



# The Legal Reality of Non-Profit Companies

The Regulation's violation of the rules of the law itself and international and national legal standards.

1

The restrictions set by the regulation reflect the imbalance in the State of Palestine's implementation of its international contractual obligations. The official authorities declared that when it issued the regulation, it worked to harmonize its legislation with the obligations resulting from joining the FATF "Financial Action Task Force", at the same time it violates other obligations of the State of Palestine according to its accession to the international conventions of human rights, foremost of which are the two international covenants for human, civil, political, economic, social and cultural rights. Therefore, the government must deal with international obligations as one integrated unit in balance between respect for public rights and freedoms and other financial and economic obligations.



2

The regulation and the restrictions contained therein violate the rights and obligations stipulated in Article (22) of the International Covenant on Civil and Political Rights, which the State of Palestine acceded to in 2014, which states:

- Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3

The regulation violates the provisions of the Basic Law, because the will of the Palestinian constitutional legislator has clearly and explicitly stated that the right to form associations, and what falls under it with regard to the organization of non-profit companies, can only be regulated by a "law." This is confirmed by Article (26), paragraph (2) from the Basic Law, "Palestinians have the right to participate in political life, as individuals and groups, and they have the following rights in particular: ... 2. Form trade unions, associations, federations, leagues, clubs, and popular institutions in accordance with the law." Therefore, transferring the responsibility to regulate everything related to the organization of non-profit companies from the law to the regulation certainly means that the latter is unconstitutional\*.

\*Al-Haq's observations regarding the Non-Profit Companies Regulation No. (20) of 2022, <https://www.alhaq.org/ar/advocacy/20864.html>



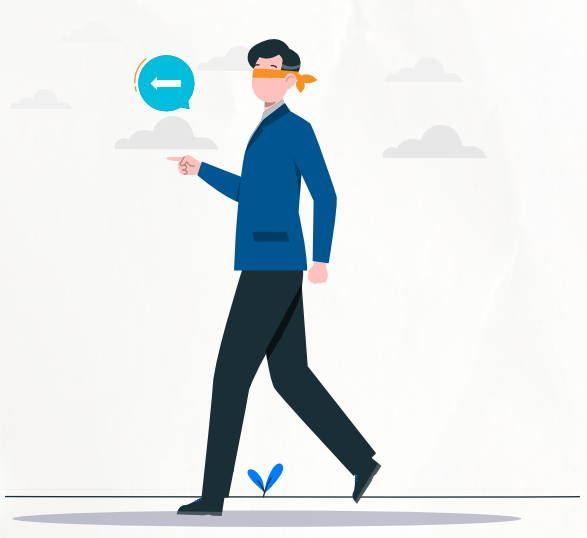
4

The Companies Law did not stipulate any text related to the crimes of money laundering and terrorist financing, but the regulation contained a complete chapter containing (20) articles out of the regulation's (44) articles that included procedures related to combating money laundering and terrorist financing. This contradicts the rules for issuing regulations that must be consistent with the law and explain the practical aspects of applying its articles. The reason for the issuance of regulations from the administrative competent authority aims to interpreting the procedures that were ambiguous when applying the texts contained in the law. Thus, the current regulation with its multiple and complex procedures, applies in more than one of its articles, legal procedures related to joining the Financial Action Task Force (FATF).

5

Restricting the right to free exercise of activities, as Article (16/2) of the regulation requires the ministry to: "Coordinate with the competent authority for non-profit companies, the ministry under which the activity falls, to ensure the compatibility of the non-profit company's activities and programs required for funding with the government approved plan. This article contradicts the right of the non-profit company to exercise its activity within the limits of the law. Moreover, the role for some for-profit companies(I think it should read: non-profit) that are formed with the aim of presenting an oversight role over the authorities and influencing them, contradicts with this aforementioned text, since it hinders their independence required to carry out such a role.\*

\*A memorandum on the Prime Minister's request to abolish the non-profit companies system, sent by the NGO Network, the Human Rights Council, and non-profit companies in the West Bank and Gaza Strip, October 2022.



6

Ignoring the special nature of institutions, as the non-profit companies' regulation of 2022 included a restriction on the salaries of workers in institutions and operating expenses. Article (11/2) stipulates that: "The total salaries and operating expenses of a non-profit company may not exceed a specific percentage of its budget, to be determined annually, provided that it does not exceed (%25)." This article contradicts the nature of non-profit companies, which work is based on providing services to beneficiaries such as human rights and development institutions of an empowering nature, and not in-kind, cash, relief, or health assistance...etc.\*

\*A memorandum on the Prime Minister's request to abolish the non-profit companies system, sent by the NGO Network, the Human Rights Council, and non-profit companies in the West Bank and Gaza Strip, October 2022.

7

The jurisdiction of the Registrar of Companies to liquidate non-profit companies mentioned in the regulation in the text of Article (17) thereof, contradicts the provisions of Article (280) of Companies Law No. (42) of 2022 entitled "Compulsory Liquidation", which requires resorting to the judiciary for compulsory liquidation in Paragraph 1 of the law "The Registrar may request the competent court to initiate the liquidation procedures..." This jurisdiction granted by the regulation to the registrar violated the law when it stipulated the liquidation of the non-profit company without resorting to the courts. It also constituted a case of abuse of power when it was based on an illogical reason, as stated in Paragraph (d) of Article (17) of the regulation, which gives the Registrar the power to liquidate the company "in the event that the for-profit company did not operate for a year or suspended its work for the same period."



8

Penalties may not be stipulated in the regulation, but rather they should be contained in the law. Nevertheless, the regulation has imposed penalties on non-profit companies in Article (40) entitled "Disciplinary Measures Imposed on Non-Profit Companies." These penalties amount to stopping, suspension, or canceling the license of the non-profit company. This power was given by the regulation to the minister upon the recommendation of the Registrar of Companies or the competent ministry in violation of the Companies Law, which stipulates the penalties imposed on companies in Chapter One of Part Twelve entitled "Violations and Penalties".

9

The law placed restrictions on all non-profit companies in one sentence, without adhering to the provisions of the sameregulation, which stipulated in Article 20 the necessity of conducting a money laundering risk assessment for non-profit companies by the Registrar of Companies. The same applied to financing terrorism. Moreover, this assessment results in determining a subgroup that is exposed, by virtue of its activities, size, or characteristics, to the risk of terrorist financing. After that, Paragraph (b) of Article (20) stipulates identifying and detailing the threats, and how these parties exploit this process, which is how to carry out these threats. However, the regulation has set strict restrictions on all non-profit companies without any distinction between those that practice legitimate activities and should not have any restrictions imposed on them from others. The regulation did not mention in any of its articles the threats and their details and how to exploit them, thus the regulation violates the provisions it contained and the recommendations of the FATF that set these standards.



10



The Regulation in Article No. (20), paragraph (C), provided for a review of the appropriateness and adequacy of procedures, including legislation related to non-profit companies, in order to prevent their misuse in supporting and financing terrorism and terrorist organizations, and to improve them whenever necessary. Laws and regulations are evaluated by the government in line with the main criteria stated in the eighth recommendation of the FATF, and when looking at the Palestinian legal regulation, we find that it contains very restrictive control tools related to non-profit companies that have been repeated verbatim and procedurally in the regulation. Thus, it can be said that there is no benefit from having a new legislation and regulation while applying the same procedures related to funding, donations, and disbursement that were applied before the issuance of the regulation. These procedures were classified by Palestinian human rights organizations as inconsistent with the rights of people to freely work in society and establish associations. They were also described as very complex due to the large number of oversight tools and the lengthy time they require without specifying their ceiling.\*

\*The source is an explanatory memorandum issued by civil society organizations to the Prime Minister to demand the abolition of the Non-Profit Companies Regulation No. (20) of 2022, that was sent to the Prime Minister's Office in early October 2022.