41 Foreign Donations (Voluntary Activities) Regulation Act 2016 (Bangladesh) (“FDRA”), ss. 3 and 4(2), [http://www.parliament.gov.bd/images/pdf/acts\\_of\\_10th\\_parliament/acts\\_of\\_12th\\_session/43.pdf](http://www.parliament.gov.bd/images/pdf/acts_of_10th_parliament/acts_of_12th_session/43.pdf); [https://www.icnl.org/wp-content/uploads/Bangladesh\\_FDVA.pdf](https://www.icnl.org/wp-content/uploads/Bangladesh_FDVA.pdf).

42 FDRA, s. 6(1).

43 FDRA, ss. 15(b) and (c).

44 FDRA, s. 14.

45 FDRA, s. 1.

46 FDRA, s. 10.

47 FDRA, s. 9.

48 FDRA, s. 6(5).

CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING
<b>Registration</b>	Organizations must register under the Foreign Contribution Regulation Act (FCRA) with the Ministry of Home Affairs (MHA) to receive foreign contributions. <sup>49</sup> There is detailed qualifying criteria for registration. <sup>50</sup>
<b>Prior approvals</b>	Unregistered NGOs must seek prior permission from the MHA to receive foreign funds, which is valid only for the specific purpose and source. <sup>51</sup>
<b>Cancellation of registration/ penalties</b>	The MHA has broad discretionary power to cancel an organization's FCRA registration. <sup>52</sup> Penalties for violation or cancellation of registration include NGOs being prevented from using unutilized amounts of the foreign contribution. <sup>53</sup>
<b>Restrictions on activities</b>	Foreign funding is predicated on concepts such as "undesirable purposes," <sup>54</sup> "for the benefit of the society," <sup>55</sup> "the sovereignty and integrity of India," "public interest," and "religions, racial and social harmony." <sup>56</sup> NGOs are prohibited from transferring funds (sub-granting) to other organizations using foreign funds. <sup>57</sup>
<b>Reporting requirements</b>	The amount of each foreign contribution received, the source and manner in which it was received, and "the purposes for which and the manner in which" it was used must be reported to the MHA. <sup>58</sup>
<b>Restrictions on operations</b>	Foreign funds can be received only through an "FCRA Account" with a designated branch of the State Bank of India in New Delhi. <sup>59</sup> Administrative expenses are capped at 20% for foreign funds. <sup>60</sup>

49 Foreign Contributions Regulation Act 2010, Ministry of Law and Justice, No. 42 of 2010 (26 September 2010) (India) ("FCRA"), s. 11(1), [https://fcraonline.nic.in/Home/PDF\\_Doc/FC-RegulationAct-2010-C.pdf](https://fcraonline.nic.in/Home/PDF_Doc/FC-RegulationAct-2010-C.pdf).

50 FCRA, s. 12(4).

51 FCRA, ss. 11(2), 12(6).

52 FCRA, s. 14(1)(c).

53 FCRA, ss. 11(2); section 15(1).

54 FCRA, s. 12(4)(a) (vi).

55 FCRA, ss. 12(4)(b) and (c).

56 FCRA, s. 12(4)(f).

57 Foreign Contribution (Regulation) Amendment Act 2020, Ministry of Law and Justice, No. 33 of 2020 (28 September 2020) (India) ("FCRA 2020"), s. 3, amending FCRA s. 7, [https://fcraonline.nic.in/home/PDF\\_Doc/fc\\_amend\\_07102020\\_1.pdf](https://fcraonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf). See also Foreign Contribution (Regulation) (Amendment) Rules 2020 (FCRR 2020), Ministry of Home Affairs, Notification (10 November 2020), [https://fcraonline.nic.in/home/PDF\\_Doc/fc\\_rules\\_12112020.pdf](https://fcraonline.nic.in/home/PDF_Doc/fc_rules_12112020.pdf).

58 FCRA, s.18(1).

59 FCRA 2020, s.12, amending FCRA s. 17.

60 FCRA 2020, s. 4, amending FCRA s. 8(1)(b).

CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING
<b>Registration</b>	Organizations must register with the Economic Affairs Division (EAD) before utilizing “foreign economic assistance.” <sup>61</sup>
<b>Prior approvals</b>	NGOs must enter into a memorandum of understanding (MOU) with the EAD at least 60 days before using foreign funding for a particular project. <sup>62</sup>
<b>Cancellation of registration/ penalties</b>	Any violation of the MOU or the Policy for Local NGOs/NPOs Receiving Foreign Contributions 2022 (NRFC) may result in suspension or cancellation of the MOU. <sup>63</sup>
<b>Restrictions on activities</b>	NGOs must not engage in activities inconsistent with national security or which promote religious intolerance, hatred or ethnic violence. <sup>64</sup>
<b>Reporting requirements</b>	NGOs must submit annual reports to the EAD on their projects, project completion reports, and audited financial statements. <sup>65</sup>
<b>Restrictions on operations</b>	NGOs must not use any other bank account except account(s) designated by the EAD. <sup>66</sup>

61 Policy for Regulation of Organizations Receiving Foreign Contributions 2013 (“RORFC”) (Pakistan), s. 2 pursuant to which organizations may have been registered, [https://www.ead.gov.pk/SiteImage/Misc/files/iii\\_%20NGOs%20Policy%202013.pdf](https://www.ead.gov.pk/SiteImage/Misc/files/iii_%20NGOs%20Policy%202013.pdf). RORFC.

62 Policy for Local NGOs/NPOs Receiving Foreign Contributions 2022, Ministry of Economic Affairs, Notification (September 2022, Pakistan) (“NRFC”), ss. 8(b) and 14(d), <https://www.icnl.org/wp-content/uploads/NGOPOLICY2022.pdf>.

63 NRFC, s. 12(a).

64 NRFC, ss. 12(b) and 12(c).

65 NRFC, ss. 11(a), 11(b) and 11(c).

66 NRFC, s. 11(d).

As shown in the charts below, Indonesia, Nepal, the Philippines, and Thailand have a combination of laws and regulations directed specifically at foreign funding, as well as general laws and regulations that impact NGOs receiving foreign funding.

## Indonesia

CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING	GENERAL LAWS AND REGULATIONS IMPACTING NGOS RECEIVING FOREIGN FUNDING
<b>Registration</b>	Societal organizations must register with the Ministry of Home Affairs to receive foreign assistance. <sup>67</sup>	N/A
<b>Prior approvals</b>	Organizations must report a “plan for acceptance of foreign assistance” to the Ministry, including the source of the assistance, its purpose, and plan for its utilization. <sup>68</sup>	N/A
<b>Cancellation of registration/ penalties</b>	Receiving foreign support without government approval can result in suspension or dissolution.	N/A
<b>Restrictions on activities</b>	Organizations founded by foreign individuals or foreign legal entities are prohibited from engaging in activities that disrupt intelligence or diplomatic and political stability. <sup>69</sup>	Prohibition on adopting, developing, and spreading teachings or ideas that are contrary to Pancasila, the national ideology, and conducting activities that threaten the sovereignty of the Republic of Indonesia. <sup>70</sup>
<b>Reporting requirements</b>	N/A	NGOs receiving foreign funding must provide reports of activities to the Government and publish annual financial reports in newspaper. <sup>71</sup>
<b>Restrictions on operations</b>	If founded by foreign individuals or entities, NGOs must have a partnership with the government. <sup>72</sup>	N/A

<sup>67</sup> Ministry of Home Affairs Regulation No. 38 of 2008 on the Obtainment and Granting Societal Organization Donations From and To Foreign Entities (“MHA Reg 38”), Art. 7(1) (Indonesia), [https://www.icnl.org/wpcontent/uploads/Indonesia\\_indonesia01.pdf](https://www.icnl.org/wpcontent/uploads/Indonesia_indonesia01.pdf).

<sup>68</sup> MHA Reg 38, Arts. 10 and 11.

<sup>69</sup> Law No. 17 of 2013 on Societal Organizations (“Law 17”) (Indonesia), Art. 52(e).

<sup>70</sup> Law 17, Art. 59(2)(4).

<sup>71</sup> Law 17, Art. 38.

<sup>72</sup> Law 17, Art. 48.

CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING	GENERAL LAWS AND REGULATIONS IMPACTING NGOS RECEIVING FOREIGN FUNDING
<b>Registration</b>	N/A	All NGOs must be registered with the Social Welfare Council (SWC).
<b>Prior approvals</b>	Organizations must submit a project proposal and application for approval to the SWC prior to carrying out foreign funded project. <sup>73</sup>	N/A
<b>Cancellation of registration/ penalties</b>	N/A	N/A
<b>Restrictions on activities</b>	Receipt and use of foreign funds are predicated on concepts such as “the national interest,” <sup>74</sup> “national need and priority,” and “sectors of national sensitivity.” <sup>75</sup>	N/A
<b>Reporting requirements</b>	An annual financial statement for each project and details of project activities must be made public. <sup>76</sup>	N/A
<b>Restrictions on operations</b>	20% cap on administrative expenditure. <sup>77</sup>	N/A

73 Social Welfare Act, 2049 (1992) (Nepal) (“SWA”), s. 16(1), <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/social-welfare-act-2049-1992.pdf>; Local Government Operation Act, 2074 (2018) (Nepal) (“LGOA”), art. 25(1), [https://s25924.pcdn.co/wp-content/uploads/2018/03/local-governance-Act\\_final-version.pdf](https://s25924.pcdn.co/wp-content/uploads/2018/03/local-governance-Act_final-version.pdf).

74 SWA, s. 16(2).

75 International Development Cooperation Policy 2019 (Nepal) (“IDCP”), ss. 3.10.1 and 3.10.5, [https://www.mof.gov.np/uploads/document/file/print\\_copy\\_IDCMP-2019\\_Eng-fullpage\\_20191107071739.pdf](https://www.mof.gov.np/uploads/document/file/print_copy_IDCMP-2019_Eng-fullpage_20191107071739.pdf).

76 IDCP, s. 3.10.8.

77 IDCP, s. 3.10.7.

CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING	GENERAL LAWS AND REGULATIONS IMPACTING NGOS RECEIVING FOREIGN FUNDING
<b>Registration</b>	N/A	All NGOs must register with the Securities and Exchange Commission (SEC). <sup>78</sup>
<b>Prior approvals</b>	All foreign funding must be transferred through the Department of Foreign Affairs (DFA) for “appropriate clearance.” <sup>79</sup>	N/A
<b>Cancellation of registration/ penalties</b>	The Certificate of Incorporation can be cancelled for failing to comply with requirements of a 2019 circular on money laundering and terrorist financing. <sup>80</sup> There are also potential penalties under anti-terrorism laws. <sup>81</sup>	N/A
<b>Restrictions on activities</b>	N/A	There are various restrictions via anti-money laundering and counter-terrorism laws. <sup>82</sup>
<b>Reporting requirements</b>	N/A	NGOs must file an annual General Information Sheet and audited financial statements with the SEC. <sup>83</sup> Within six months of registration, NGOs must also file a Mandatory Disclosure Form to the SEC in relation to money laundering and terrorist financing. <sup>84</sup>
<b>Restrictions on operations</b>	N/A	There are a range of compliance requirements if NGOs are deemed to be “at risk” of money laundering or terrorist financing. <sup>85</sup>

78 Republic Act No. 11232, An Act Providing for the Revised Corporation Code of the Philippines, [https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation\\_RA-11232-REVISED-CORPORATION-CODE-2019.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation_RA-11232-REVISED-CORPORATION-CODE-2019.pdf).

79 DFA Note Verbale No. 2021-0592 (February 5, 2021) (Philippines) (“Note Verbale”), <https://mb.com.ph/2021/02/21/foreign-diplomatic-missions-now-required-to-clear-all-ngo-donations-with-dfa/>.

80 SEC Memorandum Circular No. 25 (2019) (Philippines) (“SEC Circular”), s. 9.5, <https://www.sec.gov.ph/wp-content/uploads/2020/02/2019MCNo25.pdf>.

81 Anti-Terrorism Act of 2020 (Philippines) (“Anti-Terrorism Act”).

82 Anti-Money Laundering Act of 2001, s. 2(3) (iv) (Philippines); Anti-Terrorism Act.

83 Revised Securities Regulation Code (Rule 68, Annex 68-C) (Philippines), [https://www.sec.gov.ph/wp-content/uploads/2019/12/2019Rule\\_RSRCRule68.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/12/2019Rule_RSRCRule68.pdf).

84 SEC Circular, ss. 9.1, 9.3.

85 SEC Circular, Chapter VI.



CATEGORY	LAWS AND REGULATIONS DIRECTED SPECIFICALLY AT FOREIGN FUNDING	GENERAL LAWS AND REGULATIONS IMPACTING NGOS RECEIVING FOREIGN FUNDING
<b>Registration</b>	N/A	All NGOs must be registered, other than unincorporated associations. <sup>86</sup>
<b>Prior approvals</b>	The foreign donor and the intended recipient must submit an application for approval, specifying the objectives and activities of the donor organization and the details of the project it wishes to support. <sup>87</sup>	N/A
<b>Cancellation of registration/ penalties</b>	N/A	The Anti-Money Laundering Office can suspend NGO transactions based on “sufficient evidence.” <sup>88</sup>
<b>Restrictions on activities</b>	INGOs must have objectives that are “in conformity with the development policy and security of Thailand” and “activities shall not be contrary to morals, Thai custom and culture.” <sup>89</sup>	Registration can be denied if the NGO’s objects are “contrary to good morals” or may endanger “public order or national security.” <sup>90</sup>
<b>Reporting requirements</b>	N/A	N/A
<b>Restrictions on operations</b>	N/A	N/A

86 Civil and Commercial Code 2468 (Thailand) (“CCP”), s. 78, <https://legal.co.th/resources/civil-and-commercial-code/book1/thailand-civil-and-commercial-code-page-10-association-section-78-82/>.

87 Rules of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organizations to Operate in Thailand, 2541 (1998) (“REFPO”) (Thailand), clause 13, <https://www.icnl.org/wp-content/uploads/rule1998.pdf>.

88 Anti-Money Laundering Act, B.E. 2542 (1999), as amended, section 40 (Thailand). See [http://thailaws.com/law/t\\_laws/tlaw0019\\_2.pdf](http://thailaws.com/law/t_laws/tlaw0019_2.pdf).

89 REFPO, clauses 9 and 10, <https://www.icnl.org/wp-content/uploads/rule1998.pdf>.

90 CCP, s. 82.

As shown in the charts below, Malaysia and Sri Lanka do not have any laws or regulations specifically directed at foreign funding, but have laws and regulations generally applicable to NGOs which are having an adverse effect on NGOs that receive foreign funding.

 **Malaysia**

CATEGORY	GENERAL LAWS AND REGULATIONS IMPACTING NGOS RECEIVING FOREIGN FUNDING
Registration	“Local societies” are required to register with the Registrar of Societies. <sup>91</sup>
Prior approvals	N/A
Cancellation of registration/ penalties	Violations may result in cancellation of registration. <sup>92</sup>
Restrictions on activities	Registration and activities are limited by concepts such as “prejudicial to or incompatible with peace, welfare, security, public order, good order or morality” <sup>93</sup> and “purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order or morality.” <sup>94</sup>
Reporting requirements	Required annual reports to the Registrar, including details of the office-bearers, members and affiliates, financial accounts, and a description of any money or property, any pecuniary benefit or advantage received by the society from any person, organization, government, or government agency outside Malaysia. <sup>95</sup>
Restrictions on operations	N/A

91 Societies Act 1966, s. 6 (Malaysia) (“Societies Act”), <https://mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf>.

92 Societies Act, s. 13.

93 Societies Act, s. 7(3)(a) and 13(1)(c)(ii).

94 Societies Act, s. 5(1).

95 Societies Act, s. 14(1).



## Sri Lanka

CATEGORY	GENERAL LAWS AND REGULATIONS IMPACTING NGOS RECEIVING FOREIGN FUNDING
<b>Registration</b>	All voluntary social service organizations must register with the NGO Secretariat. <sup>96</sup>
<b>Prior approvals</b>	N/A
<b>Cancellation of registration/ penalties</b>	There are government-appointed management boards for registered NGOs involved in fraud or misappropriation of funds. <sup>97</sup>
<b>Restrictions on activities</b>	N/A
<b>Reporting requirements</b>	NGOs must submit monthly reports at the district and national levels on all project activities, finances, and beneficiaries. <sup>98</sup>
<b>Restrictions on operations</b>	3% of the aggregate amount of all funds received by an NGO is deemed to be profit and income subject to taxation. <sup>99</sup>

96 Voluntary Social Service Organizations (Supervision and Registration) Act, No. 31 of 1980, s. 3 (Sri Lanka) ("VSSOA"), [http://www.ngosecretariat.gov.lk/images/downloads/act\\_no\\_31\\_of\\_1980.pdf](http://www.ngosecretariat.gov.lk/images/downloads/act_no_31_of_1980.pdf).

97 VSSOA, ss. 10 and 11.

98 Letter from National Secretariat for NGOs (9 January 2017), [http://www.ngosecretariat.gov.lk/index.php?option=com\\_content&view=article&id=7:collection-of-information&catid=11&Itemid=104&lang=ta](http://www.ngosecretariat.gov.lk/index.php?option=com_content&view=article&id=7:collection-of-information&catid=11&Itemid=104&lang=ta).

99 Inland Revenue (Amendment) Act of 2005 (Sri Lanka), [http://www.ird.gov.lk/en/publications/Income%20Tax\\_Documents/IR\\_Act\\_No\\_10\[E\]\\_2006\\_\(Consolidation\\_2014\).pdf](http://www.ird.gov.lk/en/publications/Income%20Tax_Documents/IR_Act_No_10[E]_2006_(Consolidation_2014).pdf).

## C. Informal Measures

In addition to the legal and regulatory restrictions noted above, in most of the countries surveyed, governments also used informal measures to restrict the activities of NGOs. The responses from both our questionnaires and interviews detailed the different types of informal funding restrictions experienced across countries, which amounted to various forms of political pressure, harassment, and intimidation. These included being labelled a Western agent; threats to investigate or audit the organization; pressure to re-purpose funds, choose particular geographical locations or hire particular people; threats of de-registration and cyber-harassment; physical surveillance; and imprisonment and physical attacks.

These informal measures tend to operate alongside formal restrictions, although in some countries informal restrictions have a greater impact on NGOs. For example, in Malaysia, there are very few formal restrictions impacting NGOs. Instead, as an interviewee commented, there is a special intelligence unit that monitors human rights work amidst a constant political battle to discredit NGOs. Another Malaysian interviewee explained how NGOs are hesitant to do “sensitive work” because being labelled a certain type of NGO restricts their ability to do other kinds of work.

Similarly, in Sri Lanka, where there are few formal restrictions, informal measures such as harassment and intimidation are directed at NGOs involved in certain types of activities. One interviewee described how plainclothes police gather information on people working at certain NGOs from people in the vicinity of the NGO’s office or visit the NGO offices and seek information, including the personal addresses and telephone numbers of staff. In Indonesia, significant informal pressure is brought to bear to pressure NGOs to register with the Home Office. One interviewee from Indonesia stated that organizations are subject to intimidation and harassment both at the national and provincial levels to register, despite there being no legal requirement to do so.

In other countries, significant informal measures are applied in addition to extensive formal foreign restrictions. For example, in Pakistan, an interviewee noted the different methods being deployed by the Government to intimidate and pressure orga-



"In India recently a colleague went to the Ministry of Home Affairs for a meeting. The official pointed out some errors in the FCRA form. Our colleague responded, 'Oh I'm sorry that's an oversight.' The MHA official then said, 'how can you make oversights, given you are the guys writing op-eds about the FCRA?' He then named people in my team by name – people who have never had their name in the public domain, or written an op ed, or been featured in any story. He wanted us to know that we are being watched."



"We have members who were red tagged and killed."

nizations: telephone calls asking for detailed information about projects, or inability to receive no objection certificates if the NGO is receiving foreign funding. Similar methods to create fear and anxiety among NGOs were reported by respondents from India. One interviewee described how one of their funders was told in “no uncertain terms” not to fund other organizations involved in online publications critical of the Government.

In the Philippines, the informal measures employed by the Government are the most extreme of all countries surveyed. These measures include ‘red tagging’, whereby organizations are essentially blacklisted by the Government and often accused of anti-national, communist, or terrorist activities. An interviewee explained that red-tagging involves “two fronts” – officially by the Government and unofficially by unidentifiable private organizations clearly funded by the Government. Interviewees discussed how red tagging of their organizations has affected staff through the monitoring of personal bank accounts, names being given to the media as plotting against the Government, and at its most extreme, extra-judicial killings. Rights-based activists and lawyers have been targeted in such killings.<sup>100</sup>

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100 Ruji Auethavornpipat and Maria Tanyag, “Protests and Pandemics: Civil Society Mobilisation in Thailand and the Philippines During COVID-19.” Policy Briefing, New Mandala, Canberra, 2021, at 13.

# VI. FINDINGS

## Finding #1. Laws and regulations that may seem innocuous or technical on their face are being implemented in a heavy-handed manner

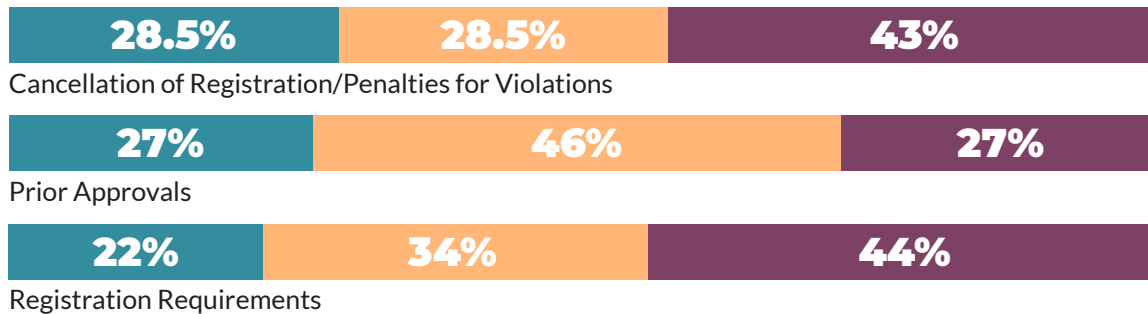
Our questionnaire and interview data revealed that while many laws are seemingly neutral on their face, they are often implemented in an onerous manner, which is having a negative impact on the work of NGOs, including during COVID-19 when the survey was conducted.

The questionnaire data shown in Figure 7 demonstrates that all six categories of formal restrictions are negatively impacting NGOs that receive foreign funding. The questionnaire asked respondents to identify the extent to which each restriction had an impact on their organization, ranging from not at all to very severe. The percentage of respondents that identified each category of restriction as having a severe or very severe impact on their organization is as follows:

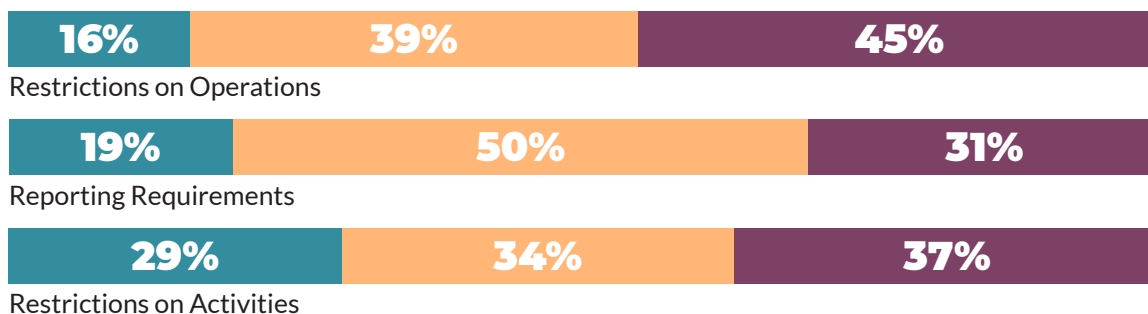
- restrictions on operations – 45%
- registration requirements – 44%
- cancellation of registration and penalties for violations – 43%
- restrictions on activities – 37%
- reporting requirements – 31%
- prior government approvals – 27%

### Figure 6. Impact of legal and regulatory foreign funding restrictions

#### RESTRICTIONS ON THE RECEIPT AND ALLOCATION OF FOREIGN FUNDS



#### RESTRICTIONS ON THE USE OF FOREIGN FUNDS



Not at all
  Moderately/a little
  Very severely/severely

The interview data further revealed that the heavy-handed implementation of already bureaucratic requirements – registration requirements, prior government approvals, and reporting requirements – are having a significant impact on NGOs, particularly during COVID-19.

### REGISTRATION REQUIREMENTS

In a number of countries, including Bangladesh, India, Nepal, Pakistan, Sri Lanka, and Thailand, registration for NGOs is being implemented in an extremely restrictive manner.<sup>101</sup> As detailed below under Finding #3, at the height of the COVID-19 pandemic, registration requirements created insurmountable obstacles to NGOs providing vital relief services. Moreover, large numbers of NGOs had their registrations cancelled or faced the possibility of cancellation. This has been most acute in India, where NGOs not only faced difficulties registering under the FCRA, but where the Government has been severely restricting renewal of FCRA status. As one interviewee from India pointed out, about 6,000 FCRA registrations were cancelled in 2022, and any organization whose approval is pending is afraid to speak out.

Other countries also faced difficulties with registration. An interviewee from Thailand described the renewal process as extremely lengthy and involving intrusive investigation by Government agencies, including in their case, agents coming to their office to question and take photos of staff. A Pakistani interviewee detailed how the Government can cancel an NGO's registration or block their bank account with a single notification from the provincial Charity Commissioner. An interviewee from Bangladesh explained that registration requirements with local government authorities have created particular issues for INGOs who wish to implement community-based projects.

### PRIOR APPROVALS

The requirement to obtain prior government approval to receive or use foreign funding is also being used in a harsh way in many countries. For example, in India, unregistered NGOs who wish to accept foreign funding must seek prior permission from the



**The Indian Government's prior approval list includes organizations like Global Giving and Omidyar Network. You cannot receive money from these donors until the Government gives them approval, which seldomly happens.**

101 ICNL, "The Law affecting Civil Society in Asia: Developments and Challenges for Nonprofit and Civil Society Organizations," p 13-20, <https://www.icnl.org/wp-content/uploads/2019-Asia-Legal-Environment-Overview-final.pdf>.

Ministry of Home Affairs.<sup>102</sup> Moreover in implementing this law, the Government has created a watchlist of foreign funders, many of which fund human rights or environmental work. This has significantly restricted the ability of NGOs to receive funding from listed donor organizations, along with persecution of organizations engaged in sensitive work. One prominent example was Amnesty International, which was forced to suspend its India operations in September 2020, after the Government froze its bank account.<sup>103</sup>

In Pakistan, registered NGOs must apply for a memorandum of understanding (MOU) with the Economic Affairs Division; this is used to gather extensive intelligence on NGOs and their staff.<sup>104</sup> An interviewee from Pakistan informed us that the prior approval process triggers a severe investigation by law enforcement agencies which collect and store personal data, including on the family and social media accounts of staff. In Nepal, the prior approval process when implemented is lengthy and cumbersome, with various levels of government agencies involved. NGOs and INGOs who have received foreign funding must submit a project proposal and application for approval by the Government's Social Welfare Council, the regulatory body for NGOs, prior to carrying out the project.<sup>105</sup> NGOs must then obtain approvals from local governments,<sup>106</sup> which interviewees have noted can be particularly cumbersome. In Indonesia, NGOs which receive foreign assistance must create a "plan for acceptance of foreign assistance." This plan must be submitted to the Ministry of Home Affairs for work with national coverage, to the Governor for provincial work, or to the Regent/Mayor for work to be undertaken in a regency/municipality.<sup>107</sup> In addition, NGOs may be required to obtain a permit from a "Permit Team" that comprises different ministries and the Indonesian National Police in order to register as a legal entity with the Ministry of Law and Human Rights.<sup>108</sup> Interviewees from Indonesia explained that access to funding is more difficult than a few years ago. One interviewee gave examples of foreign agencies not being able to continue their work due to the permit team denying them their licenses.

As detailed below in Finding #5, these prior approval processes have created roadblocks for NGOs, often hampering relief efforts during COVID-19.

## REPORTING REQUIREMENTS

Reporting requirements exist in many countries, but in some countries they are being implemented in an onerous manner, creating unnecessary administrative burdens.<sup>109</sup> For example, in Bangladesh, registered NGOs must submit reports of their activities to the

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102 FCRA, ss. 11(2), 12(6).

103 See Human Rights Watch, World Report 2021: Events of 2020, at 322, [https://www.hrw.org/sites/default/files/media\\_2021/01/2021\\_hrw\\_world\\_report.pdf](https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf).

104 NRFC, ss. 8(b) and 14(d).

105 SWA, s. 16(1); LGOA, art. 25(1).

106 LGOA, art. 25(3).

107 MHA Reg 38, Arts. 10 and 11.

108 Law No. 17 of 2013 on Societal Organizations (Law 17), Article 44(3) and (4).

109 ICNL, "The Law affecting Civil Society in Asia: Developments and Challenges for Nonprofit and Civil Society Organizations," at 25-27, <https://www.icnl.org/wp-content/uploads/2019-Asia-Legal-Environment-Overview-final.pdf>.



Bureau of NGO Affairs.<sup>110</sup> An interviewee described the bureaucratic process involved in the submission of these reports, which involves the submission of an annual report stating how much money was received for each project and how much was spent, and which may involve an audit by the Government. Once the project has finished, the NGO is required to submit a completion report, which must be endorsed by the local government.

Reporting requirements have also had an impact on NGOs beyond administrative difficulties. For example, in Sri Lanka reporting requirements have supposedly been used by government officials to pressure NGOs to direct funding to specific issues and away from others. In the Philippines, the Securities and Exchange Commission has reportedly shared information gathered from the required annual reports of NGOs with various government agencies, including the military and police.<sup>111</sup>

## Finding #2. Foreign funding restrictions have increased, notwithstanding COVID-19

During the COVID-19 pandemic, as governments struggled to provide the required services, NGOs played a pivotal role by providing food, medicine, and hygiene kits, maintaining critical health systems, spreading information and health messaging, and supporting women and young children.<sup>112</sup> However, despite the critical role played by NGOs during this time of dire need, many governments across the Indo-Pacific region continued to enact or propose new restrictions on the foreign funding of NGOs.

NGOs are the closest institutions to communities, so empowering them to participate in crisis response can turn these institutions into an auxiliary arm of the government in crisis management. From the onset of COVID-19, governments across the region relied on NGOs to assist in combatting the various aspects of the pandemic. For example, in the very first week that India entered lockdown in March 2020, Prime Minister Narendra Modi called on NGOs to help the Government by providing basic necessities to the underprivileged, supplying medical and protective gear, and assisting with awareness campaigns on social distancing.<sup>113</sup> NGOs responded to this request and contributed in a myriad of ways.<sup>114</sup>

In Pakistan, when the country was under a lockdown in March 2020, the Government issued registrations to NGOs and no objection certificates to INGOs to enable these or-

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110 FDRA, s. 13.

111 SEC Circular, s. 10.1.

112 "12 Ways NGOs are Helping the World's Poorest during Covid 19," Bond, 9 July 2020, <https://www.bond.org.uk/news/2020/06/12-ways-ngos-are-helping-the-worlds-poorest-during-covid-19/>.

113 "Help Govt Serve Poor: PM Modi to NGOs," Indian Express, 31 March 2020, <https://indianexpress.com/article/india/crime/coronavirus-india-lockdown-help-govt-serve-poor-pm-modi-to-ngos-6339236/>.

114 Shreya Challagalla, "Dealing with the Pandemic: The Role of the NGOs," India Foundation, 1 July 2021, <https://indiafoundation.in/articles-and-commentaries/dealing-with-the-pandemic-contribution-of-ngos/>.

ganizations to provide humanitarian relief in response to COVID-19.<sup>115</sup> As a result, NGOs played a crucial role to stem the economic burden on the low-income groups by providing them rations and medical assistance.<sup>116</sup> In Indonesia, NGOs such as the Red Cross stepped in to actively send stronger public messaging through awareness campaigns, to contain the spread of the virus.<sup>117</sup> Similar scenarios played out across the region.<sup>118</sup>

However, despite early indications that NGO activity was going to be vital, countries across the region continued to increase restrictions on NGOs that receive foreign funding. India is perhaps the starkest example of a country that experienced crippling effects from the pandemic yet simultaneously increased restrictions on cross-border philanthropy. In a surprise move, the FCRA was amended at the height of the first wave of the COVID-19 pandemic in 2020 to further tighten regulations on foreign funding.<sup>119</sup>

Among the changes were requirements prohibiting NGOs from re-granting foreign contributions to other non-profits, mandating all foreign funding to be placed in a specific bank account with the State Bank of India Delhi branch, and imposing a 20% cap on administrative expenses. These additional restrictions sent shock waves through the NGO community in India. As the *New York Times* noted, “a sweeping change to India’s decades-old law governing foreign donations is choking off foreign aid just when the country needs it desperately. The amendment, passed by the government of Prime Minister Narendra Modi in September with little warning, limited international charities that donate to local nonprofits.”<sup>120</sup>

Pakistan, despite temporarily easing restrictions on national and international NGOs carrying out COVID-19 relief work in April 2020,<sup>121</sup> reverted to increasing restrictions on cross-border funding throughout the pandemic. In 2021 and again in 2022, the Government introduced a new NPOs Receiving Foreign Contributions (NRFC) policy, which imposed further restrictions on foreign funding. The 2022 Policy, which replaced the 2021 Policy, includes a prohibition on commencing physical activity on foreign funded

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115 Sohail Warraich, “Striving for space in Pakistan under COVID-19,” *Re-Interrogating Civil Society in South Asia* (Routledge India, 2021) 221-232, at 228.

116 Aamir Latiff, “Pakistan’s Charities Assist in Fight against Corona Virus,” *Asia Pacific*, 26 March 2020, <https://www.aa.com.tr/en/asia-pacific/pakistans-charities-assist-in-fight-against-coronavirus/1780046>.

117 Red Cross, “Red Cross Urges Indonesians to Change Behavior to Curb COVID-19,” Red Cross Press Release, 24 July 2020, <https://www.ifrc.org/press-release/red-cross-urges-indonesians-change-behavior-slow-covid-19>.

118 Asia Development Bank, “Engaging Civil Society Organizations to Enhance the Effectiveness of COVID-19 Response Programs in Asia and the Pacific” (2021) 42 *The Governance Brief*, <https://www.adb.org/sites/default/files/publication/689831/governance-brief-042-civil-society-covid-19-asia-pacific.pdf>.

119 See ICNL, “India’s Foreign Contribution (Regulation) Act,” <https://www.icnl.org/post/assessment-and-monitoring/indias-foreign-contribution-regulation-act-fcra>; ICNL, “India’s 2020 FCRA Amendments Impact on Association,” July 2021, <https://www.icnl.org/post/analysis/indias-2020-fcra-amendments-impact-on-association>.

120 Anupreeta Das, “India’s Strict Rules on Foreign Aid Snarl Covid Donations,” *The New York Times* 12 May 2021, <https://www.nytimes.com/2021/05/12/business/india-covid-donations.html>; Warraich supra note 116, at 228.

121 Imran Mukhtar, “Pakistan Eases Aid Restrictions as Coronavirus Cases Rise,” *The New Humanitarian*, 15 April 2020, <https://www.thenewhumanitarian.org/news/2020/04/15/coronavirus-Pakistan-aid-access-NGO-restrictions>.

projects prior to approval and signing of an MOU with the Economic Affairs Division.<sup>122</sup>

In other countries too, even in the face of the destruction wreaked by COVID-19 and lack of capacity to adequately respond to the pandemic, governments continued to clamp down on the ability of NGOs to raise foreign funding. For example, in the Philippines, a Note Verbale issued in 2021 requires NGOs to receive clearance from the Department of Foreign Affairs (DFA) before they can receive funding from a foreign government. The DFA requires all funds, regardless of mode of disbursement, transfer, or download, to be transferred through the DFA for “appropriate clearance.”<sup>123</sup> The Philippines’ Government also fast-tracked the Anti-Terrorism Act (ATA) during the early days of the pandemic in June 2020. The ATA has reportedly been weaponized throughout the pandemic for the purposes of “red-tagging’ and to silence public discontent regarding serious shortcomings and violent approaches to the handling of the pandemic.”<sup>124</sup>

The Sri Lankan and Thai Governments continued to propose laws that would severely limit the work of NGOs receiving cross-border funding. In Sri Lanka, the government began drafting new legislation in 2022 aimed at stricter monitoring of NGOs, including requiring information on their sources of funding and restricting the purposes for which funds can be used.<sup>125</sup> In February 2021, the Thai Cabinet approved the Draft Act on the Operations of Not-for-Profit Organizations, a second draft of which was approved in January 2022. The Thai draft NPO law is at least partly targeted at the perceived threat of foreign funding, equating the objectives of organizations that use foreign funding to those of “foreign agents.”<sup>126</sup>

In addition to formal restrictions, informal pressures and harassment of NGOs also continued during COVID.<sup>127</sup> As described above, interviewees from many countries in the region detailed ongoing harassment of NGOs.<sup>128</sup>

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122 NRFC, ss. 8(b) and 14(d).

123 See Roy Mabasa, “Foreign Diplomatic Missions Now Required to Clear all NGO Donations with DFA,” Manila Bulletin, 21 February 2021, <https://mb.com.ph/2021/02/21/foreign-diplomatic-missions-now-required-to-clear-all-ngo-donations-with-dfa/>.

124 Ruji Auethavornpipat and Maria Tanyag, *supra* note 101, at 20.

125 Yoshitha Perera, “New Laws to Regulate NGOs and Social Service Orgs: Cabinet Moves to Draft New Legislation,” The Sunday Morning, 14 August 2021, <https://www.themorning.lk/new-laws-to-regulate-ngos-and-social-service-orgs-cabinet-moves-to-draft-new-legislation/>; The National Peace Council of Sri Lanka, “Sudden Appearance of NGO Legislation is Ill Timed,” 16 August 2021, <https://www.peace-srilanka.org/media-centre/media-releases/item/1056-16-08-2021-sudden-appearance-of-ngo-legislation-is-ill-timed>.

126 See The Draft Act on Operations of Not-for-Profit Organisations, 202: Submission to Thailand’s Office of the Council of State, 31 March 2021, <https://www.article19.org/wp-content/uploads/2021/04/ARTICLE-19-submission-NGO-Law.pdf>; Global NPO Coalition, Review of Thailand’s Draft NPO Law and Eight Underlying Principles, [https://fatfplatform.org/assets/Global-NPO-Coalition-on-FATF\\_Thailand-submission-7-28-21.pdf](https://fatfplatform.org/assets/Global-NPO-Coalition-on-FATF_Thailand-submission-7-28-21.pdf); 4 Things to Know About Thailand’s Updated Draft NPO Bill, ICNL, March 2022, <https://www.icnl.org/post/analysis/4-things-to-know-about-thailands-updated-draft-npo-bill>.

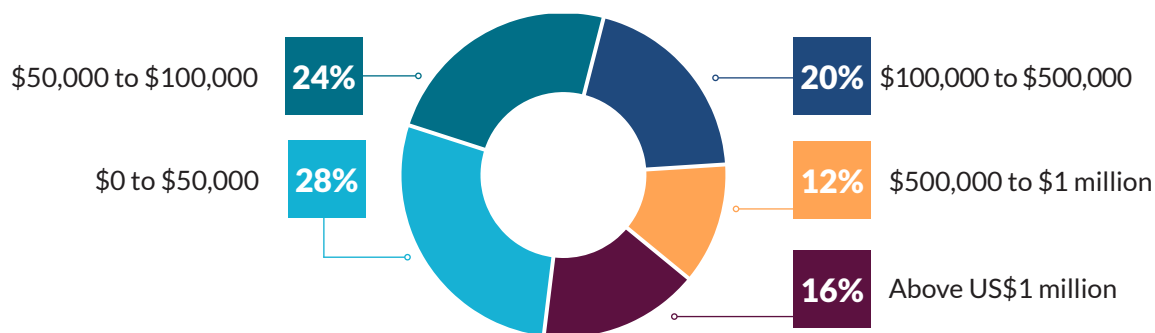
127 See, e.g., Government Responses to COVID-19 in Asia and the Pacific, ICNL, last updated 21 Oct 2022, <https://www.icnl.org/post/analysis/government-responses-to-covid-19-in-asia-and-the-pacific>.

128 See Part V above.

## Finding #3. Funding opportunities have been lost due to foreign funding restrictions

Questionnaire and interview data show that significant funding opportunities have been lost due to the combination of formal and informal restrictions during COVID-19. In answer to the question of whether the extra funds would have been used for COVID-19 response or humanitarian relief, 72% of questionnaire respondents answered affirmatively. Figure 7 shows the extent of the foreign funding lost, as reported in questionnaire responses, with 48% of organizations estimating that restrictions lost them more than US\$100,000, including 16% who estimated losing more than US\$1 million.

Figure 7. Funding lost due to restrictions



In India in particular, NGOs providing vital services during COVID-19 struggled to obtain funds. India's health care system was stretched to the limit by COVID-19. However, many NGOs working on the ground were unable to receive funding from international donors due to the FCRA requirements of registration or prior government approval in order to receive funds. For example, the Hemkunt Foundation based outside New Delhi operated a 24/7 oxygen drive enabling patients to access oxygen cylinders, which were in short supply even in the city's largest hospitals. As the organization expanded its work to Mumbai and other cities, help poured in from all over the world, but the Foundation was not able to accept foreign donations as it was not registered under the FCRA.<sup>129</sup> Individuals with access to foreign funding also found it impossible to access those funds during the pandemic, except by partnering with an NGO with FCRA registration – a near impossible task for those with no previous ties to NGOs – thus cutting off another source of vital funds.<sup>130</sup>

Several donation platforms launched in response to the pandemic, including GiveIndia, Action COVID-19 Team, and Act Grants, attracted large amounts of funding from

129 Catherine Cheney and Amruta Byatnal, "Foreign Aid Regulations, Donor Fatigue, Stymie India Covid 19 Response," Devex, 29 April 2021, <https://www.devex.com/news/foreign-aid-regulations-donor-fatigue-stymie-india-covid-19-response-99778>.

130 Chitra Ramani, "How FCRA Regulations are affecting COVID-19 Relief Work," The Hindu, 29 May 29, 2021, <https://www.thehindu.com/news/cities/bangalore/how-fcra-regulations-are-affecting-covid-19-relief-work/article34674466.ece>.

high net worth individuals and organizations such as Google and Microsoft. However, these crowdsourced funds were not available to NGOs without FCRA registration.<sup>131</sup>

The Indian Government's refusal to renew FCRA registrations has also caused the loss of crucial funds for India's COVID-19 relief efforts. For example, in January 2022, the Government did not renew Oxfam India's FCRA registration. This has resulted in Oxfam severely restricting its work across the country, including important COVID-19 related relief such as setting up oxygen plants, providing lifesaving medical and diagnostic equipment, delivering lifesaving food to the most vulnerable communities, and bridging the learning gap in school education due to COVID-19.<sup>132</sup>

Cancellation of an organization's registration under the FCRA has further implications for domestic NGOs, as the FCRA requires that unutilized foreign contributions must be vested with the Government.<sup>133</sup> Interviewees from India explained that the risk of this asset vesting occurring has affected the willingness of some foreign donors to fund domestic NGOs.

As a result of the difficulties associated with the FCRA, some organizations in India have made the difficult decision to stop taking foreign funds altogether. An interviewee explained that their organization decided it would no longer accept foreign contributions when, as part of the FCRA renewal process, the Central Bureau of Investigation investigated their directors, asking personal questions, including about their children, which were completely unrelated to FCRA renewal.

In other countries too, foreign funding restrictions have resulted in a loss of COVID-19 related humanitarian aid. An interviewee from Pakistan explained that when the pandemic started, all relief work was granted and authorized by the National Disaster Management Authority led by military personnel. Organizations focused on advocating for improved space for civil society organizations to provide relief services for their com-



**India's health care system was stretched to the brink by COVID-19; meanwhile NGOs working on the ground were unable to receive funding from international donors, due to the country's foreign aid regulations.**

131 Cheney and Byatnal, supra note 130; ICNL, "Foreign Funding Barriers Hinder COVID Relief Efforts in India," [https://www.icnl.org/wp-content/uploads/FCRA-in-India-Overview.pdf?\\_ga=2.225076824.310140838.1670978328-106568981.1670253191](https://www.icnl.org/wp-content/uploads/FCRA-in-India-Overview.pdf?_ga=2.225076824.310140838.1670978328-106568981.1670253191).

132 Oxfam, "Oxfam's Reaction to Government of India's Decision to Restrict Foreign Funds," Oxfam Press Releases (January 3, 2022), <https://www.oxfam.org/en/press-releases/oxfam-reaction-government-indias-decision-restrict-foreign-funds>.

133 FCRA, ss. 11(2) and 15(1).

munities were not issued no objection certificates to obtain foreign funding. Another respondent from Pakistan commented on lost funding opportunities due to the Economic Affairs Division asking them to change the theme of a funded program.

NGOs across the region reported obstacles obtaining foreign funding as a result of restrictions. In the Philippines, an interviewee noted that bank accounts may be frozen through the country's anti-terrorism and anti-money laundering laws, which could have a deterrent effect on foreign donors' willingness to provide funds. An interviewee from Bangladesh described lost funding opportunities as a result of their inability to register as a local organization and the stringent registration requirements for INGOs. Even in Malaysia, where there are no formal government restrictions requiring prior Government approval to receive funding, purposeful inaction by the Government has affected the ability of NGOs to raise funds. One interviewee described losing approved funds from a foreign donor because the donor required approval from the Government; despite multiple emails by the organization to personal contacts at the relevant Ministry over a number of months, the necessary approval was never received.

## Finding #4. Foreign funding restrictions are preventing NGO collaboration

Many funding restrictions have made it impractical or impossible for NGOs to collaborate. The most striking example is in India, where under the 2020 FCRA amendments introduced during COVID-19, NGOs are prohibited from making transfers (sub-granting) to other organizations using foreign contributions, including organizations with FCRA certificates.<sup>134</sup> Interviewees from India commented that this restriction has had a significant impact on large collaborative projects. Prior to the 2020 FCRA amendments, a donor could give a grant to one organization to manage funds for all of the partner organizations on a project. However, since the FCRA amendments prohibiting sub-granting, each organization must now receive funds separately. The result is that many of these collaborative

<sup>134</sup> FCRA 2020, s. 3.



If your FCRA registration is cancelled, then any foreign assets that you have, including any balance of money, has to be given back to the Government of India. That is a big fear. So foreign funders are under stress that if the organization is denied the FCRA, the funding will be taken away instead of going to the program.

partnerships are no longer possible, preventing projects being taken to scale, with a disproportionate impact on smaller and grassroots NGOs.<sup>135</sup>

The rule against sub-granting was a deathblow to much of the collaborative work needed in order to respond effectively to the COVID-19 crisis. In March 2020, after a strict lockdown was imposed in India, several NGOs collaborated to help migrant workers stuck on the roads as they were forced to return to their villages. However, after the new rules came into effect in September 2020, collaboration among NGOs became near impossible and severely affected NGO response.<sup>136</sup> An interviewee from India provided the following example: “[T]here are people working on COVID-19 who formed a coalition of organizations. They have 80 members in the coalition. Obviously, no donor is going to write 80 checks, sign 80 agreements, wait for 80 reports. Whereas in the past one organization could receive the grant and then sub-grant to the other 79.”

The second wave of COVID-19 seemed to take the Government by surprise and resulted in many hospitals, particularly in New Delhi and parts of North India, being inundated with COVID-19 patients, many of whom died with insufficient medical attention and support.<sup>137</sup> In rural areas, where healthcare facilities are much weaker than urban areas, the FCRA prohibition on sub-granting has had a pronounced effect. This is because local NGOs in these rural areas typically are not able to directly access foreign funding, but rather depend on larger NGOs to sub-grant funds for their work; as a result, the prohibition on sub-granting resulted in a loss of much-needed income for these small, local NGOs.<sup>138</sup> In addition, given that this FCRA restriction also applies to physical donations, critical supplies such as oxygen concentrators received as a donation from abroad could not be sent to organizations working in rural areas.<sup>139</sup>

135 This interview data is supported by findings from Human Rights Watch, see *supra* note 104.

136 Cheney and Byatnal, *supra* note 130.

137 Uma Purushothaman and John Moolakkattu, “The Politics of the COVID-19 Pandemic in India,” (2021) 10 (10) *Social Sciences* 38, at 386-7.

138 Sruthisagar Yamunan, “Modi want NGOs to Help Fight Covid-19 but their Hands are Tied by Rules his Government Introduced,” *Scroll.in*, 4 May 2021, <https://scroll.in/article/993897/modi-wants-ngos-to-help-fight-covid-19-but-their-hands-are-tied-by-rules-his-government-introduced>.

139 *Id.*



**[In India] it was easier for the donor to give funds to one organization, who would manage those funds on behalf of all the partner organizations. That scenario has completely gone. So if we receive a large amount of foreign funding, we have to implement it on our own. We won't be able to work with smaller organizations ... where we could provide training and capacity building support.**

NGOs have also experienced collaboration issues in Sri Lanka. These issues have arisen because NGOs are not permitted to maintain foreign currency accounts,<sup>140</sup> and all foreign funds received convert automatically into Sri Lankan rupees, resulting in NGOs being left with no foreign currency with which to collaborate with NGOs in other countries. An interviewee from Sri Lanka noted that this situation has been exacerbated by the current foreign currency crisis in Sri Lanka.

## Finding #5. Foreign funding restrictions are increasing administrative and financial burdens on NGOs and causing delays in project implementation

Foreign funding restrictions have created complex bureaucratic hurdles that are burdensome, time-consuming and costly. This is a particular issue when responding to emergencies like COVID-19 because not only is there more urgent use to which those funds and resources can be put, but so many project starts are delayed, making rapid response difficult.

For example, in Bangladesh, India, and Pakistan there are requirements that foreign funding must be directed through particular banks. Counterintuitively, India and Pakistan introduced this requirement in the middle of the COVID-19 pandemic during which NGOs were providing vital services. In India, every NGO registered or granted prior permission under the FCRA can only receive foreign contributions in an “FCRA Account” with a designated branch of State Bank of India in New Delhi.<sup>141</sup> In Pakistan, NGOs with a MOU must not use any other bank account except the designated account provided to the Economic Affairs Division.<sup>142</sup> In Bangladesh, foreign donations can only be made through a specific bank account with a “scheduled bank”; the bank is not permitted to release the foreign funds to the NGO without the approval of the NGO Affairs Bureau.<sup>143</sup>

The administrative consequences of these restrictions in India were described by an interviewee as time consuming, requiring a large amount of paperwork, extremely complex, a “worst nightmare” and creating “complete mayhem.” Funneling COVID-19 related aid through the State Bank of New Delhi proved to be too high a hurdle for many NGOs, particularly during COVID-19. For example, organizations have been prevented from distributing oxygen concentrators from foreign donors and supplying them to the Government because they were unable to open a new bank account in Delhi.<sup>144</sup> Another organization which had raised millions for COVID-19 relief efforts attempted to wire

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140 Foreign Exchange Act No. 12 of 2017 s. 2(2) (Sri Lanka).

141 FCRA 2020, s. 12.

142 NRFC, s. 8.

143 FDRA, s. 9.

144 Sima Kotecha, “India Covid: How Law Stops NGOs Distributing Essential Aid,” BBC, 13 May 2021, <https://www.bbc.com/news/world-asia-india-57095591>.



money to its affiliate on the ground in India to build 2,500 hospital beds for COVID-19 patients. As a result of the requirement to channel aid solely through the State Bank of New Delhi, the money still had not cleared a week later.<sup>145</sup>

In Pakistan, NGOs must also use designated bank accounts.<sup>146</sup> Recognizing that these and other requirements were impeding the ability of NGOs to provide desperately needed assistance to combat COVID-19, the Pakistani Government lifted restrictions in March 2020, but for six months only.<sup>147</sup>

Administrative burdens are also evident in the amount of information that must be provided to government agencies, including extensive records of foreign funds. A respondent from India explained that reporting requirements involved extra resourcing, including hiring a staff member specifically to deal with the accounting required for FCRA compliance. Bureaucratic hurdles also caused unnecessary delays to COVID-19 relief aid, due to increased paperwork and operational requirements around distributing funds.<sup>148</sup> For some NGOs working on the COVID-19 response, the FCRA has made it very difficult to accept foreign aid at all without being in violation of the law.<sup>149</sup>

Similarly, in Bangladesh, prior approval requirements from the NGO Affairs Bureau for projects using foreign funds creates significant administrative hurdles and delays in implementation. One interviewee explained that they have a separate communications team working with the Government on approvals and even then, approval takes so long that 50% of projects are not able to start on time. In Pakistan, NGOs and INGOs have pointed out problems they faced in implementation of projects during COVID-19, such as obtaining clearances from more than a dozen federal government offices and lack of coordination among various arms of the government, including the banking sector and tax collection body.<sup>150</sup> Before restrictions were temporarily eased in March 2020, approval was reportedly taking

<sup>145</sup> Das, supra note 121.

<sup>146</sup> NRFC s 11(d).

<sup>147</sup> Mukhtar, supra note 122.

<sup>148</sup> Purushothaman and Moolakkattu, supra note 138, at 386.

<sup>149</sup> Kotecha, supra note 145.

<sup>150</sup> Kalbe Ali, "International Bodies Criticize Restrictions on NGOs," Dawn, 13 April 2021, <https://www.dawn.com/news/1617934>.



**The compliance requirements are too much, not only for us but for every organization in Pakistan. Previously, 90% of my time was used for strategic thinking, planning, conceiving new models of development, critical engagement. Now 90% of my time is going towards compliance.**

up to four to five weeks, which made emergency response near impossible.<sup>151</sup>

## Finding #6. Foreign funding restrictions are limiting the capacity of NGOs to engage in awareness raising, advocacy, and research

Non-service delivery organizations have been a particular target of governments across the region. Laws in a number of countries are being used to exert pressure on NGOs to both limit certain NGO activities, and to direct NGOs towards projects that advance the Government's political agenda. The dangers of this approach were highlighted during COVID-19. The Asian Development Bank found that during such crises, NGOs are in a position to help achieve improved implementation effectiveness by ensuring responsiveness and integrity in public expenditures and accountability of public officials; detecting and reporting corruption in service delivery; ensuring efficiency in public procurement and distribution; building trust between communities and government authorities; and improving inclusion in government programs by representing the voices and needs of marginalized groups.<sup>152</sup> The necessity for awareness raising and advocacy were also highlighted during the COVID pandemic. For example, across the region, governments engaged in efforts to raise community awareness of COVID-19 and equip communities with the knowledge and skills to prevent viral spread and reduce the risks of contracting the virus. NGO assistance was crucial.<sup>153</sup> These awareness-raising and advocacy activities are personnel heavy, and require a large proportion of funding to be devoted to staff salaries and other personnel expenses.

Governments in India, Bangladesh and Nepal have capped the

<sup>151</sup> Mukhtar, supra note 122.

<sup>152</sup> Vinya Bhargava, "Engaging Civil Society Organizations to Enhance the Effectiveness of COVID-19 Response Programs in Asia and the Pacific," (2021) 42 Asian Development Bank: The Governance Brief, <https://www.adb.org/sites/default/files/publication/689831/governance-brief-042-civil-society-covid-19-asia-pacific.pdf>.

<sup>153</sup> "NGOs Respond to Call for Spreading Awareness on Covid," The Hindu, 12 July 2020, <https://www.thehindu.com/news/national/andhra-pradesh/ngos-respond-to-call-for-spreading-awareness-on-covid/article32060476.ece>.



This might not be a problem for organizations which are providing services because everything is program cost, but for us it's the human resource cost which is spent on research, advocacy, convening. These can easily be construed as administrative expenses. So this 20% restriction doesn't work at all for the kind of organization that we are.

amount of a foreign contribution that can be utilized for administrative expenses at 20%.<sup>154</sup> As a number of interviewees from India noted, this restriction has had significant consequences for organizations engaged in research, advocacy and policy work because their main cost is personnel. The practical effect has been that the only activity that can now be funded from foreign sources is service delivery. However, as noted above, during emergencies like COVID-19, non-service delivery activities also become crucial.

Interviewees from Nepal noted that the 20% cap on administrative expenditure for projects carried out by INGOs<sup>155</sup> can create problems in carrying out their work where, for example, the Government has determined that project coordinator costs and salaries are administrative.

## Finding #7. Foreign funding restrictions are having unintended consequences for service delivery during COVID-19

Foreign funding restrictions are often justified by governments as necessary to curb the influence of foreign agents in domestic matters and protect national sovereignty. The restrictions frequently contain broad language that permit governments to curb the activities of NGOs engaged in advocacy work that Governments find threatening. For example, in India one of the conditions for obtaining a certificate of registration or receiving a grant of prior permission is that the NGO is not likely to use it for “undesirable purposes,”<sup>156</sup> the activity or project is “for the benefit of the society,”<sup>157</sup> and the acceptance of the funding will not affect “the sovereignty and integrity of India,” “the public interest,” or “religious, racial, and social harmony.”<sup>158</sup> In Malaysia, registration and activities are limited by concepts such as “prejudicial to or incompatible with peace, welfare, security, public order, good order or morality”<sup>159</sup> and “purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order or morality.”<sup>160</sup> Pakistan, Indonesia, Bangladesh, Nepal, the Philippines, and Thailand all have similar language in their laws.

This language has been used selectively by governments in these countries to restrict activities of NGOs focusing on governance and rights-based advocacy. For example, interviewees in India have stated they are wary of working in human rights, democracy, governance, constitutionalism, media, advocacy or even civilian awareness campaigns

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154 FDRA (Bangladesh), s. 6(5); FCRA 2020 (India), s. 4; IDCP (Nepal), s. 3.10.7. The 20% cap in Nepal applies to projects carried out by INGOs.

155 IDCP, s. 3.10.7.

156 FCRA, s. 12(4)(a) (vi).

157 FCRA, s. 12(4)(b) and (c).

158 FCRA, s. 12(4)(f).

159 Societies Act, s. 7(3)(a) and 13(1)(c)(ii).

160 Societies Act, s. 5(1).

that could be interpreted as being political in nature.

In Pakistan, interviewees stated that the Government is only renewing the registrations of service delivery organizations, while rights-based organizations are having difficulties renewing their registrations. One interviewee told us that rights-based organizations are in critical danger because their space is being occupied by service delivery organizations working with the Government. In Nepal, an interviewee commented that foreign funding for activities dealing with inequality, caste, and human rights are sometimes labelled as a potential threat to sovereignty. An interviewee from Indonesia explained that the Ministry of Home Affairs must review any paper they are planning to publish and even attend some of their events, interfering with their independence.

Even in countries where there are no formal restrictions on the scope of activities of NGOs, informal pressure causes NGOs to avoid certain types of work. For example, a Sri Lankan interviewee explained that they are reluctant to work on issues such as freedom of religion, thought, and conscience because of how the Government views those issues. Similarly in Malaysia, interviewees explained how the monitoring of human rights groups has made NGOs hesitant to engage in certain types of work because being labelled as a particular type of NGO restricts their ability to do other kinds of work.

While the curbing of advocacy and related activities might be the intended effect of many foreign funding restrictions, because the restrictions are broadly applicable to all NGOs receiving any foreign funding, even the activities of organizations that are engaged in service delivery are negatively impacted. Additionally, as revealed by our interviews, many organisations involved in advocacy are also engaged in service delivery; curbing their activities therefore also results in the curbing of critical humanitarian aid.

The consequences of these policy approaches were clearly felt during the COVID-19 pandemic. For example, in 2017, Pakistan expelled 29 INGOs, many of which were not involved in promoting human rights or good governance but were indeed primarily service organizations, such as Plan and Marie Stopes International-



**It is no longer possible to write a proposal to a donor, Indian or foreign national, which contains the terms human rights, democracy, governance, or constitutionalism; there's a whole set of words you can no longer use.**

al.<sup>161</sup> Many of these organizations would have been in a position to play an important role in Pakistan's response to COVID-19.

Since 2011, India has cancelled more than 20,000 FCRA licenses.<sup>162</sup> Organizations that lost their FCRA licenses in 2022 include NGOs such as Oxfam India, Tuberculosis Association of India, the Ramakrishna Mission, Missionaries of Charity founded by Mother Teresa, and educational institutions such as the Delhi University and the Indian Institute of Technology-Delhi. A few of these licenses were reinstated, but many remain cancelled.<sup>163</sup> When organizations like these have their licenses cancelled, they are unable to carry out many of their humanitarian activities, and in some cases, unable to stay in operation. As discussed above, inability to raise foreign funds, restrictions on collaboration, administrative burdens and delays, and restrictions on administrative costs, also curbed the ability of many service delivery organizations to effectively assist in pandemic relief.<sup>164</sup>

## Finding #8. Foreign funding restrictions are having a chilling effect on NGOs

Our interview data shows that in a number of the countries surveyed, foreign funding restrictions, whether formal or informal, have produced a chilling effect on NGOs. This chilling effect manifests in three ways: threatening an NGO's very existence; causing NGOs to leave some countries altogether; and silencing individuals who work at NGOs.

### EXISTENTIAL THREAT TO NGOS

For some local NGOs, foreign funding restrictions have created an existential threat, leading them to significantly reduce their operations and programs and in some cases, to shut down altogether. As noted throughout this report, in India the effect

161 Kiran Stacey and Farhan Bokhari, "Pakistan Orders Expulsion of 29 International NGOs," The Financial Times, 14 December 2017, <https://www.ft.com/content/15d38124-de54-11e7-a8a4-0a1e63a52f9c>.

162 Bharti Jain, "Foreign Funding Licenses of 20k NGO Cancelled since 2011; Govt," Times of India, 10 February 2021, <https://timesofindia.indiatimes.com/india/foreign-funding-licences-of-20k-ngos-cancelled-since-2011-govt/articleshow/80778113.cms>.

163 Kunal Purohit, "In India NGOs Face Funding Bans Reel under 'Strangulating' Laws," Devex, 13 January 2022, <https://www.devex.com/news/in-india-ngos-face-funding-bans-reel-under-strangulating-laws-102404>.

164 See Findings #4, #5, and #6.



**In 2017, Pakistan expelled 29 INGOs, many of which were primarily service organizations. Many of these organization would have been in a position to play an important role in Pakistan's response to COVID-19.**

of the FCRA has been pronounced. Multiple interviewees from India commented that the chilling effect of the FCRA is such that many organizations unable to access foreign funding are having to shut down their operations. Some organizations are also losing their local donors because these Indian donors are concerned that, if an NGO loses favour with the Government, then they will be implicated by association.<sup>165</sup>

Similarly, in Bangladesh, an interviewee explained that as a result of the foreign funding restrictions, foreign aid agencies are bypassing NGOs altogether and instead channelling funds through commercial contractors, who are not subject to the restrictions. In Indonesia, societal organizations receiving foreign support without Government approval are subject to suspension or dissolution.<sup>166</sup> One interviewee explained that three organizations have already been dissolved by this law without going through a court process and with no opportunity for the organizations to appeal the decisions.

In other countries, donors are afraid to fund NGOs involved in rights-based and advocacy work for fear of antagonizing the government. For example, an interviewee in Pakistan commented that many rights-based organizations do not address structural and policy issues that are enhancing poverty or criticize the Government because the Government has told them that they must not support a rights-based agenda and they are afraid of the Government. This chilling effect is particularly pronounced in the Philippines, with personal examples given by interviewees. For example, one interviewee told us there is a certain hesitation on the part of foreign governments to fund them because all of their projects are centered on the accountability of human rights violators. Another told us that the informal blacklisting, or red-tagging, of organizations, including their own, has created a stigma among foreign donors who are concerned about antagonizing the Government.



**Many organizations are planning for the long term to ween off foreign contributions, but they need the transition time, so they are finding ways to comply, adjust, and adapt. They do everything. But in the long run most are reconciled to the fact that they should look at alternate options instead of this dependence on foreign contributions.**

<sup>165</sup> Purohit, supra note 165.

<sup>166</sup> Presidential Regulation Number 18 of 2017 on Procedures for Accepting and Giving Donations by Community Organizations in the Prevention of Terrorism Financing Crimes.

## NGOS ARE LEAVING SOME COUNTRIES IN THE REGION

In some cases, regulatory restrictions are causing NGOs to leave countries altogether. As an INGO interviewee noted, after Pakistan was put on the Financial Action Task Force grey list, the Government and the Economic Affairs Division made the environment very inhospitable in term of restrictions, so a number of INGOs have left.<sup>167</sup> Similarly, an INGO interviewee in Bangladesh commented on the chilling effect of the restrictions on their ability to work there. They often lose funding to other countries in the region like Myanmar, Cambodia, Laos, or Vietnam which do not have the same restrictive implementation context as Bangladesh. Similarly, in Thailand, the Government's proposed legislation is likely to result in some NGOs leaving Thailand altogether. One interviewee noted that they have arrangements in place to move money to Korea if the new law comes into effect and makes working in Thailand too difficult.

## INDIVIDUALS WORKING AT NGOS ARE BEING SILENCED

These restrictions are also having a chilling effect on individuals who work at many of these NGOs, silencing and preventing them from carrying out their work. For example, an interviewee from India described how they had been personally affected: "Last week for the first time I actually said no to an invitation [to speak on the closing of civil society space] at the UN because I truly fear what the consequences could be. And there are very few people who are willing to speak on that topic at all."

The interviewees from all of the countries surveyed overwhelmingly felt that they had to preserve their anonymity in this study. The chilling effect of government restrictions and closing civic space also likely explains hesitance to respond to the study's written questionnaires. As an interviewee from India commented: "You see a lot of self-censorship. People do not want to be named. It's a scary environment. It's not only the FCRA. Every little piece of legislation is now being used by the Government and the bureaucracy to harass civil society groups across the board. Therefore, people are quite cautious."

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<sup>167</sup> For example, the registrations of at least 15 INGOs were temporarily rejected in 2015. See Warraich, *supra* note 116, at 224.



To give you a sense of how great the threat is perceived to be, people don't even want to associate their names with a research report.

# VII. CONCLUSION

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This empirical study gathered data on the impact of foreign funding restrictions on NGOs in nine countries in the Asia Pacific region. The data clearly demonstrates that the restrictions – both formal and informal – have had a significant impact on the work and fundraising capacity of NGOs that receive foreign funding, harming the sector at a time when its ability to respond to the ongoing COVID-19 crisis was critical.

Foreign funding restrictions apply in all of the countries surveyed. In some countries, there are comprehensive laws and regulations that are specifically directed at NGOs receiving foreign funding, while in others there is either a combination of specific laws and regulations and generally applicable laws and regulations that impact NGOs receiving foreign funding, or only the latter. While NGOs in those countries with specific laws and regulations covering the entire range of restrictions are impacted most severely, NGOs in all of the countries surveyed reported that they were negatively impacted by the restrictions.

Governments in the region are using laws and regulations on the books, the mode of implementation of those laws and regulations, and informal restrictions such as harassment and intimidation to restrict the fundraising capacity and work of civil society. Governments tend to be especially concerned about the work of organizations engaged in particular types of civil society initiatives, notably rights and governance-based activities. However, given that the reach of restrictions often extends more broadly, uniformly across the entire sector, a wider range of NGOs – including thousands of service and humanitarian relief-oriented organizations – are impacted.

Many NGOs in the region appear to be at least partly funded by foreign donors and the restrictions are having a broader chilling effect on these organizations. A number of NGOs in the region are questioning their dependency on foreign funds and even the viability of their continued existence, while others are leaving certain countries altogether. Moreover, for many, loss of foreign funding translates to loss of domestic funding, particularly where NGOs may be stigmatized by the government, as happens in multiple jurisdictions. The loss of a dynamic civil society has wider implications for countries in the region, including with respect to the promotion of democratic rights and freedoms, as well as the achievement of key development outcomes.<sup>168</sup>

As climate change and conflict trigger more humanitarian crises in the Indo-Pacific, authoritarian crackdowns on civic space – including cutting off resources for civil society – can only hurt the most vulnerable citizens who rely on the relief provided by charitable organizations. In time, this means that the most significant impact of the foreign funding restrictions will ultimately be on the people and communities that these NGOs can no longer serve.

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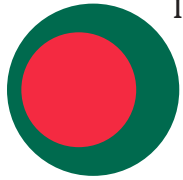
<sup>168</sup> See Dupuy, Fransen and Prakash, *supra* note 16, at 7-8.



# APPENDIX

## LEGAL AND REGULATORY FOREIGN FUNDING RESTRICTIONS BY COUNTRY

### Bangladesh



In 2016 Bangladesh's Parliament passed a controversial new law, the Foreign Donations (Voluntary Activities) Regulation Act 2016 (FDRA),<sup>169</sup> which regulates the activities and operations of NGOs that receive foreign funding. The registration requirements and prior government approvals required under this legislation have created significant burdens for NGOs, particularly in the way that they are implemented. The Bureau of NGO Affairs also has significant discretion to cancel or withhold registration of NGOs.

#### REGISTRATION REQUIREMENTS

In Bangladesh, prior to receiving foreign funds, NGOs must register with the NGO Affairs Bureau by providing information including the amount of the donation, its source, and how it will be used.<sup>170</sup> Once issued, a registration certificate has a 10-year duration.<sup>171</sup> A respondent from Bangladesh explained that registration is also required with local government authorities, which creates issues for INGOs:

If you don't have registration with the local government authority, Department of Social Service in Bangladesh (DSS) – you can't implement a local community-based project by yourself. One of the critical challenges for INGOs is we can't really have a partner without completing due diligence as per the Government's format. So that really restricts us in terms of selecting a suitable partner for implementation. Whereas the local nonprofits that are registered under the DSS can access Government funds, they can't directly access the funds that are coming through the foreign aid channels. For example, a USAID fund that is coming directly from the US Government is not coming into a local CSO who doesn't have a foreign donation registration.

#### PRIOR GOVERNMENT APPROVALS

Before receiving a foreign donation, NGOs must obtain approval from the NGO Affairs Bureau for the project to be funded.<sup>172</sup> An interviewee commented on the significant administrative hurdles and delays the implementation of this restriction has created:

We have a separate communications team working with the Government to get approvals. To obtain a permit the format is very detailed where we have to share all this information – who is funding, how much, what will be the

<sup>169</sup> [http://www.parliament.gov.bd/images/pdf/acts\\_of\\_10th\\_parliament/acts\\_of\\_12th\\_session/43.pdf](http://www.parliament.gov.bd/images/pdf/acts_of_10th_parliament/acts_of_12th_session/43.pdf); [https://www.icnl.org/wp-content/uploads/Bangladesh\\_FDVA.pdf](https://www.icnl.org/wp-content/uploads/Bangladesh_FDVA.pdf).

<sup>170</sup> FDRA, ss. 3 and 4(2).

<sup>171</sup> FDRA, s. 4(3).

<sup>172</sup> FDRA, s. 6(1).

administrative cost, what are going to be the program benefits. So these are like pre-reports. What is very disturbing for the development projects is that sometimes the approval takes more than six weeks. That means 50% of the projects that are funded by development partners don't start on time.

**The respondent also provided a further example of how the onerous bureaucratic approval process has affected a particular project:**

I just submitted a project for [a US company] and they are going to provide us with [a product] for populations who need access to safe water during emergency. The Government is really interested in why we are accepting the donation. I had to write down intricate information on why we need the product, where we will be using it, how will we be using it, and then they also added another condition – this looks like a medical good, so we need to get approval from the National Drug Administration Authority. That means we have to add another layer of information to obtain the approval from the national drug agency, and the national drug agency might send it to the Ministry of Environment.

## **CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE**

Any violation of the FDRA may result in cancellation or postponement of registration by the Bureau of NGO Affairs, or where a foreign donation is received without prior approval, a fine may be imposed ranging from the amount of the donation received and three times that amount.<sup>173</sup> An interviewee also explained that another penalty for starting a project without prior approval is that bank accounts can be frozen:

Until or unless you have the FD6 approval for the development projects or the FD1 and FD2 approval for the emergency projects, you are not in a position to start any project or even the banking. Because when you talk about international funding that actually comes through the global banking channels, the Government will just freeze the bank account if you receive money from any Government and you don't have the FD6 approval, which is issued by the Prime Minister's office.

## **RESTRICTIONS ON ACTIVITIES**

NGOs in receipt of foreign funding must not make any “malicious and indecent” comments regarding the constitution of Bangladesh or any of its institutions or engage in any “anti-state activities.”<sup>174</sup> There are various consequences, including fines or cancellation of registration (as noted above).<sup>175</sup>

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<sup>173</sup> FDRA, s. 15(b) and (c).

<sup>174</sup> FDRA, s. 14.

<sup>175</sup> FDRA, s. 15.

## REPORTING REQUIREMENTS

Registered NGOs must submit reports of their activities to the Bureau of NGO Affairs.<sup>176</sup> A respondent described the bureaucratic process involved in the submission of these reports:

You have to submit a report to the Government on a yearly basis. So every year you have to report on how much money you received for the project, how much money you spent, and if the Government wishes to audit that you will have to make sure you have a disclosure that the Government can do the audit and ensure financial transparency. Once the project is finished, you have to submit a completion report which has to be endorsed by a number of line ministries, including the local government where you implement the project.

## RESTRICTIONS ON OPERATIONS

Registered NGOs must submit to inspections and monthly coordination meetings with the NGO Bureau's representatives.<sup>177</sup> In addition, foreign donations can only be made through a specific bank account with a "scheduled bank," and the bank is not permitted to release the foreign funds to the NGO without the approval of the NGO Affairs Bureau.<sup>178</sup> There is also a 20% cap on the amount that can be utilized for administrative expenses.<sup>179</sup>

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176 FDRA, s. 13.

177 FDRA, s. 10.

178 FDRA, s. 9.

179 FDRA, s. 6(5).

## India



India stands out for its draconian restrictions on foreign funding of NGOs both in terms of the laws and regulations on the books and in how they are implemented. India's detailed legislative and regulatory scheme is contained in the Foreign Contributions Regulation Act 2010 (FCRA) and its associated regulations,<sup>180</sup> which was amended during the COVID-19 pandemic by the Foreign Contribution (Regulation) Amendment Act 2020 (FCRA 2020)<sup>181</sup> to further tighten regulations on foreign funding. In 2021, the constitutionality of three of these amendments was unsuccessfully challenged in the Supreme Court of India.<sup>182</sup> A number of the restrictions are having a significant impact on NGOs in India, including restrictions on transfers of funds, or sub-granting and the 20% cap on the amount of foreign funds that can be applied to administrative expenses. In addition, the process of FCRA renewal has created a climate of fear among the NGO sector and the creation of a "watchlist" of foreign donors has further restricted foreign funding.<sup>183</sup>

### REGISTRATION REQUIREMENTS

India's FCRA requires NGOs to obtain a "certificate of registration" from the Ministry of Home Affairs in order to receive foreign contributions.<sup>184</sup> The regulatory scheme contains detailed qualifying criteria for registration,<sup>185</sup> including that the organization applying has met certain requirements for three years.<sup>186</sup> If FCRA registration is approved, the organization is authorized to receive foreign contributions for up to five years.<sup>187</sup> One interviewee explained the difficulties they have encountered in trying to register under the FCRA:

We have been trying to get FCRA registration. It's been two years. Despite putting everything in order and sending, there's no communication from the authorities' end. The pandemic has also slowed down the process. But there's hardly any interaction and very limited follow up systems. It is a one-way communication. No matter how much you write you don't get a response.

**Renewal of an FCRA registration certificate is predicated on an inquiry by the Government to satisfy itself that the NGO has fulfilled all of the conditions for registration**

180 Ministry of Law and Justice, No. 42 of 2010 (26 September 2010), [https://fcraonline.nic.in/Home/PDF\\_Doc/FC-RegulationAct-2010-C.pdf](https://fcraonline.nic.in/Home/PDF_Doc/FC-RegulationAct-2010-C.pdf). See also the Foreign Contribution (Regulation Rules) 2011 (FCRR).

181 Ministry of Law and Justice, No. 33 of 2020 (28 September 2020), [https://fcraonline.nic.in/home/PDF\\_Doc/fc\\_amend\\_07102020\\_1.pdf](https://fcraonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf). See also Foreign Contribution (Regulation) (Amendment) Rules 2020 (FCRR 2020), Ministry of Home Affairs, Notification (10 November 2020). See [https://fcraonline.nic.in/home/PDF\\_Doc/fc\\_rules\\_12112020.pdf](https://fcraonline.nic.in/home/PDF_Doc/fc_rules_12112020.pdf)

182 Noel Harper & Ors v. Union of India & Anr W.P. (C) No. 566 of 2021 (SC) (India).

183 See Sugata Ghosh, "Hewlett Foundation in FCRA 'Watchlist,'" The Economic Times, 16 March 2022, [https://economictimes.indiatimes.com/news/india/hewlett-foundation-in-fcra-watchlist/articleshow/90245762.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/india/hewlett-foundation-in-fcra-watchlist/articleshow/90245762.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

184 FCRA, s. 11(1).

185 FCRA, s. 12(4).

186 FCRR 2020 Rule 6(i), amending FCRR rule 9(1).

187 FCRA, s. 12(6).

enumerated in the FCRA.<sup>188</sup> The respondents from India explained that the lengthy and opaque renewal process has become very challenging for NGOs and their foreign donors. As one respondent noted:

There is absolutely no transparency. There is no regular communication from the FCRA authorities. What they are doing every three months is extending the deadline. All those organizations who have applied for renewal were given an extension to the 31st of December, then to the 31st March, then 30th June. This is difficult for donors because if there is a project with a duration of three or four years, they don't want to give that commitment on the basis of three-month extensions. They want a full renewal. Only then will they be able to give that money. We have three to four projects in the pipeline, but because we haven't received the renewal as yet we're not able to strike a deal with the donors that this funding is for three years. So 11,000 NGOs have no information whether things will be approved or not.

Another commented:

We applied for renewal July last year. Now it has been a year and online it shows that we are in process. Like hundreds of others, we still haven't got our FCRA renewal and we are waiting. I think the authorities are just looking at each organization applying for renewal as if it's their first time, so that there has to be a Central Bureau of Investigation inquiry. The CBI officer comes to your place of work and checks whether you are a paper organization or if you have a physical presence. They ask for records, they ask for accounts, they ask who else is working in the office, does this office belong to you, who are your board members, we'd like to meet your board members. All this takes time. The Government doesn't have the machinery.

## PRIOR GOVERNMENT APPROVALS

In India, unregistered NGOs who wish to accept foreign funding must seek prior permission from the Ministry of Home Affairs, which is valid only for the delineated purpose and from that particular source.<sup>189</sup> The NGO must “submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given.”<sup>190</sup> The regulatory scheme contains detailed qualifying criteria for prior approval to be granted.<sup>191</sup> In addition, the legislation provides that the Government may approve “the source or sources from which the foreign contribution shall be accepted.”<sup>192</sup> In implementing this law, the Government created a “watchlist” of foreign funders and any funding received from an organization on that list must be approved for clearance by the

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188 FCRA 2020, s. 1, amending FCRA s. 16(1).

189 FCRA, ss. 11(2), 12(6).

190 FCRR 2020 Rule 6(iii)(C), amending FCRR Rule 9(1).

191 FCRA, s. 12(4).

192 FCRA, s. 11(3)(iv).

**Ministry of Home Affairs.<sup>193</sup> One respondent commented on the current watchlist:**

There's a list of 36 donors who have been put on the so called watchlist - technically the prior permission list. If you look at that list, there are Christian organizations, organizations working on climate, organizations working on human rights. Many Dutch and Danish NGOs are on the watchlist.

**Respondents noted the significant effect this watchlist has had on foreign funding:**

[The watchlist] includes organizations like Global Giving, Omidyar Network. You cannot be receiving money from them without Government approval and that is seldom given. It's almost like they have banned them, but they don't say they have been banned, [instead] they have been put under prior approval. So that kind of witch-hunting goes around. I actually had a query from an organization who said, "we have signed a grant agreement with Omidyar but now we are having second thoughts whether we should even take money from them." So for the donor and the donee there is just this constant anxiety and fear that has been created. The Government works on this fear psychosis. Many were in the Global Giving Program but now they feel that oh my god just forget it, let's look at some other alternative.

## **CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE**

The FCRA provides the Government with broad discretionary power to cancel an organization's FCRA registration where, for example, it is in the "public interest" to do so.<sup>194</sup> If an NGO's registration is cancelled, the organization will not be eligible for registration or grant of prior permission for three years from the date of cancellation.<sup>195</sup> It has been reported that the Government has cancelled the FCRA registrations of almost 1,900 NGOs from 2017-2021 for violating provisions of the FCRA.<sup>196</sup> One interviewee gave an update on this situation for 2022 and emphasized the impact this restriction is having on NGOs:

At the start of the year, we had about 20,000 organizations that had FCRA permissions, of which 6,000 have now been cancelled. So that leaves about 14,000. I think about 2,000 have got their approvals. So there are another 12,000 organizations whose approval is pending. Anyone whose approval is pending is very afraid to speak out. They don't want to do anything that could jeopardize their approval process.

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193 See Sugata Ghosh, "Hewlett Foundation in FCRA 'Watchlist,'" The Economic Times, 16 March 2022, [https://economictimes.indiatimes.com/news/india/hewlett-foundation-in-fcra-watchlist/articleshow/90245762.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/india/hewlett-foundation-in-fcra-watchlist/articleshow/90245762.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

194 FCRA, s. 14(1)(c).

195 FCRA, s. 14(3).

196 See "Govt Cancelled FCRA Licence of 1,900 NGOs in last Five Years," Times of India, 9 February 2022, <https://timesofindia.indiatimes.com/india/govt-cancelled-fcra-licence-of-1900-ngos-in-last-five-years/articleshow/89452240.cms>.

Penalties for violations or even voluntary cancellation of registration under the FCRA provide that the unutilized or unreceived amount of the foreign contribution shall not be utilized without prior approval of the Government.<sup>197</sup> The interviewees described further penalties that the government now employs and the severity of the consequences of these penalties. As one individual stated:

The penalties are so severe that it makes you very, very cautious. They can freeze your bank accounts now for 365 days. How do you function if your bank account is frozen for a year? So that's one possible consequence. The other one is even more strange. If they decide to fully cancel your FCRA, they can actually seize any assets that were created using FCRA money.

Another commented on the consequences of FCRA cancellation for donors:

If your foreign contribution registration is cancelled, then any foreign contribution assets that you have including any balance of money has to be given back to the Government of India. They take control of that and that is a big fear. So lots of foreign funders are under stress that if the organization is denied the FCRA approval, funding will be taken away instead of going to the program.

One interviewee noted that this penalty is in place even where, as in their case, they wish to voluntarily surrender their FCRA:

The Government has very fortunately given us the opportunity to voluntarily surrender our FCRA if we want to. But the bad news is that if you have any FCRA assets, then even on a voluntary surrender you have to give those assets to the Government of India. I'm happy to give up my FCRA but I can't. If I do that, I have to give my corpus to the Government of India. This is a big piece people don't know, that you can be punished for even voluntarily cancelling.

## RESTRICTIONS ON ACTIVITIES

NGOs in India who have been granted a registration certificate or who have received prior government approval to receive foreign funds are required to “utilize such contribution for the purposes for which the contribution has been received.”<sup>198</sup> There are also restrictions on the scope of activities which can be undertaken using foreign funding.<sup>199</sup> For example, one of the conditions for obtaining a certificate of registration or receiving a grant of prior permission is that the NGO is not likely to use it for “undesirable purposes,”<sup>200</sup> the activity or project is “for the benefit of the society,”<sup>201</sup> and the acceptance of the funding will not affect “the sovereignty and integrity of India,” “the public interest,” or “religious,

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197 FCRA, ss. 11(2) and 15(1).

198 FCRA, s. 8(1)(a).

199 FCRA, s. 8(1)(a).

200 FCRA, s.12(4)(a)(vi).

201 FCRA, ss. 12(4)(b) and (c).

**racial, and social harmony.”<sup>202</sup> As two respondents from India commented:**

This is the problem I describe as you have to colour within the lines. The problem is the lines are not static. The lines themselves are moving. So you don't know what is going to trigger a response from the Government. Therefore, everyone is withdrawing as far as possible from the lines because you don't know where the lines are shifting. To give you an example, it is no longer possible to write a proposal to a donor, Indian or foreign, which contains the terms human rights, democracy, governance, constitutionalism - there's a whole set of words which you can no longer use.

There are some areas that you just can't fund anymore through foreign funding. Nothing to do with the media, nothing to do with advocacy, nothing to do with campaigning, and even research into these areas. You can only use foreign money for a limited set of safe purposes.

**There is also a prohibition on NGOs that are deemed by the Government to be “of a political nature” receiving foreign contributions,<sup>203</sup> which has presented issues for NGOs whose work could be broadly construed as political. As one respondent explained:**

How do you define activities of a political nature? As part of our work with local government institutions, we do a lot of training programs for elected representatives. Many of those elected representatives belong to one of the political parties. We also do civilian awareness campaigns. So it's participating in the electoral process, which could easily be construed as a political activity. But actually these are civic education activities. Because of the vagueness that the FCRA Act and rules use, it's a matter of interpretation. There is scope for misinterpretation and varied treatment.

**In addition, under the recent FCRA amendments NGOs are prohibited from making transfers, or sub-grants, to other organizations using foreign contributions.<sup>204</sup> Respondents from India commented that this restriction has had a significant impact on large collaborative projects, including those providing COVID-19 relief. For example:**

Before this ban on sub-granting, a partner organization would pitch for a grant or we would pitch for it. We can no longer do those kinds of partnerships. Each one has to get a separate remittance from a foreign donor. For example, there are people working on COVID who formed a coalition of organizations. They have 80 members in the coalition. Obviously no donor is going to underwrite 80 checks, sign 80 agreements, wait for 80 reports. Whereas in the past one organization could receive the grant and then sub-grant to the other 79 - so it's preventing that type of coalition work.

**Another respondent noted that this has prevented them from taking projects to scale and from working with smaller local NGOs:**

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<sup>202</sup> FCRA, s.12(4)(f).

<sup>203</sup> FCRA, s. 5(1).

<sup>204</sup> FCRA 2020, s. 3, amending FCRA s. 7.



Although we never acted as a donor agency to receive funds and re-grant funds to another organization, it was easier for the donor to give funds to one organization. So we would manage those funds on behalf of all the partner organizations. That scenario has completely gone. If we receive a large amount of foreign funding now, we have to implement it on our own. We won't be able to work with smaller organizations or medium-size organizations where we could provide training and capacity building support. For example, one program we were discussing with the donor involved scaling up in 20 cities. But we didn't want to implement that program in 20 cities on our own. We wanted to work with 20 other organizations. Since subgranting is no longer allowed, we had to say to the donor, we are not able to scale up this program to this level.

**Another interviewee commented on the effect this has had on foreign donors who wish to make grants for large-scale projects involving multiple organizations:**

Foreign donors didn't know the small grassroots organizations, but they trusted the big intermediaries who would do the due diligence and ensure the money was well utilized. It has become more cumbersome. Foreign funders much prefer to give one large grant to an intermediary rather than make these small, small grants. Donor fatigue has set in. There was a time when they just gave the intermediary one large lump sum and told them this is to be distributed among 100 organizations. Now for a grant to many different organizations they say, let's look at some other countries to support.

**According to interviewees, these types of restrictions are limiting the type of humanitarian and development work that can be done, and causing donor flight to other, more open jurisdictions.**

## REPORTING REQUIREMENTS

In India, NGOs that have been registered or received prior approval under the FCRA must report to the Ministry of Home Affairs the amount of each foreign contribution received, the source and manner in which it was received, and “the purposes for which and the manner in which” it was used.<sup>205</sup> Interviewees note how cumbersome these requirements are in practice, particularly given how difficult Government websites are to navigate:

The websites are very clunky, so people are struggling just to update forms. Sometimes the forms become circular. For example, if you want to report a change of trustees, that is one kind of form that you have to fill out. Now, when you try to file your annual return, it will report all the trustees as they have it in their data set. So you can't change that until you file this, but if you file this you'll be filing the wrong set of names. So some of the features are just circular logic which are impossible to navigate.

## RESTRICTIONS ON OPERATIONS

**Every NGO registered or granted prior permission under the FCRA can only receive foreign contributions in an “FCRA Account” with a designated branch of State Bank of**

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<sup>205</sup> FCRA, s. 18(1).

**India in New Delhi.<sup>206</sup> Respondents noted that while this was not particularly onerous for NGOs located in cities, it created a significant burden for NGOs in rural areas.**

Opening the State Bank of India bank account was not an easy task. It took a while. There was a lot of paperwork. Most of the urban organizations, including us, have overcome that hurdle. But for people in rural or district areas, they would go to a State Bank of India branch who were clueless on the FCRA, so they went through the worst nightmare. It was complete mayhem.

**Another respondent similarly noted problems this requirement posed for organizations around the country:**

I have been on the road for the last three months visiting hundreds of organizations. All of them have faced this problem...the sheer logistics and uncooperative attitude from bankers. People had to come to the State Bank of India in New Delhi physically. Can you imagine from all parts of the country people are travelling to Delhi just to open a bank account?

**In addition, separate records must be maintained with regard to all receipts and disbursements of foreign funds.<sup>207</sup> One respondent explained the extra resourcing needed to ensure that this requirement is met, particularly as it is not consistent with reporting requirements for other purposes:**

It means that we had to hire an extra person in the finance team who just looks after the FCRA accounts. It's not just a separate account. If it was just a separate account, that would be easy. But here, you're actually having to use different accounting principles. FCRA requires you to account on a cash basis, so the day that a donor gave me money I had to report that income even though I'm going to use it over a period of 12 months. The income tax reporting requires me to use a mercantile system of accounting, which means I will only report the income when I actually use it for a program. So it's not just different books of accounts, it's different systems of accounting.

**There is also a 20% cap on the amount of a foreign contribution that can be utilized for administrative expenses.<sup>208</sup> As a number of respondents from India noted, this restriction has had significant consequences for NGOs, particularly in terms of being able to pay salaries outside of staff doing fieldwork as part of a program, which makes it far more difficult to utilize foreign funding.**

The bigger hurdle is restriction on your admin costs which cannot be more than 20%. To grow programs I need to pay adequate salaries to people. With the restriction on 20% administration expenses, how am I going to do it? So even if I get money from [foreign] funders, how can I use it?

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<sup>206</sup> FCRA 2020, s. 12, amending FCRA s. 17.

<sup>207</sup> FCRA, s.19.

<sup>208</sup> FCRA 2020, s. 4, amending s. 8(1)(b).

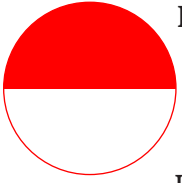
**One interviewee emphasized that the practical result of this restriction is that foreign funding can only be used to fund service delivery:**

This restriction is a particular problem for anyone who does research or policy analysis or advocacy or anything like that where your main cost is personnel. If you're a service delivery organization where you're feeding children or you're vaccinating people, then your overheads are likely to be below 20% because your program expenses are so large. So basically it means that almost the only kind of work you can now finance through foreign funding is service delivery.

**Similarly, another interviewee commented that this restriction has disproportionately affected research and advocacy organizations:**

This might not be a problem for organizations which are providing services because everything is program cost - but for us it's the human resource cost which is spent on research, spent on advocacy, spent on convening and those can easily be construed as admin expenses. So this 20% restriction, it doesn't work at all for the kind of organization that we are.

# Indonesia



Indonesia has been going through a democratic transition process since 1998, following the end of three decades of Suharto's authoritarian "New Order" regime, which stifled the activities of civil society organizations.<sup>209</sup> Following regime change in 1998, the environment for CSOs in Indonesia improved and the number of CSOs increased.<sup>210</sup>

In Indonesia, there are laws and regulations applying to foreign NGOs and organizations who wish to receive foreign assistance, in particular the Ministry of Home Affairs Regulation No. 38 of 2008 on the Obtainment and Granting Societal Organization Donations From and To Foreign Entities,<sup>211</sup> which applies to societal organizations (known as Ormas). While CSOs can also take the form of other legal entities, including foundations and associations which have their own laws and regulations, it is the legal and regulatory regime governing societal organizations overseen by the Ministry of Home Affairs that contains restrictions on foreign funding.

## REGISTRATION REQUIREMENTS

NGOs who are not registered as foundations or associations, but rather are societal organizations wishing to receive foreign assistance must register with the Ministry of Home Affairs, other government agencies and/or regional or local government bodies.<sup>212</sup> As one interviewee explained:

I think because we are not under the Ormas law, we define ourselves, the legal entity, as a foundation. But along with other civil society organizations we are in the coalition for freedom of association and in our work with our colleagues at the provincial level we found that there are many cases where organizations based at the provincial and regional level have to be registered as Ormas with the Home Office in order to access funds, be it foreign funds or provincial.

**Registration as Ormas becomes important if an organization wants to bid for government projects. As explained by an interviewee:**

In order to compete with other organizations we have to be registered as Ormas in the Home Secretary office. It's not enough to be registered as a foundation, we have to have another registration from the Home Secretary office, so this regulation really limits the options for most CSOs.

209 See Eryanto Nugroho, "Changing Legal Environments for Civil Society Organizations: Bill on Societal Organizations (RUU Ormas) and Freedom of Association in Indonesia," (2013) 16(1) The International Journal of Not-for-Profit Law, <https://www.icnl.org/resources/research/ijnl/bill-on-societal-organizations-ruu-ormas-and-freedom-of-association-in-indonesia>.

210 Id.

211 Regulation No. 38 of 2008 (MHA Reg 38), [https://www.icnl.org/wpcontent/uploads/Indonesia\\_indonesia01.pdf](https://www.icnl.org/wpcontent/uploads/Indonesia_indonesia01.pdf)

212 MHA Reg 38, Art. 7(1).

## PRIOR GOVERNMENT APPROVALS

In Indonesia, NGOs who receive foreign assistance must create a “plan for acceptance of foreign assistance.” This plan must include the source of the assistance, its purpose, and plan for its utilization, and be submitted to the Ministry of Home Affairs for work with national coverage, to the Governor for provincial work, or to the Regent/Mayor for work to be undertaken in a regency/municipality.<sup>213</sup> As a result:

It is probably more difficult to access the funding if we compare to maybe two or three years ago because there are a few stages that we have to follow. We have to be interviewed, we have to give some detailed information and some of the governmental institutions also oversee our activities.

In addition, NGOs may be required to obtain a permit from a “Permit Team” that comprises different ministries and the Indonesian National Police in order to register as a legal entity with the Ministry of Law and Human Rights.<sup>214</sup> One interviewee noted that in practice, this only applies to certain organizations:

That specific permit team mostly applies to foreign donor agencies. There are some cases where foreign agencies cannot continue their work in Indonesia because the permit team stopped the license.

## CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE

Societal organizations receiving foreign support without government approval are subject to suspension or dissolution as provided for in Presidential Regulation Number 18 of 2017 on Procedures for Accepting and Giving Donations by Community Organizations in the Prevention of Terrorism Financing Crimes. As one interviewee explained:

Now the Government can dissolve an organization without going through the due process of law via court. Three organizations have already been dissolved by this new law of 2017 without going through a court process. So, because it’s only by the government decision, there is no room for the organization being dissolved to argue. They just have an option to go to the administrative court after they have been dissolved.

## RESTRICTIONS ON ACTIVITIES

There is a prohibition on adopting, developing, and spreading teachings or ideas that are contrary to Pancasila, the national ideology, and conducting activities that threaten the sovereignty of the Republic of Indonesia.<sup>215</sup> For organizations founded by foreign individuals or foreign legal entities, there is also a prohibition on activities that disrupt intelligence and diplomatic and political stability.<sup>216</sup> One interviewee commented that these restrictions have had an impact on their activities:

<sup>213</sup> MHA Reg 38, Arts. 10 and 11.

<sup>214</sup> Law No. 17 of 2013 on Societal Organizations (Law 17), Article 44(3) and (4).

<sup>215</sup> Law 17, Art. 59(2)(4).

<sup>216</sup> Law 17, Art. 52(e).

There are also restrictions on doing sensitive activities. For example, if we would like to publish any paper or other materials, the Ministry of Home Affairs has to review them. It's really interfering with our independence. We also have to notify them about any external activities relating to the publication, and staff of the Ministry of Internal Affairs itself can come to those events as part of their monitoring process.

## REPORTING REQUIREMENTS

In Indonesia, societal organizations must regularly provide reports of their activities to the Central or Regional Government, as well as publish their annual financial reports in an Indonesian-language daily newspaper if they receive donations from the state, overseas, or other third parties totalling 500 million IDR (USD 34,000) or more.<sup>217</sup> In addition, NGOs founded by foreign individuals or foreign legal entities must report sources, amounts and uses of funds.<sup>218</sup>

## RESTRICTIONS ON OPERATIONS

In Indonesia, NGOs founded by foreign individuals or foreign legal entities are required to have a partnership with the government or, if an Indonesian foundation, with Indonesian NGOs.<sup>219</sup>

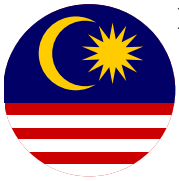
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<sup>217</sup> Law 17, Art. 38.

<sup>218</sup> Law 17, Art. 51(e).

<sup>219</sup> Law 17, Art. 48.

## Malaysia



In Malaysia, while there are no specific laws or regulations directly aimed at restricting foreign contributions for local NGOs, the Societies Act 1966 contains restrictions that may disproportionately affect NGOs receiving foreign funding.<sup>220</sup> However, NGOs are also able to register as companies, such that they are regulated under the Companies Act rather than the stricter requirements of the Societies Act. The 12th General Election in 2008 brought about many political and social changes in Malaysia and one of the most significant has been the enormous growth in the number of NGOs operating in the country.<sup>221</sup>

### REGISTRATION REQUIREMENTS

In Malaysia, “local societies” are required to register with the Registrar of Societies (ROS) pursuant to the Societies Act 1966 through the Ministry of Home Affairs.<sup>222</sup> NGOs are also able to register under the Companies Act 2016.<sup>223</sup> Interviewees explained that regulation by the ROS has become stricter over the past decade.

### PRIOR GOVERNMENT APPROVALS

While there are no laws or regulations requiring prior government approvals for NGOs to receive or use foreign funds, one interviewee noted that some funders require that prior approval from the Government should be received before they will provide funding:

Very recently we received funds for a project, but the funder required us to receive approval from the Ministry of the Economic Planning Unit to implement it. So I've been going around for the last seven months writing email after email to the Ministry. We have received everything that's necessary. But we never received that approval, even though I was able to reach a close contact at the Ministry. As a result, we never got the money into our accounts because we never had a green light from the Government.

### CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE

For those organizations registered under the Societies Act, failure to comply with its provisions may result in cancellation by the Registrar of Societies.<sup>224</sup> In addition, registration may be cancelled if the Minister of Home Affairs exercises their broad discretion under the Act to declare a society “unlawful.”<sup>225</sup> Penalties are imposed under the

220 Societies Act 1966 (“Societies Act”) (Malaysia), <https://mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf>.

221 Ying Hooi Khoo, “The NGO Government Relations in Malaysia: Historical Context and Contemporary Discourse,” (2013) 1(1) *Malaysian Journal of Democracy and Election Studies* 76-85, [https://www.researchgate.net/publication/264117714\\_The\\_NGO-Government\\_Relations\\_in\\_Malaysia\\_Historical\\_Context\\_and\\_Contemporary\\_Discourse](https://www.researchgate.net/publication/264117714_The_NGO-Government_Relations_in_Malaysia_Historical_Context_and_Contemporary_Discourse).

222 Societies Act, s. 6.

223 Companies Act 2016 (Malaysia), [https://www.ssm.com.my/Pages/Legal\\_Framework/Companies%20Act%20-1965-\(Repealed\)/aktabi\\_20160915\\_companiesact2016act777\\_0.pdf](https://www.ssm.com.my/Pages/Legal_Framework/Companies%20Act%20-1965-(Repealed)/aktabi_20160915_companiesact2016act777_0.pdf).

224 Societies Act, s. 13.

225 Societies Act, s. 13(1)(b).

Act for any officer, manager or member of any unlawful society,<sup>226</sup> or for any person who uses a certificate of registration which has been cancelled.<sup>227</sup> An interviewee noted that this is predominantly being applied to political parties who are registered under the Act:

The main thing we see in the last few years is trying to de-register a political party, because strangely the political party also is registered under the Registrar of Societies. The parties that normally get de-registered are parties in opposition or critical of the Government. They are the ones who get into more trouble now.

## RESTRICTIONS ON ACTIVITIES

The Registrar of Societies can refuse to register or, cancel the registration of, an NGO it thinks will be “prejudicial to or incompatible with peace, welfare, security, public order, good order, or morality.”<sup>228</sup> In addition, the Minister of Home Affairs has broad discretion to declare as “unlawful” a society which in their opinion is being used “for purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order, or morality.”<sup>229</sup> An interviewee noted that if an organization is critical of the Government, these provisions allow the Government to “*use their powers to stop you.*” Another interviewee commented that Home Affairs monitors the work of NGOs:

I’m sure we are being monitored. It’s very easy for the Government to monitor and identify if you’re receiving certain funds. Every now and then plain clothes policemen would come and attend the program and get to know its content. If the number of people participating is large and if it’s a sensitive topic or group of people or indigenous minority, the police would be more likely to appear. They report on what is discussed at our meetings and whether we are a threat or not.

## REPORTING REQUIREMENTS

Under the Societies Act, every registered society must submit annual reports to the Registrar, including details of the office-bearers, members and affiliates, financial accounts, and a description of any money or property, any pecuniary benefit or advantage received by the society from any person, organization, government, or government agency outside Malaysia.<sup>230</sup> The Registrar can request this information from a society at any time.<sup>231</sup> One interviewee described the process of annual reporting:

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226 Societies Act, ss. 42 and 43.

227 Societies Act, s. 53A.

228 Societies Act, s. 7(3)(a) and 13(1)(c)(ii).

229 Societies Act, s. 5(1).

230 Societies Act, s. 14(1).

231 Societies Act, s. 14(2).



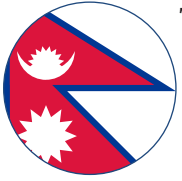
It's not so easy. You need to have your annual meetings and you actually have to meet reporting requirements, such as providing financial reports, so you just have to do it on time. They do a lot of follow up, and they will come back to you if you don't have those documents ready.

In addition, under Malaysia's anti-money laundering and anti-terrorist financing legislation, all bank transfers from overseas of amounts that exceed a certain limit are required to be reported by financial institutions.<sup>232</sup> An interviewee explained that this involves completing a form for the bank and declaring what the money is for, so in their case, "*we declare it is for development work or projects.*"

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232 The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Part IV (Malaysia), <https://www.bnm.gov.my/-/anti-money-laundering-anti-terrorist-financing-and-proceeds-of-unlawful-activities-act-2001-act-613>.

# Nepal



The number of NGOs in Nepal increased rapidly in 1990 following the emergence of a multi-party democracy and an increasingly more favourable operating environment. However, NGOs have been critical of the Government's attempts to restrict the activities of civil society through proposals to change the legal framework, which contain restrictive provisions for the regulation, registration, and supervision of NGOs.<sup>233</sup> While Nepal has existing legislation and policies that include provisions restricting foreign funding, including the International Development Cooperation Policy 2019 (IDCP),<sup>234</sup> the Social Welfare Act, 2049 (1992) (SWA),<sup>235</sup> and Local Government Operation Act, 2074 (2018) (LGOA),<sup>236</sup> in general most of the difficulties encountered by NGOs are related to the processes involved in getting approval from different government bodies before work on a foreign-funded project can commence.

## REGISTRATION REQUIREMENTS

In Nepal, all NGOs must be registered and there is no specific registration for NGOs receiving foreign funding. According to an interviewee, registration can be onerous:

For the registration of NGOs, you need to get permission from the local authorities first, then you have to get police reports for all your board members. Then you have to file either to the District Administration Office or for company registration. Due to these bureaucratic hurdles and procedures, it is a little bit difficult, but not impossible.

Another interviewee spoke about their personal experience with registration:

We registered our organization in 2015. Prior to that we had a very informal type of platform. But then we realized we had to get registered to actively get involved in issues. So we went to the District Administrator. But unfortunately, a conflict arose there because our name was interpreted as a political charity. So they forced us to change our name.

## PRIOR GOVERNMENT APPROVALS

NGOs and INGOs who have received foreign funding must submit a project proposal and application for approval by the Government's Social Welfare Council, the regulatory body for NGOs, prior to carrying out the project.<sup>237</sup> NGOs seeking to use development assistance must also go through the Social Welfare Council.<sup>238</sup> NGOs are also required to work in coordination with local governments.<sup>239</sup> One interviewee explained the process as follows:

<sup>233</sup> See <https://www.icnl.org/resources/civic-freedom-monitor/nepal>.

<sup>234</sup> [https://www.mof.gov.np/uploads/document/file/print\\_copy\\_IDCMP-2019\\_Eng-fullpage\\_20191107071739.pdf](https://www.mof.gov.np/uploads/document/file/print_copy_IDCMP-2019_Eng-fullpage_20191107071739.pdf).

<sup>235</sup> <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/social-welfare-act-2049-1992.pdf>.

<sup>236</sup> [https://s25924.pcdn.co/wp-content/uploads/2018/03/local-governance-Act\\_final-version.pdf](https://s25924.pcdn.co/wp-content/uploads/2018/03/local-governance-Act_final-version.pdf)

<sup>237</sup> SWA, s. 16(1); LGOA, art. 25(1).

<sup>238</sup> IDCP, s. 3.10.10.

<sup>239</sup> LGOA, art. 25(3).

In a nutshell, there are two steps. One is at the Social Welfare Council; another is at the local level. Once we get the funding, we have to get the approval of the Social Welfare Council. That process is lengthy and cumbersome, but it is not difficult. If you want to work at the local level [province or district] then the local body regulator must give their permission for the program.

**While the interviewee noted that generally projects were approved and that channels of communication were good, implementation difficulties arose with the lengthy approval processes and changing Government officials:**

There are difficulties working with the government officials. Sometimes things are not done in a timely manner. Also people keep changing, so we have to engage ourselves convincing them about our programs and projects. This is one of the biggest challenges we face in terms of approval and implementation.

**This was consistent with the experience of another interviewee:**

When we receive the funding, the problem arises when we seek approval from the Government because the Government has implemented laws that require us to seek approval from the Social Welfare Council. At the same time, they also ask us to seek permission from the sub-national level where the projects are being implemented. The problem is that it's a long process and the local bodies are reluctant to give their approval. This process creates bureaucratic hurdles for civil society because in some cases the local sub-national level officials are not proficient in how the funding works, how it's channeled, and how it's spent.

## **RESTRICTIONS ON ACTIVITIES**

**There is a prohibition on the receipt of foreign assistance for projects that are “against the national interest.”<sup>240</sup> International development cooperation must be consistent with “national need and priority” and activities should not be undertaken “in sectors of national sensitivity.”<sup>241</sup> As one interviewee noted, this requirement may affect NGOs with programs focused on civil and political rights:**

The Nepalese Government is not that concerned with the sources of money, what it's concerned with is where that money is going. If that money is going to programs like human rights, inclusion, participation, and empowerment, then the Government wants to have a closer look at those projects. But if it's about providing some humanitarian assistance, that's not a big problem. So when we receive funding, if the Government considers that the funding will lead to a robust discussion on inequality, caste, or human rights, they sometimes say that it is a potential threat to sovereignty, to discourage or harass NGOs not to work on sensitive issues.

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<sup>240</sup> SWA, s.16(2).

<sup>241</sup> IDCP, ss. 3.10.1 and 3.10.5.

The interviewee explained that this has not prevented organizations from receiving foreign funding to address some of these sensitive issues:

International funding has played an important role in empowering marginalized groups, in terms of political engagement and financial awareness. As a result of this empowerment, they've started advocating for their rights and accountability from the Government. And this is not something that the dominant caste groups are accepting yet, because if marginalized groups are empowered politically, economically, and culturally, then dominant caste groups will not be able to continue their dominant role in society.

## REPORTING REQUIREMENTS

In Nepal, an annual financial statement for each project and details of project activities must be made public.<sup>242</sup> NGOs working with local governments are subject to a progress reporting system.<sup>243</sup> The respondents found the reporting requirements to be quite straightforward:

We have to report periodically to the Government. In terms of annual reporting, there is no specific guideline or any kind of a format the Government provides. Normally once we send the report to the donors, we also send one copy to the Government. That makes the reporting easy, so there is hardly monitoring from the Government.

Once a project is complete, there is a separate evaluation process from the Social Welfare Council. In practice, while money is allocated to this process, it does not seem to create any additional restrictions on NGOs. An interviewee explains:

Part of the budget from the project is allocated to the Social Welfare Council for monitoring and evaluation. For example, if we have received funding of \$20,000, we have to allocate \$1,000 for monitoring and evaluation and that money has to be deposited into the SWC's bank account before the project starts. Once you give them the deposit slip then immediately you will get your approval.

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242 IDCP, s. 3.10.8.

243 LGOA, art. 25(2)(c).

## RESTRICTIONS ON OPERATIONS

There is a 20% cap on the amount of funds that can be used for administrative expenditure for projects carried out by INGOs.<sup>244</sup> The interviewees commented that this can create problems in carrying out their work:

If I talk to you about the scenario four to five years ago, the Government was not very concerned about the breakdown of administrative costs, but these days the Government is asking us to demonstrate how the 20% is distributed, what percentage goes to salaries, rent, electricity, etc.

Being an advocacy and awareness-raising type of organization, it has been difficult to work within the 20% administrative cost limitation. For example, our project coordinator is treated as programmatic staff rather than administrative personnel. But the Government is reluctant to accept that expenditure as a program cost, instead treating it as an admin expense. This makes work quite difficult, especially in relation to advocacy.

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<sup>244</sup> IDCP, s. 3.10.7.

# Pakistan



Local and international NGOs have long been subject to regulations in Pakistan, through the Policy for Regulation of Organizations Receiving Foreign Contributions 2013 (RORFC),<sup>245</sup> and the Policy for Regulation of International Non-governmental Organizations in Pakistan 2015 (RINGO).<sup>246</sup> However, after Prime Minister Imran Khan came to power in 2018, the government intensified a crackdown on NGOs purportedly on the basis that they receive foreign funds, promote the “enemy agenda” and are working against the state. This crackdown included ordering 18 foreign NGOs to close their operations and leave the country.<sup>247</sup>

In September 2022, the Government introduced the Policy for Local NGOs/NPOs Receiving Foreign Contributions (NRFC),<sup>248</sup> which replaced the RORFC and an updated 2021 Policy,<sup>249</sup> and introduced further restrictions on foreign funding. This regulatory framework and the implementation of registration requirements and prior government approvals for projects has created a challenging regulatory environment for domestic and international NGOs, particularly rights-based organizations.

## REGISTRATION REQUIREMENTS

Any foreign organization and any organization registered within Pakistan is required to register with the Economic Affairs Division before utilizing “foreign economic assistance.”<sup>250</sup> The application for registration is shared with and vetted by the Ministry of the Interior, as well as provincial and local governments.<sup>251</sup> In addition, there are special registration rules for INGOs receiving foreign contributions; they are required to register with the Ministry of Interior, and are not permitted to raise funds and/or receive donations locally, unless specifically authorized.<sup>252</sup> An INGO Committee, chaired by the Interior Secretary of the Ministry of Interior is the sole authority for approving registration of INGOs.<sup>253</sup> An interviewee from Pakistan explained the significant effect of these requirements on INGOs and the delays in registration for domestic NGOs:

The Government introduced this new regulatory framework in 2013 to restrict foreign funding in Pakistan for both local NGOs and for international

245 Policy for Regulation of Organizations Receiving Foreign Contributions 2013 (Pakistan), [https://www.ead.gov.pk/SitelImage/Misc/files/iii\\_%20NGOs%20Policy%202013.pdf](https://www.ead.gov.pk/SitelImage/Misc/files/iii_%20NGOs%20Policy%202013.pdf).

246 Ministry of Interior, Notification (1 October 2015), <https://ingo.interior.gov.pk/>.

247 Haroon Janjua, “Why is the Pakistani Government Cracking Down on NGOs?,” DW, 11 February 2021, <https://www.dw.com/en/why-is-the-pakistani-government-cracking-down-on-ngos/a-56537755>.

248 Ministry of Economic Affairs, Policy for Local NGOs/NPOs Receiving Foreign Contributions 2022, <https://www.icnl.org/wp-content/uploads/NGOPOLICY2022.pdf>.

249 Ministry of Economic Affairs, Policy for NGOs/NPOs Receiving Foreign Contributions 2022 (16 June 2021, Pakistan).

250 RORFC, s. 2, pursuant to which organizations may have been registered.

251 RORFC, s. 3.

252 RINGO, ss. 4.1, 4.2.

253 RINGO, s. 4.4.

organizations. International organizations have to register with the Ministry of the Interior where they are subject to quite strict criteria to allow them to work in Pakistan. As a result, about 19 large-scale international organizations had to pack up from Pakistan in the last few years. Local NGOs were actually getting foreign funding, but they had to pass through a rigorous, lengthy process led by the Economic Affairs Division. For instance, we submitted our first application with the EAD in 2014. We received a response only in 2016 and that response was that we had to submit a fresh application. We submitted again in 2016 and did not receive a response until 2019, when we were told that that we had to submit yet another application. We submitted that application and it took us a year to get our registration in 2020.

The respondent also referenced the 2022 High Court of Sindh judgment, where the Court found that the 2013 policy (RORFC) had no legislative or constitutional authority vesting the Economic Affairs Division with the power to refuse registration and so the RORFC had no legal effect.<sup>254</sup> The respondent explained that following this judgment, registration decisions have shifted from the purview of the Economic Affairs Division to Charity Commissions located in the provinces:

Currently the Economic Affairs Division's policies are not functional, although they have two hundred plus applications with them. They are not deciding those applications because the Sindh High Court has asked them not to exercise this power, which the Court has deemed unconstitutional. So the Government has introduced a registration regime through Charity Commissions in all four provinces. Only those who are actually renewing their registrations with the Charity Commissions are being considered for foreign funding.

## PRIOR GOVERNMENT APPROVALS

Registered NGOs with at least two years of experience in the relevant field must submit an application for a Memorandum of Understanding (MOU) with the Economic Affairs Division at least 60 days before using foreign funding for a particular project, along with a letter of commitment from the foreign donor.<sup>255</sup> INGOs must declare all foreign funds, along with the terms and conditions of those funds, and can only provide assistance to local NGOs with prior government approval.<sup>256</sup> An interviewee commented that the implementation of the MOU requirement has been quite oppressive for NGOs:

When it comes to foreign funding, you submit your application to the Economic Affairs Division and it goes through a severe investigation by the law enforcement agencies. There have been a number of visits by the intelligence agencies. They collect and store your data, they ask for your wife, your children, your family, your relatives and your social media accounts, so you are being screened through an extensive process and then if they find a tweet which is not in line with their policy of patriotism then your application is going to get rejected. But for organizations with military influence or involvement, their MOUs get processed promptly.

<sup>254</sup> Marie Stopes Society v. Federation of Pakistan and others, (2019) CP No.D-1817 (High Court of Sindh) (Pak.).

<sup>255</sup> NRFC, ss. 7(b) and 8(b).

<sup>256</sup> RINGO, ss 4.3 and 5.4.

If approved, the Economic Affairs Division and the NGO will enter into the MOU, which will specify the project’s “work plan” and information on sources of financing and will be valid for three years.<sup>257</sup> Any additional projects will also require approval of the Economic Affairs Division.<sup>258</sup> A respondent described the extent to which the Economic Affairs Division can then make decisions about each project:

One of the major requirements is to submit a complete proposal to the Economic Affairs Division. They will decide where we can operate, which subject to choose for development, research, and humanitarian actions, who the partner organizations will be, and which district will be selected for the particular project.

## CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE

Any violation of the MOU or the NRFC may result in suspension or cancellation of the MOU by the Economic Affairs Division.<sup>259</sup> One respondent from Pakistan noted that, following Pakistan being put on the FATF ‘grey list’ of countries in 2015 as a result of there being inadequate laws to combat money laundering and terrorist financing, the Government established charity commissions in the provinces which were then able to cancel registrations of NGOs and INGOs:

After Pakistan was put on the FATF grey list, the Government set up Charity Commissions in every province. And the Charity Commission can cancel your registration any time if it wants. So if the Government wants to cancel the registration of your organisation or block your bank account, it can do so simply with legal cover via a single notification from the Charity Commission.

The interviewee further explained that the Government’s position on INGOs changed after Pakistan was put on FATF’s grey list. Previously, politicians had good relationships with INGOs that contributed to development projects within their constituencies. However, following Pakistan’s appearance on FATF’s grey list, Pakistan’s military, which controls foreign policy, saw these INGOs as a threat to its reputation, and so they were made to leave Pakistan.

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<sup>257</sup> NRFC, ss. 7(d) and 10(c).

<sup>258</sup> NRFC, s. 10(h).

<sup>259</sup> NRFC, s. 12.



## RESTRICTIONS ON ACTIVITIES

NGOs which have signed MOUs with the Economic Affairs Division must not engage in activities inconsistent with national security or which promote religious intolerance, hatred, or ethnic violence.<sup>260</sup> In addition, registered INGOs must not be involved in activities inconsistent with the “national priorities” or “national interests” of Pakistan.<sup>261</sup> An interviewee commented that this restriction has particularly impacted rights-based organizations:

The Government now is renewing the registrations of only service delivery organizations. So in Pakistan, rights-based organizations are in danger. They are at a critical stage. Their spaces have been occupied by those organizations who are working for service delivery in parallel to the Government, and actually facilitating Government service delivery efforts in health, education, welfare, sanitation and so on. So the international community is largely helping to fund huge government service delivery programs.

## REPORTING REQUIREMENTS

NGOs must submit annual reports of their projects, project completion reports, and audited financial statements to the Economic Affairs Division.<sup>262</sup> For INGOs, this must include an “Annual Plan of Action” detailing all envisaged projects and respective budgetary allocations.<sup>263</sup>

## RESTRICTIONS ON OPERATIONS

NGOs with an MOU must not use any other bank account except the designated account(s) provided to the Economic Affairs Division.<sup>264</sup> One respondent from Pakistan noted that this has been a longstanding restriction:

It was not that the Government wanted to know how much money was coming into the civil society sector. They knew that already because everything that comes into Pakistan from any other country must come through the state bank operations.

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<sup>260</sup> NRFC, ss. 12(b) and 12(c).

<sup>261</sup> RINGO, ss. 4.7 and 5.11.

<sup>262</sup> NRFC, ss. 11(a), 11(b) and 11(c).

<sup>263</sup> RINGO, s. 5.3.

<sup>264</sup> NRFC, s. 11(d) and 15(b).

# Philippines



Since the mid-1980s, governments in the Philippines have been generally supportive of civil society, resulting in one of the most well-developed and institutionalized civil society sectors in the developing world.<sup>265</sup> More recently, however, President Duterte’s administration has targeted civil society organizations and made it more difficult for them to influence the country’s development.<sup>266</sup> Legislative changes, such as the Note Verbale issued in 2021, have impacted the ability of NGOs to raise foreign funds.<sup>267</sup> In addition, in 2018 and 2019 the Securities and Exchange Commission (SEC) issued “Guidelines for the Protection of SEC Registered Non-profit Organizations from Money Laundering and Terrorist Financing Abuse,” which include specific measures directed towards NGOs in relation to money laundering and terrorist financing.<sup>268</sup>

## REGISTRATION REQUIREMENTS

NGOs must register with the SEC to access funds, whether local or foreign.<sup>269</sup> An interviewee noted that in order to set up an account to receive foreign funds, the bank requires that the entity be registered with the SEC, noting that “*your legitimacy as an organization is related to your SEC registration.*”

## PRIOR GOVERNMENT APPROVALS

The Note Verbale issued in 2021 requires NGOs to receive clearance from the Department of Foreign Affairs (DFA) before they can receive funding from a foreign government. The DFA requires that all funds, regardless of mode of disbursement or transfer, be transferred through the DFA for “appropriate clearance.”<sup>270</sup> Interviewees from the Philippines explained the impact of this restriction on local NGOs:

The Note Verbale that was issued by the Department of Foreign Affairs mandates that all funds should be reported by [Foreign] Governments and international organizations to the Department of Foreign Affairs to be cleared for funding local nonprofits. One of our partners, a conglomerate of Protestant churches, had some funds from Hong Kong whose release was delayed as a result of that clearance process.

265 Asian Development Bank, “Overview of NGOs and Civil Society: Philippines,” ADB Civil Society Briefs, at 3, <https://www.adb.org/sites/default/files/publication/28972/csb-phi.pdf>.

266 “Critical Voices of Civil Society Organisations Suppressed in the Philippines,” Reliefweb, 10 December 2020, <https://reliefweb.int/report/philippines/critical-voices-civil-society-organisations-suppressed-philippines>.

267 DFA Note Verbale No. 2021-0592 (February 5, 2021) (Note Verbale) (Philippines). See Roy Mabasa, “Foreign Diplomatic Missions Now Required to Clear all NGO Donations with DFA,” Manila Bulletin, 21 February 2021, <https://mb.com.ph/2021/02/21/foreign-diplomatic-missions-now-required-to-clear-all-ngo-donations-with-dfa/>.

268 SEC Memorandum Circular No. 25 (2019) (SEC Circular) (Philippines). See <https://www.sec.gov.ph/wp-content/uploads/2020/02/2019MCNo25.pdf>, amending SEC Memorandum Circular No. 15 (2018).

269 Republic Act No. 11232, An Act Providing for the Revised Corporation Code of the Philippines, [https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation\\_RA-11232-REVISED-CORPORATION-CODE-2019.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation_RA-11232-REVISED-CORPORATION-CODE-2019.pdf).

270 Note Verbale; Mabasa, supra note 270.

## CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE

The SEC can revoke an organization's Certificate of Incorporation for failing to comply with requirements under the 2019 circular.<sup>271</sup> In addition, penalties are being imposed under anti-terrorism laws,<sup>272</sup> as noted by one interviewee:

When you've been flagged as being in violation of an anti-terrorist law, the Government can immediately send notices to your banks for your accounts to be frozen. Then you'll be subjected to forfeiture hearings. In the next stage, criminal cases will be filed on individuals, such as members of the Board of Directors or known officers of the organizations. We have monitored the cases of The Rural Missionaries of the Philippines, which is a humanitarian organization. The RMP is facing all of these measures, from frozen bank accounts, to forfeiture, to criminal proceedings.

## RESTRICTIONS ON ACTIVITIES

Funds received by NGOs are subject to anti-money laundering and counter-terrorism laws.<sup>273</sup> As the interviewees noted, there appears to be a growing risk of abusing such restrictions to target particular NGOs:

We have members that have been targeted with cases under anti-money laundering and anti-terrorist financing laws. Two are the subject of freeze orders. I think there are 70 activists now who are being accused of financing terrorism.

Another interviewee described the uncertainty surrounding the anti-money laundering/counter terrorism laws:

Under the anti-terror law, designation by the Anti-Terrorism Council basically has no due process. It is based on the Council's own investigation. If you are designated, your assets are frozen automatically. You then have 10 days upon receipt of the notice that your assets have been frozen to appeal to the Anti-Terrorism Council; there is no other recourse. If the Anti-Terrorism Council exercises its discretionary powers in designating organizations and individuals, including ours, the freezing of our bank accounts and assets would result in loss of foreign funding because you're stigmatized. Who would want to fund an organization which has been designated as a terrorist?

## REPORTING REQUIREMENTS

NGOs must file an annual General Information Sheet and audited financial statements with the SEC.<sup>274</sup> Within six months of registration, SEC-registered NGOs must also file a Mandatory Disclosure Form to the SEC in relation to money laundering and terrorist

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271 SEC Circular.

272 Anti-Terrorism Act of 2020 (Philippines).

273 See Anti-Money Laundering Act of 2001, s. 2(3) (iv) (Philippines); Anti-Terrorism Act of 2020 (Philippines).

274 Revised Securities Regulation Code (Rule 68, Annex 68-C) (The Philippines). See [https://www.sec.gov.ph/wp-content/uploads/2019/12/2019Rule\\_RSRCRule68.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/12/2019Rule_RSRCRule68.pdf).

financing.<sup>275</sup> At the discretion of the SEC, SEC-registered NGOs may also be required to submit information on objectives and purpose of their stated activities, nature and location of operations and projects, sources of funds, and intended beneficiaries.<sup>276</sup> This information can then be shared with other government agencies, including the Philippines National Police, National Bureau of Investigation, and the Anti-money Laundering Council.<sup>277</sup> One respondent commented on the issues that this raises for NGOs:

The SEC has said they are working with law enforcement agencies including the military and the police and the intelligence sector in processing information. So for us that's a concern because we're a civilian agency, but if the SEC is working with law enforcement agencies who implement certain policies like the war on drugs or the anti-insurgency program which impacts human rights defenders then we have a deeper problem in terms of implementation. We're bracing for the worst impact of these laws.

## RESTRICTIONS ON OPERATIONS

Under its 2019 circular, “Guidelines for the Protection of SEC Registered Non-profit Organizations from Money Laundering and Terrorist Financing Abuse,” the SEC has a range of compliance requirements for NGOs deemed to be ‘at risk’ of money laundering or terrorist financing as determined by the Anti-Money Laundering Council and/or the SEC.<sup>278</sup> These requirements include mandatory background checks of officers and trustees, a mandatory audit by the SEC, and mandatory attendance at programs and seminars. NGOs at risk are also required to identify donors who are ‘Politically Exposed Persons’ (PEPs), i.e. individuals (and in some cases their family members) who have a “prominent public position/function” in the Philippines, a foreign state, or an international organization.<sup>279</sup> Pursuant to the 2019 circular, the SEC has broad powers to investigate at its discretion “to determine whether any person has violated or is about to violate” the Guidelines.<sup>280</sup> An interviewee noted that classifications of “at risk” organizations were ongoing.

The SEC sent out surveys for risk assessment on the possibility of organizations being used for money laundering and financing terrorism. We are still waiting on the classifications by the SEC on risk assessment of NPOs. The details of the survey form were distributed and were filed only in November of 2021, so they're still in the process of evaluating these assessment forms.

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275 SEC Circular, ss. 9.1, 9.3.

276 SEC Circular, s. 9.4.

277 SEC Circular, s. 10.1.

278 SEC Circular, Chapter VI.

279 SEC Circular, s. 8.1.

280 SEC Circular, s. 11.1.

## Sri Lanka



In Sri Lanka, NGOs have long been viewed with suspicion by the government and some sections of society. Because of their heavy dependence on foreign funding, they have been accused of being agents of foreign governments and organizations and as working against the sovereignty and territorial integrity of the country. Since the election of a vocally anti-NGO President and Government in 2019 and 2020, respectively, the pressures on NGOs have intensified. The NGO Secretariat was brought under the Ministry of Defence in 2020 (where it remained until it was transferred to the Foreign Ministry in 2022) and legislation has been proposed aimed at stricter monitoring of NGOs, including their sources of funding and the purposes for which funds can be used.<sup>281</sup> While there are currently no specific laws or regulations directly aimed at restricting foreign contributions, informal mechanisms and pressures have resulted in NGOs facing difficulties in raising foreign funds and implementing programs.

### REGISTRATION REQUIREMENTS

In Sri Lanka, there are no specific registration requirements for receiving foreign funding. Voluntary social service organizations are required to register under the Voluntary Social Service Organizations (Supervision and Registration) Act of 1980 (VSSO Act),<sup>282</sup> but many organizations – including those that do not meet the definition of a VSSO – register under different laws, notably the Companies Act of 2007.<sup>283</sup> As one interviewee explained:

We decided to register under the Companies Act as a not-for-profit limited liability company. Many of the nationally based CSOs also registered as limited liability companies and not-for-profit.

In 2020, following the election of a new government, CSOs reported an informal requirement to register with the NGO Secretariat even if they were already registered under a different Act.

The process of registering with the NGO Secretariat is cumbersome and time-consuming. Once a CSO submits the relevant applications, the NGO Secretariat forwards all registration documentation to the Ministry of External Resources and the Ministry of

281 Yoshitha Perera, "New Laws to Regulate NGOs and Social Service Orgs: Cabinet Moves to Draft New Legislation," *The Sunday Morning*, 14 August 14, 2021, <https://www.themorning.lk/new-laws-to-regulate-ngos-and-social-service-orgs-cabinet-moves-to-draft-new-legislation/>; The National Peace Council of Sri Lanka, "Sudden Appearance of NGO Legislation is Ill Timed," 16 August 2021, <https://www.peace-srilanka.org/media-centre/media-releases/item/1056-16-08-2021-sudden-appearance-of-ngo-legislation-is-ill-timed>. The Government drafted an amendment to the VSSO Act in 2018 but it was withdrawn after protests from civil society. Since the new Government came into power in 2020, there have been renewed proposals to pass laws aimed at further regulating NGOs; interviewees told us that these new laws are based on the 2018 draft but likely even more draconian. An Act to Amend the Voluntary Social Service Organizations (Supervision and Registration) Act, No. 31 of 1980 (draft), <https://drive.google.com/file/d/1HQJTYaXMBzrMFVkBruRnW53WdrwU8ES/view>.

282 Voluntary Social Service Organizations (Supervision and Registration) Act, No. 31 of 1980, section 3 (Sri Lanka), [http://www.ngosecretariat.gov.lk/images/downloads/act\\_no\\_31\\_of\\_1980.pdf](http://www.ngosecretariat.gov.lk/images/downloads/act_no_31_of_1980.pdf).

283 Companies Act, No. 07 of 2007 (Sri Lanka), <https://www.parliament.lk/uploads/acts/gbills/english/3776.pdf>.

Defence for approval. This approval process takes approximately four to five months. Reportedly, in 2020, CSOs that were not registered with the NGO Secretariat faced difficulties opening bank accounts. CSOs not registered with the NGO Secretariat, particularly those engaged in social justice and human rights advocacy, also reported visits from government officials who insisted on registration with the NGO Secretariat. CSOs registered with the NGO Secretariat were reportedly instructed to refrain from working with unregistered organizations.

Draft NGO legislation proposed in 2022 reportedly tried to capture a broad range of collectives or groups in its definition of an NGO, and compel them to register and obtain approval from the Secretariat for their existence – or become illegal. It also included a labelling system under which NGOs would be registered according to various criteria including whether the organization received foreign funding, raising concerns of negative stereotypes of NGOs that receive foreign funding as ‘foreign agents’ pursuing the agendas of western governments.

### PRIOR GOVERNMENT APPROVALS

There are no regulations currently specifying that NGOs require approval prior to receiving foreign funds. A notice issued by the Finance and Planning Ministry in 2014 stating that all NGOs should receive prior approval from the Ministry prior to obtaining foreign funds was never implemented.<sup>284</sup> However, NGOs appear to be acutely aware that prior discussions with the Government are often a prerequisite to the effective implementation of projects. As stated by one interviewee:

Even though there was no official enforcement [of the 2014 notice], we have to be conscious about always going and having a consultation with the Government. When we apply for funding, we have to consider what the Government’s attitude is going to be like for certain programs that we have to rely on their support to implement.

In addition, proposed legislation includes provisions to “regulate, supervise and inspect” NGOs through a legalized National Secretariat for NGOs with extraordinary and excessive powers in the context of reporting and approvals.<sup>285</sup> As one interviewee commented:

What I know is that they are going to bring [the 2014 notice] to the new amendment to the Voluntary Services Act. That’s going to be a real barrier for any form of fundraising. The team that they have appointed to amend the Act has extreme views against NGOs.

284 The Presidential Secretariat, Circular No. RAD/99/01 (26 February 1999) (Sri Lanka), [http://www.ngosecretariat.gov.lk/images/downloads/president\\_circular\\_RAD-99-01.pdf](http://www.ngosecretariat.gov.lk/images/downloads/president_circular_RAD-99-01.pdf).

285 See “New Laws to Regulate NGOs and Social Service Orgs: Cabinet Moves to Draft New Legislation,” *The Morning*, 14 August 2021, <https://www.themorning.lk/new-laws-to-regulate-ngos-and-social-service-orgs-cabinet-moves-to-draft-new-legislation/>.

The same interviewee described the potential chilling effect of these proposed restrictions:

Even in terms of practically looking at things, these project opportunities sometimes come at very short notice. If we have to go to the Government and define our scope of work every time, it's really going to limit our ability to win a proposal. We will not be able to compete.

## CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE

Although there is nothing in the law that enables the Government to cancel the registration of NGOs, the VSSO Act does provide for Government-appointed boards of management for NGOs involved in fraud or misappropriation of funds.<sup>286</sup> In addition, under proposed legislation, cancellation/deregistration is permitted for a broad range of reasons, including not carrying out activities for a year or engaging in activities contrary to its objectives or “public interest” and “national security.”<sup>287</sup>

## RESTRICTIONS ON ACTIVITIES

Currently, there are no laws and regulations restricting the activities of NGOs or the purposes for which foreign funds can be used. As one interviewee put it:

I don't think that there is a set of foreign funding restrictions that are really impacting organizations now. Organizations raise funding for things like reconciliation, accountability, human rights violations, even things like enforcement... so even that funding comes to Sri Lanka because those are not closely monitored or limited by the Government.

However, regardless of the lack of regulation, implementation is often problematic if the issues dealt with by the project are not consonant with the Government's agenda. One interviewee commented:

This current Government has a very negative attitude to NGOs. They always use language to misinform and miscommunicate the work of organizations like us in Sri Lanka. There were a few opportunities to apply for funds to work on freedom of religion and thought and conscience. But you know how the Government and public see some of those issues – so we did not go for those opportunities because we knew we wouldn't be able to implement them.

Another interviewee described some of the pressures placed on NGOs to only implement certain types of work:

The Director General of the NGO Secretariat seemed to be making unilateral decisions and issuing statements about what CSOs had to do and where, including more welfare and development work, as agreed by the Secretariat. It was much worse for locally-based CSOs in the North and East in particular.

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286 VSSOA, ss. 10 and 11.

287 See Centre for Policy Alternatives, Observations on the Bill to Amend the Voluntary Social Service Organisations (Registration and Supervision) Act No. 31 of 1980 (22 March 2018), <https://www.cpalanka.org/wp-content/uploads/2018/03/CPA-Note-on-VSSO-Amendment-2018-FINAL-2-1.pdf>.

Additionally, in June 2020, the Ministry of Defence announced that the NGO Secretariat had initiated investigations into NGOs with “questionable funding sources and projects.” This policy most impacted NGOs engaged in human rights with funding from foreign donors. For example, as noted by the Civil Society Organizations Sustainability Index, Terrorism Investigation Department officials repeatedly made unannounced visits to a Jaffna think tank to inquire about its activities, funding, and staff details. In the North and East of the country, Government officials reportedly asked NGOs involved in transitional justice and human rights to focus instead on infrastructure development in the area. As a result of these requests, CSO activities on transitional justice and human rights were seriously curtailed in 2020.<sup>288</sup>

Under recent legislative proposals, registration can be suspended or canceled for a range of reasons, including if the organization is thought of as a threat or prejudicial to national security or the public interest or if the organization is operating contrary to national interests. The legislation also requires that civic groups agree to “common development needs” of the country as defined by or agreeable to the government.<sup>289</sup>

## REPORTING REQUIREMENTS

In Sri Lanka, reporting requirements for all NGOs include monthly reports at the district and national level on all project activities, finances, and beneficiaries.<sup>290</sup> An interviewee from Sri Lanka commented on the use of these requirements for political purposes:

That’s a real difficult thing in the system because sometimes those reports and proceedings are not implemented as effectively as the NGO Secretariat is describing it. Different districts have different district secretaries and NGO coordinators, with certain attitudes towards NGOs and how they can actually get certain things done through NGOs by using that reporting mechanism for political gain.

Another interviewee told us that their organization was very careful about the contents of the reports they hand in because the Secretariat often used the contents of the report to pressure organizations to do some type of work and not others:

They require you to give them your entire program of work for the next year. Some groups give the program and then are directed for what they can do. We give a very general, generic kind of report. We’ve definitely taken trouble over what we make public.

288 US AID, 2020 Civil Society Organization Index (September 2021), [www.veriteresearch.org/wp-content/uploads/2021/11/VR\\_ENG\\_RR\\_Sep2021\\_2020-CSO-Sustainability-Index-Sri-Lanka-Country-Report.pdf](http://www.veriteresearch.org/wp-content/uploads/2021/11/VR_ENG_RR_Sep2021_2020-CSO-Sustainability-Index-Sri-Lanka-Country-Report.pdf).

289 Centre for Policy Alternatives, *supra* note 290.

290 Letter from National Secretariat for NGOs, 9 January 2017, [http://www.ngosecretariat.gov.lk/index.php?option=com\\_content&view=article&id=7:collection-of-information&catid=11&Itemid=104&lang=ta](http://www.ngosecretariat.gov.lk/index.php?option=com_content&view=article&id=7:collection-of-information&catid=11&Itemid=104&lang=ta).



## RESTRICTIONS ON OPERATIONS

In Sri Lanka, there is tax legislation which provides that three percent of the aggregate amount of all funds received by an NGO is deemed to be profit and income subject to taxation.<sup>291</sup> An interviewee from Sri Lanka noted that, while this had not impacted their organization, it had affected others, commenting: *“I have seen many local NGOs raise this issue at many different donor forums, simply asking donors like the EU to talk to the Government to lift it.”*

The proposed legislation reportedly contains several clauses restricting NGO operations, including that a bank is prevented from facilitating an NGO from opening or maintaining a bank account without proof of registration, and that maintaining a bank account in contravention of the provisions will constitute an offence under the legislation. In addition, powers are granted to the NGO Secretariat to breach confidentiality of banking information, without reference to any criminal conduct.<sup>292</sup>

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291 Inland Revenue (Amendment) Act of 2005 (Sri Lanka), [http://www.ird.gov.lk/en/publications/Income%20Tax\\_Documents/IR\\_Act\\_No\\_10\[E\]\\_2006\\_\(Consolidation\\_2014\).pdf](http://www.ird.gov.lk/en/publications/Income%20Tax_Documents/IR_Act_No_10[E]_2006_(Consolidation_2014).pdf).

292 Centre for Policy Alternatives, *supra* note 290.

# Thailand



For the last three decades Thailand has had a flexible and arguably tolerant approach to NGOs.<sup>293</sup> However, Thai NGOs are currently facing what many have described as an “existential threat.”<sup>294</sup> In February 2021, the Thai Cabinet approved the Draft Act on the Operations of Not-for-Profit Organizations, a second draft of which was approved in January 2022, which places regulatory authority of NGOs with the Ministry for Social Development and Human Security. This proposed legislation is at least partly targeted at the perceived threat of foreign funding, and cites as a rationale for enacting the law that NGOs have accepted money from foreign sources, “and used them to fund activities that may affect the relationship between the Kingdom of Thailand and its neighbouring countries, or public order within the Kingdom”; the draft law thus stigmatizes organizations that use foreign funding by equating their objectives to those of “foreign agents.”<sup>295</sup> Following the first Cabinet approval, the Thai Cabinet released principles relating to money laundering and financial crimes, seeming to link the need for more restrictive NGO legislation and control of foreign funding to these areas.<sup>296</sup>

As of the time of writing, the bill is still pending.<sup>297</sup> Thailand also has existing Rules of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organizations to Operate in Thailand, 2541 (1998)<sup>298</sup> that apply to foreign organizations seeking to operate or give financial assistance in Thailand, and anti-money laundering laws that apply to NGOs.

## REGISTRATION REQUIREMENTS

In Thailand, all NGOs must be registered, other than unincorporated associations, but there are no particular registration requirements for NGOs who receive foreign funding.<sup>299</sup>

## PRIOR GOVERNMENT APPROVALS

Where a foreign organization is seeking to provide financial or other assistance, it must, together with the intended recipient, submit an application for approval, specifying the objectives and activities of the donor organization and the details of the project it

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293 Kavi Chongkittavorn, “Examining the Implications of Thailand’s New Draft Law on NGOs,” *The Irrawaddy*, 12 May 2021, <https://www.irrawaddy.com/opinion/guest-column/examining-the-implications-of-thailands-new-draft-law-on-ngos.html>.

294 Peter Zsomer, “Rights Groups See Existential Threat in Draft Thai NGO Law,” *VOA News*, 15 May 15, 2021, <https://www.voanews.com/a/east-asia-pacific-rights-groups-see-existential-threat-draft-thai-ngo-law/6205847.html>.

295 See *The Draft Act on Operations of Not-for-Profit Organisations, 202: Submission to Thailand’s Office of the Council of State*, 31 March 2021, <https://www.article19.org/wp-content/uploads/2021/04/ARTICLE-19-submission-NGO-Law.pdf>; Global NPO Coalition, 1

Review of Thailand’s Draft NPO Law and Eight Underlying Principles, [https://fatfplatform.org/assets/Global-NPO-Coalition-on-FATF\\_Thailand-submission-7-28-21.pdf](https://fatfplatform.org/assets/Global-NPO-Coalition-on-FATF_Thailand-submission-7-28-21.pdf).

296 ICNL, Thailand, Civic Freedom Monitor, <https://www.icnl.org/resources/civic-freedom-monitor/thailand>.

297 See <https://www.icnl.org/resources/civic-freedom-monitor/thailand>.

298 ‘REFPO’, <https://www.icnl.org/wp-content/uploads/rule1998.pdf>.

299 Civil and Commercial Code 2468 (CCP), s. 78 (Thailand), <https://legal.co.th/resources/civil-and-commercial-code/book1/thailand-civil-and-commercial-code-page-10-association-section-78-82/>.

wishes to support.<sup>300</sup> An interviewee commented on this process: “*One of the organization’s Board members is assigned to interact with intelligence agents and answer whatever questions there may be coming from the Thai Government.*”

## CANCELLATION OF REGISTRATION AND PENALTIES FOR NON-COMPLIANCE

The Registrar can cancel an organization’s registration if its objects or activities are “contrary to the law or public morals” or “likely to endanger the public peace or national security.”<sup>301</sup> Furthermore, the Anti-Money Laundering Office is authorized to suspend NGO transactions based on “sufficient evidence.”<sup>302</sup> An interviewee noted:

The organization is registered with the Ministry of Labour so it has a permit to operate every two years and that’s renewed every two years and part of that renewal process is having intelligence agents actually come to the office and talk to people and look at how [the organization] is set up and who is there. On two occasions, they took our photos, which made the team very nervous. The renewal process is also very long. It’s every two years in April that the permit lapses and a renewal has to be filed. And usually it takes about a year or 18 months for the authorities to approve the renewal. So it’s a very insecure situation. There are times when it’s finally renewed, but then we need to renew again in six months.

## RESTRICTIONS ON ACTIVITIES

An NGO will be denied registration if its conducts activities that are “contrary to good morals” or that may endanger “public order or national security.”<sup>303</sup> INGOs that operate in Thailand must have objectives that are “in conformity with the development policy and security of Thailand” and “activities shall not be contrary to morals, Thai custom and culture.”<sup>304</sup>

The Draft Act on the Operations of Not-for-Profit Organizations contains broad restrictions on NGO activities and gives authorities broad discretion to determine which activities may be carried out using funds from foreign sources.<sup>305</sup> An interviewee who works across East Asia, discussed the impact of the proposed legislation on their ability to remain in Thailand:

The draft law on nonprofits in Thailand has created a very difficult and insecure arrangement. What makes it really difficult for us is that there will be greater scrutiny of what we do and there are greater requirements for reporting activities and who the donors are. More importantly, we’re not

300 REFPO, clause 13.

301 CCP, s. 102.

302 Anti-Money Laundering Act, B.E. 2542 (1999), as amended, s. 40 (Thailand), [http://thailaws.com/law/t\\_laws/tlaw0019\\_2.pdf](http://thailaws.com/law/t_laws/tlaw0019_2.pdf).

303 CCP, s. 82 (Thailand).

304 REFPO, clauses 9 and 10.

305 See eg, Caleb Quinley, “Thai Civil Society Defends Open Letter to President Biden to Pressure Prayut to Withdraw Problematic Law,” Thai Enquirer, 13 May 2022, <https://www.thaienquirer.com/40147/thai-civil-society-defends-open-letter-to-president-biden-to-pressure-prayut-to-withdraw-problematic-law/>.

going to be allowed to move money from Thailand to different parts of East Asia. There's also a provision where the Thai Government can stop us from conducting our activities if it views our activities as detrimental to Thailand's relations with neighboring countries, and they can always use that against us because we support rights defenders and organizations that are challenging these governments on different levels. So that makes it very difficult for us to remain in Thailand in the near future.

**In addition, the Anti-Money Laundering Office agreed on 21 May 2021 on the Draft Amendment of the Anti-Money Laundering Act, which proposes a number of changes, including measures on the seizing of assets, additional criminal sanctions, and the widening of its scope of application to include NGOs.<sup>306</sup>**

**Thailand's combination of laws and regulations directed specifically at foreign funding, as well as general laws and regulations that impact NGOs that receive foreign funding, highlight the difficulties NGOs face in navigating foreign funding restrictions.**

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<sup>306</sup> See "Cabinet Approves Draft Amendment to Anti-money Laundering Law," Bangkok Post, 4 November 2021, <https://www.bangkokpost.com/thailand/general/2209727/cabinet-approves-draft-amendment-to-anti-money-laundering-law>.

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