

Submission from the Global Initiative on Civic Space and Security to the UN Special Rapporteur on the rights to freedom of peaceful assembly and association's call for inputs, for his report **on the ability of civil society to access resources**, for presentation at the 50th session of the UNHRC

1. Introduction

The Global Initiative on Civic Space and Security (the Global Initiative) is a new learning and action platform co-founded by the [Funders Initiative for Civil Society](#) (FICS) and the [Fund for Global Human Rights](#) that seeks to seed a global, strategic, cross-sectoral response to the "security playbook" – the widespread abuse by States of counterterrorism and security laws, information technology and harmful narratives to restrict civic space.

The Global Initiative works to grow and resource the field of actors working at the intersection of civic space and security through three interconnected strategies: generating a deeper understanding of the security playbook through research and learning; building an ecosystem of funders willing to resource civil society to disrupt and reform the security playbook; and providing funding and technical accompaniment for civil society actors on this important but currently under-examined problem.

This submission is based on:

1. Research and analysis commissioned by FICS and FGHR on the impact of counterterrorism measures on civic space;
2. A survey of public and private philanthropic foundations¹ and ten in depth interviews with senior program officers and grants managers in these institutions on the challenges they have encountered as funders, in giving resources to civil society organizations (CSOs), and
3. Input by leading civil society partners in the UK, Nigeria and India.

This submission opens with an analysis of what is driving restrictions on access to resources globally, highlights key trends including impact on funders and shifts in funder practice and highlights impact on civil society partners in a number of contexts.

2. What are, in your opinion, the main drivers influencing the adoption of these measures?

A broad and inclusive civic space, where organisations, movements and individuals are able to participate and actively shape their society, is critical to tackling the enormous crises humanity faces in the decade ahead. However, over the past fifteen years, human rights defenders and CSOs have faced increasing administrative harassment, smear attacks, criminalization, intimidation, surveillance and sometimes violence at the hands of those whose interests they threaten.

¹ Circulated among the Human Rights Funders Network and Ariadne: European Funders for Social Justice and Human Rights memberships

FICS' [2020 review on the future of civic space](#) interviewed 150 funders and civil society representatives working on the issues that will be most contested in the coming decade – including climate justice, democracy, racial justice, transparency and migrants' rights. This research identified three cross cutting drivers set to close space in the next decade:

1. **SECURITY PLAYBOOK:** The use of laws (including emergency laws), information technology and discourse to restrict and criminalise assembly, expression, and association on the grounds of national security or countering terrorism and violent extremism.
2. **SOCIO-CULTURAL AND POLITICAL THREATS TO DEMOCRACY:** Transnationally co-ordinated populist, authoritarian, and anti-rights actors who seek to weaken the rule of law, erode democratic pluralism, re-impose 'traditional' values and wage aggressive anti-rights and anti-gender campaigns.
3. **THE CONCENTRATION AND ABUSE OF ECONOMIC POWER:** The unprecedented accumulation of power and wealth in corporate hands providing economic actors with undue influence on politics, and preventing regulation that would protect rights and enabling the legal and physical harassment of actors who oppose their interests.

Interviewees identified all three drivers as being implicated in restrictions of freedom of association and in particular access of CSOs to resources. Broadly, restrictions on civic space were situated within the wider context of rising populism and authoritarianism as tactics used by powerful actors to gain and consolidate power by cracking down on those demanding transparency, accountability or threatening their political or economic interests. In particular interviewees highlighted:

- The over-application and abuse of laws to counter terrorist financing and money-laundering as the foremost driver of restrictions on freedom of association and their ability to give or receive resources – especially across borders. This is examined in greater depth below.
- The role of the organised global anti-gender movement in advocating for legislation to restrict LGBTQI+, feminist and SRHR rights, including freedom of association and access to funding as well as orchestrated attacks to delegitimise such actors. Examples were given of the correlation between restrictions of freedom of association and anti-gender campaigns in Sub Saharan Africa in particular (Kenya, Zimbabwe, Senegal, Burkina Faso), particularly in contexts where LGBTQI+ movement building was increasingly effective and strategic.
- The undue influence of the private sector ([strikingly unregulated in contrast to civil society](#)), and its role in using SLAPP suits to delegitimise environmental, corporate accountability organisations and journalists.

In the two decades since the terrorist attacks of September 11th, 2001, States and transnational bodies have gained extensive powers with the stated aim of combating terrorist and extremist groups. Following the 9/11 attacks, the United Nations Security Council has been the driver behind over 140 governments passing counterterrorism and security laws between 2001 and 2018 which have had a significant impact on civic freedoms globally.

In particular [UN Security Resolution 1373](#) – passed weeks after the 9/11 attacks – and the [Global Counter Terrorism Strategies](#) adopted every two years by the UN General Assembly from 2006 onwards require States to combat terrorist and violent extremist groups by disrupting their: a) access to cross border funding; b) ability to communicate

securely; c) ability to disseminate information freely and d) impunity to engage in terrorist or extremist acts. Consequently, UN agencies and transnational bodies have developed norms for governments and private actors to ensure systems – including financial and banking systems, travel routes and social media platforms – are not used to enable “terrorism” and “extremism” and that legislation is introduced to criminalise acts of terrorism and violent extremism – include material support for such acts.

In practice, these norms are increasingly over applied or abused to target civil society. Between 2005-2018 over two thirds of communications received by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism [concerned the use of counterterrorism and security legislation against human rights defenders, civil society groups and activists](#). According to the UNSR *“this empirical finding ...affirms that the targeting of civil society is not a random or incidental aspect of counterterrorism law and practice. It suggests the hard-wiring of misuse into counter-terrorism measures taken by States around the globe”*.

Reasons behind this “hard-wiring” include the failure of the UN Security Council and agencies to set clear, narrow definitions of terrorism, extremism and security, allowing States to criminalise and smear those exercising their civic freedoms as a threat to security, and the pre-emptive security policy agenda, driven by the UN, that requires States to identify and counter threats before they materialise.

In the absence of clear definitions and due process safeguards, States are over-applying or abusing counter-terrorism and security laws and measures to disrupt the access of legitimate CSOs to resources, to justify surveillance and censorship of those lawfully exercising their civic freedoms, and to criminalise protest and dissent. Legal restrictions are often preceded by or go hand-in-hand with efforts by States and non-state actors to delegitimise CSOs and human rights defenders as “terrorists” or “enemies of the state”.

With regards to access to resources, counterterrorism guidelines developed by the [Financial Action Task Force](#) (FATF), an intergovernmental policy making body established in 1989 by the G7, and hosted by the OECD, to combat global money laundering and terrorist financing, have been identified as significantly contributing to the waves of restrictive foreign funding and NGO laws introduced over the last decade.

Until 2016, FATF's [Recommendation 8](#) singled out the not for profit (NPO) sector as being particularly vulnerable to abuse for financing terrorism and recommended that national governments took steps to prevent this. As partial- or non-compliance with FATF's recommendations affects the financial standing and investment prospects of countries, States were incentivised to introduce tighter oversight of cross-border funding of CSOs, contributing to over-regulation of civil society in the form of: intrusive supervision of CSOs; restrictions on CSOs' access to funding and bank accounts; forced dissolution, and de-registration or expulsion of CSOs.

Concerted, targeted advocacy by international and national members of the [Global Nonprofit Organizations \(NPO\) Coalition on the FATF](#) over several years led to the FATF's landmark decision to revise Recommendation 8 in 2016. The FATF has recently established [a programme to address the unintended consequences of financial restrictions on civil society](#) and created direct access for civil society to submit expertise, concerns and evidence of misapplication and abuse of FATF standards. Despite progress, there is a continued correlation between FATF and restrictions on access to resources as evidenced by a recent [investigation](#) by Reuters linking FATF to NGO restrictions in Uganda, Turkey, Serbia, Myanmar and India in the last two years, and a continued need

for FATF members to urgently address how FATF recommendations are implemented at the national level.

3. What are the key trends, developments, and challenges affecting the ability of civil society organizations to access resources, including foreign funding, in your country, region, or globally?

Over the last decade, funders reported their grantees have faced sustained and growing restrictions on their ability to register, operate, receive cross border funding and access banking services in all regions.

In this section we highlight five key trends relevant to this report:

1. NARRATIVES TO JUSTIFY RESTRICTIONS ON ACCESS TO RESOURCES:

Alongside the legal and administrative measures leading to restrictions, the most common trend noted was the widespread use of narratives to justify legislative restrictions and interference by authorities in the operation and funding of civil society. One interviewee noted that while smear attacks were "*initially a by-product*" of restrictive NGO laws they are "*now a central piece of the strategy to prevent groups from doing their work and/or accessing resources*".

The dominant narratives reported are:

- *The labelling of human rights defenders as threats to security:*
This ranges from explicit labelling of activists as terrorists (recent examples were given from [Egypt](#), [Algeria](#), [Israel](#), [Hong Kong](#) and the [UK](#)) to more subtle measures aimed at implying civil society may be a risk to security (for example in Brazil, parliament pushed back against plans to place CSOs under the oversight of the intelligence agencies). One funder noted that the use of emergency powers in response to the COVID-19 pandemic has broadened societal ideas of what constitutes a threat to security – creating a fertile ground for broad and incorrect use of such terms. Funders and civil society experts reported that linking civil society to terrorism and extremism made banks, funding platforms and funders more averse to working with civil society organisations.
- *Labelling of civil society – particularly those actors that receive funding from abroad – as “foreign agents” or operating “against national interests”:*
The “foreign agent” label, which originated in Russia in 2012, has been [widely copied](#) including across Eurasia, parts of Sub-Saharan Africa and most recently in Central America. One funder noted that human rights defenders and movements in Latin America – and in particular “*indigenous movements pushing for autonomy and recognition*” – were being labelled as being “anti-national interest” by governments from across the political spectrum. A recent evolution of this narrative is of environmental and climate activists being “pushed by wealthy global environmentalists” (i.e. by interests from outside the country) in a context of unprecedented international funding for environmental work.
- *Restricting foreign funding to prevent interference in referenda and elections under the guise of defending the democratic process:*

For example in 2018, ahead of the referendum on access to abortion, [Irish human rights groups were accused of breaching an electoral interference law](#) by accepting funds to work on abortion rights, while in 2020 a source at the [Kenyan Ministry of Foreign Affairs, speaking anonymously to journalists, labelled some international development partners as "infiltrators" and "scavengers"](#) working for the interests of foreign powers in efforts to block their funding for election support programmes. In the midst of the 2021 Ugandan elections that were widely considered to be flawed, [President Museveni ordered the suspension of the Democratic Governance Facility](#) saying it was being "used to finance activities and organisations designed to subvert (the) government under the guise of improving governance." The suspension was a significant blow to efforts by multi-lateral and bilateral funds to provide financial and technical support to state and non-state actors in areas such as democracy, human rights, and rule of law.

- *Smear attacks on LGBTQI+, feminist and female human rights and environmental defenders* are frequently gendered in nature, justifying restrictions on access to resources on the grounds of tradition, culture and morality. According to one of the interviewees, state authorities and foreign anti-gender actors are holding the ground in West Africa. They have become stronger and more strategic, often deploying the narrative and language of the LGBTQI+ persons with the aim to advocate against their rights and exclude them from society.

2. IMPACT OF THE COVID-19 PANDEMIC:

A number of interviewees reported that COVID-19 restrictions initially made it easier for States to restrict cross border funding or tighten existing restrictive NGO laws (for example in Russia and India) without public debate or scrutiny. The pandemic created a huge strain on the resources of CSOs simultaneously seeking to meet new and urgent needs within their communities and manage the personal needs of staff, whilst also facing practical barriers to access resources due to restrictions on freedom of movement and closures of banks. Conversely several interviewees noted an increase in self-sufficiency among some movements (for example indigenous people's movements in Latin America), and some examples of the public questioning the rationale behind foreign funding restrictions – for example in India where the Foreign Contribution Regulation Act 2010 severely restricted much needed funds and equipment reaching national and local groups during the second COVID-19 wave in 2021.

3. REDUCTIONS IN THE ENABLING ENVIRONMENT FOR PHILANTHROPY:

Restrictions on access to resources and cross border funding poses an existential challenge to the ability of private, public and governmental funders to support vital work on human rights, social justice, development, humanitarian response and environmental protection. The majority of private and public funders that support such work in the global south and east are registered in the US or Europe.

Funders reported multiple barriers to giving resources to civil society domestically and across borders:

- The duty to comply with laws to prevent terrorist financing and money laundering has significantly hampered the ability of several of the funders we interviewed to move resources to grantees in other countries. Interviewees reported that compliance had become very complicated and resource

intensive with the assessment of risk and burden of proof landing on funders and CSOs rather than on governments or banks to demonstrate compliance.

- Funders registered in the US reported much greater oversight from the tax authorities manifested in different ways from *"tightening of rules and regulations governing how they can assess non-US actors' equivalency determination (to US charities) to greater suspicion of what is political activity, what is lobbying and engaging in policy on the role of NGOs."* Tax rules are also limiting the ability of funders to give general support. In particular the Internal Revenue Service increasingly requires substantiation with funders facing more pressure to justify that the grants are of a charitable nature.
- In the context of political polarisation there are unprecedented levels of political and media scrutiny of private philanthropy. In parallel one interviewee observed that *"anti-democratic parties and populist parties have flipped the script on what used to be uncontested work on democratic practice"*, as a result of which work – such as research on populism or democracy – which five years ago would have been viewed as neutral, could now be perceived as political activity or partisan.
- A number of funders also reported coming under direct attack by governments for example in Hungary, India and in Guatemala when President Giammattei [justified imposing tight financial controls on NGOs](#) by citing media articles and funders' grant data to suggest foreign funders were supporting organisations accused of crimes from corruption and money laundering to sexual abuse and involvement in the drugs and arms trade.

The combined impact of the above challenges has resulted in greater legal and accountancy costs and workload for funders, increased barriers to providing unrestricted funding and a lower appetite to fund any work that could be characterised as political. As a result, interviewees reported that less funding is going to CSOs abroad.

4. SHIFTS IN FUNDER PRACTICE:

While the trends outlined above have had an overall chilling effect on cross border funding – an increasing number of funders are seeking to ease the administrative burden on grantees and facilitate access to resources.

- Private foundations are increasingly investing in mechanisms that enable them to continue funding human rights and environmental work that they would otherwise not have the capacity to support due to due diligence requirements, costs and risk. Mechanisms include intermediary grassroots funds, collaborating with other funders through pooled and aligned funds where risk and reporting is shared and through investment in local philanthropy including infrastructure and community foundations.
- A number of funders reported finding flexible ways to overcome the multiple barriers grantees face in accessing resources. These include using informal banking processes, digitalisation of internal foundation processes, increased willingness to modify grants and budgets and to fund grantees registered as businesses or consultancies.

- Several funders have been involved in unilateral and joint efforts with other funders to build the capacity of grantees to navigate challenging and rapidly changing legal and regulatory environments. Support for grantees included: Funding for auditing support; providing tools, expert advice and information on compliance and funding INGOs and national NGOs to provide up to date information and analysis on the enabling environment for civil society and philanthropy.
- Recognising the link between legislative restrictions and heightened physical and digital security risks to grantees, a number of grassroots funders provide funding to support the safety, holistic security and resilience of grantees as well as support to move to more secure communications platforms.
- One funder highlighted the importance of not only addressing legislative restrictions but resourcing LGBTQI activists to counter hostile narratives. This funder supported grantees in the Balkans, West Africa and South Asia on strategic communications and how to shift narratives. The same funder supported opposition research on opponents of LGBTQI+ rights and SHRH in the African continent.

5. DEATH BY A THOUSAND AMENDMENTS

Funders and civil society experts reported the trend for frequent proposed changes to the enabling legal environment for civil society and philanthropy. One interviewee reported that the Nigerian government proposes amendments to NGO legislation every year, with changes overseen by *"highly inefficient agencies"* resulting in continuous barriers and delays for civil society. Another reported States as *"getting smarter"* as to *"where to bury restrictions – for example in miscellaneous statute bills, changes in big law packages or less obvious pieces of legislation such as anti-money laundering counter-terrorism bills and changes to the taxation regimes eroding the public benefit status."* The volume and pace of amendments and constant uncertainty and exhaustion this creates appears to be part of a long-term strategy by some States in their efforts to restrict civil society.

6. BANKS DE-RISKING

The regulatory burdens related to the implementation of counter-terrorist financing and anti-money laundering requirements and the increasing number of sanctions regimes have had a profound impact on banking practices. All interviewees reported challenges with grantees facing unexplained delays, refusals of money transfers, onerous and intrusive information requests (often into the mission and activities of the organisations) and in some cases closure of banks accounts – even where the banks have the necessary documentation they need. Several interviewees reported a new trend where States announce laws that are not taken forward but have immediate consequences for the banking industry who start changing their practices even before they have to which has a chilling effect on the groups (for example in Niger, Mauritania, Philippines and Thailand). In India, the State has instrumentalised the State Bank to control the access of civil society to banking services. Examples provided by interviewees included:

- HSBC Mexico closed the account of a Mexican CSO without notice. After the funder made enquiries, a bank employee privately disclosed that HSBC was closing

several NGO accounts as accounts for charitable purposes were deemed too high-risk.

- An LGBTQI funder reported how exclude wording such as 'lesbian' or 'trans' in all contracts and bank dealings in the region to prevent substantial delays resulting from additional scrutiny.
- 2020 amendments to the Indian Foreign Contribution Regulation Act 2010 include a requirement that all FCRA registered civil society organisations open bank accounts at one State Bank of India (SBI) branch in New Delhi. As of July 2021, only around 50% of FCRA registered organisations had an operational bank account.

EMERGING TRENDS

In addition to the major trends identified above, there are a number of emerging factors that should be monitored:

- **INCREASING ACTION ON THE CLIMATE CRISIS:** At the recent COP26 USD \$1.7bn worth of commitments were made by international donors, private philanthropy and governments for energy transition, stopping fossil fuels, conservation of forests, and support to indigenous communities. Getting funding to the most effective groups tackling climate change at the national and local grassroots level will require funders circumventing the many restrictive laws and administrative barriers that have been put in place over the last decade. While there is greater political and public support for much of this work, oil and gas rich states will continue to restrict such work and we are likely to see increased restrictions and smear attacks – most likely on the grounds of national security – against environmental, indigenous peoples' rights and climate activists.
- **REGULATION OF FUNDRAISING PLATFORMS AND CRYPTOCURRENCY:** Several interviewees noted the potential of cryptocurrency and other new technologies as a means of resourcing activists in restrictive environments, for example Belarus. Blockchain technology, on which cryptocurrencies are based, has a wide range of potential applications of interest to funders. Its secure chains of data offer alternative means of verifying recipients in contexts where restrictive regulation or threats to partner security mean traditional approaches to registering an organisation are not viable, as well as a means of securely transferring funds where bank de-risking or over-regulation of civil society means wire transfers are impractical. However, others noted recent moves to regulate new technologies, often in the name of CFT / AML measures. One respondent cited the [Nigerian government's move to ban cryptocurrency](#) in the wake of the #EndSARS protests, after supporters of the movement raised funds online through cryptocurrency.

4. What legislative, administrative, policy or regulatory measures have been adopted in recent years in your country, region or globally that affect the ability of civil society organizations to access resources, including foreign funding? What are the main features of these measures?

The most prevalent measures identified by interviewees and survey respondents as impacting civil society's access to resources are:

- Legislation introduced by States to comply with international obligations or norms to counter terrorist financing and money laundering regulation, which extends the powers of States to regulate and monitor flows of cross border funding.

Enforcement of such laws is often accompanied by freezing of bank accounts, audits, office raids, and smear attacks in the media. The private sector is also involved, with banks and fundraising platforms seeking to comply with regulations by imposing onerous demands on CSOs or withdrawing services.

- Transparency and aid effectiveness measures, used by some governments to control the inflow, intended purpose and recipients of international development cooperation support. Such measures are sometimes accompanied by narratives implying corruption or financial mismanagement by CSOs.
- Vaguely worded laws ostensibly intended to prevent foreign interference or threats to national security and state sovereignty, targeted at CSOs and their funders often in concert with a negative narrative or smear attacks on these civic actors.
- Laws and regulations governing the registration and operation of CSOs which have a direct bearing on their ability to access grants and financial services where registration is denied, suspended or terminated.
- Tax regulations that erode the public benefit status of CSOs or question their charitable status, and exorbitant taxation rates and procedures misused to impede or cripple CSOs.

Often several of these measures will manifest and interact in a single country context. Attached as an appendix are a series of case studies exploring the impact of:

- Countering terrorist financing / anti-money laundering laws and restrictive NGO laws combined with surveillance, criminalisation and bureaucratic harassment on civil society in the Middle East North Africa region (Egypt, Israel, Syria)
- Restrictive legislation governing foreign funding in India, including 2020 amendments to the Foreign Contributions Regulation Act that have impeded the country's response to COVID-19
- The introduction of "foreign agents laws" in Central America (El Salvador, Nicaragua)

5. Conclusion

The Global Initiative on Civic Space and Security endorses representations made by international, regional and domestic non-governmental organisations and the former UN Special Rapporteur on Freedom of Peaceful Assembly and Association that remind States that the ability of civil society to seek, receive and use resources is inherent to the right to freedom of association and essential to the existence and effective operations of any association; and, that as a part of their obligation under international human rights law States must allow associations to seek, receive and use foreign funding in exercising their right to mobilise resources available within society as a whole and from the international community.

Furthermore, the Global Initiative encourages banks to make stronger efforts to better understand NPO mandates and operations and to facilitate their legitimate activities through ensuring financial inclusion and access to financial services, and for governments and central banks to provide adequate guidance to banks on the operations of NPOs.

APPENDIX: COUNTRY AND REGIONAL CASE STUDIES

MIDDLE EAST NORTH AFRICA

Access to resources has been a contentious issue in the Middle East and North Africa for over a decade with a significant drop in funders operating across the region due to costs of compliance and legal and reputational risks. Some private funders rely on intermediary funders who have tried to develop innovative solutions for channeling funds and carry the burden of vetting and checks for compliance with countering terrorist financing and anti-money laundering laws and other legislation. Funders we interviewed described chronic problems with lack of resources for civil society, suspension of their grantees' activities and fatigue. One intermediary funder described governments in the Middle East North Africa as "*having an industrial plan to make civil society disappear*". Positive developments include support from diaspora groups for local human rights movements and success with crowdfunding, for example in Palestine, but the long term challenge will be how to get funds across borders both practically and lawfully. Examples from Egypt, Israel and Syria highlight the different ways security laws and rhetoric are severely restricting access to resources for civil society.

Egyptian civil society, and in particular human rights groups have been subjected to waves of notorious restrictive laws, criminalization, intimidation and harassment over the last decade. The latest iteration of this was the introduction of Law 149 of 2019 which requires mandatory registration of CSOs, allowing the authorities to close down unregistered organisations and freeze their assets. The law prohibits a range of activities including "political work" and work that allegedly undermines national security, public order, or public morals. None of these terms are clearly defined. The law also imposes severe restrictions on local and foreign funding with NGOs requiring prior approval from security and intelligence agencies before receiving foreign funding.

Over the last decade, the Israeli government has cracked down on Israeli, Palestinian and international human rights organisations by clamping down on funding, denying entry to employees, and raiding offices. In October 2021, Israeli Minister of Defense announced the designation of six leading Palestinian civil society organizations in the Occupied Palestinian Territory as "terrorist organizations" under Israel's Anti-Terrorism Law 2016. This move was intended to not only criminalize these organizations, but to cut off their funding and other forms of support they receive from international partners and supporters. According to Frontline Defenders, the timing and method of the designation suggests that it was also an effort to legitimate the surveillance and infiltration of the devices of Palestinian human rights defenders using Pegasus spyware, as discovered by a Front Line Defenders forensic investigation.

Access to resources for those who work on conflict affected countries – for example Syria – is hampered by multiple sanctions regimes and international anti-terrorist regulations that require banks to follow strict procedures when they provide their services to local civil society organisations and INGOs in such contexts. One funder described how banks arbitrarily "red flag" such organisations rather than supporting their access to financial services. This, combined with economic and political pressures in the neighbouring countries where these organisations operate, has made it extremely difficult for civil society to access funds and limited their ability to help communities affected by conflict or in humanitarian crisis.²

² Full report available at: <https://www.impact-csr.org/invisible-sanctions/>

INDIA

India's Foreign Contribution Regulation Act (FCRA) is one of the most restrictive and draconian laws regulating foreign funding. The most recent [amendments](#), introduced in September 2020, severely hampered India's ability to respond to its disastrous second COVID-19 wave and have had grave consequences for CSOs, particularly [smaller grassroots organisations](#) and those engaged in rights-based research and advocacy work.

In 2010, India was evaluated by the Financial Action Task Force (FATF) and found to be non-compliant with Recommendation 8. The FATF recommended that the government undertake a comprehensive, risk-based assessment of the NGO sector for terrorist financing, following which the State quickly introduced the Foreign Contribution Regulation 2010 Act (FCRA 2010). The amendments went beyond the reforms required. It is worth noting that Recommendation 8 has since been revised to remove the claim that the NPO sector is "particularly vulnerable" to terrorist abuse, yet India continues to use compliance with FATF recommendations to justify the 2010 FCRA and other unnecessary regulatory burdens on Indian civil society and funders.

FCRA 2010 contains several problematic provisions. It prohibits organisations with a "political nature" from receiving foreign funding. The concept of "political activity" is ill-defined and can include social mobilisation as political activity. FCRA 2010 also prohibits the acceptance and utilisation of foreign contributions for activities detrimental to national interest; "national interest" also remains undefined. The law also requires civil society organisations to review their permission to receive foreign funding every five years.

Despite grave concerns in domestic civil society and the international community, the FCRA 2010 is being increasingly used to cut off crucial financial resources to civil society. Interviewees and survey respondents cited examples of the FCRA 2010 being used to target civil society groups working on issues of human rights, social justice, accountability, minority rights and environmental and corporate accountability issues. In June 2016, three UN Special Rapporteurs issued a [joint statement](#) on repeated misuse of the FCRA.

The FCRA was further tightened in 2020 - amendments include a requirement that all FCRA registered civil society organisations open bank accounts at one State Bank of India (SBI) branch in New Delhi and a prohibition on the sub-granting of FCRA funds. As of July 2021, only around 50% of FCRA registered organisations had an operational bank account while the sub-grant prohibition has created a major challenge for funders seeking to support small, grassroots and remote CSOs. Over 80% of FCRA registrations were due to expire in October 2021, making groups critical of the government vulnerable to losing their certificates. [Last month](#) over 6000 organisations were denied renewal of their FCRA registrations.

The Indian government has consistently sought to target not only civil society but deter funders. India has, for several years, maintained a prior approval or 'watchlist' of foreign entities - typically donor agencies - whose incoming foreign transactions require prior approval by the Ministry of Home Affairs. In July 2021, the government added ten additional foreign donors to this list, including US-based foundations working on critical issues of forced labour and modern slavery, climate change and the environment, and other prominent issues. There was no public explanation as to how or why these funders were added to the prior approval list. The legal reality has had a profound impact on private funders and donors, with many deciding to leave India altogether. Those who stayed have tried to find alternative legal routes to providing resources, but at considerable additional cost and risk.

There are, however, opportunities to advocate for change. India is scheduled for evaluation by the FATF in 2022 and the body - with support from key members states, funders and civil society - could hold India to account on its overregulation of civil society in line with its new commitment to ensuring a concern for the abuse and unintended consequences of financial restrictions.

CENTRAL AMERICA

Interviewees highlighted two countries in Central America that have recently or are in the process of adopting laws and mechanisms that will label CSOs receiving funding from abroad as “foreign agents”, echoing legislation which originated in Russia in 2012 and has since been shown to be [a way of controlling or limiting advocacy](#) on issues from human rights to environmental protection.

In August 2021, at least 45 CSOs had their legal status [revoked](#) by **Nicaraguan** authorities. The country's government [accused](#) the organisations of failing to comply with civil society reporting requirements and of obstructing authorities' work. The cancellations were based on legal instruments such as the “[foreign agents law](#)”, the law on non-profit entities (Law 147), the law against money laundering (Law 977) and other regulations on non-profit oversight³.

The government has cracked down on organisations working on human rights, arbitrarily revoking their legal status, and arresting numerous political prisoners who have spoken out about human rights abuses. Organisations that have chosen to register have been asked to supply contact information for the communities that they serve. CSOs therefore either run the risk of registering as a foreign agent and putting themselves and the communities they serve at risk, or not registering, having their bank accounts surveilled by the government, being arrested and / or having their legal status revoked.

New legislation proposed in **El Salvador**⁴ would require individuals and organisations that receive funding from external sources to register with the Ministry of the Interior and Territorial Development in a yet-to-be established Russia inspired Foreign Agents Registry that will have broad discretionary powers. This law would impose a 40 percent tax on the funding received by these organisations – an unprecedented restriction against civil society even among existing foreign agent/foreign funding laws. Those that register as foreign agents will be barred from any political activities perceived to alter public order or “endanger or threaten national security” or “the social and political stability of the country.” Failure to comply with any provision of the Foreign Agents Law, including the requirement to register within 8 days of the law entering into effect, could result in the cancellation of their legal status, criminal charges, as well as a fine of up to \$100,000-\$150,000. CSOs are already required to provide financial documentation in El Salvador. However, the proposed bill would require more onerous requirements.

³ CIVICUS Monitor: Closure of 45 civil society organisations within one month in Nicaragua: <https://monitor.civicus.org/updates/2021/09/09/closure-45-civil-society-organisations-within-one-month-nicaragua/>

⁴ CIVICUS Monitor: Foreign Agents Law would restrict fundamental freedoms in El Salvador: <https://monitor.civicus.org/updates/2021/12/07/foreign-agents-law-would-restrict-freedom-el-salvador/>