



Unblocking the Money: Mobilizing a Donor Response to Tightening Regulatory Restrictions on Civil Society and Cross-Border Philanthropy

July 15, 2014

1:45-3:15 pm

Session Organizers:

- David Mattingly, Director of Programs, Fund for Global Human Rights
- Julie Broome, Director of Programmes, Sigrid Rausing Trust

Facilitator:

- David Mattingly, Director of Programs, Fund for Global Human Rights

Speakers:

- Julie Broome, Director of Programmes, Sigrid Rausing Trust
- David Moore, Vice President of Legal Affairs, International Center for Not-for-Profit Law (ICNL)

Sponsor:

- IHRFG-Ariadne Donor Working Group on Cross-Border Philanthropy

The Fund for Global Human Rights supports frontline groups in repressive countries and has seen increased regulations on civil society across regions. David Mattingly explained that the Fund realized it needs to fight these restrictions in addition to navigating around them. David cited Mexico as an example: to comply with Financial Action Task Force (FATF) regulations, Mexico required organizations to report on their donors and donations. These requirements are cumbersome and have paved the way for defamation campaigns against groups receiving foreign funds: for example, the Mexican government accused a small non-governmental organization (NGO) of channeling foreign funds for terrorism and organized crime.

David Moore noted that over 60 laws or initiatives have been passed in the past two years to restrict funding for civil society worldwide. Some impede the ability of organizations to form, others prevent people from gathering, but many restrict access to resources, which can take many forms. Governments can ban foreign funding completely (for example, in Venezuela), implement complex bureaucratic requirements, like registering grant agreements (China), restrict funding for types of activities, like human rights (Ethiopia), or require NGOs to register with government agencies (Bangladesh and Egypt) or those receiving foreign funds to register as “foreign agents” (Russia). These laws have a contagion effect, as countries copy their neighbors’ efforts to restrict space for civil society.

The International Center for Not-for-Profit Law (ICNL) mapped these restrictions in a report for private donors. The mapping looks at initiatives to respond to these restrictions on multiple levels:

Global:

- The United Nations Human Rights Council's Special Rapporteur on the rights to freedom of peaceful assembly and of association issued a report on access to resources, upholding the right to foreign funding.
- The Community of Democracy has established a Working Group on Enabling and Protecting Civil Society, composed of 13 governments. The Working Group calls upon member states and private actors to offer diplomatic responses to draft laws threatening civil society
- The Lifeline Embattled CSO Assistance Fund funds emergency grants as well as advocacy
- The Extractive Industries Transparency Initiative (EITI) assesses the enabling environment for civil society when countries apply for membership
- FATF has largely had a negative impact on the civic space issue but has now formed a Transnational Civil Society Working Group

Regional:

- The Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe issued reports and guidelines on freedom of assembly and association; the Inter-American Commission on Human Rights has held annual hearings; and the African Commission has established a study group on freedom of association and assembly
- There are still gaps in Middle East and Asia and few regional programs to support legal reform

Bilateral:

- Advocates have argued that countries restricting foreign funding are in violation of bilateral investment treaties

National:

- Few individual nations in the Organization for Economic Cooperation and Development (OECD) have invested significant resources to support civil society law reform

There has been successful pushback against restrictions, such as in Cambodia or Kenya, because of these tools to respond. ICNL's report is available online [here](#).

Julie Broome explained that donors have come together, through the ICNL mapping project and the new Working Group, to discuss how to respond collectively and get ahead of the issue. Possible donor responses include:

National:

- Supporting NGO advocacy and engaging in advocacy themselves. For example, through Ariadne, several donors recently issued a statement calling on Hungary's government to stop its harassment of Norway Grants, its grantees, and other human rights NGOs
- Training NGOs and drawing on best practices from other nations to encourage legislative reform. Donors can also support strategic litigation to challenge restrictive laws or civic education on the implications of such restrictions

Regional:

- Supporting NGO networks, regional mechanisms to examine restrictions on civil society, or strategic litigation in regional courts

Global:

- Establishing a learning network for donors to share best practices
- Articulating the positive role of NGOs and philanthropy in supporting human rights broadly
- Supporting efforts to engage with FATF (for example, through the current Working Group hosted by the Charity and Security Network)
- Collaborating to develop an early warning system to assess where restrictive laws might emerge, enabling donors to prevent rather than respond to restrictions
- If there was sufficient interest, donors could also create a collaborative fund offering rapid response grants to NGOs grappling with restrictive laws

The Donor Working Group on Cross-Border Philanthropy, jointly hosted by IHRFG and Ariadne, aims to:

1. Facilitate other donors engaging in discussion and action on this issue
2. Explore together a conceptual approach to addressing the problem of restrictions on foreign funding
3. Develop vehicles for addressing the problem
4. Act as a resource to assist donors navigating the difficult legal environment

Question-and-Answer Period

One participant noted the lack of a visible response from the global human rights community and asked whether donors should do more to promote this issue with rights groups beyond individual national efforts. The panelists agreed that the international conversation has been weak. Julie said that donors have begun to connect different national campaigns and noted an initiative to draft a model NGO law that civil society could use on an international level. David Moore pointed to organizations participating in the Lifeline Fund and CIVICUS starting to engage on this issue.

Another participant noted that restrictions on foreign funding are a problem in India. The funder's foundation might benefit from a working group in Northeast India that also includes NGOs, and they would be interested in advice from the broader donor working group. Julie explained that the working group is the space to seek advice and to brainstorm with colleagues facing similar issues. David Moore agreed that India is a particularly problematic country and noted that its neighbors (Nepal, Sri Lanka, Bangladesh) have been introducing similar legislation.

Another participant asked how these mechanisms interact with each other and if they have been conducive to change on the ground. David Moore noted the difficulty in computing causation when looking at response initiatives. If a restrictive law is withdrawn, who gets credit: the Special Rapporteur and the Community of Democracy or, more likely, local actors? All are key pieces of the movement, as discussed at a recent meeting in Warsaw on the right to foreign funding.

Participants then broke into smaller groups to examine case studies from Pakistan, Venezuela, and Morocco and consider which responses might be helpful. Funders suggested several strategies:

- Identify points of leverage (for example, appeal to international standards and reputation)

- Look at short-term needs and make sure the work continues. When necessary, work through umbrella organizations or established international affiliates to get to local organizations
- Speak with grantees on the ground to understand their needs
- Safety considerations: a public stance could put activists at risk, but amplifying the civil society's broader voice might make it harder to target an individual activist
- Encourage pushback and movements to change the public perception of restrictive laws
- Create a coalition of NGOs to engage individual governments or regional bodies together. Make explicit to governments the pitfalls of restrictive laws with regards to Western actors like the EU
- Increase civil society's presence in EU spaces
- Civil society can take several approaches in this case, and it isn't funders' place to unite them behind one. Both confrontation and engagement with government can be useful
- Tie civil society's access to foreign funding to individual governments' access to bi- and multi-lateral funding
- Funders can also come up with their own regulatory framework to set an example
- Look at countries that have successfully resisted these laws and use them as models for other context.

Biographies of Speakers:



Julie Broome, Director of Programmes, Sigrid Rausing Trust

Julie Broome is Director of Programmes. She has worked at the Trust in a number of capacities, most recently Head of Human Rights, before becoming Director of Programmes. Prior to joining the Trust she was Programme Director at the CEELI Institute in Prague, where she was responsible for conducting rule of law-related trainings for judges and lawyers from countries undergoing transition. Previously, she was a Programme Manager for Central and Eastern Europe with the American Bar Association's Rule of Law Initiative, and a Programme Associate at the Henry M Jackson Foundation in Seattle. Julie holds a Bachelor of Arts degree from Sarah Lawrence College, a Master's degree in International Studies from the University of Washington, and a Master's degree in International Human Rights Law from the University of Essex.



David Mattingly, Vice President for Programs, Fund for Global Human Rights

As Vice President for Programs for the Fund for Global Human Rights, David is responsible for oversight, coordination, and integration of human rights grantmaking in six regions around the world. Since joining the Fund, David has managed grants programs for frontline groups based in Latin America, North Africa, and West Africa; coordinated an initiative to strengthen the capacity of Mexican activists to promote public policies that expand human rights protections; and developed the Fund's grantmaking strategy to challenge rights abuses related to sexual orientation and gender identity. After earning a Bachelor of Arts in International Development from American University, David monitored the human rights situation in indigenous communities in Chiapas, Mexico. Prior to joining the Fund, David worked at the Moriah Fund, where he helped manage grantmaking programs promoting indigenous rights in Guatemala, environmental justice, and women's rights and reproductive health. David serves on the Board of Directors of the Center for International Environmental Law.



David Moore, Vice President of Legal Affairs, International Center for Not-for-Profit Law

David Moore is Vice President of Legal Affairs with the International Center for Not-for-Profit Law (ICNL). On behalf of ICNL, David manages several of ICNL's global programs, enabling ICNL to monitor developments worldwide and respond flexibly. David has supported civil society legal reform in a diverse range of contexts, including in Africa (e.g., Malawi, Mauritius, Sierra Leone, South Sudan, Uganda, Zambia, and Zimbabwe), in Asia (e.g., Afghanistan, Bangladesh, Cambodia, Indonesia, Laos, Myanmar, Pakistan, and Vietnam), and in Europe and Eurasia (e.g., Bulgaria, Croatia, Hungary, Moldova, Russia, and Turkey). David has published extensively on issues of civil society law, and has served as a trainer on civil society legal issues for government officials, civil society representatives, and U.N. civil society staff. For a decade, David served as a professor at the Central European University in Budapest, teaching Civil Society Law; he has previously taught at the Catholic University in Lublin, Poland and the European Humanities University in Minsk, Belarus.