Equality Now
A just world for women and girls.

Office of the High Commissioner for Human Rights (OHCHR)
Palais Des Nations
1211 Geneva 10
Switzerland

29 September 2017

Re: Civil Society Space Report – Input: Information on the procedures and practices in respect of civil society involvement with regional and international organizations, including United Nations bodies, agencies, funds and programmes, and the contribution of civil society to their work and challenges and best practices.

In response to the call for inputs by the Office of the High Commissioner for Human Rights (OHCHR) on the report being prepared pursuant to Human Rights Council Resolution 32/31, *Civil society space*,[1] Equality Now submits this communication[2] on "civil society involvement in regional and international organizations, including United Nations bodies, agencies, funds and programmes, and the contribution of civil society to their work and challenges and best practices". Equality Now is an international human rights organization with ECOSOC status founded in 1992 working to promote the equality of women and girls worldwide. Noting the global phenomenon of shrinking space for civil society, and in particular the promulgation and impact of unjust national legislation restricting the activities and funding of non-governmental organizations (NGOs), this submission addresses threats to civil society's ability to engage with regional and international bodies and mechanisms as a result of this shrinking space and the attendant consequences for these bodies and mechanisms. The submission also notes our concern regarding recent limitations on NGO participation in United Nations meetings and events.

Restricting civil society space through anti-NGO legislation

The space for civil society is shrinking around the globe, threatening efforts to protect and promote human rights and especially those of women and girls. This is a phenomenon fueled in particular by the passage of legislation unjustly restricting the operations and/or funding sources of non-governmental organizations. For example, in Ethiopia, the 2009 Charities and Societies Proclamation (Proclamation No. 621/2009), which governs the registration and regulation of NGOs, prohibits NGOs receiving more than 10 percent of their

[1] Human Rights Council, *Resolution 32/31: Civil Society Space,* 20 July 2016, A/HRC/RES/32/31. China, Congo, Cuba, Nigeria, Russian Federation, South Africa and Venezuela (Bolivarian Republic of) voted against the resolution, with Bolivia (Plurinational State of), Burundi, Ethiopia, Kenya, Kyrgyzstan, Qatar, Saudi Arabia, United Arab Emirates and Viet Nam abstaining.

[2] Equality Now hereby waives any claim of confidentiality to which we may be entitled in the communication process.

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funding from foreign sources from engaging in virtually all human rights and advocacy activities.[3] This includes NGOs working on women's rights and access to justice issues. Numerous human rights bodies have raised concerns about the law.[4]

In Russia, Federal Law No. 121-FZ on Non-Commercial Organizations requires non-profit organizations receiving foreign funding and engaging in "political activities" to register as "foreign agents", while the more recent Federal Law of 23 May 2015 No. 129-FZ "On amendments of some legislative acts of the Russian Federation" gives prosecutors the ability to extrajudicially shut down NGOs found to be "undesirable". Both of these laws have been criticized by the Human Rights Committee, who in 2015 recommended that the Russian Federation repeal, or at least significantly revise, such legislation.[5]

In Kenya, the Public Benefits Organization Act of 2013 (PBO Act) was intended to replace the Non-Governmental Organizations Act and allow greater self-regulation and more predictability in the legal requirements for NGOs. However, the PBO Act was not commenced (i.e., brought into force) for well over a year, and through the government's NGO Board 540 civil society organizations were reported deregistered in December 2014, with as many as 179 reportedly reinstated shortly thereafter.[6] At the same time, the NGO Board proposed amendments to the PBO Act that included, among others, tighter restrictions on funding; these amendments were opposed by many NGOs in the country.[7]

In Tanzania, the government reportedly broke up a meeting of NGOs working on reproductive health in January 2017.[8] Generally, the government seems to be adopting an opaque approach to governance and punishing non-government bodies that speak out against questionable government directives. For example, the Ministry of Home Affairs threatened to deregister NGOs that were advocating for the lifting of a ban by the President prohibiting pregnant teenage girls from attending school.[9] A reading of the Tanzania NGO Coordination

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[3] *See* Proclamation No. 621/2009, available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85147&p_country=ETH&p_count=141.

[4] *See, e.g.*, Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Ethiopia*, 27 July 2011, CEDAW/C/ETH/CO/6-7 at Nos. 28-29; Human Rights Council, *Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee: Ethiopia*, 19 August 2011, CCPR/C/ETH/CO/1 at No. 20.

[5] *See* Human Rights Committee, *Concluding observations on the seventh periodic report of the Russian Federation*, 28 April 2015, CCPR/C/RUS/CO/7 at No. 22. Equality Now detailed these laws in a recent submission to the Committee on Economic, Social and Cultural Rights in advance of its discussion of the Russian Federation, available at http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28679_E.pdf.

[6] *See Kenya Today*, "Here are the list of 540 NGO's Including Church organisations deregistered by Uhuru government", 16 December 2014, https://www.kenya-today.com/news/list-ngo-church-organisations-deregistered-uhuru-government; *Daily Nation*, "Board lifts ban on 179 charity firms", 21 December 2014, http://mobile.nation.co.ke/news/Board-lifts-ban-on-179-charity-firms/1950946-2565122-format-xhtml-rdjuulz/index.html.

[7] *See The East African*, "NGOs in Kenya urge taskforce not to alter sector law", 21 March 2015, http://www.theeastafrican.co.ke/news/NGOs-in-Kenya-urge-taskforce-not-to-alter-sector-law--/2558-2661474-brfni3z/index.html.

[8] *See* Andrew Green, Devex, "In an apparent crackdown, Tanzania government raids NGO meeting on reproductive rights", 6 January 2017, available at https://www.devex.com/news/in-an-apparent-crackdown-tanzania-government-raids-ngo-meeting-on-reproductive-rights-89394.

[9] *See* Sharon Sauwna, *The Citizen*, "Tanzania's teen mums: Nchemba warns critical NGOs", 25 June 2017, available at http://www.thecitizen.co.tz/News/Tanzania-s-teen-mums--Nchemba-warns-critical-NGOs/1840340-3986942-ft07npz/index.html.

Act of 2002 (amended in 2005), the NGO Code of Conduct of 2008 and the National Policy on NGOs suggests that the group of legislation was enacted to curb the increase and reach of NGOs as well as to limit their ability to engage in government planning and policy, provide oversight and accountability and educate populations on their rights.

Finally, on 24 May 2017, Egyptian President Abdel Fattah el-Sisi signed into law Law 70 of 2017 "The Law of Associations and Other Foundations Working in the Field of Civil Work", which, *inter alia*, requires NGOs to seek permission for activities and official approval for foreign funding; violations can result in criminal prosecution.[10] The High Commissioner for Human Rights Zeid Ra'ad Al Hussein has expressed unequivocal concern over this new law, calling for its repeal and stating that the new legislation "places such restrictions on civil society that it effectively hands administration of the NGOs to the Government" – in breach of both international law and the Egyptian Constitution.[11]

The above cited examples are the situations with which we are most familiar, impacting women and girls and affecting the work of women's rights organizations. Additionally, among others, new and pending legislation in Hungary and the Republic of Moldova, respectively, has been flagged for concern by the High Commissioner.[12]

Restricting civil society space through State intimidation of and reprisals against civil society leaders and human rights defenders

Individual civil society leaders and human rights defenders have also been targeted with the aim to silence them, intimidate the sector and restrict civil society spaces further. Such action can take the form of exile and travel restrictions, removal of resources, false imprisonment and even murder.[13]

The alarming and ongoing case of Azza Soliman illustrates this phenomenon and its consequences for the human rights of women and girls. On 7 December 2016, Azza Soliman, a leading human rights defender from the Center for Egyptian Women's Legal Assistance

[10] Available at http://www.icnl.org/research/library/files/Egypt/law70english.pdf (posted by The International Center for Not-for-Profit Law) and http://www.icnl.org/research/library/files/Egypt/law178-2002-Ar.pdf (Arabic).

[11] *See* Office of the High Commissioner, "Repressive new NGO law deeply damaging for human rights in Egypt – Zeid," 1 June 2017, available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21678&LangID=E. *See also* Zeid Ra'ad Al Hussein, "Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries," Human Rights Council 36th session: Opening Statement, United Nations High Commissioner for Human Rights, 11 September 2017, transcript available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E.

[12] *See* Zeid Ra'ad Al Hussein, "Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries," Human Rights Council 36th session: Opening Statement, United Nations High Commissioner for Human Rights, 11 September 2017, trans cript available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E. The statement also references State repression against civil society through tactics including intimidation, financial and travel restrictions and abuses of the penal system, in both these and other countries including Bahrain, Egypt, India, Iran, Israel, Pakistan, Palestine, Philippines and Turkey.

[13] We note the case of Salwa Bugaighis, a Libyan human rights activist who was assassinated in June 2014. *See* Equality Now's archived action, "Justice for Salwa", available at https://www.equalitynow.org/action-alerts/fighting-equality-should-not-equal-death-justice-salwa-justice-all. While it is still unknown who exactly was behind the assassination, the State is clearly implicated in the creation of an environment where crimes against human rights defenders, particularly women, occurs with impunity.

(CEWLA), was arrested and interrogated in Egypt under accusations of receiving foreign funding. Ms. Soliman, who CEWLA maintains has not committed any crime, has also been banned from traveling and all of her assets and those of her law firm have been frozen, restrictions that the Egyptian government continues to impose.[14] Ms. Soliman is among many human rights defenders in Egypt who have faced such financial and other restrictions as a result of accusations of receiving foreign funding: following the reopening of Case No. 173/2011, an investigation into the registration and funding of Egyptian human rights organizations, numerous other human rights defenders and civil society leaders in the country have faced arrest, interrogation, travel restrictions and asset freezes.[15] This includes Mozen Hassan and Aida Seif El Dawalah, who continue to be barred from leaving the country, and the continued closure of El Nadeem Center for the Treatment and the Rehabilitation of Victims of Violence.[16]

The government's actions have untold consequences for the women and girls of Egypt. In addition to having an obvious chilling effect on the activities of other human rights defenders and NGOs in the country, hindering the activities of CELWA, with whom Equality Now has partnered closely with for many years to combat FGM, sexual violence, child "marriage" and sex trafficking, represents in itself a significant setback to the realization of the human rights of women and girls in Egypt.

Restrictions on NGOs represent and perpetuate State failures to protect human rights, particularly for women and girls

Civil society plays an important role in the promotion and protection of all human rights and fundamental freedoms. Unjustly restricting civil society leaves individuals and communities vulnerable to human rights abuses and sends the signal that civil society and the rights those in the space are trying to protect are not important. Unjust restrictions on foreign funding for NGOs (i.e., restrictions that go beyond reasonable oversight related to, for example, combating money laundering or funding by fundamentalists) manifest a particularly pernicious form of State repression against civil society.[17] Such restrictions obviously constrain NGOs ability to act – for example, the CEDAW Committee has noted its concern regarding "the suspension or closure of…organizations working in the field of women's rights" following the Russian government's restrictions on NGOs receiving foreign funding.[18]

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[14] *See* Equality Now, "Urgent Alert: Human Rights Defenders Under Attack in Egypt", https://www.equalitynow.org/action-alerts/egypt-azza-soliman-activist-human-rights-under-attack.

[15] *See* "17 Egyptian rights groups: The Perpetrators of Human Rights Abuses Retaliate Against Rights Groups, the Voice of Victims," 21 March 2016, available at http://www.cihrs.org/?p=18347&lang=en (reporting that the investigations in the so-called "foreign funding case" had resulted in actions taken, including travel bans, summons for questioning and asset freezes, against the Cairo Institute for Human Rights Studies (CIHRS), Nazra for Feminist Studies, the Egyptian Initiative for Personal Rights (EIPR) and the Arab Network for Human Rights Information (ANHRI), as well as against individuals including Hossam Bahgat, the founder of the EIPR, and Gamal Eid, the director of ANHRI).

[16] *See id*. NGO El Nadim Center for the Treatment and Rehabilitation of victims of Violence, founded in 1993, is a key source of information on issues related to torture, deaths in detention and impunity for these crimes in Egypt and was run by Aida Seif El Dawlah.

[17] *See generally* Maina Kiai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, A/HRC/23/39 (reporting on, and in many cases noting with concern, laws and practices that constrain civil society organizations' access to foreign funding).

[18] CEDAW, *Concluding observations on the eighth periodic report of the Russian Federation*, 20 November 2015, CEDAW/C/RUS/CO/8 at No. 15. The Committee has called upon Russia to "review the legislation requiring non-commercial organizations that receive foreign funding to register as "foreign agents" and to 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". *Id*. at No. 16.

These laws also risk leaving open a gap in the provision of social services that is often filled by civil society in the absence of State funding and/or focus. In the context of women's rights organizations, and where governments have abdicated their responsibilities to protect women and girls, disallowing NGOs to fill these gaps can have far reaching consequences. For example, such restrictions remove from women subjected to domestic violence and other gender-based abuses the support they might have received from women's organizations in the absence of State support. This can impede even women's ability to seek justice through the courts – in Russia, for example, a multitude of domestic violence offenses remain classified under the law as suitable for only private prosecution (subject to very narrowly interpreted exceptions), requiring victims to investigate and prosecute offenses themselves.[19] By forcing the closure of women's rights organizations who would have otherwise assisted domestic violence survivors in bringing these private cases, the State doubly denies these women justice.

The impact of these restrictions on the effectiveness of regional and international human rights bodies

The consequences of repressive legislation and other actions taken by States to restrict domestic NGOs and human rights defenders ripple outwards, weakening the capacity of civil society to document and report on human rights abuses and monitor adherence to commitments on human rights standards. As the High Commissioner has stated with regard to Egypt's new NGO legislation, these laws severely hamper the "crucial function of human rights NGOs – to hold the State accountable for its human rights obligations."[20]

Regional and international organizations, including United Nations bodies, agencies, funds and programmes, rely on civil society to give accountings of the human rights challenges facing members of a given community. As the High Commissioner stated in his report of 11 April 2016, *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned*:

> "Vibrant civil society participation in the United Nations human rights system is indispensable to the effective protection and promotion of human rights. Civil society actors identify protection and other gaps in the international architecture, alert the international community of impending crises and campaign for the creation of new standards and mechanisms. **Their participation enriches the system's responses by linking them to what is happening at the country level**."[21]

Restricting the ability of civil society to function through repressive laws and State action weakens and undermines these linkages, impacting the ability of regional and international bodies to effectively carry out their mandates. Where CSOs are unable to engage freely with regional and international bodies and mechanisms (e.g., United Nations treaty bodies), these mechanisms may be restricted in their ability to gather information, make

[19] See Art. 20 of the Code of Criminal Procedure of the Russian Federation. For further information, see ANNA National Centre for the Prevention of Violence, *Violence Against Women in the Russian Federation: Alternative Report to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)* (2015), p. 5, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_21870_E.pdf.

[20] *See* Office of the High Commissioner, "Repressive new NGO law deeply damaging for human rights in Egypt – Zeid," 1 June 2017, available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21678&LangID=E.

[21] A/HRC/32/20 (emphasis added).

recommendations and monitor change. For example, in 2014, several Egyptian human rights organizations decided not to participate in Egypt's review before the Human Rights Council's Universal Periodic Review, a decision that also resulted in the cancellation of side-events and meetings. [22] The contingent publically stated that the decision was made "in fear that their participation might result in reprisal or possible persecution".[23]

Additionally, persecution from repressive national governments can put local organizations in danger for speaking to regional and international partners, sometimes forcing these local groups to operate behind-the-scenes. For example, Equality Now often makes submissions to UN treaty bodies that are informed by the accounts of human rights abuses shared by our partners on-the-ground. In some cases, our partners fear retribution from their national governments to such a degree that, despite their significant contribution to a submission, they decline signing their name or otherwise publically signaling their participation in the development of the submission and documentation of human rights abuses therein. Such restrictions remove from international and regional NGOs a level of legitimacy because it falsely appears that these groups are operating without local input. At the same time, a government's restrictions on international NGOs operating within its borders can prevent partnerships between local and international NGOs in the first instance; this removes the level of protection afforded by these partnerships, as they would allow local NGOs to access international fora and media through international partners and therefore at decreased risk of persecution.

Overall, where local NGOs are unable to freely stand behind information presented to regional and international bodies about conditions in their home countries, the ability of these bodies to hold States accountable may be undermined. States could deflect and challenge reports of abuses brought to them by international and regional bodies if the State is able to argue that reports are not produced by local stakeholders or that the information comes from outside agitators. Additionally, the impact of information can be diminished when conveyed through an international organization. For example, guidelines published by OHCHR regarding stakeholder written submissions to the Universal Periodic Review may provide a good example of possible missed opportunities that can manifest when first-hand accounts are presented, out of necessity, as second-hand.[24]

We have also experienced, and heard from partners, frustrations regarding recent engagement with UN bodies. Opportunities to make oral interventions at the UN or participate in debates, for example at the High Level Political Forum, have always been limited, and it appears that this is even more so now the case. For instance, we were dismayed to learn that access to the United Nations during the 72nd session of the United Nations General Assembly was severely restricted, even for those NGOs duly accredited.[25]

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[22] *See* Egyptian Center for Economic & Social Rights, "After Threats, Egyptian Human Rights Organization Decide Not to Participate in UPR", 4 November 2014, http://ecesr.org/en/2014/11/04/after-threats-egyptian-human-rights-organization-decide-not-to-participate-in-upr/.

[23] *Id*.

[24] *See* "Universal Periodic Review: information and guidelines for relevant stakeholders' written submissions", Nos. 12 and 16, available at http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf. The guidelines state that "first-hand information should be given priority" while "second-hand information should be referred to in footnotes/endnotes, and only if necessary". Information "included in footnotes/endnotes will not be taken into consideration…for the [summary of information based on written submissions produced by OHCHR to be taken into consideration by the Council in the review]".

[25] *See* CSONet, "Requesting a United Nations Grounds Pass in New York for NGOs in Consultative Status with ECOSOC", http://csonet.org/?menu=86. Restrictions included restricting accessibility to UN Headquarters to

As the High Commissioner for Human Rights has unequivocally stated, "according space to civil society is not optional."[26] We therefore respectively urge OHCHR to recommend to States to:

- Reform, and where appropriate repeal, all laws that effectively prevent the functioning of civil society organizations seeking to promote and protect human rights, including those restricting NGOs' ability to receive foreign funding
- Cease, condemn and investigate all acts, by both public and private actors, of intimidation and reprisal against civil society leaders and human rights defenders, including, *inter alia*, murder, false imprisonment and financial punishments
- Cease any hindrance, and instead implement policies that encourage, NGO participation in local and national government, as well as with regional and international bodies

Additionally, we respectively request that OHCHR strive to make certain that UN bodies, agencies, funds and programmes, including the Sustainable Development Goal processes and reviews, work to ensure that CSOs have the ability to frequently, freely and substantively contribute input to and observe the workings of these entities through clear and effective channels of participation and engagement.

Global Executive Director
Equality Now

UN staff and Member State delegations only, and requiring special passes, available in limited supply, for even those NGOs with ECOSOC consultative status and already in the possession of ground passes.

[26] *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned: Report of the United Nations High Commissioner for Human Rights*, 11 April 2016, A/HRC/32/20 at No. 5 ("According space to civil society is not optional. International human rights law places an obligation on States to respect rights and freedoms that are indispensable for civil society to develop and operate, including the freedoms of opinion and expression, peaceful assembly and association and the right to participate in public affairs. International law also protects the lives, liberty, physical integrity and privacy of civil society actors from arbitrary State interference.").