

# GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

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## *Closing Civic Space: Impact on Development and Humanitarian CSOs*

### **Introduction**

Multiple reports have outlined the plight of human rights and other advocacy organizations around the globe in the face of escalating legal restrictions on civil society.<sup>1</sup> Often overlooked in such reporting is the similarly difficult experience of civil society organizations (CSOs) focused on development, which have also witnessed the deterioration of an enabling environment conducive to their success.

The importance of domestic and international CSOs' involvement in development and humanitarian work has been routinely affirmed by the international community and codified in a

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<sup>1</sup> Rebecca Vernon, "Closing the Door on Aid," *The International Journal of Not-for-Profit Law* 11, no. 4 (2009); Thomas Carothers and Saskia Brechenmacher, "Closing Space: Democracy and Human Rights Support Under Fire," *Carnegie Endowment for International Peace*, February 20, 2014 ("Closing Space"); "Democracy in Action: Protecting Civil Society Space," *Trócaire Policy Report*, 2012; "Shrinking Political Space of Civil Society Action," *ACT Alliance*, June 1, 2011; "How to Protect and Expand an Enabling Environment: Space for Civil Society," *CIDSE and ACT Alliance ("Report: Space for Civil Society")*, June 4, 2014; Harriet Sherwood, "Human rights groups face global crackdown 'not seen in a generation,'" *The Guardian*, August 26, 2015.

variety of international declarations and agendas, including the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action, the Busan Partnership for Effective Development Cooperation, and most recently, the 2030 Agenda for Sustainable Development.<sup>2</sup> In many areas of the world, particularly remote, rural, and economically depressed areas, development organizations act as essential gap-fillers, providing important social services, disaster relief, capacity building opportunities, poverty alleviation, and other crucial services that the government and private sector may be unable to provide. In these and other areas, development and humanitarian CSOs work in tandem with state and private actors, complementing and strengthening the ability of both to respond to the needs of their communities, especially the most disadvantaged among them.

In order for development and humanitarian CSOs to carry out their critical work, they require, at a minimum, the freedom to exercise three interdependent rights: the rights to peacefully assemble, freely associate, and openly express themselves. Impediments to the exercise of these rights undermine civil society's ability to contribute to a country's development.<sup>3</sup> This review of global state practice reveals that in an increasing number of countries, local and international CSOs engaged in critical development work are constrained from fully exercising their internationally protected rights, and thus, from serving the communities that need and depend on them.

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<sup>2</sup> At the third High Level Forum on Aid Effectiveness in Ghana, civil society was confirmed to be an important and independent actor in development cooperation; commitments were made to work with CSOs to create an enabling environment that can help maximize their contributions to development. Similarly, the Accra Agenda for Action and the Busan Partnership Declaration formally confirmed the need for an enabling environment for civil society as a key element of aid and development effectiveness. The latter states, in ¶ 22, that CSOs “play a vital role in...shaping development policies and partnerships, and in overseeing their implementation.” General Assembly resolution 70/1, “Transforming our world: the 2030 Agenda for Sustainable Development,” laid out new economic, social and environmental development goals, which came into effect in January 2016 and are expected to be achieved by 2030. According to a June 2016 report by the Secretary General of the UN, achieving the “ambitious targets of the 2030 Agenda requires a revitalized and enhanced global partnership that brings together Governments, civil society, the private sector, the United Nations system and other actors.” The report also states that the “success of all such global initiatives” will depend on “partnerships with civil society.” See United Nations Economic and Social Council, Progress Towards the Sustainable Development Goals, E/2016.75 (3 June 2016), available at [secretary-general-sdg-report-2016--EN.pdf](#) [last accessed August 20, 2016].

<sup>3</sup> These three freedoms are enshrined in a variety of international and regional human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the Arab Charter on Human Rights, and the European Convention on Human Rights, among others.

## *Constraints and Challenges Faced by Development CSOs*

This issue of Global Trends examines the key constraints and challenges faced by development CSOs, which, like CSOs focused on human rights and advocacy, have suffered under what civil society observers have described as one of the most intense crackdowns on CSOs witnessed in a generation.<sup>4</sup> While not exhaustive, the four challenges discussed below are among the most common and problematic constraints to the enabling environment for development CSOs.<sup>5</sup> These challenges include:

- Burdensome legal requirements
- Restrictions on foreign funding and affiliations
- Counterterrorism legislation and policies
- Vilification, distrust and violence

### *Burdensome Legal Requirements*

States, as the gatekeepers of formal CSO registration, can prevent or deter certain kinds of organizations from forming by creating a CSO registration process that is overly complicated, time-consuming, ambiguous, and expensive. State authorities can also exploit their decision-making powers to delay registration or renewal applications indefinitely, or to arbitrarily reject applications altogether. Additionally, the state can selectively enforce and arbitrarily interpret the law, strictly enforcing and harshly interpreting the smallest details against organizations deemed undesirable, while looking the other way for organizations deemed non-threatening. Finally, states can use the law to significantly narrow the scope of permissible development activities, to impose excessive reporting or renewal requirements, and overall, to make it difficult for CSOs—including development CSOs—to fulfill their mandates.

- In **Eritrea**, one of the poorest countries in Africa, the President is on record stating, “[a]nyone who takes aid is crippled. Aid is meant to cripple people...”<sup>6</sup> Eritrea’s 2005 proclamation on non-governmental organizations reflects this antagonism and distrust toward CSOs devoted to aid and development. It requires CSOs to pay taxes on imported

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<sup>4</sup> Harriet Sherwood, “Human rights groups face global crackdown ‘not seen in a generation,’” *The Guardian*, August 26, 2015.

<sup>5</sup> For an overview of the challenges faced by all CSOs, see International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, “Defending Civil Society Report,” 2<sup>nd</sup> Ed. (June 2012), pp. 14-34, or Report: Space for Civil Society, at 11 (Executive Summary).

<sup>6</sup> Ezili Danto, “US NGOs Kicked out of Eritrea: Foreign Aid is Meant to Cripple People,” *Global Research*, April 5, 2015.

materials, submit project reports every three months, and annually renew their operating licenses, among other burdensome and intrusive requirements. To form a humanitarian relief organization, founders must have the equivalent of one million dollars at their disposal. International CSOs engaged in this kind of work must have the equivalent of two million dollars before gaining permission to operate.<sup>7</sup> With the exception of the International Committee of the Red Cross (ICRC), which has had to significantly narrow its scope of operations,<sup>8</sup> not a single international CSO has worked in Eritrea since 2011, when six CSOs (Oxfam, Refugee Trust International, Lutheran World Federation, Irish Self-Help, Gruppo Missione Asmara of Italy, and Norwegian Church Aid) were forced to leave.<sup>9</sup> Others, such as Catholic Relief Services, left voluntarily after facing administrative hassles pertaining to obtaining visas for their staff, seeking approval for their activities and making travel arrangements. Humanitarian food distribution by CSOs and the World Food Program are forbidden, and as a result, malnutrition is an increasingly significant concern.<sup>10</sup>

- In **Laos**, in 2014 the foreign ministry promulgated guidelines that, if adopted into law, will subject CSOs, particularly international CSOs, to extensive and cumbersome legal requirements. If passed, international CSOs will be required to obtain from the foreign ministry a new operating permit each year (approval of which can take up to two months), as well as prior approval before initiating any projects, hiring foreigners, or opening offices. According to one CSO staff member, “the increased restrictions on INGOs [international non-governmental organizations] would hurt the government’s efforts at reducing poverty in the country,” among other repercussions.<sup>11</sup> Civil society observers have noted that the government has been targeting international and domestic CSOs focused on development work since the country hosted the ninth Asia-Europe Forum in 2012, which highlighted Laos’ status as the least developed nation in Southeast Asia. Indeed, in the aftermath of the Forum, one of the event’s key organizers was expelled from the country for suggesting that Laos creates a hostile environment for aid groups, among other such critical remarks.<sup>12</sup>

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<sup>7</sup> UN Office of the Coordination of Humanitarian Affairs, “Eastern Africa: Eritrea,” <http://www.unocha.org/eastern-africa/about-us/about-ocha-eastern-africa/eritrea>.

<sup>8</sup> International Committee of the Red Cross, “ICRC Emergency Appeals 2015: Eritrea,” p. 2, 2015\_ea\_eritrea.pdf.

<sup>9</sup> Freedom House, “Eritrea,” Freedom in the World 2016, <https://freedomhouse.org/report/freedom-world/2016/eritrea>.

<sup>10</sup> US Department of State, “Eritrea,” Country Reports on Human Rights Practices for 2009, at p. 25, [www.state.gov/documents/organization/160120.pdf](http://www.state.gov/documents/organization/160120.pdf).

<sup>11</sup> Joshua Lipos, “NGOs Say Proposed Guidelines Would Hamstring Lao Civil Society,” Radio Free Asia, October 2, 2014.

<sup>12</sup> Id.

- In **Kenya**, organizations serving sexual minorities or involved in HIV/AIDS prevention and treatment have faced many obstacles when attempting to register. In some cases, they have been forced to enter into hosting agreements with already registered CSOs. For example, the African Sex Workers Alliance (ASWA), after having difficulties registering on its own, entered into a hosting agreement with an already registered CSO, which agreed to receive its funding and oversee its fiscal operations. While this arrangement has made it possible for ASWA to operate, its difficulties in registering heightened the stigma faced by sex workers and increased their discomfort with accessing HIV services.<sup>13</sup> In other instances, Kenyan authorities have used the broad powers granted to them under the law to de-register CSOs involved with HIV-related issues. For example, Bar Hostess Empowerment Programme, Kenya Treatment Access Movement, Liverpool VCT, Médecins Sans Frontières (MSF) and AIDS Law Project, each of which is involved in HIV treatment or prevention, have been proposed for de-registration in recent years, causing them to expend their already limited resources to prevent such an outcome.<sup>14</sup>
- In **Panama**, according to one report, the rejection rate for first time registration applicants is 99 percent.<sup>15</sup> Some CSOs wait two or more years to obtain legal personality due to complicated and discretionary procedures; and others are unable to afford the expensive registration fees and domicile requirements imposed by law, according to which applicants must pay between \$300 and \$500 and own or rent premises where all their organizational activities will take place. Applicant CSOs must also submit a “work plan” detailing their objectives and main activities for their first five years.<sup>16</sup> As a result of these burdensome requirements, which apply equally to CSOs of all types, some development CSOs have been forced to indefinitely await the results of their registration applications, delay their missions, or stop operating altogether.
- In **Zimbabwe**, in advance of presidential elections in 2012, the government arbitrarily and indefinitely suspended twenty-nine CSOs on the pretext that they failed to meet registration requirements and were engaging in political activities.<sup>17</sup> Many CSOs engaged in health and essential services were affected in this round-up, including some CSOs that

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<sup>13</sup> ICNL and the Joint UN Programme on HIV/AIDS, [Forthcoming Report] Understanding the Impact of Shrinking Civil Society Space on the HIV Response: A Three-Country Study, 2016 at p 20.

<sup>14</sup> Id.

International Center for Not-for-Profit Law, NGO Law Monitor: Panama, (last updated December 6, 2015,)) <http://www.icnl.org/research/monitor/panama.html>.

<sup>16</sup> Id.

<sup>17</sup> Cris Chinaka, “Zimbabwe suspends NGOs as possible election looms,” Reuters Africa, February 15, 2012.

provide care to those with HIV/AIDS and others involved in distributing medicine and food to the poor. As a result, the provision of these essential services was either substantially delayed or indefinitely suspended.<sup>18</sup>

- In the **British Virgin Islands**, the Non-Profit Organizations (NPOs) Act of 2012, which was passed as part of a broader counterterrorism campaign, requires the annual registration of all NPOs and imposes a high penalty, including imprisonment of up to three years, fines up to \$50,000, or both, for failing to register.<sup>19</sup> Moreover, NPOs with five or more employees are required to appoint a Money Laundering Reporting Officer, and the failure to maintain all required records can result in a \$5,000 fine. Various organizations, including one working on crisis intervention, another focused on family support, and a local “search and rescue” league have expressed distress over the administrative and financial costs involved in meeting the requirements of the new law.<sup>20</sup>

### *Restrictions on Foreign Funding and Affiliations*

An increasing number of countries impose restrictions on foreign funding and affiliations with devastating effects for many development CSOs, whose existence often depends on access to foreign resources.<sup>21</sup> A recent report by the Carnegie Endowment for International Peace details the “viral-like” spread of new laws restricting CSOs’ access to foreign funds.<sup>22</sup> According to this report, such laws not only affect high-profile democracy and human rights groups but also organizations involved in development assistance; and such laws are not only passed in

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<sup>18</sup> “Zimbabwe suspends 29 NGOs in latest ZANU-PF crackdown,” Voice of America, February 15, 2012.

<sup>19</sup> See Non-Profit Organizations Act of 2012, Section 11(1).

<sup>20</sup> Charity & Security Network, “How the FATF is Used to Justify Laws that Harm Civil Society, Freedom of Association and Expression,” May 2013, [http://www.charityandsecurity.org/analysis/Restrictive\\_Laws\\_How\\_FATF\\_Used\\_to\\_Justify\\_Laws\\_That\\_Harm\\_Civil\\_Society](http://www.charityandsecurity.org/analysis/Restrictive_Laws_How_FATF_Used_to_Justify_Laws_That_Harm_Civil_Society).

<sup>21</sup> Various scholars and organizations have tracked this trend. Examples include: Douglas Rutzen, “Aid Barriers and the Rise of Philanthropic Protectionism,” *International Journal for Not-for-Profit Law*, Vol. 17, No. 1 (March 2015); CIVICUS, “The Challenge of Resources: Changing Funding Prospects for Civil Society” *State of Civil Society 2011*, <http://civicus.org/downloads/2011StateOfCivilSocietyReport/Funding.pdf> (finding that in 33 countries, 87 % identified national or internal factors constraining funding); Darin Christensen and Jeremy Weinstein, “Defunding Dissent: Restrictions on Aid to NGOs,” *Journal of Democracy*, Vol. 24, Iss. 2 (April 2013) (finding that out of 98 countries for which comprehensive data are available, 12 countries prohibit and 39 countries now restrict foreign financing of domestic NGOs); ICNL has documented more than 50 attempts by countries to pass legislation to restrict foreign funding since 2012.

<sup>22</sup> Closing Space at 1.

authoritarian or semi-authoritarian states, but increasingly, in all types of governments, including democracies.<sup>23</sup>

Governments often frame restrictions on foreign funding and affiliations as necessary for the preservation of state sovereignty or national security. According to the UN Special Rapporteur on the rights to freedom of assembly and association, however, such claims are “not only spurious and distorted,” but also “in contradiction with international human rights law,”<sup>24</sup> because access to funding, both foreign and domestic, is inherent in the right to freedom of association.<sup>25</sup>

- In **Egypt**, under a decree adopted in 2014, members of CSOs who use foreign funding to commit acts that “harm the national interest” face life imprisonment and fines of 500,000 Egyptian pounds (\$56,000). This decree, in combination with other repressive policies adopted as part of a broader crackdown on civil society initiated in the wake of the Arab Spring, has been used to harass, forcibly shut down, and seize the assets of hundreds of CSOs, including development CSOs.<sup>26</sup> In some cases, CSOs have chosen to suspend their operations rather than operate under the restrictive legal regime. For example, Al-Mawred al-Thaqafy (Culture Resource), an organization devoted to providing opportunities for the poor and marginalized communities to access and participate in cultural and artistic activities, suspended all activities in November 2014 due to frustrations stemming from the new legal restrictions and fear of prosecution for its receipt of foreign funds.<sup>27</sup> Similarly, Tahrir Academy, an online learning platform that offered educational support for students in primary and secondary schools, was forced to shut down due to the extensive funding constraints imposed by law.<sup>28</sup>
- In **India**, the Foreign Contribution Regulation Act (FCRA)<sup>29</sup> requires all CSOs wishing to accept foreign contributions to register with the central government; agree to accept the donations only through certain designated banks; maintain separate books of accounts

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<sup>23</sup> Id. at 61.

<sup>24</sup> United Nations Human Rights Council, A/ HRC/23/39, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,” April 24, 2013, at para. 30 [“SR Report on Right to Resources”].

<sup>25</sup> Protecting civic space and the right to access resources, Community of Democracies, General Principles (Principle 1 is: “the ability to seek, receive and use resources is inherent to the right to freedom of association and essential to the existence and effective operations of any association.”)

<sup>26</sup> Freedom House, “Egypt,” Freedom in the World 2016, <https://freedomhouse.org/report/freedom-world/2016/egypt>.

<sup>27</sup> Shady Lewis, “My pragmatist friend surrenders,” Mada Masr, December 4, 2014.

<sup>28</sup> Mai Shams El-Din and Tarek Abd El-Galil, “Tahrir Academy’s Shutdown Casts a Shadow over Educational NGOs,” Al-Fanar Media: News and Opinion about Higher Education, August 25, 2015.

<sup>29</sup> “Over 14,000 NGOs barred from receiving foreign funds: Govt,” The Indian Express, July 19, 2016.

for the disbursements of such funds; and report all the details pertaining to each contribution, including the amount, the source, the way in which it was received, the purpose for which it is intended, and the manner in which it will be used.<sup>30</sup> In 2015, the government cancelled the registration of over 9,000 CSOs for purportedly violating the requirements of the FCRA; as of July 2016 it had barred over 14,000 CSOs from receiving foreign funds. According to a government report, most of the foreign funds being received by the affected CSOs were “meant for establishment expenses, rural development, welfare of children, construction and maintenance of schools and colleges, grant of stipend and scholarships, AIDS awareness, research, awareness campaigns, welfare and maintenance of religious functionaries and schools, welfare of women and construction of hostel for poor students.”<sup>31</sup> The Ford Foundation, which in India supports water sanitation, slum rehabilitation, poverty reduction, and food distribution programs, was caught up in the recent crackdown. In 2015, its assets were frozen, and according to a top Foundation official, its inability to access funds most directly affected “projects that fight child marriage, provide clean water in slums and feed pregnant women.”<sup>32</sup> Many other development-oriented organizations and institutions were also affected, including Cordaid, the Danish International Development Agency, Mercy Corps, Action Aid, and a multitude of universities and philanthropic organizations, which faced additional restrictions on their ability to access foreign funds after being placed on a government watchlist” along with the Ford Foundation.<sup>33</sup> Some of these organizations have been banned entirely from receiving foreign funds.<sup>34</sup>

- In **Ethiopia**, under the 2009 Charities and Societies Proclamation, to be registered as an “Ethiopian” charity or society, a CSO must be exclusively composed of and controlled by Ethiopians and must not receive more than 10 percent of its resources from foreign sources.<sup>35</sup> Otherwise, a CSO will be characterized as a “foreign” or “resident” organization, which triggers strict limitations and requirements on any foreign funds

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<sup>30</sup> International Center for Not-for-Profit Law, NGO Law Monitor: India, last updated June 20, 2016, <http://www.icnl.org/research/monitor/india.html>.

<sup>31</sup> Abhishek Bhalla, “Government cracks down on NGOs which scoop Rs 10,000 crore a year in foreign donations...but don’t bother to file returns,” Daily Mail India, July 13, 2013.

<sup>32</sup> Rupam Jain Nair and Andrew Macaskill, “Ford Foundation funding dries up as Modi clamps down on NGOs,” Reuters, July 15, 2015.

<sup>33</sup> Vaishnavi Chandrashekhar, “India Crackdown? Ford Foundation latest foreign NGO slapped by Delhi,” Christian Science Monitor, May 4, 2015.

<sup>34</sup> Suryatapa Bhattacharya, “Indian Organizations Banned from Receiving Foreign Funds,” Wall Street Journal, June 2015.

<sup>35</sup> Charities and Societies Proclamation No. 621/2009, Article 2.

received, and places severe constraints on its scope of activities. While human-rights based CSOs have been particularly affected by this restrictive law, many development organizations that have significant foreign staff or are dependent on foreign funding, which include the vast majority of CSOs operating in Ethiopia, have similarly been affected.<sup>36</sup> According to one report,

while considerable attention has been paid to the debilitating effects of the CSO Proclamation on human rights groups, development organizations permitted to receive foreign funding have not been spared from the government's campaign to silence all independent monitoring and reporting of its policies. A number of independent development organizations that do not have explicit human rights mandates have reported severe obstruction by the government, including instructions to cease any form [of] advocacy or policy analysis and focus exclusively on service delivery activities.<sup>37</sup>

- In **Nicaragua**, the government announced in September 2015 that CSOs would no longer be permitted to directly receive foreign funds; instead, such funds had to first pass through, and be vetted by, government institutions. From the start, this move negatively affected the operations of many development organizations, including the United Nations Development Programme (UNDP), which was ranked the top performing development agency by Aid Transparency Index. UNDP was forced to remove one of its top representatives from the country, significantly cut its staff, and cancel at least five of its development assistance projects, resulting in a major downsizing of its presence and operations.<sup>38</sup> According to one local source, "those who stand to lose the most from this conflict are the people of Nicaragua, as the country is losing access to the million-dollar projects portfolio facilitated by the UNDP." The UNDP, at the time of the government's announcement that the program must drastically reduce its operations, had helped Nicaragua acquire approximately \$270 million to support over 115 projects over a twelve year period.<sup>39</sup>

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<sup>36</sup> Kendra E. Dupuy, et. al, "Who Survived? Ethiopia's Regulatory Crackdown on Foreign-Funded NGOs," *Review of International Political Economy*, March 2014, p. 22.

<sup>37</sup> Tor Hodenfield, "The hypocrisy of foreign funding laws in Ethiopia," *Open Democracy*, April 25, 2014.

<sup>38</sup> International Center for Not-for-Profit Law, *NGO Law Monitor: Nicaragua*, last updated November 2015, <http://www.icnl.org/research/monitor/nicaragua.html>; UNDP, "UNDP rejects accusations from the Government of Nicaragua published by the press," February 16, 2016, <http://www.latinamerica.undp.org/content/rblac/en/home/presscenter/articles/2016/02/16/el-pnud-rechaza-las-acusaciones-del-gobierno-de-nicaragua.html>.

<sup>39</sup> Arlen Cerda, *Nicaragua: UNDP Strongly refutes Ortega's accusations*, *Confidencial*, February 20, 2016.

- In **Uzbekistan**, authorities instructed a court in July 2006 to forcibly shut down Winrock International (WI), an American development organization focused on assisting farmers and providing agricultural support. The organization was accused of violating local laws, including “unapproved religious content” in one of its publications, publishing without a license, and misrepresenting traditional gender roles in their print materials, all of which WI denied.<sup>40</sup> WI’s work focused on improving Uzbekistan’s agricultural sector and supporting farmers. It implemented water support programs, initiated farmer-to-farmer projects, and facilitated collaboration between farmers and the Uzbek agriculture ministry, among other such objectives. WI was just one of many international CSOs targeted, charged, or forcibly closed in the mid-2000s in Uzbekistan;<sup>41</sup> most foreign and international CSOs that operated in the country during the 1990s and early 2000s have now been closed and expelled from the country.<sup>42</sup>
- In **Pakistan**, distrust of foreign-funded and affiliated CSOs reached a peak after the killing of Osama Bin Laden in May 2011. In addition to temporarily closing the Islamabad headquarters of Save the Children, a development organization that has operated in Pakistan since 1979, the Interior Ministry cancelled agreements with at least fifteen foreign charities, including the Norwegian Refugee Council, a humanitarian relief organization that assists refugees. These organizations were accused of “collecting sensitive data” from Pakistan’s tribal areas.<sup>43</sup>

### **Counterterrorism Legislation and Policies**

Many development CSOs have been, and continue to be, negatively impacted by the proliferation of counterterrorism measures over the past fifteen years. Legitimate measures to prevent the transfer of funds to, or any connections or affiliations with, terrorist organizations have proven debilitating for the work of many development CSOs operating in high risk areas or serving populations in areas where extremist groups are present.<sup>44</sup> One UN report found that

<sup>40</sup> “Uzbek court rejects NGO appeal against shutdown,” Sputnik, August, 18, 2006.

<sup>41</sup> Uzbekistan: No end to crackdown on Western NGOs, IRIN, July 2006.

<sup>42</sup> International Center for Not-for-Profit Law, NGO Law Monitor: Uzbekistan,” last updated 30 June 2016, <http://www.icnl.org/research/monitor/uzbekistan.html>.

<sup>43</sup> Jon Boone, “Pakistan shuts down Save the Children offices in Islamabad,” The Guardian, June 12, 2015.

<sup>44</sup> See Humanitarian Policy Group, *UK Humanitarian Aid in the Age of Counter-Terrorism: Perceptions and Reality, March 2015*; Counterterrorism and Humanitarian Engagement Project, “An Analysis of Contemporary Anti-Diversion

counterterrorism laws have led to severe restrictions on development and humanitarian CSOs' access to funding, the blocking and stalling of their projects, and increased self-censorship. According to this report, one consequence of these laws is increased suffering and destitution among those most in need of development and humanitarian assistance.<sup>45</sup>

- In the **United States**, many US-based CSOs complain that the counterterrorism legal framework adopted in the wake of the September 11<sup>th</sup> attacks has had negative implications on their operations abroad and on the ability of grantmakers and donors to support them without fear of criminal liability. As the UN's Special Rapporteur on the rights to freedom of peaceful assembly and of association (UNSR) pointed out following his recent visit to the US, "the Antiterrorism and Effective Death Penalty Act (1996), amended by the US Patriot Act of 2001, prohibits a wide range of support to terrorism but does so in a way that jeopardizes the right to freedom of association in the process."<sup>46</sup> Among other negative implications on the right to associate, this Act "complicates the work of humanitarian organizations in areas where terrorist actors are active" and "has had a severe chilling effect on associations willing to provide relief work to vulnerable populations," according to the UNSR.<sup>47</sup>

Disaster and other relief organizations have reported facing a difficult dilemma: either complying with laws barring "material support," which is broadly and ambiguously defined, or violating long-standing principles requiring neutrality in aid distribution.<sup>48</sup> Activities such as building and operating hospitals, setting up refugee camps, and distributing food, water, and medicine could all potentially constitute offering "material support" to a terrorist if anyone from one of the proscribed groups inadvertently becomes a recipient.<sup>49</sup>

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*Policies and Practices of Humanitarian Organizations,*" (Harvard Law School & Brookings Project on Law and Security, May 2014); Kate Mackintosh and Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action," An Independent Study Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs & the Norwegian Refugee Council, July 2013 ["Study on Impact of Counter-Terrorism Measures"]; Charity and Security Network, *Collateral Damage: How the War on Terror Hurts Charities and the People They Serve*, May 2009 ["Report: Collateral Damage"].

<sup>45</sup> Study on Impact of Counter-Terrorism Measures at p. 111.

<sup>46</sup> Statement by the UNSR on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of His Visit to the US, July 27, 2016, <http://freeassembly.net/news/usa-statement/> (UNSR Statement on US Visit).

<sup>47</sup> Id.

<sup>48</sup> *Collateral Damage*, Chapter 6: Counterterrorism Laws Create Barriers for International Philanthropy and Programs, p.51.

<sup>49</sup> Id. at 53-54.

CSOs have also expressed concern about two programs, the Partner Vetting System (PVS) and Risk Analysis Management (RAM), developed by the US Agency for International Development (USAID) and the State Department, respectively, which are designed to prevent terrorists, their supporters and their affiliates from benefiting from funds managed by domestic CSOs. Among other requirements, these programs require CSOs to disclose certain personal data pertaining to key personnel and other individuals associated with the CSO, as well as for all sub-grantees, sub-contractors, and other partners to US government agencies. Such personal data may include, for example, the name, government-issued photo ID, social security or passport number, email address, telephone numbers, birth date, birth location, gender and tribal affiliation. This information is entered into an online government database and screened by US government personnel.<sup>50</sup> CSOs fear that this data collection and reporting may give the impression that CSOs are collecting information on behalf of, or in collusion with, the US government. While USAID is piloting the PVS in only five countries,<sup>51</sup> US CSOs working in those places report that the programs are undermining their perceived neutrality and thus, compromising their working relationships with certain local partners.<sup>52</sup>

- In the **United Kingdom**, various international banks, including HSBC, UBS and NatWest, fearful of running afoul of British (and other Western) counterterrorism legislation, have closed accounts or blocked or delayed funds to (or transfers from) accounts held by UK-registered charities and international CSOs working in areas where terrorist groups are present. This has prevented them from operating at their full capacity, if at all.<sup>53</sup> British Muslim CSOs in particular complain that they are disproportionately affected by such actions. The Ummah Welfare Trust, a UK-based international relief and development organization that aims to alleviate poverty and suffering in areas most in need, is one such

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<sup>50</sup> Neal Cohen, Robert Hasty, and Ashley Winton, "Implications of the USAID Partner Vetting System and State Department Risk Analysis and Management System under European Union and United Kingdom Data Protection and Privacy Law," Counterterrorism and Humanitarian Engagement Project, Research and Policy Paper, March 2014, at p. 1.

<sup>51</sup> The pilot program applies in Guatemala, Kenya, Lebanon, Philippines, and Ukraine, and joins existing vetting programs for West Bank/Gaza and Afghanistan. Note that rules governing the PVS give USAID authority to vet outside of the pilot program where a risk assessment indicates it is appropriate. See Charity and Security Network, "Partner Vetting System: Summary and Analysis," February 11, 2016, [http://www.charityandsecurity.org/PVS\\_summary\\_and\\_analysis](http://www.charityandsecurity.org/PVS_summary_and_analysis). For a more extensive summary of the concerns raised by the PVS, see Counterterrorism and Humanitarian Engagement Project, Partner Vetting in Humanitarian Assistance: An Overview of the Pilot USAID and State Department Programs, November 2013, pp. 14-18.

<sup>52</sup> UNSR Statement on US Visit.

<sup>53</sup> Victori Metcalfe-Hough, Tom Keatinge, and Sara Pantuliano, HPG Working Paper: UK humanitarian aid in the age of counter-terrorism: perceptions and reality, (Humanitarian Policy Group, March 2015), at p. 1.

example. HSBC closed the organization's account in 2014 after it initiated projects in the Palestinian Territories.<sup>54</sup>

- In **Somalia**, after the United States listed al-Shabaab, an affiliate of Al-Qaeda based in Mogadishu, as a terrorist group in 2008, aid flowing to the country decreased by 88 percent because international CSOs feared running afoul of US counterterrorism law, drastically reducing services to beneficiaries in al-Shabaab controlled areas.<sup>55</sup> The loss of aid was particularly devastating from 2010-2012, when Somalia experienced a severe famine. According to one report: "In Somalia, the implementation of sanctions and counter-terrorism measures against al-Shabaab is considered by many humanitarians to have contributed to an already polarised environment in which humanitarian actors are not perceived as neutral, impartial or independent.... Beneficiaries are directly affected by the constraints."<sup>56</sup>
- In **the Palestinian Territories**, particularly the Gaza Strip where Hamas remains in control, humanitarian aid and development support offered by international CSOs has significantly diminished in recent years due to counterterrorism legislation in donor countries. For example, in the United States, an executive order adopted in 1995 prohibits all transactions with listed terrorist groups and persons, including Hamas. Similarly, under EU law, all EU member states must ensure that "funds, financial assets or economic resources or financial or other related services will not be made available, directly or indirectly, for the benefit of" Hamas.<sup>57</sup> Violations of these laws and executive orders can lead to criminal sanctions. Due in part to self-censorship by CSOs fearful of unintentional violations, and in part to direct restrictions on funding and the blocking of projects in areas where terrorists group operate, many beneficiaries of international development assistance have suffered as a result of these laws. One CSO was unable to distribute food to 2,000 families because its primary donor prevented it from sharing its beneficiary list with the Ministry of Social Affairs, which was considered too close to engaging Hamas directly. Another CSO could not proceed with its plans to launch a psychosocial project

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<sup>54</sup> Dominic Laurie, "HSBC closes some Muslim groups' accounts," BBC News, July 30, 2014.

<sup>55</sup> Study on Impact of Counter-Terrorism Measures at p. 82.

<sup>56</sup> "Counter-terrorism laws can stifle humanitarian action, study shows," The Guardian, July 23, 2013.

<sup>57</sup> Id.

in Palestinian schools because the headmaster of the school was perceived as too closely aligned with Hamas.<sup>58</sup>

- In **Syria**, several British CSOs reported in 2014 that they had suspended humanitarian and development operations in areas where the Islamic State or other proscribed groups are present, not out of fear of personal danger, but from fear of prosecution under UK counterterrorism laws. One such CSO, London-based Human Care Syria, was unable to carry out its mission of delivering water filters to communities in northeast Syria that lack access to clean water until it found a route that ensured no contact with ISIS or other proscribed groups. Another CSO, Hand-in-Hand for Syria, which delivers essential medical and food aid to desperate populations, was forced to close a hospital it operated near Aleppo when it could not locate a partner agency through which foreign donors, fearful of exposure to potential prosecution, felt comfortable channeling funding.<sup>59</sup>
- In **Egypt**, many development-oriented CSOs have been shuttered in recent years on the basis of alleged ties to the Muslim Brotherhood (MB), which the country outlawed in 2013 as part of a broader crackdown on radical groups. Faith-based development organizations, even those with no connections to the MB, particularly have been targeted; indeed, many have been harassed, raided, forced to endure lengthy court battles, deprived of funds, had their leaders arrested, and in many cases, been shut down.<sup>60</sup> According to one report, more than 1,000 charities and CSOs were dissolved, the funds of over 100 schools seized, and over fifty hospitals shut down entirely after links to the MB were alleged.<sup>61</sup> One development CSO caught up in this campaign was El Gameya El Shareya (GS), an Islamic-based charity focused on offering medical support to the poor, regardless of religion, political affiliation, or ability to pay, specializing in oncology, radiology, burn rehabilitation, optometry, and dialysis. Prior to the military's ouster of President Muhammad Morsi in July 2013, it operated thirty medical centers and maintained more than 1,000 branches in the most economically deprived sectors of Egypt. After being accused of receiving funds from the MB, which it repeatedly denied, the organization's assets were frozen and seized, all but shuttering its operations. Though

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<sup>58</sup> Study on Impact of Counter-Terrorism Measures at p. 97.

<sup>59</sup> Tim Whewell, "Anti-Terrorism Laws 'hinder aid operations'," BBC News, July 1, 2014.

<sup>60</sup> Nicholas Lin, Emily Crane Linn, "Egypt's War on Charity," Foreign Policy, January 29, 2015 ("Egypt's War on Charity").

<sup>61</sup> "Government committee seizes brotherhood-affiliated properties," Nooz, November 18, 2015.

it eventually succeeded in reversing this decision after a lengthy court battle, its domestic and international credibility was severely tarnished and its financial resources drained. GS now struggles to operate at barely a third of its original capacity.<sup>62</sup> Other development-focused charities, such as Resala and Sonaa Hayat, have faced similar charges, and consequently, are similarly struggling to fulfill their missions and in many cases, to survive.<sup>63</sup>

- In **Kenya**, the government deregistered over 500 CSOs in December 2014, justifying this massive deregistration campaign as essential to “safeguarding” Kenya’s national security in the face of al-Shabaab’s rising influence.<sup>64</sup> Many of the deregistered organizations were aid agencies and charities, including orphanages and clinics<sup>65</sup> that offered assistance to the neediest members of Kenyan society, including children. Examples include the Adventists Development organization, African Development Solutions, the African Welfare Programme, and African Kids in Need Organization.<sup>66</sup> Separately, twelve development organizations, including the medical charity Médecins Sans Frontières, were given twenty-one days to submit audited financial statements and to comply with “all reporting obligations” in order to avoid deregistration. Moreover, the government has used anti-terrorism legislation to restrict human rights organizations from engaging in important development work. For example, Muslims for Human Rights (MUHURI), an organization that provides free legal services for people who use drugs in addition to its human rights work, was designated a “specified entity,” the equivalent of a terrorist group under the law. This resulted in its assets being frozen and severe limitations being placed on its operations. Although the label was ultimately lifted following a lengthy court battle, the freezing of its assets prevented the organization from serving the needs of drug users for a significant period.<sup>67</sup>

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<sup>62</sup> Aaron T. Rose, “Administrative Court lifts Al-Gameya Al-Shareya,” Daily News Egypt, June 2014.

<sup>63</sup> Egypt’s War on Charity,

<sup>64</sup> “Kenya ‘deregisters’ NGOs in anti-terror clampdown,” BBC News, December 2014; Jenny Lei Ravelo, “Kenya’s security bill reinforces fears of NGO crackdown,” Devex, December 2014.

<sup>65</sup> While only fifteen were specifically accused of having links to terrorism, which resulted in the revocation of the work permits of their foreign employees and the freezing of their bank accounts, the remaining organizations were technically deregistered for allegedly failing to submit financial records.

<sup>66</sup> “List of 540 NGOs including church organizations deregistered by Uhuru Government,” Kenya Today, December 16, 2014.

<sup>67</sup> ICNL and the Joint UN Programme on HIV/AIDS, [Forthcoming Report] Understanding the Impact of Shrinking Civil Society Space on the HIV Response: A Three-Country Study, 2016, at p 20.

## *Vilification, Distrust and Violence*

CSOs are essential providers of development relief, poverty reduction, and public health services. If CSOs are to perform these critical functions effectively and efficiently, a collaborative and trusting relationship with national, regional and local governments is imperative. However, in an increasing number of countries around the globe, CSO-government relations are characterized by mutual distrust, antagonism, and competition.

Distrust of CSOs, including development CSOs, manifests itself in myriad ways: unjustified raids, property seizures, false allegations (which lead to lengthy and expensive legal challenges), forced closures, and in some cases, violence. At best, where the relationship between the government and civil society is antagonistic, lack of collaboration, inefficient allocations of resources, and miscommunication are likely; at worst, individuals suffer, communities deteriorate, and CSO activists are smeared, attacked, or in some cases, killed.

In addition to antagonistic CSO-government relations, development and humanitarian aid workers operating in areas where violent extremists are present, areas often in need of urgent life-saving support, have been the target of attacks leading to injury and even death by extremists. Such violence, and fear of such violence, has acted as a deterrent to working in such areas to many development and humanitarian aid organizations concerned about the personal safety of their staff.

- In **Sudan**, the government regulatory body charged with monitoring the work of international and national CSOs, the Humanitarian Aid Commission (HAC), uses a variety of techniques to intimidate, harass, and create bureaucratic obstacles for CSOs, including humanitarian organizations. Following the International Criminal Court's (ICC) issuance of an arrest warrant against President Bashir, HAC began to expel international aid and humanitarian organizations, which are often accused of colluding with the ICC and unnamed "foreign powers." Thirteen international aid organizations were expelled in 2009 and another seventeen in 2012, including Save the Children Sweden and Ireland's Goal, both of which provided aid to impoverished areas of Sudan.<sup>68</sup> The International Committee of the Red Cross had its operations suspended in 2014 for "technical reasons" according to HAC's official letter. For those allowed to remain, HAC often creates bureaucratic obstacles to delay or hamper their operations. For example, in 2012 HAC refused to allow Médecins Sans Frontières (MSF) to transfer medical supplies to North

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<sup>68</sup> "Khartoum expels foreign aid agencies from eastern Sudan," BBC News, June 1, 2012.

Darfur, and continues to severely restrict its access to areas most affected by conflict. According to a MSF official responding to its inability to access key parts of Sudan: “MSF has worked tirelessly to deliver medical aid to the people of Darfur since the beginning of the crisis. It is completely unacceptable that the people of Darfur are being deprived of essential medical care.”<sup>69</sup>

- In **Afghanistan**, the country with the highest number of attacks on aid workers in the world, CSOs focused on offering key development assistance have been frequent targets of extremist attacks. According to a report by the Humanitarian Outcomes research group, there were fifty-four major acts of violence against CSOs in 2014 and 190 major attacks against aid operations.<sup>70</sup> These figures represent a decrease from 2013, when there was a huge spike in violent acts against CSOs; however, the lower number of attacks in 2014 is attributed to the departure of many CSOs and activists working in the country.<sup>71</sup> A number of development and humanitarian actors affiliated with Médecins Sans Frontières, the Sanayee Development Foundation, and the International Assistance Mission have been executed by the Taliban; and various humanitarian workers engaged in constructing new schools throughout Afghanistan, particularly girls’ schools, have been attacked and killed in recent years. The risk of violence, and the inability of the government to protect against such violence, deters many organizations from operating in areas where attacks against development and humanitarian aid workers is common.<sup>72</sup>
- In **Syria**, aid workers have been the frequent target of extremist attacks, and the country is second only to Afghanistan in the number of workers killed. Since the conflict began in Syria, more than forty International Federation of Red Cross and Red Crescent Societies (IFRC) workers, many of them volunteers, lost their lives while attempting to offer humanitarian assistance.<sup>73</sup> As a result of such violence, development and humanitarian CSOs have chosen to scale back their operations, or in some cases, leave the country entirely. According to the Director of International Relief and Development, a global nonprofit organization devoted to providing relief, stabilization and development

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<sup>69</sup> “MSF expelled from areas of South Darfur, Sudan,” Médecins Sans Frontières, November 11, 2014.

<sup>70</sup> “Aid worker security report 2014. Unsafe passage: road attacks and their impact on humanitarian operations,” Humanitarian Outcomes.

<sup>71</sup> “Fewer aid worker attacks. That’s good, right?” IRIN, July 13, 2015.

<sup>72</sup> Guillaume Decamme, “Foreign aid workers shy away from Afghanistan as violence surges,” AFP, November 6, 2015.

<sup>73</sup> International Committee of the Red Cross, “Syria: Red Cross/Red Crescent Movement Deplores Aid Worker Deaths,” news release, November 2014, <https://www.icrc.org/en/document/international-red-cross-and-red-crescent-movement-deplores-death-two-aid-workers-syria>.

assistance, “I’m hesitant to send anybody anywhere in Syria.” The threats faced by his and other similar development and aid organizations “affect those who are in desperate need of the food, sanitation kits, winterization materials, infrastructure repair material, and medical supplies that his organization provides.”<sup>74</sup>

- In **Bahrain**, in August of 2011, Médecins Sans Frontières was forcibly shut down by the government after treating individuals injured while participating in largely peaceful pro-democracy protests.<sup>75</sup> This was part of a broader government crackdown against health care providers, hospitals, health centers, and other institutions and individuals involved in treating and caring for wounded protesters. According to one report, this violent and widespread crackdown included “attacks on health care providers; denial of medical access to protesters injured by security forces; the siege of hospitals and health centers; and the detention, ill-treatment, torture and prosecution of medics and patients with protest-related injuries.”<sup>76</sup>
- In **Nicaragua**, the western hemisphere’s second poorest country, where the work of organizations devoted to providing humanitarian and development assistance is essential, the Sandinista government began a sweeping crackdown on CSOs in 2008. Claiming that CSOs were “modern-day trojan horses” focused on destabilizing the government, the government accused many organizations, including some development organizations, of embezzlement, money laundering, and subversion, among other crimes. Such accusations are used to justify property raids, harassment, equipment seizures, arrests, and lengthy bureaucratic hassles, particularly when it comes to importing supplies to carry out essential development work. For example, Interfaith Service to Latin America, a small American CSO dedicated to building schools and clinics and offering scholarships to students in need, was unable to transport medical equipment and supplies to one of Nicaragua’s public hospitals. According to the head of the organization, the government’s refusal to allow its shipping container filled with medical supplies to pass customs was “part of a worrisome pattern over the last several years toward an increasingly Byzantine system of ever-changing, arbitrary rules. [The Ministry of Health’s] regulations for each group of medical volunteers and contributions grow increasingly bizarre.... Most CSOs operating here appear afraid to go public with their complaints or—

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<sup>74</sup> Beenish Ahmed, “Kayla Mueller and the impossible and dangerous job of providing aid in Syria,” Think Progress, February 12, 2015.

<sup>75</sup> Kelly McEvers, “Doctors Without Borders Targeted in Bahrain,” NPR, August 9, 2011.

<sup>76</sup> James Lawlor Duggan, “Bahrain: Systematic Attacks on Medical Providers,” Human Rights Watch, July 18, 2011.

even worse—may be quietly considering pulling out of Nicaragua altogether if the aggravation of trying to help continues to increase.”<sup>77</sup>

### *Conclusion*

Development CSOs are essential contributors to thriving and healthy communities in all areas of the world, especially rural, isolated, war-torn, or poverty-stricken areas where local resources and government support are insufficient. For development CSOs to deliver their important and, in many cases, life-saving assistance, it is paramount that they have access to domestic and foreign funding, operate free from burdensome regulations and restrictive governmental oversight, and work collaboratively in an atmosphere of mutual trust with the state. If these conditions are not in place, development CSOs, like human rights organizations and defenders around the globe, will continue to face significant obstacles to their ability to fulfill their important missions and, in some cases, even to exist.

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<sup>77</sup> Jon Kerr, “Does Nicaragua still want help from international NGOs?” The Nicaragua Dispatch, April 11, 2013.