



**United Nations Special Rapporteur on the Rights to Freedom of Peaceful  
Assembly and of Association**

**Call for inputs on trends, developments, and challenges to the ability of civil  
society organizations to access resources, including foreign funding to  
inform thematic report to the U.N. Human Rights Council**

18 February 2022

**Introduction**

Access Now welcomes this opportunity to provide relevant information to the United Nations (U.N.) Special Rapporteur on the rights to freedom of peaceful assembly and of association to inform the Special Rapporteur's thematic report on trends, developments, and challenges to the ability of civil society organizations to access resources, including foreign funding to be presented to the U.N. Human Rights Council's 50th session.<sup>1</sup> As an ECOSOC accredited organization, Access Now routinely engages with U.N. Special Procedures in support of our mission to extend and defend digital rights of users at risk around the world.<sup>2</sup>

With missions rooted in defending the fundamental human rights of all individuals, civil society remains an essential force to advance stakeholder accountability and ensure transparency in often opaque multilateral processes. This submission outlines civil society barriers and challenges regarding access to resources, including foreign funding, and de-risking and sanctions overcompliance. It is important to note that while this submission draws upon examples from various regions, these examples are non-exhaustive, and do not represent the lived experiences of all persons at risk. More information is required to take into full account the intersecting forms of oppression of those who are directly targeted.

***Civil society barriers and challenges regarding access to resources, including foreign funding***

1. As part of our mission to defend and extend digital rights of users at-risk worldwide, Access Now provides flexible and grantee-driven funding to grassroots and frontline organizations fighting for human rights in the digital age. We pursue this work at a time when civil society

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<sup>1</sup> U.N. Human Rights, Office of the High Commissioner for Human Rights, *Call for inputs from the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association for his report to be presented at the 50th session of the Human Rights Council*, available at <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/hrc50report.aspx> 2022.

<sup>2</sup> Access Now, *About Us*, 2021, available at <https://www.accessnow.org/>. Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. Access Now works to defend and extend the digital rights of users at risk around the world through policy, advocacy, technology support, grants, legal interventions, and global convenings like RightsCon.

around the world is working under increasingly difficult circumstances, from targeted censorship, to restrictions on operations, to threats to physical safety. It is also a time when the digital space has become a critical battleground in broader human rights struggles, as well as a place where marginalization, systemic racism, societal discrimination, and violence can be reproduced and even amplified.<sup>3</sup> We observed several key trends emerging from our recent grantmaking efforts. For instance, we offered more support for local digital security help desks, received more requests for assistance fighting internet shutdowns through grassroots organizing, and helped organizations working to mitigate human rights challenges related to social media platforms worldwide.

2. In 2020, Access Now provided \$979,059 in direct financial support across 38 grants to 34 separate local and grassroots organizations working across 27 countries.<sup>4</sup> In 2020, 76% of our support went towards funding grassroots groups with budgets less than \$200,000. Such support has been an increasing priority, as grassroots organizations working in challenging contexts typically face significant obstacles in accessing funds.<sup>5</sup> Many donors perceive risk in such contexts, and organizations working on behalf of marginalized communities can face additional barriers as they traditionally have less access to resources.
3. Under the guise of “terrorism” and “national security” interests, some countries are making the legal environment increasingly difficult for civil society to register as NGOs, open bank accounts, and receive foreign funding. Such government backed efforts threaten the very existence of NGOs, and therefore their ability to carry out their mission. For instance, According to the World Association of Non-Governmental Organizations, the **Philippines** has “a vibrant NGO sector, with 60,000 registered aid groups, promoting the interests of farmers, women, indigenous people, among many others.”<sup>6</sup> Nonetheless, in February 2021, the Philippines rushed out a “new order requiring all international aid for NGOs to be cleared with the foreign ministry, saying the aim was to stamp out funding for terrorism.”<sup>7</sup> Philippine-based NGOs claim that the requirement might lead to a reduction in funding and threaten their survival.<sup>8</sup>
4. In **Belarus** since summer 2021 **governmental authorities liquidated 344 NGOs, and 208 NGOs decided to initiate the liquidation process themselves in a fear of further**

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<sup>3</sup> Access Now, Access Now Grants, available at: <https://www.accessnow.org/grants/>, 2021.

<sup>4</sup> Access Now, Digital civic space: how Access Now Grants built resilience in 2020, available at: <https://www.accessnow.org/how-access-now-grants-built-resilience-in-2020/>, 28 July 2021.

<sup>5</sup> Ibid.

<sup>6</sup> Reuters, Philippine foreign minister defends move to monitor foreign funding for NGOs, available at: <https://www.reuters.com/article/philippines-ngos/philippine-foreign-minister-defends-move-to-monitor-foreign-funding-for-ngos-idINKBN2AQ16A>, 24 February 2021; World Association of Non-Governmental Organizations, available at: <https://www.wango.org/>, 2021.

<sup>7</sup> Reuters, Philippine foreign minister defends move to monitor foreign funding for NGOs, available at: <https://www.reuters.com/article/philippines-ngos/philippine-foreign-minister-defends-move-to-monitor-foreign-funding-for-ngos-idINKBN2AQ16A>, 24 February 2021.

<sup>8</sup> Ibid.

**persecution.**<sup>9</sup> Among the reasons for shutting down Belarusian civil society were named the financing of protest activities, reimbursement of administrative fines to people who participated in “illegal mass events”, financing and conducting seminars on counteraction to law enforcement agencies (including offering free legal help and advice on how to appeal administrative arrests and fines).<sup>10</sup>

5. Over the past year, remaining Belarusian NGOs have been constantly denied registration of foreign financial support by the Belarusian controlling body, the Department for Humanitarian Affairs, even if they had received funds from the same donors and for the same projects and goals as before.<sup>11</sup>
6. Furthermore, the recipients of foreign financial support in the period autumn 2020-autumn 2021 repeatedly faced inspections and were asked to provide additional reports by the Department of Financial Investigations of the State Control Committee, tax authorities, and the Department of Humanitarian Affairs.<sup>12</sup>

### ***Foreign agent and undesirable organizations laws (Russia)***

7. Since 2014, Russian authorities have been using a so-called “Foreign Agent” law as a tool to silence dissent, imposing heavy burdens upon civil society organizations, who receive foreign funding and engage in what the government deems “political activities,” and stigmatizing them by labeling “foreign agents.”<sup>13</sup> The interpretation of criteria to be listed as ‘foreign agent’ are so broad that even being endorsed to attend international conferences can be regarded as one of the grounds for an activist and his organization to be included on the list.<sup>14</sup>
8. As of 16 February 2022, 75 NGOs and 7 non-registered associations in Russia are registered as ‘foreign agents’.<sup>15</sup> 12 non-profit organizations received this status only in 2021, signifying that the Russian government only increases repressions aimed at civil society and plans to further exert its control over them. Some of the notable cases include:

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<sup>9</sup> Lawtrend, Ситуация со свободой ассоциаций и организациями гражданского общества Республики Беларусь: обзор за январь 2022 г., available at:

<https://www.lawtrend.org/freedom-of-association/situatsiya-so-svobodoi-assotsiatsij-i-organizatsiyami-grazhdanskogo-obshhestva-respubliki-belarus-obzor-za-yanvar-2022-g>, 18 February 2022.

<sup>10</sup> Investigative Committee of Belarus, СК: получена информация о причастности ряда НГО и СМИ к теневому движению финансовых средств, available at: <https://t.me/skgovby/4890>, 16 July 2021.

<sup>11</sup> Lawtrend, Изменение законодательства об иностранной безвозмездной помощи, available at:

<https://www.lawtrend.org/freedom-of-association/izmenenie-zakonodatelstva-ob-inostranno-Bezvozmezhdnoj-pomoshhi>, 18 February 2022.

<sup>12</sup> Ibid.

<sup>13</sup> Human Rights Watch, Russia: Government vs. Rights Groups.The Battle Chronicle, available at:

<https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>, 18 June 2018.

<sup>14</sup> Golos Ameriki, Репрессии против журналистов и правозащитников в России в 2021 году, available at:

<https://www.golosameriki.com/a/repressions-against-journalists-and-human-rights-lawyers-in-russia/6375927.html>, 30 December 2021.

<sup>15</sup> Inoteka, Inoteka: data on «foreign agents» and «undesirable» organizations, available at: <https://inoteka.io/ino/foreign-agents-source-en>, 16 February 2022.

- a. On September 29, 2021, the Ministry of Justice of the Russian Federation included “OVD-Info,” a protest monitoring group and a NGO that provides legal advice and assistance to those persecuted for exercising their right to freedom of assembly, to a list of foreign agents “foreign agent.”<sup>16</sup> Later on Russia’s censorship body, Roskomnadzor, blocked its website and sent notifications to social media, messaging, and search platforms, asking them to block OVD-Info’s social media pages.<sup>17</sup>
  - b. In 2021-2022 5 non-registered associations, representing the rights and interests of LGBTQ community in Russia, including "Russian LGBT Network," "Mayak," “Reverse.” “Vyhod, " and “Moscow community center for LGBT+ Initiatives, were declared “foreign agents.”<sup>18</sup> In three instances the Government failed to provide the exact reason for such inclusion.<sup>19</sup>
9. The status of ‘foreign agent’ obliges NGOs to mark all its materials, including their social media posts, with a special label and to provide excessive reports (approximately 44 pages every 3 months) to a controlling body, Roskomnadzor.<sup>20</sup> Mentioning ‘foreign agent’ NGOs in media sources imposes similar marking obligations to media outlets, journalists or bloggers. Non-compliance with these requirements can lead to the suspension of one's activities, administrative or even criminal charges.
  10. Administrative fines can also be imposed on an employee, who distributes any materials and does not indicate that they are an employee of an NGO-foreign agent.<sup>21</sup>
  11. For example, in December, Russian courts liquidated the two entities forming one of the most respected Russian human rights organizations, Memorial, for alleged failure to mark their online publications as “foreign agent” material as required by the Foreign Agent Law.<sup>22</sup>
  12. In a disturbing trend, more countries around the world are following Russia’s example. Kazakhstan, Belarus, Poland, Hungary, Egypt, Israel, Nicaragua, El Salvador, and Guatemala are among the countries around the world that have passed or are considering passing “Foreign Agent” laws similar to Russia’s.<sup>23</sup>

<sup>16</sup> Inoteka, OVD-Info was recognized as a foreign agent. What’s next?, available at: <https://inoteka.io/inoagent-en>, 29 September 2021;

<sup>17</sup> Access Now, Dear Big Tech: Don’t help Russia deplatform civil society, available at: <https://www.accessnow.org/big-tech-russia-deplatforming/>, 31 January 2022.

<sup>18</sup> Inoteka, Inoteka: data on «foreign agents» and «undesirable» organizations, available at: <https://inoteka.io/ino/foreign-agents-source-en>, 16 February 2022.

<sup>19</sup> Ibid.

<sup>20</sup> Meduza, 2021 год в России — год «иноагентов» Как государство преследует независимых журналистов, СМИ и НКО. Самые впечатляющие числа, available at: <https://meduza.io/feature/2021/12/31/2021-god-v-rossii-god-inoagentov>, 31 December 2021.

<sup>21</sup> Inoteka, Inoteka: data on «foreign agents» and «undesirable» organizations, available at: <https://inoteka.io/ino/foreign-agents-source-en>, 16 February 2022.

<sup>22</sup> The New York Times, Russian Court Orders Prominent Human Rights Group to Shut, available at: <https://www.nytimes.com/2021/12/28/world/europe/russia-memorial-human-rights.html>, 28 December 2021.

<sup>23</sup> Coda Story, Putin’s playbook: Strongmen around the world are using Russian tactics to quell dissent, available at: <https://www.codastory.com/disinformation/russias-foreign-agents-law-reverberates-around-the-world/>, 27 July 2021; Eurasianet, Russia’s

13. In addition to Foreign Agent Laws, Russia also uses Undesirable Organizations law that gives prosecutors the power to extrajudicially declare foreign and international organizations that allegedly undermine Russia's security, defense, or constitutional order as "undesirable" in Russia, shut them down, and criminally prosecute organizations and individuals who participate in activities of such organizations.<sup>24</sup> As of today, 50 organizations have been declared "undesirable" in Russia.<sup>25</sup>
14. U.N. High Commissioner urged "the authorities to end the arbitrary practice of labeling ordinary individuals, journalists, and non-governmental organizations as 'extremists', 'foreign agents' or 'undesirable organizations.'"<sup>26</sup>

### ***De-risking and sanctions overcompliance***

15. Beyond compliance with such laws, many private sector actors initiate their own programs to reduce fraud and corruption that, while well-meaning, proceed in ways and result in actions counter to their own purposes and to the promotion of human rights. For example, banks may see a grant-making organization like Access Now sending small amounts to individuals in countries subject to sanctions, and restrict or deny those transactions based on nothing more than a broad, discretionary prohibition on transactions involving the sanctioned country or region, regardless of whether the law prohibits such a transaction in fact.
16. Banks restrict or terminate transactions of and services to non-profit organizations for a variety of reasons that often misapply anti-fraud and anti-corruption measures, sometimes under the justification of "de-risking."<sup>27</sup> The financial institutions can fail to understand or pay heed to the nature of the work done by their non-profit clients, applying risk screening processes based on country or other broad indicators that raise flags without accounting for the intent or context of the flagged transactions and transacting parties. Like many organizations, Access Now has

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foreign agent law ricochets around Kazakhstan. Kazakhstan is aping Russia's attacks on civil society, available at: <https://eurasianet.org/russias-foreign-agent-law-ricochets-around-kazakhstan>, 5 January 2022; The Guardian, Israel passes law to force NGOs to reveal foreign funding, available at: <https://www.theguardian.com/world/2016/jul/12/israel-passes-law-to-force-ngos-to-reveal-foreign-funding>, 12 July 2016; Committee to Protect Journalists, Proposed Salvadoran 'foreign agent' law could impact media organizations, available at: <https://cpj.org/2021/11/proposed-salvadoran-foreign-agent-law-could-impact-media-organizations>, 16 November 2021; Reuters, Guatemala's top court backs controversial NGO law, overturns past ruling, available at: <https://www.reuters.com/world/americas/guatemalas-top-court-backs-controversial-ngo-law-overturns-past-ruling-2021-05-13/>, 13 May 2021.

<sup>24</sup> Human Rights Watch, New 'Undesirables' Law Expands Activists' Danger Zone, available at: <https://www.hrw.org/news/2021/06/17/new-undesirables-law-expands-activists-danger-zone>, 17 June, 2021.

<sup>25</sup> Министерство юстиции Российской Федерации, Перечень иностранных и международных неправительственных организаций, деятельность которых признана нежелательной на территории Российской Федерации, available at: <https://minjust.gov.ru/ru/documents/7756/>, 4 February 2022.

<sup>26</sup> Reuters, U.N. decries Russia moves against Navalny, calls for upholding rights, available at: <https://www.reuters.com/world/un-decries-russia-moves-against-navalny-calls-upholding-rights-2021-06-21/>, 21 June 2021.

<sup>27</sup> For more information, see Charity and Security Network, Bank De-Risking of Non-Profit Clients, available at: <https://charityandsecurity.org/news/report-summary-bank-de-risking-of-non-profit-clients>, 25 June 2021.

suffered under such unilateral and opaque decisions made by financial institutions.

17. Similarly, state sanctions and the “overcompliance” with state sanctions by private sector technology and financial firms prevent many civil society organizations and individuals from accessing a wide range of essential goods and services, including health supplies<sup>28</sup> and information and communications technologies.<sup>29</sup> Sanctions – and conservative corporate interpretations of those sanctions – can prevent at-risk actors like human rights defenders from accessing crucial security tools,<sup>30</sup> licensed copies of software,<sup>31</sup> and global services<sup>32</sup> that protect their devices, data, and networks. This dynamic of overcompliance often continues restricting access even after sanctions have been lifted.<sup>33</sup>
18. Without access to trusted global software and services, civil society actors may be forced to depend on either pirated and unlicensed versions of software that lack recent security updates<sup>34</sup> – putting them and their communities at greater risk – or local services subject to greater surveillance and censorship.<sup>35</sup> Civil society often pleads with major ICT companies to provide greater access to services. Despite making some progress,<sup>36</sup> Silicon Valley firms often place the blame on credit card companies and payment processors, who refuse to process transactions for certain countries or regions, as a particular roadblock toward providing greater access to ICTs. As a result, many sanctioned countries do not have access to the Apple App Store or Google Play Store, or only can access limited services on those platforms.<sup>37</sup>

## Concluding Recommendations

### 1. States

- a. Implement open, secure, and affordable access to information and communications technologies, including the open internet, so civil society can meaningfully operate in the digital age;

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<sup>28</sup> OHCHR, Over-compliance with US sanctions harms Iranians’ right to health, Oct 2021

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27665&LangID=E>

<sup>29</sup> See, e.g., Foreign Policy <https://foreignpolicy.com/2021/05/06/iran-internet-censorship-us-sanctions> and Al Jazeera <https://www.aljazeera.com/economy/2019/7/31/locked-out-did-us-tech-company-overcomply-with-iran-sanctions>.

<sup>30</sup> See Vice, Google Gives Free Security Keys to Activists, But Not if You’re in Iran or Syria, available at:

<https://www.vice.com/en/article/9kxy4p/google-titan-keys-iran-syria-cuba-crimea-sudan-north-korea>, 26 April 2019.

<sup>31</sup> See NY Times, Microsoft Changes Policy Over Russian Crackdown, available at:

<https://www.nytimes.com/2010/09/14/world/europe/14raid.html>, 13 September 2021.

<sup>32</sup> See Center for Human Rights in Iran, U.S. Government, Companies Can do More to Promote Internet Freedom in Iran, available at:

<https://iranhumanrights.org/2021/03/u-s-government-companies-can-do-more-to-promote-internet-freedom-in-iran/>, 17 March 2021.

<sup>33</sup> See Center for Strategic and International Studies, Forging a Path to Stronger U.S. - Sudan Relations: Keeping Up the Momentum, available at: <https://www.csis.org/analysis/forging-path-stronger-us-sudan-relations-keeping-momentum>, 26 March 2018.

<sup>34</sup> See Microsoft, Cybersecurity Risks from Non-Genuine Software, available at:

<https://news.microsoft.com/uploads/2017/10/Whitepaper-Cybersecurity-Risks-from-Non-Genuine-Software.pdf>

<sup>35</sup> See Article 19, ARTICLE 19 launches report on Iran’s November 2019 Internet shutdown and its aftermath, available at:

<https://www.article19.org/resources/report-on-irans-internet-shutdown/>, 7 October 2020.

<sup>36</sup> See ZDNet, GitHub receives US sanction exemption to be fully available to developers in Iran, available at:

<https://www.zdnet.com/article/github-receives-us-sanction-exemption-to-be-fully-available-to-developers-in-iran/>, 5 January 2021.

<sup>37</sup> See Cult of Mac, App Store expanding to 20 more countries this year [Updated], available at:

<https://www.cultofmac.com/695345/app-store-to-expand-to-20-more-countries/>, 23 March 2020.

- a. Undertake action to address persecution of individuals working in civil society, online and offline, such as by issuing sanctions against the clients, owners, and affiliates of spyware companies and enhancing funding for circumvention tools and services;
- b. Repeal or amend all laws that deem civil society organizations, journalists, activists, human rights defenders, and individuals generally, as “terrorists,” “extremists,” “foreign agents,” “undesirable” or otherwise a threat to national security interests, ensure such laws are fully aligned with international human rights standards;
- a. Ensure sanctions are targeted, rather than broad or country- or region-based, so that sanctions regimes do not prevent access to essential goods and services, including the ICT sector.

## 2. Private Sector

- a. Financial institutions should take particular care that “de-risking” processes do not overburden civil society or impose unintended, broad restrictions or flags on parties, banks, or transactions intended to preserve and strengthen civic space. Any relevant policies and processes should be transparent and open to appeal and explanation;
- b. Financial institutions should seek to understand their civil society customers, engage in due diligence to strengthen their policies regarding civil space, and seek and incorporate feedback as to how they may mitigate the harmful effects of de-risking procedures.
- c. Financial intermediaries should ensure that access to financial services extends to civil society even in locations formerly sanctioned, or where certain government institutions and figures are sanctioned but civil society remains legal to transact with.



**Access Now** (<https://www.accessnow.org>) defends and extends the digital rights of users at risk around the world. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions, and convenings such as RightsCon, we fight for human rights in the digital age.

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