

Bangladesh: foreign donations regulation bill is a further effort to restrict Civil Society

The Government of Bangladesh should withdraw the Foreign Donations Regulation Bill 2015 (FDRB), the International Commission of Jurists said today.

The provisions of the FDRB are unduly restrictive and inconsistent with Bangladesh's international legal obligations to respect the right to freedom of association, the ICJ said, and if not withdrawn, the Parliament should reject it.

"The provisions of the Foreign Donations Regulation Bill are clearly designed to restrict and harass human rights defenders in Bangladesh," Sam Zarifi, ICJ Asia-Pacific director said. "If passed, this law will enable the Bangladeshi executive to control the space for civil society even more than it does now".

The FDRB requires all NGOs who receive or want to receive funding from a foreign source to register with the NGO Affairs Bureau. The NGO Affairs Bureau will have the power to control, inspect, monitor and evaluate the activities of these NGOs. A violation of the FDRB is an offence, punishable by the Bureau with fines and disciplinary action.

The provisions of the bill fall afoul of the right to freedom of association which, as the UN Special Rapporteur on freedom of association explained "not only includes the ability of individuals or legal entities to form or join an association, but also to seek receive and use resources, including human, material and financial- from domestic, foreign and international sources." The restrictions they propose on freedom of expression neither appear necessary nor proportionate to any the grounds prescribed under international law or a legitimate aim.

The key shortcomings of the proposed provisions include the sweeping powers given to the NGO Affairs Bureau, to be carried out with unfettered discretion. The bill spells out no time frame for making decisions on NGO registration (leaving them in administrative limbo and unable to receive funding from foreign sources during that period), and imposes no clear criteria for or limits on decisions to register and not to renew registration. Moreover the provisions give authority to the NGO Affairs Bureau to approve and ask organizations to make changes or corrections to project proposals, to monitor organizations, to be informed of foreign travel in certain cases, and to impose sanctions for violations of the bill's provisions. The lack of judicial review of decisions taken by the NGO Affairs Bureau increases the vulnerability of civil society groups to political pressure.

"The Foreign Donations Regulation Bill would effectively allow the Prime Minister's Office to control and restrict a significant source of support for civil society groups who are not politically aligned with the government," Zarifi said. "Such a law is antithetical to the functioning of a vibrant democracy and a culture of accountability."

The provisions of the FDRB are easily prone to abuse, and if enacted would add to the threats and challenges human rights defenders in Bangladesh face. Contrary to the call of the UN Human Rights Council, the bill's provisions would inhibit the functional autonomy of associations and impose undue and discriminatory requirements on those that seek foreign funding, in contravention of international law.

The provisions of the bill are illustrative of a worrying trend in the sub-region to further limit the space for the work of human rights defenders and to control civil society organizations; other countries in the sub-region are also considering similar laws.

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Additional Information:

The ICJ is concerned that provisions of the FDRB violate internationally recognized rights, including those contained in the ICCPR.

This Bill is being debated in a context where human rights defenders in Bangladesh face increased harassment and intimidation, including through the use of laws like the Information and Communication Technology Act. ICJ has documented such instances in the past.

For example, in February 2014, the ICJ called on the government of Bangladesh to stop harassing and intimidating Adilur Rahman Khan, Secretary of Odhikar, a prominent human rights organization and ICJ affiliate, [here](#). In November 2014, ICJ urged the government of Bangladesh to launch a thorough investigation into alleged attacks on a prominent human rights lawyer, Rabindra Ghosh, [here](#).

Significant concerns in the FDRB include:

Need for registration: The FDRB requires organizations that want to receive foreign funding to be registered with the NGO Affairs Bureau. The application for registration must include the amount of foreign donation, its source and how the donation will be used, in addition to "additional information" contained in the rules. Registration must be renewed every 10 years, and renewal is dependent on the NGOs activities in the previous 10 years being "satisfactory". The FDRB does not prescribe any time limits within which the NGO Affairs Bureau must consider and act upon a request for registration or renewal. Nor does the bill define on what grounds an NGO's activities will or will not be deemed "satisfactory". This means that registration applications can be left pending for years, thus risking limiting access to funding. Similarly, the absence of criteria for decisions on registration and renewal of registration means that the NGO Affairs Bureau is left with broad and unfettered discretion and may decide not to renew registration without any reasonable cause.

Need for project approval: To be able to receive foreign donations, the FDRB also requires approval of each project from the NGO Affairs Bureau. Based on inputs from other ministries, under section 6 (4), the NGO Affairs Bureau can ask organizations to make changes or corrections to project proposals. There is no time limit in place within which the NGO Affairs Bureau must decide on the approval of projects, and no guidelines for what types of changes and corrections the Bureau can demand. Rather than creating an enabling environment for enjoyment of the right of freedom of association and the rights of individuals and groups to promote and defend human rights, making foreign donations contingent on the approval of the organization's work is tantamount to allowing the government to control the activities of NGOs.

Freedom of movement: Section 8 (3) of the FDRB requires individuals "involved in voluntary activities" to inform the Bureau before they travel abroad for "official" purposes, using money from the project budget. Such requirements, if enacted would constitute further disproportionate restrictions on the exercise by individuals of the rights to freedom of association, as well as freedom of movement, which fall afoul of Bangladesh's obligations under international law.

Criminal Penalties: Sections 14 and 15 make it offence to violate the FDRB or any rule or order under the FDRB. Punishments range from written cautionary orders, to

finances and disciplinary actions against individuals. The provision does not distinguish between the violation of a major provision and a minor, technical provision, thus increasing discretion in the hands of the executive and the possibility of arbitrariness.

Powers of the NGO Affairs Bureau: As highlighted above, the provisions of the draft FDRB give the NGO Affairs Bureau, which is part of the Prime Minister's Office, a broad range of wide and seemingly unfettered powers to control the functioning of NGOs. In addition to making decisions on registration, and whether to approve or alter projects funded with money from abroad, the FDRB mandates the Bureau to decide on when or whether to issue fund releasing approval letters; to inspect, monitor and evaluate the activities of approved NGOs; to monitor and coordinate voluntary activities of NGOs; and to prescribe punishments for violation of provisions of the FDRB. Thus FDRB gives the NGO Affairs Bureau an extraordinary amount of control over the functioning of NGOs, without clear and human rights compliant limit.

Lack of an independent appeal process: Under the FDRB, appeals by any NGO or person aggrieved by an order of the NGO Affairs Bureau regarding registration, project approvals, and sanctions are to be heard by the Secretary of the Prime Minister's Office. The decisions of the Secretary are final. The effect of these provisions would be that there no possibility to appeal or subject the the findings of a to review before an independent judicial body. The lack of effective redress before an independent body increases the risk of unfettered abuse of the wide discretion granted to the NGO Affairs Bureau.