Foreign Agent Registration & Funding Restrictions for NGOs

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Any U.S.-based nonprofit that operates internationally must cling to a complex web of regulations in each country where its presence is felt. Local labor laws, restrictions on financial transactions and banking, and restrictions on the use of foreign consultants are just a few of the hoops that U.S. non-governmental organizations (NGOs) must jump through to support grantees and programs in other countries.

While most NGOs exist for completely altruistic reasons—in the hopes of advancing human rights, health, economic prosperity, democracy, and conservation—many governments across the world place a high level of scrutiny on NGOs, due to concerns that foreign entities and their foreign funding suggest political influence from outside nations. Some governments might also be wary of cultural influences from visiting NGOs, which potentially threaten to alter local customs and power structures. To continue operating internationally, NGO leaders must stay informed of changing laws that require foreign entities to jump through hoops—some purposefully difficult—before providing aid in specific countries.

Due to the scrutiny around foreign funding and potential political influence entering a nation by way of its NGO host, most nations require NGOs and other foreign entities to register with the local government—and often abide by additional stipulations—before they can legally operate in that state. Depending on which nation an outside NGO wishes to operate in, registration could be relatively simple or complex. While on its face, a nation's foreign entity registration law is likely directed at organizations engaging in 'political activities,' many of these laws are so broadly written that they apply to the work of NGOs— especially those that receive funding from outside the nation.

Russia recently received perhaps the loudest international outcry against its registration laws, called 'foreign agent laws'—a title which, as assumed by NGO advocates around the world, means to evoke Cold War-like feelings aimed to galvanize the nation's citizens against the presence of NGOs. Since instituting its foreign agent law in 2012, Russia amended the law to allow the state to register NGOs without their consent, after NGOs around the world initially pushed back against registration and its stigma. In 2015 Russia restricted NGO activity further by instating a law that enabled the state to identify and shut down 'undesirable' organizations. The law prohibits these blacklisted organizations from holding public events, distributing promotional materials and mass media messages, and cooperating with Russian financial institutions. Persecution is said to be heavy for organizations that refuse to disband, as well as for any cooperative Russian individuals or entities. This law

effectively struck at a group of prominent NGOs operating in Russia, and also forced some international funders to cut ties with their local grantees.

Both governmental and NGO critics across the world have voiced concern that rather than promoting transparency between NGOs and its government, Russia's foreign agent laws aim to quiet the voices of Russian citizens while further isolating them from the world. Amendments made to the law in 2016 were said to clarify the definition of 'political activity' in order to exempt most NGOs from foreign agent registration, but many international critics believe that the adapted language more broadly encompassed most NGOs, promising an ongoing struggle between Russian authorities and local NGO leaders.

Russia is but one example of a nation electing to tighten the noose around NGOs. Since the time of the Second Industrial Revolution when the presence of NGOs began to expand around the world, countries have enacted registration laws to regulate NGO activity. Along with foreign agent registration and scrutiny or limitations on the use of foreign funding, many countries demand additional conditions of registration.

Penalties for failure to comply with foreign agent requirements differ from country to country, but often include heavy fines or—in extreme cases—the imprisonment of NGO staff. For example, a nation that requires foreign agent registration might also require an NGO to:

- Pay a registration fee
- Seek approval of the organization name, logo and brand identity
- Brand all documentation and publications according to local regulations
- Seek approval of individual projects and related foreign funding
- Seek licenses for specific programmatic activities (e.g., provision of healthcare or education)
- Receive and manage all funding through specific banks or a single bank account
- Submit to ongoing financial review by a national oversight body
- Limit the number of foreign consultants used
- Submit annual reports of all activities
- Submit an annual audit report and, in some cases, appoint an auditor from a list approved by a national oversight body
- Submit to the inspection of bank accounts, financial records, and other organizational documents (some states retain the right to inspect NGO accounts and materials at any time)
- Notify a national oversight body at the time of disbandment (or even temporary closure of offices or programs)

Foreign agent registration requirements can typically be researched through a nation's relevant government agency—oftentimes the Ministry of Justice, Ministry of Internal Affairs, NGO Affairs Agency, or Registrar of Societies. Another helpful starting point is the International Center for Not-for-Profit Law (ICNL), which maintains a Civic Freedom Monitor that provides up-to-date information on legal issues affecting civil society in roughly 50 countries. For most countries listed, the Civic Freedom Monitor comments on the relevant NGO registration body and known barriers to entry.

The United States itself passed the 1938 Foreign Agents Registration Act (FARA), which is sometimes confused with seemingly parallel laws that aim to restrict NGO activity in other nations. The purpose of FARA, according to The U.S. Department of Justice, is to inform Americans and the U.S. Government of the source of information and the identity of people/organizations attempting to influence U.S. public opinion, policy and laws. FARA was a direct response to German propaganda agents present in the U.S. prior to World War II. After the fall of the Third Reich, FARA was amended to require organizations to register as foreign agents if they engage in specified activities—namely in a political or quasi-political capacity—at the order, request, or under the direction or control of a foreign principal. The U.S. Department of Justice states that foreign entities that engage in these activities in the U.S. must 'make periodic disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities.'

According to the US Embassy in Israel, 'U.S. law imposes no limits, restrictions, or transparency requirements on the receipt of foreign funding by NGOs operating in the United States, other than those generally applicable to all Americans.' Unlike foreign agent laws in some other countries, U.S. law does not specifically target NGOs simply because they are funded by foreign government entities or other foreign principals.

In regards to foreign agent registration, critics exist at both ends of the spectrum. NGO advocates believe that

these laws bar humanitarian workers from providing much-needed support to communities around the globe, while others assert that NGO activity is a form of foreign interference that each nation has a right to scrutinize and regulate. NGO leaders must continue to be mindful of changing registration laws in each country in which they operate. Even when operating under the watch of unfriendly governments, an NGO's presence and impact is validated by the reaction of the local community that it serves.

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RESOURCES

Civic Freedom Monitor, The International Center for Not-For-Profit Law, www.icnl.org/research/monitor/

FAQs – Foreign Agents Registration Act of 1938, U.S. Department of Justice, www.fara.gov/fara-faq.html and www.fara.gov