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# ILLUSTRATIVE LIST OF OVERREGULATION OF NON PROFIT ORGANIZATIONS

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The following list aims to categorize the various types of overregulation that NPOs encounter, which has resulted from or may have resulted from the misinterpretation and/or misuse of the application of the Financial Action Task Force (FATF) regime, with a focus on Recommendation 8. It serves for illustrative purposes only as we continue to conduct further research to verify reports, document more examples of overregulation and understand their link to the FATF. Therefore, this list will be updated continuously to include accurate and recent information to the extent possible. For further details, please contact Vanja Skoric, ECNL Senior Legal Advisor at [vanja@ecnl.org.hu](mailto:vanja@ecnl.org.hu)

## ***I. LIMITATION TO THE RIGHT TO ENTRY***

### **Severe registration requirements**

Some countries have introduced burdensome registration requirements for NPOs. This may include overly-complicated registration procedures, arbitrary denial of registration, annual registration, a ban on registration, and others. For example:

- The Non-Profit Organizations Act of 2012 in the **British Virgin Islands** requires the annual registration of all NPOs and imposes a high penalty for failing to register. The Act states that the non-profit organization regime was evaluated as not being at the desired level by the Caribbean FATF assessment<sup>1</sup>. Therefore, the Minister for Health and Social Development believed that adopting the Act would make the country more compliant with FATF standards.

## ***II. LIMITATION TO THE RIGHT TO OPERATE FREE FROM UNWARRANTED STATE INTERFERENCE***

### **Severe internal governance requirements**

Some countries have introduced provisions that interfere with the freedom of founders and members to regulate the organization's internal governance, especially in the case of organizations that receive foreign funding. For example:

- In **Bangladesh**, foreign-funded NPOs registered with the NPO Affairs Bureau would be required to establish a board of directors with at least 7 members and a general board consisting of 21

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<sup>1</sup> Objects and reasons of the Non-Profit Organizations Act.



members in the event that the recently-approved Foreign Donations (Voluntary Activities) Regulation Act (FDRA) is enacted. The draft Act seeks to “eliminate militant and terror financing and ensure a terrorism-free Bangladesh by 2021.”<sup>2</sup>

- In **Pakistan**, the Economic Coordination Committee of the Cabinet approved a policy in November 2013 for the regulation of organizations receiving foreign contributions that aims to ensure the transparent utilization of funds and streamline the activities of NPOs. Foreign and foreign-funded NPOs have to register with the government and sign a Memorandum of Understanding in which they commit to not employing more than 10 percent foreign national staff and ensuring Pakistani nationals are given preference for key positions.<sup>3</sup>

### Severe reporting requirements

Several countries introduced burdensome reporting requirements for NPOs and high penalties for non-compliance, including special staff responsible for AML/CFT compliance, detailed activity reporting and assessment of work, compulsory annual auditing, and others. For example:

- In the **British Virgin Islands (BVI)**, all nonprofit organizations are required to complete a detailed annual reporting form, which includes submission of full financial information on revenue and expenditure, including an itemization of wages, salaries paid by the organization. The BVI does not impose similar reporting requirements on all businesses in the territory. Furthermore, a nonprofit with more than five employees must appoint a Money Laundering Reporting Officer who is responsible for AML/CFT compliance. NPOs with five or fewer employees must have someone to perform the AML/CFT compliance. Fines range from \$3,000-\$30,000 (including up to \$10,000 for “failure to maintain any records required to be maintained”).
- In **Cambodia**, according to Prime Minister Hun Sen, the purpose of the Law on Associations and Non-Governmental Organizations (LANGO), adopted by the National Assembly in July 2015, is to prevent terrorist financing.<sup>4</sup> According to the law, which will mandate registration of NPOs, either the Ministry of Economy and Finance or the National Audit Authority may conduct an audit or examination of an association or non-governmental organization “in case[s] of necessity.”<sup>5</sup> Furthermore, the LANGO requires all NPOs to submit annual financial reports to the government.<sup>6</sup>

### Competences of authorities defined very broadly

Given that competences of authorities are defined very broadly within the law, this allows for different interpretations when it comes to inspecting NPOs and asking for information. For example:

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

<sup>3</sup> Point 4.4. of the Memorandum of Understanding of the Policy for regulation of organizations receiving foreign contributions. Available at: <http://www.icnl.org/research/library/files/Pakistan/policy.pdf> Currently the Pakistan laws affecting especially foreign NPOs and INGOs are under review – for updates please see ICNL NGO Law Monitoring Pakistan <http://www.icnl.org/research/monitor/pakistan.html>

<sup>4</sup> <https://www.cambodiadaily.com/news/hun-sen-touts-ngo-law-as-bulwark-against-terrorist-financing-81441/>

<sup>5</sup> Republic of Cambodia, Law on Associations and Non-governmental Organizations, Article 25(4).

<sup>6</sup> Republic of Cambodia, Law on Associations and Non-governmental Organizations, Article 27.



- In **Uganda**, the broad provisions of the Anti-Money Laundering Act 2014 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 NPO Registration Act that would allow the NPO Board to have enhanced scrutiny of NPOs and empower the Board to de-register entities that violate “any law”.<sup>7</sup>
- In **Sri Lanka**, the Foreign Minister presented amendments to the laws to combat terrorist financing and money laundering in order to strengthen the capacity of the investigating law enforcement and judicial authorities, and to harmonize them with internationally-accepted standards against money laundering and the financing of terrorism.<sup>8</sup>

### **III. LIMITATIONS TO THE ABILITY TO SEEK AND SECURE RESOURCES**

#### **Thresholds on the amount of funding that can be received or disbursed**

In **Kosovo**, according to the Law on the Prevention of Money Laundering and Terrorist Financing, NPOs are not allowed to receive or disburse payments beyond quite low thresholds: 1,000 EUR from a single source or 5,000 EUR to a single recipient, in a single day. NPOs seeking a one-time or recurring exemption have to file a written request with the Financial Intelligence Unit.<sup>9</sup> Failure to respect these restrictions is considered a criminal offence and is punishable by imprisonment of up to two years. Business entities regulated under this law are not subject to this requirement.

#### **Prior registration or government approval to receive foreign funding**

- In **Azerbaijan**, the government has imposed the grant registration requirement with the Ministry of Justice in order to help “enforce international obligations of the Republic of Azerbaijan in the area of combating money laundering.” The grant contract must be concluded in written form, the signatures of the parties must be notarized, and the contract must be translated into Azeri in order to be registered with the Ministry of Justice.<sup>10</sup>
- In **Bangladesh**, if enacted, the Foreign Donations (Voluntary Activities) Regulation Act would require organizations to register with the NPO Affairs Bureau and obtain prior approval to receive foreign fund for any voluntary activity on a project-by-project basis.<sup>11</sup>
- In January 2015, the government of **Pakistan** launched a National Action Plan against terrorism.<sup>12</sup> Pursuant to this National Action Plan, the Securities and Exchange Commission of

<sup>7</sup> [https://www.bou.or.ug/opencms/bou/bou-downloads/acts/supervision\\_acts\\_regulations/FI\\_Act/The-Anti-money-Laundering-Act-2013.pdf](https://www.bou.or.ug/opencms/bou/bou-downloads/acts/supervision_acts_regulations/FI_Act/The-Anti-money-Laundering-Act-2013.pdf)

<sup>8</sup> [http://www.colombopage.com/archive\\_15A/Mar18\\_1426687569CH.php](http://www.colombopage.com/archive_15A/Mar18_1426687569CH.php)

<sup>9</sup> Republic of Kosovo, Law No. 03/L-196 On the Prevention of Money Laundering and Terrorist Financing, Article 24.

<sup>10</sup> ICNL, NPO Law Monitor, available at: <http://www.icnl.org/research/monitor/azerbaijan.html>

<sup>11</sup> ICNL, NPO Law Monitor, available at: <http://www.icnl.org/research/monitor/bangladesh.html>

<sup>12</sup> <http://cpakgulf.org/2015/01/the-national-action-plan-an-over-view/>



Pakistan issued Circular No. 02/2015, stating that it will subject all not-for-profit companies<sup>13</sup> registered under Section 42 of the Companies Ordinance to a license re-validation/renewal process to ensure they are not engaged in terrorist financing, including confirming that income and profits “are applied solely towards the promotion of the objects for which the association was formed.”<sup>14</sup> The subsequent Circular No. 04/2015 laid out the requirements of the license renewal process, which is to include details of local and foreign donations and grants received during the past five years, as well as an affidavit by the director/s and chief executive/s affirming that they are not associated with money laundering and terrorist financing.<sup>15</sup>

- In **Sri Lanka**, the government announced in July 2014 that it was drafting a law requiring all NPOs to register with the Ministry of Defense in order to be eligible to receive international funding.<sup>16</sup>

### Limitations on the form of donation

Country legislation may set restrictions on cash donation and only allow bank transfers as a result of overregulation resulting from the FATF standards. For example:

- In **Azerbaijan**, cash donations (both giving and receiving) are banned and it is a general requirement to receive donations by bank transfer, unless it is a NPO whose primary statutory goal is charity and it receives cash of an amount less than 200azn (\$255).<sup>17</sup>

### Requirement to identify donors

- The Anti-Money Laundering Law requires foreign donors to **Mexican** NPOs to disclose personal data. Foundations are required to provide their by-laws as well as the personal identification information of their legal representatives.<sup>18</sup>
- In **Spain**, foundations and associations are required to identify and verify the identity of all persons who provide donations or resources of an amount equal to or greater than 100 Euros, as well as to retain records with the identification of those donors.<sup>19</sup>

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<sup>13</sup> According to Section 42 of the Companies Ordinance of 1984, a not-for-profit company is an association capable of being formed as a limited company ... to be formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful object, and applies or intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members...”

<http://www.bu.edu/bucflp/files/2012/01/Companies-Ordinance-of-1984.pdf>

<sup>14</sup> [http://www.secp.gov.pk/circulars/pdf/Cir\\_2015/Cir02\\_LicensesRenewalSec42.pdf](http://www.secp.gov.pk/circulars/pdf/Cir_2015/Cir02_LicensesRenewalSec42.pdf)

<sup>15</sup> [http://www.secp.gov.pk/circulars/pdf/Cir\\_2015/Cir04\\_LicenseRenewal.pdf](http://www.secp.gov.pk/circulars/pdf/Cir_2015/Cir04_LicenseRenewal.pdf) Currently the Pakistan laws affecting especially foreign NPOs and INGOs are under review – for updates please see ICNL NGO Law Monitoring Pakistan

<http://www.icnl.org/research/monitor/pakistan.html>

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

<sup>17</sup> ICNL, NPO LAW MONITOR, AVAILABLE AT: <HTTP://WWW.ICNL.ORG/RESEARCH/MONITOR/AZERBAIJAN.HTML>

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

<sup>19</sup> Regulation of Act 10/2010 on Anti-Money Laundering and Counter-Terrorist Financing, <http://globalcompliance.com/spain-new-aml-decree-20141105/>

### Onerous reporting requirements and fines

- In **Azerbaijan**, NPOs and representative and branch offices of foreign NPOs are subject to fines of 5000–8000azn (\$6370–10200) for failure to include information about the amount of the donation and the donation's source in financial reports submitted to the Ministry of Finance. For NPO managers, the penalty is 1500–3000azn (\$1900–3800).
- In **Pakistan**, foreign and foreign-funded NPOs registered with the government have to declare all foreign contributions and get their accounts annually audited by a registered chartered accounting firm. In addition, they need to submit independent or third party evaluations annually, including quantitative and qualitative assessments of their work, to the government – national, provincial and local – informing them about their ongoing programmes in that area.<sup>20</sup>

### Broad discretion to seize NPO assets

In some cases, the anti-money laundering legislation provides overly broad discretion to seize the property of NPOs without a prior court order. For example:

- In **Turkey**, the Law on Financing of Terrorism allows alleged terrorist assets to be seized without obtaining a judge's ruling.<sup>21</sup> Opposition lawmakers fear the law could be used to wrongly label people as terrorists and freeze the assets of innocent groups or individuals.
- In **Sri Lanka**, the Suppression of Terrorist Financing Act No 25 of 2005 gives authorities the power to seize property and other assets of suspected terrorists without first obtaining a court order.<sup>22</sup>

## IV. LIMITATION TO THE RIGHT TO COMMUNICATION AND COOPERATION

The implementation of FATF standards may limit the right to freedom of expression. For example:

- In **Turkey**, under the Anti-Terror Law, if terrorist propaganda is suspected to have been spread within the buildings, premises, offices or extensions belonging to associations and foundations, the penalty will be doubled.<sup>23</sup> Through such a restriction under the law, NPOs are almost forced to be silent in political matters.

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<sup>20</sup> Article 8 and 9 of the Policy for regulation of organizations receiving foreign contributions, points 4.16 and 4.18 of the Memorandum of Understanding of the Policy for regulation of organizations receiving foreign contributions. Currently the Pakistan laws affecting especially foreign NPOs and INGOs are under review – for updates please see ICNL NGO Law Monitoring Pakistan <http://www.icnl.org/research/monitor/pakistan.html>

<sup>21</sup> <http://www.reuters.com/article/2013/02/07/us-turkey-financing-law-idUSBRE91614K20130207>

<sup>22</sup> [http://fiusrilanka.gov.lk/docs/ACTs/CSTFA/Convention\\_on\\_the\\_Suppression\\_of\\_Terrorist\\_Financing\\_Act\\_2005-25%28English%29.pdf](http://fiusrilanka.gov.lk/docs/ACTs/CSTFA/Convention_on_the_Suppression_of_Terrorist_Financing_Act_2005-25%28English%29.pdf)

<sup>23</sup> Article 7(3) of the Anti-Terror Law; see also GÖKÇEÇİÇEK AYATA and ULAŞ KARAN: Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendations, February 2014 ([http://www.tusev.org.tr/userfiles/files/LegalFrameworkReport\\_website.pdf](http://www.tusev.org.tr/userfiles/files/LegalFrameworkReport_website.pdf))





## V. *LIMITATION TO THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY*

Overregulation resulting from the FATF standards may limit the right to freedom of peaceful assembly. For example:

- In **Brazil**, a proposed law on “terrorism” and “disorder” was discussed which would limit freedom of expression and assembly. The proposed law PL 499/2013 would create the crime of “terrorism” and had vague definitions, which could be used to criminalize protests.
- In **Turkey**, the Anti-Terror Law provides for a one- to five-year prison sentence for anyone “who conceals or partially conceals their face during a demonstration or public assembly that turns into propaganda for a terrorist organization.” In December 2014, the government proposed the amendment of this provision of the Anti-Terror Law to include increased penalties for engaging in violent protest or protest deemed to be “propaganda for terrorist organizations.”<sup>24</sup>

## VI. *CRIMINAL AND CIVIL SANCTIONS*

- The Criminal Code of **Kazakhstan** deems being a “leader of a public association,” rather than a business or other legal entity, as an aggravating factor leading to greater penalties in a number of crimes, including “[p]ropaganda of terrorism or extremism.”<sup>25</sup>
- In practice, the **United States** has exhibited harsher treatment of NPOs than business for the same violation of the Anti-Terrorism Act, which prohibits “knowingly provid[ing] material support,” including funding, to US-designated terrorist organizations.<sup>26</sup> In March 2007, Chiquita Brands International was only issued with a fine for knowingly making direct payments to terrorists for protection from violence in Colombia, while since 2001 nine US charities have been shut down for similar alleged violations, even with reportedly fewer funds for terrorist financing being involved.<sup>27</sup>

### **POSSIBLE NEW ENTRIES:**

- The Environment Law Clinic in **Canada** has released a report calling for sweeping modernization of Canadian charitable law. It found that the current rules around “political activity” — defined by Canada Revenue Agency as any activity that seeks to change, oppose or retain laws or policies — are ambiguous and confusing and the penalties for breaking the rules are too harsh. The report also

<sup>24</sup> ICNL, NPO Law Monitor, available at: <http://www.icnl.org/research/monitor/turkey.html>

<sup>25</sup> Criminal Code of Kazakhstan, Article 254

<sup>26</sup> 18 U.S.C. § 2339B

<sup>27</sup> [http://www.charityandsecurity.org/news/Chiquita\\_Banana\\_Fined\\_Not\\_Shut\\_Down\\_Transactions\\_Designated\\_Terrorists](http://www.charityandsecurity.org/news/Chiquita_Banana_Fined_Not_Shut_Down_Transactions_Designated_Terrorists)



highlights the potential for political interference with the tax auditing of charities and calls for the creation of an independent Canadian Charities Commission.

- A counterterrorism draft law of 2014 in **France** would provide overly broad and vague powers that would breach rights to free movement and expression, The law would allow the government to ban French nationals from leaving the country on very broad grounds that could breach their right to free movement under international human rights law.
- Foreigners intending to work in non-government organizations (NGOs) in **India**, carry out research work on human rights and environment issues will have to face stricter scrutiny of their visa applications, according to the new proposal. Home Ministry has justified it by stating that many foreigners come to India on Tourist Visa and later get involved in research works and NGOs dealing with environment and human rights issues.
- In November 2014, **Tajikistan** initiated amendments to the Law on Public Associations in response to recommendations from the Financial Action Task Force (FATF). The Law would require NPOs to register all aid in a special registry, possibly requiring government approval.
- **Egypt's** cabinet on July 2015 approved new anti-terror legislation with proclaimed aim to "dry up sources of funding for terrorism", however, it considerably limits freedom of expression. For example, it penalizes individuals who publish "false news" or data contradicting official government statements on terrorist attacks.

*Has your organization or others you know of experienced difficulties or constraints in its work due to restrictions justified by the FATF counterterrorism measures? Please [let us know!](#)*

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