

ENABLING THE FLOW OF DONATIONS INTERNATIONAL STANDARDS THAT SAFEGUARD CROSS-BORDER GIVING TO CSOS



Monitoring Progress, Empowering Action

Since 2013, over 18 countries have proposed or passed laws or policies that restrict the access of CSOs to funding from other states, private donors and foundations, individuals, or international organizations.

ECNL has analyzed over 36 relevant laws, by-laws, and practices from 26 countries globally to understand the scope of restrictions and provide legal arguments to counter them. The analysis illustrates new trends and provides guidance for arguments based on international and regional standards that safeguard the right to freedom of association, including the right for civil society organizations (CSOs) to seek and access resources, and other applicable human rights. This paper aims to empower CSOs, activists, donors, researchers and others to counter restrictions to international funding and to advocate for a more enabling environment for their activities and impact.

THE PROBLEM

Under the identified laws and policies that restrict access to international funding, CSOs are obliged to:

- Register in a special register;
- Ask permission or notify government bodies before receiving or using international funds;
- Submit special detailed and frequent reports on the receipt and use of international funds;
- Undergo special audits;
- Channel international funding through state banks or organs;
- Submit to harsh sanctions for non-compliance;
- Submit to enhanced state controls and investigations.

The laws or policies are also frequently accompanied by public slandering and stigmatization of CSOs receiving international funding, and often quite vicious and arbitrary harassment.

THE IMPACT

The above laws and policies have greatly impacted the operation and activities of CSOs in the respective countries. Some key challenges include:

- Heavy administrative burdens, especially for smaller CSOs
- Difficulties in implementing projects
- Difficulties in applying often vague or unclear legislation
- Harsh sanctions including dissolution for failure to comply with rules
- Loss of reputation, funds, stakeholders and projects
- Increased unwillingness of potential donors to engage in cross-border philanthropy

THE ANALYSIS

The analysis highlights the following conclusions:

- Enhancing the transparency of CSOs, protecting state sovereignty and ensuring aid effectiveness are not legitimate aims under international human rights law, and therefore restricting or hampering CSOs' access to international funding cannot be justified;
- States need to properly justify new laws or policies based on fact-based evidence, and in particular need to specify why existing regulations are not sufficient to resolve an issue;
- Certain measures, e.g. reporting obligations, may not be so burdensome as to prevent CSOs from implementing their activities;
- Blanket measures affecting all CSOs that receive international funding are disproportionate and thus not permissible;
- Measures that endanger or impede CSOs' ability to plan and implement their activities, (including prior permission/notification and special eligibility procedures) strike at the core of CSOs' right to freedom of association and cannot be justified;
- Obliging CSOs to publish private details of donors or beneficiaries is not permissible as it violates the right to private life;
- Generally, slandering or harassing individual CSOs or groups of CSOs is not permissible (nor is it necessary to ensure transparency of funding); and
- The dissolution of CSOs for minor infractions (including failure to report on funding or to report on all funding received) is disproportionate and thus never permissible.