

The Phenomenon Of The Closing Space For Civil Society

Poonam Joshi and David B. Mattingly (www.globalhumanrights.org)

How many of the following stories do you think make international headlines? In 2012 the Canadian government asked the *Canada Revenue Agency* to undertake extensive audits of seven prominent environmental rights groups for an alleged breach of caps on how much non-governmental organisations (NGOs) can spend on advocacy activities. In September 2014 Hungarian police raided the offices of the *Okatars Foundation* claiming that it was channeling funds from Norwegian EEA grants to support Hungarian opposition parties instead of civil society groups.

Last month, an independent panel on the voluntary sector found that independence of British civil society is under attack, with the 2014 Lobbying Act having had a chilling impact on campaigning, and an increasing number of ‘gagging clauses’ in public service contracts preventing charities from criticizing local and central government policies.

Stories of charity audits, funding caps, gagging clauses and legal restrictions on cross border philanthropy rarely trouble the media or elicit public interest, but they should. Why? Because these are not disconnected stories, but part of a global trend where governments are using administrative laws to tighten their control over NGOs, particularly those that challenge political authority and seek change. The scale of the restrictive measures being introduced and the motivation behind them raise serious questions about the future of human rights and dissent not just in autocracies like Russia and Egypt, but also in democracies, including the UK.

According to the *International Centre for Not for Profit Law*, since January 2012, more than 100 laws have been proposed or enacted by governments aimed at restricting the registration, operation, and cross border funding of NGOs. These laws are framed as efforts by governments to encourage transparency and accountability within civil society, to limit tax breaks to organizations that are genuinely ‘charitable’ as opposed to political, or as critical measures part of a wider strategy to counter terrorist financing or organized crime. As such they sound perfectly legitimate and even laudable given taxpayers concerns about misuse of funds by charities, and the fear of resources flowing to armed extremists.

However when one takes a closer look at the legislation being tabled, a gap emerges between the justification given for the measures and motivation. Article 104 of the China’s 2014 draft anti-terrorism law defines ‘terrorism’ in broad terms to include ‘thought, speech or behavior’ that is ‘subversive’ or even that



Poonam Joshi



David B. Mattingly



which seeks to ‘influence national policy making’. In the UK that would make Women’s Aid, the NSPCC and Age UK terrorist groups. Uganda’s draft 2015 Non Governmental Organisations Act aims to deny organisations that engage in activities ‘contrary to the dignity of the people of Uganda’ permission to register and operate. Human Rights Watch believes the law will be used to close down any organization that seeks to criticize the Ugandan government. The UK’s Lobbying Act was supposed to expose the £2bn commercial lobbying industry to some public scrutiny, but along the way the coalition government tacked on charities and unions to the bill. The result is while 63 percent of charities report that complying with the Act would make it harder for them to achieve their goals, only a fraction of commercial lobbyists (eleven to date) have registered their interests.

Understanding the closing space

So what explains this rash of restrictive measures, which have been likened to a contagion spreading from country to country? Experts have attributed the trend to a number of complex factors. Autocratic leaders have been unnerved by the power of popular protest in the Former Soviet Union and most recently across the Middle East and North Africa, and increasingly view civil society actors as ‘the political opposition in waiting’ rather than as independent and impartial actors. In the last three years Russia’s President Putin, Egypt’s General Sisi and Azerbaijan’s President Aliyev have all used NGO laws to criminalise and defame activists, in contexts where the political opposition is so decimated that only civil society is left to hold a mirror up to the authorities.

Democracies also have been affected by what Thomas Carothers from the Carnegie Endowment describes as a global loss of democratic momentum. Sierra Leone and India provide recent examples of governments seeking to silence anyone trying to challenge their economic or political agendas or interests. In March this year, the Sierra Leonean government proposed an NGO law to

silence NGO transparency and accountability groups that wanted to know why the government couldn’t explain what had happened to a third of the funds spent on the Ebola crisis. Three months later India, the world’s largest democracy, tightened up its rules to restrict funds to any groups that challenge the country’s ‘economic interests’. This move comes after the government engaged in thirteen months of aggressive smear attacks against environmental and human rights activists that it accuses of having reduced India’s GDP by 2 – 3 percent through their opposition to extractives, nuclear energy and GM food projects.

The heightened international focus on counterterrorism has also contributed to restrictions, with over 140 governments having been pressured by the U.S. and U.N. to pass counterterrorism legislation that targets civil society. The crackdown is being unwittingly promoted by the Financial Action Task Force (FATF), an acronym you need to know as an international funder. Established in 1989 by the G7, FATF was to set global standards to reduce money-laundering, and following the September 11, 2001, terrorist attacks, it expanded its aims to including cutting off the flow of financing for terror groups. It has carried out this mandate by requiring governments to implement legislation that tightens controls on cross border funding to civil society, despite a lack of evidence that international donor funds are being diverted to support terrorism. Countries that fail to comply risk taking a hit to their credit rating. FATF recommendations are adopted both by governments merely seeking to earn certification as well as those that find the policy prescriptions a convenient cover for

their repression of civil society. Regardless of intent, these policies represent a disproportional response to a perceived threat and disrupt funding for the very NGO and community groups that are well placed to counter extremism in many countries.

The implications of the closing space for philanthropy

As philanthropists and funders, the main resource we have to provide civil society is our funding. As such the attacks on civil society, and in particular on cross border philanthropy fundamentally disrupt our business model. On a day to day basis funders are struggling with how to comply with and adapt to rapidly changing and tightening legal environments in countries where they are awarding grants.

As philanthropists and funders, the main resource we have to provide civil society is our funding. As such the attacks on civil society, and in particular on cross border philanthropy fundamentally disrupt our business model.

Funders within country offices are having to weigh risks to staff and reputations against their desire to continue funding and act in solidarity with long standing partners. And while the environment in the UK is a far cry from that of Russia or Egypt, funders are increasingly concerned about anti-human rights rhetoric of the current government and their continued ability to support advocacy and campaigning on contentious issues.

What can you do?

Educate yourself about the trend

While the factors contributing to a global crackdown on cross border philanthropy are complex and interrelated, international donors are coming together to create accessible resources on the threat and the most promising ways funders can counter it. The Donor Working Group on Cross-Border Philanthropy was established in March 2014 to enable human rights donors to develop a strategic response to threats to the legally enabling environment for civil society. The working group is co-hosted by the Ariadne European Funders for Social Change and Human Rights network, the International Human Rights Funders Group based in the US, and the European Foundation Centre. The group has commissioned research, organised briefings and engaged in one-to-one conversations with peers aimed at mobilising a growing pool of donors to harness their grant-making, expertise and voice to push back against the closing space.

Adapt to new regulatory environments

NGOs can be unaware of changes in policy until it is too late. As funders we are often in a position to have the information and resources to alert grantees and help them comply with new regulations. Even before restrictions are put in place, it is a wise investment for funders to help organizations strengthen their financial and governance systems to limit their exposure to legal harassment by governments or other entrenched interests with incentive to disrupt their work. Failing to do so could make their task easier by leaving our sector vulnerable to accusations of mismanagement of funds.

For example, in July 2013 Mexico introduced new anti-money laundering legislation in order to comply with FATF recommendations. While the policy wasn't designed with the intention of targeting civil society, both funders and grantees are anxious that the law could be misused by the Mexican government, at a time when relationship between the government and civil society are tense. Therefore a group of donors has come together to educate grantees and funders alike about the new regulations and to provide guidance and technical assistance to NGOs to promote compliance as a preventive measure.

Engage in targeted advocacy

Donor efforts often stop at adaptation, but there are additional steps we can take that go beyond supporting grantees to adapt to new regulations and to find ways to circumvent restrictions that get in their way in delivering resources across borders. International funders also are starting to come together to push back against these restrictions and the underlying interests and factors that drive them. The coalition in Mexico, for example, has plans to move beyond compliance by using the country's 2017 FATF review as an opportunity to challenge the most onerous requirements of the anti-money laundering law.

Donors also have the credibility and responsibility to speak out against the prescriptions of FATF and others that restrict civil society space. Over the last several years a small group of counter terrorism and human rights groups in the U.S. and Europe initiated a dialogue with FATF on the negative impact of counter terrorist financing measures on civil society. The group has been successful in influencing FATF to rethink its guidance to governments, demonstrating that it is possible to influence the body. Funders based in the UK will have an opportunity to weigh in when the country next comes up for FATF review.

Leverage support from the business sector

While the free movement of capital internationally faces far fewer obstacles than the flow of charitable

giving across borders, the global business sector has a major interest in the outcome of debates around civil society restrictions. Investors depend on the rule of law to conduct operations abroad, and businesses with reputational considerations are taking a major risk by working in countries with infamously repressive regimes. Where donors have strong ties with the private sector, such as through corporate giving, those relationships could be leveraged to mobilise businesses to challenge restrictions that ultimately could impact their bottom line. Governments have proven to be much more open to economic arguments, and more receptive to messengers from the business sector, which often has the ear of finance ministries.

Fund local campaigns to challenge restrictions

Finally, donors can use the primary tool of funding to defend our continued ability to support work abroad. Activists increasingly are challenging restrictions through campaigns, legal advocacy and public education, and they need our support. For example, in Kenya activists have been able to push back against

a new policy that would introduce a 15 percent cap on the amount of an NGO's budget that can be comprised of foreign funding. They did this by joining forces with development organisations – and in particular the movement of People Living with HIV/AIDS – and made a compelling case for civil society that can provide lessons for efforts to challenge restrictions in other countries.

Our sector is facing nothing less than an existential threat, with complex drivers and causes. It can be overwhelming to keep up with this rapidly unfolding trend of increased restrictions on civil society activity and foreign funding, but information is available to help funders decide how to adapt and respond to new legal environments. Moreover, donors have powerful tools at our disposal – our funds, alliances and advocacy – to defend our work and continue to sustain the organizations that rely on cross border philanthropy to hold governments accountable and meet the needs of their communities.

Poonam Joshi joined the Fund for Global Human Rights as the Director of London Office in December 2012. Prior to joining the Fund, Poonam worked as a consultant to the Sigrid Rausing Trust, where she was Acting Director of the Women's Rights program and from March 2011 developed the Trust's new grant-making strategy for the Middle East and North Africa. She also worked for seven years with Amnesty International UK's women's rights program, where she represented AIUK as a gender expert on a range of issues including political participation in Egypt and Libya; human trafficking in the UK; religious fundamentalism and counter terrorism. Poonam has practiced family and criminal law in London. She earned a BA in English from Oxford University and a Masters in Development Studies from the School of Oriental and African Studies at the University of London.

As Vice President for Programs for the Fund for Global Human Rights, David Mattingly is responsible for oversight, coordination, and integration of human rights grant-making in six regions around the world. Since joining the Fund in 2005, David has managed grants programs for frontline groups based in Latin America, North Africa, and West Africa; coordinated an initiative to strengthen the capacity of Mexican activists to promote public policies that expand human rights protections; and developed the Fund's grant-making strategy to challenge rights abuses related to sexual orientation and gender identity. After earning a BA in International Development from American University, David monitored the human rights situation in indigenous communities in Chiapas, Mexico. Prior to joining the Fund, David worked at the Moriah Fund, where he helped manage grant-making programs promoting indigenous rights in Guatemala, environmental justice, and women's rights and reproductive health. David serves on the Board of Directors of the Center for International Environmental Law (CIEL).