

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recently proposed Bill T/14967 on the Transparency of Organizations Financed from Abroad ("the Bill"), which if adopted into law, will lead to undue restrictions on the rights to freedom of expression and freedom of peaceful assembly and association in Hungary.

According to the information received:

Under the provisions of the proposed Bill, non-Governmental organizations (NGOs) that receive more than 24,000 EUR (7.2 million HUF) annually from a foreign source must register with the court as a "foreign-supported organization." The NGO concerned shall declare, within 15 days, that it has become an organization receiving foreign funding to the registering court.

The definition of 'foreign funding' under the terms of the proposed Bill includes any financial or other economic support originating directly or indirectly from abroad, regardless of its legal title, and includes donations from private individuals as well. Funding received from the European Union is exempted only in cases when it is channeled through a Hungarian budgetary institution.

Failure to register as a foreign-supported organization would result in a fine of up to 2.900 EUR. Failure to pay the fine would lead to the dissolution of the NGO, its legal status being revoked through a simplified termination procedure by the court.

A Civil Information Portal would register these NGOs as "foreign-supported organizations" and, moreover, will obligate these NGOs to identify themselves as such on their websites, press and other public communications.

Additionally, NGOs designated as a "foreign-supported organization" would have to report annually on the names, countries and cities of foreign supporters, even if they are private individuals, and the names and registered address in case of

organizations. The report would have to include the amount of their funding as well.

The Bill does not apply to associations pursuing religious and sports activities, as well as to political parties and trade unions.

We are strongly concerned that the Bill appears to discriminate against, and delegitimize, NGOs that receive funding from foreign organizations or individuals, and has the potential to stigmatize their work. By forcing NGOs to use a label such as “foreign-supported organization” on their websites, press, and other public communications, regardless of how the NGOs identify themselves, the Bill would curtail the NGOs’ rights to freedom of expression and association. The majority of NGOs that receive foreign funding are focused on civil and political rights, and more likely to criticize government and government policies, such as organizations who receive funding by George Soros and the Open Society Foundation, which Prime Minister Viktor Orbán has specifically singled out in his public remarks, including in his February 2017 annual state of the nation speech. Because the proposed Bill applies selectively to some NGOs, and because those organizations would undoubtedly face public stigmatization by being associated with foreign funders, their expressions of peaceful dissent would likely be chilled.

We are further concerned that although the amendments to Act CLXXV on freedom of association, public benefit status and the operation and support of CSOs were included in the legislative agenda for 2017, submitted in December 2016 by the Government, eventually the Bill was submitted as an individual MPs proposal, thereby circumventing the provisions of Act CXXXI of 2010 on public participation in the legislative process. As a consequence, there have been no public consultations about the legislation.

In connection with above alleged facts and concerns, we would like to refer your Excellency’s Government to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Hungary on 17 January 1974, which guarantee freedom of expression and opinion to everyone. Article 19(2) guarantees “freedom to seek, receive, and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” By being forced to choose between being fully funded, or operating without a stigmatizing label, the above restrictions in the Bill would significantly restrict NGOs’ freedom of expression and ability to operate.

While the right to freedom of expression is not absolute under ICCPR Article 19(3), restrictions on expression are only appropriate under narrow circumstances. Restrictions must be provided by law, and necessary and proportionate to protect the rights or reputations of others or for the protection of national security, public order, or public health and morals. While fighting money laundering and terrorism funding (which are stated as concerns in the preamble) are indeed legitimate and important State

interests, it is unclear how forcing NGOs to register as “foreign-supported organizations” furthers those State interests.

We are seriously concerned that the Bill is superfluous. The compilation of financial reports is already mandatory for NGOs and they are available for public access. The public may access information on the sources and funded activities these organizations received and whether these resources were granted abroad. Additionally, we are concerned that the sanctions imposed by the Bill are not proportionate. In fact, the Bill would introduce new grounds for dissolution by the court as a sanction for non-compliance with administrative obligations, which is a restriction of the right to freedom of association. The dissolution of an NGO for failure to self-label as a “foreign-supported organization” is unduly harsh and disproportionate.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how forcing NGOs to declare themselves “foreign-supported organizations” would effectively combat money laundering and the financing of terrorism.
3. Please explain the purpose behind differential treatment between NGOs, including the distinction made between those NGOs with more than 24,000 EUR from foreign funding and those with less.
4. Please explain how the Bill would supplement meaningfully the already existing laws pertaining to NGOs, particularly how it would advance the stated goal of transparency, especially since NGOs already submit financial reports which are accessible to the public.
5. Please provide information concerning the legal grounds for adoption of the legislation and how they are compatible with Hungary’s obligations under international human rights law to respect and promote the rights to freedom of expression and the right to freedom of association.

We also wish to advise that we are considering issuing a public statement to clarify our concerns on the legislation’s consistency with human rights law to which Hungary is party.

We would like to inform you that this communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression:

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annalisa Ciampi

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

Michel Forst

Special Rapporteur on the situation of human rights defenders