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*A Mapping of Existing Initiatives to Address Legal Constraints
on Foreign Funding of Civil Society*

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I. Introduction

Since January 2012, more than 50 countries have introduced or enacted measures constraining civil society. This trend is consistent with a continuing decline in democracy worldwide. *Freedom in the World 2014* reveals that 2013 was the eighth consecutive year of decline in freedom globally, with 54 countries showing overall declines.¹

The decade before the new millennium was witness to a remarkable expansion of democratic reform and civil society empowerment. With the fall of the Berlin Wall, remarkable associational growth and the rise of the Internet, political, technological, and social factors converged to create an era of civic empowerment. Early in the new millennium, however, the paradigm shifted with emphasis on the “war on terror,” and discussions of national security or state sovereignty trumping human rights and civil society. In discussions about aid effectiveness, “host country ownership” was co-opted into “host government ownership” by governments seeking to justify crackdowns on civil society. In addition, authoritarian regimes, anxious to preserve power, became increasingly aware of the potential power of civil society due to the Rose Revolution (2003) and Orange Revolution (2004), and then the “Arab Awakening” (2011).

In the aftermath of the Rose and Orange Revolutions, we witnessed a regulatory backlash against civil society, with laws drafted or enacted to constrain the freedoms of association, expression, and peaceful assembly. Similarly, the events of the “Arab Awakening” and more recent protests from Thailand to Turkey to Venezuela have triggered a second wave of legal impediments.

Governments employ diverse measures to impede civic empowerment, including restrictions on the formation of organizations, the ability to advocate for change, and access to information and communication technology (ICT). Legal barriers impeding the ability of civil society organizations (CSOs) to access international assistance, in the form of grants and donations or otherwise, are among the most commonly used constraint. Indeed, constraints on external funding have arisen in every region, including countries from Africa (e.g., Ethiopia, Kenya, Sudan); Asia (e.g., Bangladesh, Indonesia, Pakistan); Europe & Eurasia (e.g., Azerbaijan, Russia, Ukraine); Latin

¹ Please see <http://www.freedomhouse.org/report/freedom-world/freedom-world-2014#.UxEVs4Xnmf0>.

America (e.g., Bolivia, Ecuador, Venezuela); and the Middle East (e.g., Algeria, Bahrain, Egypt). Please see Appendix A for an illustrative list of recent foreign funding constraints.

The funding restrictions have made it much more difficult to transfer funding to support a broad range of causes, including but not limited to the work of human rights defenders. Attached in Appendix B is an illustrative list of examples of the negative consequences of foreign funding restrictions based on an informal survey of private donors.

In response, governments, multilateral organizations, international organizations, and local CSOs have pushed back against the increasing constraints and are seeking to defend and protect the legal space within which civil society can operate. This briefing paper seeks to (1) provide an overview of existing responses to the issue of foreign funding restrictions; and (2) make clear recommendations for how private donors can most effectively respond to the trend of increasing restrictions on access to foreign funding for CSOs.

ICNL self-funded the preparation of this briefing paper to deliver on a commitment made at a September 23rd roundtable event on the margins of the UN General Assembly. It is a working document, and we are providing it to close partners to help inform strategic discussions. Because of time and resource constraints, the paper does not seek to include every ongoing initiative.

II. Overview of Existing Initiatives

Several initiatives have emerged to defend and protect the legal space within which civil society can operate, including the ability of CSOs to access external support or foreign funding. This section provides an overview of several of these existing initiatives, which have emerged at various levels:

- Initiatives under the auspices of the United Nations;
- Additional global multilateral initiatives;
- Regional multilateral initiatives;
- Bilateral initiatives;
- Transnational civil society platforms;
- Transnational research initiatives; and
- Country-level programs.

As a threshold matter, ICNL notes that few initiatives target foreign funding constraints in isolation. More commonly, initiatives seeking to protect and promote civil society, civic space, and/or the fundamental freedoms of peaceful assembly and of association may include a focus on foreign funding constraints. This mapping therefore makes reference to select civic space initiatives.

At the same time, however, we also recognize that there are countless programs focused on civil society support or human rights defenders more broadly; we make no attempt to outline those here. [For example, the EU runs a protection program that

provides up to €10,000 to human right defenders seeking to flee and subsist in an outside country.] Rather, we focus our attention on initiatives relating to the *legal space for civil society* or civic space.

A. United Nation Initiatives

The United Nations Human Rights Council is the principal UN intergovernmental body responsible for human rights.

The Human Rights Council addresses human rights issues through working groups on human rights issues, through Special Rapporteurs, and through the Universal Periodic Review.

Special Procedures

The Human Rights Council has responsibility for creating [Special Procedures](#). A Special Procedure is a mandate for an individual (called a “Special Rapporteur”) or a working group (usually composed of five members). Mandates may either be thematic or country specific. The Working Group on Arbitrary Detention is an example of a thematic mandate, and the Independent Expert on the situation of human rights in Haiti is an example of a country mandate. As of 1 October 2013 there are 37 thematic and 14 country mandates.

Relating to civil society, there are at least three mandates worth highlighting: the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders.

Most notably, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association presented his second thematic report to the UN Human Rights Council in May 2013.² The report affirms that the freedom of association includes the ability of associations “to seek, receive, and use resources – human, material and financial – from domestic, foreign, and international sources.”³ In addition, the report addresses the justifications states often use to restrict foreign funding –such as state sovereignty and aid effectiveness – and challenges the appropriateness of such justifications under international law.

In addition, the UN Special Rapporteur on the situation of human rights defenders has addressed the issue of foreign funding and affirmed the right to receive. The overlapping mandates lend themselves to joint action. Indeed, the three mandate-holders mentioned above have issued joint statements on restrictive legislative initiatives.

²http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

³ *Id.* at p. 4.

Post-2015 Development Agenda

Outside the framework of the UN Human Rights Council, the UN is working to formulate the successors to the Millennium Development Goals. The process includes two main tracks: (1) UN Secretary General led discussions, informed by worldwide consultations with civil society and other stakeholders; and (2) Member-State led (UN General Assembly) discussions. These two tracks will inform Member-State negotiations from September 2014 to September 2015 and the UN Secretary General's synthesis report to be presented in December 2014. A new framework will be finalized in September 2015 at the High Level Post-2015 Summit.⁴

Since 2012, the UN, in partnership with civil society, has made an unprecedented effort to involve civil society and others from all over the globe, organizing a series of thematic, global, regional, and in-country consultations to determine the Post-2015 Development Agenda. The UN Development Group (UNDG) has hosted consultations on the post-2015 agenda in more than fifty countries, culminating into a synthesis report in September 2013, [A Million Voices: The World We Want](#). The report declared that the post-2015 agenda should “ensure that meaningful civil society participation is facilitated via a rights-driven framework” which protects and promotes freedom of information, expression, association, and assembly. The UNDG is now conducting a [second wave of consultations](#) from April 2014 to April 2015, focusing on financing and other means of implementation.

In May 2013, the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda released its report on “[A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development](#).” Prepared by representatives from government, the private sector, and civil society, the report highlights the importance of an enabling environment for CSOs (“In order to play a substantive role, citizens need a legal environment which enables them to form and join CSOs ...”). In addition, the freedoms of association and assembly are included as part of Goal 10 (“Ensure Good Governance and Effective Institutions”): “Ensure people enjoy freedom of speech, association, peaceful protest and access to independent media and information.”

In 2014, the President of the General Assembly held [six events on the post-2015 agenda](#), including on [Contributions of women, the youth, and civil society](#); [Role of Partnerships](#); and [Human Rights and the Rule of Law](#). The key messages of these events broadly recognized that civil society is a critical partner in development and that exercise of civil society freedoms contributes to development.

The intergovernmental debates began in 2013, and currently advocacy efforts are focused on the Open Working Group (OWG) on Sustainable Development Goals; the Expert Group on Financing Sustainable Development; and the High Level Political Forum. The OWG, composed of 30 members representing individual countries or groups of countries, was established in January 2013 as part of the outcome to the UN

⁴ This information is based on the Advocacy Toolkit-Influencing the Post-2015 Development Agenda, developed by CIVICUS and the Stakeholder Forum.

Conference on Sustainable Development (Rio+20), held in Rio de Janeiro in June 2012. Its mandate is to begin the process among the Member States to develop the sustainable development goals (SDGs) that would constitute the Post-2015 Agenda. Following eight OWG information-gathering sessions in January and February 2014, the co-chairs of the OWG outlined [focus areas](#) to consider during the 13 OWG sessions between March and July 2014, when Member States begin the process of identifying goals and targets. Focus area 19 (“Peaceful and non-violent societies, capable institutions”) includes “strengthening of civil society” and “freedom of media, association and speech.” In June 2014, the OWG released a [“Zero Draft,”](#) with Proposed goal 16 (“Achieve peaceful and inclusive societies, access to justice for all, and effective and capable institutions.”). This goal includes the following target (16.7): “promote free and easy access to information, freedom of expression, association and peaceful assembly.” During the 12th OWG session, the Major Groups of non-government stakeholders advocated to replace this target with the following [language](#): “by 2020, ensure legal frameworks guarantee freedom of media, association, assembly, and expression.” The OWG will submit a final proposal to the UNGA in September 2014. Other intergovernmental processes include the [Intergovernmental Committee of Experts on Sustainable Development Financing](#), which is holding five sessions from August 2014 to August 2015 and is expected to present a report on financing and implementation in September 2014; and the [High Level Political Forum on Sustainable Development](#), which is tasked to review the SDGs annually.

B. Global Multilateral Initiatives

Community of Democracies (CD) Working Group on Enabling and Protecting Civil Society

The Community of Democracies⁵ (CD) Working Group on Enabling and Protecting Civil Society fosters collaboration among states, civil society and international organizations to counter, through concrete initiatives, the growing global trend towards constraining civil society organizations and restricting the space in which they can operate through legal means. Since its inception in 2009, the Working Group, chaired by Canada, has been working to support the essential role that CSOs play in a well-functioning democratic society. The group engages in diplomacy, advocacy and technical assistance activities to prevent the adoption of restrictive laws that target civil society and foster the development of those enabling laws that allow civil society to thrive.

The Working Group’s membership comprises 13 governments (Botswana, Canada, Chile, Czech Republic, Denmark, Mongolia, the Netherlands, Poland, Slovakia, Spain, Sweden, Tanzania and the United States); 4 civil society organizations with an

⁵ Notably, the Community of Democracies (CD) organized its Seventh Ministerial Conference in April 2013 in Mongolia. In recommendations for the Ulaanbaatar Ministerial Declaration, CSOs called on governments to “condemn those who stigmatize and persecute NGOs for their legitimate human rights and democracy work on the grounds that they receive funds from or work with international partners.” For more information, see the following link: <http://www.icnl.org/images/news/2013/Civil%20Society%20Recommendations%20Ulaanbaatar.pdf>

expertise in laws governing civil society (ARTICLE 19, CIVICUS, ICNL and the World Movement for Democracy (WMD); and three advisory organizations (UNDP, the UK Charity Commission and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association).

The Working Group has proved effective in coordinating diplomatic actions to counter legislation that excessively restricts civil society, including through funding constraints. The Working Group's "calls for action" have helped galvanize diplomatic actions that have contributed to the withdrawal or amendment of restrictive draft laws in several countries. Thus, the CD Working Group is a key vehicle to mobilize and coordinate diplomatic action when civil society legal constraints arise.

Community of Democracies Regional Dialogues Project

The Community of Democracies, in cooperation with the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, has launched a project entitled "Protecting Civic Space and the Right to Access Resources." The project envisions meetings in five regions with CSO and, where possible, government representatives. On May 7, 2014, a first meeting took place at the premises of the Permanent Secretariat of the Community in Warsaw. Over 25 civil society representatives from the OSCE region took part in a dialogue with representatives of the Community and of the Special Rapporteur's office. The Warsaw meeting had several goals: mapping the concerns of CSOs regarding restrictions on access to resources; understanding the existing legal framework for freedom of assembly and association and access to resources; disseminating the [UN Special Rapporteur's 2013 report to the Human Rights Council](#) and sharing its main arguments in support of civil society; and identifying possible actions and initiatives to protect CSOs. Four additional regional dialogues are planned for 2014-2015.

Lifeline Embattled CSO Defense Fund

The Lifeline Embattled CSO Assistance Fund provides emergency financial assistance to CSOs under threat or attack and advocacy support responding to broader threats to civil society. Lifeline supports a variety of CSOs that conduct advocacy, promote and protect human rights, and/or act in a watchdog capacity, including human rights organizations, journalist associations, student groups, labor unions, think tanks, and others. Advocacy support grants have helped enable CSOs to undertake fact-finding research; advocacy campaigns; strategic litigation; and consultation meetings. In addition to funding, Lifeline implementing partners also engage in joint advocacy initiatives relating to particular countries. Lifeline receives contributions through an international donor pool of 17 governments and two independent foundations that support democracy and human rights. Implementing partners include seven international civil society partners.

Extractive Industries Transparency Initiative (EITI)

The EITI is a global coalition of governments, companies and civil society working together to improve openness and to encourage accountable management of revenues

from natural resources. Governments and companies are required to report what they pay and receive for natural resources while international and national civil society organizations provide essential support to the EITI through their advocacy, training, monitoring and facilitation efforts. Implementation of the EITI Standards on the country level is carried out by Multi-Stakeholder Groups (MSGs) comprised of government officials, industry representatives and CSOs. According to the Protocol on Participation of Civil Society, countries are responsible for ensuring that civil society is able to operate freely and engage fully in the EITI process.

A weakness in EITI process, however, has been the absence of clear criteria for assessing countries' "enabling environment" for civil society. To address this gap, ICNL is working with Publish What You Pay (PWYP) to provide a systematic approach to assessing the state of civil society in EITI countries. At a meeting of CSO EITI Board members in Kinshasa, Democratic Republic of the Congo, in October 2013, participants agreed on a "checklist" of key questions that should be asked when assessing the civil society enabling environment of an EITI country. The content of the checklist includes CSOs' ease of formation, *access to funding*, freedom of speech, operational freedom, and involvement in decision-making. PWYP piloted the checklist in Ethiopia.

Ethiopia first applied for candidature in EITI in 2009. The EITI Board rejected Ethiopia's application based on concerns that it would be impossible for civil society to fully engage in the EITI process in the context of the 2009 Proclamation on Charities and Societies, which, among other restrictions, capped foreign funding at 10% for organizations doing rights-based work. The Proclamation has severely constrained civil society in Ethiopia and most rights-based organizations have ceased operations, dramatically down-sized, or shifted issue focus. Perhaps surprisingly, however, Ethiopia's application for EITI candidature was accepted in March 2014, despite the fact that 2009 Proclamation remains in place. Thus, the role of the EITI as a vehicle in encouraging greater protections for civil society remains uncertain at best.

Financial Action Task Force

The Financial Action Task Force (FATF) is an inter-governmental policy making body that sets anti-terrorist financing and anti-money laundering standards. Specifically, Recommendation 8 and its accompanying Interpretative Note cover "non-profit organizations" or "NPOs." These documents include a number of problematic provisions, including those calling for "supervision or monitoring" of NPOs, as well as "more effective information gathering and investigation" relating to NPOs.

Countries have used FATF and other counter-terrorism measures as justifications to infringe on the rights of civil society, including its autonomy and ability to receive international support. A February 2012 [report](#) written by Statewatch and the Transnational Institute examined the effects of FATF regulations in nearly 160 countries and found the rules are being used by governments to "cut back on the space of civil society...freedom to access and distribute financial resources for development, conflict resolution and human rights work." Currently FATF is updating its basic

framework for legal oversight of NPOs in the counter-terrorism context, beginning with research to establish “typologies” of terrorist abuse of NPOs.

The [Charity & Security Network](#) (CSN) and [Human Security Collective](#) (HSC) established the Transnational Civil Society Working Group to monitor and respond to developments concerning civil society related to the activities of the Financial Action Task Force (FATF). With representatives of CSOs from Africa, Australia, Europe and the United States, the Working Group is a global effort to add the voices of civil society to this important discussion. Among other activities, the Transnational Civil Society Working Group is providing feedback on a FATF-commissioned report on “typologies” of abuse of the nonprofit sector for terrorist financing. In addition, the CSN and HSC are facilitating consultations in order to provide space for various stakeholders (including CSOs and private donors) to address concerns and provide recommendations on FATF’s treatment of NPOs. For example, in April 2013, FATF met with 20 CSOs in London. While considerable work remains, in June 2013, FATF released a “limited update” of its Best Practices paper (BPP), which incorporates language on the need to safeguard freedom of association and expression.

In addition:

- The CSN is engaging with the US Treasury Department on counter-terrorism measures and is actively engaged with other partners in advancing a bill in the US Congress entitled the [Humanitarian Assistance Facilitation Act](#).
- The HSC is spearheading efforts to engage the EU and the Government of the Netherlands on providing greater protection to human rights defenders. Among other issues, this initiative is focusing on the legal and financial frameworks and measures that affect the political space of civil society and human rights defenders, with particular attention on the impact of counter-terrorism measures.
- The HSC has engaged the UN counter-terrorism entities in New York on the importance of including civil society in the implementation of the [UN Global Counterterrorism Strategy](#) (UN-GCS) and a number of Security Council Resolutions. The fourth review of the UN-GCS in June 2014 fully recognized the vital role of civil society in its implementation, in particular in addressing the conditions conducive to the prevention of violent extremism and in upholding human rights while countering terrorism.
- In collaboration with the European Center for Not-for-Profit Law (ECNL) and the European Foundation Center (EFC), the CSN and HSC are convening European civil society and policymakers in order to facilitate their engagement on the reform of FATF Recommendation 8.

Open Government Partnership

The [Open Government Partnership](#) (OGP) was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens. Since then, OGP has grown from 8 countries to 64 participating countries. OGP primarily focuses on internal reform

within countries (unlike the CD Working Group, for example, which seems to leverage diplomatic support when issues arise in other countries).

Among other issues, the OGP prioritizes the following:

- Access to information;
- Aid transparency;
- Anti-corruption;
- Budget transparency;
- Citizen participation;
- Legislative openness;
- Media freedom;
- Political financing;
- Public procurement and public service delivery; and
- Rule of law.

CSO members of the OGP Steering Committee as well as the OGP Support Unit have raised the issue of shrinking civic space, including at the OGP Summit in London in October 2013. We understand that the OGP is still considering its next steps on this issue.

Follow-up to Obama Event

On September 23, 2013, President Obama convened a [High Level Event on Supporting Civil Society](#) on the margins of the UN General Assembly. Speakers included:

- US President Barack Obama;
- UN Deputy Secretary General Jan Eliasson;
- Mexican civil society leader Alejandro Gonzalez Arreola;
- President Tsakhiagiin Elbegdorj of Mongolia;
- UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai;
- Burmese activist Khin Lay; and
- ICNL President Douglas Rutzen.

The US Government has organized an Interagency Policy Committee (“IPC”) to follow up on this initiative. Specifically, the IPC is looking at different lines of effort, including: (1) improving the policy environment for civil society by strengthening countries’ adherence to international norms and promoting best practices for government and civil society engagement; (2) coordinating multilateral, diplomatic engagement to address restrictions on civil society; (3) identifying new and innovative ways of providing technical, financial, and logistical support to civil society; and (4) strengthening the USG response and internal processes. As of the end of June 2014, we understand that work continues to determine the details of these lines of effort.

In addition, in January 2014, the Ford Foundation and the Open Society Foundation convened a meeting entitled *Envisioning a New Paradigm for Civil Society in the*

21st Century Planning Meeting. The impetus for this meeting flowed, in part, from the UN side event hosted by President Obama. In addition, USAID focused its recent Democracy, Human Rights and Governance (DRG) Partners' Forum on the issue of closing space, and Stanford University's Center on Democracy, Development and Rule of Law is organizing a workshop in July related to the third line of effort listed above.

C. Regional Multilateral Initiatives

African Union / African Commission on Human and Peoples' Rights

The African Union (AU) came into existence in 2002, replacing the Organization of African Unity (OAU), which was established in 1963. The objectives and guiding principles of the AU include the promotion of democratic principles and institutions, popular participation and good governance, promotion and protection of human and peoples' rights, and the ability of the organization to take action upon the decision of the Assembly (in cases of grave violations of human rights) or upon request of a member state. The African Commission on Human and Peoples' Rights (Commission), a quasi-judicial body, is charged with protecting and promoting human rights under the African Charter on Human and Peoples' Rights (African Charter) through interpretation of the African Charter at the request of a State Party or an organization recognized by the AU, consideration of inter-state and individual communications, and examination of State reports.

In 2009, the African Commission on Human and People's Rights established a *Study Group on Freedoms of Association and Assembly* to produce a report on the state of the two freedoms on the continent. Study Group members were appointed by resolution in 2011 and given one-year term extensions in 2012 and 2013. Notably, the Study Group is made up of eight civil society member organizations, representing North, East, West, Central, and Southern Africa. With limited funding from the Commission and the AU, Study Group activities have been funded by member organizations through grants from the EU, Sida and others. With ICNL's technical and financial support, the Study Group's report was adopted by the Commission in May 2014. The report, which is now being finalized for publication, provides a comprehensive overview of the content of the rights based on international and continental norms, as well as the treatment of the rights in selected countries. The Study Group is also preparing Guidelines on Freedom of Association and Assembly.

The Organization for Security and Cooperation in Europe (OSCE)

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law. The ODIHR, in cooperation with the Council of Europe's Commission for Democracy through Law (Venice Commission), launched the process of drafting *Guidelines on Freedom of Association* in March 2013. This set of guidelines will be one of several jointly-prepared guidelines on specific types of legislation, prepared by the ODIHR and the Venice Commission. Previous guidelines addressed laws regulating freedom of

peaceful assembly (2nd ed. 2010), political parties (2010) and freedom of religion or belief (2004); in addition, the *Guidelines on the Protection of Human Rights Defenders* was published in June 2014. The guidelines offer advice and expertise in these areas of law, and are based on universal and regional treaties relating to the protection of human rights and fundamental freedoms – all recognized by OSCE participating States in their human dimension commitments – and on evolving state practice (as reflected, for example, in the judgments of national and international courts and the commitments of intergovernmental bodies), and the general principles of law. The guidelines listed above have so far proven to be useful tools to enhance knowledge on how to legislate on the above subject matters in a manner that is compliant with international standards and commitments, and to enhance awareness of the above rights in general.

In the fall of 2013 a joint working group was formed, which involves experts from the Venice Commission and ODIHR experts, including the lead drafter responsible for drafting the Guidelines. ICNL's Natalia Bourjaily, Vice President-Eurasia, is a member of this group appointed by the ODIHR, and has been tasked with preparing the section on access to resources. The adoption of the Guidelines is tentatively scheduled for the Venice Commission Plenary Session in December 2014.

The Venice Commission

Established in May 1990, the European Commission for Democracy through Law - better known as the [Venice Commission](#) – acts as the Council of Europe's advisory body on constitutional matters. Composed of constitutional and international law experts, supreme or constitutional court judges and members of national parliaments, the Venice Commission is dedicated to the promotion of Europe's legal heritage and is now recognized as an international independent legal think-tank. The Commission has been particularly active in Eastern European countries, assisting them in the drafting of new constitutions or laws on constitutional courts, electoral codes, minority rights and the legal framework relating to democratic institutions.

The Venice Commission receives requests for opinions on legislation from various sources, including the member states and bodies of the Council of Europe, such as the Parliamentary Assembly of the Council of Europe (PACE). For example, in February 2013, PACE's Committee on Legal Affairs and Human Rights requested an opinion from the Venice Commission on two Russian laws: the Federal Law on Non-Commercial Organizations of 13 July 2012 and the Federal Law on Treason and Espionage of 23 October 2012. The Commission issued opinions on both laws in August 2013.

Expert Council on NGO Law⁶

The [Expert Council on NGO Law](#) was created in January 2008 by a non-governmental body – the Conference of INGOs of the Council of Europe – with the aim of creating an enabling environment for NGOs. Toward this end, the Expert Council carries out thematic and country studies on specific aspects of NGO legislation and its implementation; and provides advice on how to bring national law and practice into line with Council of Europe standards and European good practice. The Expert Council looks to the European Convention on Human Rights and to a Recommendation adopted in 2007 by the Council of Europe's Committee of Ministers, which sets a framework for the legal status of NGOs in Europe (CM/Rec(2007)14). The work of the Council covers the 47 member countries of the Council of Europe and Belarus. It cooperates closely with other Council of Europe bodies, in particular the Venice Commission and the Commissioner for Human Rights. To be clear, however, the Expert Council, while funded through the Council of Europe, is an NGO initiative for NGOs in all Council of Europe member States.

To date it has produced the following thematic studies:

- 1) Conditions of establishment of NGOs;
- 2) Internal governance of NGOs;
- 3) Sanctions and liability in respect of NGOs; and
- 4) Review of developments in standards, mechanisms and case law.

The Council also produces country reports, as it has done on Russia and Azerbaijan. In October 2013 it organized a roundtable discussion in Moscow to present the opinion of the Expert Council on NGO Law on the so-called “foreign agents’ law” and to offer an international platform for an exchange of views on NGO legislation and its implementation and to receive first-hand information on the situation in Russia. As a follow up to the event, the Council published a thematic study on [“Regulating Political Activities of Non-Governmental Organisations.”](#)

OAS/ Inter-American System for the Protection of Human Rights

The Organization of American States (OAS) is a regional organization founded in 1948 in order to promote solidarity among member states and to defend their sovereignty. The OAS established two bodies to promote and protect human rights in the American hemisphere: the Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (“the Court”); both are institutions of the Inter-American System for the protection of Human Rights (“IAHRS”). As part of its mandate, the IACHR⁷ holds hearings each year on the situation of human rights in the

⁶ The Expert Council on NGO Law is not truly a multilateral initiative but rather is an NGO initiative. Nonetheless we include it in this section because of the backing it receives from the Council of Europe. For information on the terms of reference for the Expert Council, see the following: http://www.coe.int/t/ngo/Articles/Expert_Council_TermsofReference_270612_en.asp.

⁷ The IACHR has received support for publications from INGOs, such as the Swedish Foundation for Human Rights, Plan International, Save the Children and the International Work

member states where CSO representatives report and document violations of fundamental rights. The IACHR issues annual thematic and country reports which also reflect the situation of the human rights in the hemisphere. Two reports, *Democracy and Human Rights on Venezuela* and *The Second Report on the situation of human rights defenders in the Americas*, contain specific observations and recommendations on foreign funding restrictions for CSOs. The IACHR has also established the rapporteurships for freedom of expression and on human rights defenders, who spearheaded the two reports referenced above.

D. Bilateral Engagement

Donor governments are engaged on the issue of civil society space in a variety of ways, including through diplomacy and traditional donor agencies. We make no attempt in this section to outline, even in illustrative form, these traditional longstanding forms of bilateral engagement. Instead, this section simply seeks to highlight new initiatives that move beyond traditional human rights arguments and beyond traditional forms of diplomatic and donor engagement.

Bilateral Investment Treaties. Restrictions on foreign funding often conflict with provisions of Bilateral Investment Treaties (BITs).⁸ BITs are a less-explored avenue for CSOs to seek remedies when governments breach treaty obligations and interfere with the transfer of funds to CSOs, among other measures. ICNL's [general study](#) on "International Investment Treaty Protection of Not-for-Profit Organizations" was published in 2008. Applying the investment argument at the national level, ICNL also conducted research on how the Egyptian crackdown on foreign funding violated the US-Egyptian BiT. Moreover, ICNL is in discussions about getting trade representatives more engaged on this issue. Finally, in addition to bilateral investment treaties, it could be worth exploring other non-traditional arguments, like investment insurance, noting that the US Overseas Private Investment Corporation (OPIC) has an explicit prong focused on workers' and human rights.

Global Philanthropy Working Group. In the autumn of 2012, the US Department of State launched the Global Philanthropy Working Group (GPWG) to engage with the philanthropic community on the promotion of global philanthropy and civil society. The GPWG is a cross-sectoral working group that is addressing the enabling environment for philanthropy in terms of both donor and partner country constraints. The Council on Foundations and ICNL serve as civil society co-chairs of the working group, which consists of more than 25 US foundations engaged globally. Among other initiatives, the GPWG has created a Task Team on US Regulatory Challenges to International Grantmaking. This Task Team is examining several issues, including licensing policy relating to humanitarian assistance and the impact of counter-terrorism/anti-money

Group for Indigenous Affairs (IWGIA). The IACHR also receives support from government aid agencies, such as the Swedish International Development Cooperation Agency (Sida), Finland, etc. For details about other governments supporting the IACHR, please see the following: <http://www.oas.org/en/iachr/donantes/2013/default.asp>.

⁸ Guiding Principles on Non-Governmental Organizations, U.S. Department of State Bureau of Democracy, Human Rights, and Labor, Dec. 14, 2006, <http://www.state.gov/g/drl/rls/77771.htm>; <http://www.icnl.org/research/resources/dcs/BITNPOProtection2.pdf>;

laundering measures on cross-border philanthropy. Members of the GPWG also participated in the recent annual conference of the Council on Foundations to solicit additional feedback on the GPWG's workplan and activities.

Millennium Challenge Corporation (MCC). The MCC is an independent US foreign aid agency that seeks to address global poverty. Before a country can become eligible to receive assistance, MCC's Board examines its performance on independent and transparent policy indicators and selects compact-eligible countries based on policy performance. The MCC requires selected countries to identify their priorities for achieving sustainable economic growth and poverty reduction. Countries develop their MCC proposals in broad consultation within their society. MCC teams then work in close partnership to help countries refine a program. When a country is awarded a compact, it sets up its own local Millennium Challenge Account (MCA) to manage and oversee all aspects of implementation. The key point to the MCC approach is that it can help produce incentives for good performance on enabling environment issues. Indeed, in one country in Africa, the incentive of MCC funds generated significant political will for civil society legal reform.

E. Transnational Civil Society Platforms

Civil society has responded to the challenge of foreign funding restrictions through advocacy against restrictive measures, through education of civil society colleagues, through awareness-raising of legal barriers both domestically and internationally, through strategic litigation, and through participation in some of the global, multilateral and regional initiatives listed above. This section highlights civil society efforts to strengthen its voice through the formation of platforms and networks. One donor recently identified over 100 transnational platforms and networks relevant to civil society. Accordingly, we make no attempt to provide an exhaustive list, but instead provide only an illustrative list of transnational civil society platforms, focused, at least to some extent, on the legal space for civil society, and therefore on foreign funding restrictions.

African CSO Platform on Principled Partnership (ACPPP): The ACPPP serves as a rallying point for civil society activists (CSAs) and CSOs across Africa for guaranteed enabling environment for development and democracy. ACPPP is the only Africa-based platform focused exclusively on rallying African CSOs to collectively respond to national and regional threats to development space of CSOs and CSAs in any country, effectively turning national and thematic campaigns into African ones.

African Lawyers for Defense of Civil Society: The African Lawyers Network includes lawyers from Ethiopia, Gambia, Ghana, Kenya, Liberia, Nigeria, Sierra Leone, South Africa, South Sudan, Tanzania, and Zimbabwe. Established in 2012 at an inaugural meeting in Freetown, Sierra Leone, the Network has pursued several action steps, including:

- Issuing statements on the threat to civil society activists and media practitioners in Zimbabwe, Kenya, and Sierra Leone;

- Providing legal aid to CSO practitioners in Sierra Leone, which resulted in the Government of Sierra Leone being ordered to recognize a trade union and lift an injunction against another;
- Issuing comments on restrictive draft legislation in South Sudan; and
- Preparing an annual report entitled the “State of Civil Society Report for Africa.”

In addition, the African Lawyers Network intends:

- to publish case studies and index all regional instruments relevant to defending civil society;
- to engage meaningfully at regional levels, by advocating with the African Union, African Commission, and other regional bodies; and
- to increase its legal aid and impact litigation program, particularly at the sub-regional level.

Arab Freedom of Association Network (AFAN): AFAN is an informal network of civil society leaders, human rights activists, media practitioners, academics, and legal experts working to protect and advance the freedom of association in the Middle East/North Africa. Formed with the support of ICNL, AFAN facilitated the development of regional “communities of practice,” which allowed Network members to work together to deepen their expertise on particular civil society law issues and create tools, models, and analysis that can support reform.

Ariadne Network: Ariadne is a network of funders that provides a useful and supportive community for donors of all sorts, from individual philanthropists to professionally staffed trusts and foundations. It aims to enable European funders to connect with other like-minded donors, to share and transfer knowledge, to deepen grant-making skills and to build relationships for effective cooperation and collaboration. Ariadne seeks to increase the impact of philanthropic funding by growing the knowledge and understanding of broad human rights issues amongst funders, and to encourage others to invest in this field by enabling them to be part of an active and innovative community. As part of its efforts, Ariadne has set up the [Dealing with the disabling environment for HR funding](#) community, which enables willing contributors to share information regarding the disabling environment for human rights.

CIVICUS: World Alliance for Citizen Participation: CIVICUS is an international alliance of members and partners which constitute an influential network of organizations at the local, national, regional and international levels, and span the spectrum of civil society including: civil society networks and organizations; trade unions; faith-based networks; professional associations; NGO capacity development organizations; philanthropic foundations and other funding bodies; businesses; and social responsibility programs. CIVICUS is an international alliance dedicated to strengthening citizen action and civil society throughout the world.

CSO Partnership for Development Effectiveness (CPDE): The CPDE is an open platform that unites CSOs from around the world on the issue of development effectiveness, in particular in the context of the Busan Partnership for Effective

Development Cooperation and the Global Partnership for Effective Development Cooperation (GPEDC).

Euro-Mediterranean Human Rights Network (EMHRN): Created in 1997 in response to the Barcelona Declaration and the establishment of the Euro-Mediterranean Partnership, the [EMHRN](#) is a network of more than 80 human rights organizations, institutions and individuals based in 30 countries in the Euro-Mediterranean region. The EMHRN promotes networking, cooperation and development of partnerships between human rights NGOs, activists and wider civil society in the Euro-Mediterranean region. The EMHRN acts as a regional forum for human rights NGOs and a pool of expertise on promotion and protection of human rights in the region.

Inter-American Network on Civil Society Law: Professors from 15 Latin American and Caribbean nations launched an informal network at the conclusion of a June 2013 ICNL regional conference on teaching the laws governing CSOs. Approximately 60 professors communicate regularly via e-mail and on a dedicated Facebook page to share syllabi, teaching materials, and significant developments related to freedom of association in the region.

South Asian Task Force on Freedom of Association (SAFoA): At the conclusion of the ICNL-sponsored South Asian regional workshop on freedom of association in Bangkok in July 2013, South Asian participants from 7 countries (Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka) established a task force to address challenges to freedom of association, including restrictions on foreign funding. The Task Force, for whom Forum Asia serves as the secretariat, has since helped support a solidarity mission to Bangladesh (following the arrest of a prominent human rights activist) and the visit of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to India.

Transnational Civil Society Group on FATF: The Charity & Security Network and partner organizations have established the [Transnational Civil Society Working Group](#) to monitor and respond to developments concerning civil society related to the activities of the Financial Action Task Force (FATF). With representatives of NGOs from Africa, Australia, Europe and the United States, the Working Group is a global effort to add the voices of civil society to this important discussion.

World Movement for Democracy: The World Movement for Democracy is a network of activists, practitioners, scholars, policy makers, and funders who work to advance democracy. It aims to strengthen democracy where it is weak; defend democracy where it is longstanding; and support the efforts of pro-democracy groups in non-democratic countries. Since 1999, the World Movement has held biennial global assemblies in different regions of the world to hold discussions and workshops on democracy topics. In addition, the World Movement, together with ICNL, launched the Defending Civil Society project in 2008. As part of this project, the World Movement and ICNL published the [Defending Civil Society report](#), which was endorsed by Desmond Tutu, the Dalai Lama and Vaclav Havel. It provides illustrative examples of the legal barriers used to constrain civic space and articulates international legal

principles to protect civil society. In addition, the *Defending Civil Society Toolkit: Tips for Engaging in NGO Law Reforms (Toolkit)* is an online resource that provides tips, tools and strategies to help activists around the world advocate for the enabling environment for civil society in their countries.

F. Transnational Research

It is also important to note the existence of several transnational research initiatives. As with other responsive initiatives, the research efforts are generally focused more broadly on legal space issues relating to civil society or human rights defenders. At the same time, many of these initiatives do monitor and capture developments relating to foreign funding restrictions. Attached in Appendix C is a chart containing information on an illustrative list of research initiatives.

Notable research initiatives and publications include:

- [*Closing Space: Democracy and Human Rights Support*](#), Thomas Carothers and Saskia Brechenmacher, Carnegie Endowment for International Peace, 2014.
- [*Defending Civil Society report*](#), World Movement for Democracy and ICNL, 2012.
- [*Democracy in Action: Protecting Civil Society Space*](#), Trocaire Policy Report, 2012;
- [*Global Trends in Civil Society Law*](#), ICNL;
- [*Global Trends on Civil Society Restrictions*](#), CIVICUS, 2013;
- *Model Law on Human Rights Defenders*, International Service for Human Rights (ISHR);
- [*NGO Law Monitor*](#), ICNL;
- [*The Enabling Environment Index*](#), CIVICUS;
- [*The Philanthropic Freedom Index*](#), the Hudson Institute's Center for Global Prosperity;
- [*The State of Civil Society Report 2013*](#), CIVICUS;
- *Violations of the right of NGOs to funding: from harassment to criminalization*, [*The Observatory for the Protection of Human Rights Defenders*](#), OMCT and FIDH, 2013.

G. Country-level Engagement

Virtually all initiatives listed above are aimed, ultimately, at influencing change at the national level: to push back against restrictive measures proposed by the government; to push forward an enabling reform initiative; to raise awareness of the extent to which the national legal framework complies with or diverges from international standards or good regulatory practices; to build the capacity of CSOs and civil society lawyers and practitioners to defend civil society and promote reform over the long term; and to help CSOs and CSO practitioners navigate the existing legal framework most effectively.

In this section, we highlight country-level initiatives, with a focus on identifying various types of country-level assistance. We make no attempt to capture civil society support

programs at the national level, because few, if any, of these programs include legal components that envision a response to the increasingly hostile framework for funding.

The specific types of country-level assistance could include:

- Technical assistance on draft legislation, through the provision of analyses, comparative information and expertise on international law and good regulatory practices, as well as in-person drafting assistance;
- Capacity building of CSOs and CSO practitioners in civil society legal issues and advocacy through such activities as trainings, educational seminars, university courses, mentoring, the dissemination of toolkits, research fellowships, peer fellowships, study tours, etc.;
- Civic education aimed at raising awareness and educating CSOs and the general public on the legal and political space for civil society;
- Strengthening of “communities of practice” to encourage more effective networking, dialogue and information sharing on a variety of relevant topics;
- Research on issues affecting the legal and political space in which CSOs operate;
- Monitoring of developments affecting the legal and political space in which CSOs operate;
- Legal support made available to CSOs under threat or legal challenge. For example, the Non-profit Partnership Lawyers for Civil Society (LCS), established in 2006, unites highly qualified lawyers specializing in not-for-profit law in Russia. Forty-four lawyers from regions across the Russian Federation – from Kaliningrad to Petropavlovsk-Kamchatsky provide free legal advice to the country’s CSOs.

Toward those ends, there are a number of multi-year, large-scale initiatives supporting engagement at the country level, including:

- The Civic Space Initiative, 2012-2015.
- The NGO Legal Enabling Environment Program (LEEP), 2013-2018.
- The Lifeline: Embattled CSO Defense Fund, 2011-present.

Notably, however, there are a limited number of country-based initiatives that focus on long-term civil society development to address law reform needs. Attached in Appendix D is a chart showing regional and country-specific gaps.

III. Success Stories at the National Level

Through a study conducted in 2010, ICNL explored success stories in law reform and lessons learned from progressive NGO legal reform. The results of that study were published in an issue of *Global Trends in NGO Law*, entitled “Enabling Reform: Lessons Learned from Progressive NGO Legal Reform Initiatives” (<http://www.icnl.org/research/trends/trends2-3.pdf>). There is of course no magic formula for a successful reform initiative. At the same time, however, ICNL’s

experience in the countries surveyed revealed the following crucial lessons regarding a successful law reform advocacy process:

- The importance of broad-based participation in a law reform campaign.
- Engaging the government and legislature to support progressive legislation.
- A sound and supportive technical approach.
- Carefully designed diplomatic intervention.

Looking more specifically at reform efforts relating to foreign funding rules, we have prepared in Appendix E a summary of “success stories” in five countries. Based on the country overviews, we note the following learning points:

- A rapid response. When the Nicaraguan government published a draft administrative manual containing restrictive provisions, ICNL provided immediate technical assistance to its diverse Nicaraguan CSO partners to assess the draft manual under national and international law.
- A locally-led response to the legislative threat. In Israel, local civil society practitioners led efforts against the 2011 draft foreign funding bill. In Kyrgyzstan, local CSOs have led an advocacy campaign against a draft foreign funding bill, which has, to date, been successful in delaying consideration of the bill.
- A coordinated response among local and international actors. In Israel, local civil society, allies in the Israeli government, the diplomatic community, and international organizations were able to work together to prevent passage of the hybrid bill in 2011. In Kenya, local CSOs led the response against the draft amendments, but the international community played a crucial role by serving as conveners and by leveraging influence over individual government officials.
- Convening cross-sectoral dialogues. To support the law reform process in Iraq, the United Nations (the UN Office for Project Services) hosted roundtable conferences on the draft law, distributed proposed amendments to the draft law, hosted a number of civil society consultations for Iraqi government officials and CSO leaders, and advised the Civil Society Committee of the Iraqi Parliament on recommended changes.
- Building civil society coalitions. In Iraq, local organizations built a coalition of more than 6,000 Iraqi CSOs. In Nicaragua, local CSOs developed a consensus advocacy strategy. In Kyrgyzstan, local CSOs developed a joint strategic plan against adoption of the draft foreign funding law. In Kenya, in response to the introduction of the restrictive amendments, a civil society network that had been formed around the drafting of the Public Benefit Organizations Act was re-energized.
- Sound technical assistance. In Israel, an ICNL-led seminar for senior officials at the Ministry of Foreign Affairs on the foreign funding of civil society,

complemented by constructive discussions with the Attorney General's Office about the initiatives' failure to comply with constitutional provisions and international law apparently helped persuade policymakers to reconsider the draft bill. In Iraq, ICNL assisted in the drafting of the federal law on NGOs by preparing comments and legal analysis of preliminary drafts. In Nicaragua, ICNL helped assess the restrictive legal measures under national and international law; and helped local partners craft persuasive talking points appropriate for key audiences including legislators, CSOs, the press, and foreign donors.

- Addressing the concerns of law drafters and policymakers. In Kenya, CSOs advocated against the draft amendments by highlighting the amendments' potential effect on civil society and Kenya generally and by emphasizing the importance of civil society to Kenya's economy and development in sectors such as health and education. As part of the advocacy campaign in Kyrgyzstan, local CSOs prepared a short video containing a positive message about CSOs' social and economic impact in the country's development.

IV. Strategic Responses of Private Donors: Next Steps

As revealed in the mapping study, there are several global initiatives focused on foreign funding restrictions – and civic space more broadly. From the development of international norms to multilateral diplomacy to the provision of emergency funding, these initiatives are welcome and playing an important role in pushing back against hostile environments. Initiatives at the regional level are far more episodic, with relatively more robust efforts occurring in Europe and Latin America through multilateral mechanisms and modest regional programming in Central Asia and Africa, but very little happening in Asia and the Middle East. It is at the country level where the true test of reform impact is felt (or not). And it is at this level where one finds the greatest gaps.

This section will present and consider a range of options or “next steps” for challenging legal barriers to foreign funding. In considering next steps for donors, we start with the greatest need – the country level – and then expand outward to the regional and global levels. The ideas outlined below are potential options to advance the deliberations and are not intended to be recommendations. We are cognizant that important work relating to some of these “next steps” may already be under way. And we understand that the donors themselves are best poised to determine what strategic responses are likely to be most effective.

A. Country-level Strategies for Engagement

Engage in direct advocacy against restrictive legislation. Few private donors have sought to address the restrictive legislation directly with government officials of the host country. ICNL recognizes the risk of an advocacy strategy whereby donors play into the narrative trumpeted by many governments – i.e., that foreign donors are improperly intervening in domestic affairs. If appropriate, however, concrete actions could include:

- Submit letter of concern to the host government;
- Issue press release or editorial on issues relevant to civil society and the proposed restrictions;
- Lend support to NGO campaigns against restrictive laws;
- Mobilize prominent regional voices, including ex-politicians and other prominent/respected people, to speak out against restrictions on civil society.

Support reform of restrictive legislation. Successful reform efforts are happening in several countries; progress is possible. At the same time, however, there are significant gaps in country-level support. *Why?* Gaps in country-level support arise for a variety of reasons, hindering the ability to respond to foreign funding challenges. A number of categories of countries may fall outside of immediate donor priorities, particularly donor government priorities. Examples include:

- “Politically sensitive” countries (e.g., Bahrain, Ethiopia);
- Countries where governmental (and particularly, US) funding is perceived as “toxic” (e.g., Venezuela, Palestine, China);
- Countries not undergoing a crisis situation (e.g., Cambodia);
- Countries proactively doing the right thing (e.g., Mongolia);
- Countries perceived as having sufficiently strong democratic credentials (e.g., Hungary, Israel);
- Well-established democracies (e.g., Canada, the US).

Where do the gaps arise? Consequently, as revealed in Appendix D, of the 145 countries on the OECD-DAC list, only 6 countries are receiving donor investments of more than \$100,000 per year to advance civil society legal reform. A few countries, such as Myanmar, benefit from the upsurge in donor attention, but many other countries are neglected.

How to respond? Strengthening law reform capacity could include the following kinds of support:

- Educating CSOs on civil society law through trainings, fellowships, etc. so that local CSOs can lead efforts in pushing for reform;
- Supporting local CSO advocacy efforts against restrictive funding laws (e.g., direct support to advocacy campaigns, trainings for CSOs on advocacy techniques, etc.);
- Training CSO activists and practitioners on legal compliance strategies so as to avoid violations of foreign funding restrictions. Trainings could focus on, among other issues, conversion from a non-profit to a commercial entity and setting up an affiliate organization or branch office or subsidiary.
- Supporting strategic litigation challenges to restrictive funding laws. A recent example is support provided to challenge the Russian “Foreign Agents” law in the European Court of Human Rights.

- Supporting law reform in broader civic space issues, including laws affecting CSO registration, assembly, Internet and communications technology, and advocacy and expression.
- Supporting civic education. Recognizing that long-term reform is linked to public attitudes, civic education efforts relating to civil society and the freedoms of association, expression and peaceful assembly may lay the basis toward meaningful reform in the future.

In what time-frame? When proposed foreign funding restrictions arise, responses by donors and governments are often crisis-oriented and short-lived. Global technical assistance projects enable international and local organizations to respond quickly and flexibly, but generally only for brief engagements. But there are comparatively few long-term investments being made to strengthen local law reform capacity. In light of the importance of local leadership, it is the long-term “developmental approach” to civil society space that is most likely to reap benefits.

Support reform of legislation in democratic countries. Too often foreign funding restrictions are justified as following the example of established democracies. The Russian government’s reference to the US Foreign Agents Registration Act (FARA) is perhaps the most prominent example. Consequently, there is a need to push democratic/donor countries to lead by example and reform their own restrictive laws, thereby undermining the rationale of authoritarian regimes and instead exerting influence through their own positive and progressive framework.

B. Regional Strategies for Engagement

This section lists strategic options potentially appropriate at the regional level. As mentioned, there is limited focus on regional programming, with initiatives being supported in Central Asia and Africa but largely lacking in other regions. At the same time, there can be great benefit to regional initiatives. Both reforming and backsliding countries will often draw examples from the regional neighborhood; efforts to showcase enabling legal approaches and highlight the negative consequences of restrictive laws are crucial. Cross-border exchanges, vibrant regional networks, educational and capacity building of civil society legal expertise proved fundamental to reform efforts in Central and Eastern Europe. Depending on the region of focus, we can consider a menu of possible activities, including the following:

Support for Regional Mechanisms. Regional human rights mechanisms can offer a crucial tool for challenging restrictive regulation. While donor support is helping to galvanize the Study Group in Africa, more could be done in Latin America and Asia to help ensure greater interaction between civil society groups and relevant institutions within these regional organizations. In addition, consideration could be given to facilitating learning exchanges or peer fellowships between regional organizations, so that AU or ASEAN representatives can learn from colleagues working within the OAS and European systems.

Strengthening Regional Networks. Issues and struggles often remain localized; regional networks help to ensure broader awareness and a more meaningful response. Regional networks have taken root in Africa, Latin America, the Middle East and Asia. While the effectiveness and viability of each network varies considerably, they can play an important role in addressing challenges to civil society by providing space for linkage and interaction. Regional networks in Central and Eastern Europe were crucial, for example, in advancing law reform effectively in that region during the 1990s. Donors will have better ideas but potential means of strengthening networks could include: information exchange, peer fellowships, regional meetings/trainings, solidarity missions of networks to particularly hostile environments, regional consultations with UN Special Rapporteurs or other high-profile experts. The Open Society Foundation (OSF) has recognized the importance of regional networks in Africa and has provided initial funding to strengthen them through a regional networking project. Perhaps a similar networking support program could be considered in other regions, such as Asia.

Supporting Legal Compliance. While legal compliance is a question of national or local law, there may be value in facilitating the exchange of compliance strategies as a regional capacity strategy. For example, an increasingly common tactic for avoiding foreign funding constraints is to transfer funds to organizations registered as commercial entities or to a commercial subsidiary. Trainings or workshops to share compliance strategies and tactics could be instrumental in raising both awareness of options and the capacity to act on them.

Supporting Legal Defense and Strategic Litigation. At the regional level, the African Lawyers for the Defense of Civil Society is the only regional network focused on strategic litigation in defense of civil society. Strategic litigation has been successfully conducted at the country level (in both Sierra Leone and Uganda, for example) and a challenge to Sierra Leone's NGO law is currently pending at the ECOWAS Community Court of Justice.⁹ Other regions lack similar networks and the African Lawyers network is still in a nascent phase. Donors could support workshops and publications to publicize litigation successes; document successful litigation strategies; and train lawyers on the successful elements of strategic litigation.

C. Global Strategies for Engagement

Navigating the Existing Legal Environment. Most typically, private donors have responded to the restrictive funding environment by developing practical strategies to transfer funds effectively within the constraints of the legal system.¹⁰ In light of the donors' immediate interest in how to continue supporting local partners in hostile funding environments, there may be useful ways to help donors navigate existing legal requirements relating to foreign funding. One option could be to facilitate learning networks that focus on recipient countries. For example, donors active in places such

⁹ ECOWAS is the Economic Community of West African States, which is a regional group of 15 West African countries, founded in 1975. Like the East African Court of Justice, the ECOWAS Community Court of Justice has jurisdiction to rule on fundamental human rights issues.

¹⁰ This statement is based on evidence received from an informal survey of donors. In the interests of confidentiality, we do not include an overview of these practical strategies.

as China, India, or Russia could form *ad hoc* information sharing networks. Through such learning networks, donors could share information about navigating through the legal landscape of recipient countries.

Establish Early Warning System. Early warning systems are most commonly associated with earthquakes or weather-related disasters. There is nothing comparable for civil society related disasters or government crackdowns against civil society. While an early warning system may not lead to preventing the disaster itself, it could leave donors, governments and CSOs better poised to respond early and effectively. That said, we note that maintenance of an early warning system would be resource and labor-intensive and require rigorous application in order to be useful.

Formulate compelling response to state justifications for foreign funding constraints. Donors could contribute directly to developing a compelling response to government justifications for impediments to funding. As mentioned, government arguments supporting funding restrictions – national security, counter-terrorism, state sovereignty – are often presented in compelling terms. In light of this, the challenge is to make the case for pluralistic funding support. Are there persuasive reasons for governments to allow private donors to fund initiatives and organizations within a country but outside of the governmental development plan? The question is controversial not only among governmental leaders, but also among some civil society leaders. A clear articulation of how the value of philanthropic pluralism can actually strengthen the recipient country would be an important contribution to the field.

Launch De-stigmatization Campaign. Civil society is often losing the battle for the “hearts and minds” of not only government representatives, but of the general public. Government narratives of national security, state sovereignty, and guarding against foreign interference are often more compelling than civil society responses. The need for donors to develop a rhetorically appealing counter-narrative is crucial. We recognize that this specific messaging would need to be customized for different contexts.

Engage with Financial Action Task Force (FATF). Donors can support the advocacy efforts of the Transnational Civil Society Working Group to monitor and respond to FATF developments concerning civil society.

Open new lines of argument relating to investment protection. The research on use of investment treaties is well detailed, as mentioned above in Section II.D. As a next step, donors could focus on strategic litigation in an investment treaty case in order to move from a theoretical argument to a practical reality. The goal would be to create favorable precedent to solidify the norm that foreign funding constraints are protected by bilateral investment treaties. Governments have difficulty funding litigation, so this would be an appropriate gap for private donors to fill. Another potential next step would be to survey the existing BITs and map the extent to which they protect foreign funding. Based on the survey and mapping, donors could help ensure that trade representatives from friendly states are supportive of BITs covering CSOs and could then consider launching an advocacy campaign to strengthen the language of future BITs.

Public-Private Partnerships: Knowing that governments are working through multilateral mechanisms to respond to foreign funding challenges, consideration could be given to how private donors might contribute to and/or amplify those responses. ICNL recognizes that private donors may feel constrained working through government-driven, multilateral organizations. In some cases, partnership opportunities may be limited to information-sharing, as is the case with the CD Working Group Enabling and Protecting Civil Society, which has established an International Contact Group, consisting of a range of interested stakeholders, including private donor organizations. Other options include:

- Establishing a multi-donor fund for civic space protection. Examples of multi-donor funds include the former Trust for Civil Society in Central and Eastern Europe, the Balkan Trust for Democracy, and the Black Sea Trust for Regional Cooperation. It may be interesting to consider dedicating such a fund to improving the funding environment globally or in a given region.
- Participation in Lifeline: Embattled CSO Defense Fund. The provision of emergency and advocacy grants to CSO activists and human rights defenders is being addressed through the multilateral vehicle represented by Lifeline. Two private donors are already engaged in supporting Lifeline financially. Additional donor involvement is welcome. Moreover, as members of the Donor Steering Committee, donors may support Lifeline not only through financial contributions, but also through intellectual input into the strategic priorities of Lifeline.

Appendix A: Restrictions on Foreign Funding

This appendix provides an illustrative list of recent legal constraints imposed on the foreign funding of civil society organizations (CSOs). For more information on these or other initiatives, please contact ICNL (david@icnl.org.hu).

Type of Restriction	Country	Legal Measure	Status
Prohibitions and limitations against foreign funding	Ecuador	Decree prohibiting international CSOs from receiving funding from bilateral and multilateral sources for activities in Ecuador	Issued 2011
	Venezuela	Law for Protection of Political Liberty and National Self-Determination prohibits CSOs dedicated to “defense of political rights” from receiving foreign funding.	Enacted 2010
	Kenya	Miscellaneous Amendment Bill 2013: The bill included amendments to the Public Benefits Organizations Act, 2013 and sought to cap the amount of foreign funds NGOs can receive to 15% of their budget.	Draft amendments issued in November 2013 and withdrawn in December 2013.
Advance government approval	Bangladesh	Foreign Donations (Voluntary Activities) Regulation Act would prohibit individuals and organizations from receiving foreign funding for carrying out any voluntary activity without prior approval from the government; require organizations to register with the NGO Affairs Bureau before receiving foreign aid; and empower the NGO Affairs Bureau to approve or deny foreign funding on a project-by-project basis.	Draft bill issued first in 2012 and approved by the Cabinet of Ministers in June 2014. Pending parliamentary review.
	Pakistan	Foreign Contributions Act would require NGOs to obtain prior approval to use foreign funds, and give the government broad authority to review an NGO application or inspect the NGO, with strict penalties for noncompliance.	Drafted originally in 2012, with subsequent versions issued in 2013 and 2014. Still pending.
	Sudan	Government policy: Existing law requires NGOs to secure approval from the Humanitarian Affairs Commission (HAC), and the new policy states that funds may not be disbursed to the NGO until the HAC has approved a proposal by the NGO.	Issued 2013
	Turkmenistan	Presidential Decree: On State Registration of Foreign Projects and Programs of Gratuitous Technical,	Issued 2013

		Financial and Humanitarian Assistance and Grants: The Decree creates a new state commission to provide advance approval for all foreign funded projects and programs.	
	Nigeria	Bill to Regulate the Acceptance and Utilization of Financial/Material Contribution of Donor Agencies to Voluntary Organizations: The Bill requires voluntary organizations that wish to receive foreign funding to secure advance governmental approval and provide for imprisonment in case of violation of this requirement.	Bill presented for first reading in Parliament in June 2014.
Burdensome procedural requirements	Azerbaijan	Amendments to Laws on NGOs, Registering Legal Entities, Grants, and Administrative Penalties: NGOs are expected to register information about foreign donations received and there are strict penalties for noncompliance.	Enacted 2013
	Yemen	Amendments to NGO Law: The amendments relate to government interest in, among other things, "controlling" NGO funding to address "flaws in how the law was implemented over the past decade."	Drafted 2012
Restricted purposes and activities	Ethiopia	Proclamation on Registration and Regulation of Charities and Societies limits foreign funding to no more than 10% of total organizational income for organizations pursuing certain designated purposes.	Enacted 2009
	Bolivia	Law on Granting Legal Personality: The law grants the state the right to dissolve organizations without administrative process and requires NGOs to register all of their funding sources. In addition, it could be interpreted to preclude NGOs from working in human rights and democracy promotion and from receiving financial support from the government or international donors not in the country.	Enacted 2013
	Israel	Draft NGO Law: The draft law set a limit of \$5,500 in funding from foreign government entities if an NGO engages in prohibited activities (i.e., calling for the prosecution of IDF soldiers in international courts; supporting boycott, divestment, or sanctions against Israel and its citizens; and rejecting Israel's character as a Jewish, democratic State.)	Drafted 2013
Stigmatization of recipients of foreign funding	Russia	So-called Law on "Foreign Agents": NGOs receiving foreign funding and engaged in "political activities" must be registered as a "foreign agent"	Enacted 2012
	Kyrgyzstan	Draft "Foreign Agent" Law: The draft law would require that NGOs wishing to conduct political activities register as	Drafted in 2013, under review by parliamentary

		foreign agents. As a result, their activities would be limited and additional requirements would be imposed.	committee in June 2014.
	Ukraine	Law on Organizations Receiving Funding from Abroad: The law requires all public organizations and mass media to register as “organizations receiving foreign funding” and subjects such organizations to new reporting requirements, mandatory annual audits, and requirements to brand all of their activities and products as produced by “organizations receiving foreign funding.”	Enacted in February 2014 and subsequently repealed.

Appendix B:

Impact of Foreign Funding Restrictions on Donor Support

Legal barriers to foreign funding have made impeded the transfer of donor funding to support a broad range of causes, including but not limited to the work of human rights defenders. This appendix provides an illustrative list of examples of the negative consequences of restrictions on funding based on an informal survey of private donors conducted in February and March 2014.

Illustrative examples include:

- In some countries, foreign funding is completely prohibited. (Syria)
- In other countries, prior authorization of foreign funding is required, which necessitates the careful management of procedural hurdles. (Egypt, Algeria)
- In still other countries, CSO-recipients need to be registered with a specially designated regulatory body in order to receive foreign funding. (Bangladesh, India)
- Grantees are sometimes requested to provide detailed information on the executive leadership of the donor organization. (Argentina, Mexico)
- Cross-border transfers exceeding a certain threshold are subject to numerous *ad hoc* checks and audits. (Russia)
- Grantees have been audited and/or raided by government investigators, distracting them from carrying out program activities. (Russia)
- A local CSO was subjected to investigation, with the national bank requesting all commercial banks to hand over details of the accounts of the organization, which was suspected of being “engaged in suspicious transactions.” (Uganda)
- Political pressure is sometimes applied to certain organizations such that they do not want to receive foreign funding directly because it can undermine their reputation. (Bolivia, Ecuador, Honduras, India)
- Foreign funding may be subject to bank-imposed delays or refusals to release funds to grantee bank accounts; and/or to exorbitant taxation. (Bangladesh, Kazakhstan, Libya, Turkmenistan)
- Local CSOs may be dissolved due to opposition to government policy. (Ecuador)
- In some countries, difficulties in registering as a non-profit organization may make it impossible to have an organizational bank account. (China)

In addition to the “inflow” barriers listed above, there are also “outflow” barriers imposed due to, among others, counter-terrorism measures and restrictions on financial transactions with sanctioned countries. For more information on outflow barriers, please see ICNL’s article on the [“Legal Framework for Global Philanthropy: Barriers and Opportunities.”](#)

Appendix C: Transnational Research

Organization	Research Project and Description
CIVICUS	<p>CIVICUS publishes multiple annual reports on civic space, including the following:</p> <p>The State of Civil Society Report outlines trends, situations, and factors affecting the opening and restricting of civic space.</p> <ul style="list-style-type: none"> Report webpage: http://socs.civicus.org/?page_id=4289 Report pdf available here: http://socs.civicus.org/wp-content/uploads/2013/04/2013StateofCivilSocietyReport_full.pdf <p>The Global Trends on Civil Society Restrictions specifically looks at “restrictions and threats to civil society in [countries] which breach the spirit of the Busan agreement.”</p> <ul style="list-style-type: none"> Report pdf available here: https://www.civicus.org/images/GlobalTrendsonCivilSocietyRestrictions2013.pdf <p>The Enabling Environment Index considers governance and policy factors as well as socio-economic and socio-cultural factors that contribute to making the environment supportive or inhibitive of citizens engaging in civic space.</p> <ul style="list-style-type: none"> Report webpage: https://www.civicus.org/eei/. The report and data can be accessed here as well as a tool to compare specific country or indicator data. Report pdf available here: https://www.civicus.org/eei/downloads/Civicus_EEI%20REPORT%202013_WEB_FINAL.pdf <p>The Civil Society Rapid Assessment tool, currently in the pilot stage, is more flexible for evaluating strengths and weaknesses of CS in a wider range of situations, including more volatile conditions.</p> <ul style="list-style-type: none"> Tool webpage: https://www.civicus.org/what-we-do-126/csi/csi-ra; a report on the pilot stage has not yet been published. <p>The Civil Society Index (CSI) evaluates “the organisational structure of civil society, civic engagement, perception of impact, practice of values and the enabling environment” in order to equip civil society organizations with tools to strengthen their capacities to effect change at the local and national levels.</p> <ul style="list-style-type: none"> Information about CSI: https://www.civicus.org/what-we-do-126/csi/classic-csi Reports available here: https://www.civicus.org/resources/reports-and-publications/csi-reports
Foundation Center	<p>The Foundation Center provides a bibliography of resources related to civil society and international philanthropy. http://foundationcenter.org/getstarted/topical/globalsociety.html</p> <p>It also maintains a Catalog of Nonprofit Literature which addresses similar themes. http://catalog.foundationcenter.org/</p>
Hudson Institute's Center for Global Prosperity (CGP)	<p>The Philanthropic Freedom Index was launched as a pilot project on the philanthropic freedom of countries. The Index measures “the ability of individuals and organizations (both profit and non-profit) to donate time and money to social causes” by focusing on three indicators: civil society regulation, domestic tax regulation, and the regulation of cross-border flows. The CGP hopes to expand the pilot into an index. http://www.hudson.org/files/documents/FinalOnlineVersionPhilanthropicFreedomAPilotStudy3.pdf</p>
Human Rights Watch (HRW)	<p>HRW publishes reports on restrictions on civil society and economic, social, and cultural rights in individual countries.</p> <p>Reports available here: http://www.hrw.org/publications/reports?topic=737&region=All</p>

International Center for Not-for-Profit Law (ICNL)	<p>The International Center for Not-for-Profit Law (ICNL) (www.icnl.org) produces and maintains several online publications:</p> <ul style="list-style-type: none"> • The NGO Law Monitor outlines the legal frameworks affecting freedom of association and of assembly, access to civic space, and the availability of foreign funding in 48 countries and 8 multilateral organizations. It also addresses the legal barriers and restrictions created by these frameworks which inhibit citizens' and NGOs' capacities to exercise these freedoms and participate in civic space. (http://www.icnl.org/research/monitor/index.html) • Global Trends in NGO Law synthesizes key developments relating to the legal and regulatory issues that affect non-governmental organizations (NGOs). (http://www.icnl.org/research/trends/index.html) • ICNL's thematic portal on foreign funding reviews laws and measures that protect the right of NGOs to receive funding from abroad. (http://www.icnl.org/research/resources/foreignfund/index.html)
International Civil Society Centre (ICSC)	<p>ICSC uses the experiences of CSOs to build reports on trends that will affect the effectiveness of CSOs in carrying out their work. The section on future trends is available here: http://icscentre.org/area/future-trends</p>
International NGO Training and Research Centre (INTRAC)	<p>Research by INTRAC, conducted in conjunction with the European Association of Development and Training Institutes (EADI) (http://www.eadi.org/) and the University of Portsmouth (http://www.port.ac.uk/), explores the legal and political environment for CSOs in 12 countries (Bangladesh, Egypt, Ethiopia, Honduras, Kosovo, Kyrgyzstan, Myanmar, Peru, Rwanda, Serbia, Uganda and Vietnam).</p>
International Service for Human Rights (ISHR)	<p>Model Law on Human Rights Defenders. ISHR is working with “regional, sub-regional and national human rights defender groups from around the world to develop a model national law on human rights defenders and to advocate for its adoption at the international level and its enactment locally.” The goal of the law will be to provide appropriate protections for human rights defenders and also to give them greater leverage in advocating for human rights. http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.irbuHzaG.dpuf</p> <p>ISHR also publishes manuals and handbooks to provide information to human rights defenders whose advocacy intersects with regional and international human rights systems. http://www.ishr.ch/publications</p>
Trocaire	<p>Democracy in Action: Protecting Civil Society Space is a report covering 27 countries that examines how civil society advances towards freer democratic participation can be reversed. http://www.trocaire.org/sites/trocaire/files/resources/policy/democracy-in-action.pdf</p> <p>In addition, Trocaire publishes country policy reports regarding civil society networks and access to civic space. http://www.trocaire.org/resources/policyandadvocacy/search?f[0]=field_policy_resource_theme%3A35</p>
World Bank	<p>The World Bank produces reports on civil society engagement both with the World Bank and with World Bank-funded activities. Some of these reports relate to how to better strengthen the integration of CSOs into these activities. The World Bank – Civil Society Engagement Review is conducted every 2-3 years and examines collaboration, funding, and outreach regarding CSO involvement.</p> <p>Publication page available here: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20098376</p>

	~menuPK:277367~pagePK:220503~piPK:220476~theSitePK:228717,00.html
World Movement for Democracy	<p>The Defending Civil Society report, published in 2012 in its second edition by ICNL and the World Movement for Democracy, was previously endorsed by Desmond Tutu, the Dalai Lama and Vaclav Havel. It provides illustrative examples of the legal barriers used to constrain civic space and articulates international legal principles to protect civil society. (http://www.icnl.org/research/resources/dcs/index.html).</p> <p>The Defending Civil Society Toolkit is an online resource that provides tips, tools and strategies to help activists around the world advocate for the enabling environment for civil society in their countries.</p>
Additional Resources	<p>Closing Space: Democracy and Human Rights Support, Thomas Carothers and Saskia Brechenmacher, © Carnegie Endowment for International Peace, 2014.</p> <p>Defunding Dissent: Restrictions on Aid to NGOs, Darin Christensen and Jeremy Weinstein, Journal of Democracy, 2013.</p> <p>Violations of the right of NGOs to funding: from harassment to criminalization, <i>The Observatory for the Protection of Human Rights Defenders</i>, © OMCT and FIDH, 2013.</p>

Appendix D: Gaps in Civic Space Programming

This appendix reveals where there are gaps in regional and country-based programming focused on the legal environment for civil society, which would thereby embrace the funding environment for civil society. Where programming above \$100,000 per year is focused on the legal space for civil society, countries and regions are marked in green. Where programming is non-existent or below the \$100,000 threshold, countries are marked in red. The charts are not intended to capture broader civil society or human rights defender support programs, but instead focused on programs that could advance legal reform for civil society and the funding environment.

Regional Programs
Sub-Saharan Africa
Middle East/North Africa
Eastern Europe & Eurasia
Central Asia
Asia
Latin America/Caribbean

Country Programs			
DAC list of ODA Recipients			
Least Developed Countries	Other Low Income Countries	Lower Middle Income Countries and Territories	Upper Middle Income Countries and Territories
Afghanistan	Kenya	Armenia	Albania
Angola	Dem Republic of Korea	Belize	Algeria
Bangladesh	Kyrgyz Republic	Bolivia	Anguilla
Benin	Tajikistan	Cameroon	Antigua and Barbuda
Bhutan	Zimbabwe	Cape Verde	Argentina
Burkina Faso		Republic of Congo	Azerbaijan
Burundi		Cote d'Ivoire	Belarus
Cambodia		Egypt	Bosnia and Herzegovina
Central African Republic		El Salvador	Botswana
Djibouti		Fiji	Brazil
Equatorial Guinea		Georgia	Chile
Eritrea		Ghana	China
Ethiopia		Guatemala	Colombia
Gambia		Guyana	Cook Islands
Guinea		Honduras	Costa Rica
Guinea-Bissau		India	Cuba
Haiti		Indonesia	Dominica
Kiribati		Iraq	Dominican Republic
Laos		Kosovo	Ecuador
Lesotho		Marshall Islands	Macedonia
Liberia		Federated States of Micronesia	Gabon
Madagascar		Moldova	Grenada

Malawi		Mongolia	Iran
Mali		Morocco	Jamaica
Mauritania		Nicaragua	Jordan
Mozambique		Nigeria	Kazakhstan
Myanmar		Pakistan	Lebanon
Nepal		Papua New Guinea	Libya
Niger		Paraguay	Malaysia
Rwanda		Philippines	Maldives
Samoa		Sri Lanka	Mauritius
Sao Tome and Principe		Swaziland	Mexico
Senegal		Syria	Montenegro
Sierra Leone		Tokelau	Montserrat
Solomon Islands		Tonga	Namibia
Somalia		Turkmenistan	Nauru
South Sudan		Ukraine	Niue
Sudan		Uzbekistan	Palau
Tanzania		Vietnam	Panama
Timor-Leste		West Bank and Gaza Strip	Peru
Togo			Serbia
Tuvalu			Seychelles
Uganda			South Africa
Vanuatu			St. Helena
Yemen			St. Kitts-Nevis
Zambia			St. Lucia
			St. Vincent and Grenadines
			Suriname
			Thailand
			Tunisia
			Turkey
			Uruguay
			Venezuela
			Wallis and Futuna

Not included on OECD/DAC list: Bahrain, Russia

Appendix E: Reform Success Stories

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

Israel

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

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

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

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

deal a harsh blow to a long list of constitutional rights, including freedom of expression, freedom of association and the right to equality. Instead of enabling open discussion in an efficient “marketplace of ideas, they try to suppress speech. They put Israel on a par with the handful of countries that have taken similar steps, and I doubt the State of Israel should be jealous of these regimes and act like them.¹

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

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

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

Iraq

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

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

ICNL was able to assist the drafting and passage of the new federal law by preparing comments and legal analysis of preliminary drafts, partnering with the United Nations Office for Project Services (UNOPS) to host roundtable conferences on the draft law, distributing proposed amendments to the draft law, hosting a number of civil society consultations for Iraqi government officials and CSO leaders, advising the Civil Society Committee of the Iraqi Parliament on recommended changes, and creating coordination mechanisms for Iraqi CSOs

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

working on CSO law reform. ICNL supported its local partners in building a coalition of more than 6,000 Iraqi CSOs. The drafting process led to a partnership between the government and civil society that bridged divisions between Arab and Kurd, Sunni and Shia – one of the first such efforts in post-Ba’athist Iraq.

Nicaragua

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

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

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

Kyrgyzstan

In September 2013, two Parliamentary deputies developed a draft law that was almost identical to the Russian “foreign agents” law. In addition, the draft law would have introduced burdensome oversight and reporting obligations for all CSOs, and in particular, for those receiving foreign funding. ICNL and its local partner (the Association of Civil Society Support Centers) immediately mobilized the CSO community to develop a strategic plan against adoption of the draft law. ICNL prepared and distributed its analysis and, at an initial roundtable held in September, participants decided to push for public hearings on the draft law as soon as possible. On September 18, Kyrgyz President Mr. Atambaev said that Kyrgyzstan does not need the law on “foreign agents.” In spite of criticism of the draft by local and international organizations, and a well organized advocacy campaign against the draft law, President Atambaev seemingly changed his opinion, when he said in a BBC interview on November 19: “Let the Kyrgyz Parliament consider the draft law, and then we will see what will happen. But, once again, I want to highlight, that the primarily analogic law was adopted in the US, the cradle

of democracy, not in Russia.” On November 20, the MP and one of the initiators of the draft law also stated that that he would not withdraw the draft law from Parliament and that he and other initiators of the draft were sure that adoption of such draft law would lead to transparency and security of Kyrgyzstan.

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

Kenya

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

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

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