

2010

## International Non-Governmental Organizations and Non-Profit Organizations

Karla W. Simon

---

### Recommended Citation

Karla W. Simon, *International Non-Governmental Organizations and Non-Profit Organizations*, 44 INT'L L. 399 (2010)

<https://scholar.smu.edu/til/vol44/iss1/26>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in *International Lawyer* by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

# International Non-Governmental Organizations and Non-Profit Organizations

KARLA W. SIMON\*

This Year-in-Review for international non-governmental organizations (NGOs) and non-profit organizations (NPOs) updates certain issues covered by earlier reports, including the following: developments in Ethiopia, tax legislation in India, developments in the definition of public benefit in England and Wales, changes made in the Societies Law in Jordan, changes in China regarding possible new regulations on social organizations, and changes in Russia's NGO law. New developments with regard to Armenia, Cambodia, Canada, Ireland, Lao PDR, and Zambia are also reported. There is an analysis of recent case law affecting NGOs and NPOs, including an important freedom of religion case from the European Court of Human Rights, a French case holding Scientology to be a fraud, and a European Court of Justice decision finding that Germany could not restrict charitable tax deductions to only German charities.

## I. Legislation/Regulations

### A. ALBANIA

On March 9 2009, the Albanian Parliament adopted the Law on the Organization and Functioning of the Agency for Supporting Civil Society (Law No. 10093). The law was signed by the President and was published in the Official Journal of Albania on April 2, 2009. It entered into force fifteen days after its publication. The Agency will support activities aiming to encourage the sustainable development of civil society and the creation of favorable conditions for civic initiatives. In addition to organizations, part of its funds will go to individuals for research, participation in international events, training, and scholarships related to civil society.

According to ICNL, which reported the adoption of the law on its website,<sup>1</sup> this law follows the example of countries such as Hungary, Croatia, and Estonia, which created

---

\* Karla W. Simon is Professor of Law at the Columbus School of Law, Catholic University of America. The principal source for this report is the *International Journal of Civil Society Law Newsletter* (IJCSL-N), available on the website of the International Center for Civil Society Law (ICCSL) at [www.iccs.org](http://www.iccs.org). I thank Prof. Leon Irish for his contributions and my research assistant, Jason Stiener.

1. *Albania Adopts Law to Create Agency for Supporting Civil Society*, THE INT'L CTR. FOR NOT-FOR-PROFIT LAW (Apr. 3, 2009), <http://www.icnl.org/knowledge/news/2009/04-03.htm>.

similar structures (funds). The Agency is a public law entity managed by a Supervisory Board that will distribute grants for NGOs.

The financing for the grants comes from the state budget, and for 2009 its amount will be US\$1 million. Because the law specifies that the state cannot provide a smaller budget to the Agency than that given in the previous year, funds to be distributed by the Agency should grow throughout the next several years. In addition, the state budget will cover administrative expenses of the Agency from a separate budget line and will provide premises for its activity.

Civil society representatives will constitute a majority of the Board members (five representatives) while the central public administration will have four representatives. Board members serve for four-year terms, with the possibility of being re-elected once. The Council of Ministers' first task after the adoption of the law was to prepare procedures for Board nomination and to appoint the first Supervisory Board (within thirty days after the law entered into force).

## B. ARMENIA

The Armenian Parliament approved a controversial draft Religion Law and the proposed new Article 162 in the Criminal Code to punish the sharing of beliefs. A wide range of religious communities and human rights activists within Armenia expressed deep concern about these proposed new laws, which seek to legally define Christian belief as "the belief in Jesus Christ as God and Savior and an acceptance of the Holy Trinity" as a prerequisite for registering Christian religious organizations.<sup>2</sup> These drafts also seek to define and criminalize "soul hunting," a term negatively used as a synonym for all types of proselytism.<sup>3</sup> Armenia's Parliament requested a review of the draft Laws from the Venice Commission of the Council of Europe.<sup>4</sup> The review was to be conducted jointly with the Organization for Security and Co-operation in Europe (OSCE) and is expected to be highly critical of the drafts.

## C. AUSTRALIA

The Associations Law of New South Wales, which provides for the registration and regulation of clubs, societies, and other non-profit associations, was passed at the end of March 2009 and received Royal Assent in April. Unlike its predecessor, the new law "distinguishes between large (Tier 1) and small (Tier 2) associations for the purposes of financial reporting, so enabling tighter reporting and auditing."<sup>5</sup> Furthermore, it imposes certain requirements on large associations: it "requires an association's committee mem-

2. See Julia Hakobyan, *Freedom of Religion 2009: U.S. Dept. of State Criticizes Armenia for Few Improvements in the Freedom of Minority Religious Groups*, ARMENIANOW, Oct. 29, 2009, <http://www.armenianow.com/?action=printable&IID=1258&AID=4193&CID=3984&lng=eng>.

3. Eur. Comm'n for Democracy Through Law (Venice Commission), Opinion no.530/2009, art. 8 (Apr. 21, 2009), [http://www.venice.coe.int/docs/2009/CDL\(2009\)065-e.asp](http://www.venice.coe.int/docs/2009/CDL(2009)065-e.asp).

4. See Felix Corley, *Armenia: A "Serious Setback to the Development of a Modern, Progressive and Liberal Armenia,"* HUMAN RIGHTS IN ARMENIA, Mar. 24, 2009, [http://www.hra.am/en/point-of-view/2009/03/24/armenia\\_a\\_serious\\_setback\\_to\\_the\\_development\\_of\\_a\\_modern\\_progressive\\_and\\_liberal\\_armenia](http://www.hra.am/en/point-of-view/2009/03/24/armenia_a_serious_setback_to_the_development_of_a_modern_progressive_and_liberal_armenia).

5. *Associations Incorporation Bill 2009*, Council of Soc. Serv. of New S. Wales, <http://www.ncoss.org.au/hot/AssociationsIncorporationBill.pdf> (last visited Nov. 14, 2009).

bers to disclose their pecuniary interests in any matters to be discussed at a committee meeting, and creates a number of offenses with respect to fraudulent behavior and misuse of confidential information by an association's committee members."<sup>6</sup>

#### D. AZERBAIJAN

Azerbaijan's parliament adopted a new law on non-governmental organization on June 30, 2009, but eliminated several controversial amendments opposed by IFEX members,<sup>7</sup> the Institute for Reporters' Freedom and Safety (IRFS), and other international human rights groups.<sup>8</sup> Changes were made in the draft NGO Law to meet the objections of civil society before Parliament adopted the new law.

NGOs and international rights groups argued that the amendments would increase government control over civil society and media organizations in Azerbaijan. The legislation sets new limits on the country's non-governmental organizations, but did not include one of the most controversial original provisions that limited foreign funding to a maximum of fifty percent of an NGO's total budget.<sup>9</sup> The new legislation allows foreign-based NGOs to work in Azerbaijan only based on intergovernmental agreements.<sup>10</sup> The Eurasia Foundation said that "[d]etails about the revised bill are scarce, with Azerbaijani media providing only the broadest of information."<sup>11</sup>

#### E. CAMBODIA

The draft NGO law was discussed before submission to the National Assembly. The draft law entitled "Law on Organizations," was first written over a decade ago and requires NGOs to submit documents for government approval, detailing their structure, goals, funding, resources, properties, and even logos. It includes fines and imprisonment for any NGO that fails to submit annual reports to the Ministry of Economy and Finance. There were objections to the proposed law because it was used to "intimidate NGO leaders, trade unionists, and, increasingly, grassroots activists representing their communities in land and other natural resource disputes."<sup>12</sup> The Cambodian government has long wanted a law on associations and NGOs, and has produced various drafts since at least 1996. The Asian Human Rights Commission (AHRC) has taken the position that a rights-based approach to the law is necessary.<sup>13</sup> "The government has vowed to include nongovernmental organizations in the consultation process for drafting new legislation

6. *Id.*

7. The International Freedom of Expression Exchange (IFEX) is a global network of non-governmental organizations that promotes and defends the right to freedom of expression. See <http://www.ifex.org>.

8. Int'l Freedom of Expression eXchange, *Parliament Drops Most Contentious Changes to NGO Law* (July 1, 2009), [http://www.ifex.org/azerbaijan/2009/07/01/ngo\\_law/](http://www.ifex.org/azerbaijan/2009/07/01/ngo_law/).

9. *Id.*

10. *Id.*

11. *Azerbaijan: NGO Law Passed*, EURASIANET.ORG, June 30, 2009, <http://www.eurasianet.org/departments/news/articles/eav063009.shtml>.

12. *Cambodia: New law restricts legitimate activities of civil society groups*, ASIA FORUM FOR HUMAN RIGHTS AND DEVELOPMENT (Dec. 11, 2008), [http://www.forum-asia.org/index.php?option=com\\_content&task=view&id=2041&Itemid=130](http://www.forum-asia.org/index.php?option=com_content&task=view&id=2041&Itemid=130).

13. Asian Human Rights Commission, *Cambodia Needs a Rights-based NGO Law* (Mar. 4, 2009), <http://www.ahrchk.net/statements/mainfile.php/2009statements/1920/>.

regulating their activities, but this has done little to assuage the fears of civil society groups who see the impending law as a threat.”<sup>14</sup>

#### F. CANADA

A new Not-for-Profit Corporations Act, Bill C-4, passed its third reading in the Canadian Senate on June 23, 2009 and received royal assent on the same day.<sup>15</sup> The provisions of this new act will come into force on a day or days still to be fixed by order of the Governor in Council. The new act represents the first substantive changes in more than ninety years governing federal not-for-profit corporations.<sup>16</sup>

#### G. CHINA

1. As to basic legal framework issues, five types of local level experiments in places such as Qingdao municipality and Jiamusi municipality are being developed to relax the dual management system practices for social organizations in China.<sup>17</sup> There are five different methods for eliminating the dual management system:

- (1) Getting rid of dual management and moving to a registration system;
- (2) Moving to a “documentation system;”
- (3) Adjusting the supervisory authority’s permission process;
- (4) Reducing the oversight role of the supervisory authority; and
- (5) Making it possible to have a one-stop shop, with the Ministry of Civil Affairs (MoCA) having both registration and supervisory powers.<sup>18</sup>

The documentation system (instead of registration) is a promising development, and it is being used for small local NGOs that provide services to the poor and other persons suffering social or economic disabilities (such as children of migrant workers). It does not require a formal registration, but a NGO is granted recognition by the local civil affairs authorities if it files papers with them. The one-stop shop (no sponsor) requires registration with MoCA, and it is being used for certain types of civil society organizations (CSOs), such as trade associations (which do not threaten the government but assist with economic development).

2. As to tax issues, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) issued two circulars in November to clarify the tax treatment of CSOs/NPOs and to provide rules for donors to them. Both circulars are retroactive to January

14. *Cambodia-Government to Seek NGO Views on NGO Law*, INT’L J. CIV. SOC’Y L. NEWSL., 2009, [http://www.iccsf.org/pubs/09-03\\_IJCSL-N.pdf](http://www.iccsf.org/pubs/09-03_IJCSL-N.pdf). “We have the draft legislation in our hands. We are in the process of sending the legislation out to NGOs asking them for their views,” said Sieng Lapresse, an undersecretary of state at the Ministry of Interior. *Id.*

15. JACQUELINE M. DEMCZUR, BILL C-4, THE NEW CANADA NOT-FOR-PROFIT CORPORATIONS ACT, HAS PASSED (2009), available at <http://www.carters.ca/pub/update/charity/09/jun09.pdf>.

16. Bill C-4 had been the topic of *Charity Law Bulletins issued by Carters.ca*, with updates on its progress over the years outlined in various “Charity Law Updates.”

17. Dual management means that social organizations and other Chinese NGOs/NPOs must have permission to register from a supervisory agency, which also exercises oversight over the activities of the organization. See Karla W. Simon, *Regulation of Civil Society Organizations in China: Necessary Changes after the Olympic Games and the Sichuan Earthquake*, 32 FORDHAM INT’L L.J. 943 (2009).

18. Hang Gao & Karla Simon, *Opening the Space: New Developments for China’s Community Organizations*, 8 INT’L J. CIV. SOC’Y L. (forthcoming April 2010).

1, 2008, the effective date of China's new Enterprise Income Tax Law.<sup>19</sup> With respect to the former, Circular [*Caishui*] 122 says that exempt items include gifts, state subsidies, membership fees, interest on bank accounts, and other income as determined by the MoF and the SAT.<sup>20</sup>

The second Circular [*Caishui*] 123 describes the procedures whereby CSOs/NPOs seeking to qualify themselves as appropriate donees of tax deductible contributions can do so. It also describes attributes of such NPOs, including governance and conflict of interest rules. This is a reissuance of a Circular first issued in 2007, and it is described in detail in Karla W. Simon, *Regulation of Civil Society Organizations in China: Necessary Changes after the Olympic Games and the Sichuan Earthquake*.<sup>21</sup> The text of the Circular is available on the ICCSL website in the Documentation Center.<sup>22</sup>

#### H. ENGLAND AND WALES

The Charity Commission of England and Wales has published its "emerging findings" on public benefit organizations.

These are detailed reports on the findings of twelve public benefit assessments of individual charities. Those reports provide details of the issues that arose in individual cases and the conclusions and recommendations. [The Charity Commission said that while] it is too soon to draw from [its] first round of public benefit assessments any firm conclusions about the ability of charities in general, or certain types of charit[ies], to meet the public benefit requirement. . . [the findings should be scrutinized.] [It thinks charities] might find it helpful if [there were]. . . general points of interest and initial observations about what we have learned from this exercise so far, alongside the emerging findings from carrying out the assessments.<sup>23</sup>

Before the findings were adopted, there was considerable controversy over whether fee-charging private schools and other bodies would not be found to provide a public benefit.<sup>24</sup> This continues to be a major source of contention between the fee-charging charities and the Charity Commission.<sup>25</sup>

19. HG.Org Worldwide Legal Directories, *The New Enterprise Income Tax Law of China*, <http://www.hg.org/article.asp?id=7497> (last visited Jan. 29, 2010).

20. Caishui [2009] No. 122, The Circular on Tax-Exempt Incomes of NPOs by Ministry of Finance and State Administration of Taxation (promulgated by the Ministry of Finance, State Administration of Labor, Jan. 1, 2008, effective Jan. 1, 2008) available at [http://www.iccsl.org/pubs/Caishui\\_122\\_\(eng\).pdf](http://www.iccsl.org/pubs/Caishui_122_(eng).pdf).

21. Simon, *supra* note 17, at 943.

22. Caishui [2009] No. 123, The Circular on Management Issues Concerning NPOs' Eligibility of Tax Deduction (promulgated by the Ministry of Finance, State Administration of Labor, Jan. 1, 2008, effective Jan. 1, 2008), available at [http://www.iccsl.org/pubs/Caishui\\_123\\_\(eng\).pdf](http://www.iccsl.org/pubs/Caishui_123_(eng).pdf).

23. See CHARITY COMM'N, EMERGING FINDINGS FOR CHARITY TRUSTEES FROM THE CHARITY COMMISSION'S PUBLIC BENEFIT ASSESSMENT WORK: 2008-09 (2009), <http://www.charity-commission.gov.uk/publicbenefit/assesmerge.asp>.

24. See *England and Wales-Draft Guidance on Education and Fee-Charging Published*, INT'L J. CIV. SOC'Y L. NEWSL. (Apr. 2008), available at <http://www.iccsl.org/search/show.cfm?id=2685>.

25. See Letter from Belinda Pratten, Nat'l Council of Voluntary Orgs (NCVO) to Patrick Skidmore, Charity Comm'n, available at [http://www.ncvo-vol.org.uk/uploadedFiles/NCVO/What\\_we\\_do/Policy/Charity\\_Law\\_and\\_Regulation/Public%20Benefit%20Fee%20charging%20guidance.pdf](http://www.ncvo-vol.org.uk/uploadedFiles/NCVO/What_we_do/Policy/Charity_Law_and_Regulation/Public%20Benefit%20Fee%20charging%20guidance.pdf).

## I. ETHIOPIA

The World Bank extended US\$540 million to develop basic services in Ethiopia and stated that the country should ease its regulations on NGOs.<sup>26</sup> Ethiopia adopted a controversial aid law in early 2009,<sup>27</sup> under which any local group drawing more than ten percent of its funding from abroad would be classified as “foreign” and subjected to tight government control.<sup>28</sup> The classification would effectively ban such associations from working on issues related to ethnicity, gender, children’s rights, and conflict resolution.<sup>29</sup> The US\$540 million is meant for basic services covering education, health, agriculture, water, and road projects under a three-year scheme.<sup>30</sup> The World Bank replaced its former scheme of direct budgetary support to Ethiopia soon after the disputed 2005 parliamentary elections there, which foreign observers said fell short of international standards.<sup>31</sup>

Nonetheless, in August it was reported that the government had revoked the licenses of forty-two organizations, allegedly operating “out of their mandate.”<sup>32</sup> They appear to have been revoked because of their reporting of human rights abuses.<sup>33</sup>

J. INDIA<sup>34</sup>

To overhaul the outdated and cumbersome tax system in India, the Finance Minister released a draft Direct Taxes Code and discussion paper. Among other changes, the new code will affect charities, as outlined here. The code replaces the term “charitable purpose” with the term “permitted welfare activities.” Permitted welfare activities has been defined to mean any activity involving relief of the poor, advancement of education, provision of medical relief, preservation of environment, preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.<sup>35</sup>

Under the new proposal, the scope of Section 2(15) of the Income Tax Act has been broadened. Prior to this amendment, “Charitable purpose” included “relief of the poor, education, medical relief, and the advancement of any other object of general public utility.”<sup>36</sup> Finance (No.2) Act 2009 has now added: “preservation of the environment (including watersheds, forests and wildlife) and preservation of monuments or places or

26. *Ethiopia-World Bank Extends \$540 Million Loan and Says Country Should Ease Regulations on NGOs*, INT’L J. CIV. SOC’Y L. NEWSL. (June 2009), <http://www.iccsl.org/search/show.cfm?id=3442>.

27. Analysis of the legislation can be found in the YIR for 2008. Karla W. Simon, *International NGO and NPO Committee*, 43 INT’L LAW. 695, 695-96 (2009). The law was adopted in January 2009.

28. Ethiopia-World Bank Extends, *supra* note 26.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Ethiopia-Licenses of NGOs Revoked by Government*, INT’L J. CIV. SOC’Y L. NEWSL. (Aug. 2009), available at [http://www.iccsl.org/pubs/09-08\\_IJCSL-N.pdf](http://www.iccsl.org/pubs/09-08_IJCSL-N.pdf).

33. *Id.*

34. See Noshir H. Dadrawala, *Difficult Times Ahead for Charities in India*, 7 INT’L J. CIV. SOC’Y L. 57 (2009), available at [http://www.iccsl.org/pubs/09-10\\_IJCSL.pdf](http://www.iccsl.org/pubs/09-10_IJCSL.pdf).

35. *Id.*

36. *Id.*

objects of artistic or historic interest.”<sup>37</sup> Advancement of any other object of general public utility will not include any activity in the nature of trade, commerce, or business, or any activity of rendering any service in relation to any trade, commerce, or business, for a fee or for any other consideration, irrespective of the nature of use, application, or retention of the income from such activity. The finance ministry has uploaded on its website the draft Direct Taxes Code, a discussion paper, a comment on the code, and a place for people to respond to it.<sup>38</sup>

Chapter IV of the draft Direct Taxes Code contains “Special Provisions Relating to Computation of Total Income of Non-profit Organisations.”<sup>39</sup> Some of the important features of this chapter are as follows:

1. The new regime will uniformly apply to all non-profit organizations irrespective of the nature of their activities.
2. An organization will be treated as a non-profit organization if:
  - (a) It is established for the benefit of the public;
  - (b) It is established for carrying on permitted welfare activities;
  - (c) It is not established for the benefit of any particular caste;
  - (d) It is not established for the benefit of any of its members;
  - (e) It actually carries on the permitted welfare activities during the financial year and the beneficiaries of the activities are the general public;
  - (f) It does not intend to apply its surplus or other income or use its assets or incur expenditure, directly or indirectly, for the benefit of any interested person;
  - (g) Any expenditure by the organization does not inure, directly or indirectly, for the benefit of any interested person;
  - (h) The funds or assets of the organization are not used or applied, or deemed to have been used or applied, directly or indirectly, for the benefit of any interested person;
  - (i) The surplus, if any, accruing from its permitted activities does not inure, directly or indirectly, for the benefit of any interested person;
  - (j) The funds or the assets of the non-profit organization are not invested or held in any associate concern or in any prescribed form or mode;
  - (k) It maintains such books of account and in such manner, as may be prescribed;
  - (l) It obtains a report of audit in the prescribed form from an accountant before the due date of filing of the return with respect to:
    - (A) The accounts of the business, if any, carried on by it;
    - (B) The accounts relating to the permitted welfare activities; and
  - (m) It is registered with the Income-Tax Department under the Code.<sup>40</sup>

There are also complex rules for the computation of income of non-profit organizations: the generally applicable tax rate is fifteen percent. Surprisingly, the “gross receipts” include contributions, unless they are designated as being made to the endowment. In

37. *Id.*

38. Dep’t of Community, Rural and Gaeltacht, *Direct Taxes Code Bill (2009)*, available at <http://finmin.nic.in/dtcode/Direct%20Taxes%20Code%20Bill%202009.pdf>.

39. *Id.*

40. *See id.* chp. IV.

addition, passive investment income is included.<sup>41</sup> On the other hand, the amounts paid out to carry out public welfare activities or capital expenditures for such purposes are deductible from gross receipts in order to arrive at the income of an organization.<sup>42</sup>

#### K. IRELAND

The Charities Bill 2007 was passed by Dáil Éireann (lower house of the parliament) on November 5, 2008, and moved to the Seanad Éireann (Senate—upper house of the parliament), which approved it on February 28, as the Charities Law of 2009. The Charities Law aims to ensure accountability and protect against abuse of charitable status and fraud. The law also defines a charitable purpose for the first time in primary legislation.<sup>43</sup>

#### L. JORDAN

According to *The National*,<sup>44</sup> Jordan is considering revisiting a controversial civil societies law that local and international rights groups have criticized for taking too much control over the funding, registration, and monitoring activities of NGOs.<sup>45</sup> Parliament hastily endorsed the law in 2008, drawing the ire of Jordanian NGOs who said they were not consulted when the law was drafted.<sup>46</sup> The law, which became effective in December 2008, was seen as a step backwards because it expanded government control over NGO registration, required cabinet consent for foreign donations to NGOs, and gave the government the right to dissolve an NGO for minor violations.<sup>47</sup> Under increasing local and international pressure, the government has decided to adopt a softer stance and said it will consider the demands of NGOs and CSOs, which formed a coalition last year to protest against the law before it became official.<sup>48</sup>

#### M. LAO PEOPLE'S DEMOCRATIC REPUBLIC

International aid groups welcomed a decision by the Lao government to allow local NGOs to register and operate as independent entities for the first time. By November 2009, Lao citizens were able to apply to form NGOs after the Decree on Associations was signed by Prime Minister Bouasone Bouphavanh and announced on May 11, 2009.<sup>49</sup> The decree was effective within 180 days after application.<sup>50</sup> Two or more people can now establish a local NGO under the new law.<sup>51</sup> The decree provides a clear legal framework

41. *See id.*

42. *See id.*

43. MINISTRY OF FINANCE, PRINCIPAL FEATURES OF THE CHARITIES ACT (2009), available at <http://www.pobail.ie/en/CharitiesRegulation/PRINFEACharAct09.pdf> (last visited Nov. 16, 2009).

44. *Citizen Participation and Freedom of Expression*, INT'L J. CIV. SOC'Y L. NEWSL. (Mar. 2009), available at [http://www.iccsl.org/pubs/09-03\\_IJCSL-N.pdf](http://www.iccsl.org/pubs/09-03_IJCSL-N.pdf).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Lao PDR Approves Decree for Non-Profit Associations*, INTL CENTER FOR NOT-FOR-PROFIT LAW, May 21, 2009, <http://www.icnl.org/KnoWleDge/news/2009/05-21.htm>

50. *Id.*

51. *Id.*

for member-based groups, in contrast with a more ad hoc registration process that often depended on connections.<sup>52</sup> Although international NGOs can do much in the country, local NGOs know the local culture and community needs, according to Luke Stephens, country director of the Irish-based NGO Concern Worldwide.

#### N. NORTHERN IRELAND

According to Voluntary News, the new Charity Commission for Northern Ireland held its first board meeting on June 15, 2009 in Belfast and established a timetable for its work.<sup>53</sup> A commencement order was introduced by September 2009<sup>54</sup> to bring into effect provisions on the meaning of charitable purpose and the public benefit test, the Charities register, the Charity Tribunal, and the Commission's investigatory powers. Public benefit guidance is due, with consultation to follow.<sup>55</sup>

#### O. RUSSIA

Within a week of when Russian President Dmitry Medvedev introduced the re-written law on Russian NGOs, the law passed the State Dumas in the first reading. The new law may have fewer hurdles for Russian NGOs. The law has more relaxed restrictions on the civic groups than the legislation introduced by former president Vladimir Putin in 2006. The law passed with a vote of 391 to 57.<sup>56</sup> Commenting on the bill, President Medvedev said the number of audits would be reduced for non-profit organizations to once every three years.<sup>57</sup> The list of documents authorities are allowed to ask for checks is restricted, and registration procedures are being simplified.<sup>58</sup>

#### P. SERBIA

The Serbian Parliament approved the new Law on Associations on July 8, 2009.<sup>59</sup> The Parliament's decision marked the culmination of efforts to bring the legal framework for associations in Serbia closer to international standards and regional best practices. Among other things, the law requires only three natural or legal persons to establish an association, permits informal associations to operate, and sets out rules governing the establishment of branch offices of foreign associations operating in Serbia; currently, those branch

52. Decree Law, ICCSL Documentation Center, [http://www.iccsl.org/pubs/Lao\\_PDR\\_Decree\\_Law\\_on\\_Associations.pdf](http://www.iccsl.org/pubs/Lao_PDR_Decree_Law_on_Associations.pdf) (English translation available).

53. See Charities Comm'n for N. Ireland, [http://www.dsdni.gov.uk/charities\\_commission.htm](http://www.dsdni.gov.uk/charities_commission.htm) (last visited Nov. 16, 2009).

54. Charity Commission for Northern Ireland, Draft Time Table, [http://www.dsdni.gov.uk/charities\\_draft\\_time\\_table.htm](http://www.dsdni.gov.uk/charities_draft_time_table.htm) (last visited Jan. 30, 2010).

55. *Id.*

56. *Duma Passes NGO Law*, BARENTS OBSERVER.COM, June 29, 2009, <http://www.barentsobserver.com/duma-passes-ngo-law.4611026-16180.html>.

57. *Duma Passes New NGO Law*, INT'L CTR. FOR CIVIL SOC'Y LAW (June 2009), <http://www.iccsl.org/news/news.html>.

58. *Id.*

59. *Serbian Law on Associations Enacted*, THE INT'L CTR FOR NOT-FOR-PROFIT LAW (July 10, 2009), <http://www.icnl.org/knowledge/news/2009/07-10.htm>.

offices operate in a legal vacuum.<sup>60</sup> The law envisages that the Agency for Registration of Commercial Companies will be the registration body for associations.<sup>61</sup> This novel approach gives rise to a number of issues, including the agency not being exposed to international standards pertinent to freedom of associations.<sup>62</sup>

#### Q. TAJIKISTAN

Tajikistan's President Imomali Rakhmon signed a controversial new religion law. The U.S. Commission on International Religious Freedom criticized the law, saying:<sup>63</sup>

If signed, the law will legalize harsh policies already adopted by the Tajik government against its majority Muslim population, including the closure of hundreds of mosques and limiting the religious education of children. Moreover, the law will impose state censorship on religious literature, restrict the conduct of religious rites to officially-approved places of worship and allow the state to control the activities of religious associations.<sup>64</sup>

The new religion law places onerous restrictions on the Muslim community, such as limiting the number of mosques based on the number of local residents and imposing state interference in the appointment of imams. The preface to the law singles out the Hanafi school of Sunni Islam for its 'special role' in the development of Tajikistan's 'culture and moral life,' downplaying the significance of the Shi'a Ismaili minority, which lives in Tajikistan's Mountainous Badakhshan Region.<sup>65</sup>

The law will also cause difficulties for Tajikistan's other religious minorities by dramatically increasing the numerical threshold for registration requirements, as well as requiring the founders of a religious group seeking registration to certify that they have lived in their territory for at least five years and adhered to the religion. The law also requires that a religious community obtain consent of the Religious Affairs Committee to invite foreigners or attend religious conferences outside the country.<sup>66</sup>

The new law came into force when the government officially published it.

#### R. ZAMBIA

Zambian President Rupiah Banda signed legislation regulating the operations of civil society, sending shock waves through the sector, which fears its independence will be severely compromised.<sup>67</sup> Presidential assent means the 2009 NGO Bill, withdrawn in

---

60. *Id.*

61. *Id.*

62. *Id.*

63. U.S. Commission on International Religious Freedom, Pending Religion Law in Tajikistan Concerns USCIRF (Mar. 20, 2009), [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2371&Itemid=1](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2371&Itemid=1).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Zambia—Restrictive NGO Law Enacted*, 11 INT'L J. CIV. SOC'Y L. NEWSL. (Sept. 2009), available at [http://www.iccsf.org/pubs/09-09\\_IJCSL-N.pdf](http://www.iccsf.org/pubs/09-09_IJCSL-N.pdf).

2007 after widespread protests by civil society and opposition parties, now only needs gazetting to become legislation that will require “the registration and co-ordination of NGOs” and can “regulate the work, and the area of work, of NGOs operating in Zambia.”<sup>68</sup> The new stipulations will compel NGOs to re-register every five years and submit annual information on their activities, funders, accounts, and the personal wealth of their officials.<sup>69</sup> Failure to comply could result in the suspension or cancellation of registration.<sup>70</sup> CSOs held an emergency meeting in the capital (Lusaka) in August 2009 to plan a response to the regulations, which some NGOs have termed “unconstitutional.”<sup>71</sup> The Zambian organizations reportedly discussed protests and seeking a possible court injunction against enforcement of the law.<sup>72</sup>

## II. Important Case Law

### A. ENGLAND & WALES

The magazine *Third Sector* reported that the Charity Commission’s decision to remove a trustee of a Tamil temple in south London was overturned by the First-tier Tribunal (Charity).<sup>73</sup> In only its second verdict, the tribunal panel (formerly known as the Charity Tribunal) rejected all seven of the commission’s reasons for removing Nagendram Seevaratnam as a trustee of the Sivayogam temple in south London and decided unanimously he should be reinstated immediately.<sup>74</sup> The seven reasons included claims that Seevaratnam had failed to take sufficient steps to dissociate himself and the charity from the Tamil Tigers.<sup>75</sup> The tribunal said that rumors about links had not been in wide circulation and the Commission had failed to show it would be reasonable for anyone to believe them.<sup>76</sup> The tribunal agreed with the Commission that Seevaratnam, who declined to give oral evidence, had been a dominant trustee but said that that did not constitute misconduct or mismanagement in its own right and arose because of his professional background, language skills, and his status in the religious and cultural life of the charity.<sup>77</sup> It accepted that Seevaratnam had shown misconduct and mismanagement in various ways but disagreed that his removal was necessary to protect the assets of the charity.<sup>78</sup> The tribunal said it was “most concerned” to hear that evidence submitted to the commission by Seevaratnam (demonstrating he had implemented adequate procedures for selecting and monitoring recipients of funding in Sri Lanka) had not even been translated.<sup>79</sup>

---

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *England & Wales—Charity Commission Decision Overturned by Tribunal*, INT’L J. CIV. SOC’Y L. NEWSL. 1 (Nov. 2009), [http://www.iccsf.org/pubs/09-11\\_IJCSL-N.pdf](http://www.iccsf.org/pubs/09-11_IJCSL-N.pdf).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

## B. EUROPEAN COURT OF JUSTICE

The European Court of Justice held that a country cannot restrict tax deduction for gifts to charitable bodies in only their home country. *Hein Persche v. Finanzamt Lüdenscheid* concerned a German national who claimed a tax deduction for a gift in kind, valued at about EUR 18,180, to the Centre Populaire de Lagoa in Portugal (a retirement home to which a children's home is attached).<sup>80</sup> German law allows tax deductions for gifts to charitable bodies in Germany but excludes deductions for charities in other member states.<sup>81</sup>

The ECJ ruled that because

the possibility of obtaining a tax deduction can have a significant influence on the donor's attitude, the inability in Germany to deduct gifts to bodies recognised as charitable if they are established in other Member States is likely to affect the willingness of German taxpayers to make gifts to such bodies. Such legislation constitutes, therefore, a restriction on the free movement of capital which is, as a rule, prohibited.<sup>82</sup>

This decision is an important one for all of Europe, holding as it does that cross-border donations within Europe must be made deductible under domestic law.

## C. FRANCE

A French court convicted the French branch of the Church of Scientology of fraud and fined the organization almost US\$900,000.<sup>83</sup> But the court stopped short of granting the prosecution's demand to ban the church entirely. The church said it would appeal. The verdict was among the most important in several years to involve the group, which is registered as a religion in the United States but has no similar legal protection in France, where it is considered a sect.<sup>84</sup> The court decision marks the first time that the church itself—and not individual church members—had been tried and convicted.<sup>85</sup> “The case was brought by two former members who said they were pushed into paying large sums of money in the 1990s, pressed to sign up for expensive ‘purification courses’ and harassed to buy a variety of vitamins and other forms of pharmaceuticals, plus electronic tests to measure spiritual progress.”<sup>86</sup>

---

80. Press Release No. 05/09, European Court of Justice, A Tax Deduction for Gifts to Charitable Bodies Must Not be Restricted to Bodies Established in the National Territory, (Jan. 27, 2009), available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/cp090005en.pdf>.

81. *Id.*

82. *See id.*

83. Steven Erlanger, *French Branch of Scientology Convicted of Fraud*, N.Y. TIMES, Oct. 27, 2009, available at <http://www.nytimes.com/2009/10/28/world/europe/28france.html>.

84. *Id.*

85. *Id.*

86. *Id.*

## D. KAZAKHSTAN

The Kazakh Constitutional Council said that amendments to the religion law, passed by the Kazakhstan Parliament in late 2008, are in conflict with the country's Constitution.<sup>87</sup> The 2008 bill was criticized by international organizations for its harsh and restrictive measures, including a requirement that children obtain permission from both parents for children to attend religious events. The law also increased the punishment for individuals found guilty of conducting charitable work, importing, publishing, or distributing religious literature, or building or opening places of worship in violation of "demands established in law."<sup>88</sup> Large fines were expected to be imposed upon members of unregistered churches.<sup>89</sup>

## E. RUSSIA

The European Court of Human Rights ruled unanimously in favor of two Scientology religious groups in Russia (*Kimlya v. Russia*),<sup>90</sup> finding that they have the right to be registered as religious organizations under Russian law. This decision determines that members of the Church of Scientology of Surgut and the Church of Scientology of Nizhnekamsk have the right to religious freedom and freedom of association pursuant to Articles 9 and 11 of the European Human Rights Convention. In 1997, the Russian government passed laws preventing religious organizations from forming legally unless they could prove they had been in existence in their respective states for fifteen years. Such a law obviously discriminates against religions not established in a state for fifteen years and has now been ruled as unlawful by the European Court of Human Rights. In reaching this decision, the Court "established that the applicants were unable to obtain recognition and effective enjoyment of their rights to freedom of religion and association in any organizational form."<sup>91</sup> The restricted status they were given—that of being a "religious group"—was found by the Court to convey no practical or effective benefits to them for they were deprived of legal personality, property rights, and the legal capacity to protect the interests of its members and they were severely hampered in the fundamental aspects of their religious functions.<sup>92</sup> Accordingly, the Court found "that there has been an interference with the applicants' rights under Article 9 interpreted in the light of Article 11."<sup>93</sup>

---

87. Interfax, *Kazakhstan's Amendments to Religion Law Ruled Unconstitutional* (Feb. 11, 2009), <http://www.interfax-religion.com/print.php?act=news&id=5694>.

88. Mushfig Bayram, *Kazakhstan: Religious Freedom Survey, September, 2009*, FORUM18, Sept. 23, 2009, available at [http://www.forum18.org/Archive.php?article\\_id=1352](http://www.forum18.org/Archive.php?article_id=1352).

89. *Id.*

90. *Kimlya v. Russia*, App. Nos. 76836/01 & 32782/03, (Eur. Ct. H. R. Judgment of Oct. 1, 2009), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=kimlya%20-%20v.%20-%20Russia&sessionId=44127636&skin=hudoc-en>.

91. *Id.* ¶ 88.

92. *Id.*

93. *Id.* ¶ 89.

## E. UNITED STATES

The federal district court ruling in *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner*<sup>94</sup> is a positive step forward in the ongoing efforts of U.S. charities to make national security laws fair and to ensure they protect vulnerable people that depend on charities for vital aid. The court found that the Department of the Treasury's seizure of KindHearts assets without notice or means of appeal violated the Fourth and Fifth Amendments.<sup>95</sup> The Treasury had frozen the funds and seized all of KindHearts' assets on February 19, 2006, while it investigated whether the group provided material support to Hamas, which has been designated as a terrorist organization by the United States government.<sup>96</sup> To date, KindHearts has not been designated. Its efforts to defend itself have been hampered by lack of specific allegations to respond to and lack of deadlines or procedures for Treasury reconsideration. The Treasury has denied KindHearts' requests to release its funds for aid through other organizations. The court ruling recognized the impact of the Treasury action: "As a result of the block, KindHearts' assets and property, including about one million dollars in bank accounts, became frozen indefinitely."<sup>97</sup>

## III. Other Developments

## A. CHINA

As part of the 2009-2010 National Human Rights Action Plan,<sup>98</sup> the Chinese Government stated:

The construction and management of social organizations will be strengthened to enhance their functions in serving society. Revisions will be made to the Regulations on the Registration and Management of Social Organizations, Interim Regulations on the Registration and Management of Private Non-enterprise Entities, and Regulations on the Management of Foundations to ensure social organizations conduct activities in accordance with the law and their respective charters. The government encourages social organizations to participate in social management and public services and encourages the establishment of private non-enterprise entities in the fields of education, science and technology, culture, health care, sports and public welfare. It gives play to the social functions of social organizations such as industry associations, societies, and chambers of commerce and develops and standardizes all kinds of foundations to promote programs for the public good.<sup>99</sup>

94. *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 647 F. Supp. 2d 857 (N.D. Ohio 2009).

95. *Id.* at 919.

96. *Id.* at 867.

97. *Id.*

98. INFO. OFFICE OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, NAT'L HUMAN RIGHTS ACTION PLAN OF CHINA (2009-2010) (2009), available at [http://www.gov.cn/english/official/2009-04/13/content\\_1284128.htm](http://www.gov.cn/english/official/2009-04/13/content_1284128.htm).

99. *Id.*

## B. KYRGYZSTAN

The International Center for Civil Society Law (ICNL) reported that the President of Kyrgyzstan met with a group of leading Kyrgyz NGOs in May 2009.<sup>100</sup> The meeting culminated with all participants signing a formal agreement between the Government of the Kyrgyz Republic and the Kyrgyz Third Sector, represented by the participating NGOs. The “Kyrgyz Agreement” commits all parties to further cooperation in a number of specific areas, including enforcement of legislative norms, guaranteeing human and citizens’ rights within the Kyrgyz Republic, and public supervision over the government’s decision-making at all levels.<sup>101</sup>

## C. UNITED REPUBLIC OF TANZANIA

Zanzibar adopted an NGO Policy in 2009. A copy is available on the ICCSL website.<sup>102</sup> This important document describes the relationships between the NGO sector and the government of Zanzibar. Because NGO matters are devolved from the United Republic of Tanzania to the two federal entities (Tanzania and Zanzibar), Zanzibar had long been without an NGO Policy, even though Tanzania has had one for many years.<sup>103</sup>

The new Zanzibar NGO Policy states that the Government recognizes NGOs and CSOs “as an important force and necessary instrument in strengthening economic and social development. CSOs are important partners in development and national building and an important force in the promotion of democracy and contributing in the growth of national income and poverty reduction.”<sup>104</sup> The Policy sets up the Nongovernmental Organizations Board, as the principal regulatory body for NGOs. The “vision” of the policy “is the creation of strong and sustainable [NGOs] which are conducted on the basis of justice, transparency and accountability so that they can contribute fully in national development.”<sup>105</sup>

## D. UNITED STATES

The fight against terrorism has dealt a harsh blow to Muslim charities and interfered with their donors’ religious freedom, according to a report by the American Civil Liberties Union (ACLU).<sup>106</sup> The ACLU report said that statutes were “overly broad and en-

100. *Kyrgyzstan-Compact-like Agreement Signed by Government and NGOs*, INT’L J. CIV. SOC’Y L. NEWSL. (June 2009), available at <http://www.iccsl.org/search/show.cfm?id=3443>.

101. *Open Agreement on Fundamentals of Interaction Between the Government and Civil Society Organizations of Kyrgyzstan* (May 5, 2009), available at [http://www.icnl.org/knowledge/library/dlogin.php?file=kyrgyzstan/agreement2009\\_eng.pdf](http://www.icnl.org/knowledge/library/dlogin.php?file=kyrgyzstan/agreement2009_eng.pdf).

102. *Revolutionary Gov’t of Zanzibar, Non-governmental NGOS (NGOs) Policy* (2009), available at <http://www.iccsl.org/pubs/ZanzibarNGOPolicy.pdf>.

103. *See UNITED REPUBLIC OF TANZANIA, NATIONAL POLICY ON NON-GOVERNMENTAL ORGANIZATIONS (NGOs), DAR ES SALAAM* (2001), available at [http://www.bot-tz.org/MFI/Library/NGO\\_Policy\\_2002\\_English.pdf](http://www.bot-tz.org/MFI/Library/NGO_Policy_2002_English.pdf).

104. *See* *Revolutionary Gov’t of Zanzibar*, *supra* note 102.

105. *Id.* chp. 3.1.

106. *AMERICAN CIVIL LIBERTIES UNION, BLOCKING FAITH, FREEZING CHARITY: CHILLING MUSLIM CHARITABLE GIVING IN THE “WAR ON TERRORISM”* (2009) available at <http://www.aclu.org/files/pdfs/humanrights/blockingfaith.pdf>.

forced in a discriminatory manner, coupled with a lack of due process, have starved Islamic charities of money and impeded Muslims' ability to fulfill zakat, their religious requirement to make charitable donations."<sup>107</sup> Though it gives no estimate of the decline in donations to Muslim groups after the September 11 attacks, the report notes that nine Islamic charities have closed since then.<sup>108</sup>

---

107. Stephanie Storm, *A.C.L.U. Report Says Antiterror Fight Undercuts Liberty of Muslim Donors*, N.Y. TIMES, June 15, 2009, <http://www.nytimes.com/2009/06/16/us/16charity>.

108. U.S.—*ACLU Report Details Undermining of Muslim Charities Since September 11 Attacks*, INT'L J. CIV. SOC'Y L. NEWSL. (July 2009), available at [http://www.icysl.org/pubs/09-07\\_IJCSL-N.pdf](http://www.icysl.org/pubs/09-07_IJCSL-N.pdf).