

## COMMENTS: RWANDA

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# On the compliance of Rwanda's Law Governing NGOs, No. 058/2024 with AML/CFT and human rights standards

## Executive Summary

ICNL is pleased to submit these comments on Rwanda's Law governing Non-Governmental Organizations, 058/2024 ("the Act"), which was signed into law on June 20 and published in the gazette on July 19 to commence operation. The law determines the establishment, organization and functioning of Non-Governmental Organizations (NGOs) in Rwanda (both national and international NGOs). It repeals two previous laws: (i) *Law governing the organization and functioning of national non-governmental organizations, 04/2012*; and (ii) *Law governing the organization and functioning of international non-governmental organizations, 05/2012*.

The assented version largely mirrors the bill that was adopted by Parliament on May 30, 2024, but with some minor edits.<sup>1</sup> More concerning is that several restrictions that were previously raised by Non-Governmental Organizations (NGOs), human rights mechanisms and development partners have been maintained, posing a risk of overregulation of the NGO sector.<sup>2</sup>

As the UN mandate holders noted in their [joint open letter](#) on this law, several provisions are inconsistent with Rwanda's human rights obligations and will significantly impede the ability of NGOs to operate and exist.<sup>3</sup> This analysis reviews the Act to assess its compliance with Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT) standards and potential consequences going forward.

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<sup>1</sup> ICNL produced comments on the initial version of the NGO Bill introduced in parliament in May 2024 and updated comments relating to the version that parliament ultimately adopted in June 2024. The most significant change in the assented law relates to the definition of a "national non-governmental organization", that means an organization composed of physical persons or organisations **with a certificate of registration...** instead of "certificate of legal personality" as previously stated in the Bill. This is confusing and contradicts Article 19 that refers to a certificate of legal personality for registration of national NGOs.

<sup>2</sup> These include: mandatory registration and burdensome requirements for documentation; broad grounds for denial of registration without providing for judicial appeal; broad oversight powers of the Broad to interfere in NGO internal matters to approve changes to NGO objectives, names, statutes and leaders; monitor and evaluate NGOs or request audits; broad prohibitions on NGO activities and operational restrictions; onerous reporting obligations; excessive oversight on International NGOs' activities; broad and vague grounds for suspending NGOs.

<sup>3</sup> See, Open Letter, Ref.: OL RWA 3/2024, 26 June, 2024, accessible here [OL RWA \(3.2024\) \(ohchr.org\)](#).

This analysis will support further engagement by the Rwanda Governance Board with the Rwandan government peers, the diplomatic community, and international mechanisms to promote reforms to the law in the longer term. It also aims to ensure that the implementation of the law complies with international best practice to the extent possible, as immediate reforms to the law are unlikely.

## International Law

### ANTI MONEY-LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AML/CFT) STANDARDS – STATE OBLIGATIONS

The Financial Action Task Force (FATF) is an inter-governmental organization that sets standards for legal and regulatory measures to counter money laundering (ML), terrorist financing (TF), and the proliferation of weapons of mass destruction. The FATF’s Recommendation 8 (R8) provides guidance for states to address risks of TF abuse in the non-profit sector.

More specifically, governments must (i) identify the organizations that fall within the FATF definition of non-profit organizations (NPOs), (ii) apply focused, proportionate and risk-based measures to protect them from TF abuse, and (iii) ensure that measures do not unduly disrupt or discourage legitimate NPO activities in line with the risk-based approach.

FATF explains that in the context of R8, an “NPO” is a legal entity or organization that primarily engages in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works.”<sup>4</sup> Thus, the FATF does not consider R8 to apply to the entire non-profit sector. Rather, the FATF explains that countries must undertake a “risk-based” approach to regulating those NPOs that meet the FATF definition. In the Rwandan context, the Act refers to NGOs more broadly, not all of whom fall within the FATF definition of an NPO and R8 requirements.

A “risk-based approach” requires countries to identify the types of organizations most at risk for TF (a subset of NPOs, as defined for FATF purposes), and adopt targeted measures to address these specific risks, rather than broadly monitoring and restricting all NPOs. The FATF explicitly revised R8 in 2016 to counter the trend of overbroad restrictions on the non-profit sector due to anti-money laundering and anti-terrorism policies. FATF further revised R8 in November 2023 to clarify that governments must **(i) identify the organisations which fall within the FATF definition of NPOs and assess their terrorist financing risks**, (ii) apply focused, proportionate **and risk-based** measures to protect them from TF abuse, **and (iii) not unduly disrupt or discourage legitimate NPO activities** [the bolded language reflects new language in R8].

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<sup>4</sup> See, revised FATF R8, and its Interpretative Note, page 65.

The FATF went further to remove the requirement to review the adequacy of the NPO laws and regulations governing these NPOs.

Several international mechanisms have emphasized that AML/CFT measures must not unduly restrict NPOs' work.<sup>5</sup>

#### THE RIGHT TO THE FREEDOM OF ASSOCIATION

The FATF stresses that AML/CFT measures should not contravene a country's human rights obligations and should respect fundamental rights, such as freedom of peaceful assembly and of association.<sup>6</sup>

Article 22 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to the freedom of association.<sup>7</sup> Any restrictions on the right to freedom of association must be (1) prescribed by law, (2) necessary in a democratic society, and (3) in furtherance of at least one of four clearly-defined interests: national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. These limited circumstances must be "construed strictly; only convincing and compelling reasons justify restrictions on...freedom of association."<sup>8</sup>

To meet the ICCPR's requirement that a restriction be "prescribed by law," the restriction must be sufficiently precise to enable an individual or NPO to assess whether their intended conduct would be in breach of the law, and to foresee the likely consequences of any such breach.<sup>9</sup> To meet the requirement that a restriction be "necessary in a democratic society," the restriction must be proportionate to one of the legitimate aims enumerated above. A restriction is proportionate where it is the least restrictive means required to achieve the purported aim.<sup>10</sup>

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<sup>5</sup> See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/61/267 (2007), para 70; UN General Assembly Resolution 76/169 on Terrorism and Human Rights, A/RES/76/169, 7 January 2022, urges States to safeguard the work of civil society by ensuring that counter-terrorism laws and measures are consistent with and are applied in a manner that fully respects human rights, particularly the rights to freedom of expression, peaceful assembly and association; para 15. UN Human Rights Council resolution, A/HRC/RES/51/24, 7 October 2022, para 36.

<sup>6</sup> The updated FATF Best Practice Paper on combating TF abuse of NPOs (November 2023) states that implementation of R8 should respect and observe fundamental human rights and freedoms, such as freedom of opinion, expression, religion or belief, and freedom of peaceful assembly and of association; see, Best Practices Paper, para 47

<sup>7</sup> Rwanda acceded to the ICCPR in 1975.

<sup>8</sup> *Sidirouopoulos v. Greece*, 4 Eur. Ct. H.R. 500 (1998); *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998); *Socialist Party and Others v. Turkey*, Application No. 21237/93 (1998), para. 50. See also *Freedom and Democracy Party v. Turkey*, Application No. 23885/94 (1999); *Refah Partisi (The Welfare Party), Erbakan, Kazan, and Tekdal v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (2001).

<sup>9</sup> *Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai*, U.N.DOC A/HRC/20/27 (2012), at para. 16.

<sup>10</sup> *Id.* at para. 17.

The African Charter on Human and Peoples' Rights (ACHPR) similarly protects the right to associate.<sup>11</sup> In its *Guidelines on Freedom of Association and Assembly in Africa* (ACHPR Guidelines on FOAA), the African Commission on Human and Peoples' Rights (African Commission) has clarified that the ACHPR requires that restrictions on the right to association meet the same conditions prescribed under the ICCPR.<sup>12</sup>

## Analysis

### POSITIVE ELEMENTS

The Act contains some positive measures that comply with AML/CFT obligations. These include:

- (i) Recognizing the right of an NGO to provide input on laws and policies, promote and protect rights, enter into agreements (Article 8);
- (ii) Empowering an NGO to carry out commercial activities (Article 10); and
- (iii) Acknowledging the autonomy of an NGO (Article 5).

### GAPS IN COMPLIANCE WITH AML/CFT STANDARDS

#### 1. LACK OF A SECTOR RISK ASSESSMENT PROCESS

**ISSUE 1.1:** The Community of Democracies Working Group on Enabling and Protecting Civil Society in its Call for Action on the draft NGO law (June 2024), called on the GoR, “to ensure that any bills or regulations it seeks to enact are supported by a fact-based understanding of risks facing the Non-Profit Organizations (NPO) sector.” To date, there is no evidence showing that the Government of Rwanda (GoR) has conducted a risk assessment that determines risk in the NPO sector.<sup>13</sup> FATF R8 requires States to understand and mitigate TF risks for the NPO sector. Procedurally, it is best practice for the government to first undertake a comprehensive NPO sector risk assessment with the full collaboration of the non-profit sector before regulating the sector for AML/CFT purposes. UN Security Council Resolution 2462 (2019) also calls on States to periodically conduct a risk assessment of their non-profit sectors or update existing ones to determine the organizations at risk of TF and to inform the implementation of a risk-based approach.<sup>14</sup> By introducing AML/CFT legislation that

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<sup>11</sup> ACHPR, art. 10. Rwanda ratified the ACHPR in 1983.

<sup>12</sup> See African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa* (“ACHPR Guidelines on FOAA”), para. 24, available at <http://www.achpr.org/instruments/freedom-association-assembly/>.

<sup>13</sup> In the 2018 report, the FATF-style regional body, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) noted that the process of National Risk Assessment was still in progress and would cover the NPOs, to guide the Rwanda Governance Board in the process of screening the NPOs. However, no information has been shared publicly on the status of this process, whose outcomes can facilitate GoR to put in place targeted measures to mitigate TF abuse in the sector.

<sup>14</sup> UN Security Council Resolution, 2462 (2019), S/RES/2462 (2019), 28 March 2019

is not informed by a risk assessment and applying the law broadly across the sector rather than targeting NPOs at risk, the GoR fails to comply with R8. This approach could subject NPOs that are not at risk of TF to over-regulation; it could also waste government resources required to monitor and evaluate organizations that are not actually at risk for TF abuse.

**BEST PRACTICE RECOMMENDATION:** The GoR should conduct a sectoral risk assessment in collaboration with the sector to identify NPOs (as defined for FATF purposes) that are at risk of TF abuse.<sup>15</sup> After this, the government can safely proceed to apply focused and proportionate measures specifically to those NPOs. Measures can include outreach and awareness-raising and introducing legislation specifically to address the vulnerability for those specific NPOs, rather than the NGO sector at large. The GoR should assess any self-regulatory measures and internal control measures in place within NPOs that could sufficiently mitigate any TF risks to avoid additional measures.<sup>16</sup> Any measures taken by a government must not unduly disrupt or discourage legitimate NPO activities.

## 2. BROAD AND VAGUE DEFINITION OF TERRORISM

**ISSUE 2.1:** The term ‘support ...terrorist activities’ used in Article 12(1)(f) is too broad and undefined under the Act, which leaves it open to wide interpretation by authorities in violation of the legal certainty principle for permissible restrictions. As noted by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in the absence of a definition of terrorism, words or expressions that leave much leeway for interpretation, such as “supports”, “involved in” or “is associated with”, may be used to list groups or entities improperly. The UN Special Rapporteur on peaceful assembly and association has also noted that vague and broad definitions of terrorism, or the absence of such a definition, inhibit the work of associations that do not pursue terrorist tactics.<sup>17</sup>

**BEST PRACTICE RECOMMENDATION:** Clarify the definition of ‘terrorist activities’ in the Act. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has emphasized that at the national level, a definition of terrorism should include **three cumulative elements** — the **aim, the purpose and the means**, with an emphasis on the last element, i.e. seeing

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<sup>15</sup> TF Risk Assessment of the NPO sector is SEPARATE from the National Risk Assessment required in Recommendation 1 (R.1) and Immediate Outcome 1 (IO.1). The scope of the NRA includes NPOs, but it does not require countries to identify the specific NPOs or NPO activities that are likely to be ‘at risk’ of terrorist financing. A R.1/IO.1-compliant NRA will not necessarily be compliant with the NPO sector risk assessment requirements under R8/IO.10.

<sup>16</sup> Revised FATF R8 Interpretative Note (INR.8), para 6(c), (d) (i-ii).

<sup>17</sup> United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/61/267* (2007), para. 23.

terrorism as a choice of morally inexcusable tactics.<sup>18</sup> In addition, the need for precision and clarity in the definition also extends to the definition of the link between the group or entity and the terrorist act.

### 3. DISPROPORTIONATE AND NON-RISK BASED PROVISIONS

FATF R8 provides that measures to protect NPOs from TF should not unduly disrupt or discourage legitimate NPO activities.<sup>19</sup> Some provisions of the Act however contravene this standard.

**ISSUE 3.1: Restrictive and burdensome registration requirements.** The Act imposes mandatory registration on NGOs, which violates freedom of association.<sup>20</sup> There is no evidence that legal restrictions on NPO sector, including a requirement to register, reduce the number of terrorist attacks within a country. This shows a one-size fits all approach that has not been proven to be an effective way to identify TF abuse.<sup>21</sup> The FATF Best Practices Paper has clarified that while countries could require NPOs to register or obtain a license, the right to freedom of association applies equally to informal associations (groups not registered) and associations that may choose to operate without registration.<sup>22</sup> In addition, NGOs have to submit excessive documents to register including collaboration letters from districts, notarized minutes, identity cards and criminal records, annual workplans and budgets and sources of funding.<sup>23</sup> The Board has powers to determine additional requirements for registration applications.<sup>24</sup> Such onerous requirements would hinder NGOs from obtaining legal status by requiring NGOs to seek approval letters from local authorities who may influence their activities, or submit personal details that threaten members' privacy which may not be necessary and effective to prove ML/TF abuse especially for low risk NGOs.<sup>25</sup>

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<sup>18</sup> United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/61/267 (2007), para. 32

<sup>19</sup> INR.8, para 5(c), supra, note 16, page 61

<sup>20</sup> Article 2 (definition of a national NGO); article 19 (legal personality for national NGO); article 22 (umbrella bodies).

<sup>21</sup> CSIS, "Liberty of Security: Do Civil Society Restrictions Limit Terrorism?" (June 2018), available at: <https://www.csis.org/blogs/international-consortium-closing-civic-space/liberty-or-security-do-civil-society-restrictions>.

<sup>22</sup> See, Best Practices Paper, footnote 22, page 18; UN A/HRC/29/25

<sup>23</sup> Article 20(1) includes broad requirements for applying for a certificate of legal personality. NGOs are required to submit excessive documentation including collaboration letters from districts, notarized minutes, identity cards and criminal records of their legal representatives, annual workplans and related budgets and sources of funding, in addition to payment of a non-refundable fee to be determined by the Board.

<sup>24</sup> Article 20(3), states that Regulations of the Board may determine additional requirements for application for a certificate of legal personality of a national non-governmental organization.

<sup>25</sup> FATF defines the **risk-based approach** as the application of measures to prevent or mitigate money laundering and terrorist financing that are commensurate with the risks identified for those activities. FATF, *International standards on Combating Money Laundering and the financing of terrorism & proliferation: FATF Recommendations 2012.pdf*, [coredownload.inline.pdf \(fatf-gafi.org\)](https://www.fatf-gafi.org/publications/standards/standards/combating-money-laundering-and-the-financing-of-terrorism-and-proliferation/fatf-recommendations-2012.pdf), pg. 10.

The Act also grants broad discretion to government to deny NPO registration based on vague security grounds without including a clear burden of proof,<sup>26</sup> or granting organizations the opportunity to appeal to an independent court, in violation of freedom of association.<sup>27</sup> The Human Rights Committee has equally expressed its concern about overly strict registration requirements for NGOs.<sup>28</sup>

**BEST PRACTICE RECOMMENDATION:** The FATF has cited a best practice in Norway that encourages voluntary registration of NPOs by providing incentives such as preferential taxation treatment. The registration process should be simplified and more efficient (with options to submit electronic and hard copies), and the fees<sup>29</sup> to be determined by the Board under the Act should be modest as recommended by the ACHPR Guidelines on FoAA, in order not to deter NGOs from registering.<sup>30</sup> The Board should engage with NPOs to assess the types or characteristics of NPOs at high risk that would require closer monitoring and supervision following a risk assessment process.<sup>31</sup> As FATF recommends, the GoR should maintain ongoing and regular dialogue with the NPO sector to maintain an accurate and up-to-date understanding of risks.<sup>32</sup>

**ISSUE 3.2: Broad discretionary supervisory and monitoring powers.** The Act gives the Board broad discretion to interfere in NGOs' internal affairs. This includes powers to approve changes to an NGO's name, statutes, and management (Article 9 and 11); authorize changes to NGO objectives (Article 12 (1)(a); "monitor and evaluate NGO performance to promote transparency and accountability" (Article 14); to suspend management of an NGO (Article 44(3)); and request audits (Article 15); without setting clear parameters for doing so. FATF R8 notes, "many NPOs may face low TF risk exposure and may have adequate internal control measures to mitigate such risks, or may already be subject to adequate levels of legal and regulatory requirements, such that there may be no need for additional measures."<sup>33</sup> Broad discretionary powers exercised by the Board would leave NGOs vulnerable to arbitrary government

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<sup>26</sup> Article 7(b) provides that the Board can deny granting a certificate of registration or legal personality when "there is evidence indicating that the applicant organization is harming or intends to harm the security, peace, health, unity of Rwandans, public order, good morals or the rights and freedoms of others", art. 7).

<sup>27</sup> The Special Rapporteur on the right to freedom of peaceful assembly and of association report states that where a registration license has been rejected, the organization "should have the opportunity to challenge the decision before an independent and impartial court" (A/HRC/20/27, para. 61).

<sup>28</sup> Concluding observations of the Human Rights Committee: Lithuania (CCPR/C/79/Add.87) and concluding observations of the Human Rights Committee: Belarus (CCPR/C/79/Add.86)

<sup>29</sup> Under Articles 20, 23, 29, 30 and 31 of the Act; NGOs are required to pay a "non-refundable fee to be determined by the Board".

<sup>30</sup> ACHPR Guidelines on FoAA, principle 18.

<sup>31</sup> UN Security Council Resolution 2462 (supra, note 14) also emphasizes that States should work cooperatively with NPOs to prevent abuse.

<sup>32</sup> FATF Best Practices Paper, para 54.

<sup>33</sup> INR.8. Para.5(e)

interference in their internal affairs and would unduly disrupt or discourage legitimate NPO activities.<sup>34</sup>

**BEST PRACTICE RECOMMENDATION:** The GoR should not subject decisions and activities of associations to external approval. Rather, the government could engage NGOs to adopt appropriate internal control measures to identify and mitigate ML/TF risks.<sup>35</sup> This can reduce the huge administrative burden of the Board; strengthen NGO self-governance and enable risk-based treatment for low risk NPOs.

**ISSUE 3.3: Disproportionate restrictions on certain INGOs' activities:** International NGOs (INGOs) are subjected to substantial and discriminatory restrictions that will discourage their formation and operation in violation of FATF R8. These include renewal of registration certificates every 1-5 years (Article 31); aligning annual action plans to the national development plan (Article 29(h); submitting proof of donor funding (Article 29 (e); submitting application letters to the Board and district authorities to wind down operations (Article 36 (1) (a); and government supervision in the sale and disposal of assets (Article 16, 34). The Board can suspend an INGO for sudden and unforeseeable circumstances (Article 35 (1)(a). These requirements are disproportionate and can result in a poor rating for FATF R8 compliance on Rwanda for failure to comply with risk-based monitoring approach where there is no evidence showing that INGOs are at high risk of TF abuse.<sup>36</sup> As noted by the UN Human Rights Council, States should ensure that “procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law.”<sup>37</sup> The revised FATF R8 also clearly states that it is not in line with best practice to implement any measures that are not proportionate to the assessed TF risks and are therefore overly burdensome or restrictive.<sup>38</sup> According to the risk-based approach, the government needs to first assess the level of TF risks for specific INGOs and design more targeted measures for the NGOs identified to be at risk.

**BEST PRACTICE RECOMMENDATION:** The GoR should work closely with INGOs through sustained outreach and education to understand the TF risks and measures they can take to mitigate them. The GoR can identify existing internal risk management policies and procedures that can assist in mitigating TF risks for low-risk

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<sup>34</sup> INR.8, para 5(c)

<sup>35</sup> FATF R8 Best Practices Paper, Box 3, example 4, page 19.

<sup>36</sup> Article 35 is unclear when temporary suspension of an INGO can end and how the Board can undertake this procedurally. Article 35(2) only sets out a procedure to notify the Board when the INGO wishes to suspend its activities voluntarily.

<sup>37</sup> Human Rights Council Resolution 22/6, A/HRC/RES/22/6, para. 8

<sup>38</sup> INR.8, para 5(e)



INGOs rather than imposing additional measures. As the FATF R8 Best Practice Paper notes, it is a good practice to foster a governance culture within NGOs that contributes to effective risk management and compliance with measures applying to NPOs.<sup>39</sup>

**ISSUE 3.4: Stringent conditions on NPO transactions:** The Act requires an NGO to transfer all its funds through licensed financial institutions in Rwanda (Article 9(1)(e)). Such stringent requirements contradict the simplified procedure recommended by the FATF for states to undertake sustained outreach to encourage NPOs to conduct transactions via regulated financial and payment channels, wherever feasible.<sup>40</sup> Additionally, the arbitrary cap of 20% on NGO overhead costs unnecessarily interferes with NGOs' ability to freely make decisions on allocation of resources to conduct their legitimate work, which constitutes an undue restriction for FATF purposes.<sup>41</sup> Applying a "one-size-fits-all" approach is inconsistent with the proper implementation of a risk-based approach.<sup>42</sup>

**BEST PRACTICE RECOMMENDATION:** The GoR should consider including flexible rules for financial inclusion of NPOs in line with FATF R8 requirements.

**ISSUE 3.5: Disproportionate sanctions for non-compliance with AML/CFT standards:**<sup>43</sup> The Act (Article 44) authorizes the Board to suspend an NGO that uses funds and assets that originate from illegal sources (c); or engages in activities that jeopardize peace and security, or good morals or good conduct (d). These terms are vague and contravene the legal certainty principle for permissible restrictions on freedom of association. The UN General Assembly Resolution 76/169 on terrorism and human rights urges States to ensure that counter-terrorism laws and implementing measures are consistent with the ICCPR, with a view to ensuring respect for the principles of legal certainty and legality.<sup>44</sup>

**BEST PRACTICE RECOMMENDATION:** As noted earlier, sanctions should comply with permissible restrictions under the ICCPR. As a general rule, sanctions should be effective, proportionate and dissuasive. FATF R8 calls States to apply sanctions addressing specific deficiencies identified, effective at ensuring future compliance by the sanctioned NGOs and dissuasive of non-compliance by others.

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<sup>39</sup> Best Practices Paper, para 66

<sup>40</sup> INR.8. Para.7(a)(iv)

<sup>41</sup> Article 9(1)(f)

<sup>42</sup> Best Practices Paper, Para 56, page 22.

<sup>43</sup> According to INR.8 Para.7(b) provides that appropriate authorities in charge of monitoring compliance with measures should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.

<sup>44</sup> Id, para 19

#### 4. EXCESSIVE REPORTING AND INFORMATION-SHARING OBLIGATIONS

**ISSUE 4.1: Onerous record keeping requirements:** Article 9 (1) (h) of the Act requires NGOs to keep for at least ten years documents on the use of their assets in the country and abroad, and the profiles of the members of the administrative organs. Ten years is excessive, burdensome, and inconsistent with FATF standards. As general guidance, reporting requirements for NPOs should not be more burdensome than those for a for-profit organization of comparable means. FATF Recommendation 10 requires financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international.<sup>45</sup> Recommendation 24<sup>46</sup> also prescribes at least five years for information on beneficial owners to be maintained.<sup>47</sup> Additionally, FATF R8 provides that such information could be requested by competent authorities in accordance with due process procedures. The Act fails to provide similar safeguards for NGOs.

**BEST PRACTICE RECOMMENDATION:** The GoR should take a targeted approach by only imposing such record-keeping and reporting obligations on NGOs identified as at-risk of TF abuse in the risk assessment. FATF Recommendation 24 sets out requirements for legal persons to maintain, for at least five years, all necessary records of transactions. Accordingly, the GoR could consider aligning with FATF standards to a lower threshold of five years for NGOs to maintain records on transactions and profiles of members. In addition, procedural safeguards should be included on how authorities can access such information in line with due process standards.

**ISSUE 4.2: Excessive and burdensome reporting and disclosure requirements for NPOs to submit their bank account information to the Board:** (Article 9(1)(e) is an overreaching, disproportionate measure for monitoring NPO transactions in the absence of evidence of high risk of TF abuse in the sector and violates NGOs' right to privacy.<sup>48</sup> Moreover, banks already undertake Customer Due Diligence in line with

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<sup>45</sup> Revised R8, para 11.

<sup>46</sup> FATF Recommendation 24 provides that "countries should ensure that there is adequate, accurate, and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities." FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, updated Nov. 2023, page 22.

<sup>47</sup> Interpretative Note on R24, para 8, page 95.

<sup>48</sup> Article 17, ICCPR protects the right to privacy. The UN Special Rapporteur *on the rights to freedom of peaceful assembly and of association, Maina Kiai* in his 2012 report, United Nations General Assembly, UN Doc. A/HRC/20/27 noted that authorities must also respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights. In this connection, authorities should not be entitled to condition any decisions and activities of the association; (para 65)

FATF Recommendation 10<sup>49</sup> and have the capacity to provide such information to authorities in case of an NPO deemed to be at risk.<sup>50</sup>

**BEST PRACTICE RECOMMENDATION:** The GoR should adopt focused, proportionate and risk-based measures that are not overly burdensome to NPOs by coordinating with financial institutions to access account information in case of investigation of TF abuse of a particular NGO, and only after due process. The FATF provides clear obligations for reporting entities under Recommendation 10 that should be complied with by the GoR. FATF R8 has clarified that NPOs are not reporting entities and do not conduct customer due diligence.<sup>51</sup>

### Additional considerations

**Strengthen measures for sustained outreach to NPOs** as a key requirement for compliance with FATF R8. According to FATF's R8 Interpretative note, states should undertake outreach and educational programmes as appropriate to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.<sup>52</sup> The relevant oversight body should work with NPOs to develop and refine best practices to address terrorist financing risks and thus protect them from terrorist financing abuse.<sup>53</sup> The Best Practices Paper recommends an NPO outreach system to include regular information sharing, education and outreach with and across the NPO sector. It is a good practice for outreach activities to also cover the result of the TF risk assessment relating to NPOs, once conducted.<sup>54</sup>

FATF R8 requires countries to strengthen self-regulatory measures to help mitigate TF abuse in the sector.<sup>55</sup> The Act recognizes sectoral regulation through the formation of umbrella organizations and forums of umbrella organizations (Articles 22 and 23), but these are subject to mandatory registration, in violation of the right to freedom of association. Instead of excessive state oversight, the GoR through the Board should engage the NPO sector to strengthen good governance models.

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<sup>49</sup> Recommendation 10 covers Customer Due Diligence and Record-keeping obligations for financial institutions, which States should set out in law. See, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Updated Nov 2023), pg. 14.

<sup>50</sup> Utilizing banks as sources of information on NGO accounts is in line with the FATF R8 requirement for States to ensure effective capacity to respond to international requests for information about an NPO of concern INR.8, para 7(d); updated FATF Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems (updated July 2024).

<sup>51</sup> INR.8, para 5(e)

<sup>52</sup> INR, para 7(a)(ii); Best Practices Paper, paras 50-53.

<sup>53</sup> INR, para 7(a)(iii)

<sup>54</sup> FATF Best practices Paper, para 53

<sup>55</sup> FATF R8 defines self-regulatory measures to include rules and standards applied by self-regulatory organizations and accrediting institutions. See, INR.8, page 65

## Conclusion

ICNL is grateful for the opportunity to provide comments on the NGO Act and stands ready to provide further assistance as required.