



ILLUSTRATIVE LIST OF OVERREGULATION OF NGOS

For discussion at ICNL's Global Forum 2015

The following list aims to categorize the various types of overregulation that NGOs encounter, which have been or may have been a result of the misinterpretation and misuse of the application of the Financial Action Task Force (FATF) regime, with focus on Recommendation 8. We continue to document more examples of overregulation and understand its link to the FATF regime.

I. Violation of the right to entry

Severe registration requirements

Some countries introduced burdensome registration requirements for NGOs. This may include overly complicated registration procedure, arbitrary denial, annual registration, ban on registration and others. For example:

- The Non-Profit Organizations Act of 2012 in the **British Virgin Islands** requires annual registration of all NGOs and impose high penalty for failing to register. The Act states that the non-profit organizations regime was evaluated not to be at the desired level by the Caribbean FATF assessment¹. Therefore, the Minister for Health and Social Development believed that adopting the Act would make the country more compliant with the FATF standards.

II. Violation of the Right to Operate Free from Unwarranted State Interference

Severe internal governance requirements

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

- In **Bangladesh**, foreign funded NGOs registered with the NGO Affairs Bureau would be required to establish a board of directors with at least 7 members and a general board consisting of 21 members in case 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."²
- In **Pakistan**, the Economic Coordination Committee of the Cabinet approved a Policy for regulation of organizations receiving foreign contributions in November 2013 that aims to ensure transparent utilization of funds and streamline activities of the NGOs. Foreign and foreign-funded NGOs shall register with the Government and sign a Memorandum of Understanding in which they commit not to employ more than 10 percent of foreign national staff and give preference to Pakistan nationals for key positions.³

¹ Objects and reasons of the Non-Profit Organizations Act.

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

³ 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>



Severe reporting requirements

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

- In **British Virgin Island**, 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 **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 NGOs registered with the government shall declare all foreign contributions and get their accounts annually audited by a registered chartered accounting firm. In addition, they shall annually submit independent or third party evaluation, including quantitative and qualitative assessment of their work to the Government, Provincial Government and local government and inform them about their programs in their area.⁴

Broad competence for the authorities to inspect NGOs

Some legislation allows broad competence for the authorities to inspect NGOs and ask for information. For example:

- 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 NGO Registration Act that would allow the NGO Board to have enhanced scrutiny of NGOs and empower the Board to de-register entities that violate “any law”.⁵
- In **Sri Lanka**, Foreign Minister presented amendments to the laws to combat terrorist financing and money laundering in order to strengthen the capacity of the law enforcement and judicial authorities responsible for investigating money laundering and terrorist financing in harmony with internationally accepted standards against money laundering and the financing of terrorism.⁶

⁴ 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

⁵ https://www.bou.or.ug/opencms/bou/bou-downloads/acts/supervision_acts_regulations/FI_Act/The-Anti-money-Laundering-Act-2013.pdf

⁶ http://www.colombopage.com/archive_15A/Mar18_1426687569CH.php



III. Violation of the Right to Seek and Secure Resources

Strict requirements to receive donation from any resources

In most cases, the countries introduce limitations specifically on foreign funding but there are examples of strict requirements to receive donation from both foreign and domestic resources, too. For example:

- In **Kosovo**, NGOs are not allowed to receive or disburse payments beyond quite low thresholds (1,000 EUR, respectively 5,000 EUR from a single source/recipient in a single day). NGOs seeking a one-time or recurring exemption may file a written request with the Financial Intelligence Unit. Failure to respect these restrictions is considered a criminal offence and is punished by imprisonment of up to 2 years.⁷

Limitations on foreign funding

In a number of countries, the inflow of cross-border philanthropy is constrained as a result of counterterrorism and anti-money laundering measures.

Prior registration or government approval to receive foreign funding

- In **Azerbaijan**, the government 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.⁸
- In **Pakistan**, any organization registered outside Pakistan or any domestic organization willing to utilize foreign assistance will need prior registration with the Economic Affairs Division.⁹
- In **Bangladesh**, 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 fund for any voluntary activity on a project-by-project basis.¹⁰
- In **Sri Lanka**, the government announced in July 2014 that it was drafting a law requiring all CSOs to register with the Ministry of Defense in order to be eligible to receive international funding.¹¹

⁷ 2010 Law No. 03L-196 on the Prevention of Money-Laundering and Terrorist Financing

⁸ ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/azerbaijan.html>

⁹ Policy for regulation of organizations receiving foreign contributions

¹⁰ ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/bangladesh.html>

¹¹ 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>



Notification requirement to receive foreign funding

- In **Turkey**, associations and foundations may receive monetary or in-kind aid from abroad provided they declare this to the local administrative authority beforehand. The numerous documents required for the declaration of funds create an unnecessary workload.¹²

Limitations on the form of donation

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

- In **Azerbaijan**, cash donations (both to give and receive) are banned and it is a general requirement to receive donation by bank transfer, unless it is a NPO whose primary statutory goal is charity and it receives cash in an amount less than 200azn (\$255).¹³

Requirement to identify the donors

- In **Spain**, foundations and associations are required to identify and verify the identity of all persons who provide donations or resources in an amount equal to or greater than 100 Euros.¹⁴
- The Anti-Money Laundering Law requires foreign donors to **Mexican** NPOs to disclose personal data. Foundations will be required to provide their by-laws as well as the personal identification information of their legal representatives.¹⁵

Broad discretion to seize NGO assets

In some cases, the anti-money laundering legislations provide overly broad discretion to seize the property of NGOs without 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.¹⁶ 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.¹⁷

¹² GÖKÇEÇİÇEK AYATA and ULAŞ KARAN: Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendation. (Under publication)

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

¹⁴ Regulation of Act 10/2010 on Anti-Money Laundering and Counter-Terrorist Financing from 2014, <http://globalcompliance.com/spain-new-aml-decree-20141105/>

¹⁵ ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/mexico.html>

¹⁶ <http://www.reuters.com/article/2013/02/07/us-turkey-financing-law-idUSBRE91614K20130207>

¹⁷ <http://fiusrilanka.gov.lk/docs/ACTs/CSTFA/Convention on the Suppression of Terrorist Financing Act 2005-25%28English%29.pdf>



IV. Violation of the Right to Communication and Cooperation

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

- In **Turkey**, if the offense of terrorist organization propaganda is committed within the buildings, premises, offices or extensions belonging to associations and foundations, the penalty will be doubled.¹⁸ Through such a restriction of the Anti-Terror Law, NGOs are almost forced to be silent in political matters. It has been stated that the vagueness and obscurity in the definition of a terrorist organization in the law leads to the restriction of freedom of association.¹⁹

V. Violation of the Right to Freedom of Peaceful Assembly

The overregulation of the FATF standards may limit the right to freedom of peaceful assembly, too. For example:

- 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.”²⁰
- In **Brazil**, a proposed law on “terrorism” and “disorder” was discussed which would have limited freedom of expression and assembly. The proposed law PL 499/2013 created the crime of “terrorism” and had vague definitions which could have been used to criminalize protests.

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!](#)

For more information, reports and resources, visit our <http://fatfplatform.org/> and follow us on Twitter: NonProfits on FATF @fatfplatform

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This paper is produced under the project: “Standing up Against Counter-Terrorism Measures that Constrain Civic Space”. The project is supported in part by the grant from the Open Society Human Rights Initiative”



¹⁸ Article 7(3) of the Anti-Terror Law

¹⁹ Turkey, ICCPR, CCPR/C/TUR/CO/1, para 16-19.

²⁰ ICNL, NGO Law Monitor, available at: <http://www.icnl.org/research/monitor/turkey.html>