



## REGULATION OF THE NON-PROFIT SECTOR

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# GOVERNMENT DON'TS IN IMPLEMENTING THE FATF'S RECOMMENDATION 8

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The [FATF's Recommendation 8](#) has led to **overregulation**, resulting in **disproportionate restrictions on the non-profit sector**. In some cases, the FATF recommendations themselves or the wish to protect non-profit organizations (NPOs) from abuse were stated as the official reason, while in others one can only assume that restrictions are linked to the intended implementation of Recommendation 8.

An [ICNL report](#) outlines that since January 2012, **more than 50 countries have introduced or enacted measures constraining civil society**. The [CIVICUS report for 2014](#) catalogues **96 countries where civil society rights have been violated**. The rationale governments offer in having to restrict civil society space varies. However, a worrying number state the **prevention of abuse of NPOs for terrorism financing**. **Governments employ diverse measures, including:**

- *restrictions on the formation of organizations*
- *restrictions on the ability to advocate for change*
- *restrictions on the access to information and communication technology (ICT)*
- *legal barriers impeding the ability of civil society organizations (CSOs) to access international assistance, in the form of grants and donations or otherwise.*

The FATF's [Interpretive Note on Recommendation 8 \(IN\)](#) and its [Best Practice Paper \(BPP\)](#) recommend the following:

- The IN stresses that measures adopted by countries to protect the NPO sector from terrorist abuse **should not disrupt or discourage legitimate charitable activities** (para 3 b); **supervisory measures should apply to NPOs that account for a significant portion of the financial resources under the control of the sector**, and a **substantial share of the sector's international activities** (para 6 b).
- The BPP clearly states that **counter-terrorism measures should not apply to the entire NPO sector** (since not all NPOs are at risk of abuse) and that **government overregulation of the NPO sector is not a desirable outcome** of implementing the FATF standards. **No additional regulations should be applied** if existing legislation and other measures (such as self-regulation mechanisms) are sufficient to mitigate the risks. In addition, **the importance of outreach to NPOs and regular dialogue** to develop a collaborative relationship is emphasized.

*EXAMPLES<sup>1</sup> OF GOVERNMENTS MISINTERPRETING RECOMMENDATION 8:*

*(a) by not conducting a risk assessment of the NPO sector, and/or*

*(b) by targeting the entire NPO sector without distinguishing between a subset of NPOs which may be particularly vulnerable to terrorist abuse.*

**1) Universal and complex registration requirements for all NPOs**

This may include an overly-complicated procedure, arbitrary denial, annual registration and/or ban on registration. Such provisions are unnecessarily burdensome and are disproportionate to the risk. They violate the international law standard that, while acknowledging that restrictions on association may be necessary in a democratic society, underscores that it ought to be proportional and be of the least restrictive means necessary to achieve a legitimate end. [In his thematic report](#), the UN Special Rapporteur Maina Kiai notes that unregistered **associations have protection under international human rights standards and “are eligible to access funding.”** He also notes that the [International Covenant on Civil and Political Rights](#) makes no distinction between registered and unregistered associations.

**2) Provisions that interfere with the freedom of founders and members to regulate an organization’s internal governance**

These are often used in the case of organizations receiving foreign funding. A high level of government intrusion into NPO operations as well as restrictions on fundraising and the use of resources exceed what is necessary or reasonable to protect against terrorist financing or fraud.

**3) Burdensome reporting requirements for NPOs and high penalties for non-compliance**

In some cases this includes special staff responsible for anti-money laundering/countering the financing of terrorism (AML/CFT) compliance, detailed activity reporting and assessment of work, and a compulsory annual audit. Such provisions are unnecessarily burdensome and are **disproportionate to the risk**, especially considering that a vast majority of NPOs do not fall in the category of being particularly vulnerable to terrorist abuse.

**4) Specific limitations on foreign funding and the inflow of cross-border philanthropy**

These include prior registration or government approval to receive foreign funding; registration as foreign agent; and limitation on the use of foreign funds – and are applied to all NPOs. This is inconsistent with the right of association. The need for government approval on foreign funding for NPOs, which implies it can be withheld, also infringes on the right of association. The [UN Report of the Special Rapporteur](#) on the rights to freedom of peaceful assembly and association makes it clear that, “The right to freedom of association not only includes the ability of individuals or legal entities to form

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<sup>1</sup> Source includes Charity and Security Network Factsheet,  
[http://www.charityandsecurity.org/background/FATF\\_Human\\_Rights](http://www.charityandsecurity.org/background/FATF_Human_Rights)

and join an association but also to seek, receive and use resources...from domestic, foreign, and international sources.” It notes that transparency and accountability regulations for civil society “must be the least intrusive means to achieve the desired objective.”

## 5) Limiting the right to freedom of expression and legitimate NPO activity

In some cases, the power to impose penalties on NPOs engaged in activities vaguely defined as being ‘*harmful to the national interest*’ opens the door to politically-motivated action against NPOs, especially against those that publicly criticize or disagree with government policy. The result could be asset freezing and other sanctions imposed on NPOs or individuals for political reasons, as some anti-money laundering legislation provides overly-broad discretion to seize the property of NPOs without a court order.

### ANNEX 1: ILLUSTRATIVE EXAMPLES OF GOVERNMENT OVER-REGULATION

**Azerbaijan:** In February 2013, the Parliament passed a series of amendments to ban cash donations and require organizations to register donations with the Ministry of Justice. There are increased penalties for NPOs that fail to register a grant, penalty for failure to include donation information in financial reports submitted to the ministry of finance, penalty for donors giving cash donations to an NPO, penalty for NPOs receiving cash donations, requirement that donations be paid by bank transfer, confiscation and a penalty for implementation of projects without a grant contract (parties must execute a written grant contract and register it with notarized signatures with the ministry). In an official justification to the proposed amendments, the drafters stated: *The main purpose of the draft is to ensure transparency in the reception and usage of voluntary donations by NPOs and religious organizations, as well to enforce international obligations of the Republic of Azerbaijan in the area of combating money-laundering.*<sup>2</sup>

**Bahrain:** Despite a relatively small NPO sector, Bahrain has an extensive regulatory framework governing it. In 2012, Bahraini officials began restricting the NPO operating environment as part of their efforts to meet international AML/CFT standards. The government called on NPOs and other local groups to comply with the regulations concerning receiving or sending funds overseas, which specify that sending or receiving funds from abroad requires the approval of the ministry.<sup>3</sup>

**Bangladesh:** In 2012, the Bangladeshi government initiated the process of establishing a new commission which would be responsible for bringing all non-governmental organizations under a single authority to hold them accountable and ensure transparency in their financial transactions. The commission would also draft a new law to regulate NPO activities, and be responsible for investigating

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<sup>2</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/azerbaijan.html>

<sup>3</sup> <http://gulfnews.com/news/gulf/bahrain/ngos-urged-to-comply-with-foreign-funds-rule-in-bahrain-1.1038199>



any allegations of *anti-state* activities or terror financing carried out by NPOs and other voluntary organizations. If enacted, the Foreign Donations (Voluntary Activities) Regulation Act would require organizations to register with the NGO Affairs Bureau and obtain prior approval to receiving foreign funds for any voluntary activity on a project-by-project basis.<sup>4</sup>

**Belarus:** Presidential Decree No. 24 introduced foreign funding restrictions. Under this decree, all foreign funding has to be registered and approved by the Department on Humanitarian Activities of the Property Management Department of the President. The procedure of approval is cumbersome; often guarantee letters are required from local authorities or other public authorities to support use of funding by NPOs to a certain local purpose. Only a limited list of purposes are allowed for gratuitous foreign assistance and liability for non-compliance with provisions of the decree include administrative and criminal measures. For example, in 2013, the pensioners' organization "Our Generation" was fined 5 million Belarusian roubles (500 USD) for the illegal use of foreign aid. Monthly reports on the use of foreign gratuitous aid are filed with the State Control Committee.<sup>5</sup>

**British Virgin Islands (BVI):** The Territory's Non-Profit Organisations Act of 2012 seeks to register and monitor the operations of all non-profit organizations in the BVI and it is linked to meeting the recommended standards of the FATF. Sections of the Act include: annual registration of all non-profit organizations and a high penalty for failing to register; and all donations and programme revenues to be individually entered on the annual reporting form. NPOs are subject to the requirements of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008, which requires NPOs to establish internal control systems, effect customer/donor due diligence measures, maintain proper records and provide appropriate AML/CFT training for employees and/or volunteers. These requirements should be contained within a comprehensive Compliance Manual including content more suitable for a financial institution such as a bank or trust company. NPOs with more than five employees are required to appoint a Money Laundering Reporting Office (MLRO) who is responsible for AML/CFT compliance. NPOs with five or fewer employees are exempt from the requirement to appoint a MLRO, however, the AML/CFT compliance functions must still be performed.<sup>6</sup>

**Egypt:** In 2014, Egypt amended its penal code to punish anyone who receives foreign funding or other support from a foreign source with the intent to harm the national interest, compromise national sovereignty or breach security of public space with life imprisonment. The law likewise imposes the same penalty on anyone who gives or offers such funds or facilitates their receipt. NGOs must register, and the government can deny them registration; the government may appoint a member to the Board of directors; and NPOs cannot receive foreign funds without approval from the government. In 2015, additional counterterrorism legislation was adopted that could be used to penalize civil society organizations for legitimate, peaceful activity. "Terrorist entities" are broadly defined in legislation to include "any association, organization, group or gang" that attempts to "destabilize the public order;

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<sup>4</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/bangladesh.html>

<sup>5</sup> See more at: <http://www.icnl.org/research/monitor/belarus.html>

<sup>6</sup> <http://www.bvifia.org/non-profit-organisations#sthash.UpXT9qYu.dpuf>

endanger the wellbeing or safety of society;... endanger social unity;... obstruct the work of public authorities, the judiciary, government entities, or local municipalities;... block public or private transportation, or roads; harm national unity or threaten national peace; or obstruct the implementation of the constitution or laws or bylaws..." According to local experts, the broad terms of the law's definitions could encompass, for instance, a human rights organization engaged in political advocacy or a student union that calls for peaceful protests. Under the law, when an organization is deemed a terrorist entity by a special judicial process, that organization is outlawed, its activities banned, and its financial assets frozen.<sup>7</sup>

**India:** Under the Foreign Contribution Regulation Act 2010 (FCRA), all NPOs in India, such as public charitable trusts, societies and Section 8 companies, wishing to accept foreign contributions must: a) register with the central government; b) agree to accept contributions through designated banks; and c) maintain separate books of accounts with regard to all receipts and disbursements of funds. NPOs are required to report the amount of the foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used. Funds collected by an Indian citizen in a foreign country on behalf of an NGO registered in India are considered foreign contributions. Based on the restrictive legislation, India has cancelled the registration of nearly 9,000 charities for failing to declare details of donations from abroad. A "cancellation order" issued by the home ministry states the government had cancelled the registration of 8,975 associations because they did not declare details of their foreign funding for three years starting from 2009/10.<sup>8</sup>

**Kenya:** Under the NGO Coordination Act, the Government may deny registration of societies on vague and ambiguous grounds. The Act is vague and ambiguous on a number of issues where wide discretion is given to the NGO Board and the Minister, such as, the certificate of registration for NGOs may contain terms and conditions as the NGO Coordination Board may prescribe. Under the Act, all non-profit organizations are required to furnish the NGO Board with bank statements of all the accounts they operate as well as the names of all the signatories. In 2015, three NGOs have been deregistered and barred from operating in the country after the sector regulator, the NGO Coordination Board, cancelled their licenses in the ongoing clampdown on civil society organizations accused of operating outside the law and financing terrorism.<sup>9</sup>

**Kosovo:** According to the 2010 Law No. 03L-196 on the Prevention of Money-Laundering and Terrorist Financing, an NGO shall not accept any contribution in currency in excess of € 1,000 from a single source in a single day. In addition, an NGO shall not disburse currency in excess of €5,000. NGOs seeking a one-time or recurring exemption from the obligations above may file a written request for exemption with the FIU setting forth the nature of the exemption sought and the reasons for it. The FIU

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<sup>7</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/egypt.html>

<sup>8</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/india.html>,  
<http://in.reuters.com/article/2015/04/28/india-charities-funding-idINKBN0NJ15J20150428>

<sup>9</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/kenya.html>,  
<http://www.nation.co.ke/news/NGOs-lose-licences-over-terrorism-claim/-/1056/2731888/-/3g9v0nz/-/index.html>

may decide to grant, conditionally grant, or deny the exemption. NGOs are required to maintain accounts that document all income and disbursements and submit an annual report. If the NGO violates these provisions the competent authorities may suspend or revoke the registration of the NGO.<sup>10</sup>

**Kyrgyzstan:** The Counteracting Terrorist Financing and Legalization of Proceeds from Crime Act was adopted in 2006 and amended in 2009 in accordance with the FATF's recommendations. There is a regulatory body developing rules on terrorist financing aimed at use by non-commercial entities and charitable operations. Charitable financial transactions are among those listed as subject to *compulsory control*.<sup>11</sup>

**Mexico:** The country enacted onerous rules on NPOs receiving foreign funding, including intrusive reporting requirements to the Government. The Anti-Money Laundering Law from 2012 requires foreign donors to Mexican NPOs to disclose personal data on executive personnel, including their home addresses, passport numbers, etc.<sup>12</sup>

**Pakistan:** In 2013, the Economic Coordination Committee approved a Policy for Regulation of Organizations Receiving Foreign Funds. NPOs must obtain advance government permission to receive foreign contributions, and the government may cancel certification of an NPO if it deems fit: NPOs are then banned for a period of 3 years. It was emphasized that Pakistan's AML/CFT legislation is continuously being aligned with international best practices. In addition, in 2015 the draft Foreign Contributions Act, 2014 (draft FCA), was put on the government's agenda, with the purported aim of preventing terrorist financing by regulating the foreign funding of domestic non-governmental organizations and international non-governmental organizations (INGOs).<sup>13</sup>

**Spain:** Spain approved Regulation of Act 10/2010 on Anti-Money Laundering and Counter-Terrorist Financing in 2014. The decree requires foundations and associations to identify and verify the identity of all persons who provide donations or resources of an amount equal to or greater than 100 euros. According to the legislation, associations and foundations must apply measures related to the operation of the governing board and the suitability of its members, the implementation of procedures to ensure the knowledge of their counterparts, the application of adequate systems to control the effective performance of its activities and the use of funds in accordance with provisions, the retention for a period of ten years of documents or records showing use of funds in different projects, and the obligation to inform the authorities of any fact that may constitute evidence or proof of laundering of capital and financing of terrorism, and to collaborate with the Commission and its support bodies.<sup>14</sup> In addition, the government has passed a law in 2015 reclassifying peaceful protest as a "threat to public security" and introducing fines up to €600,000 for those joining demonstrations near sensitive targets –

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<sup>10</sup> 2010 Law No. 03L-196 on the Prevention of Money-Laundering and Terrorist Financing

<sup>11</sup> <http://www.legislationline.org/documents/action/popup/id/6926>

<sup>12</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/mexico.html>

<sup>13</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/pakistan.html>

<sup>14</sup> Regulation of Act 10/2010 on Anti-Money Laundering and Counter-Terrorist Financing



including government buildings. The “unauthorized” use of images of security forces will also be fined, as well as a tweet containing a hashtag publicizing an unauthorized political event.<sup>15</sup>

**Sri Lanka:** The Parliament amended The Suppression of Terrorist Financing Act No 25, following an FATF assessment and a meeting in 2013. The updated law gives authorities the power to seize property and other assets of suspected terrorists without first obtaining a court order. A previous version of the law only applied to recognized terrorist groups and property in the country. After the amendment, the law has been expanded to include individuals suspected of being a terrorist and any kind of assets whether tangible or not in or outside of Sri Lanka, going further than the standards found in FATF policy. Freedom of expression is endangered by the volatile combination of a vague definition of terrorism and a narrow, technical approach to anti-terrorist financing laws. This can result in asset freezing and other sanctions imposed on NPOs or individuals for political reasons.<sup>16</sup>

**Turkey:** Certain provisions in the Anti-Terror Law (TMK) directly pertain to freedom of association. If an offense deemed linked to terrorist propaganda is committed within buildings, locales, offices or their annexes belonging to associations, foundations, political parties, trade unions or professional organizations or their subsidiaries, or within educational institutions, students’ dormitories or their annexes, the penalty will be doubled. This means that a person exercising their freedom of expression by voicing their opinion on a certain political matters at a location belonging, say, to an NGO will be subject to heavy penalties.<sup>17</sup>

**Uganda:** In 2014, the Parliament adopted the Anti-Money Laundering Act with broad provisions, which allow the government to monitor the assets and business transactions of individuals and organizations under the guise of *public interest*. This Act, coupled with the NGO Registration Act, allows the NGO Board to have enhanced scrutiny of NGOs and empowers the Board to de-register entities that violate “any law”. The Non-governmental Organisations (NGO) Bill adopted in 2015 grants the NGO Board broad powers to refuse to register an NGO, to issue permits with instructions that place conditions on the staffing of NGOs, and to restrict the employment of foreign nationals.<sup>18</sup>

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<sup>15</sup> <http://www.euroalter.com/2015/spanish-gag-law-is-against-european-values-and-basic-democratic-rights>

<sup>16</sup> Tamil Guardian, “Government to Close Bank Accounts of NGOs not Registered with MoD,” Tamil Guardian, July 10, 2014, accessed September 8, 2014, <http://www.tamilguardian.com/article.asp?articleid=11504>

<sup>17</sup> <http://www.reuters.com/article/2013/02/07/us-turkey-financing-law-idUSBRE91614K20130207>

<sup>18</sup> ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/uganda.html>