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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Access to resources

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*

Summary

In the present report, submitted in accordance with Human Rights Council resolution 41/12, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, addresses the trends, developments and challenges threatening civil society's access to financial resources, including laws, policies and practices that impede such access. Freedom of association protects the right of civil society organizations to access the funding necessary to carry out their work. Associations' access to funding is essential not only to the existence of the association itself, but also to the realization of other human rights, to the achievement of the 2030 Agenda for Sustainable Development and to COVID-19 resilience and recovery plans. Drawing on international law and the input of States and civil society, the Special Rapporteur provides recommendations to States and other key stakeholders so they can better respect and ensure the right of associations to seek, receive and use financial resources.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



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I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, to the Human Rights Council in accordance with Council resolution 41/12.

2. In the report, which builds on a previous report under the same mandate,¹ the Special Rapporteur seeks to deepen the understanding of challenges facing civil society organizations in accessing financial resources,² particularly foreign funding, and their impact, while providing recommendations to States and other key stakeholders so they can better respect and ensure associations' right to seek, receive and use financial resources. The report is accompanied by a set of guidelines further laying out recommendations for States and other stakeholders promoting civil society organizations' right to seek, receive and use financial resources.³

3. In preparing for the report and its guidelines, the Special Rapporteur convened several online consultations with civil society and donor organizations from across the world. He also held discussions with States. He sent out a questionnaire and received responses⁴ from 14 States, 67 civil society organizations, two national human rights institutions and three international organizations. He also convened in-person regional consultations with civil society in Kampala (27 February 2022) and in Mexico City (10 March 2022). The Special Rapporteur thanks all who made contributions to the preparation of the present report.

II. Activities

A. Country visits

4. The Special Rapporteur conducted a country visit from 6 to 16 December 2021 to the Niger⁵ and from 28 March to 8 April 2022 to Brazil.⁶ He thanks both Governments for their cooperation before and during these visits. He further thanks all Member States which have extended invitations to him and hopes to honour these invitations in the near future.

B. Communications

5. The Special Rapporteur sent a total of 181 communications to States from 15 April 2021 to 15 April 2022. His observations on these communications, and on the replies received, are contained in an addendum to the present report.⁷

C. Participation in various events

6. From 15 April 2021 to 15 April 2022, the Special Rapporteur took part in many events, including:

(a) Webinar on strategic litigation for the protection of civic space in West Africa, organized by the Pan-African Lawyers Union, the Institute for Human Rights and

¹ [A/HRC/23/39](#).

² *Ibid.*, paras. 10–11. The mandate of the Special Rapporteur has understood “financial resources” to include monetary transfers, in-kind donations and other forms of financial assistance provided by natural and legal persons, whether domestic, foreign or international – including individuals, associations (whether registered or unregistered), foundations, Governments, corporations and international organizations.

³ The guidelines will be made available in an addendum to the present document.

⁴ See <https://www.ohchr.org/en/calls-for-input/call-inputs-mandate-special-rapporteur-rights-freedom-peaceful-assembly-and>.

⁵ The report will be made available in an addendum to the present document.

⁶ Report to be presented to the Human Rights Council at its 53rd session.

⁷ [A/HRC/50/23/Add.1](#).

Development in Africa, the Network of University Legal Aid Institutions and Robert F. Kennedy Human Rights (5 October 2021);

(b) Round table with Ghanaian parliamentarians and the Chairman of the Human Rights Committee in the Parliament of Uganda on human rights and the role of parliamentarians, organized by Parliamentarians for Global Action (13 October 2021);

(c) The G20 Labour Summit, in a session on strengthening multilateralism in support of democracy and human rights, organized by the International Labour Organization and hosted by Italy;

(d) Online session entitled “Sustaining peace and human rights: making it work at the country level through engaging United Nations special procedures”, organized during Geneva Peace Week by the Dag Hammarskjöld Foundation, Interpeace, OHCHR, the Peacebuilding Support Office and the Quaker United Nations Office (2 November 2021);

(e) Virtual UNDP global dialogue on strategies to strengthen civic space and civil society engagement in the HIV response (3 November 2021);

(f) United Nations Climate Change Conference side events on children’s access to environmental justice, organized by the Children and Young People’s Commissioner Scotland (4 November 2021), and on public participation and solving the climate crisis together, organized by the Ministry of Environment and Physical Planning of North Macedonia and the European Center for Not-for-Profit Law (5 November 2021);

(g) Academic visit to Kampala with the support of Defend Defenders, African Defenders and the International Center for Not-for-Profit Law (23–29 January 2022);

(h) Academic visits to Uganda (23–29 January 2022), Kenya (30 January–5 February 2022) and Mexico (7–11 March 2022) with the support of Defend Defenders, African Defenders, the International Center for Not-for-Profit Law, Article 19, UnidOSC and the Geneva Academy of International Humanitarian Law and Human Rights.

7. On 8 December 2021, the Special Rapporteur published a joint declaration on protecting and supporting civil society at risk, together with the Inter-American Commission on Human Rights and its Special Rapporteur on freedom of expression; the Special Rapporteur on Human Rights Defenders and Focal Point for Reprisals in Africa, of the African Commission on Human and Peoples’ Rights; and the Office for Democratic Institutions and Human Rights, of the Organization for Security and Cooperation in Europe (OSCE).⁸

III. Access to funding

A. Legal foundation

8. Article 20 of the Universal Declaration of Human Rights recognizes that “everyone has the right to freedom of peaceful assembly and association”. The International Covenant on Civil and Political Rights enshrines the same right in its article 22, which emphasizes that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. Freedom of association constitutes an individual right that is exercised collectively and enjoyed in community with others.⁹ In its collective dimension, this fundamental freedom applies to associations themselves, as representative bodies of their founders and members.

9. The right of associations to freely access human, material and financial resources – from domestic, foreign, and international sources – is inherent in the right to freedom of association and essential to the existence and effective operations of any association.¹⁰ In

⁸ See https://www.ohchr.org/sites/default/files/2021-12/newpage_jointdeclaration_9dec2021_en.pdf.

⁹ Human Rights Committee, general comment No. 31 (2004), para. 9; and Inter-American Court of Human Rights advisory opinion 27/21, paras. 71–72.

¹⁰ See A/HRC/23/29; and Human Rights Council resolution 32/31.

interpreting article 22 of the International Covenant on Civil and Political Rights, the Human Rights Committee has affirmed that “the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association to freely carry out its statutory activities”,¹¹ including using equipment received as foreign aid.¹² The Committee has recognized that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22. In several concluding observations to States on the implementation of the Covenant, the Committee has raised concerns regarding restrictions on access to foreign funding for civil society organizations¹³ and has repeatedly stressed that legal provisions restricting foreign funding must not risk the effective operations of non-governmental organizations (NGOs).¹⁴ The right to access resources is also grounded in the right to peaceful assembly. In its general comment No. 37 (2020) on the right to peaceful assembly, the Human Rights Committee recognized that article 21 of the Covenant protected activities that were “outside the immediate context of the gathering” but which were “integral to making the exercise meaningful”, such as “participants’ or organizers’ mobilization of resources”.¹⁵

10. Other international human rights instruments also recognize associations’ right to access resources. For example, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief explicitly recognizes the right to access resources in its article 6 (f), which states that the right to freedom of thought, conscience, religion or belief shall include the freedom to solicit and receive voluntary financial and other contributions from individuals and institutions.¹⁶ Similarly, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders)¹⁷ has recognized in article 13 that everyone has a right, individually and in association with others, to solicit, receive and utilize resources for promoting and protecting human rights through peaceful means. The Committee on the Elimination of Discrimination against Women has indicated that in ensuring the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,¹⁸ States must “ensure an environment in which women’s associations and non-governmental organizations working on gender equality and women’s empowerment may freely operate and raise funds”.¹⁹

11. Regional monitoring bodies have also amply recognized that freedom of association protects the right of associations to seek, receive and use financial resources. For example, the Inter-American Commission on Human Rights has consistently stressed that “one of the State’s duties stemming from freedom of association is to refrain from restricting the means of financing of human rights organizations. States should allow and facilitate human rights organizations’ access to foreign funds in the context of international cooperation.”²⁰ The African Commission on Human and Peoples’ Rights has indicated that “the law shall clearly state that associations have the right to seek, receive and use funds freely in compliance with not-for-profit aims”. This right extends to the right of associations “to seek and receive funds from local private sources, the national State, foreign States, international organizations, transnational donors and other external entities. States shall not require associations to obtain authorization prior to receipt of funding.”²¹ In the European context, the Committee of

¹¹ *Belyatsky et al. v. Belarus* (CCPR/C/90/D/1296/2004).

¹² *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003) and *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004).

¹³ See, for example, CCPR/C/VNM/CO/3, CCPR/C/BLR/CO/5, CCPR/C/HUN/CO/6, CCPR/C/BGD/CO/1, CCPR/C/AZE/CO/4, CCPR/C/RUS/CO/7 and CCPR/C/ISR/CO/4.

¹⁴ See also CCPR/C/VEN/CO/4 and CCPR/C/ETH/CO/1.

¹⁵ See para. 33.

¹⁶ General Assembly resolution 36/55.

¹⁷ General Assembly resolution 53/144.

¹⁸ See art. 7 (c).

¹⁹ CEDAW/C/RUS/CO/8, paras. 15–16. See also CEDAW/C/TJK/CO/6, para. 19.

²⁰ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 179.

²¹ African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly*, paras. 37–38.

Ministers of the Council of Europe has repeatedly affirmed that “NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own State but also from institutional or individual donors, another State or multilateral agencies”.²² The European Parliament has also stressed that “the ability to seek, secure and use resources is essential to the operation of any association”.²³ The European Court of Human Rights and the European Court of Justice, too, have acknowledged that freedom of association also encompasses civil society organizations’ right to access funding.^{24, 25}

B. State obligations

12. Article 22 of the International Covenant on Civil and Political Rights imposes both negative and positive obligations on States. Positive measures require States to establish and maintain an enabling environment in which associations can operate effectively, including fostering and facilitating their access to financial resources. In keeping with this positive obligation, States should, for example, provide tax benefits and other forms of public support to associations, including reducing the costs of bank transfers.²⁶ The Special Rapporteur believes that the provision of public support can foster associations’ right to seek, secure and use resources and to do their work more effectively.²⁷ The process of qualifying for such privileges should be simple, transparent and impartial. Above all, the provision of public support should neither put associations in a vulnerable position nor be used as leverage to control or excessively monitor civil society organizations.²⁸

13. Negative obligations require States to refrain from applying laws and engaging in practices that interfere with the exercise of the right, including with accessing funding. Any restriction to accessing funds, as an inherent part of the right to freedom of association, must meet the requirements of article 22 (2) of the International Covenant on Civil and Political Rights, meaning that it must be provided by law and be necessary to achieve one or more of the enumerated legitimate objectives, which relate to the protection of national security, to public order, public health or public morals, and to respect of the rights or reputations of others. Restrictions to freedom of association are the exception to the rule and must be applied and interpreted narrowly.

14. A restriction does not meet the legality requirement simply because it is formally enacted as a national law. The laws concerned must be accessible and sufficiently precise to allow members of the society to decide how to regulate their conduct (foreseeability) and may not confer unfettered or sweeping discretion on those who enforce them. Any limitation must further be “necessary in a democratic society”. To meet the condition of necessity, authorities must demonstrate that the measure can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective. The State must also prove that the measure is necessary to avert a real and not a hypothetical threat to one of the grounds for limitation, such as national security or public order.²⁹ When

²² Council of Europe Committee of Ministers recommendation CM/Rec(2007)14, and see also recommendation CM/Rec(2018)11; OSCE Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission), Joint Guidelines on Freedom of Association, principle 7.

²³ European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe (2021/2103(INI)).

²⁴ European Court of Justice, *Commission v. Hungary* (case C-78/18), judgment of 18 June 2020, paras. 110–118.

²⁵ European Court of Human Rights, *Ramzanova and others v. Azerbaijan* (application No. 44363/02), para. 59.

²⁶ OSCE Office for Democratic Institutions and Human Rights and the Venice Commission, Joint Guidelines on Freedom of Association, para. 223.

²⁷ A/70/266, paras. 79–80. See also Council of Europe Committee of Ministers recommendations CM/Rec(2007)14 and CM/Rec(2018)11; African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, paras. 41–42; and Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 187.

²⁸ A/70/266, para. 83.

²⁹ A/HRC/23/39, para. 23.

assessing the proportionality of a restriction imposed on associations, States must examine whether the measure is excessively burdensome, and whether the nature and severity of the sanctions imposed in case of non-compliance are proportionate to the gravity of the wrongdoing.³⁰ Restrictions should not impair the essence of the concerned right or be aimed at discouragement and casting a chilling effect to deter its enjoyment.

IV. Importance to sustainable development and COVID-19 response and recovery

15. As indicated by the Special Rapporteur on multiple occasions, civil society involvement in and contributions to the achievement of the purposes and principles of the United Nations, including the realization of human rights and sustainable development, are paramount, and States should exert all efforts to support, rather than inhibit, civil society's work.³¹ The Human Rights Council has repeatedly stressed that when provided with an enabling environment, civil society can contribute effectively to "addressing and resolving challenges and issues that are important to society", including addressing financial and economic crises, responding to humanitarian crises, including armed conflict, protecting the environment, empowering persons belonging to minorities and vulnerable groups, and combating racism and racial discrimination.³²

16. The 2030 Agenda for Sustainable Development also envisions a key role for civil society participation and action in the achievement of the Sustainable Development Goals. Goal 17, in particular, recognizes that it is not feasible for States to successfully implement the 2030 Agenda without joint collaboration with other stakeholders, including civil society.³³ In its recommendation on enabling civil society in development cooperation and humanitarian assistance, the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee reaffirmed that "civil society actors, in their diversity, are critical contributors to the 2030 Agenda, the pledge to leave no one behind, inclusive sustainable development, effective humanitarian assistance, peacebuilding, and protecting and strengthening democracy".³⁴ In particular, the Development Assistance Committee recognized, in the resolution, the critical roles played by civil society organizations in the coronavirus disease (COVID-19) response, recovery and resilience-building. Similarly, the Joint Guidelines on Freedom of Association, of the OSCE Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission), recognize the role of State funding and access to public resources in "promoting the role of women and minority groups in public and political life by, for example, providing financial support to those associations that take positive measures to ensure equality of representation, promote the position of women in society for the purpose of gender equality or enhance the public and political participation of minorities".³⁵

17. The Special Rapporteur stresses that for associations to deliver on their mission, access to resources is critical. States contradict their commitments to sustainable development and aid effectiveness when they unduly restrict funding to associations. The contradiction becomes all the more stark where governments receive funding directly through international cooperation. States must recognize that allowing for a robust and diverse resourcing of civil society organizations will better secure their effective contribution to the implementation of the 2030 Agenda and to COVID-19 response, recovery and resilience-building.

³⁰ Ibid.

³¹ [A/HRC/23/39](#), para. 42. See also [A/73/279](#) and [A/74/349](#).

³² Council resolution 24/21.

³³ [A/74/349](#), para. 20.

³⁴ Development Assistance Committee recommendation on enabling civil society in development cooperation and humanitarian assistance (OECD/LEGAL/5021).

³⁵ See para. 204.

V. Trends, developments and challenges affecting civil society organizations' access to funding

18. In his 2013 report, the former Special Rapporteur warned that civil society actors were facing “increased control and undue restrictions in relation to funding they received, or allegedly received”.³⁶ This trend has markedly increased since. The proliferation of undue restrictions to associations' right to seek, receive or utilize funding – domestic and foreign – has continued unabated. Civil society organizations are being subjected more and more to laws and regulations put in place to control, rather than enable, access to funding. These measures have often been introduced ahead of elections and/or in response to prominent protest movements, and been used to silence, intimidate and harass human rights organizations. Many civil society organizations have been forced to reduce their operations, readjust their activities, or simply close. Trends and developments of concern also include the increasing overregulation and financial exclusion of civil society organizations as a result of counter-terrorism and anti-money-laundering measures.

A. Impeding access to foreign funding

19. Recent years have seen several States adopt or amend laws and regulations constraining the right of civil society organizations to access foreign funding. These measures have imposed strict requirements for civil society organizations to access and use foreign funding, as well as increased administrative burdens, and have created harsher penalties for non-compliance. Often, these measures impose burdensome requirements and obligations on the ability of associations to access foreign funding, while continuing to give broad discretion to domestic authorities, including law enforcement, in the law's implementation. Security considerations have been consistently used to justify such measures with no objective verification of the claims made in those justifications.³⁷

1. Government authorization to access foreign funds

20. More civil society organizations globally are being required to seek prior authorization to receive foreign funding. The prior approval schemes vary by country, but common measures include the advance registration of every organization permitted to receive foreign contributions, and government approval of every foreign contribution. For instance, in India, civil society organizations seeking to receive foreign funding must register under the Foreign Contribution (Regulation) Act, of 2010. If registration under the Act is approved, the organization can receive foreign contributions for up to five years, subject to strict conditions and burdensome reporting requirements. The Act imposes a total ban on access to foreign funding for associations found to be of a political nature, which is broadly defined. The Act has been the subject of several communications and statements by special procedure mandate holders³⁸ for failing to meet the “the stringent test for allowable restrictions” on the right to freedom of association and for obstructing civil society organizations' access to foreign funding. The special procedure mandate holders raised their concerns that the prior authorization regime under the Foreign Contribution (Regulation) Act was incompatible with the international human rights obligations of India and was being used “to silence organizations involved in advocating civil, political, economic, social, environmental or cultural priorities, which may differ from those backed by the Government”.³⁹

³⁶ A/HRC/23/39, para. 12.

³⁷ See A/HRC/40/52.

³⁸ For details of all communications sent and information received, see <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. For the cases mentioned here, see specifically IND 7/2015, IND 2/2016, IND 10/2016, IND 28/2018 and IND 17/2020. See also detailed analysis of the Foreign Contribution (Regulation) Act, of 2010, at <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>.

³⁹ See <https://www.ohchr.org/en/press-releases/2016/06/un-rights-experts-urge-india-repeal-law-restricting-ngos-access-crucial?LangID=E&NewsID=20112>.

21. The Special Rapporteur notes with concern that instead of modifying the Foreign Contribution (Regulation) Act to comply with international human rights norms and standards, India amended it in 2020 so as to impose greater restrictions on civil society organizations seeking to access foreign contributions. For example, the 2020 amendments reduced the cap on administrative expenses for any foreign funding or grants from 50 per cent to 20 per cent, severely affecting civil society organizations' capacity to use resources to pay salaries, professional fees, utility bills, travel, and other operational expenditures. The amendments also introduced a prohibition against all subgranting among organizations registered under the Act, which limits collaboration between larger and smaller associations; and required all funds to be received in a single bank account of one Delhi branch of the State Bank of India. The amendments gave greater power to officials to suspend an organization's registration for 180 days in addition to the 180 days already provided for under the Act, while officials determined if the registration should be cancelled "in the public interest" or if the registration holder had violated the law. In Egypt, the Law of Association (Law 149/2019),⁴⁰ adopted in 2020, requires civil society organizations to notify the Government of every contribution they receive. This law and its accompanying regulations give the Government the authority and unbounded discretion to prohibit grants and donations from outside Egypt or from foreign entities inside Egypt, instituting prior approval for foreign donations.

22. The Special Rapporteur emphasizes that associations should be free to seek, receive and use foreign funding without any special authorization being required. Advance government authorization to access foreign funds fails to meet the necessity and proportionality test and constitutes a violation of the right to freedom of association.⁴¹ Even a notification procedure of the receipt of these funds might need to be justified and to meet the strict necessity and proportionality test.⁴²

2. Burdensome and overly intrusive rules governing the use of foreign funding

23. Some countries have imposed onerous, bureaucratic and overly intrusive requirements on civil society organizations once they receive foreign funding, limiting their ability to freely operate. This might include obligations to submit extensive and detailed reports or publicly disclose information about the use of their funding (e.g. in the case of Belarus, India, Nicaragua and the Russian Federation). The Special Rapporteur reiterates that if proven necessary to achieve a legitimate aim, reporting requirements on an association receiving foreign funding should be made as simple as possible.⁴³ Reporting requirements must not place excessive or costly burdens on the organization. Requiring civil society organizations to publicly disclose financial information constitutes a severe restriction to freedom of association. Such a requirement has been recognized as justified when relied upon to ensure the transparency of political parties and organizations formally engaging in remunerated lobbying activities,⁴⁴ and in connection with associations receiving public funds, but only with regard to such funds specifically, rather than to their finances as a whole. All reporting requirements should be crafted in a way that protects the rights of the donors, beneficiaries and staff of associations.⁴⁵

24. Violation of these requirements can often result in severe sanctions, including the closure of the association or the criminal prosecution of its representative. For example, the Special Rapporteur has raised concerns with the Government of Uganda regarding the increased use of administrative measures, criminalization and acts of intimidation against civil society organizations in connection with accessing foreign funding,⁴⁶ including the recent decision of the Ministry of Internal Affairs to suspend the activities of 54 civil society organizations, including 16 organizations that allegedly had failed to file annual returns and account audits with the competent authorities.⁴⁷ The Special Rapporteur reiterates that any

⁴⁰ See EGY 6/2021.

⁴¹ CCPR/CO/76/EGY, para. 21.

⁴² A/HRC/23/39, para. 37.

⁴³ See A/70/266 and A/74/349.

⁴⁴ Venice Commission opinion CDL-AD(2019)002, para. 106.

⁴⁵ Ibid., para. 108.

⁴⁶ See UGA 1/2022, UGA 4/2021, UGA 1/2021 and UGA 5/2020.

⁴⁷ See UGA 4/2021.

sanction for failure to comply with reporting requirements or other administrative controls should always be guided by the principles of proportionality and necessity. Involuntary dissolution and suspension are some of the most serious sanctions that the authorities can impose on an organization. Their imposition should be a measure of last resort.

3. Stigmatization tactics against foreign-funded civil society organizations

25. A defining trend in restricting foreign funding is the stigmatization of associations. For years now, some governments have deliberately depicted foreign funding as a new form of imperialism, or neocolonialism, and recipients have been subjected to legal restrictions and stigmatization.⁴⁸ Associations promoting human rights and democratic reforms have been targeted, with many legally required to accept the label of “foreign agents” as a condition for continuing to operate and receive crucial funding.

26. Together with other special procedures, the Special Rapporteur has repeatedly raised concerns with the Russian Federation⁴⁹ regarding the adoption and enforcement of the 2012 “Law on Foreign Agents”, noting that forcing associations to carry the label of foreign agents under vaguely defined concepts such as “engaging in political activities” or “staging political actions to influence public policy or opinion” can “obstruct and stigmatize the legitimate work of human rights defenders and civil society organizations and have a serious damaging effect on these organizations and the right to freely associate in the Russian Federation”.⁵⁰ This law has been amended several times since then to expand its scope and further restrict the ability of associations to operate and access foreign funding. Notably, on 30 December 2020, new amendments to the law expanded the list of actors that can be designated as foreign agents and increased penalties to up to five years in prison in case of violations of the law. The enforcement of the law has resulted in a series of arbitrary audits, criminal proceedings, and cancellations of organizations,⁵¹ including the dissolution of prominent human rights groups such as the International Memorial Society and the Memorial Human Rights Centre.⁵² The Special Rapporteur has joined other United Nations experts in repeating calls for the repeal of this law or substantial amendments to it in order to bring it into line with the human rights obligations of the Russian Federation.⁵³

27. In 2020, Nicaragua enacted the Foreign Agents Registration Law, which requires all associations, their key personnel as well as their contractors to register as foreign agents if they receive any financial support from foreign sources. Registered foreign agents are subject to wide-ranging restrictions, which include being obliged to provide prior notification of intent to receive foreign support, prohibition on spending any foreign funds on activities not cleared by the Government, monthly reporting and continuous monitoring. Registered foreign agents may not “intervene in matters, activities or issues of internal politics” or policy.⁵⁴ Following the adoption of the law, several civil society organizations in the country were forced to close and cease operations.⁵⁵ In 2021, El Salvador introduced a similar draft law on registration of foreign agents that would severely limit access to funding from foreign sources. Notably, the draft law includes stigmatizing public disclosure requirements, and would impose a 40 per cent tax on every foreign financial transaction made to a foreign agent.⁵⁶

28. The Special Rapporteur emphasizes that the sweeping imposition of the label of “foreign agent” on all civil society organizations and the burdensome reporting, disclosure and registration obligations imposed on them simply because they receive foreign funding

⁴⁸ A/HRC/23/39, para. 27.

⁴⁹ The Law on Foreign Agents was the subject of several communications by special procedures. See RUS 5/2012, RUS 3/2013, RUS 13/2013, RUS 5/2014, RUS 7/2014 and RUS 9/2014.

⁵⁰ See RUS 5/2014.

⁵¹ See, for example, RUS 4/2015, RUS 2/2016, RUS 4/2016 and RUS 3/2017.

⁵² See RUS 13/2021.

⁵³ See, for example, RUS 13/2021 and RUS 9/2019.

⁵⁴ See NIC 3/2020.

⁵⁵ See, for example, NIC 5/2021.

⁵⁶ See SLV 8/2021.

cannot be deemed necessary in a democratic society in order to ensure a legitimate aim, including ensuring transparency of the civil society sector.

29. In addition to facing stigmatizing legal measures, foreign-funded civil society organizations have been the victims of disinformation and smear campaigns aimed at discrediting their work, including by high-ranking government officials. Government-controlled media outlets and online platforms are often exploited to portray civil society organizations' activities as "treasonous" and as serving "foreign interests". The Special Rapporteur has raised concerns about the use of the foreign agents laws in the Russian Federation and Nicaragua in State-sponsored media campaigns to smear civil society organizations, further exposing them to risks of harassment and violence and rendering their work difficult.⁵⁷ In Belarus, the President reportedly made a statement in which he conflated the work of non-governmental and non-profit organizations with "gangsters and foreign agents", saying they were "thoughtlessly" registered by the Government and their employees were "brainwashed with foreign money".⁵⁸ Such attacks create a chilling effect on civil society organizations' ability to exercise their right to freedom of association and reduces their capacity to fundraise. All such chilling steps must be brought to an end.

4. Restrictions on foreign funding in relation to political activities

30. Many States restrict or prohibit access to foreign funding on the basis of the political nature of the activities of an organization. These restrictions raise serious concerns of legality, especially because they often use overly broad terms that are open to many interpretations which could encompass almost all potential activities of a civil society organization. This includes activities that are not only legitimate but encouraged by the International Covenant on Civil and Political Rights, such as defending human rights and promoting knowledge of basic rights and participation in government. In India, the Foreign Contribution (Regulation) Act disqualifies from eligibility to receive foreign funding all those whose actions may be construed as "likely to affect prejudicially ... the economic interest of the State" or "the public interest". The Special Rapporteur has raised concerns with Guatemala regarding the adoption in 2020 of a decree that threatens associations using foreign funds "to undertake activities that 'alter public order' in Guatemalan national territory" with immediate deregistration, and its executives with criminal prosecution.⁵⁹ What constitutes altering public order or affecting the public interest is undefined.

31. Some States have passed laws with equally vague terms that have been abused by authorities to criminally prosecute civil society actors, particularly human rights defenders and protest organizers, for receiving and using foreign funding to support their pro-democracy activities. For instance, Egypt amended its Criminal Code in 2014 to increase penalties for organizations that receive foreign funding with the intent of harming the "national interest" or "public peace". The national security law enacted in 2020 in Hong Kong, China, criminalizes both Hong Kong and international actors who commit "collusion with a foreign country or with external elements to endanger State security" through the provision or receipt of "instructions, control, funding or other kinds of support". The law further calls for the conviction and punishment of the "institution, organization and individual outside the mainland" providing such support. In Algeria, the Penal Code was amended in 2020 to punish with "imprisonment of five to seven years" anyone who receives funds "to carry out or incite to carry out acts likely to undermine the security of the State, the stability and normal functioning of its institutions, national unity, territorial integrity, the fundamental interests of Algeria or public security and order". These reforms were adopted in response to mass pro-democracy protest movements in the said countries, that have been met with fierce repression, including mass arrests and criminalization.⁶⁰

⁵⁷ See RUS 13/2013.

⁵⁸ See BLR 8/2021.

⁵⁹ See <https://freeassemblyandassociation.net/wp-content/uploads/2021/01/Guatemala-Amicus-Brief-Guatemala-ENG.pdf>.

⁶⁰ See, for example, <https://www.ohchr.org/en/press-releases/2020/09/un-experts-condemn-jail-sentence-against-algerian-journalist-and-call-his> and CHN 17/2020.

32. Restrictions against foreign donations have been justified, for example, to prevent undue foreign influence on political parties or protect the integrity of the electoral process.⁶¹ However, such measures cannot be based on vague and overly broad terms, which do not comply with the principle of legality. As indicated by the Venice Commission, “an association should not be prohibited, dissolved, stigmatized, or criminalized simply because it receives and uses foreign funding to peacefully participate in matters of political and public debate”, including promoting rights-based amendments to the legal or constitutional order. Overly broad restrictions in this area produce a chilling effect on the exercise of the right to freedom of association and have an adverse effect on civic space and democracy.

B. Countering the financing of terrorism

1. Financial Action Task Force standards and enforcement

33. International norms and standards designed to prevent money-laundering and the financing of terrorism have been linked to a rise of restrictive regulations impeding associations’ right to seek, receive and use financial resources worldwide. In his 2013 report, the former Special Rapporteur criticized standards developed by the Financial Action Task Force, a global policymaking body addressing money-laundering and terrorist financing, for failing to “provide for specific measures to protect the civil society sector from undue restrictions to their right to freedom of association by States asserting that their measures are in compliance with Financial Action Task Force recommendations”. Specifically, the report warned that the Task Force’s recommendation 8, for the laws and regulations that govern non-profit organizations to be reviewed so that these organizations could not be abused for the financing of terrorism, was being misused by States to crack down on civil society. Similar concerns were raised by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who observed that the Task Force’s recommendation 8 “has proved to be a useful tool for a number of States as a means of reducing civil society space and suppressing political opposition” and has caused “incalculable damage to civil society”.⁶²

34. The Special Rapporteur has welcomed efforts by the Financial Action Task Force to address these concerns.⁶³ Specifically, in revising its recommendation 8, the Task Force clarified that the role of States was not to single out the non-profit sector for more stringent regulations, but rather to oversee and protect the subset of civil society organizations that “the country has identified as being vulnerable to terrorist financing abuse”, and noted that those measures must be “focused and proportionate”.⁶⁴ The Task Force stressed that a “targeted approach” in dealing with the terrorist threat to the civil society sector “is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to misuse by terrorists, the need to ensure that legitimate charitable activity continues to flourish, and the limited resources and authorities available to combat terrorist financing in each country”.⁶⁵ The Task Force also indicated that countries must implement recommendation 8 consistently with their obligations under human rights and humanitarian law treaties.

35. Yet, six years after the revision of recommendation 8, many concerns remain. Particularly worrying is the fact that the peer (mutual) evaluations that are carried out in the different countries to classify their degree of compliance with Financial Action Task Force standards generally do not take into consideration ways in which the measures being adopted have been abused to unduly restrict and criminalize the legitimate work of civil society organizations or have generated unintended consequences against civil society organizations’ right to seek, receive and use funding. The case of Nicaragua is particularly worrying. The

⁶¹ Venice Commission opinion CDL-AD (2019)002, paras. 101–102.

⁶² A/HRC/40/52, para. 6; see also OTH 14/2016.

⁶³ A/74/335, para. 35.

⁶⁴ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (2012–2022), available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

⁶⁵ Interpretive note to recommendation 8 – see especially sect. B.3 (e).

2020 report on Nicaragua by the Financial Action Task Force of Latin America indicated that the country was “mostly compliant” with recommendation 8,⁶⁶ even though Law 977 (against money-laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction), among other Financial Action Task Force-inspired laws, had been designed and used to harass, criminalize and persecute civil society actors, including human rights defenders and opposition parties.

36. The Special Rapporteur aligns himself with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who has insisted that the Financial Action Task Force needs to implement highly specific and comprehensive human rights benchmarking and guidance in order to facilitate human rights-compliant implementation of recommendation 8.⁶⁷ The Task Force should ensure that human rights considerations are applied consistently throughout the jurisdictions of the members of the Task Force and of Task Force-style regional bodies.⁶⁸ The Special Rapporteur further recommends that the Task Force act urgently to ensure that its evaluators have the necessary expertise and training on revised recommendation 8. This is ever more important in a context where repressive governments worldwide continue to use the Task Force’s recommendation 8 as a justification for cracking down on civil society.

2. Overregulation in the name of the Financial Action Task Force framework

37. The Special Rapporteur and other mandate holders have repeatedly raised concerns about overregulation of the sector in the guise of fighting terrorism and countering money-laundering. Legislation being enacted or proposed is often disproportionate to the risk and is frequently exploited by Governments to curtail freedoms of association, peaceful assembly and expression (e.g. the Philippines,⁶⁹ Thailand,⁷⁰ Turkey,⁷¹ Venezuela (Bolivarian Republic of)⁷² and Zimbabwe⁷³). These laws and regulations are often characterized as being necessary in order to comply with the Financial Action Task Force’s standards, with language copied from recommendation 8 and its interpretive note. Notwithstanding the references to the Task Force’s recommendation 8, the laws are generally inconsistent with the Task Force’s requirement that laws be focused on those civil society organizations that have been demonstrated to be at a high risk of abuse for terrorism financing and that such laws be proportionate to address the risk identified.⁷⁴

38. In seeking to implement Financial Action Task Force recommendation 8, States must avoid sector-wide restrictions that assume that all civil society organizations are particularly vulnerable to terrorist financing or that treat the entire sector in a uniform manner. Restrictions must be based upon individualized and identifiable suspicion, not upon pre-emptive suspicion of an entire sector.⁷⁵ To comply with the risk-based and focused approach required by recommendation 8, States must first assess and determine risk, and only then should they impose targeted measures where justified by the risk assessment, and only if existing measures are insufficient to address the risk. In addition to minimizing infringement of the freedom of association, such an approach concentrates the State’s attention on civil society organizations that are at the greatest risk of being abused for terrorist financing, rather than adopting the inefficient and overreaching approach of attempting to “supervise” the entire civil society organization sector. The Special Rapporteur also believes that the Task

⁶⁶ See <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/GAFILAT-FUR-Nicaragua-Jan-2020.pdf>.

⁶⁷ A/74/335, para. 35.

⁶⁸ Ibid., para. 36.

⁶⁹ See PHL 4/2020.

⁷⁰ See THA 7/2021.

⁷¹ See TUR 3/2021.

⁷² A/HRC/47/55, paras. 63–69. See also VEN 8/2021.

⁷³ See ZWE 3/2021.

⁷⁴ The overregulation trend has been documented by the Financial Action Task Force itself, in its most recent report on unintended consequences on the non-profit sector. See <https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>.

⁷⁵ A/70/266, para. 53.

Force plays a critical role in ensuring that countries adequately implement the recommendation 8 requirement of identifying subsectors of civil society organizations at high risk and those at low to no risk of abuse.

39. Laws and regulations are often adopted without any meaningful consultation with civil society organizations. The Special Rapporteur emphasizes that civil society organizations are a crucial partner in government counter-terrorism efforts, and that undue restrictions on their work may be counterproductive and negatively impact counter-terrorism efforts.⁷⁶ Indeed, Financial Action Task Force standards require States to engage with civil society regarding terrorism financing risks, to learn what measures civil society organizations are taking to mitigate that risk – for example, self-regulation or good internal governance practices – and to take that information into account in their sector risk assessments. The Special Rapporteur encourages States to engage with, rather than to marginalize, civil society organizations, in order for States to better meet their obligations under recommendation 8 for effective sector oversight.

3. Terrorist designation

40. Several special procedure mandate holders have already looked at the question of how targeted sanctions – though useful for addressing terrorism financing – can also severely restrict access to funding for humanitarian and other civil society organizations or can be used maliciously to target them.⁷⁷ Most recently, the Special Rapporteur joined other mandate holders in condemning the decision by Israel to designate six Palestinian human rights and civil society groups as terrorist organizations, calling it “a frontal attack on the Palestinian human rights movement, and on human rights everywhere”. They raised concerns that this designation “would effectively ban the work of these human rights defenders, and allow the Israeli military to arrest their staff, shutter their offices, confiscate their assets and prohibit their activities and human rights work,”⁷⁸ including work with “Palestinian women and girls, children, peasant families, prisoners and civil society activists, all of whom face increased levels of discrimination and even violence”. It was known then that the Government of the Netherlands had decided to cut funding to one of the Palestinian NGOs targeted by Israel. The Special Rapporteur joined other mandate holders in calling upon the Netherlands to review and reconsider the decision of the country’s former Government to end funding by the Netherlands for the Union of Agricultural Work Committees.⁷⁹

41. Even without a terrorism designation, States have reportedly been able to loosely accuse civil society actors of terrorism and freeze their assets and ban them from travel, often without providing reasons and with no judicial recourse.⁸⁰ The Special Rapporteur was informed that the organization Rural Missionaries of the Philippines had had its bank accounts frozen after government authorities had asserted that there was probable cause that it had engaged in terrorist financing by supporting communists.⁸¹

4. De-risking by banks

42. Civil society organizations have been calling out a trend of “inordinate delays in cash transfers, onerous due diligence requirements, inability to open bank accounts and arbitrary closure of bank accounts – collectively classed as ‘de-risking’ activities by financial institutions”.⁸² While the Financial Action Task Force’s standards and national legislation are recognized as key drivers of this trend, many banks go beyond both legal and Financial

⁷⁶ A/HRC/40/52, para. 6.

⁷⁷ See A/HRC/40/52; see also A/73/361.

⁷⁸ See <https://www.ohchr.org/en/press-releases/2021/10/u-experts-condemn-israels-designation-palestinian-human-rights-defenders>.

⁷⁹ NLD 1/2022.

⁸⁰ A/HRC/40/52, para. 48.

⁸¹ PHL 1/2020.

⁸² See <https://fatfplatform.org/assets/Global-NPO-Coalition-input-for-UC-workstream-on-derisking-and-financial-exclusion.pdf>.

Action Task Force standards, treating all civil society organizations as high-risk clients and raising the due diligence requirements and costs for their services.⁸³

43. For example, the Special Rapporteur was informed that banks were increasingly requiring civil society organizations to provide extensive documentary evidence for transactions emanating from abroad. In Armenia, for example, certain banks reportedly required detailed information from civil society organizations opening an account (e.g. the passport data of all founders, contracts with donors, identification of the objective of the organization, and the purposes of funds received). In many cases, this heightened scrutiny had resulted in the denial of services and in banks foregoing charitable customers, thereby avoiding, rather than managing, risks associated with non-profit clients.⁸⁴

44. Governments also instructed financial institutions to implement restrictive measures. For instance, in the Bolivarian Republic of Venezuela, the Office of the Superintendent for the Banking Sector had instructed the national banking sector to strengthen the oversight of financial operations carried out by NGOs in order to detect operations that could be linked to criminal activities or could qualify as money-laundering, financing of terrorism, or the proliferation of weapons of mass destruction. The order had been adopted in November 2020, a year prior to the Caribbean Financial Action Task Force’s scheduled country evaluation.⁸⁵ This is the crucial time period when many States rush to implement oversight measures – typically in the form of decrees or subregulatory norms. Financial institutions can face severe sanctions for non-compliance.

45. The Special Rapporteur underscores that businesses have a responsibility to respect and protect human rights, including freedom of association, as laid out in the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.⁸⁶ For financial institutions, this entails the responsibility to avoid infringing civil society organizations’ right to access financial resources and to carry out human rights due diligence in order to ensure, at a minimum, that their activities, actions and omissions do not lead to the financial exclusion of civil society organizations.⁸⁷ Financial institutions should engage with civil society organizations in identifying adverse impacts from their policies and practices for countering terrorist financing and money-laundering on the right to freedom of association. States must provide guidance to financial institutions to assist them in trying to prevent their policies and practices from unduly restricting civil society organizations’ access to and use of funding. The Financial Action Task Force also has a crucial role to play in ensuring that banks carry out their due diligence responsibilities in full respect of human rights.

C. Other State restrictions

46. Some States are imposing restrictions that also affect the ability of associations to raise funds domestically. Azerbaijan, for example, prohibits all anonymous donations, and limits the receipt by civil society organizations of cash donations to 200 manats (approximately \$115).⁸⁸ Some States are introducing new restrictions on public fundraising. For example, some countries require civil society organizations to notify the authorities or to obtain a permit or licence when publicly soliciting donations. Turkey recently extended the permit requirement already in place for face-to-face public collections to online collections. The new law requires government permission for launching online fundraising campaigns and imposes heavy penalties for violation of the law (doubling the administrative fines for unauthorized offline money collection campaigns).⁸⁹ Such measures can severely hinder fundraising for emerging needs such as natural disasters where rapid response would be crucial. Increasingly, movements and civil society organizations are relying on new, digitally

⁸³ A/HRC/40/52, para. 51.

⁸⁴ Submission by the European Center for Not-for-Profit Law.

⁸⁵ A/HRC/47/55, paras. 63–69.

⁸⁶ A/HRC/17/31.

⁸⁷ See A/HRC/47/39/Add.2.

⁸⁸ See AZE 1/2012.

⁸⁹ Official Gazette No. 31351, Law No. 7262.

based techniques (e.g. crowdfunding via the Internet, e-payment systems, email, and SMS-based campaigns) to encourage giving and raise funds.

47. The Special Rapporteur has strongly condemned the recent wave of laws and regulations in some parts of the world that are designed to silence, intimidate or exclude civil society organizations that promote human rights by limiting their access to funding. In Hungary, for example, a special immigration tax was introduced in July 2018 that imposes a 25 per cent tax (a) on financial support for an immigration-supporting activity carried out in Hungary; and (b) on financial support for the operations of an organization with an office in Hungary that carries out immigration-supporting activity (Act XLI of 2018).⁹⁰ In Ghana, a bill entitled the “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021” proposes prohibiting the funding or sponsorship of many activities in support of the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and penalizing them with imprisonment of 5 to 10 years.⁹¹ In Slovakia, amendments to the Act on Government Subsidies⁹² restricted the eligibility of potential applicants for and beneficiaries of subsidies in the field of gender equality to organizations promoting “marriage and family values”. There is no definition of what constitutes “marriage and family values” in the law, but it is understood to be code for excluding LGBTI rights. Provisions restricting or prohibiting the right to freedom of association, including the right to access funding, of a specific group on discriminatory grounds, such as sexual orientation or gender identity, is not permitted under the Covenant and must be reviewed with a view to repealing.

D. Donor practices of concern

48. The Special Rapporteur notes with concern the fact that the COVID-19 pandemic led to loss of funding for civil society organizations around the world. For instance, in Africa alone, 55.69 per cent (in 2020) and 68.1 per cent (in 2021) of civil society organizations that responded to a survey by EPIC-Africa and @AfricanNGOs reported having lost funds as a result of the pandemic.⁹³ Similarly, a study conducted for the European Union showed that almost one quarter of surveyed European civil society organizations indicated loss of funding as a key result of the pandemic.⁹⁴ An assessment for the Asia-Pacific region on engaging civil society organizations in the COVID-19 response also identified the funding scarcity following the pandemic as a key challenge for such organizations.⁹⁵

49. The reasons for this loss of funding are manifold, and analysing the trends in the reduction of funding provided to civil society during the pandemic is beyond the scope of the present report. However, the Special Rapporteur notes with concern that the practices of many donors (both bilateral and private) continue to impose severe burdens on civil society organizations to the detriment both of their financial sustainability and of the impact of their programmes and activities, including for addressing the health crisis.

⁹⁰ See HUN 1/2018.

⁹¹ See GHA 3/2021.

⁹² Submission by the Slovak National Centre for Human Rights.

⁹³ EPIC-Africa and @AfricanNGOs, “The impact of COVID-19 on African civil society organizations: challenges, responses and opportunities”, June 2020, available at <https://static1.squarespace.com/static/5638d8dbe4b087140cc9098d/t/5efabc7884a29a20185fcbaf/1593490570417/The+Impact+of+Covid-19+on+African+Civil+Society+Organizations.pdf>, and “The impact of COVID-19 on African civil society organizations: ongoing uncertainty and a glimmer of optimism”, October 2021, available at [https://static1.squarespace.com/static/5638d8dbe4b087140cc9098d/t/617aa205267bb74562c1eedd/1635426839723/EPIC-Africa+The+Impact+of+COVID-19+on+African+Civil+Society+Organizations+OCTOBER+2021+REPORT+\(4\).pdf](https://static1.squarespace.com/static/5638d8dbe4b087140cc9098d/t/617aa205267bb74562c1eedd/1635426839723/EPIC-Africa+The+Impact+of+COVID-19+on+African+Civil+Society+Organizations+OCTOBER+2021+REPORT+(4).pdf).

⁹⁴ European Economic and Social Committee, *The Response of Civil Society Organizations to Face the COVID-19 Pandemic and the Consequent Restrictive Measures adopted in Europe*, available at <https://www.eesc.europa.eu/sites/default/files/files/qe-02-21-011-en-n.pdf>.

⁹⁵ Asian Development Bank, *The Governance Brief*, issue 42 (2021), “Engaging civil society organizations to enhance the effectiveness of COVID-19 response programs in Asia and the Pacific”, see <https://www.adb.org/sites/default/files/publication/689831/governance-brief-042-civil-society-covid-19-asia-pacific.pdf>.

50. For instance, information received by the Special Rapporteur indicates that some donors' grant-making processes and administrative requirements, particularly those of bilateral donors, continue to be complex and onerous, excluding many organizations. Many representatives of civil society organizations reported having difficulties in accessing information related to funding opportunities, and following complicated application processes, as well as lacking the capacity to handle such processes. The Special Rapporteur echoes the 2021 OECD Development Assistance Committee recommendation on enabling civil society in development cooperation and humanitarian assistance, which calls upon States to "streamline administrative requirements for civil society support to lower transaction costs for civil society and providers, and incorporate adaptive and flexible processes into results management of civil society funding".⁹⁶ The Special Rapporteur also encourages the adoption of measures to increase and facilitate funding to local organizations, including unregistered organizations.

51. Donor preference for short-term impact continues to pose an obstacle to the work of many civil society organizations globally, particularly local civil society actors. Access to flexible core funding and multi-year funds can enable the stability of civil society organizations and allow them to focus less on fundraising and dedicate more efforts towards fulfilling their mission. The Special Rapporteur calls upon donors to prioritize predictable and flexible core funding as well as multi-year grants to support civil society organizations. He commends commitments by OECD member States to "promote and invest in the leadership of local civil society actors in partner countries or territories by, where appropriate and feasible, increasing the availability and accessibility of direct, flexible, and predictable support including core and/or programme-based support, to enhance their financial independence, sustainability, and local ownership".⁹⁷

52. Information received by the Special Rapporteur indicated that donors were not always prepared to face sudden political change or conflict. For instance, in Myanmar, after the military coup, while some donors were able to act quickly and flexibly, many others lacked an effective plan to circumvent the urgent situation that ensued. In such conditions, regular channels of financing may be insecure or unavailable, and civil society may have special needs to access funds safely and securely to perform pressing tasks. The lack of donor preparedness in such situations may put civil society organizations at severe risk. The Special Rapporteur calls upon donors working in conflict situations and contexts that are politically sensitive to pay special attention to civil society needs and to anticipate them in advance.

53. The Special Rapporteur notes that certain donor practices continue to perpetuate unequal power relations between civil society organizations in high-income countries and those in low-income, lower-middle-income and upper-middle-income countries. As indicated in the 2021 "Policy Framework for Strengthening Civil Society", from the Netherlands, "power relationships are related to who takes decisions, who receives and manages funding, who plans programmes, and who is involved in formulating a programme and deciding what form participation takes".⁹⁸ The Special Rapporteur agrees with the assertion that "more control and ownership for local civil society organizations is a major step towards establishing relationships on an equal footing and promoting the role of civil society", and that this also ensures that programmes "can be embedded more effectively and more sustainably in the local context". In this regard, the Special Rapporteur notes with approval commitments expressed by the OECD Development Assistance Committee to "ensuring local civil society actors are involved in decision-making based on equal power relations with supported civil society strategic alliances, networks, platforms and resource centres, in the design, budgets, and implementation of their programming".⁹⁹

⁹⁶ OECD/LEGAL/5021, pillar 2, recommendation 6.

⁹⁷ *Ibid.*, pillar 2, recommendation 4.

⁹⁸ Government of the Netherlands, "Policy Framework for Strengthening Civil Society: Power of Voices Partnerships" – a framework for funding civil society organizations, 1 January 2021 to 31 December 2025, available from <https://www.government.nl/documents/policy-notes/2019/11/28/policy-framework-strengthening-civil-society>.

⁹⁹ OECD/LEGAL/5021, pillar 2, recommendation 4.

VI. Impact

54. The restrictions and barriers described above have had a significant impact on the operation, and in many cases the existence, of civil society organizations in many parts of the world. Their impacts go beyond the financial sustainability of the affected organizations, and directly affect the communities that civil society organizations serve. These restrictions also have serious implications for efforts to recover from the COVID-19 pandemic. For instance, according to information received by the Special Rapporteur, in India almost 6,000 civil society organizations lost their ability to receive foreign funds because of onerous requirements and amendments made to the Foreign Contribution (Regulation) Act. This included prominent aid organizations and institutions working to improve education and health. Reports also indicate that the Foreign Contribution (Regulation) Act obstructed the humanitarian response, preventing non-profit organizations, including hospitals, civil society groups and charitable trusts, from being able to accept oxygen, medical equipment, donations and other critical supplies. The Special Rapporteur is deeply concerned by further reports of this legislation being used by law enforcement authorities to harass and silence civil society actors.

55. Restrictions on foreign funding for civil society organizations have had a chilling effect on civil society, dissuading many such organizations from seeking these kinds of funds or forcing them to simply close. In Egypt, for instance, restrictions on foreign funding have been used to crack down on civil society organizations for over a decade, leading to several such organizations having to close or move out of the country. The Government has kept a case targeting several civil society organizations that are based on foreign funding open and pending since 2011, allowing for ongoing investigations into and harassment of the organizations. In the Russian Federation, the designation of civil society organizations receiving foreign funding as “foreign agents” has stigmatized their work and cut them off from sources of domestic funding, forcing many to close. At the same time, several international donor organizations have been blacklisted as undesirable organizations. These two factors combine to strangle civil society in the country. In Myanmar, following the 2021 coup, a vast proportion of civil society organizations have been forced to close or to severely limit their functions, affecting beneficiary communities already impacted by conflict, a repressive environment and the COVID-19 pandemic.

56. These restrictions have had a disproportionate impact on civil society organizations advancing the rights of marginalized groups, including women and LGBTI persons, which are often highly dependent on foreign funds to support their activities. For example, in the Russian Federation, the Law on Foreign Agents has encouraged stigmatization and discrimination against LGBTI organizations and the targeting and persecution of the LGBTI community. LGBTI organizations were among the first organizations subjected to investigations, exhaustive court proceedings and fines under the above-mentioned law, draining their limited resources. At the time of writing of the present report, the registers of “foreign agents” maintained by the Ministry of Justice include many prominent LGBTI groups functioning in the Russian Federation at the national and local levels.

57. Bank de-risking has affected all types of civil society organizations, but especially those that operate in high-risk jurisdictions. The Special Rapporteur received information about a national branch of an international and well-recognized NGO that had been forced to relocate from the Democratic People’s Republic of Korea where it had more than 20 years’ experience working in food safety; this decision was effectively inflicted upon it by banks and their restrictive interpretation of international sanctions. Financial exclusion is ultimately pushing civil society organizations to bypass the banking system or use unregulated means to make and receive donations, impeding the transparency and accountability that measures countering terrorism are said to pursue. It also creates risks for staff and offices who must carry large amounts of cash to enable ongoing operations.

58. The Special Rapporteur also observes that undue restrictions on the ability of civil society to access resources has a direct link to overall deterioration in the human rights context in a country. In Nicaragua, for example, laws regulating access by civil society organizations to funding have been enacted alongside legislation curtailing the rights to freedom of expression and peaceful assembly, such as the Special Cybercrime Law, amid a

years-long repression of civil society and opposition movements.¹⁰⁰ Applied in tandem, these measures have enabled the Nicaraguan authorities to suppress civic space in the country, criminalizing human rights defenders and opposition leaders and dissolving hundreds of civil society organizations.

VII. Promising practices

59. Although threats to the right of civil society organizations to seek, receive and use funding are proliferating, the Special Rapporteur has identified important efforts by States and other stakeholders to advance the realization of this right. The following are some examples of positive actions brought to the attention of the Special Rapporteur which deserve to be mentioned.

60. Some Governments adopted important policies to ensure civil society organizations received public support during the COVID-19 pandemic. For instance, in Denmark, the Ministry of Social Affairs and Senior Citizens provided extraordinary funding to civil society associations of approximately 640 million kroner. In Czechia, the thresholds for donations to be tax-deductible doubled for individuals and tripled for corporate donors. Other States eased existing permission processes for civil society organizations seeking to access foreign funding. Public funding to civil society organizations and access to other forms of financial relief can be critical measures in ensuring the effectiveness of government policies in times of crisis, particularly for organizations working with marginalized or minority groups.

61. Government and private donors have also made important progress in ensuring that flexible funds are allocated to support civil society organization and human rights movement-building. Many donors were quick to adapt to COVID-19-related challenges facing civil society organizations across the world, by expanding unrestricted funding, easing red tape and taking a more active role in advocacy work. The Special Rapporteur commends efforts by several donors to support civil society organizations operating in increasingly complex environments for accessing funding, which has included help in navigating these restrictions and building resilience.

62. The Special Rapporteur notes that some States have adjusted their legislation to enable new forms of giving. In Finland, for example, the Fundraising Act of 2019 exempts small-scale fundraising from licences, thus allowing free flow of support. The Act also acknowledges the possibility of raising virtual currency. Mandate holders have emphasized the importance of tax benefits in fostering associations' right to seek, secure and use resources and to carry out their work more effectively.¹⁰¹ This includes exemptions for the revenue of certain associations from income tax or tax exemptions for both individual and corporate donors. The general tax exemption in Poland for public benefit associations and personal income tax deductions are examples of good practice. The Special Rapporteur recalls that those privileges should be easily attainable through a straightforward procedure and tangible to incentivize philanthropic giving.

VIII. Conclusion and recommendations

63. The COVID-19 pandemic has highlighted the importance of a well-resourced civil society, and the negative impact of restrictions on access to financial resources not only on civil society organizations but also on the communities they serve, including by limiting life-saving programmes during the COVID-19 response. The Special Rapporteur underlines that this should be an important wake-up call for a renewed commitment to an enabling environment for civil society organizations, where access to financial resources is recognized, respected and promoted.

¹⁰⁰ See NIC 3/2020.

¹⁰¹ [A/70/266](#), para. 81.

64. **The Special Rapporteur recommends that States:**

(a) **Ensure that associations – registered and unregistered – can fully enjoy their right to seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities;**

(b) **Create and maintain, in law and in practice, an enabling environment for the enjoyment of civil society organizations’ right to seek, receive and use resources;**

(c) **Ensure that any restriction on civil society organizations’ right to access funding complies with international human rights norms and standards, in line with the strict test of necessity and proportionality in a democratic society, bearing in mind the principle of non-discrimination;**

(d) **Repeal laws and regulatory measures imposing restrictions contrary to international human rights standards, including measures:**

(i) **Imposing blanket prohibitions on accessing foreign funds;**

(ii) **Imposing prior authorization, registration, or licensing requirements for fundraising activities, domestic or foreign;**

(iii) **Requiring additional burdensome and overly intrusive reporting or public disclosure obligations from civil society organizations seeking to access or use foreign funds;**

(iv) **Imposing caps or additional tax on the income from foreign funding;**

(v) **Stigmatizing or delegitimizing the work of foreign-funded and other groups of civil society organizations, including compelling recipients of foreign funding to adopt negative labels such as that of “foreign agents”, with the aim of suppressing the legitimate activities, such as human rights and democracy promotion, of those associations;**

(vi) **Using overly broad and vague definitions to limit civil society organizations’ ability to defend human rights or engage in matters of political concern or public debate;**

(vii) **Imposing unnecessary and disproportionate sanctions;**

(e) **Ensure full compliance with Financial Action Task Force recommendation 8 and its risk-based approach when adopting laws and measures directed at civil society. States must avoid overregulating the civil society sector via laws and regulations against money-laundering and terrorism financing;**

(f) **Meaningfully engage with civil society organizations when adopting any measures affecting their right to seek, receive and use funding;**

(g) **Strengthen the financial sustainability of civil society organizations through diverse and flexible forms of financial and non-financial support, including institutional funding, meaningful tax benefits, promotion of the activities of civil society organizations in State-supported media, and support for philanthropy, local crowdfunding platforms and other new, innovative mechanisms;**

(h) **Review existing laws and practices to make sure that they promote and facilitate the solicitation and receipt of funds, including via the use of digital technologies;**

(i) **Ensure that the tax treatment of civil society organizations is no more onerous than that of businesses and incentivize support of the work of the not-for-profit sector.**

65. **The Special Rapporteur recommends that the donor community:**

(a) **Fully implement the OECD Development Assistance Committee recommendation on enabling civil society in development cooperation and humanitarian assistance;**

(b) **Engage in extensive consultations with diverse civil society actors with a view to understanding the impact of funding and their needs for resources, the adverse effects of restrictions on receiving funds and ways to overcome them, and additional capacity-building needs of recipients;**

(c) **Establish a process to co-create funding priorities and projects in consultation with civil society and affected communities. This would involve moving away from a top-down approach to a more participatory approach where civil society and donors are able to craft priorities as equal partners;**

(d) **Increase longer-term investment (such as multi-year grants) and adaptive core support systems for organizations and movements working to advance the rights of marginalized groups, including women's rights, and environmental justice and indigenous peoples' rights.**

66. **The Special Rapporteur encourages the Human Rights Committee to consider the development of a general comment on article 22 of the International Covenant on Civil and Political Rights, recognizing access to resources as an integral part of freedom of association.**

67. **The Special Rapporteur emphasizes that multilateral entities have positive responsibilities to establish and maintain an enabling environment for civil society. He calls upon the Financial Action Task Force and its member States to integrate human rights law, particularly the right of associations to seek, receive and use funding, within all discussions, evaluations and standard-setting on countering terrorism and its financing. The Task Force must ensure, through its standards, methodology, guidance and training, that the application and enforcement of recommendation 8 does not de facto undermine binding international human rights norms. The Special Rapporteur equally calls upon other multilateral agencies and political entities, including the Security Council's Counter-Terrorism Committee Executive Directorate and the Global Counter-Terrorism Forum, to ensure that their efforts to combat the financing of terrorism are consistent with their human rights obligations.**

68. **The Special Rapporteur also recommends financial institutions to adhere to their human rights obligations to respect the right to freedom of association and exercise human rights due diligence when designing and implementing policies and practices that affect civil society organizations' access to resources. Financial institutions should not automatically treat civil society organizations as high-risk through their policies and practices and should allow such organizations to benefit from the use of new and innovative technologies and sources of funding such as crowdfunding platforms.**