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Karla W. Simon

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International Non-governmental Organizations

KARLA W. SIMON, WITH THE ASSISTANCE OF NASIRA B. RAZVI*

I. Introduction

Economic and social reforms remain a major focus of international non-governmental and not-for-profit organizations in the 21st Century, and thus the legal environment within which such organizations operate is crucial to the success of such reforms. With the spread of democracy in developing regions around the world, civil society groups are challenged to provide local organizations and governments with the tools needed for strengthening democratic principles of freedom of information and association, and promoting fundamental human rights. Despite the urgency of this work, however, some governments have become suspicious of not-for-profit organizations (NPOs) and non-governmental organizations (NGOs), particularly those that advocate for human rights and democracy. In addition, recently enacted anti-terror legislation and regulations have resulted in greater scrutiny of civil society, with some countries enacting legislation that has a limiting effect on essential civil and political freedoms.

This report discusses developments at the international, regional, and local levels with respect to the legal framework for NPOs and NGOs during 2006. It discusses the developments using a thematic format, which does not, of course, serve to elucidate all of what happened in any one country or region. The themes covered include the following: anti-terror legislation; Charity Commissions; China; control of foreign NPOs or foreign funding for NPOs; freedom of information (and its linkage to expression and association);

* Karla W. Simon is professor of law at the Columbus School of Law, Catholic University of America. Professor Simon also serves as editor-in-chief of the International Journal of Civil Society Law (IJCSL), available at www.icsl.org. Nasira B. Razvi serves as a Newsletter Editor of the IJCSL Newsletter and is a Pakistani lawyer residing in Canada. Both are Vice Chairs of the Non-governmental and Not-For-Profit Organizations Committee of the American Bar Association Section of International Law. The authors are grateful for the input of Karen A. Hudes and Edna Udobong, who co-chair the Non-governmental and Not-For-Profit Organizations Committee of the American Bar Association Section of International Law, as well as Committee member Kimberly Reed. The research assistance of Kevin Schwartz, a third year law student at the Catholic University of America, is also gratefully acknowledged.

1. Examples of such suspicions can be found in Russia and Uzbekistan, as elaborated further in this text.

2. Many of the highlights included here are derived from articles and country reports published in the International Journal of Civil Society Law (IJCSL) and the IJCSL Newsletter. Both are published by the International Center for Civil Society Law (ICCSSL). All issues of both publications are available at http://www.icsl.org. Subscriptions are handled by Managing Editor Kevin Schwartz, who can be reached at schwartz.ijcsl@yahoo.com.
II. Anti-Terror Legislation

Passage of anti-terror legislation was a major effort of legislatures around the world in response to the events of September 11, 2001. Thus, Canada, the United States, and the United Kingdom, among other countries, adopted legislation and regulations that were designed to combat the use of NPOs and NGOs for terrorist purposes. In addition, the United Nations and regional bodies, such as the European Union (EU), issued resolutions and directives providing mechanisms to deal with terrorism and terrorist organizations. In 2006, some of the anti-terror provisions were found to be in violation of the freedoms of association and expression. Three recent decisions suggest that certain hastily developed provisions may not survive challenges based on fundamental human rights claims.

A. Canada

In October 2006, the Superior Court of Justice for Ontario struck down a portion of Canada's anti-terrorism law, ruling that the clause dealing with the definition of terrorism violated the freedoms of religion, thought, and association guaranteed in the Charter of Rights. Mohammad Momin Khawaja was the first person charged under the Anti-Terrorism Act. In its decision, the court severed a clause in the law that defines terrorist activities as crimes motivated by ideology, religion, or politics. The opinion has not as yet been published by the court on its website, but legal experts and government officials have said that the inclusion of the motivation clauses has actually made it more difficult to prove terrorist activity.

B. United States

A decision by a Los Angeles federal district judge in November 2006 in a case brought by the Humanitarian Law Project struck down key portions of a U.S. presidential order

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blocking financial assistance to terrorist groups as unconstitutional. In *Humanitarian Law Project v. U.S. Treasury*, U.S. District Judge Audrey B. Collins found two provisions of an executive order signed on September 23, 2001, to be unconstitutional because they were impermissibly vague. These provisions allow the president to unilaterally designate organizations as terrorist groups and broadly prohibit association with such groups. The ruling marks a victory for the Humanitarian Law Project, which seeks to provide support for the lawful, nonviolent activities of two groups designated terrorist organizations by the U.S. government: the Kurdistan Workers' Party (PKK) in Turkey and the Liberation Tigers of Tamil Eelam (LTTE), also known as the Tamil Tigers, in Sri Lanka.

C. **EUROPEAN UNION**

In a December 2006 ruling, the Court of First Instance of the European Communities annulled a decision of the EU to label an organization as a terrorist organization, a decision that froze the organization's assets in 2002. An action against the Council of the EU (the Council) was brought in the Court of First Instance by the Organisation des Modjahedines du Peuple d'Iran (People’s Mujahidin of Iran) (OMPI) to annul the decision, which had been made pursuant to Common Positions on combating terrorism and on the application of specific measures to combat terrorism, adopted by the Council to implement Security Council Resolution 1373 against terrorism. The decision in the case was based on the Council's failure to provide adequate reasons for the terrorist label and on a failure of process in reaching the determination.

**III. Charity Commissions**

There were three major developments with regard to the creation of charity commissions, one in England and Wales, one in Northern Ireland, and one in Japan. In addition, the new Charities Commission in New Zealand continued to prepare for the registration of charities, which is expected to commence in February 2007.

**A. ENGLAND AND WALES**

The long-awaited Charities Bill affecting charities in England and Wales received Royal assent and became the Charities Act on November 8, 2006. The Charities Act 2006 enables charities to administer themselves more efficiently and be more effective; improves the regulation of charity fundraising and reduces regulation of the sector, especially for smaller charities; provides a clear definition of charity with an emphasis on public benefit; improves the Charity Commission's functions and powers as regulator, increases its accountability, and preserves its independence; and establishes a new Charity Tribunal,

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for appeals. Provisions in the Charities Act will begin to come into force beginning in early 2007. The implementation plan has been made available by the Office of the Third Sector (OTS), which was established in May 2006 within the Cabinet Office.

One of the most contentious issues that arose as the new legislation was debated in the Parliament was the extent to which the public benefit requirement applies to all charities, including fee-paying schools. The OTS has stated that "the new definition of charity, and the public benefit test, will not be brought into force until there is an accessible appeal right through the Charity Tribunal, and the Charity Commission has developed and consulted on its guidance on the operation of the public benefit requirement." The Charity Commission has also committed itself to developing a new program of regulation of public fund raising.

**B. JAPAN**

Perhaps the most significant development in regard to charity commissions was the decision in Japan to adopt such a structure for oversight of the charitable sector. In what is widely regarded as a major improvement in the registration and oversight of NPOs and, more specifically, of charities, the Diet passed legislation at the end of May that will permit general incorporated associations and foundations to be easily established through a simple registration process. As a second step, an organization will be able to apply to a special Committee or Commission (at the national or prefectural level, depending on the scope of its activities) to be recognized as being a public benefit organization (PBO). Although the legislation will not go into effect for eighteen months after its passage by the Diet at the end of May, this development will greatly simplify NPO registration and PBO recognition.

In the context of the new legislation, the purposes that could be considered to be charitable or public benefit purposes were laid down in the law. This was done in order to eliminate ministerial discretion with regard to determining whether and organization could so qualify. The list of purposes is quite long and useful in terms of setting out a well-elaborated definition of the term. In addition, the legislation addresses issues of composition and remuneration of PBO boards, as well as conflicts of interest.

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16. *Id.* at 2.

17. *Id.* at 3. See also *Charities Act*, supra note 13.


19. *Id.*
C. NORTHERN IRELAND

A proposed Charity Commission continued to be considered during 2006 in Northern Ireland. In July, a discussion document was made public by the Department for Social Development (DSDNI). As in England and Wales, one of the targets of the new legislation would be an increase in accountability and transparency for charities (including better regulation with regard to charitable fund-raising), which is being proposed in large part to increased public trust in the charity sector. The purposes of the proposed legislation are stated to be: "a Charity Commission for Northern Ireland, a Charity Tribunal for Northern Ireland, statutory definitions of 'charity' and 'charitable purpose' and the necessary powers and other provisions needed to ensure that charities are properly registered and regulated."21

IV. China

Although it may seem somewhat strange to include a section in the report dealing with only one country, the number of developments with regard to China is so extensive as to merit such treatment. In addition, the variety of items discussed here show the extent of the ambivalence of the government of the People's Republic about civil society and the freedoms of association and expression.

A. PROPOSED CHARITY LAW

A program launched by the Chinese Ministry of Civil Affairs (MoCA) in late 2005 "sets forth general requirements and major targets for the development of charity activities in the next five years from 2006 to 2010 and elaborates the guidelines on the principles, basic policies, and related measures for charity organizations."22 Following this development, the process of drafting a national law on charity has commenced.23 Issues to be addressed include a definition of charity, the development of a process for becoming a "certified charitable organization," a sanctions regime, regulation of volunteers, and rules with regard to public fund raising.24

The proposed charity law will address issues of social responsibility that are also raised by the The Draft of the Law on Corporate Social Responsibilities of Multinational Corporations Operating in China issued in 2005. The draft suggests that multinational corporations operating in China should:

21. Id. at 4.

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resist corrupt practices and bribes and should acknowledge appropriate business ethics and conduct. When circumstances permit, they should provide aid during natural disasters; contribute to the alleviation of poverty; provide care to the handicapped; and sponsor activities in education, technology, culture and health, sports, environmental protection, public infrastructure projects, and other philanthropic and social welfare efforts.

B. Farmer's Professional Associations Law

In another matter of significance for civil society, the new Farmers' Professional Associations Law was adopted by the State Council in November 2006. The World Bank has published a book-length analysis of the legislation and its aims, which is available on its website in both English and Chinese.

C. Regulation of Lawyers

A final development affecting NPOs and their rights in China in 2006 has to do with the regulation of lawyers and a set of Guiding Opinions on Lawyers Handling Mass Cases, issued by the All China Lawyers Federation in March 2006. Because all practicing lawyers in China are subject to regulation by the All China Federation, rules it proposes may affect their right to practice law. According to a report published by Human Rights Watch in December 2006, the Guiding Opinions "let local authorities interfere in cases involving ten or more plaintiffs, making it more difficult for the cases to get a fair hearing in court." The new regulations are also said to also discourage lawyers from talking to domestic or international media, require that they get their firms' permission to take on such cases, and hold lawyers liable if disputes they are dealing with intensify.

V. Control of Foreign NPOs or Foreign Funding for NPOs

Developments under this heading have occurred not only in former Soviet Union countries such as Russia and Uzbekistan but also in Latin America (Peru and Venezuela) and the Indian Sub-Continent.

29. Id.
A. India

Like other countries in the region that have long sought to control foreign funding for NPOs, the Indian Parliament is considering a new version of the Foreign Contributions (Management and Control) Act, 2006 to replace the Foreign Contributions Regulation Act, 1976 (FCRA). Under the new legislation, the government will be able to require that certain entities obtain prior permission from the central government before accepting any foreign funding. The legislation includes registration, reviews of licenses, audits, and monitoring of NPOs by government authorities. The most controversial provisions in the law include the requirement for periodic renewal of permission to receive foreign funding and the grounds on which the regulator is authorized to deny the renewal of license to receive foreign funding. The legislation is analyzed in a paper published in the International Journal of Civil Society Law in 2005.

B. Peru

On December 8, 2006, the Peruvian Congress passed new legislation that will bring more than 3,000 foreign and local development NGOs under the direct control of the Peruvian International Cooperation Agency (APCI). The legislation requires NGOs to list and register their projects as well as their donors with the APCI, to which it gives the power to decide which organizations shall receive or be denied donations according to the priorities it establishes and its own definition of the public interest. The new law also requires NGOs' work plans to comport with state-mandated development guidelines and priorities. Under this legislation, the government has the capacity to control funds intended to promote free expression and investigative journalism in Peru, a part of which comes from independent media in the United States and Europe.

C. Russia

During the past year, restrictions on the legal environment for civic engagement in Russia came into effect. On January 16, 2006, four Russian laws were amended under a
The new legislation requires both domestic and foreign NPOs operating in Russia to register or re-register with a newly created Federal Registration Service (FRS) by an October 17, 2006, deadline. The burdensome requirements imposed by the law and subsequent regulations seem designed to limit associational activity in Russia, and they have been criticized by numerous organizations, including the U.S. State Department. A great deal of the focus of the legislation is on foreign NPOs and foreign funding, and it contains many restrictions, which are discussed in detail in other materials. The New annual reporting requirements for domestic and foreign NPOs mandate providing highly detailed information to the FRS, including all sources of an NPO's income, how each contribution was spent (with a prohibition on using foreign income for anything political, although that term is not defined in the law and is presumed to be applied broadly), and an exact schedule of all of the upcoming year's meetings, events, or other activities, to which the government is entitled to send a representative. As of December 2006, the FRS had granted re-registration to only about 200 of the roughly 350-400 foreign NPOs currently operating in Russia.

The controversy about re-registration of operating NPOs is similar to an earlier one that arose in response to the re-registration provision of the 1995 Law on Non-commercial Organizations. In March 2006, the European Court of Human Rights delivered a judgment of admissibility in the case Sutyazhnik v. Russia. The NPO, Sutyazhnik, had


40. The application of these new rules to churches has been the subject of protests by church leaders in Russia, who fear that they will be used to suppress religious minorities. See Russia News and Information Agency Novosti, Government to Try Out New Methods of Church Control (Dec. 8, 2006), available at http://en.rian.ru/analysis/20061208/56685283.html (quoting VEDOMOSTI).

41. The authors are grateful to Committee member Kimberly Reed of Hogan & Hartson in Moscow, who provided information on developments in Russia.


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sought re-registration under the 1995 law, which was eventually denied, and the case in the European Court results from an appeal with regard to decisions of Russian courts denying the re-registration.

D. Uzbekistan

Freedom House, a prominent U.S. democracy promotion organization, had its activity suspended in the country in early 2006. The organization appealed the decision, but the action was upheld in the courts. The Ministry of Justice had accused Freedom House's Uzbek office of violating Uzbek legislation, including the law on non-governmental non-profit organizations. In 2005, Uzbek courts suspended and later closed the offices of IREX, a U.S. NGO that ran education programs in the country. The London-based Institute for War and Peace Reporting withdrew from the country, citing security concerns. Approximately 200 domestic organizations have been forced to close down or leave the country, as have numerous international NGOs, including Internews, the BBC, RFE/RL, and the Open Society Institute.

E. Venezuela

Although views differ with respect to the International Cooperation Law, which was proposed in Venezuela's Parliament in 2006, there is no question that one reading of it is that it aims to decrease the influence of NGOs funded by the United States and EU and their democracy promotion work in the country. In fact, Senator Richard Lugar has specifically mentioned the legislation proposed in Venezuela as one prominent instance of a country seeking to make it difficult for organizations that promote democracy with U.S. government assistance funds to operate outside the United States.

VI. Freedom of Information

A. Inter-American Court of Human Rights

In the first decision of its kind from an international tribunal, the Inter-American Court of Human Rights ruled in Claude Reyes v. Chile that there is a fundamental human right of access to government information. The Court found in favor of three environmental activists who in 1998 had sought information from the Chilean government about a con-

46. Opposing views can be found on the website of the Heritage Foundation, which calls it “draconian” (see http://www.heritage.org/Research/LatinAmerica/eml005.cfm) and in the web blog Venezuelanalysis.com (see http://www.venezuelanalysis.com/articles.php?artno=17850).
troversial logging project. The court held that by failing to provide access to the re-
quested information, Chile had violated Article 13 of the American Convention on
Human Rights, which guarantees freedom of thought and expression.

The Court stated that Article 13 contains an implied right of general access to govern-
ment-held information, and that States Party must adopt legal provisions to ensure the
right is given full effect. In its October 2006 decision, the Court specifically ordered
Chile to provide the requested information about the Rio Condor logging project or to
issue a reasoned decision for withholding it, as well as to adopt adequate administrative
procedures to protect the right in the future and to train public officials to uphold the
public’s right to information. International civil society advocates of transparency in
governance and the right-to-know applauded the precedent-setting court decision.

B. AUSTRALIA

In other freedom of information news, International Right to Know Day in July was
celebrated globally, with over sixty-eight countries having now adopted Right to Know
and Freedom of Information Laws. Nonetheless, there was some backsliding in various
countries, notably in Australia, where the High Court of Australia ruled against The Aus-
terian newspaper in McKinnon v. Secretary, Department of Treasury. The Australian
was seeking access to Treasury documents on income tax and the first Home Owners
Grant Scheme. The Government’s power to keep information under wraps because the
minister claims secrecy is in the public interest was thus upheld over three dissents.

VII. Harmonizing NPO Legislation between Civil Law and Common Law Jurisdictions

A. NORTH AMERICA

In an ambitious project in which its Committee is participating on behalf of the Section
of International Law of the American Bar Association (ABA), the National Conference
of Commissioners on Uniform State Laws (NCCUSL) has moved forward with its Project
to Create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in
North America. The NCCUSL Committee, in cooperation with the ABA, has begun its
review of developments relative to the United States Uniform Unincorporated Associa-
tion Act, last amended in 1995, and will draft updated amendments to promote the act’s
national uniform adoption in conjunction with an effort to harmonize similar applicable laws in Canada and Mexico.

In addition to creating a model law for U.S. jurisdictions, this project is the first effort by NCCUSL to harmonize the laws of all of North America, including the English-speaking provinces of Canada, Quebec, and Mexico (both of which are civil law jurisdictions). The project is of great practical as well as theoretical interest, as most individuals belong to a number of nonprofit unincorporated associations (NUAs), which can be created informally, often without anything in writing. Yet, in most North American jurisdictions, individuals can incur personal liability by being a member of an NUA, often unwittingly. Additionally, there are serious legal problems involving the contracts, property, and liabilities of NUAs.

**B. European Union**

Similar issues about harmonization have been raised in Europe, but the outcome has been different. The decision by two projects has been to move away from harmonization efforts and to create a new legal form, which would operate throughout the region. A proposal for a European Statute for Foundations has been prepared by the European Foundation Centre’s (EFC) EU Committee and its Legal and Tax Task Forces, which was released to the public during the first quarter of 2005.56 The proposal is an important component of the EFC project Enhancing the Legal Environment for Independent Funders in Europe. It would create a new European legal instrument that is an optional tool and that is complementary to existing national legislation in Member States of the EU. The proposal states that European Foundations will primarily be governed by European law, and only foundations pursuing a public benefit purpose could qualify.57

As a follow-up to the EFC project, a book entitled The European Foundation58 also suggests a similar sort of legal form be adopted at the European level. One rationale for this outcome is that the book’s editors believe that there is no possibility of harmonization of all the laws in Europe affecting the foundation legal form. This author reviewed the book in 2006 and essentially agreed with that conclusion.59

It should also be noted that the European Commission does not appear to be entirely convinced by the proposals for a European Foundation. European Commissioner Charles McCreevy announced in a November 2005 speech to the European Parliament Committee on Legal Affairs that he is “not yet convinced about the ability of a European Foundation Statute to respond to the specific needs of foundations,” but the European Commission will “[n]onetheless . . . pursue our reflection.”60 It will be interesting to see how the North American project progresses and whether that might potentially change the thinking in Europe.

57. Id.
58. The European Foundation: A New Legal Approach (Klaus J. Hopt et al. eds., 2006).
VIII. Reform of the Legal Framework for NPOs in Common Law Countries

As noted in the section discussing charity commissions, there has been intense debate in common law countries in recent years concerning the meaning of "charity" or "public benefit." Significant developments in this regard occurred not only in the United Kingdom but also in Canada and the United States.

A. CANADA

The Canada Revenue Agency (CRA) published its final guidance on the meaning of public benefit in March 2006. Entitled Guidelines for Registering a Charity: Meeting the Public Benefit Test, the new rules are very detailed and provide significant clarity for both organizations and the revenue authorities. One of the most important issues is the fact that the new rules do not remove the presumption of charitable status for the first three of the so-called Pemsel categories of charity. These are as follows: (1) relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other purposes beneficial to the community in a way the law regards as charitable. With respect to the first three categories, the presumption will continue to exist, unless the contrary is shown.

On the other hand, with respect to the fourth category, public benefit will continue to need to be proved. Nonetheless, the burden is also not excessive with regard to the fourth category under the new CRA tests. With respect to that category, it must be shown that the organization's purposes are analogous to those that have previously been determined to be charitable. This burden primarily arises, however, only in circumstances where the proposed purposes are novel or unrecognized; if they are similar or identical to an accepted charitable purpose, proof of benefit will generally not be required. An example given by the CRA is the promotion of health and protection of animals.

B. ENGLAND, WALES AND NORTHERN IRELAND

Strikingly, the new legislation for England and Wales and that proposed for Northern Ireland will eliminate the presumption for all four categories of charity. This addresses the issue of expensive public schools, which had animated the debate about the legislation in both the House of Commons and the House of Lords. In addition, the listing of charitable purposes is much longer in the proposed legislation than the four common law categories. The longer listing of charitable purposes is designed to elaborate a more cer-

63. See Freedom Press Release, supra note 44.
64. Id.
66. DEP'T FOR SOC. DEV., supra note 20, Art 5 (2), at 30.
67. Public schools in the U.K., are, of course, actually private, and they charge very high fees.

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tain application of the Pemsel fourth category (as well as to better define religion in an age in which non-theist belief systems are recognized as "religious.")

C. SCOTLAND

In 2006, Scotland also developed a test of public benefit that differs considerably from the earlier Pemsel test, and it has also eliminated the presumption. Guidance on the definition of charity under the 2005 Scottish charity legislation was released by the new Office of the Scottish Charity Regulator (OSCR) in early 2006, and a list of fifteen purposes plus a catchall was included. In terms of the definition of public benefit, the OSCR guidance deals with it again in a different manner from the tests developed in the other countries—concentrating, for example, on the extent to which there is actual access to services of a charity rather than whether fees may be set high in an abstract sense.

D. UNITED STATES

Developments in the United States have centered around one aspect of the public benefit test, which is codified in Internal Revenue Code Section 501(c)(3) as the absolute prohibition on charitable organizations engaging in any campaign activities for or against candidates for public office. Unlike the system in the United Kingdom, where charity law is administered principally by the courts and the Charity Commission, the United States is like Canada, where the principal regulatory agency for charities is the revenue service. Thus, the developments in 2006 with regard to campaigning or electioneering activities by charities are significant.

The new Political Activities Compliance Initiative (PACI) procedures announced in February 2006 applied to the 2006 election season and for the future. According to Internal Revenue Service (IRS) officials, the goal is deterrence and action "while the issue remains prominent, so that there are no reoccurrences and so correction could occur prior to the next election season."

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68. And, as in the case of Japan mentioned above, to reduce discretion on the part of regulators to determine whether the purposes would qualify.
70. Id.
72. Id.
73. I.R.C. § 501(c)(3) (2006). The following organizations are referred to in subsection (a):

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(emphasis added).
to the relevant election." The IRS also says it wants to educate charities and religious organizations and to give notice about the program, and it did so in February 2006 by issuing some guidance on the relevant issues. The major change in dealing with issues of possible violation of the anti-electioneering provision is the timing of investigations. The IRS will no longer wait for an annual return (Form 990) to be filed or for the tax year to end before beginning an examination. However, no time frame is given for how long an IRS agent has to complete an investigation. OMB Watch has questioned the new procedures in a long analytical report issued as part of its Nonprofit Advocacy program.

IX. Tax Reforms Aimed at Increasing Support for the Sector

This is a fertile subject and one in which there were developments in many countries around the world. This report will, however, highlight only two proposals for increasing tax incentives for giving in Germany and New Zealand, both of which deal with several important questions that have been raised in other countries/contexts.

A. Germany

In the case of Germany, the study of issues with regard to supporting public benefit organizations and volunteering has taken part against a background of social and economic changes resulting from the reunification of Germany following the fall of the Berlin Wall in 1990. For many years the large foundations and associations in Germany, together with many academics and practitioners, have been pushing for a set of proposals that would allow for tax dispensations for volunteers (which are not currently available) in addition to increasing the deductible amounts for charitable contributions to public benefit organizations. In November 2006, various documents for new legislation that would increase support for “increased citizen participation” were made public, including proposals to:

• Eliminate the current differences among religious, charitable, and public benefit activities with respect to the upper allowances for charitable contribution deductions;
• Increase the upper allowance to 20 percent of income from 5 percent and 10 percent as under current law;
• Increase the amount of the allowance for capital contributions from 307,000 Euros to 750,000 Euros; and

77. The materials are available in German on the website of the Maecenata Institut of the Humboldt University, http://www.maecenata.eu/images/Dokumente/Institut/.
• Permit a tax credit of up to 300 Euros for persons who volunteer for certain types of public benefit organizations (those serving the elderly, the needy, etc.)

In December 2006, it was announced that the government had agreed to most of the proposals, including, importantly, the tax credit for volunteers. The Finance Minister indicated in a press release that the reforms will go into effect in 2007 and be retroactive to January 1, 2006.78

B. NEW ZEALAND

With respect to New Zealand, the changes are still in the planning phase, but, as in Germany, there seems to be strong government support for increasing tax incentives for charitable giving and volunteering. In October 2006, Inland Revenue published for discussion a document entitled “Tax incentives for giving to charities and other non-profit organisations: a government discussion document.”79 Interestingly, the proposed discussion document, like the German proposals, would account for volunteer time in a new way, either by allowing the volunteer a tax rebate80 for the time or by making cash grants to charities that use volunteers. Another proposal would consider possibly moving from the current rebate system for individual cash contributions (the rebate system is more fair across income brackets than a deduction but does not net as much revenue for charities because the rich do not receive higher incentives as their marginal rates increase).81 Many other proposals are made in the document, which has begun an interactive process in New Zealand whose outcome will not be known for some time. For example, the new Charities Commission has submitted its comments,82 and many others are expected to do so as well.

X. Conclusion

As this brief report indicates, every year holds developments with regard to the legal and fiscal frameworks within which civil society organizations operate. These changes, whether for good or ill, are obviously crucial for the organizations, as they seek to carry out their important work in social and economic development, culture, health, education, and so on. There is no question that some countries have harsher views of the sector than others, but there seems to be a little progress on that front as more countries try to involve NPOs and NGOs more fully in development processes that reduce poverty and human suffering.

78. The text of the proposed legislation is available on the website of the Ministry of Finance, http://www.bundesfinanzministerium.de/lang_de/DE/Aktuelles/Aktuelle_Gesetze/Referententwuerfe/001_1,templateId=raw,property=PublicationFile.pdf.
80. This system refunds a portion of the amount donated to the charities.
81. Id.