
Joint Declaration on Protecting the right to freedom of association in light of “Foreign Agents”/ “Foreign Influence” Laws

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AICHR
INDONESIA



The United Nations Special Rapporteur on the rights of freedom of peaceful assembly and of association,¹ the Special Rapporteur on Freedom of Expression of the InterAmerican Commission on Human Rights (IACHR),² the Commissioner Rapporteur for Human Rights Defenders of the IACHR,³ the Special Rapporteur on Human Rights Defenders and focal point on reprisals in Africa of the African Commission on Human and Peoples’ Rights (ACHPR),⁴ the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR),⁵ and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Recalling and reaffirming their Joint Declarations on Freedom of Peaceful Assembly and of Association and Misuse of Digital Technologies of September 2023, on Protecting the Right to Freedom of Peaceful Assembly in Times of Emergencies of September 2022; on Protecting and Supporting Civil Society at-risk of December 2021, and on the Right to Freedom of Peaceful Assembly and Democratic Governance of December 2020;

Reaffirming that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and enable their full participation in public life;

¹ Ms Gina Romero.

² Mr. Pedro Vaca.

³ Mr. José Luis Caballero.

⁴ Hon. Rémy Ngoy Lumbu.

⁵ Ms. Yuyun Wahyuningrum.

Further stressing that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing;

Noting that the right to freedom of association is a cornerstone of a vibrant, pluralistic and participatory democracy and underpins the effective exercise of other human rights;

Recalling again the importance of the right to freedom of association as it empowers everyone to express their views, to engage in public life, join cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, elect leaders to represent their interests and hold them accountable; and that these rights also nurture group identity and solidarity;

Recognising the important and positive role that associations often play in achieving goals that are in the public interest, including the promotion and protection of human rights, the provision of services, advancing climate justice, sustainable development and peacebuilding, advancing equality, ensuring participatory decision-making processes and inclusive, accountable and democratic institutions;

Underscoring that the enjoyment of the right to freedom of association is also essential for the exercise of other fundamental freedoms, such as the freedom of opinion and expression, the freedom of peaceful assembly, freedom of religion or belief, the right to participate in public life, the right to vote and to stand for elections, among others;

Emphasizing that the obligations of States to respect, protect and facilitate the right to freedom of association extend to matters related to the formation and registration of associations, their operation, access to funding, and with regards to matters of oversight, and suspension or dissolution of an association; and that the unlawful and arbitrary interference within any of these stages may unduly restrict and violate the right of freedom of association;

Deeply concerned about the deepening trends in democratic regression and rising authoritarianism across the world, the rise of populism and States-sponsored initiatives aimed at undermining and suppressing international human rights norms and standards, which is exacerbating the global attack on civic space and the undue restrictions on the right to freedom of association, of expression and other fundamental freedoms;

Expressing especially deep concern about the increased spread of restrictive laws seeking to hinder or seriously impacting the exercise of the right to freedom of association and of peaceful assembly, among other rights;

Noting also with concern the increasing imposition of laws, policies and administrative procedures that unduly restrict funding of associations⁶ from international sources and cause unjustified and discriminatory interference with the enjoyment of the right to freedom of association and related rights and freedoms, which is disproportionate and unnecessary in a democratic society;

⁶ The term "associations" used in this Declaration concerns all types of associations, including non-government and not-for-profit civil society organisations, associations and foundations.

Noting with particular concern the spread across all regions of so-called “foreign agent”/foreign influence legislative initiatives and laws with similar effects, which introduce unnecessary, disproportionate and discriminatory obligations, restrictions or prohibitions on associations falling within the broad definition of “foreign agent”/ “foreign influence” (or the like);

Further concerned that these laws mostly employ vague, overbroad and/or ambiguous definitions, and as such fail to comply with international human rights standards, including the principle of legal certainty and foreseeability of legislation, and allow wide discretion and arbitrary application on the part of the implementing authorities;

Expressing deep concern that some of the “foreign agent”/“foreign influence” laws provide for punitive forms of liability, imprisonment of the associations’ representatives, and/or dissolution of the associations in case of violation, which is contrary to international standards requiring that no one should be criminalized for exercising the rights to freedom of association; and that the suspension and the involuntarily dissolution of an association should remain an exceptional and only applied as a last resort;

Cognizant that these laws are discriminatory, as they target associations based on the foreign origin of their funding and their legal form, as these laws do not apply to for-profit entities, which do not receive the same scrutiny; and further these laws have an indirect discriminatory impact on certain categories of associations, as specifically targeted by these laws are associations and activists that promote human rights and democratic values and those that may be considered critical to the government;

Expressing deep concern, that these laws have been exacerbating hostile narratives against and stigmatization of civil society, human rights defenders, rights movements and peaceful protests, and have been used as a tool by many States to further stifle dissent and silence critical voices;

Noting that the imposed obligations to register and publicise associations receiving foreign funding, and to adopt labels insinuating that these associations pursue foreign interest which often trigger the stigmatisation of these associations such as being “traitors” or being “unpatriotic” among others, risk deeply stigmatizing, vilifying and/or discrediting associations and activists engaged in important and legitimate work, including advocacy and participation in public affairs and debate;

Noting with deep concern, that the imposition of excessive registering requirements and the creation of public lists of associations receiving foreign funding, and the harmful anti-civil society narratives and populism surrounding the adoption of these laws, create a climate of mistrust, fear and hostility against civil society members, including from the general public. This poses serious threats to those associated with the concerned civil society organization and independent media, including members, staff and their families, as well as beneficiaries, to the functioning or even existence of associations, and is harmful to civil society as a whole, human rights and democracy;

Expressing serious alarm that the anti-civil society discourses exacerbated by the “foreign agent”/ “foreign influence” legislative initiatives often go along with State and political narratives aimed at suppressing the exercise of human rights, undermine democracy and polarise societies; it creates a wide and deep chilling effect in society discouraging the public of expressing views and opinions related to certain issues such as on gender and sexual and reproductive rights due to fear of stigmatization, vilification and attack;

Deeply concerned about the significant number of activists and journalists forced to flee from their countries due to the threat of criminalization, reprisals and punishments, including related to the “foreign agent”/ “foreign influence” legislative initiatives; and the forced dissolution of associations in some countries exacerbated by these initiatives; noting further that exiled activists and associations depend mainly on foreign funding to continue their human rights work and their existence, and hence would automatically fall under the “foreign agent”/ “foreign influence” labelling and restrictions;

Noting with concern that such laws, through the imposition of new obligations or restrictions on associations linked to the receipt of foreign funding or other benefits in kind, constitute undue restrictions of an association’s right to access resources, and endanger associations’ very existence since in a context with very limited access of domestic funding especially for independent associations, an organization may need to choose between either refusing all foreign funding or being subject to new restrictions, obligations and possible stigmatization.

Noting that the authorities’ justification for the introducing such legislative initiatives are insufficient, not based on concrete, transparent or thorough risk assessment, fails to explain why such measures need to apply to associations and not to other entities, such as private entities; fail to explain why such laws are necessary and what specific gaps they seek to fill in the existing legal framework;

Cognizant that enhancing “transparency”, such as for tackling the threat of foreign interference, as used by authorities to justify these legal initiatives to restrict associations’ rights, does not by itself constitute a legitimate aim allowing for restrictions of these rights under international human rights law;

Acknowledging that promoting transparency in general is a commendable goal, aimed at fulfilling accountability, good governance and the public’s right to be informed and countering possible illegitimate interferences, and that there may be circumstances where enhanced transparency measures are necessary to pursue legitimate aims, *however stressing* that since such laws fail to meet the requirements of international human rights law and standards and risk causing a disproportionate and stigmatizing impacts on associations, hence they are bound to have the opposite, undesired effect of reducing the ability of civil society associations to play their vital role in ensuring transparency and democracy;

Stressing that States and multilateral bodies when seeking to address harmful foreign interference should strictly separate the narrow regulations of lobbying activities on behalf of other countries or others that do not target specifically nonprofits or their foreign funding, from the vaguely and stigmatising “foreign agent”/foreign influence laws clearly targeting associations;

Recognizing also the role of different authorities, including legislators, and non-State actors such as political party representatives, religious leaders, the business community among others, in contributing to the adoption of such laws, directly and, through creating an environment hostile for civic freedoms and spreading misinformation; and hence recalling the important role these actors can and should play in pushing back against these laws to protect fundamental freedoms;

Reiterating that States must fully comply with their human rights obligations, including with reference to the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, as well as with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders); and regional treaties, including the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and its Maputo Protocol, and the European Convention for the Protection of Human Rights and Fundamental Freedoms; and the ASEAN Human Rights Declaration.

Reaffirming the crucial role that international, regional cooperation and multilateral institutions can play in addressing concerns expressed in this declaration and the protection of civic space;

Welcoming and encouraging efforts by the international community and regional mechanisms aimed at strengthening the normative framework for enabling, promoting and protecting the right to freedom of association, recalling particularly the reports by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council dedicated to best practices (A/HRC/20/27), to access to resources (A/HRC/50/23) and its complimentary guidelines (A/HRC/53/38/Add.4); the Financial Action Task Force (FATF) amendment of its Recommendation 8 providing clarity to prevent misuse of counter-terrorism or anti-money laundering measures; and regional guidance and recommendations, such as the 2017 ACHPR Guidelines on Freedom of Association and Assembly in Africa; the 2015 ACHPR Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa; the 2014 ODIHR-Venice Commission Joint Guidelines on Freedom of Association; the 2014 ODIHR Guidelines on the Protection of Human Rights Defenders, and of other relevant guidance regarding the issue of funding of non-governmental organizations and related matters, including the Committee of Ministers of the Council of Europe's Recommendation CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe; (Recommendation Rec(2003)4) on common rules against corruption in the funding of political parties and electoral campaigns, and Recommendation on the legal regulation of lobbying activities in the context of public decision making (Recommendation Rec (2017)2); the Declaration of Inter-American Principles on the Legal Regime for the Creation, Operation, Financing and Dissolution of Civil Non-Profit Entities (CJI/RES. 282 (CII-0/23) rev.3.) and the recommendations of the IACHR Second Report on the Situation of the Human Right Defenders in the Americas (OEA/Ser.L/V/II. Doc.66. 31 dec. 2011);

Further, welcoming and encouraging efforts by regional and international judicial bodies to strengthen standards and the protection of the right to freedom of association with regards to "foreign agents"/foreign influence legislative initiatives, such as the recent landmark judgement by the European Court of Human Rights in case against Russia,⁷ and by the European Court of Justice regarding the already repealed Hungarian NGO Transparency Law.⁸

⁷ European Court of Human Rights, *Ecodefence and Others v. Russia*, Judgement on Applications nos. 9988/13 and 60 others, 14 June 2022.

⁸ Court of Justice of the European Union, Judgement, *Case C-78/18 Commission v Hungary*, (2/2020)

Adopt, on 13 September 2024, the following Joint Declaration, aiming at protecting and preventing from stigmatization the right to freedom of association in the face of spreading “foreign agent”/ “foreign influence” and similar legal initiatives:

I. Scope of the Joint Declaration

This Joint Declaration addresses the right to freedom of association issues which arise in the context of so-called “foreign agent”/foreign influence legislative initiatives and laws with similar effects, which introduce unnecessary, disproportionate and discriminatory obligations, restrictions or prohibitions on associations falling within the definition of “foreign influence ” (or the like), such as separate registration obligations, adopting labelling as a “foreign agent”, overly burdensome, intrusive and costly reporting requirements, and prohibition of engagement in certain activities, including public participation in the decision-making processes.

II. General principles

States must respect and comply with the following standards and requirements:

1. The right to freedom of association includes the right of associations – both, registered and unregistered - to seek, secure and utilize resources, including from foreign and international sources, without prior authorization or other undue impediments, as this is essential for the meaningful enjoyment of the right.
2. States have the obligation to respect, protect and facilitate the exercise of the right to freedom of association and any laws, policies and any legislative and policy initiatives or amendments should reflect these requirements.
3. As a rule, there should be no restriction on the right to freedom of association. States have the obligation not to unduly interfere with the right to freedom of association. Any restrictions must be justified, and must meet the strict requirements of legality, clarity, precision, and foreseeability, pursuing legitimate aims as specified in international human rights law which should be narrowly interpreted (i.e., in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of others’ rights and freedoms). These restrictions must be necessary in a democratic society, proportionate, non-discriminatory, case-specific, and evidence-based, justified only by a real, not hypothetical risks, and should not be based on unfounded or/and general suspicion. The least intrusive means should be prioritized to achieve the legitimate objective, and all restrictions should be subject to independent, impartial, and prompt judicial review.

4. As a rule, States should guarantee the right of associations to acquire legal personality, ensuring a registration process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge, with independence, professionalism, impartiality, and transparency. States should not compel associations to register in order to be allowed to exist and to operate freely.
5. The foreign origin of an association's funding or of other benefits in kind alone does not justify differentiated treatment. Imposing restrictions on this basis without proper justification violates the prohibition on discrimination and the right to freedom of association.
6. Inspection of an association should be permitted only following a judicial order, and where there is a well-founded evidence-based suspicion of a serious legal violation by the association; access to remedy should be ensured. Unwarranted inspections and the use of intelligence activities against civil society activists and organizations can directly impact and restrict the right to freedom of association and must not be utilised for purposes of harassment and intimidation of associations. Any intelligence activities carried out by the State targeting those exercising their right to freedom of association must be human rights-compliant, risk-based and case specific, justified by an imperative purpose, must meet the requirements of legality, necessity and proportionality, have strict legal boundaries and conducted under close judicial supervision.
7. When available, access to public financing and special tax regimes should be made under equal conditions and without discrimination, through transparent, equitable and non-discriminatory systems.
8. Associations are born and governed by the will of their founders, associates, or members, and associations should be free to determine their statutes, structure and activities. The suspension and the involuntary dissolution of an association are the severest types of restrictions and should only be allowed exceptionally when there is a clear and imminent danger resulting in a serious violation of national law, in compliance with international human rights law, and subject to an impartial and independent judicial decision, and access to effective remedy.
9. State and public officials should refrain from advocacy of hatred that constitutes incitement to violence, hostility or discrimination; and must refrain from utilising or condoning public rhetoric and/or including in policies and laws any qualifying provisions and labelling stigmatizing and vilifying civil society, activists, human rights defenders or media; and instead public officials should promote and create enabling environment by promoting the important work by civil society for betterment of society and advancement of rights.

III. Measures to protect associations from undue restrictions and stigmatization due to “foreign agent”/ “foreign influence”-like laws and legislative initiatives:

States, including their legislative bodies should:

- 10.** Ensure that legislative initiatives impacting the right of association, including the right to seek, receive, use and manage resources, including from abroad, undergo inclusive, extensive, transparent and effective public consultations. Ensure such consultations are carried out from a very early stage, including the phase of impact-assessment of various regulatory scenarios, and ensure the safe and meaningful participation of civil society and representatives of various communities, with effective equal opportunities for participation of women, minorities and marginalised communities.
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- 11.** Ensure that consultations occur in a timely manner, providing sufficient time for civil society to provide input throughout the law-making process, and that the results of such consultations are communicated publicly, explaining the rationale underlying the chosen regulatory approach.
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- 12.** Repeal “foreign agent”/ “foreign influence”-like legislation and ensure full compliance of freedom of associations legislation, regulations and policy measures with international human rights standards, including the principles of legality, foreseeability, necessity, legitimacy, proportionality, and non-discrimination.
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- 13.** Refrain from adopting “foreign agent”/“foreign influence”-like legislation or proposing such initiatives.
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- 14.** Refrain from compelling recipients of foreign funding or of other benefits in kind to register and/or for imposing the adoption of negative labels such as “foreign agents”, “receiver of funding from abroad” or any similarly stigmatizing labels; and refrain from imposing undue restrictions on the access to and activities of recipients of foreign funding.
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- 15.** Ensure all civil society organizations have access to independent, impartial and effective remedies in cases of any restrictions of the right to freedom of association, including those resulting from the “foreign agent”/ foreign influence like initiatives, including their right to access resources.
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- 16.** Establish an effective and consultative feedback and evaluation mechanism to enable affected associations to report issues with, and to challenge, the regulatory or legislative framework governing the right to association, including transparency requirements and “foreign agent”/ foreign influence-like laws where they exist; conduct thorough impact assessment of laws or other regulations related to associations to ensure they do not have stigmatizing and unduly restrictive impact on civil society and civic space in general.
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- 17.** Ensure that legislative initiatives seeking to impose declarations of assets and other resources, of membership or relationships or similar requirements, targeting civil society and other non- for-profit organizations are based on a proper thorough and transparent risk assessment relevant to civil society work, demonstrating the necessity of the legislation, identifying the genuine, real, present, and sufficiently serious threat linked to the work of civil society that the law is seeking to address, considering existing legislative framework, and exploring alternative less intrusive measures.
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- 18.** Adopt a non-discriminatory approach of any legislation regulating associations, including assessing the disproportionate impact such legislation may have on diverse associations, including marginalized and grassroots social movements and informal organizations; considering the particular context and civic space environment.
- 19.** Refrain from imposing sanctions on associations and/or individuals linked to them, unless these are strictly necessary, and ensure that the imposed sanctions are the least intrusive means to achieve the desired objective and proportionate to the civil society organisation's infringements of the law, ensuring access to effective remedy. Custodial sentences, pre-trial detention or denial of bail, should not be imposed for the exercise of the right to association; proscription or dissolution should be an exceptional measure of last resort (only when other less intrusive measures have demonstrably failed to achieve the legitimate aim being pursued).
- 20.** To enhance transparency, States and other stakeholders, should support and incentivize voluntary, individual and collective, civil society efforts to establish independent self-governance standards and promote openness, transparency, accountable and democratic structures.
- 21.** Support and provide an enabling environment for civil society and activists who have fled their countries due to intimidation, threats and criminalisation in the climate of repressive "foreign agent"/foreign influence legislations and regulations targeting them.

Other actors:

- 22.** Media and tech companies offering intermediary services, should, in line with their responsibility under the United Nations Guiding Principles on Business and Human Rights, exercise human rights due diligence and identify, prevent, mitigate potential and actual adverse impact on the rights to freedom of association related to their business activities, such as related to the spread of disinformation and hate speech targeting civil society and their work. They should prevent civil society from being subjected to stigmatizing and smear campaigns and instead collaborate with civil society to develop effective strategies to counter these, including through support to initiatives that offer fact-checking services.
- 23.** Media outlets, both online and offline, should give critical attention to the state of civic space. This includes facilitating critical discussions and analysing how propaganda and disinformation that targets civil society, such as related to 'foreign agents', and narratives aimed at suppressing the exercise of human rights contribute to the erosion of civic freedoms, inclusive public discourse and democracy.
- 24.** National human rights mechanisms should conduct continuous monitoring and publicly report of the impact of "foreign agent"/foreign influence laws and such initiatives, political discourse and public narratives on the enjoyment of the right to association and on civic space; and include this information in reports to regional and international bodies, including in submissions for the Human Rights Council's' Universal Periodic Review (UPR).

- 25.** The international donor community should invest in studies to comprehensively document and assess the impact of “foreign agent”/ “foreign influence”-like laws on civic space and human rights in general; and develop strategies in collaboration with civil society, including those in exile, to continue supporting civil society actors operating in environments affected by such laws and regulations. Such studies also should assess the impact these laws have on the development, economy and the social benefits in society to support evidence-based countering of stigmatizing and populist narratives against civil society.
- 26.** The international donor community should also support broad coalition-building solidarity initiatives among various civil society actors to empower them to carry out early warning, information sharing, capacity building, solidarity and prevent the adoption of “foreign agent”/ “foreign influence” like laws.

■ *The United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, **Gina Romero.***

■ *The Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa of the African Commission on Human and Peoples' Rights (ACHPR), **Rémy Ngoy Lumbu.***

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