

Mr. Clement Voule

Special Rapporteur on Rights to Freedom of Peaceful Assembly and of Association

Office of the High Commissioner

United Nations Human Rights

**Re: 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**

Dear Mr. Voule,

The Council on Foundations (the “Council”) appreciates the opportunity to provide comments to the UN Human Rights Special Rapporteur on the 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.

The Council is a nonprofit membership organization that serves as a guide for more than 800 grantmaking foundations and corporations working to advance the greater good. Many of our foundation members work internationally, including sending philanthropic funds across borders to organizations of all shapes and sizes in nearly every country. In recent years, the disbursement of philanthropic dollars across borders has become increasingly difficult, largely due to national laws that politicize nonprofits, prohibit the inflow of foreign funds, create undue administrative and legal burdens on nonprofits, or securitize and over-scrutinize nonprofit activities.

On behalf of our foundation members and their nonprofit partners globally, we would like to draw your attention to the following issues.

### **1. National Laws that Target Nonprofits and Foreign Funding**

According to the International Center for Not-for-profit Law (ICNL), since 2016, 91 countries have proposed or enacted more than 260 legal measures affecting civil society. Of these measures, 72% have been restrictive. This mirrors data from CIVICUS which notes that only 3.1% of the world’s population live in countries with “open” civic space. Nonprofits are a vital pillar of an open society and should be free to engage in charitable activities supported by a wide array of private and public donors.

However, nations across the globe continue to pass legislation that specifically targets the nonprofit sector and its ability to fundraise from donors outside their own borders. Recent examples of such legislation include the Foreign Contribution Regulation Act (FCRA) in India, which was amended in October 2020 to devastating effect – resulting in tens of thousands of Indian nonprofits no longer able to receive foreign funding. In 2017, the People’s Republic of China passed its “Foreign NGO Law” which threw the nonprofit sector into turmoil and required

international nonprofits and foundations to establish an office within the country or undergo a complicated process for approval of “temporary activity licenses.”

These are just two examples, in the world’s two most populous nations, of severe crackdowns on nonprofits and their ability to fundraise internationally. These are not the only two examples by any means, but they reflect an ongoing targeted approach to stifling nonprofits and destabilizing the third pillar of any successful and open society, an independent and healthy nonprofit sector.

Often laws that target foreign funding are passed under the banner of protecting national security or use outdated language from the Financial Action Task Force (FATF). Within the post-9/11 legal regime, nonprofits were targeted as uniquely susceptible to being conduits for terrorist financing, money-laundering, and other illicit activity. While FATF has since re-written its notorious Recommendation 8, national governments continue to use this framing to pass legislation that reinforces the unproven notion that nonprofits, more than any other actor, serve to destabilize national security and advance illegal and terrorist activity.

**Recommendation:** Encourage the free flow of philanthropic funding across borders by denouncing laws that prohibit the ability of nonprofits to fundraise from donors outside their borders and denounce laws that use the language of “national unity” or “protecting national security” when regulating legitimate nonprofit activities.

## **2. The Domestic and International Politicization of Nonprofits**

The impetus for many laws that target nonprofits and their ability to fundraise internationally is often a perceived risk to the national government. In the cases of both India and China, these laws specifically require federal approval before nonprofits undertake charitable activities. In all cases, these activities can only be approved if they are aligned with the national government’s own priorities. Under the guise of protecting national security, these laws that target nonprofits prohibit certain religious, academic, and social work that is deemed a threat to national unity. For instance, charity work grounded in Christianity is often forbidden in both countries, as is working with disadvantaged communities such as ethnic and religious minorities or the LGBTQ community.

The nature of most charity work across the globe is political by nature. It is a political act to support disadvantaged communities. It is a political act to fundraise from donors to further one’s mission. It is a political act to rally one’s community around an issue in society. Yet, the politicization we are witnessing is not reflective of this – instead, only certain causes are politicized, only certain organizations risk governmental oversight, and only certain donors face black-listing by these governments.

With the title of “foreign agent,” nonprofits across the globe face a new existential risk – being labeled an agent of a foreign government or entity. Rooted in the USA’s own Foreign Agents Registration Act (FARA), the term “foreign agent” has been increasingly applied to nonprofits who are perceived to act against national interests, but in reality are often merely engaging with international partners. FARA, which was established in 1938 in the USA to counter Nazi propaganda, has a different life abroad, where countries such as Russia and most recently

Nicaragua, have passed their own foreign agent laws targeting applications to nonprofit activity. In Russia, it is now virtually impossible for nonprofits to receive foreign funding due to this foreign agent law. In Nicaragua, nonprofits seeking foreign funds must now go through back channels or establish offices in neighboring countries.

Every nation has the right to regulate its nonprofit sector and conduct oversight over its activities and fundraising. However, foreign agent laws are by their nature subject to the political whims of those in power, using stigmatizing language to essentially name an organization “an enemy of the state” and severely hampering that organization’s ability to fundraise, further its mission, or maintain its legal registration.

In our globalized world, we should expect and encourage nonprofits to collaborate with partners across the globe, as we expect our governments and businesses to as well. Unfortunately, nonprofits are uniquely targeted as political entities by national governments and we risk harming our global progress towards achieving the Sustainable Development Goals (SDGs) and combatting COVID-19 and climate change due to these restrictions on the sector.

**Recommendation:** Encourage and promote global cooperation among nonprofit organizations working on complex and often political issues and ensure that foreign agent laws are consistently applied to all entities rather than uses by those in power to punish nonprofit organizations working on issues or in ways with which they disagree.

### **3. Regulations that Worsen Reporting and Administrative Requirements**

Not all laws that target nonprofits seek to fundamentally deprive the sector of access to resources or limit their ability to conduct their work. Some laws seek to control the nonprofit sector by adding unnecessary reporting and administration requirements. For example, components of the amendments to the FCRA law in India included that all nonprofits must receive foreign donations via a bank account with the State Bank of India, despite the fact that Indian nonprofits already were required to maintain a separate bank account for all foreign funds received. Additionally, the amendments required that all donor information be shared with the national government before any charitable work could begin, as well as frequent reporting to the government on the scope and progress of the activities.

In Mexico, the Federal Law for the Prevention and Identification of Operations with Illegally Acquired Funds requires that Mexican nonprofits obtain a long list of documentation from their foreign donors, including their passport number. This has rendered giving to Mexican nonprofits extremely difficult and has made many donors think twice before sharing their passport with the national government.

Again, every national government has the right to regulate their nonprofits and promote transparency within the sector. However, administrative requirements should serve a clear purpose while also aiming to make life easier for nonprofits and donors, not stifle an already resource-deprived sector.

**Recommendation:** Reiterate that laws regulating nonprofits with the goal of increasing transparency in the sector are not unduly burdensome or cumbersome for nonprofits but rather

seek transparency through ease of technology, simplified documents, while respecting the principles of an independent nonprofit sector.

#### **4. Bank De-Risking and Financial Access for Nonprofits**

The post-9/11 legal regime has made banks wary of working with nonprofits across the globe. Banks of all shapes and sizes have delayed payments to nonprofits, frozen assets, or “de-risked” their portfolios by closing nonprofit bank accounts. There is an ongoing need to educate banks on the nature of nonprofit work and further reinforce that nonprofits are not any more susceptible to terrorist financing or other illicit activity than any other entity.

**Recommendation:** Advocate for a risk-based approach to conducting due diligence on nonprofit clients and reinforce the importance of providing financial access to nonprofits globally.

We look forward to the Special Rapporteur’s next steps on protecting the rights of nonprofits globally at the 50<sup>th</sup> Human Rights Council session.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kathleen L. Gault".