

RECOMMENDATIONS - UZBEKISTAN

Draft Resolution of the Cabinet of Ministers of the Republic of Uzbekistan on Measures for Further Support of Social Partnership and International Cooperation in the Implementation of Socially Beneficial Programs and Projects by Nongovernmental Noncommercial Organizations¹

¹ The authors have used an unofficial translation of the Draft Resolution into Russian and apologize if some provisions of the Draft Resolution were interpreted incorrectly due to the inaccuracy of the translation.

Introduction

On July 18, 2023, the Cabinet of Ministers of the Republic of Uzbekistan (CoM RUZ) posted for public discussion the Draft Resolution of the CoM RUZ on Measures for Further Support of Social Partnership and International Cooperation in the Implementation of Socially Beneficial Programs and Projects by Nongovernmental Noncommercial Organizations (Draft Resolution).

The Draft Resolution will repeal the CoM RUZ Resolutions #852² and #328,³ and establish a new procedure for approval of funds and property⁴ acquired from foreign sources by Uzbekistani nongovernmental noncommercial organizations (NNOs)⁵ (the Procedure).

The Draft Resolution eliminates contradictions between Resolutions #852 and #328 and simplifies the procedure for approval of funds received by NNOs from foreign sources in comparison to the current procedure under Resolution #328. The Draft Resolution also establishes a new approval procedure. Specifically, the Procedure:

- establishes a threshold value of funds received from foreign sources (equivalent to approximately US\$2,800 over one year), above which NNOs must obtain approval for the receipt of funds under a simplified procedure (under current Resolution #328, funds of any value are subject to a complicated approval procedure);
- more clearly⁶ prohibits state organizations participating in the project as a partner ("state organization-partner") from interfering with or obstructing

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² Resolution of the CoM RUZ #858 of October 9, 2019 on Approval of the Regulation on the Procedure for Coordination with the Registering Body of the Receipt by Non-governmental Non-commercial Organizations of Funds and Property from Foreign States, International and Foreign Organizations, Citizens of Foreign States or Other Persons on their behalf.

³ Resolution #328 of the CoM of the RUZ on Approval of the Regulation on the Procedure of Interaction Between Nongovernmental Noncommercial Organizations and Government Bodies in Implementing International Grant Projects of June 13, 2022.

⁴ Hereinafter in the text "funds from foreign sources" will be referred to as "monetary resources" and/or "property" from foreign sources.

⁵ These guidelines primarily use two terms: nongovernmental noncommercial organization (NNO) and nonprofit organization (NPO). The terms correspond to the definition in Uzbek legislation for NNOs and the definition in the FATF Recommendations for NPOs. However, where international experience and norms of international law are involved, the authors use NNO and NPO as synonyms in the sense of a nonprofit legal entity or informal organization that is not government-owned and is established for a purpose other than acquiring profits.

⁶ According to the current Resolution #328, Paragraph 11 provides that "the National Partner is responsible for providing practical assistance to NNOs in regard to quality, timely implementation, and monitoring of the results of

the charter activities of NNOs, prohibits giving assignments and tasks to NNOs not related to project implementation, requesting material incentives for participation in the project, among other provisions;

- establishes a procedure for resolving disputes between the “state organizations-partners” and NNOs (specifically by authorizing the registration body, the Ministry of Justice of RUz (MoJ), to resolve such disputes);
- eliminates the MoJ’s obligation to coordinate with the Ministry of Foreign Affairs on all approval decisions for the receipt of funds from foreign sources;
- provides NNOs with the discretion to decide whether to work with a “state organization-partner” when the value of funds received from foreign sources does not exceed the equivalent of US\$28,000;
- substantially limits the duties of a “state organization-partner” to the following:
 - organizing meetings, negotiations, and other activities within the framework of the project;
 - involving industry experts and specialists in the project;
 - exchanging necessary statistical and analytical data to ensure the effectiveness of the project;
 - providing practical proposals and recommendations to resolve problems that arise during project implementation;
- establishes automatic approval of an application for funds from foreign sources when the registering authority fails to comply with the Procedure’s deadline for reviewing applications;
- establishes a step-by-step procedure for approval of the receipt of funds from foreign sources; and
- obliges the MoJ to place information on completed projects on the portal e-ngo.uz for public access.

Despite significant improvements over Resolution #328, the Procedure in the Draft Resolution could be further elaborated. In general, the Draft Resolution fails to ensure the implementation of standards established in Financial Action Task Force (FATF) Recommendation 8. The procedure for approving the receipt of funds from foreign

the grant project, and for coordinating the work of partner organizations. While the National Partner is not allowed to interfere in the internal affairs of NNOs” it is not clear what is meant by “internal affairs of NGOs” or what could be construed as “practical assistance to NNOs” provided by the “National Partner.”

sources remains complicated and it is worth considering its complete repeal, which would align with the best international practice.

These recommendations have been prepared at the request of NNOs. Further on, we will address these conceptual issues in more detail and provide recommendations pertaining to specific provisions of the Procedure.

Conceptual issues:

1. THE DRAFT RESOLUTION FAILS TO IMPLEMENT THE STANDARDS OF FATF RECOMMENDATION 8⁷

FATF Recommendation 8 requires countries to revise their legislation to eliminate the use of nonprofit organizations (NPOs) for terrorist financing. The methodology for implementing all FATF Recommendations states that *“Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions.”*⁸

The Draft Resolution will not help Uzbekistan improve its score on Recommendation 8, which is currently low (“partially compliant”).⁹ All NNOs are obliged to coordinate

⁷ Recommendation 8: “Non-commercial Organizations: Countries should review the adequacy of laws and regulations that relate to non-profit organizations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organizations to protect them from terrorist financing abuse, including: (a) by terrorist organizations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.”

⁸ Page 11 of the International Standards on Combating Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction. FATF RECOMMENDATIONS <https://www.fatf-gafi.org/content/dam/fatf-gafi/translations/Recommendations/FATF-40-Rec-2012-Russian.pdf.coredownload.inline.pdf>

⁹ Unfortunately, the text of Ministerial Decree No. 168 of July 30, 2022, “On Approval of the Regulation on the Procedure for the Selection by the Justice Authorities of the Republic of Uzbekistan of NGOs Subject to Examination of their Activities” is not available to the authors of the recommendations. However, even if it establishes some kind of risk scale among NGOs, it would not be considered sufficient for the implementation of Recommendation 8, as risk assessment should be based on a clear methodology, and all legislation on NPOs that establishes the procedure for control (approval of receipt of funds from foreign sources, reporting, inspections of NGO activities, etc.) should be in line with the risk assessment and control should always be proportionate to the risk.

with the MoJ (in essence, obtain permission) to receive any amount of funds from foreign sources and report on their use. What is the risk that NNOs pose if they do not go through this approval procedure? Is the risk the same for all NNOs? Has such a risk been assessed? At the same time, it is a significant amount of work and a waste of public resources for the MoJ to check the implementation of all NNO projects and to authorize all NNOs to receive foreign funds. These resources could have been used more effectively and would have helped to improve Uzbekistan's rating for Recommendation 8.

In the Mutual Evaluation Report on Venezuela (March 2023), FATF assessors clearly and concisely stated that Venezuela is not in compliance with Recommendation 8. In its report on the implementation of the FATF Recommendations, the Venezuelan government stated that NPOs posed the highest risk, but it failed to provide evidence of this risk. As part of addressing the stated risk, the Venezuelan government introduced legislation that imposes severe restrictions on NPOs through excessive reporting obligations and requirements to obtain approval and authorization for activities.

"243. From the assessment team's point of view, the excessive attention given to the NPO sector and the measures the country is trying to implement are not justified under the FATF standards. Beyond the creation of various registries, which entails an additional burden for NPOs, particularly for those with no risk at all, the excessive emphasis placed by the authorities on this issue cannot be justified on the grounds of the risk implied and it is detrimental to other activities. The assessment team was able to verify that, in its inspections, the SUDEBAN included an analysis of NPO samples regarding the implementation of enhanced CDD measures and the monitoring that banking institutions are supposed to conduct on NPOs; however, other types of highly relevant customers are not subject to a similar analysis in the inspections, as is the case of lawyers and real estate agents, which pose a high ML and TF risk due to the fact that they are not regulated. This demonstrates the absence of an RBA that covers NPOs and other reporting entities."¹⁰

One good practice for improving compliance with Recommendation 8 is to conduct a risk assessment of the NPO sector, identifying groups of NPOs or individual organizations with high, medium, low, and no risk. Oversight measures for NPOs should be proportionate to the risks. The same oversight measures should not be applied indiscriminately to all NPOs. The mere fact of acquiring funds from foreign sources is not a sufficient reason to impose specialized oversight on NPOs, as such measures are not applied to other entities (individuals, commercial entities, state enterprises, or other entities) when they receive funds from foreign sources. How is

¹⁰ <file:///C:/Users/nbourj/Downloads/CFATF-Mutual-Evaluation-Venezuela.pdf>

the risk of an NPO receiving foreign funds higher than the risk of an individual acquiring the same funds? If such oversight measures were applied to all NPOs, the country would not meet the requirements of Recommendation 8.

Proper risk assessment requires a methodology, which is usually developed by a government body with the participation of the civil society sector. NPO representatives should also assist the state in carrying out risk assessments of NPOs based on a jointly developed methodology. Following this approach, Kyrgyzstan improved its rating under Recommendation 8 in 2022 and its NPO risk assessment methodology was recognized as the best in the Eurasia region by a group of evaluators and the FATF Eurasian Group (EAG).

Through its programs throughout the world, ICNL helps countries improve their FATF Recommendation 8 rating. In the Eurasia region, ICNL has assisted Azerbaijan, Kazakhstan, Kyrgyzstan, and is currently assisting Tajikistan. To date, ICNL has assisted more than 35 countries with improving compliance with Recommendation 8.

2. THE PROCEDURE FOR APPROVING THE RECEIPT OF FUNDS FROM FOREIGN SOURCES REMAINS COMPLEX AND DOES NOT ALIGN WITH POSITIVE INTERNATIONAL EXPERIENCE

A) Non-compliance with international law provisions

Restrictions and onerous obligations to obtain approvals for the receipt of funds from foreign sources and account for their use contradict the provisions of the International Covenant on Civil and Political Rights (ICCPR) Article 22, which protects the right of NPOs to access resources (funding). As noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, “*the ability to assess funding and resources is an integral and vital part of the right to freedom of association*”.¹¹ Analyzing the situation, particularly in India, the UN Special Rapporteur noted that many NPOs, and especially human rights organizations, function as ‘non-profit’ organizations and therefore depend almost exclusively on external sources of funding to carry out their work. Consequently, “*undue restrictions on the resources available to associations affect the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political and social rights in general*”¹². For these reasons, the Human Rights Committee - 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

¹¹Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, U.N. Doc. A/HRC/20/27 (May 21, 2012), at paras.67-68.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/135/86/PDF/G1213586.pdf?OpenElement>

¹² Analysis of international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and the Foreign Contributions Regulations 2011 by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, April 20, 2016, section 12. <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>.

the right to freedom of association¹³. The Special Representative of the Secretary-General on the situation of human rights defenders has also stated that “*governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled as much as governments*”.¹⁴

B) Positive International Practices

Most European countries and the United States do not require NPOs to register or obtain prior approval for foreign grants. A number of Eurasian countries (Armenia, Georgia, Ukraine, Kyrgyzstan, Tajikistan, Moldova, Latvia, Lithuania, and Estonia) do not have such requirements.

C) Negative International Experience

It is no secret that, over the past few years, numerous countries, including those in Eastern Europe, have adopted legislation restricting NPOs' access to resources, particularly foreign funding, through excessive reporting requirements. Such initiatives tend to fall short of international standards and often contradict international law.

Several Eurasian countries (Azerbaijan, Belarus, Turkmenistan) require prior approval for the receipt of foreign grants and have been criticized by the international community for violating provisions of international law. In addition, there are several countries that do not require approval for the receipt of foreign grants, but they mandate burdensome reporting procedures for foreign grant recipients (Russian Federation and Kazakhstan).

In Central Europe, Hungary set a negative example in 2017 when it adopted the Law on Transparency of Organizations Receiving Support from Abroad. According to this law, such organizations must register with the Hungarian authorities as “*organizations supported from abroad*” if the amount of donations they receive annually reaches a certain threshold (€24,000). By law, when registering, these organizations must also provide the names of donors whose support reaches or exceeds 500,000 Hungarian forints (approximately €1,500) and specify the exact amount of support. Relevant civic organizations must indicate on their homepages and in their publications that they are “*an entity receiving support from abroad.*” The Hungarian legislature justified the adoption of the law on the grounds of ensuring NPO transparency to prevent undue political influence. Several international organizations, including the Council of Europe's Venice Commission, concluded that this legitimate aim cannot be used as a

¹³ Ibid., section 13.

¹⁴ Ibid., section 15.

pretext to control NPOs or limit their ability to carry out legitimate work. This would go beyond the otherwise legitimate goal of striving for transparency.¹⁵

After the passage of this law, the European Commission launched an infringement appeal procedure, and on June 18, 2020, the European Court of Justice ruled¹⁶ that by adopting the Law on Transparency of Organizations Receiving Support from Abroad, Hungary had imposed discriminatory and unreasonable restrictions on foreign donations to civil society organizations in violation of its obligations under Article 63 Treaty on the Functioning of the European Union (TFEU) and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union. The Hungarian Parliament repealed the law in May 2021, although it has subsequently adopted other initiatives restricting the rights of NPOs to access foreign funding,¹⁷ which are currently being appealed internationally as being inconsistent with international law provisions.

International practice offers other examples where governments oblige NPOs to obtain prior authorization to receive foreign funding, or even bans and restrictions on acquiring foreign financing (India, Egypt, China, Bangladesh, some African countries). Prior approval procedures also vary by country.

For example, in India, “*civil society organizations seeking foreign funding*” must register under the Foreign Contribution Regulation Act of 2010.¹⁸ In the event when registration under the Act is approved, the organization can receive foreign donations for five years, subject to strict conditions and onerous reporting requirements. The Foreign Contribution Regulation Act has been the subject of several reports and statements by UN Special Rapporteurs, claiming that it is “*not in conformity with international law, principles and standards*”.¹⁹ UN Special Rapporteurs have expressed concern that the prior authorization regime under the Foreign Contribution Regulation Act is inconsistent with India's international human rights obligations: “*We are alarmed that FCRA provisions are being used more and more to silence organisations involved in advocating civil, political, economic, social, environmental or cultural priorities, which may differ from those backed by the Government.*”²⁰

¹⁵ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)031-e)

¹⁶ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

¹⁷ <https://www.amnesty.org/en/latest/press-release/2021/05/hungary-lexngo-finally-repealed-but-a-new-threat-is-on-the-horizon/>

¹⁸ https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

¹⁹ Analysis of international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and the Foreign Contributions Regulations 2011 by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, April 20, 2016, section 36. <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>.

²⁰ <https://www.ohchr.org/en/press-releases/2016/06/un-rights-experts-urge-india-repeal-law-restricting-ngos-access-crucial>

Recommendations to Certain Provisions of the Procedure

If the concept of the Procedure is not revised, we would like to offer the following recommendations that could improve the Procedure for the approval of funds received by Uzbekistani NNOs from foreign sources and the expenditure of those funds, including reporting on the expenditures.

1. Replace the approval procedure (obtaining approval, de facto authorization) with a notification procedure (where the registering body does not have the right to reject the application, but would only receive information).

Through the notification procedure, the registration authority would be able to obtain useful information while it would not be responsible for what it authorized or prohibited, nor would it hinder the receipt of funds by an NNO. NNOs that have acquired funds from foreign sources should in all cases operate in accordance with the law while the authorized law enforcement agencies (not the registering authority) will only take action if NNOs violate the legislation.

2. If a notification procedure is introduced, there will be no need to set a notification period of 25 days prior to receipt of funds. For instance, this period can be reduced to about three days.
3. Increase the threshold value of funds received from foreign sources from the equivalent of US\$2,800 to US\$50,000, above which the registration authority must provide approval.

US\$2,800 is too low of a threshold and essentially forces most NNOs to go through a cumbersome approval process. The situation is exacerbated by the fact that this threshold is set for funds received by the organization during the year from any foreign sources. There are not many organizations that can operate for a whole year on less than US\$2,800.

4. The threshold value of resources obtained from foreign sources, above which approval is required, should be calculated based on funds provided by one donor to an NNO during a calendar year (rather than grouping together the funds received by one NNO from all foreign sources during the year). It is also important to clarify the use of a calendar year in this calculation.
5. Funds received in the amount lower than the one requiring the mandatory approval threshold (less than US\$50,000 per calendar year from one donor) should be exempt from the obligatory approval procedure.
6. Replace the mandatory designation of a “state organization-partner” with an optional (at the request of the NNO) requirement; this should apply in all cases and not only when the amount of funds is under US\$28,000.

7. In the cases listed in Paragraph 10 of the Procedure, a funds recipient should be exempted from the obligation to apply for approval.
8. Eliminate the obligation of the registration authority to verify the accuracy of the information in the application for approval (or notification, if recommendation 1. above is accepted) submitted by the NNO (delete Paragraph 14 of the Procedure in its entirety).
9. Eliminate the discretion of the registration authority to conduct “further examination” of the application by the NNO, request additional information from the NNO, or send inquiries to relevant organizations. The possibility to extend the application review period should also be eliminated (delete Paragraph 15 of the Procedure in its entirety).
10. Clarify the list of grounds contained in Paragraph 18 of the Procedure when the registration authority may reject an NNO’s application (unless the authorization procedure is replaced by a notification procedure, in line with our recommendation 1):
 - a. in Paragraph 18 of the Procedure remove *“the activity of an external source and the use of received funds and property aimed at violent overthrow of the constitutional order of the Republic of Uzbekistan, undermining its sovereignty, integrity and security, discrimination of constitutional rights and freedoms of citizens and their health, or if it is aimed at undermining morals, inciting war, social, national, racial and religious hatred, legalization of proceeds of crime and financing of terrorism.”* The Criminal Code and the Code on Administrative Offenses establish the elements of and liability for unlawful violations. It should be the authority vested in the law enforcement agencies and the Prosecutor’s Office to identify such offenses and not the prerogative of the registration authority. The registering body (MoJ) does not have the administrative resources to carry out the relevant actions, and, should an issue arise, it would in any case have to refer all such cases to law enforcement agencies. This situation only slows down the procedure for approval of funds from foreign sources. Additionally, an offense does not emerge upon receipt of funds, but rather when an illegal activity is initiated (for example, actions aimed at violent change of the constitutional system). In the absence of such actions, the registering body can only speculate how the funds will be used, which may not serve as proper justification for rejecting an application for the receipt of funds;
 - b. in the clause reading *“...in the event when the external source is included in the list of persons involved or suspected of involvement in terrorist*

activities or proliferation of weapons of mass destruction, according to legal documents, or if they are connected to organizations and individuals recognized as extremist and terrorist by the court of law; delete the words *“or suspected of involvement”* as this wording may create legal uncertainty: who suspects and on what basis? Alternatively, it is possible to specify *“...and persons who have been indicted for...”*;

- c. remove the text *“in the event when the external source is the parent organization or its founders located outside the Republic of Uzbekistan, forcibly liquidated on the territory of the Republic of Uzbekistan;”*. If a legal entity has been liquidated, how can it exist inside or outside of Uzbekistan? In any case, it will be a new legal entity; it is not clear, for instance, why the founders of a liquidated organization as individuals should be precluded from making donations to NNOs. Regardless of the liquidated NNO’s activities, the actions of individuals can be perfectly legal.
 - d. remove the text *“in the event when the purpose of receiving funds and property runs counter to the provisions of the statutory documents and the charter (statute) of the nongovernmental noncommercial organization,”* as it allows for broad interpretation by the registration authority (what if the purpose of receiving funds does not exactly correspond to the provision written in the charter?) and allows the registration authority to speculate on the purpose of receiving funds when it is not specified by the donor.
11. There is no procedure for appealing the registration authority’s refusal to approve an application for acquiring funds from foreign sources. Paragraph 29 of the Procedure only states that NNOs may appeal in accordance with the legislation, but as far as we are aware, existing legislation does not provide for such action. Such a procedure should be introduced: NNOs should be entitled to an appeal against the decision of the registration body to a court of law (clarify Paragraph 29).
12. Clarify the list of information and documents to be submitted by NNOs to the registration authority upon completion of the project, which should be accessible to the public on the registration authority’s portal. The existing version reads: *“The NNO shall post on the electronic portal of nongovernmental noncommercial organizations of the Ministry of Justice (e-ngo.uz) the reports and documents submitted to the external source that financed the project, according to Annex 4 to this Regulation.”* However, Annex 4 only specifies the information to be submitted to the registration

body of the NNO upon completion of the project, without mentioning any specific documents. We suggest amending Paragraph 28 of the Procedure to read as follows: “ *Within one month from the date of project completion, a nongovernmental noncommercial organization shall post on the electronic portal of nongovernmental noncommercial organizations of the Ministry of Justice (e-ngo.uz) the information provided to the external source that financed the project, according to Annex 4 to this Regulation*”.

13. Paragraph 26 of the Procedure states that “ *With respect to a state organization-partner violating the requirements contained in this paragraph, the registering authority shall take corrective measures stipulated by legislation based on an appeal by a nongovernmental noncommercial organization.*” However, existing legislation does not provide for such mandatory enforcement. This responsibility should be established in the Procedure, although it is not clear how the registering body will enforce corrective measures. For instance, it may be carried out with the help of another ministry, which in principle is not accountable to the MoJ.