

Tajikistan: Drop draft legislation restricting NGO access to funding

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We, a coalition of civil society organizations, are alarmed about the recent initiative of Tajikistan's government to regulate and restrict access of NGOs to financial assistance from foreign and international sources. Draft legislation to this end, which is currently under consideration by the government, runs counter to international standards protecting the right to freedom of association and risks endangering the work of NGOs in the country. We call on Tajikistan's government to drop this draft legislation and to respect the right of NGOs to have unhindered access to funding for their work, including from sources abroad.

According to draft amendments to the Law on Public Associations prepared by Tajikistan's Ministry of Justice, all grants and donations received by NGOs from foreign and international sources would be subject to inclusion in a state register of humanitarian assistance. The implementation of programs funded by foreign governments, international organizations and other sources abroad would only be allowed after the registration process has been completed. The registration requirement applies to all funds originating from abroad, irrespective of size. After a non-transparent drafting process, in which civil society has not been involved, the draft amendments are now being reviewed by other government agencies. It is expected that the draft law will be submitted to the parliament in a near future.

This draft legislation in Tajikistan forms part of a broader trend in many countries in the former Soviet Union, in which governments are stepping up efforts to control and restrict access to foreign funding of NGOs. The arguments used to justify such legislation are typically that it is necessary to enhance the accountability and transparency of NGOs that receive foreign assistance, who are also often the targets of unfounded accusations that they serve the "political interests" of foreign donors. While NGOs are accountable to the public and should provide information about their activities and sources of funding, any procedures aimed at ensuring the transparency of NGO financing must be necessary and reasonable and must not impede the ability of organizations to obtain and use funding for their work either from domestic or foreign sources.

We are concerned that the proposed registration requirement for NGO funding in Tajikistan would place an additional bureaucratic burden on NGOs, which are already required to account in detail for their activities and the sources and amounts of their funding (including that from foreign and international sources) by submitting regular reports to the Ministry of Justice and the tax authorities. The proposed registration requirement would also only apply to NGOs, not other entities that receive foreign assistance.

Moreover, we are concerned that the proposed provisions would unduly restrict access to foreign funding of NGOs. The draft amendments do not elaborate on how the procedure for registering grants with the government would be implemented or what sanctions non-compliance would entail. However, there are reasons to fear that it in practice would amount to a system of pre-authorization for the use of foreign funds that would involve direct government interference in the activities of NGOs and could result in arbitrary delays and denials to register grants. As a result, it could jeopardize not only the implementation of foreign-funded NGO projects aimed at, for example, counteracting torture, fighting corruption, promoting environmental protection or assisting members of minorities and other vulnerable groups, but also the continued existence of NGOs dependent on foreign funding sources.

Across the former Soviet Union, measures to increase government control over the financing of NGOs have been taken in the context of an increasingly restrictive climate for NGOs. The draft legislation on NGO funding in

Tajikistan is also being put forward at a precarious time for civil society organizations in this country. The Ministry of Justice, tax authorities and other state institutions enjoy wide powers to monitor and oversee NGO activities. In the recent period, inspections of NGOs have increasingly often been carried out on an unscheduled basis and been followed by warnings and – in some cases -- lawsuits to suspend and close down organizations for alleged violations of the law, including the failure to comply with requirements of a technical nature. If adopted, the draft legislation would further worsen the climate for NGOs and is also likely to contribute to public mistrust and suspicion of foreign-funded NGOs by singling them out for a specific registration regime.

In our view, the proposed amendments to Tajikistan's Law on Public Associations are inconsistent with the country's international human rights obligations and commitments. As emphasized by international human rights bodies, the ability for civil society organizations to access funding and resources for their work is an integral and vital part of the right to freedom of association as protected, in particular, by article 22 of the International Covenant on Civil and Political Rights (ICCPR). As a party to the ICCPR, Tajikistan has an obligation to facilitate NGO access to funding, irrespective of whether it originates from domestic, foreign or international sources.

The UN Special Representative on freedom of peaceful assembly and of association has stressed that while states often invoke arguments about enhancing transparency and accountability and protecting national security to justify restrictions on NGO funding, such restrictions are not permissible unless they are strictly necessary and proportionate to pursuing a legitimate aim, as required by ICCPR article 22. The Special Representative has further underlined that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an impermissible interference with ICCPR article 22. According to him, among others, requirements for organizations to obtain government approval of funding place undue constraints on the right to freedom of association. The Human Rights Committee, which supervises implementation of the ICCPR, has also taken a stand against government pre-authorization of NGO funding.

We call on the authorities of Tajikistan to comply with their international obligations and commitments on freedom of association and other fundamental rights and to:

- Refrain from adopting the draft legislation on the registration of NGO funding now under consideration, as well as from imposing other restrictions on the right of NGOs to access funding, which go beyond those that are demonstrably necessary and proportionate for a permissible reason under international human rights law.
- Consult and involve civil society in any efforts to amend legislation affecting NGOs, seek assistance from international experts in this regard, and make use of international best practice.
- Refrain from engaging in negative portrayals or stigmatization of NGOs because of their sources of funding -- or any other reason – and publicly acknowledge the importance and value of NGOs, as key partners, in efforts to enhance citizen participation in decision-making, as well as in human rights promotion, environmental protection, assistance of vulnerable groups and other areas.

Signed by:

1. “Accent” Initiative Group of Volunteers (Tajikistan)
2. Amnesty International
3. Analytical Center for Interethnic Cooperation and Consultations (Georgia)

4. Association of Ukrainian Human Rights Monitors on Law Enforcement (Ukraine)
5. "Aurora" Youth Association (Tajikistan)
6. Bar Association of the Sughd Province (Tajikistan)
7. Barys Zvozkau Belarusian Human Rights House
8. Bulgarian Helsinki Committee
9. Bureau for Human Rights and Rule of Law (Tajikistan)
10. Center for Civil Liberties (Ukraine)
11. Center for Human Rights (Tajikistan)
12. Center for National and International Studies (Azerbaijan)
13. Center for the Development of Democracy and Human Rights (Russia)
14. Helsinki Citizens' Assembly – Vanadzor (Armenia)
15. Helsinki Committee of Armenia
16. Helsinki Foundation for Human Rights (Poland)
17. Human Rights Center of Azerbaijan
18. Human Rights Group "Citizen. Army. Law." (Russia)
19. Human Rights Matter (Germany)
20. Human Rights Monitoring Institute (Lithuania)
21. Human Rights Movement "Bir Duino-Kyrgyzstan"
22. Kazakhstan International Bureau for Human Rights and Rule of Law
23. Kharkiv Regional Foundation "Public Alternative" (Ukraine)
24. "Ob Umed" Association (Tajikistan)
25. Office of Civil Freedoms (Tajikistan)
26. Promo LEX Association (Moldova)
27. International Federation for Human Rights, in the framework of the Observatory for the Protection of Human Rights Defenders
28. International Human Rights and Humanitarian Society "Memorial" (Russia)
29. Independent Human Rights Protection Center (Tajikistan)
30. International Partnership for Human Rights (Belgium)
31. International Public Organization "Law and Prosperity" (Tajikistan)
32. Moscow Helsinki Group (Russia)
33. National Association of Independent Media of Tajikistan
34. Netherlands Helsinki Committee
35. Norwegian Helsinki Committee
36. Public Charity Foundation "Parvozy Parastu" (Tajikistan)
37. Public Charity Foundation "Shuhrat va Shafkat" (Tajikistan)
38. Public Foundation "Legal Initiative" (Tajikistan)
39. Public Foundation "My Child" (Tajikistan)
40. Public Foundation "Nota Bene" (Tajikistan)
41. Public Foundation "Public Health and Human Rights" (Tajikistan)
42. Public Foundation "Voice of Freedom" (Kyrgyzstan)
43. Public Foundation "Your Choice" (Tajikistan)
44. Public Organization "Akhtari Bakht" (Tajikistan)
45. Public Organization "Amina" (Tajikistan)
46. Public Organization "Apeyron" (Tajikistan)
47. Public Organization "Barakat" (Tajikistan)
48. Public Organization "Bek" (Tajikistan)

49. Public Organization “Bonuvoni Panch” (Tajikistan)
50. Public Organization “Center for a Free Market” (Tajikistan)
51. Public Organization “Chashmai Nosir” (Tajikistan)
52. Public Organization “Chavononi Murgob” (Tajikistan)
53. Public Organization “Chavononi Pomir” (Tajikistan)
54. Public Organization “Cholpon” (Tajikistan)
55. Public Organization “Dashtak” (Tajikistan)
56. Public Organization “Equal Opportunities” (Tajikistan)
57. Public Organization “Foundation for the Development of Society” (Tajikistan)
58. Public Organization “Furuz” (Tajikistan)
59. Public Organization “Gulnora” (Tajikistan)
60. Public Organization “Inclusive Resource Center LSI” (Tajikistan)
61. Public Organization “Journalism and Democracy” (Tajikistan)
62. Public Organization "Kharif" (Tajikistan)
63. Public Organization “Khayrandesh” (Tajikistan)
64. Public Organization “Khursand” (Tajikistan)
65. Public Organization “KOC Tomiris” (Tajikistan)
66. Public Organization “Madina” (Tajikistan)
67. Public Organization “Marifat” (Tajikistan)
68. Public Organization “Markazi Nur” (Tajikistan)
69. Public Organization “Mizon” (Tajikistan)
70. Public Organization “Nachiba” (Tajikistan)
71. Public Organization “Nilufar” (Tajikistan)
72. Public Organization of Disabled Women “Safoi Konibodom” (Tajikistan)
73. Public Organization “Ormon” (Tajikistan)
74. Public Organization “Orzui Kudak” (Tajikistan)
75. Public Organization “Ozar” (Tajikistan)
76. Public Organization “Rushd” (Tajikistan)
77. Public Organization “Rushdi Ishkoshim” (Tajikistan)
78. Public Organization “Sapeda” (Tajikistan)
79. Public Organization “School of Volunteers” (Tajikistan)
80. Public Organization “Shokhburon” (Tajikistan)
81. Public Organization “Shokhi Tirandoz” (Tajikistan)
82. Public Organization “Shokhnosir” (Tajikistan)
83. Public Organization “Sino” (Tajikistan)
84. Public Organization “Sudmand” (Tajikistan)
85. Public Organization “Tochi Solim” (Tajikistan)
86. Public Organization “Yehyo” (Tajikistan)
87. Public Organization “Zanon Baroi Adolat” (Tajikistan)
88. Public Organization “Zakhro” (Tajikistan)
89. Public Verdict Foundation (Russia)
90. Turkmen Initiative for Human Rights
91. World Movement for Democracy
92. World Organization against Torture, in the framework of the Observatory for the Protection of Human Rights Defenders