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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.<sup>1</sup>

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” triggered a second wave of legal impediments. Recent (and ongoing) events in Ukraine and Venezuela are similarly making authoritarian regimes nervous; it would seem natural to expect a third wave of legal constraints after recent developments in Ukraine, Venezuela, and elsewhere.

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,

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

including countries from Africa (e.g., Ethiopia, Kenya, Sudan); Asia (e.g., Bangladesh, Indonesia, Pakistan); Europe & Eurasia (e.g., Azerbaijan, Russia, Ukraine); Latin 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 23<sup>rd</sup> 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 on-going discussions. Because of time and resource constraints, we were not able to research every ongoing initiative. Accordingly, if readers have additions, we invite you to share those additions with David Moore (ICNL's Vice President – Legal Affairs) at [david@icnl.org.hu](mailto:david@icnl.org.hu).

## **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 (Maina Kiai); the Special Rapporteur on the right to freedom of expression (Frank LaRue); and the Special Rapporteur on human rights defenders (Margaret Sekaggya).

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.<sup>2</sup> 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.”<sup>3</sup> 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 human rights defenders has addressed the issue of foreign funding and affirmed the right to receive. The overlapping mandates

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<sup>2</sup>[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf)

<sup>3</sup>*Id.* at p. 4.

lend themselves to joint action. Indeed, the three mandate-holders mentioned above have issued joint statements on disturbing legislative initiatives.

### 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.

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. For example, The [World We Want](#) platform is a UN-civil society endeavor to gather perspectives from all levels of society. In addition, a consortium of CSO partners (ICNL, ARTICLE 19, CIVICUS, and the World Movement for Democracy) is focused on making an enabling legal environment for CSOs a goal or target in the Post-2015 Development Agenda.

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.”<sup>4</sup> These acknowledgements have been echoed in the results of the [Global Thematic Consultation on Governance](#) and [Regional Consultations](#) on the Post-2015 Development Agenda. The need for an enabling legal environment for CSOs has also been discussed in the context of [possible peace goals and targets](#), to diffuse political and other conflict, as well as a [cross-cutting](#) issue that affects the attainment of any goal or target. The intergovernmental debates started in 2013, and currently advocacy efforts are focused on the Open Working Group (OWG) on Sustainable Development Goals and the Expert Group on Financing Sustainable Development. Following eight OWG information-gathering sessions in January and February 2014, the co-chairs of the OWG outlined focus areas to consider during the next OWG sessions in March when UN 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.”

## **B. Global Multilateral Initiatives**

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

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<sup>4</sup> The Report of the High Level Panel of Eminent Persons on the Post-2015 Development Agenda, [http://www.un.org/sg/management/pdf/HLP\\_P2015\\_Report.pdf](http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf)

The Community of Democracies<sup>5</sup> (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 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 WG has proved effective in coordinating diplomatic actions to counter legislation that excessively restricts civil society, including through funding constraints. The WG'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 is launching a two-year project to work with the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (and likely also the CSO members of the Civic Space Initiative) to a project entitled, "Protecting Civic Space and the Right to Access Resources." An initial planning meeting was held in late February 2014. Details are currently being arranged, but the project is envisioned to include meetings with governments and civil society in five regions focused on the right to access resources, specifically international funding.

#### Lifeline Embattled CSO Defense Fund

The Lifeline Embattled CSO Assistance Fund provides emergency financial assistance to civil society organizations (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,

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<sup>5</sup> 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>

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 16 governments and independent foundations that support democracy and human rights. Implementing partners include 7 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 has 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 recently passed 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. Ethiopia submitted a new application in 2013 for consideration by the EITI Board in March 2014.

### 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) (<http://www.charityandsecurity.org/>) 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 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.

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. Among other activities, the CSN is also providing feedback on a FATF-commissioned report on “typologies” of abuse of the nonprofit sector for terrorist financing. In addition, two consultations were held 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. The CSN is also 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](#).

In addition, the [Human Security Collective](#) 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.

#### Open Government Partnership (OGP)

The 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 the 63 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 is 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;
- 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.

President Obama announced that he would reconvene stakeholders in one year's time. To follow up, the US Government has organized an Interagency Policy Coordination Committee ("IPC") to develop deliverables. This process is ongoing. In January 2014, the Ford Foundation and the Open Society Foundation convened a meeting entitled *Envisioning a New Paradigm for Civil Society in the 21<sup>st</sup> Century Planning Meeting*. The impetus for this meeting flowed, in part, from the UN side event hosted by President Obama.

### **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 group is finalizing its report for submission to the Commission later this year. The report will provide a comprehensive overview of the content of the rights in international and continental norms, as well as the experience of the rights in ten selected countries (two from each sub-region).

#### 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 the fourth 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). These 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. All of the above joint guidelines 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 three experts from the Venice Commission and three ODIHR experts, as well as a lead drafter responsible

for drafting the Guidelines. ICNL's Natalia Bourjaily, Vice President-Eurasia, is a member of this group appointed by the ODIHR. The first meeting of the working group took place on 23 November 2013 in Paris, with plans for the working group to meet up to six times in the course of preparing the Guidelines, in either Warsaw or Paris. It is planned to have the Guidelines ready for adoption at the October 2014 plenary session of the Venice Commission.

### 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. The Venice Commission is composed of constitutional and international law experts, supreme or constitutional court judges and members of national parliaments. It 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 former eastern bloc 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 Law

The Expert Council on NGO Law ([https://www.coe.int/t/ngo/expert\\_council\\_en.asp](https://www.coe.int/t/ngo/expert_council_en.asp)) was created in January 2008 by 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. The Council is funded through the Council of Europe.<sup>6</sup>

To date it has produced the following thematic studies:

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<sup>6</sup> For information on the terms of reference for the Council, please see the following: [http://www.coe.int/t/ngo/Articles/Expert\\_Council\\_TermsOfReference\\_270612\\_en.asp](http://www.coe.int/t/ngo/Articles/Expert_Council_TermsOfReference_270612_en.asp).

- 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 will publish also a thematic study on political activities and NGOs.

### 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 IACHR<sup>7</sup> holds hearings each year on the situation of human rights in the 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. The initiatives listed are largely US-based,

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<sup>7</sup> 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 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>.

and it would be interesting to amplify the study at some point with additional examples from the EU and elsewhere.

Bilateral Investment Treaties. Restrictions on foreign funding often conflict with provisions of Bilateral Investment Treaties (BITs).<sup>8</sup> 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 worker's 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.

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

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<sup>8</sup> 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/BITNPOPProtection2.pdf>;

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 organization (CSO) 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).

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 on July 1-2, 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 (<http://www.charityandsecurity.org/node/1005>) 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 11 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 by 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. 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 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.<sup>9</sup> 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.<sup>10</sup> 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 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 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

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<sup>9</sup> 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.

<sup>10</sup> 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.

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.