

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 50/17, 52/4 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **amendments proposed by the Ministry of Interior to the Societies and Institutions and other Related Matters Law of 2017 (Law 104(I)/2017)**, and the potential restrictions the newly proposed amendments would impose on the operation of non-governmental organisations, including human rights organisations, in the Republic of Cyprus. The proposed amendments appear to be aimed at improving oversight of the non-profit sector to combat money laundering and the financing of terrorism.

Applicable international legal framework

Before sharing our comments in relation to the proposed amendments, we would like to outline the Republic of Cyprus' international legal obligations particularly as they pertain to freedom of association and the operation of non-governmental and human rights organisations. Article 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Cyprus on 2 April 1969, guarantees that everyone has the right to freedom of association. Paragraph 2 of this article further stipulates that "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." The right to freedom of association is also guaranteed under article 11 of the European Convention on Human Rights, ratified by the Republic of Cyprus on 6 October 1962, article 20 of the Universal Declaration of Human Rights, and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified on 24 May 1966.

We wish to recall that while States have an obligation to adopt national legislation to combat the financing of terrorism,¹ the measures adopted must be in compliance in all respects with international law, in particular with

¹ Security Council Res. 1373 (2001), para. 1; International Convention for the Suppression of the Financing of Terrorism, adopted by General Assembly Res. 54/109.

human rights law.² As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy (UNGA resolution 60/288), effective counterterrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing. The ability of civil society to lawfully exercise its freedoms of expression, association and right to participate in the conduct of public affairs is critical to any effective counter-terrorism strategy, and protected by articles 19, 22 and 25 of the ICCPR. Civil society plays a vital role in channeling discontent and allowing for constructive engagement with States, and in directly undermining the factors leading individuals to be drawn to terrorism and violent extremism (A/HRC/40/52, paragraph 12).

We further recall the recommendations of the former Special Rapporteur on the right to peaceful assembly and association in his report presented to the Human Rights Council on General principles and guidelines on ensuring the right of civil society organisations to have access to resources (A/HRC/53/38/Add.4). In this report, the Special Rapporteur calls on States to “ensure measures targeting harmful activities, such as terrorist financing, do not unduly or inadvertently restrict associations’ rights to access resources, including financial resources, to carry out their legitimate activities” and to include unambiguous exceptions for humanitarian and human rights organisations in measures to counter terrorist financing (paragraph 52).

Similarly, General Assembly resolution 22/6 urges States to respect, protect and ensure the right to freedom of association of human rights defenders and, in this regard, to ensure, where procedures governing the registration of civil society organisations 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 (paragraph 8).

We would also like to respectfully call your attention to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Articles 1 and 2 of the Declaration state that everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, article 5, paragraph b, states that for the purpose of protecting and promoting human rights and fundamental freedoms, everyone has the right, individually and in association with others, to form, join and participate in non-governmental organisations, associations or groups.

We also wish to emphasize that the use of legislation to create undue and complex burdens on NPOs has the effect of limiting, restricting and controlling civil society (A/HRC/40/52, recommendation d). The right to freedom of association relates not only to the right to form an association, but

² S/RES/2462 (2019), para. 6. See also, International Convention for the Suppression of the Financing of Terrorism, art. 21.

also guarantees the right of such an association to freely carry out its legitimate activities (CCPR/C/88/D/1274/2004, para. 7.2). This includes the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions”.³ This freedom to solicit and receive financial support is crucial to NPO operations. For example, experts have noted that profound limitations on access to foreign funding severely restrict the existence of NGOs, which are often wholly dependent on such funding, particularly affecting human rights and women’s organizations (A/HRC/40/52, para. 42). Additionally, the selection of NPOs for burdensome regulatory obligations based on their prior criticism of the government pressures NPOs against lawfully exercising their freedom of expression. A lack of an adequate risk-based justification for this limitation to the freedom of expression would entail that these measures would be taken in contravention of article 19 of the ICCPR.

Comments on proposed amendments

Preamble and broad definition of non-profit organisation

According to the information received, on 22 November 2023, the Ministry of Interior of your Excellency’s Government proposed extensive amendments to the Societies and Institutions and other Related Matters Law (Law 104(I)/2017), hereinafter “the Societies and Institutions Law”. The newly proposed preamble to the Societies and Institutions Law affirms that the amendments aim to bring the Republic of Cyprus’ legislation into alignment with guidelines from the European Union, the Council of Europe and FATF to enhance supervision of non-profit organisations (NPOs) and prevent their misuse for money laundering and terrorist financing.

One of the most pertinent guidelines in this regard is FATF’s recommendation 8 on non-profit organisations, which advises States to identify organisations falling under the FATF definition of non-profit organisations and assess their terrorist financing risk, putting in place focused, proportionate and risk-based measures, *without unduly disrupting or discouraging legitimate NPO activities* (emphasis added). FATF adopts a functional definition of NPOs, as outlined in its interpretive note to recommendation 8, as “a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works’.” According to the fifth-round mutual evaluation report of the Republic of Cyprus’ compliance with FATF’s recommendations carried out by the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) in 2019, the Republic of Cyprus was found to be “partially compliant” with recommendation 8.

We note that the proposed preamble to the Societies and Institutions Law appears to conflate the terms non-profit organisation and non-governmental organisation: “recognizing that *non-governmental organisations* play an important role, supporting the activities of the public sector as well as society

³ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly Res. 36/55, 25 Nov. 1981, art. 6(f). See also A/HRC/23/39 and A/61/267.

to provide important services and understanding that some *non-profit organisations* are at risk of being misused by terrorists to finance terrorism or by people active in illegal activities for money laundering” (emphasis added). This goes beyond FATF’s definition of NPOs, which explicitly “does not apply to the entire universe of organisation working in the not-for-profit realm in a country.” (Interpretive note to FAFT recommendation 8, paragraph 1). FATF limits the definition of NPO to “a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.

A newly proposed addition to article 2 of the Societies and Institutions Law appears to similarly conflate the terms non-profit organisation and non-governmental organisation with the following definition: “Non-profit organisation or NGO’ means an association or foundation or federation or union registered under the basis of this [the Societies and Institutions] Law.” This broadening of the range of organisations subject to scrutiny for money laundering or terrorist financing risks imposing undue restrictions on a range of non-governmental organisations, including human rights organisations, carrying out peaceful and legitimate activities.

Grounds for dissolution for violation of Anti-Money Laundering Act (article 4, subsections 2 and 4)

There is an existing provision under article 4 of the Societies and Institutions Law that any association which constitutes an unlawful association as per article 63 of the Criminal Code of the Republic of Cyprus cannot be registered or, if it is already registered, may be dissolved by a court order. The proposed amendments expand on these grounds for dissolution in the newly proposed article 4(2), by allowing the possibility for a dissolution via court order of “any association that is used to violate the Anti-Money Laundering Act or is used to launder money from illegal activities or to finance terrorism by natural or legal persons who exercise control thereon or by third parties.”

Furthermore, the newly proposed article 4(4) stipulates that “in the event that a suspicion arises and/or is reported by natural or legal persons who exercise control over the associations [...] or third parties that their operation is related to money laundering from illegal activities or profit-making activity” the Registrar General, who is the permanent secretary of the Ministry of Interior responsible for monitoring the implementation of the Societies and Institutions Law, may request the disclosure of such an association’s bank accounts before proceeding to request a dissolution via court order. Any banking institution to which such requests for information are addressed has an obligation to fully and accurately provide the requested information.

While acknowledging the importance of identifying at-risk organisations to tackle money laundering and terrorist financing as per FAFT’s recommendation 8, we note the possible broad interpretation of article 4(2) and (4) of the Societies and Institutions Law. The “use” of an association to violate the Anti-Money Laundering Act could refer to the exploitation of the association to violate this law without the knowledge or intention of the management of the association. Furthermore, this provision does not appear to

differentiate between minor and serious violations of the Anti-Money Laundering Act. Finally, the threshold for “suspicion” arising that an association is engaged in such activity as per the newly proposed article 4(4) is similarly vague.

It is our view that the use of non-profit organisation to commit serious violations of the Anti-Money Laundering Act with the knowledge or due to negligence on the part of the management of such an association may constitute legitimate grounds for its dissolution by court order in keeping with the provisions of article 22(2) of the ICCPR. However, we note that the proposed additions to article 4 are too broad and may result in the arbitrary dissolution of non-profit organisations not engaged in money laundering or terrorist financing. We therefore recommend that the language of these provisions be made more precise to distinguish between active or foreseeable violations of the Anti-Money Laundering Act and unforeseeable violations, as well as to differentiate between minor and serious violations. Furthermore, we recommend that a stricter definition of “suspicion” of such activities be outlined, as well further detail on how such “suspicions” can be investigated and verified, so that the dissolution of non-profit organisations may only be seen as a last resort.

Registration and notification requirements (article 10)

The proposed article 10(1) of the Societies and Institutions Law imposes the obligation on the board of directors of associations, to keep a register of the name and contact details of all of the organisation’s members, a register of all members of the board of directors and the beneficial owners of the association in accordance with the Anti-Money Laundering Act. It further stipulates that in the event that the District Registrar or Registrar General have doubts about the exact number of members or about any matter related to the association’s register of members, they may ask the board of directors to inspect the register and/or request their presentation.

While acknowledging the importance of maintaining a register of the members and board members of registered associations, and welcoming the reference that all such information will be processed in accordance with the provisions of the Data Protection Law, we find that the formulation of “doubts” on the part of the District Registrar or Registrar General is vague. We fear that such a vague formulation could lead to arbitrary interpretation of this provision, thus imposing unnecessary reporting obligations on organisations who are in no way involved in money laundering or terrorist financing. This burden may be particularly felt by small organisations with fewer members and less capacity and may lead to a chilling effect on the work of such organisations, including human rights organisations, or indeed disincentivise the establishment of new organisations.

Article 10(3) further outlines that in the event of non-compliance with the registration requirement outlined in article 10(1), the Registrar shall call on the board of directors to do so within 30 days, with a possible extension of one month upon request. An administrative fine of up to EUR 1,000 may then be imposed on any association which does not respond to this request after the deadline has passed. Following another month’s leeway, and in the event of

continued non-compliance, an administrative fine of up to EUR 100 per day for each day that passed without compliance may then be imposed. Article 10(4) further states: “in the event of non-response of the association, despite receiving the registered letter and the imposition of an administrative fine, the Registrar may proceed with a procedure to dissolve the association.”

Moreover, the cost of the potential administrative fee, may be beyond the means of certain organisations. This provision does not appear to distinguish between instances in which there appears to be a deliberate attempt to avoid compliance with the notification obligation and others in which the delay may be due to factors outside the control of the board of directors. Finally, there is a lack of precision in determining the exact deadline of which level of fine may be imposed as per article 10(3): the first fine of up to EUR 1,000 may be imposed if the association does not respond to the Registrar’s call within a 30-day deadline, with a possible extension of one month. It is unclear if the subsequent reference to “another month’s leeway” before the further imposition of a fine of up to EUR 100 per day refers to this extension, or indeed an additional month. Similarly, article 10(4) is unclear as to how many administrative fines the association must be subject to before the Registrar may proceed with a dissolution procedure.

We urge your Excellency’s Government to outline the organisations’ obligations more precisely in these provisions, in line with the principle of legal certainty, so that non-governmental organisations may best allocate their time and resources to ensuring compliance with the Societies and Institutions Law.

Domestic consultations on proposed amendments

According to the information received, the Ministry of Interior sent a letter to five non-governmental organisations on 22 November 2023 informing them of the proposed amendments and requesting their feedback by 20 December 2023. These NGOs, some being federations with multiple constituent organizations, were given less than a month’s time to provide feedback on the document outlining the amendments that was over 30 pages long. Public consultations of such extensive amendments require time in order to be effective. Sufficient time is needed to disseminate this information amongst all concerned stakeholders and to allow them to allocate the necessary time and resources to review and provide feedback on the proposed amendments in order to engage meaningfully with your Excellency’s Government on these issues.

We welcome the subsequent decision of the Ministry of Interior to upload the draft proposal onto the government’s e-consultation platform on 14 December 2023 and to extend the deadline for comments until 30 January 2024. We also welcome the announcement that, past this deadline, the Ministry of Interior would organise focus group discussions on the proposed amendments.⁴ However, we note that still no in-depth justification has been provided for the proposed amendments, beyond reference to the external obligations of your Excellency’s Government arising from the MONEYVAL evaluation and the

⁴ [draft law entitled "o on associations and foundations and other related matters \(amendment\) law of 2022" – h-consultation \(e-consultation.gov.cy\)](#)

European Commission's report on the rule of law, as well as the views of non-profit organisations themselves, without further elaboration.

We were informed that it was not possible for stakeholders to upload their comments to the e-consultation platform on the day of 30 January 2024, as the platform was closed for submissions at midnight of 30 January 2024. No comments by stakeholders appear to have been uploaded to the e-consultation platform and it is unclear if comments have been shared with the Ministry of Interior via other channels, such as directly by email. If this is the case, we urge your Excellency's Government to take into account all feedback received from stakeholders, whether uploaded to the e-consultation platform or shared otherwise.

Finally, we note that there has been no further information shared on the focus group discussions on the proposed amendments. While we acknowledge the necessary time and care required to organise such consultations, we urge your Excellency's Government to continue to engage transparently and meaningfully with non-governmental organisations, human rights defenders and other stakeholders in the drafting and implementation of these amendments. We further call on your Excellency's Government to ensure that any measures implemented to combat money laundering and the financing of terrorism are fully compliant with the Republic of Cyprus' international human rights obligations, in particular respecting the right to freedom of association as guaranteed under article 22 of the ICCPR.

We respectfully underline the importance of maintaining and upholding the fundamental guarantees of international human rights law as your Excellency's Government moves to implement the guidance of the Financial Action Task Force (FATF) and other international recommendations on combatting money laundering and terrorist financing. We stress that respect for international human rights treaties and norms is a complementary and mutually reinforcing objective in any effective counter-terrorism effort at the national level. Consequently, we recommend ongoing review and reconsideration of these amendments, in consultation with civil society organisations and human rights defenders, to ensure they are in compliance with the Republic of Cyprus' international human rights obligations, in particular the right to freedom of association.

We also respectfully remind your Excellency's Government that FATF's revised recommendation 8 and updated Best Practice Paper to Combat the Abuse of Non Profit Organisations have further clarified that it is inconsistent with recommendation 8 to have measures that are non-focused, disproportionate, and non-risk-based or to apply the same mitigating measures for medium-high-risk civil society organisations to low-risk civil society organisations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis of the proposed amendments to the Societies and Institutions and other Related Matters Law.

2. Please provide a detailed explanation as to the justification for the proposed amendments.
3. Please provide information on the next steps envisioned by your Excellency's Government to ensure a sufficient public consultation on the proposed amendments before they are submitted to the Parliament.
4. Please provide detailed information on steps taken to ensure the proposed amendments, should they be adopted, will not arbitrarily impede the work of non-governmental organisations and human rights defenders in the Republic of Cyprus, in full compliance with its international obligations under article 22 of the ICCPR and the strictly risk-based, proportionate approach to countering terrorist financing set out in FATF recommendation 8.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We stand ready to provide Your Excellency's Government with any technical advice it may require in ensuring that national laws are fully compliant with international human rights standards.

Please accept, Excellency, the assurances of our highest consideration.

Gina Romero

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism