

# Local, Regional, and International Developments Affecting Not-for Profit and Non-Governmental Organizations

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This report discusses developments at the international, regional, and local levels with respect to the legal framework of Not-for-Profit Organizations (NPO) and Non-Governmental Organizations (NGO).<sup>1</sup> Although most of the developments are local, and not “international” law developments per se, the protections accorded the freedoms of association, expression, and peaceful assembly by the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> make the local issues faced by NPOs of international concern.

## I. International Developments

### A. UNITED NATIONS

Anti-terrorism activities by the United Nations (U.N.) that target charities are the most significant international developments with respect to the legal framework for NPOs in 2003. On December 1, 2003 the U.N. Security Council published the Second Report of the Monitoring Group to the Security Council Committee established pursuant to Resolution 1267 (1999).<sup>3</sup> The Monitoring Group was established by Security Council

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1. 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 publications of the International Center for Civil Society Law. All issues of the *International Journal of Civil Society Law*, a quarterly publication, are available at <http://www.law.edu/students/orgs/IJCSL> (last visited May 9, 2004). Issues of the *IJCSL Newsletter*, a monthly publication, are on file with the author. Subscriptions to both are handled by Managing Editor Valere Fulwider, who can be reached by e-mail at [vfulwider@yahoo.com](mailto:vfulwider@yahoo.com).

2. The ICCPR, adopted by the General Assembly of the United Nations, entered into force on March 23, 1976. The full text of the ICCPR is located on the website of the Office of the High Commissioner for Human Rights, available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (last visited Mar. 11, 2004).

3. *Second Report of the Monitoring Group Established Pursuant to Resolution 1363 (2001) and Extended by Resolutions 1390 (2002) and 1455 (2003), on Sanctions Against Al-Qaida, the Taliban and Individuals and Entities Associated With Them*, U.N. SCOR, U.N. Doc. S/2003/1070 (2003), available at <http://www.un.org/Docs/sc/>

resolution 1363 (2001), to deal with international sanctions against al-Qaeda, the Taliban, their associates and associated entities.<sup>4</sup> A section of the report is devoted to the use of charities to finance terrorism.<sup>5</sup> In relation to charities, the report notes that: "Before September 11, 2001 few countries had sought to regulate charities or require them to report on their collection and disbursement activities," but many do now.<sup>6</sup> Approximately fifty charities are reported to have been closed down in Gulf countries, and 245 domestic charities have been audited in Saudi Arabia; however, very few of these have been submitted to the Security Council Committee for designation.<sup>7</sup> To date, only seventeen charities or branches of charities have been designated by the Committee. Even where charities and their managers have been designated and their existing bank accounts frozen, it has proved difficult to close them down completely.<sup>8</sup> In addition in some cases, it is difficult to pierce the charity veil and ascertain the identity of major donors.<sup>9</sup> The Monitoring Group's recommendations include the following: "special requirements should be imposed to ensure that, to the extent possible, charities route their transactions through established banking systems;"<sup>10</sup> where cash transfers are necessary, special efforts should be made to record and verify every transaction;<sup>11</sup> a database containing both favorable and unfavorable information regarding recipient entities should be established and published;<sup>12</sup> and charities should have the responsibility of verifying that their grants are not being made to blocked entities.<sup>13</sup>

## II. Regional and Local Developments

### A. ASIA AND ASIA-PACIFIC

#### 1. Australia

During the course of 2003, the legal framework for NPOs and their taxation was subject to considerable debate. In July 2003, the Treasurer released an exposure draft of a "Charities Bill,"<sup>14</sup> which, if enacted, will provide a new definition of charity for the purpose of a wide range of Commonwealth legislation.<sup>15</sup> If the bill is enacted, Australia will join Barbados as the only jurisdictions to adopt a legislative definition of charity.<sup>16</sup> Charities responded to the Bill by expressing the concern that, if enacted in the form proposed, it will cost charities

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committees/1267/1267SelectedEng.htm [hereinafter Second Report]. See also SCOR Res. 1267, U.N. SCOR, 4051st mtg., U.N. Doc. S/RES/1267 (1999), available at <http://www.un.int/usa/sres1267.htm>.

4. SCOR, Res. 1363, U.N. SCOR, 4352nd mtg., U.N. Doc. S/RES/1363 (2001), available at <http://www.un.int/usa/sres1267.htm>.

5. Second Report, *supra* note 3, at 13.

6. *Id.* at 14.

7. *Id.* at 15.

8. *Id.*

9. *Id.*

10. *Id.* at 19.

11. *Id.*

12. *Id.*

13. *Id.*

14. Press Release, Commonwealth Treasurer of Australia, Release of Charities Definition Exposure Draft (July 22, 2003), available at <http://treasurer.gov.au/tsr/content/pressreleases/2003/059.asp>.

15. *Id.*

16. Barbados *Charities Act*, § 2, Cap. 243 (1980). See also Myles McGregor-Lowndes, *Australian Charity Law Reform Proposals*, 5 INT'L J. NOT-FOR-PROFIT L. (2002), at [http://www.icnl.org/journal/vol5iss1/ar\\_myles.pdf](http://www.icnl.org/journal/vol5iss1/ar_myles.pdf) (last visited May 9, 2004).

their tax exempt status when they speak out against government policy on social issues or advocate changes in the law.<sup>17</sup> To the contrary, however, the Treasurer has stated that charities have never been penalized for speaking out on public policy.<sup>18</sup> At year end, the debate was continuing and the issues raised by charities and other commentators had not been resolved.

## 2. China

Major developments in China include the holding of several conferences on freedom of association at academic institutions, such as the Chinese Academy of Social Sciences and the University of Peking School of Law.<sup>19</sup> Despite promises for reform of the regulations governing the legal form of foundations<sup>20</sup> and significant discussions of the draft among foreign and domestic legal scholars,<sup>21</sup> new regulations were not promulgated by year's end. Other discussions during 2003 dealt with the legal issues associated with the reform of China's public institutions (e.g., schools and universities, health care institutions, museums and other cultural institutions, and scientific research institutes).<sup>22</sup> Papers presented at a major conference held in October on these issues were published in early 2004.<sup>23</sup>

## 3. New Zealand

As a result of the discussion of legal reforms relating to the NPO sector in New Zealand, the government has proposed legislation to establish a "Charities Commission"<sup>24</sup> similar to the Charity Commission of England and Wales. At the end of the year, the Ministry of Economic Development created a web page to enable easier access to information on developments related to the establishment of the Charities Commission (which is to be operational by July 2004) as well as the proposed charity legislation (which is expected in the early part of 2004).<sup>25</sup> Once the charity bill is available, the Ministry of Economic Development will post it to the site.

17. See Myles McGregor-Lowndes, *Australia Crawls Closer to Reform of the Definition of Charity*, 6 INT'L J. NOT-FOR-PROFIT L. (Jan. 2004), at [http://www.icnl.org/journal/vol6iss2/ar\\_myales.htm](http://www.icnl.org/journal/vol6iss2/ar_myales.htm).

18. *Id.*

19. IJCSL Staff, *China Update*, 1 INT'L J. CIV. SOC'Y L., 116 (Oct. 2003), at <http://www.law.edu/students/orgs/IJCSL>.

20. *Id.* at 116–117.

21. *Id.*

22. See generally Project Team on "Reform of China's Public Institutions and Development of China's Non-profit Organizations" National Research Center for Science and Technology for Development Ministry of Science and Technology, *Reform of China's Public Institutions: Retrospect & Prospects*, 2 INT'L J. CIV. SOC'Y L., 7 (Jan. 2004), available at <http://www.law.edu/students/orgs/IJCSL> [hereinafter *Reform of China's Public Institutions*]. See generally Ge Yunsong, *Nonprofit Organizations and the Reform of China's Public Institutions*, 2 INT'L J. CIV. SOC'Y L., 27 (Jan. 2004) available at <http://www.law.edu/students/orgs/IJCSL> [hereinafter *Nonprofit Organizations and the Reform of China's Public Institutions*].

23. *Reform of China's Public Institutions*, supra note 22, at 7; *Nonprofit Organizations and the Reform of China's Public Institutions*, supra note 22, at 27.

24. Media Statement, Finance Minister Michael Cullen, Design of Charities Commission Agreed, (Mar. 5, 2003), available at <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=16171>. See also IJCSL Staff, *Cabinet Agrees to Charities Commission Design*, 1 INT'L J. CIV. SOC'Y L., at 72 (May 2003), at <http://www.law.edu/students/orgs/IJCSL>.

25. Ministry of Economic Development website, at <http://www.med.govt.nz/index.html> (last visited May 9, 2004). This site includes a link to a page on the Charities Commission Establishment, at [http://www.med.govt.nz/buslt/bus\\_pol/charities/index.html](http://www.med.govt.nz/buslt/bus_pol/charities/index.html) (last visited May 9, 2004).

#### 4. *Pakistan*

Two significant developments occurred in connection with the “Enabling Environment Initiative” developed by the Pakistan Centre for Philanthropy (PCP).<sup>26</sup> The PCP has drafted, with the aid of legal experts, a proposed law that would replace much of the existing complex and confusing legal framework with a new and consolidated approach.<sup>27</sup> This draft has been submitted to the government for comments. The PCP has also published a “NPO Certification Model” and the required forms on its website.<sup>28</sup> The new model was created at the government’s behest, and it is a comprehensive effort to “grade” Pakistan’s NPOs for two distinct purposes—“enhancing its credibility in the wider public” and “obtaining tax benefits” from the Central Board of Revenue (CBR).<sup>29</sup> The three parameters to be examined for purposes of certification are internal governance, financial management, and program delivery.<sup>30</sup> The model sets specific scores for criteria within each category. Meticulously spelled out, the new system applies to all NPOs in Pakistan, but it creates different criteria for small, medium-sized, and large NPOs.<sup>31</sup>

#### 5. *Vietnam*

In July 2003, the government of Vietnam (Ministry of Home Affairs) published a decree containing regulations for the “Organization, Operations and Management of Associations.”<sup>32</sup> These regulations have been anticipated for some time, as both the 1957 Law on Associations<sup>33</sup> and the 1996 Civil Code<sup>34</sup> have long contemplated that comprehensive regulations would be forthcoming. Therefore, this is a welcome event.<sup>35</sup> On the other hand, it is clear that the regulations as issued—while making some progress—need to be reformulated to better comply with international good practice.<sup>36</sup> Issues of concern are discussed in comments submitted by a task force of the International Center for Civil Society Law (including members of International NPOs and NGOs Committee, International Law

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26. For information on Pakistan Centre for Philanthropy (PCP) or the Certification system, please visit the PCP website, at <http://www.pcp.org.pk> (last visited May 9, 2004). See also Pakistan Centre for Philanthropy, *Certification Mechanism for Pakistan NGOs*, 1 INT’L J. CIV. SOC’Y L., at 184 (July 2003), at <http://www.law.edu/students/orgs/IJCSL>.

27. PCP, *Draft Nonprofit Public Benefit Organisations (Governance and Support) Act, 2003*, available at <http://www.pcp.org.pk/PDF/Main%20Report%20EEI%20PDF/Appx%20II-EEI%20Draft%20NPO%20Act.pdf> (last visited May 9, 2004).

28. PCP, *NPO Certification Model*, available at <http://www.pcp.org.pk/PDF/Certification%20Model.pdf> (last visited May 9, 2004).

29. *Id.*

30. *Id.*

31. See *id.*

32. Decree No. 88/2003/ND-CP, Providing for the Organization, Operation and Management of Associations (2003) (Vietnam), available at <http://forum.wso.net/library/decree88.rtf> (last visited May 9, 2004).

33. Law No. 102, Law on the Right to Establish Associations (1957) (Vietnam).

34. Civil Code ch. 3 (Vietnam).

35. Earlier decrees on associations were not as comprehensive, such as Decree No. 258, On Management of Associations (1957), and Decree No. 1, On the Administration of the Organization and Activities of Associations (1989). The regulations now provide detail and clarity.

Section of the American Bar Association).<sup>37</sup> The comments discuss in detail the scope and effect of the regulations as issued.<sup>38</sup>

### III. Caucasus and Central Asia

#### A. AFGHANISTAN

The preliminary draft of Afghanistan's new constitution (since adopted in January 2004), provides protections for important human rights—the freedoms of association, expression, and peaceful assembly—that confirm the importance of establishing an independent civil society.<sup>39</sup> The constitution-making process involved many public consultations, ensuring a role for civil society in the process of reaching consensus on a new document.<sup>40</sup> In addition, a process began in 2003 to draft legislation specifically providing a new legal framework for NPOs, though it is not clear how much progress has been made in moving toward its adoption.

#### B. KAZAKHSTAN

On November 29, 2003, President Nursultan Nazarbayev signed into law amendments to the Tax Code containing provisions that benefit NPOs.<sup>41</sup> For example, it is now possible for organizations operating in the social sphere to receive in-kind contributions without fear of losing tax-exempt status.<sup>42</sup> In addition, there is a new list of organizations that may receive charitable assistance, including “social sphere” organizations.<sup>43</sup> In March 2003, the government approved the “State Program of Government Support of NPOs.”<sup>44</sup>

#### C. KYRGYZSTAN

The new Kyrgyzstan Tax Code provides greater support for the sector<sup>45</sup> including: humanitarian aid, grants, donations, income on endowments, and membership and entrance fees are exempt from income tax; the allowance for deductible contributions to Public

36. For a full description of why a country should permit the development of independent NPOs, see LEON IRISH ET AL., *GUIDELINES FOR LAWS AFFECTING CIVIC ORGANIZATIONS*, (2d ed. 2004).

37. These comments are on file with the author. The website of the International Center for Civil Society Law, <http://www.iccs.org>, is currently under construction.

38. *Id.*

39. AFG. CONST. ch. II. available at [http://www.oefre.unibe.ch/law/icl/af00000\\_.html](http://www.oefre.unibe.ch/law/icl/af00000_.html). (last visited May 9, 2004).

40. See Carlotta Gall, *Afghans Clash at a Conference to Work Out a New Constitution*, NY TIMES, Dec. 30, 2003, at A10.

41. Tax Code, § 121 (Kaz.). See International Center for Not-for-Profit Law, *Amendments to the Tax Code of the Republic of Kazakhstan Benefit NGOs* (Jan 27, 2004), available at [http://www.icnl.org/car/news/KZ\\_0104\\_Tax.htm](http://www.icnl.org/car/news/KZ_0104_Tax.htm) (last visited May 9, 2004) [hereinafter *Amendments to the Tax Code of the Republic of Kazakhstan*].

42. *Amendments to the Tax Code of the Republic of Kazakhstan*, *supra* note 41.

43. *Id.*

44. See IJCSL Staff, *Three Major Developments in Kazakhstan, Kyrgyzstan & Tajikistan NPO Legislation*, 1 INT'L J. CIV. SOC'Y L., at 98 (May 2003), at <http://www.law.edu/students/orgs/IJCSL> [hereinafter *Three Major Developments*].

45. Res. 652, Amends. to Resolutions of Kyrg. (Oct. 16, 2003). See also, *Three Major Developments*, *supra* note 44, at 98–99.

Benefit Organizations (PBO) is raised from two percent to five percent; and goods and services provided by PBOs for public benefit purposes are exempt from value added taxes.<sup>46</sup>

#### D. TAJIKISTAN

In Tajikistan, a new law "On State Registration of Legal Entities" will simplify the registration procedures for NPOs (called non-commercial organizations in the law), reduce the fees for registration, and require the registration body to state reasons for any denial of registration.<sup>47</sup>

#### E. UZBEKISTAN

Resolution No. 543 of the Cabinet of Ministers of the Republic of Uzbekistan, issued on December 11, 2003, establishes a new procedure for the registration of representative offices of international and foreign NPOs.<sup>48</sup> The resolution effectively transfers authority for registration from the Ministry of Foreign Affairs to the Ministry of Justice.<sup>49</sup>

### IV. Central and Eastern Europe

#### A. CROATIA

On October 15, 2003, the Croatian Parliament enacted a new Law on the National Foundation for Civil Society Development.<sup>50</sup> This law "promises to become one of the most innovative examples of NGO/government partnership in the CEE region."<sup>51</sup> The Foundation has been established as a public law, not-for-profit legal entity, which will support innovative programs developed by NPOs and informal, community-based initiatives.<sup>52</sup> Core activities include education and publications, grant making, and public awareness campaigns.<sup>53</sup>

#### B. HUNGARY

The Hungarian Parliament adopted the Law on the National Fund for Support of Civil Society Organizations (National CSO Fund) on June 23, 2003.<sup>54</sup> The purpose of the Na-

46. Res. 652, *supra* note 45. See International Center for Not-for-Profit Law, *Instructions to the Kyrgyzstan Tax Code Amended* (Oct. 29, 2003), available at [http://www.icnl.org/car/news/0310\\_Tax\\_KG\\_eng.htm](http://www.icnl.org/car/news/0310_Tax_KG_eng.htm).

47. See *Three Major Developments*, *supra* note 44, at 98-99.

48. Res. 543 (2003) (Uzb.). See also International Center for Not-for-Profit Law, *Comments on Resolution No. 543 of the Cabinet of Ministers of the Republic of Uzbekistan—dated December 11, 2003* (Jan. 13, 2004), available at [http://www.icnl.org/car/laws/UZ\\_RES543\\_CMT.pdf](http://www.icnl.org/car/laws/UZ_RES543_CMT.pdf) [hereinafter *Comments on Resolution No. 543*].

49. *Comments on Resolution No. 543*, *supra* note 48.

50. International Center for Not-for-Profit Law, *Croatia Enacts National Foundation for Civil Society Development Law* (Oct. 27, 2003), at <http://www.icnl.org/PRESS/20031027.htm>.

51. *Id.*

52. *Id.*

53. *Id.*

54. Act No. XLVII of 2003 on Funds Pursuing Scientific, Informational, Research and Educational Activity Helping the Operation of Parties, 76 M.K. 30 (2003) (Hung.). See IJCSL Staff, *Hungary Adopts Law on the National Fund for Support of Civil Society Organizations*, 1 INT'L J. CIV. SOC'Y L., 122, 123 (July 2003), at <http://www.law.edu/students/orgs/IJCSL> [hereinafter *Hungary Adopts Law on the National Fund*].

tional CSO Fund is to help provide institutional support to Hungarian NPOs; to finance it, the Hungarian government will provide an annual contribution,<sup>55</sup> the amount of which is based on the annual taxpayer designations under the one percent tax designation law.<sup>56</sup> Under the new law, the government is required to match the amount of actual tax designations each year and place this amount in the National CSO Fund.<sup>57</sup> In no case will the amount the government contributes to the National CSO Fund be less than one-half percent of all personal income taxes collected in a given year.<sup>58</sup> Any increase in the amount of money that taxpayers designate under the one percent law will automatically increase the amount contributed by the government.<sup>59</sup> The amount currently designated under the tax designation law by Hungarian taxpayers is quite significant—the HUF equivalent of \$26 million in 2002.<sup>60</sup>

### C. LATVIA

On October 30, 2003, the Parliament adopted the law “On Associations and Foundations” in the third reading, and the law has now been signed by the President.<sup>61</sup> This is one of the three new laws, effective April 1, 2004, which will regulate the activities of NGOs in Latvia.<sup>62</sup>

### D. POLAND

Poland’s President signed the new Public Benefit Activities and Volunteerism Law in late May of 2003.<sup>63</sup> Parts of the new law go into effect this year but other sections, such as the application of a tax designation scheme for individual donors, will not go into effect until 2004.<sup>64</sup> The adoption of this legislation is an important development for Polish civil society organizations, which worked very hard to persuade the government and the dep-

55. Act No. XLVII of 2003 on Funds Pursuing Scientific, Informational, Research and Educational Activity Helping the Operation of Parties, 76 M.K. 30 (2003) (Hung.). See *Hungary Adopts Law on the National Fund*, *supra* note 54.

56. Act No. XLVII of 2003 on Funds Pursuing Scientific, Informational, Research and Educational Activity Helping the Operation of Parties, 76 M.K. 30 (2003) (Hung.). The one percent law is discussed in various publications available on the International Center for Not-for-Profit Law website, <http://www.icnl.org>. See *Hungary Adopts Law on the National Fund*, *supra* note 54.

57. Act No. XLVII of 2003 on Funds Pursuing Scientific, Informational, Research and Educational Activity Helping the Operation of Parties, 76 M.K. 30 (2003) (Hung.).

58. *Id.*

59. *Id.*

60. *Id.*

61. Law on Association and Foundations (2003) (Lat.). The NGO Centre in Riga offers a link to the draft law, available at <http://www.ngo.org.lv> (last visited May 9, 2004).

62. The other two laws are the Law on how the Law of Associations and Foundations will come into force and the Law of Public Benefit Organizations. See the NGO Centre in Riga website, at <http://www.ngo.org.lv/?id=309> (last visited Apr. 6, 2004).

63. Law on Public Benefit Activities and Volunteerism (April 24, 2003) (Pol.), available at [http://www.icnl.org/LIBRARY/cee/laws/polpubbenvolunt\[eng\].htm](http://www.icnl.org/LIBRARY/cee/laws/polpubbenvolunt[eng].htm). See also Press Release, International Center for Not-for-Profit Law, *Poland Adopts New Law on Public Benefit Activity and Volunteerism* (May 9, 2003), available at <http://www.icnl.org/PRESS/20030509.htm> (providing a link to the new law as well).

64. Law on Public Benefit Activities and Volunteerism (2003) (Pol.), available at [http://www.icnl.org/LIBRARY/cee/laws/polpubbenvolunt\[eng\].htm](http://www.icnl.org/LIBRARY/cee/laws/polpubbenvolunt[eng].htm) (last visited Apr. 6, 2004).

uties in the Sejm (the lower house of the Parliament) and the Senate of the need for the new law.<sup>65</sup> On the other hand, Tax Code amendments adopted in October 2003 severely limited the tax benefits available for contributions to Poland's NPOs.<sup>66</sup> In November, the new Council on Public Benefit Activities<sup>67</sup> was established to advise the Polish government on the role of civil society in Poland. It is intended to comment on draft laws and the implementation of existing laws.<sup>68</sup> The Council has ten representatives from the NPO sector, five from the national government and five from local governments.<sup>69</sup>

#### E. ROMANIA

At the end of 2003, the Romanian Parliament passed a new Tax Code that includes a "percentage law."<sup>70</sup> Beginning in 2005, Romanian citizens will be able to designate one percent of their income tax to any NPO of their choice, assuming that the NPO meets the legal criteria for the program.<sup>71</sup>

### V. Former Soviet Union

#### A. BELARUS

Justice Minister Viktor Halavanau reported that his ministry inspected more than 800 NGOs in 2003, resulting in the judicial liquidation of fifty-one of them.<sup>72</sup> Several NGOs terminated:

were among the most conspicuous defenders of human rights and civil society in Belarus, including such organizations as Legal Assistance to the Population, Vyasna Human Rights Center, the Center for Youth Initiatives Kontur, the Association of Young Entrepreneurs, Minsk-based Women's Response, Gomel-based Civic Initiative, Cassiopeia Belarusian Foundation, Grodno-based resource center Ratusha, Union of Belarusian Students, and others.<sup>73</sup>

Liquidation has often been on technical grounds, but commentators believe it is rooted in political causes.<sup>74</sup>

65. See Igor Golinsky, *Polish Parliament Adopts New Law on Public Benefit Activities & Volunteerism*, 6 Soc. ECON. & L. J. (Summer 2003), at <http://www.efc.be/cgi-bin/articlepublisher.pl?filename=IG-SE-06-03-1.html>.

66. See Ewa Kulik Bielinska, *Polish NGOs Rally Against Draft Income Tax Amendments*, Soc. ECON. & L. J., Vol. 6, No. 2 (Autumn 2003), at <http://www.efc.be/cgi-bin/articlepublisher.pl?filename=EB-SE-10-03-1.html>.

67. Golinsky, *supra* note 65.

68. *Id.*

69. *Id.*

70. Law 571/2003, tit. III, The Income Tax, ch. X. The Annual Gloable Income Tax, Article no. 90. See also The Percentage Philanthropy Project, *News from Romania: New Tax Code Brings 1% Option for Romanians* (Jan. 2004), at <http://www.onepercent.hu/news.htm#Romcode> [hereinafter The Percentage Philanthropy Project].

71. The Percentage Philanthropy Project, *supra* note 70.

72. See Press Release, International Center for Not-for-Profit Law, Civil society is under increasing pressure in Belarus (Feb. 4, 2004), at <http://www.icnl.org/PRESS/20040204.htm>.

73. *Id.*

74. *Id.*

## VI. Middle East and North Africa

### A. IRAQ

On November 27, 2003, L. Paul Bremer, Administrator of the Coalition Provisional Authority (CPA), signed Coalition Provisional Authority Order Number 45 (Non-governmental Organizations),<sup>75</sup> an order providing for the registration and regulation of non-governmental organizations operating in Iraq.<sup>76</sup> Pursuant to the new regulations, any foreign or domestic NPO “wishing to operate programs in Iraq” must register with the NGO Assistance Office within the Ministry of Planning and Development Cooperation.<sup>77</sup> The NGO Assistance Office will maintain a register of NPOs.<sup>78</sup> The new regulations detail the required registration submissions, including the organization’s establishment documents, financial information (including information on sources of revenue and expenses, assets and liabilities, loans, etc.) as well as a statement of the “activities the organization is planning to carry out in Iraq.”<sup>79</sup> NPOs are required to prepare their proposed programs in consultation with the relevant ministry and to submit quarterly activity reports on those activities.<sup>80</sup> The NGO Assistance Office is authorized to conduct periodic audits and program reviews of NPOs.<sup>81</sup>

### B. JORDAN

A government-developed draft law came as a surprise to the NPO sector and evoked considerable criticism.<sup>82</sup> According to commentators, it reflected a lack of respect or appreciation for freedom of association.<sup>83</sup> The draft is pending and debates continue about whether it should be adopted.

## VII. Latin America and Caribbean

### A. GUATEMALA

The new Law on Nongovernmental Development Organizations was adopted by the Parliament of Guatemala on January 22, 2003.<sup>84</sup> Positive features of the law include: creation of a new legal regime for recognition of the legal status of an NPO, thus abolishing administrative discretion in this regard; acquisition of legal personality for an NPO upon registration of its constitution in the Municipal Civil Registry; abolition of ante-hoc deter-

75. *Non-Governmental Organizations*, Coalition Provisional Authority, Doc. CPA/ORD 45 (Nov. 27, 2003), available at <http://www.cpa-iraq.org/regulations/index.html#Regulations>.

76. *Id.* at 2.

77. *Id.*

78. *Id.* at 5.

79. *Id.* at 3.

80. *Id.* at 4.

81. *Id.* at 7.

82. See Abdullah El-Khatib, *A New NGO Law Nearing Enactment*, 1 INT’L. J. CIV. SOC’Y L., 143, (July 2003), at <http://www.law.edu/students/orgs/IJCSL>.

83. *Id.*

84. For an article dealing with the important aspects of this law, see Antonio L. & Miguel Ángel Itriago, *Guatemala: A New NGO Law*, 1 INT’L. J. CIV. SOC’Y L. 84 (May 2003), at <http://www.law.edu/students/orgs/IJCSL>.

mination of the appropriateness of an NPO in favor of post-hoc oversight; and exclusion of a provision allowing administrative dissolution of an NPO without judicial supervision.<sup>85</sup>

## B. HONDURAS

The Federacion de Organizaciones para el Desarrollo de Honduras (FOPRIDEH) has begun an effort to develop a new legal framework for NPO operations.<sup>86</sup> Many NPOs are known as Organizaciones Privadas para el Desarrollo (OPD or Private Development Organizations), and were targeted by recent government decrees aimed at increasing their accountability.<sup>87</sup> The decrees require registration of all OPDs; set up URSAC (Unit of Registration and Supervision of Civil Associations), a new registry for civil associations; and grant significant powers to the new agency with regard to the registration and supervision of NPOs.<sup>88</sup> The NPOs have agreed to work with the Ministry of Governance and Justice to create new legislation to replace the decrees.<sup>89</sup>

## VIII. North America

### A. CANADA

The Canada Customs and Revenue Agency (CCRA), which oversees the tax rules applicable to NPOs and charities in Canada, published three new circulars or other rules governing various aspects of the activities and operations of NPOs in Canada. In the Circular on Political Activities<sup>90</sup> the CCRA adopted the position that "political" activities are activities calling for political action involving communications to the public that law or policy, at any level of a Canadian or foreign government, should be retained, opposed or changed.<sup>91</sup> Also included are activities intended to pressure a politician or public official to retain, oppose or change law or policy at any level of a Canadian or foreign government.<sup>92</sup> Charities may pursue these activities, but they must be incidental and ancillary to the charity's objectives.<sup>93</sup> Thus, the Circular recognizes a *de minimis* rule for "political" activities, which cannot receive more than ten percent of a charity's resources.<sup>94</sup> The other two policy advice documents involve charities focused on eliminating racial discrimination and providing low-income housing.<sup>95</sup>

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85. *Id.*

86. FOPRIDEH provides information about its efforts on its website, <http://www.foprیده.org.hn> (last visited May 9, 2004).

87. *Id.*

88. *Id.*

89. *Id.*

90. CCRA Policy Statement: Political Activities, Ref. No. CPS-022 (Sept. 2, 2003), available at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-022-e.html>.

91. *Id.* at § 6.2.

92. *Id.*

93. *Id.*

94. *Id.* at § 9.

95. CCRA Policy Statement: Registering Charities that Promote Racial Equality, Ref. No. CSP-021 (Sept. 2, 2003), available at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-021-e.html>; CCRA Policy Statement: Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants, Ref. No. CPS-020 (Apr. 1, 2003), available at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-020-e.html>.

## B. MEXICO

In December 2003, the federal Chamber of Deputies approved a new law on Promotion of Social Development Activities by Civil Society Organizations that will encourage citizen participation in the social development sphere.<sup>96</sup> The Law was published in the Official Gazette on January 15, 2004 and has recently been posted in Spanish on the website of the Centro Mexicano de Filantropía (CEMEFI).<sup>97</sup> CEMEFI describes the new law as the fruit of ten years of work by many CSOs in the fields of democracy promotion and human rights.

## C. UNITED STATES

Much of the development of legal issues regarding NPOs in the United States dealt with ways to prevent charities from being used to finance terrorism. In Announcement 2003–29, the Internal Revenue Service asked for comments on the extent to which current law and guidance should be amended to make it easier for U.S. section 501(c)(3) organizations to comply with legal provisions in the USA PATRIOT Act and other legislation that require due diligence efforts by U.S. grant-makers (whether they are public charities or private foundations).<sup>98</sup> Several organizations representing U.S. organizations, including the Council on Foundations, Independent Sector, and the ABA Section of Taxation Exempt Organizations Committee, made comments, and each emphasized different issues.<sup>99</sup> This highly contentious issue has resulted in ongoing discussion among NPOs and private foundations that work internationally.

## IX. Sub-Saharan Africa

### A. ETHIOPIA

The NPOs in Ethiopia worked with the government throughout 2003 to draft new legislation for the NPO sector. After many meetings the draft has yet to be finalized, but the NPOs have submitted numerous comments that have been discussed by government representatives on the NGO Legal Framework Consultative Task Force.<sup>100</sup> NPOs have, for example, suggested the establishment of an Office of Voluntary Organizations, which would work with NPOs to assist them in compliance with the law. This organization would be responsible for all aspects of NPO regulation except for the rules regarding their establishment.<sup>101</sup>

96. The Law on Promotion of Social Development Activities by Civil Society Organizations (Dec. 2003) is available on the website of Centro Mexicano de Filantropía (CEMEFI), <http://www.cemefi.org>.

97. *Id.*

98. I.R.S. Announcement 2003–29 (May 5, 2003), 2003–1 C.B. 928 (International Grant-making and International Activities by 501(c)(3) Organizations: Request for Comments Regarding Possible Changes).

99. See, e.g., Council on Foundations, *IRS Announcement 2003–29: What Does it Mean?* available at <http://www.cof.org> (last visited May 9, 2004).

100. *Observations and Recommendations of the NGO Community on the Ministry of Justice's current (Third) Draft NGO Registration and Regulation Proclamation* (Nov. 2003), available on the Christian Relief & Development Association's website, <http://www.crdaethiopia.org>.

101. *Id.*

## B. SOUTH AFRICA

The South Africa Revenue Service (SARS) has recently published on its website the updated list of public benefit activities eligible for income tax exemption and charitable donation relief.<sup>102</sup> The updated list includes amendments made by the Revenue Laws Amendment Act 45 of 2003.<sup>103</sup>

## C. TANZANIA

After much discussion and concern was expressed by the NPO sector in Tanzania, the NGO Act was passed by Parliament in late 2002.<sup>104</sup> The Act was implemented in 2003, pursuant to which the first National Council for NGOs has been established.<sup>105</sup> The Council consists of representatives from the national NGO umbrella, as well as regional and district organizations, and sectoral networks.<sup>106</sup> Among other activities, the Council is in the process of developing a code of conduct and other regulations, which are intended to "facilitate self-regulation of NGOs."<sup>107</sup> Specifically, the council will work in coordination with the NGO Coordination Board, and the ten-member NGO Coordination Board will be comprised of four members from NGOs, five ministerial appointees, and a chairperson, who will be appointed by the president.<sup>108</sup>

## D. ZIMBABWE

Despite the current unrest in Zimbabwe, the national NPO umbrella organization—NANGO<sup>109</sup>—has written a new draft law to regulate the NPO sector and circulated it for consideration by the NPOs and the government.<sup>110</sup> If passed into law, the law will apply to all organizations that are not established or controlled by the state, that are established for the public benefit and that apply their resources for that benefit.<sup>111</sup> Exempt organizations would include trade unions, employers' bodies, religious bodies, governmental bodies, small organizations, and informal organizations.<sup>112</sup> The objective of the proposed bill is to encourage the development of NGOs by creating an enabling environment and an adminis-

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102. Ninth Schedule to the Income Tax Act 58 (1962), *introduced by* Act 30, § 41 (2002), *amended by* Revenue Laws Amendment Act 45 (2003) (S. Afr.), *available at* [http://www.sars.gov.za/it/pbo/ninth\\_schedule.pdf](http://www.sars.gov.za/it/pbo/ninth_schedule.pdf).

103. *Id.*

104. The Non-Governmental Organizations Act (2002) (Tanz.), *available at* <http://www.parliament.go.tz/Polis/PAMS/Docs/24-2002.pdf>.

105. *Id.* at § 25.

106. *Id.* at § 27.

107. *Id.*

108. *Id.* § 7(2) (as set out in separate schedule).

109. NANGO is Zimbabwe's National Association of Non-Governmental Organizations ([www.nango.org.zw](http://www.nango.org.zw)).

110. NANGO's draft of the Non-Governmental Organizations Act is *available at* [http://www.kubatana.net/docs/legisl/nango\\_ngo\\_bill\\_draft2\\_030727.pdf](http://www.kubatana.net/docs/legisl/nango_ngo_bill_draft2_030727.pdf) (last visited May 9, 2004) [hereinafter NANGO Draft Act]. *See also* IJCSL Staff, *NGO Bill, Rights Violations & Media Crisis*, 1 INT'L J. CIV. SOC'Y L. 182 (Oct. 2003), *at* <http://www.law.edu/students/orgs/IJCSL>.

111. NANGO Draft Act, *supra* note 110, at 4.

112. *Id.* at 5.

trative and regulatory framework.<sup>113</sup> The proposal also hopes to promote cooperation between the government and society and encourages access to information about NGOs.<sup>114</sup>

## X. Western Europe

### A. BELGIUM

Changes in Belgian law affect three types of not-for-profit entities: the foundation, the not-for-profit association, and the international not-for-profit association.<sup>115</sup> Three different laws were enacted to effect such change on December 11, 2002, June 6, 2003, and July 11, 2003. These laws fill in the detailed informational and other requirements regarding not for profit entities, their management, and documentation previously dealt with administratively by the Minister of Justice. Most of the new requirements, which become effective January 1, 2004, provide a period of one year from that date for implementation. They essentially provide considerably more guidance and transparency to a law which until now was couched in very general terms, providing the organizers with a great deal of latitude.<sup>116</sup>

### B. FRANCE

Significant new tax benefits for NPOs in France were enacted in August of 2003. The law contains all the proposals adopted in discussion by the Parliament on April 1, 2003 but differs in certain minor details from the legislation as first adopted. The new law generally applies retroactively from January 1, 2003.<sup>117</sup> The provisions include additional tax relief for donations by individuals and corporations.<sup>118</sup> In addition, foundations now have a tax-free allowance of EUR 50,000 on their investment income.<sup>119</sup>

### C. SWITZERLAND

Swiss GAAP FER 21, which went into effect in late 2002, was first publicized in English in 2003.<sup>120</sup> It establishes accounting standards for NPOs operating in Switzerland and represents a major step toward creating international accounting standards for NPOs, which will serve to enhance their transparency and accountability.<sup>121</sup>

113. *Id.*

114. *Id.* at 5–6.

115. *Moniteur Belge* 12.11.2002 2<sup>e</sup> Ed. 2<sup>e</sup> Belgisch Staatsblad, *Moniteur Belge* 16.06.2003 2<sup>e</sup> Ed. 2<sup>e</sup> Belgisch Staatsblad, & *Moniteur Belge* 11.07.2003 2<sup>e</sup> Ed. 2<sup>e</sup> Belgisch Staatsblad.

116. Previous Law of Associations and Foundations, 27 June 1927 (Belg.) (changes in law amend this act).

117. See Paul Bater, *France Update: New Tax Provisions Favoring NPOs*, 1 INT'L J. CIV. SOC'Y L. 188 (Oct. 2003), at <http://www.law.edu/students/orgs/IJCSL>.

118. Tax Code (CGI) (Fr.) art. 200 (Individuals), art. 238 (Corporations).

119. *Id.* art. 219 bis III.

120. These generally accepted accounting principles, set out in FER 21, are currently available in French and English on the website of Swiss GAAP FER, at <http://www.fer.ch/de/standards/fer21.htm> (last visited May 9, 2004).

121. *Id.* See also IJCSL Staff, *New Accounting Rules for NPOs*, 1 INT'L J. CIV. SOC'Y L. 113 (May 2003), at <http://law.edu/students/orgs/IJCSL>.

## D. UNITED KINGDOM

Queen Elizabeth indicated in her speech to Parliament in late 2003 that the government would be bringing forward a Charities Bill in early 2004.<sup>122</sup> The proposed reforms are quite significant and include the introduction of a “public benefit” test to determine charitable status.<sup>123</sup> In addition, the rules would be revised and loosened with regard to political activities. In connection with actions proposed in previous reports<sup>124</sup> which laid the groundwork for the proposed legislation, the new legal environment for NPOs and charities in England will also involve significant reforms that do not require legislation. For example, the post of Chief Charity Commissioner is to be abolished in the summer of 2004 and will be replaced by a full-time chief executive and a part-time chair.<sup>125</sup> These changes and others were first proposed in 2002 in the Prime Minister’s Strategy Unit review of charity law and regulation.<sup>126</sup>

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122. While announced in the Queen’s speech, the Charities draft bill has not yet been published. For more on these developments, including links to various policy statements, see Tash Shifrin, *Draft bill signals major overhaul of charity law*, GUARDIAN UNLIMITED, NOV. 26, 2003, available at <http://society.guardian.co.uk/charityreform/story/0,11494,1093635,00.html> (last visited May 9, 2004).

123. See *supra* note 122.

124. The Cabinet Office Strategy Unit published a report in September 2002 called “Private Action, Public Benefit: A Review of Charities and the Wider Not For Profit Sector,” available at <http://www.number-10.gov.uk/su/voluntary/report/03.htm>

125. *Id.*

126. See *supra* note 124.