

IFEX Submission to UNSR on FoAA report

Introduction

[IFEX](#), the global network of over 100 member organisations working to promote and defend freedom of expression and information worldwide, is pleased to present this submission to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association in response to the call for inputs for the study of ‘trends, developments, and challenges regarding the ability of civil society organizations to access resources, including foreign funding’.

The following contributions are representative, though not exhaustive, of the scope of the issue globally and highlight several selected findings that have been reported by or directly impacted IFEX member organisations. A series of recommendations and best practices to states and donors are also provided.

I. State practices: key trends, challenges, and developments

A growing number of governments have passed new laws and weaponized existing regulations aimed at undermining the work of civil society organisations, especially those that engage in activities deemed critical to authorities. This alarming trend often emerged in countries where protest movements or elections challenged the legitimacy and power of authoritarian regimes - which responded by raising the spectre of foreign interference to justify the crackdown on legitimate dissent. CSOs demanding accountability are often depicted as ‘enemies of the state’ and accused of illegally receiving funds and resources from foreign governments and suspicious entities. They would then be subjected to intense regulation, harassment and even physical violence which make it almost impossible for them to continue their mission. Global collaboration, partnership, and expressions of solidarity can be flagged as treasonous activities under the pretext of protecting national security and national interests. CSOs continued to face threats like this [during the pandemic](#), which severely affected their work in extending aid and organising vulnerable segments of the population in marginalized communities. Further, inflexible and onerous donor requirements often also serve as barriers for CSO access to resources, due to excessive administrative burdens as well as quickly shifting situations and needs for many organisations in the context of the pandemic and for those working under authoritarian regimes.

a) Legislative, administrative, policy or regulatory measures adopted in recent years that affect the ability of civil society organizations to access resources, including foreign funding

Numerous countries across regions have adopted legislative and regulatory measures that, while unique to their contexts, nonetheless have common traits in their rationale and application. The following are several examples highlighted by IFEX member organisations for this submission:

Zimbabwe - In November 2021, Zimbabwean Parliament gazetted a Private Voluntary Organisations (PVO) Amendment Bill. Civil society organisations have [decried](#) this legislation for ostensibly using the recommendations of the Financial Action Task Force (FATF) – an intergovernmental body aimed at devising policies for combatting money laundering and terrorist financing – to instead criminalize the work of CSOs in the country. Problematic [aspects](#) of this bill include excessive oversight and interference by the executive, harsh penalties for organisations that refuse to register under the bill’s framework, and the threat of deregistration and financial expropriation without judicial oversight or appeal. IFEX member Media Institute for Southern Africa - Zimbabwe, has recently led efforts among IFEX members to insist that the bill [be withdrawn](#) until it can be reformed to be brought in line with domestic law and international and regional standards informed by broad-based consultations with relevant stakeholders.

Cambodia - Although currently Cambodia has no legislation directly targeting foreign funding, local IFEX members in Cambodia have warned of the government’s [announced plan](#) to draft a foreign interference bill in line with Singapore’s Foreign Interference Countermeasures Law. The fact that the Cambodian Government is [considering adopting](#) a law similar to Singapore’s Foreign Interference Law is of grave concern for freedom of assembly and association in Cambodia.

The Foreign Interference Law that the Government of Singapore passed in October 2021 to counter the threat of foreign interference is [highly controversial](#), as its broad scope and limited judicial oversight provide the Government with sweeping powers to punish anyone based on vague allegations of involvement with foreigners. The enactment of this law has raised legitimate fears that it would be used to stifle critics of the ruling party.

A similar weapon in the hand of the Cambodian Government, who has frequently [accused](#) critics of stoking “color revolutions” to overthrow the government, and has already passed various repressive laws in recent years, will only provide it with more tools to silence critical voices. This law could also be used by the Government to restrict CSOs’ access to foreign funding if the authorities deem such funds as a means for foreign organisations to interfere with the country’s internal affairs, thus impacting CSOs’ right to access foreign funding and ultimately undermining their legitimate operations.

Mongolia - Two laws have recently been introduced in Mongolia that could threaten civic space and the ability to access funding – the draft Law on Legal Status of Associations and Law on Legal Status of Foundations. IFEX member [Globe International Center](#) (GIC) has flagged numerous issues with this legislation that have been [echoed](#) by other global watchdogs. These include the inappropriate application of the FATF risk assessment for terrorist financing to CSOs, new stringent and intrusive financial reporting and governance requirements, and the establishment of a ‘Civil Society Development Council’ that, among other things, gives the government increased control over access to important funding sources. As in Zimbabwe, GIC is calling on the government to withdraw these bills and initiate an open and transparent reform process that includes civil society actors.

Nicaragua - The IFEX Latin America and Caribbean Alliance (IFEX-ALC) has been working with international and local partners in Nicaragua in response to [growing restrictions](#) on freedom of expression and civic space in the aftermath of social protests in 2019 and in the lead up to elections in 2021. One such restriction has been through the ‘Law for the Regulation of Foreign Agents’. This law has already been [condemned](#) by the Inter-American Commission for Human Rights, citing the overreaching power of state authorities to brand any organisation seeking or receiving foreign funding or cooperation as a ‘foreign agent’, forcing them to register as such by threat of harsh sanctions that could include the cancellation of an organisation’s legal status and steep monetary fines. Particularly notable for this report, the law requires organizations to report their monthly income and spending, and to specify the origin of funds to the Interior Ministry.

Since introduced, IFEX member Human Rights Watch has [reported](#) that between July 28 and August 26, 2021, authorities ordered the closure of 45 NGOs, including women’s groups, international aid organisations, and

several medical associations. Other organisations have announced their suspension of activities after the Law for the Regulation of Foreign Agents went into effect in 2020.

Egypt - Egypt's 2019 'Law on Regulating the Work of Civil Associations,' has forced independent organizations to register under the repressive law or face dissolution. IFEX members have repeatedly [denounced the law](#), saying it empowers the government to deny registration to independent human rights organizations on vague grounds. Under the law's severely restrictive framework, only "societal development" work aligned with the government's plans is permitted, with any civic work authorities deem to be "political," or violating "public order" or "morals", being forbidden. Those who register are subjected to excessive interference by the State, including having their organisational funds treated as public assets, and face heavy fines for violating its provisions.

In response to reports that the 11 January 2022 deadline requiring organizations to register had been delayed for six months, rights groups called on Egypt's parliament to [repeal the law](#), and for international action to protect the country's human rights movement and ensure the survival of independent civil society organizations. As a result of this framework and a plethora of other challenges to operating in Egypt's restrictive environment, IFEX member organisation the Arabic Network for Human Rights Information (ANHRI) recently [announced](#) their decision to suspend operations.

Belarus - Finally, a combination of "extremist" legislation and administrative and judicial harassment have led to the liquidation of dozens of CSOs and media outlets in Belarus since the Lukashenka regime's intensified crackdown on freedom of expression, assembly and association began in the aftermath of elections in August 2020. [Legal analysis](#) by IFEX member ARTICLE 19 has identified how Belarus' extremism legislation violates international law, jurisprudence of the European Court of Human Rights and practices of Council of Europe member states.

Local IFEX member the Belarusian Association of Journalists (BAJ) – themselves forced to liquidate as part of the regime's self-described "purge" of CSOs deemed by the President to be "foreign agents" – have noted how in recent months, the regime has only [extended the application](#) of extremist legislation to include media outlets and their readers and subscribers. Further, at the end of 2021, the government re-introduced criminal sanctions for individuals participating in unregistered organisations. With no legal space left for CSOs to operate in Belarus, and given the dangers of participating or fundraising for liquidated organisations, this is an urgent barrier for the resourcing and funding of Belarusian CSOs, who were already facing immense [challenges](#) under restrictive registration requirements.

b) Drivers and Impacts

In the above cases and many others, regulations negatively impacting the ability of CSOs to access funding and resources have been introduced during times of challenge to political authorities. One such moment is electoral periods, where governments impose legal restrictions close to campaigning cycles. As a result, CSOs are restricted in their voter education programmes and related activities.

In other cases, legitimate protests against corrupt government practices or human rights abuses are challenged or dismissed as illegal attempts to overthrow the government, fuelled by foreign actors. Anti-corruption bodies are often accused of being Western-funded neoliberal organisations whose mission it is to undermine sitting governments. This is especially so with those that expose malfeasance in the public sector and by state run enterprises.



Another common framework used to target CSOs is under the guise of countering terrorism, extremism, or organized crime. In such cases, overly broad definitions of what constitutes these offenses has led to punitive or restrictive frameworks being applied to the activities of CSOs. Significant for this study has been the [misuse of recommendations](#) issued by the FATF to specifically target CSO funding through legislative or regulatory amendments, using the FATF as a veil of legitimacy for an otherwise inappropriate application of this regulatory mechanism.

We have also observed the way that neighbouring countries learn from and mimic repressive tactics around the world, with many governments either directly citing bad practices and legislation from other countries, or otherwise threatening and introducing measures that contain many parallels. This has been witnessed in cases ranging from Cambodia (Singapore), to Belarus (Russia) and [El Salvador](#) (Nicaragua).

The impact that such measures have on organisations is extensive and can be crippling. Foremost, the inability to seek and receive funding hampers the positive role that CSOs play in upholding the fundamental right to freedom of expression and information, among other rights protected under the UN charter. CSOs also play a crucial role holding government officials to account – a critical public good essential to democratic societies, debate and pluralism. When CSOs are prevented from accessing the funding and resources necessary to carry out their work, these public functions are lost.

It is important to note that when this is the case, it is often marginalized groups who feel the impact of this void the most, whether due to their disproportionate vulnerability to human rights abuses or inequitable access to services and resources that enable them to participate and thrive in democratic systems. Sometimes, legislative measures are specifically used to target the funding and support to these groups, such as with Ghana's [discriminatory](#) Private Members bill on 'The Promotion of Proper Human Sexual Rights and Ghanaian Family Values' introduced by Ghanaian members of Parliament in 2021.

When organisations have to contend with measures that restrict their access to funding and resources, a number of negative impacts are felt directly by organisations themselves. Administrative hurdles and reporting requirements under restrictive frameworks drain the energy and resources from organisations that are often already over-stretched. However, refusal to comply can also result in financial penalties, travel bans and other punitive measures that further obstruct their work. In extreme cases, criminal sanctions can be applied, organisations are forcefully disbanded, or otherwise cease their operations under the pressure of hostile environments and after being starved of resources. Further, the stigmatization of CSOs when persecuted under anti-terror, extremism or similar legislation opens organisations and their staff up to smear campaigns, online harassment and other forms of abuse. Finally, some organisations may make the decision to relocate their operations abroad, bringing with it a range of other financial, operational and personal challenges.

c) COVID-19 as a Unique Challenge to CSO Funding and Resourcing

Throughout the COVID-19 pandemic, IFEX members have reported many challenges to their operations. Some of these have resulted from the introduction of emergency legislation that have increased undue restrictions on the rights to freedom of expression, assembly and association and the need to respond to violations. Others are more directly tied to their organisational contexts and include the following:

Funding difficulties - Due to the necessary cancellation of many organisational activities and the shift to working from home, many organisations are having trouble receiving cost extensions from donors, and have faced further challenges finding alternative sources of funding. CSOs have also struggled with decreased or

sudden loss of funding (e.g. project funding or [membership funds](#)), inability to access emergency funds, or lack of options for short-term financing.

Lack of support for remote work - Organisations have been scrambling to implement institutional remote work setups, including developing work from home policies, purchasing necessary equipment and materials, ensuring adequate access to resources online, etc. This has also led to diverted or reduced attention and resources from achieving organisational goals

Mission creep - Certain groups who were marginalized already or at risk have been hit hard during the pandemic, face starvation, poverty, or increased persecution. As a result, some civic groups have shifted toward providing more humanitarian assistance, which drains their already modest resources.

Funding restrictions - In addition to restrictions on foreign funding described above, some governments have also reinstated restrictions on citizens' ability to withdraw cash from bank accounts or to access other financial tools and services. This further reduces the efficacy of CSOs to work with disproportionately impacted communities.

II. Donor Practices

In a shifting environment where CSOs are under threat (often suddenly), where human rights issues are swiftly changing and the pandemic continues to impact their work, responsive and flexible tactics and funding are required. Donors need to invest in CSOs on the basis of trust, prioritising the delivery of core funding to deliver on their important work. This unrestricted funding will enable CSOs to respond in the best way they can in the face of shifting scenarios.

However, many government donors (not all, but many) have been slow to take on board these approaches, and instead continue to rely on burdensome and stringent requirements that don't reflect the realities of contexts on the ground. The resulting administration for CSOs is hobbling - especially when they are facing additional administrative pressures from authoritarian regimes. In other cases, rigid project frameworks based more on the longer-term priorities of donors than pressing needs on the ground, create additional difficulties for CSOs in responding to the communities and crises that require their intervention the most.

The COVID-19 pandemic had a significant [economic impact](#) on CSOs, particularly grassroots organisations. In addition to decreased or entire loss of funds, CSOs also struggled with loss of staff due to forcible downsizing, inability to pivot project priorities, and obstruction through legislation that came into force due to the pandemic (e.g. [India](#)).

States and other donors (whether from an international organisation, foundation, or private sector) can implement helpful measures which include the prioritisation of core funding, and lowering the barriers to applying and reporting, thereby making funding more accessible. States can also develop an economic strategy that provides reliable, stable, and unrestricted government funding to civil society organisations, along with access to and opportunities for financial support. It is also vital to ensure that the support provided is safe from government cutbacks. Improving policies and legislation to expand, rather than shrink, civic space enables CSOs to operate freely and openly, and allowing access to foreign funds provides CSOs with alternative streams of funding. This enables CSOs to diversify their sources of funding, contributing to long-term financial sustainability.



There are a number of initiatives from the past couple of years (led by foundations in particular) that promote positive approaches and present good models for practice. Examples adopted by donors include:

Human Rights Funders Network: Open Philanthropy - The goal of Open Philanthropy is a funding field that is actively open to sharing power, is justice-oriented, accountable to those affected by funding decisions, and responsive to intersecting forms of injustice. Accordingly, the initiative is founded on six key pillars that include: accountability, the centering of movements and their organizers, open information, data and knowledge exchange, racial justice and intersectionality, and holistic and collective care, wellness and security.

Ford Foundation: BUILD Initiative - The Ford Foundation is working to find more innovative ways to strengthen relationships and collaborations with grantees in a bid to support their work and organisations. Whenever possible, they provide grantees with multi-year general support grants and strive to meet true costs whenever possible.

They support identification of new forms of funding for historically disadvantaged communities, which requires understanding of their values and needs. As such, they are taking deliberate steps to involve more grantees in the foundation's own strategy development.

[A Call to Action signed by over 800 Foundations](#) pledging greater flexibility in funding during the pandemic. Many of these principles represent strong granting practices in the long-term:

- Loosening or eliminating project funding restrictions
- Converting project funds to unrestricted support
- Reducing administrative demands on CSO partners
- Increase community-based emergency response funds
- Clear and transparent communication to CSO partners
- Recognise that solutions are found not within donor agencies but in CSO partner organisations and the communities they serve - particularly communities least heard
- Support, as appropriate, grantee partners advocating for important public policy changes to fight the pandemic and deliver an equitable and just emergency response for all. Lend donor voices to calls to action led by partners, at their direction and request.
- Learn from these emergency practices and share what they teach us about effective partnership and philanthropic support, so we may consider adjusting our practices more fundamentally in the future, in more stable times, based on all we learn.

[A series of research reports by the Centre for Effective Philanthropy highlighting requirements for equity and flexibility in granting.](#) These reports are based on interviews with US-based foundation leaders responding to shifting resources and grantmaking practices during the pandemic. These leaders are calling for fundamental changes in granting including prioritisation of long term, flexible funding; shifting the funder-grantee power dynamic; placing greater trust in nonprofits; and increasing foundation payout.

III. Recommendations

Given the above trends, challenges, and best practices regarding the ability of CSOs to access resources and funding, including foreign funding, the following measures are recommended:

Accreditation



To facilitate access to resources, the accreditation of civil society organisations through accreditation regimes that are fair, transparent and meet international standards conducive to an enabling environment for healthy civic space and the exercise of freedom of expression, assembly, and association must replace any regulatory bodies that are overly-politicized, restrictive or otherwise used to deny CSOs legitimacy or legal status.

Accreditation provides spaces and opportunities for dialogue between civil society and State representatives to cooperate on pressing issues, including the funding and resource challenges that organisations face regularly. This positive model for accreditation must also apply to the United Nations itself, which far too often [denies CSOs access](#) to UN bodies through the politicized ECOSOC NGO Committee.

Open access to internet and digital technologies

Ensuring easy, safe, secure, and open access to the Internet and digital technology is a vital resource for CSOs that allows them to communicate, engage, and build relationships with partners (including other CSOs, foundation donors, private sector donors, and foreign governments) nationally, regionally, and globally. It creates an enabling environment for them to work openly and effectively to meet goals and priorities to advance human rights, facilitating future funding from potential donors. CSOs should also be able to operate in environments without fear of surveillance, hacking, censorship, and violation of privacy.

Strengthened partnership

Partnerships between states and civil society are essential to upholding and fulfilling state obligations to freedom of expression, association, and assembly. Civil society plays a valuable role when engaging in consultations, policy development and implementation, and highlighting key threats and urgent issues related to human rights. Providing access and opportunity to national and foreign funding, and other resources without barriers, is beneficial for a healthy and strong civic space while also strengthening the relationship between states and civil society. This relationship can be further strengthened by collaborating with CSOs in a meaningful and equitable way, providing a genuine seat at the table in key international fora and policy spaces. Partnerships should also be a foundational value in the design and implementation of funding opportunities and initiatives for CSOs.

State-State interventions

States can hold each other accountable for obstructing CSOs through restrictive or discriminatory legislation that puts up barriers to accessing national and foreign resources, assistance, and funding. Emphasising the importance of civil society to operate in a space that encourages the exercise of freedom of expression, association, and assembly will lead to stronger human rights protections, expansion of the civic space, and advancement of country development objectives and goals. States can also offer technical assistance and advice for the reform or enactment of legislation that meets these objectives.

Legislative and policy changes

States should avoid implementing or making changes to legislation and policies that put the financial safety and sustainability of CSOs at risk. This includes legislation that actively prevents CSOs from accessing foreign funding and resources; designates CSOs as terrorist organisations; targets or criminalises certain activities of CSOs or employees exercising their rights to freedom of expression, association, and assembly; or forcible liquidations of organisations due to lack of, or disruptions, in funding. States that use other frameworks such as the FATF, or implement legislation such as hate speech laws, to target CSOs ultimately contribute to shrinking civic space under the guise of advancing human rights, freedom, and equality.

Improved donor practices

In line with the best practices described above, donors should adopt funding models that prioritize trust in CSO partners, flexibility and responsiveness in their funding initiatives and requirements, as well as an emphasis on sustainable core funding.