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### Analysis of the Draft Law on Introducing Changes and Additions to the Law of the Republic of Tajikistan on Public Associations

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International Center for Not-for-Profit Law (ICNL) has prepared this analysis<sup>1</sup> of the draft Law on Introducing Changes and Additions to the Law of the Republic of Tajikistan on Public Associations (hereinafter, the Draft Law) at the request of a number of public associations in the Republic of Tajikistan (RT).

The purpose of this analysis is to help the drafters and the members of Parliament to improve the Draft Law and bring it into line with international law and best practice so that it may contribute to the transparency of public associations operating in the country, rather than impede the development of its civil society.

A number of provisions of the Draft Law potentially conflict with international law standards and international best practice. Further, the adoption of the Draft Law in its current form may lead to the reduction of the aid provided to RT by the international donor community.

The key problems of the Draft Law include:

1. The introduction of a procedure for inspecting the statutory activity of public associations which could be used as an instrument to interfere in the internal affairs of public associations.
2. The recording of all revenue obtained by public associations, both funds and property, in a special register may weaken the financial stability of public associations and lead to the reduction of social investments in Tajikistan.
3. The ban on all anonymous donations may deprive public associations of their local sources of funding.

Below we shall examine the Draft Law provisions that cause the aforementioned issues, explain why they potentially conflict with international law standards and/or best practice, and propose changes that would avoid these problems. In considering each problematic provision, we cite the relevant provision of the Draft Law, provide our comments, and recommend relevant changes.

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**1. The introduction of a procedure for inspecting the statutory activity of public associations, which could be used as an instrument to interfere in the internal affairs of public associations.**

Proposed amendment to part 2 of Article 34 of the Law on Public Associations<sup>2</sup> as follows:

“The procedure of inspecting the statutory activity of public associations shall be approved by the Minister of Justice of the Republic of Tajikistan.”

**Comment:**

There are instances in which a well-constructed legislative provision setting forth the procedure for inspections of public associations by government bodies could be in the interest of both the inspecting government body and the public association being inspected. This procedure should strengthen the rights of the public association being inspected and clearly establish the powers of the government body so that the interference of the government body in the public association’s activity and internal affairs would be reduced to a minimum. The procedure should focus the inspection on the public association’s compliance with the law.

However, the proposed provision in the Draft Law does not focus on compliance with the law; rather, it focuses on whether the public association complies with its own internal regulations. Under Tajik law, a public association’s charter and internal documents regulate various issues, including those which are not regulated by the law. For instance, the charter may discuss internal governance and management issues, noncompliance with which does not violate the rights of other persons and is not detrimental to the interests of the state.

Interference with a public association’s internal affairs leads to violation Tajik law and violation of the right to the freedom of association. The effective RT Law on Public Associations<sup>3</sup> expressly prohibits interference into public associations’ internal affairs. For example, if an educational organization decides to participate in an environmental campaign in accordance with its members’ decision to fulfill their civic duty, it has the right to do so, even though environmental protection is not expressly written in its charter. Or, if a public association’s members have held only one meeting in the past year instead of the two required by its charter, the public association and its members should deal with it internally. It is an inefficient use of government resources to force public association members to attend meetings.

At present, the Ministry of Justice already has broad powers to inspect a public association’s activity. All inspections performed by the Ministry of Justice must focus on compliance of public association activity with the law (in particular, the Law on Public Associations) instead of the organization’s own internal documents.

Given that the Ministry of Justice already has the authority to inspect a public association’s legal compliance (as opposed to compliance with its internal regulations), the introduction of a clearly defined procedure to guide administrative inspections by the government and protect the rights of the parties involved would be a positive development. In fact, a clearly defined procedure to guide administrative inspections by the government is already in effect in the Law on Inspecting the Activity of Economic Subjects.<sup>4</sup> Unfortunately, authorized bodies disregard the provisions of this law when conducting inspections. Some government

<sup>2</sup> The Law of the Republic of Tajikistan on Public Associations of May 12, 2007.

<sup>3</sup> Article 15 of the Law of RT on Public Associations. Any interference of the bodies of state authority and their officers into the activity of public associations and any interference of public associations into the activity the bodies of state authority and their officers shall be prohibited.

<sup>4</sup> Law of RT #194 on Inspecting the Activity of Economic Subjects in the Republic of Tajikistan dated July 28, 2006.

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officials argue that only commercial legal persons are economic subjects. However, RT law defines economic subjects as “legal persons and sole entrepreneurs carrying out economic activity”<sup>5</sup>, and under the Civil Code<sup>6</sup> and the Law on Public Associations,<sup>7</sup> public associations have the right to engage in economic activity. Therefore, public associations fall within the definition of “economic subjects” and should be subject to the inspection procedure provided for by the Law of RT on Inspecting Economic Subjects.

Furthermore, it seems important that the registering body (the Ministry of Justice) develop any new procedures in consultations with the public. It is an open secret that laws in the RT are more available for public discussion than rules and regulations, which are drafted without participation of the public. As a result, adopted rules and regulation are often less democratic and progressive than the law. Participation of public associations in the drafting of the public association inspection procedure may help avoid this problem.

### **Recommendation:**

1. Limit the purpose of inspections of public associations to Law on Public Associations
2. Introduce a provision in the Draft Law to clearly indicate that all inspections of public associations shall be conducted by the Ministry of Justice and other authorized government bodies in accordance with the Law on Inspecting the Activity of Economic Subjects.<sup>8</sup>
3. The Ministry of Justice should develop a procedure for the inspecting of public association activity in compliance with the Law on Inspecting the Activity of Economic Subjects, providing in it an exhaustive list of the grounds for unscheduled inspections and the procedure for notifying the public association about and conducting both scheduled and unscheduled inspections. We also recommend that the Ministry of Justice develops this procedure in consultation with the public.
4. To edit this provision of the Draft Law as follows:

#### *“Article 34. Oversight of the Activity of Public Associations*

1. *The Prosecutor General of the Republic of Tajikistan and the prosecutors subordinate to him shall be responsible for the exercise of oversight over the public associations’ accurate and uniform compliance with applicable laws.*
2. *The registering body shall exercise oversight over the compliance of public associations’ activity with the Law on Public Associations.*
3. *The registering body shall develop the procedure for conducting checks of public associations in accordance with the Law on Inspecting the Activity of Economic Subjects.*
4. *Appropriate tax agencies shall exercise oversight over public associations’ sources of revenue, the amounts of funds they receive, and their taxpaying activity in accordance with the Tax Code of the Republic of Tajikistan.*
5. *Oversight and supervision over a public association’s compliance with effective environmental, fire protection, epidemiological and other norms and standards shall be the responsibility of duly authorized state bodies in accordance with the Law on Inspecting the Activity of Economic Subjects.”*

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<sup>5</sup> Article 2 of the Law of RT #194 on Inspecting the Activity of Economic Subjects in the Republic of Tajikistan dated July 28, 2006.

<sup>6</sup> Article 50.3 of the Civil Code of RT of June 30, 1999.

<sup>7</sup> Article 24 of Law of RT #194 on Inspecting the Activity of Economic Subjects in the Republic of Tajikistan dated July 28, 2006.

<sup>8</sup> Law #194 of the RT on Inspecting the Activity of Economic Subjects in the Republic of Tajikistan of July 28, 2006

**2. The recording of all revenue obtained by PAs in the form of funds and property in a special register.**

Proposed amendment to part 3 of Article 38 of the Law on Public Associations as follows:

“3. Voluntary contributions and donations, grants, and property received by a public association from foreign states and foreign legal persons, legal persons established with the participation of foreign entities, international organizations and public movements, as well as through other physical and legal persons shall be subject to registration by the registering body in the Special Register of Humanitarian Aid. The implementation of any programs funded by the aforementioned subjects through public organizations shall not be allowed until after registration in the said register. The procedure for the maintenance of the said register shall be determined by the Government of the Republic of Tajikistan.”

**Comment:**

This provision is of particular concern to ICNL, as it may limit public associations' access to resources. If a restriction of this kind (that is, a complex procedure for registering foreign aid) is put in place, it would limit the fundamental human right of association protected by Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Tajikistan<sup>9</sup> in April of 1999. Protection under this article of ICCPR extends to any activity of a public association.<sup>10</sup> Accordingly, it extends to fundraising activity as well. Further, the limitation on funding restricts public associations' ability to implement its activities.<sup>11</sup> Based on this, public associations must have access to resources. The right to association is devoid of all meaning if groups intending to unite cannot implement joint activities because they lack access to resources from various sources..

The proposed language of Article 38 of the Law on Public Associations includes voluntary contributions donations, grants, and property received from “other physical and legal persons.” This can be understood as the requirement to register all property received from any local donors, both physical and legal persons. If our understanding is correct, this requirement in the Tajik law would be without precedent in the laws of other countries. Furthermore, this requirement will encourage excessively burdensome bureaucracy and inhibit local philanthropy. In all likelihood, it will be impossible to enforce.

Support from foreign sources is an important substantial resource for the activity of most public associations in Tajikistan. (Due to the local economic situation, local philanthropy is underdeveloped, and the government's budget resources for the support of public associations are limited, too.) Foreign investors provide humanitarian assistance and invest in the social sphere, promoting social and political stability in the country. The provision of support to Tajikistan through funding public associations is done by the choice of foreign donors, who deservedly show their trust in Tajik public associations. Introducing a requirement to register any foreign aid before it can be used will make the provision of foreign aid more complicated and potentially cause a decrease, undermining the financial viability of many Tajik public associations. In fact, any limitations on that support will not only negatively impact Tajik public associations, it will also cause a drop in humanitarian aid and investment in the social sphere.

<sup>9</sup> ICCPR was ratified by Tajikistan in April of 1999.

<sup>10</sup> Human Rights Committee, communication No. 1274/2004, *Korneenko et al. v. Belarus*, Views adopted on 31 October 2006, para. 7.2.

<sup>11</sup> UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 16, [http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf).

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This initiative fundamentally contradicts the main objective of the National Scientific and Research Target Conception on Issues of Human Development, Further Ensuring of Democratic Principles and Civil Society Development for 2013-2028, approved by the RT Government on July 2, 2013 and which was developed in accordance with the National Strategy of Development of Tajikistan for 2009-2015. The main objective of the Concept is to “*further ensure the democratic principles, a worthy place for the individual in society, and the development of civil society.*”<sup>12</sup>

We know that many Tajik public associations are willing to work transparently and do not oppose in principle informing the government and the public of the funds they receive. However, this procedure should be simple and should be a procedure to notify, rather than a request for authorization. International experience shows that an overcomplicated procedure of registration of foreign aid and/or ban on unregistered use can often lead to unexpected and undesirable results for the state. In particular, such a complicated procedure exists in Belarus, Russia, Uzbekistan, and India. Foreign funding of organizations in those countries still continues, but mostly through channels that are more difficult for government bodies to control and not in the social sphere. It would be much more practical if Tajikistan and other countries monitored funds received from foreign sources by introducing a simple notification procedure to obtain necessary information.

Furthermore, the Draft Law does not set a minimum size of foreign aid that is subject to registration. Given that we are talking not only about grants, which usually require a special agreement between grantor and grantee, but also any property (for example, if a foreign national wants to donate an equivalent of just \$20 to a children’s home), it seems that it would be an irrational bureaucratic nightmare to record all donations. Establishing a limit on funding that is subject to registration will help avoid unnecessary red tape and cause no harm to the public interest. Law #684 of RT on Countering the Legalization (Laundering) of Criminal Revenue and the Funding of Terrorism<sup>13</sup> sets a limit of sums of money that are not subject to obligatory control. We suggest using these amounts as the limit of the property received by public associations from foreign sources that are exempt from registration in a special register.

We also propose excluding “legal persons established with the participation of foreign entities” from the category of “foreign sources.” Leaving this requirement as is will complicate the charitable activities of all joint ventures or local open joint-stock companies whose founders are foreign citizens or legal entities. For example, many banks, or large commercial corporations in Tajikistan, such as cellular companies, include foreign participation; they are actively engaged in charitable activities, allocating funds to public associations to address certain social problems. If the amendments are adopted as proposed, the charitable activities of these companies will be reduced, and public associations will lose funding even from those local sources.

### **Recommendation:**

We propose:

1. to delete from this provision the phrase “as well as through other physical and legal persons” to make it clear that only foreign and not local aid is subject to registration;
2. to ensure that the objective of the process for registering foreign aid is monitoring its receipt and notifying the government and the public;
3. to exclude “legal persons founded with the participation of foreign entities” from the category of “foreign sources”;

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<sup>12</sup> The National Scientific and Research Target Conception on Issues of Human Development, Further Ensuring of Democratic Principles and Civil Society Development for 2013-2028, approved by Resolution #288 of the Government of the Republic of Tajikistan on July 2, 2013.

<sup>13</sup> Law #684 of RT on Countering the Legalization (Laundering) of Criminal Revenue and the Funding of Terrorism of March 25, 2011. Article 6. Operations with Funds and Other Property That Are Subject to Obligatory Supervision.

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4. to establish a maximum amount of one-off aid that is not subject to registration in the special register at 350 indices for settlements<sup>14</sup>;
5. to rewrite clause 3 of Article 38 of the PAs 1 of the Draft Law as follows:

*“3. Voluntary contributions and donations, grants, and property worth the equivalent of 350 or more indices for settlements, which have been received by a public association from a foreign state or foreign legal or physical person, or an international organization or public movement on a one-off basis shall be registered by the authorized body in the special register of humanitarian aid.*

*The procedure for the maintenance of the said register is that of notification. A public association submits information for the register by filling out a standard form approved by the authorized body.*

*The form is submitted to the authorized body in its electronic version. Attached to the form is a copy of the agreement, if available, on the provision of the grant or donation. The authorized body is obliged to enter the information in a register.*

*The body authorized for the maintenance of the special register of humanitarian aid shall be determined by the Government of the Republic of Tajikistan.*

### **3. The ban on all anonymous donations deprives public associations of local sources of funding.**

Proposed amendment to add to Article 24 of the Law on Public Associations the following:  
“accept material aid in the form of property and funds from physical and legal persons on the condition that such donations are documented and their source is indicated.”

#### **Comment:**

On the one hand, the proposed regulation duplicates existing laws; on the other it may hinder the “people’s charity” and deprive primarily charitable organizations of an important local source of funding.

The laws of RT on accounting and financial reporting require that legal entities provide documentary evidence of any revenue. According to clause 6 of Article 10 of the Law on Accounting and Financial Reporting,<sup>15</sup> “All business operations and the results of an inventory are subject to timely and complete registration in the accounts.” According to clause 1 of Article 12 of this law, “All business operations carried out by the organization shall be recorded in relevant documents. These documents serve as the primary accounting documents based on which the accounting is carried out.” Article 15 of the same law states: “The property, assets and liabilities shall be reflected by the organization in its accounting and financial reporting.” It seems that there is no need to repeat the documentation requirement in the Law on Public Associations.

Also, it is not necessary to require public associations to indicate the source of the funds received from a legal person. Anonymous wire transfer/transfer of property by local legal entities in Tajikistan is already impossible. All legal entities in RT are supposed to maintain records of the receipt and expenditure of funds and of any alienation of property. Any financial audit with the participation of the bank involved will

<sup>14</sup> Clause 2, part 1 of Article 6 of Law #684 of RT on Countering the Legalization (Laundering) of Criminal Revenue and the Funding of Terrorism of March 25, 2011. The 2014 index for settlements has been approved at 40 somoni (US\$7.80 at the November 21, 2014 exchange rate).

<sup>15</sup> The Law of RT on Accounting and Financial Reporting of March 11, 2011.

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provide information about the source of the transfer. Cash transactions between legal entities in Tajikistan are prohibited.<sup>16</sup>

With regard to local and foreign physical and legal persons, Tajikistan already has in place rules that provide the government with control over any operations involving funds and property that may be detrimental to national security. Such rules are provided for by the Law of RT on Countering the Legalization (Laundering) of Criminal Revenue and the Funding of Terrorism<sup>17</sup> and are compulsory for all. There is nothing that specifically references financial transactions involving public associations, but it is illegal for any entity to launder money or to finance terrorism. Thus it seems impractical to duplicate existing rules for the control of financial operations in the Law on Public Association.

Additionally, the requirement to specify the source of funding effectively prohibits any anonymous donations and is problematic for charitable organizations in particular. This provision of the Draft Law will, first of all, put an end to the “people’s charity” where individuals donate one or two somoni<sup>18</sup> for the treatment of a sick child or help the poor. This ban may put an end to the popular practice of collecting donations by installing cash donation boxes in cash in various public places, which is often used by charitable organizations to raise small but effective donations. It is not realistic to require each person who donates one or two somoni to provide his/her ID and record their personal data. Similarly, it is impossible to collect such information from each contributor during charity events, such as concerts. Local charities will suffer greatly if this form of fundraising is prohibited. Based on our research,<sup>19</sup> Belarus is the only other country amongst reviewed countries that bans all anonymous donations in a similar manner.

### **Recommendation:**

To delete the proposed change to Article 24 of the Law on Public Associations.

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<sup>16</sup> Part 2 of Article 886 of the Civil Code of RT of December 11, 1999 (Part II): All settlements between legal persons as well as settlements involving individuals and which are connected with their participation in entrepreneurial activity shall be in non-cash form. Settlements between the above listed persons may also be in cash unless otherwise provided for by the law.

<sup>17</sup> Law #684 of RT on Countering the Legalization (Laundering) of Criminal Revenue and the Funding of Terrorism of March 25, 2011.

<sup>18</sup> The national currency of the Republic of Tajikistan.

<sup>19</sup> Legislative Regulation of Anonymous Donations: Review of the Experience of Various Countries. ICNL, January 20, 2013.