

SUMMARY LEGAL ANALYSIS: UZBEKISTAN

Regulation on Coordination Between Non-Governmental Non-Commercial Organizations and Public Authorities in the Implementation of International Grant Projects¹

1. INTRODUCTION

The Government and the President of Uzbekistan establish significant responsibilities for non-governmental non-commercial organizations (NNOs)² including citizen oversight, active participation in state and public administration, and the implementation of social projects (e.g., participation in determining and overseeing the priorities of local budget expenditure; participation in the implementation of the Sustainable Development Goals of the UN Global Agenda, etc.).³ In many countries, CSOs play an important role in improving public administration and community engagement, raising the standard of living, and providing employment. However, in order for them to play a meaningful role in addressing social and economic issues, CSOs must be financially sustainable. Government support plays an important role in ensuring financial sustainability, but government funds alone are not enough.

The International Center for Not-for-Profit Law (ICNL) is an international organization that provides technical assistance, research, and information to support the development of corresponding laws and regulation systems for civil society throughout the world. ICNL has provided assistance with reforms of CSO-related legislation in more than 100 countries. Since 1997, ICNL works on the creation of favorable legal and financial conditions for civil society in Eurasia. For more information about our work, please visit www.icnl.org.

In Uzbekistan, problems with financial sustainability are acute for NNOs, which significantly weaken their ability to implement objectives of national importance.

¹Approved by Decree #328 of the Cabinet of Ministers of Uzbekistan of June 13, 2022 (Regulation #328)

² NNOs are the most common legal form of civil society organizations (CSOs) in Uzbekistan. When referencing other countries, we use the term “CSO.”

³ Presidential Decree #PF-6181 of March 4, 2021 on Approving the Concept of Civil Society Development for 2021-2025.

Financial sustainability is based on favorable legislation which provides CSOs with free access to various sources of funding, such as government support, donations from citizens and businesses, income from business activity, and foreign funding. Notably, foreign funding has been the main source of funds for CSOs since the independence of Central Asian countries in the early 1990s. With the support of international donor organizations, CSOs have implemented projects in the social, health, education, and other spheres. Foreign grants have been an important source of investment throughout Central Asia, and they remain an important source of investment in some Central Asian countries, particularly in Kazakhstan, Kyrgyzstan, and Tajikistan. For example, foreign funding for CSOs averages approximately \$13.6 million a year in Kazakhstan⁴ and \$67.5 million a year in Tajikistan.⁵ At the same time, if CSOs have easier access to foreign grants, more donors are willing to invest and the results are more tangible, including in the social sphere.

In recent years, Uzbekistan's government has simplified access to foreign funding for NNOs. For example, the annual threshold of funds and property that are permitted to be received by an NNO from foreign sources without prior approval from the Ministry of Justice has increased fivefold since 2021,⁶ growing from the equivalent of \$548 to approximately \$2,738.

However, a recent Regulation on Coordination Between NNOs and Public Authorities in the Implementation of International Grant Projects approved by Decree #328 of the Cabinet of Ministers of Uzbekistan of June 13, 2022 (Regulation #328) may disrupt this positive trend, complicating NNOs' access to foreign resources.

The purpose of this analysis is to interpret the meaning of Regulation #328, identify the ambiguous and controversial points which we believe may create difficulties for its implementation, and give a preliminary assessment of its potential impact.

In this analysis, we will review the key provisions of Regulation #328, analyze it for compliance with international standards on the right to freedom of association, including the right to freely seek, receive, and use resources (Right of Access to Resources), and provide various positive and negative examples from a number of

⁴ [Which Countries Finance NGOs in Kazakhstan?](#) Sputnik Kazakhstan, 2018.

⁵ [Why the Tajik Authorities Are Receiving More Aid and the NNOs, Less: News: StanRadar – News from Central Asia.](#) The article indicates the total of foreign grants received by Tajik NNOs over the past four years (approx. 2017-2020) – \$270 million. ICNL has divided that amount by four to obtain a yearly average.

⁶ Decree of the President of Uzbekistan on Additional Measures for State Support of Non-Governmental Non-Commercial Organizations and Ensuring Freedom of Their Activities, Protection of Their Rights and Legitimate Interests of March 3, 2021; Decree of the Cabinet of Ministers of Uzbekistan on Approving the Regulation on the Procedure for Coordinating the Receipt by Non-Governmental Non-Commercial Organizations of Funds and Property from Foreign States, International and Foreign Organizations, Foreign Citizens or on Their Behalf from Other Persons with the Registration Authority.

countries with a focus on the consequences of the decisions they have made in this respect.

2. OVERVIEW OF REGULATION #328

Regulation #328 establishes the procedure for coordination between local NNOs and public administration bodies (“national partners”) in the implementation of international grant projects in Uzbekistan using funds received from foreign governments, international and foreign organizations, citizens of foreign states, or from other persons on their behalf.

In brief, the Ministry of Justice appoints a public administration body for NNOs involved in each international grant project so that that the national partner provides practical assistance to an NNO grantee in implementing its grant project and is responsible for developing its implementation plan and monitoring its execution.

In accordance with paragraph 2 of Regulation #328, a grant project is an international grant project implemented in Uzbekistan within the funds received by local NNOs from foreign persons. Article 48 of the Tax Code of Uzbekistan provides that for taxation purposes, grants shall mean “property provided on a gratuitous basis in accordance with the procedure determined by the Cabinet of Ministers of the Republic of Uzbekistan:

- 1) by states, governments of states, and international or foreign governmental or non-governmental organizations of the Republic of Uzbekistan;
- 2) by foreign citizens and stateless persons of the Republic of Uzbekistan.”

Article 48 does not specify who can be a grant recipient, so it is unclear whether NNOs can be grant recipients. It refers to the fact that the Cabinet of Ministers of Uzbekistan shall determine the procedure for providing property to be recognized as a grant. Unfortunately, we could not find such a procedure in Uzbek legislation. If we are correct in understanding that such an order exists and recognizes NNOs as grant recipients, then any property donated to NNOs by entities listed in Article 48 of the Tax Code shall be recognized as funds for an international grant project and therefore fall under the scope of Regulation #328. It is not clear whether the legislation on access to foreign funding remains in force (it implies, for example, a threshold of 30 million Uzbek soms, or approximately \$2,738, below which no coordination with government authorities is necessary).⁷ To the best of our knowledge, the legislation establishing such threshold was not repealed formally.

⁷ Decree #858 of the Cabinet of Ministers of the Republic of Uzbekistan on Approving the Regulation on the Procedure for Coordinating the Receipt by Non-Governmental Non-Commercial Organizations of Funds and Property from Foreign States, International and Foreign Organizations, Foreign Citizens or on Their Behalf from Other Persons with the Registration Authority of October 9, 2019.

According to Regulation #328, the national partner assigned to the NNO has a wide range of powers, including to:

- develop and approve a roadmap for the implementation of a grant project, which should present all project activities, the timeline and the implementation mechanism, as well as the project implementation territory;
- ensure effective implementation of the grant project and monitoring and evaluation of activities;
- address problems arising during the implementation of the grant project;
- sign memoranda of mutual cooperation with government bodies and organizations within the framework of the grant project, as necessary;
- make proposals for changes and additions to the grant project being implemented, as needed;
- develop recommendations on the establishment and extension of the term of implementation of the grant project; and
- analyze the results of the implementation of the grant project.⁸

Paragraph II of Regulation #328 stipulates that the national partner “shall be responsible for providing practical assistance to NNOs in its quality and timely implementation and monitoring of the results of the grant project, as well as for coordinating the work of partner organizations. Further, the national partner “shall not interfere in the internal affairs of NNOs.” There are two contradictory and therefore controversial and vaguely formulated statements in one sentence: the national partner provides practical assistance to NNOs in implementing and monitoring the results of the grant project, but it must not interfere in the NNOs’ internal affairs. It raises a number of questions - for instance, what is meant by “internal NNO affairs” in this case and what does “practical assistance to NNOs” provided by the national partner mean? How can one decide whether there has been “interference in the internal affairs of NNOs” or simply “practical assistance”? How should the relationship between an NNO and its national partner be regulated in general, given the broad powers of the latter in implementing a grant project? Also, Regulation #328 does not provide for any independent (extrajudicial) procedure for resolving disputes between an NNO and its national partner.

In addition, the Ministry of Justice can recommend that the national partner use a list of relevant ministries, agencies, and other entities to engage partner organizations. The national partner can also engage its own partner organizations in the implementation

⁸Paragraph 12 of Regulation #328.

of an NNO grant project and will be responsible for the coordination of all partners involved.

The approval process for a grant project worth less than approximately 600 million soms (or \$54,772 as of June 2022) takes up to 18 business days, and up to 25 business days for grant projects above this amount. The approval process involves such bodies as the territorial bodies of justice, the Ministry of Justice, a national partner, the Ministry of Foreign Affairs, and, if the project amount exceeds the above threshold, the Cabinet of Ministers as well.

Regulation #328 does not imply any freedom of action for the NNO receiving a grant. While the participation of a national partner in an NNO's grant project is mandatory, the right of the NNO to refuse such cooperation is not stipulated. Nor does Regulation #328 provide for any coordination and interaction with the granting organization. The donor's role in the process is not clear.

Regulation #328 can be regarded as de facto government interference in the activities of NNOs, which contradicts the norms in the Constitution and other laws of Uzbekistan. In particular, Article 58 of the Constitution provides that "the State shall safeguard the rights and lawful interests of public associations, and provide them with equal legal possibilities for participating in public life. Interference by state bodies and officials in the activity of public associations, as well as interference by public associations in the activity of state bodies and officials, shall be impermissible." The same norm is present in Article 4 of the Law on NNOs and in Article 5 of the Law on Public Associations, which stipulates that interference by state bodies and officials in the activities of civil associations/NNOs, as well as interference by civil associations/NNOs in the activities of state bodies and officials is not allowed, except in cases where it is provided for by law.

The purpose for the adoption of Regulation #328 is described in the Decree of the Cabinet of Ministers of June 13, 2022. The Decree states, in part, that Regulation #328 is adopted "in accordance with Decree #PF-6181 of the President of Uzbekistan on Approving the Concept of Civil Society Development for 2021-2025 of March 4, 2021 in order to introduce new mechanisms through which the State could support NNOs, ensure their financial sustainability, and ensure effective and mutually beneficial cooperation with public administration bodies." However, the provisions of Regulation #328 contribute little to financial sustainability, and instead establish greater government control over foreign grants while limiting the rights of NNOs to access and implement grants.

3. ANALYSIS OF REGULATION #328 FROM THE PERSPECTIVE OF COMPLIANCE WITH INTERNATIONAL STANDARDS ON THE RIGHT TO FREEDOM OF ASSOCIATION

A) INTERNATIONAL STANDARDS

International standards on the right to freedom of association are established in the founding United Nations documents such as the Universal Declaration on Human Rights (Article 20) and the International Covenant on Civil and Political Rights (ICCPR) (Article 22). Their provisions are binding on all countries that have acceded to these documents, including Uzbekistan. The right to freedom of association applies not only to people who associate or wish to associate, but also to associations (unions) themselves.

The essence of freedom of association is members' ability to decide how their organization should function. This requires a very cautious approach to regulation, on the one hand, and very close scrutiny of attempts to interfere with decisions made by the organization, on the other.

The right of NNOs to access resources (funding) is also protected by Article 22 of the ICCPR. As noted by Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association,⁹ the right of access to funding is a direct and important component of the right to the freedom of association. Analyzing the present situation, particularly in India, Maina Kiai noted that many NNOs, and especially human rights organizations, function as “non-profits” and therefore depend almost exclusively on external sources of funding to carry out their work. Therefore, “undue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political, and social rights as a whole.” For these reasons, the Human Rights Committee, as the body charged with authoritatively interpreting and enforcing the ICCPR, has consistently expressed concern about restrictions on foreign funding as an obstacle to the full realization of the right to freedom of association. The Special Representative of the Secretary-General on the situation of human rights advocates has also stated that “governments must allow access by NNOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments.”¹⁰

⁹Analysis of International Law, Standards and Principles Applicable to the Foreign Contribution Regulation Act of 2010 and the Foreign Contribution Regulation Rules of 2011 by Maina Kiai, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, April 20, 2016. See <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

¹⁰<http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

In interpreting Article 22 of the ICCPR, the Human Rights Committee has recognized that funding restrictions that interfere with associations' ability to carry out their statutory activities constitute a violation of Article 22.

4. Review of International Practices Regulating Access to Foreign Funding

A) POSITIVE INTERNATIONAL EXPERIENCE

In most European countries and the United States, there is no requirement for CSOs to register or to obtain prior approval or receive permission to access foreign grants. There are no such requirements in a number of Eurasian states (the "former Soviet Union" – Armenia, Georgia, Ukraine, Kyrgyzstan, Tajikistan, Moldova, Latvia, Lithuania, and Estonia).

B) NEGATIVE INTERNATIONAL EXPERIENCE

It is no secret that over the past few years, a number of countries, including in Eastern Europe, have adopted legislation that restricts CSOs' access to resources, especially to foreign funding, and often introduces excessive reporting requirements. Such initiatives tend to fall short of international standards and often contradict international law.

Several countries in Eurasia, such as Azerbaijan, Belarus and Turkmenistan, require prior approval for foreign grants. These countries have been criticized by the international community for violating international law. In addition, there are also a number of countries which, although they do not require permission to receive a foreign grant, impose onerous reporting requirements on foreign grants (Russian Federation and Kazakhstan).

In Central Europe, as a negative example, Hungary passed the Law on Transparency of Organizations Receiving Support from Abroad in 2017. According to this law, such organizations must register with the Hungarian authorities as "receiving support from abroad" if the amount of donations they receive in a given year reaches a certain threshold (24,000 EUR). By law, in the process of registration these organizations must also indicate the names of donors whose support reaches or exceeds 500,000 Hungarian forints (approximately 1,500 EUR) and the exact amount of support. Relevant CSO must indicate on their websites and in their publications that they are an "organization receiving support from abroad." The Hungarian legislature attributes the adoption of the law to the goal of ensuring transparency of CSOs to prevent undue political influence. Numerous international organizations, including the Council of Europe's Venice Commission, have concluded that this cannot be used as a pretext to control CSOs or restrict their ability to carry out legitimate work, which would go beyond the legitimate aim of transparency.

Following the adoption of the law, the European Commission initiated an appeal procedure, and on June 18, 2020, The European Court of Justice ruled that by passing the Act on Transparency of Civil Society Organizations Financed from Abroad, Hungary imposed discriminatory and unreasonable restrictions on foreign donations to CSOs in violation of its obligations under Article 63 TFEU and Articles 7, 8, and 12 of the EU Basic Law. The Hungarian parliament repealed the law in May 2021, although it later adopted other initiatives restricting the rights of CSOs to access foreign funding. These initiatives are currently being appealed to international bodies as not complying with international law.

In international practice, there are other examples of countries which either require CSOs to obtain prior approval or impose bans and restrictions on receiving foreign funding. These countries include India, Egypt, China, Bangladesh, and a number of African countries. Prior approval procedures vary by country.

For example, in India, CSOs wishing to receive foreign funding must register under the Foreign Contribution (Regulation) Act of 2010. If registration under the Act is approved, the organization may receive foreign donations for five years subject to strict conditions and burdensome reporting requirements. The Act also imposes a complete ban on access to foreign funding for associations regarded as political. The law has been the subject of several reports and statements by UN Special Rapporteurs arguing that it does not meet the “strict criterion of permissible restrictions” on the right to freedom of association and prevents CSOs from accessing foreign funding. UN Special Rapporteurs have expressed concern that the prior authorization regime of the Foreign Contribution Regulation Act is inconsistent with India’s international human rights obligations and is being used “to silence organizations that advocate for civil, political, economic, social, environmental, or cultural priorities that may differ from those supported by the government.”

C) CONSEQUENCES OF EXCESSIVE RESTRICTIONS ON CSO ACCESS TO FOREIGN RESOURCES

In his Access to Resources report, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Clément Nyaletsossi Voule¹¹ noted that “(t)he restrictions and barriers described above have had a significant impact on the operation, and in many cases the existence, of civil society organizations in many parts of the world. Their impacts go beyond the financial sustainability of the affected organizations, and directly affect the communities that civil society organizations serve. These restrictions also have serious implications for efforts to recover from the COVID-19 pandemic. For instance, according to information received by the Special Rapporteur, in India almost 6,000 civil society organizations lost their ability to receive

¹¹ Report of the Special Rapporteur at the 50th HRC session, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/337/84/PDF/G2233784.pdf?OpenElement>

foreign funds because of onerous requirements and amendments made to the Foreign Contribution (Regulation) Act. This included prominent aid organizations and institutions working to improve education and health. Reports also indicate that the Foreign Contribution (Regulation) Act obstructed the humanitarian response, preventing non-profit organizations, including hospitals, civil society groups and charitable trusts, from being able to accept oxygen, medical equipment, donations and other critical supplies.”

Restrictions on foreign funding and the lack of alternative sources have forced many CSOs to simply close. In Egypt, “restrictions on foreign funding have been used to crack down on civil society organizations for over a decade, leading to several such organizations having to close or move out of the country. The Government has kept a case targeting several civil society organizations that are based on foreign funding open and pending since 2011, allowing for investigations into and harassment of the organizations...In Myanmar, following the 2021 coup, a vast proportion of civil society organizations have been forced to close or to severely limit their functions, affecting beneficiary communities already impacted by conflict, a repressive environment and the COVID-19 pandemic.”¹²

5. CONCLUSION AND RECOMMENDATIONS

CONCLUSION:

Regulation #328 imposes unreasonable restrictions on Uzbek NNOs’ access to foreign resources. Excessive government control is likely to lead to further reductions in foreign investment in the form of grants, especially given the concerns of many donors about such excessive control and the lack of consultations with the donor community and NNOs about the purpose and procedures for such control. Reduced investment always has a negative impact on the national economy and civil society.

From the point of view of international standards, Regulation #328:

- violates the right to freedom of association (absence or inconsistency of the requirements stipulated in the Regulation with the legitimate purpose, the criterion of necessity and proportionality, among others);
- violates the general prohibition on discrimination against freedom of association (commercial organizations receiving foreign funding are not subject to the same regulation as nonprofits);
- does not differentiate the requirements for approval and reporting depending on the amount of foreign funding or other characteristics;

¹² Report of the Special Rapporteur at the 50th HRC session, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/337/84/PDF/G2233784.pdf?OpenElement>

- is too complicated for implementation by NNOs; and
- was adopted without a broad public discussion or research to confirm the expediency of such a document.

As noted in research carried out by the European Center for Not-for-Profit Law in 2019, “too much government control and burdensome procedures will in the end reduce the support received by the country and its population and aggravate the situation of those groups and persons most in need of aid.”¹³ This prediction may well be justified, considering that after the adoption of Regulation #328, many donors will reevaluate whether it is worth funding further NNO projects in a situation where so little depends on NNOs, and government agencies – the national partner – has the final say on contractors to implement the project, determines areas for funding in accordance with national interests, and approves the timeline and order of project implementation and monitoring.

In summation, the application of the approval procedure provided for in Regulation #328 may have a chilling effect on NNO donors and become a burden on nonprofit recipients of funds from abroad, creating a discriminatory approach, strengthening public distrust and suspicion of NNOs, threatening the financial sustainability of Uzbek NNOs, and undermining international donors’ confidence in Uzbekistan.

RECOMMENDATIONS:

- 1) While it is too early to assess the potential impact of Regulation #328 on the flow of foreign investment through grants, it would be useful if Uzbek NNOs start monitoring the practical effects. Such monitoring would be most effective with the assistance of the Ministry of Justice.
- 2) It would also be useful to obtain the Ministry of Justice’s clarification on vague language in Regulation #328, specifically:
 - o Are all provisions of Resolution #858 of the Cabinet of Ministers on Approving the Regulation on the Procedure for Coordinating the Receipt by Non-Governmental Non-Profit Organizations of Funds and Property from Foreign States, International and Foreign Organizations, Foreign Citizens or on Their Behalf from Other Persons with the Registration Authority of October 9, 2019 still in effect? If not, which provisions are no longer effective?
- 3) The Ministry of Justice is requested to consult with donor organizations to find out their intentions and plans regarding the issuance of grants as a consequence

¹³European Center for Not-for-Profit Law, [Enabling-the-flow-of-donations-RU-final-web.pdf \(icnl.org\)](#), 2019

of the adoption of the Regulation, and, possibly, to consider what role donor organizations can play in the implementation of grant projects.

- 4) In the event of negative consequences that decrease foreign grants provided to Uzbekistan, the Ministry should consider substantially modifying and/or repealing Regulation #328.