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Legislative Analysis

"The DFA Procedure on Coordination and Regulation of NGOs"

I. Title of the Document

"The DFA Procedure on Coordination and Regulation of NGOs"

II. Introduction

1. **Summary and Context:** The document, issued on 22 October 2022 by the De Facto Authorities (DFA), establishes a comprehensive framework for coordinating and regulating the activities of both domestic and international non-governmental organizations (NGOs) in Afghanistan. This procedural document is pivotal in understanding how NGOs, crucial players in humanitarian and development work, are expected to align their operations with the priorities and legal framework set by the DFA. The policy reflects a broader strategy of the DFA to assert control over NGOs and align them with its interpretation of Islamic law and governance principles.
2. **Legal Basis and Authority:** The document derives its legitimacy and enforcement capability from the Ministry of Economy under the DFA. It functions within the broader legal and administrative landscape of the DFA, where the Ministry of Economy is entrusted with the oversight of NGO activities, ensuring their compliance with the national priorities and legal stipulations. However, the document does not reference any specific legislative act or statute, raising questions about its legal standing in a broader context.

III. Key Provisions

1. **Objectives:** The Procedure aims to establish a structured and regulated environment for NGOs. It seeks to ensure that the operations of these organizations are transparent, accountable, and in line with the DFA's legal and religious frameworks. This includes a focus on equitable distribution of

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humanitarian aid and effective project implementation that adheres to DFA standards.

2. **Scope and Implementation:** The Procedure's ambit covers all NGOs operating within Afghanistan, both national and international. It mandates these organizations to register and obtain operational licenses through the Ministry of Economy, effectively placing them under the purview of the DFA's regulations. This centralized approach to NGO management reflects the DFA's intent to have substantial oversight and control over NGO activities.

3. **Definitions**

While this procedure does not contain a dedicated definitions section, understanding certain terms and acronyms is crucial for comprehending the document's context and requirements. Here are some key terms and acronyms used in this procedure:

- **Organizations:** This term typically refers to non-governmental organizations, but in a broader sense, it includes organizations or institutions in general.
- **MoU (Memoranda of Understanding):** Formal agreements between NGOs and sectoral authorities outlining the scope and terms of projects.
- **ANDMA:** Refers to the Afghanistan National Disaster Management Authority (now Office of the State Minister for Disaster Management), which is involved in coordinating emergency and urgent assistance projects.
- **TVET (Technical and Vocational Training and Education Authority):** An authority responsible for projects related to technical and vocational education.
- **Sectoral Authority:** Governmental bodies specific to different sectors, such as health, education, etc., with which NGOs must coordinate their projects.

4. **Rights and Obligations:**

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This procedure creates a number of rights and obligations for NGOs, as listed below:

Rights of NGOs

- 1) **Licensing and Registration Right:** Every NGO, domestic or international, possesses the inherent right to seek registration and acquire an operating license through the Ministry of Economy, as outlined in Article 4. This step is fundamental, ensuring NGOs gain legal status and the authority to function within Afghanistan. It guarantees organizations the right to a fair review of their applications, adhering to established guidelines. Although this right facilitates access to formal recognition and operational legitimacy, it also imposes an obligation on entities desiring to engage in Afghanistan's development and humanitarian efforts.
- 3) **Project Implementation Right:** Article 5 grants NGOs the right to implement projects across various sectors. This enables them to contribute to diverse areas of development and humanitarian assistance.
- 4) **Policy Coordination Right:** As per Article 5, NGOs hold the right to engage in policy coordination activities with international donors and the Ministry of Finance. This facilitates their involvement in policy-making processes.
- 5) **Procurement Right:** NGOs are entitled, under Article 4, to procure necessary items from domestic sources, and if required, they can resort to foreign sources. This right ensures operational flexibility and resource accessibility.
- 6) **Operational Right:** Upon meeting the procedural requirements set out in Article 4, NGOs have the right to conduct their operations. This

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right is contingent upon compliance with the established guidelines and regulations.

Obligations of NGOs

- 1) **Obligation to Register and Obtain License:** NGOs are obligated to register with the Ministry of Economy and obtain an operating license as per Article 4.
- 2) **Obligation for Project Organization and Implementation:** NGOs must organize and implement projects in consultation with the relevant sectoral authority (Article 4).
- 3) **Obligation for Transparent Reporting:** There's an obligation to submit detailed reports on budgets, expenditures, plans, objectives, and results to the Ministry of Economy (Article 6).
- 4) **Obligation Against Employing Dismissed Government Employees:** There's an obligation not to employ government employees dismissed due to absenteeism or crime for two years (Article 10).
- 5) **Obligation for Coordination and Information Sharing:** NGOs are obligated to coordinate surveys and projects and share awarded proposals with the sectoral authority (Article 4).
- 6) **Obligation to Ensure Ethical Tendering Practices:** NGOs must refrain from giving projects to companies under question during announcements and tendering (Article 4).
- 7) **Obligation to Share Project Documentation:** NGOs are required to share signed project documents with the Ministry of Economy for evaluation and approval after implementation (Article 4).
- 8) **Obligation to Maintain a Database:** Each sectoral authority is obligated to create a database for good organization of affairs (Article 4).

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- 9) **Obligation to Avoid Employing Current DFA Staff (Article 8):** NGOs are obligated to avoid employing current technical or professional staff from the DFA without explicit agreement. This aims to prevent conflicts of interest and ensure the integrity of operations within both governmental and NGO sectors.
- 10) **Restriction on Employing Staff Leaving Government Positions (Article 9):** The Procedure specifies that NGOs cannot employ individuals who leave their government positions without an agreement for a period of two years. This restriction is designed to deter abrupt transitions from government to NGO sectors and maintain stability within government roles.
- 11) **Bar on Employing Dismissed Government Employees (Article 10):** Government employees dismissed for absenteeism or committing a crime are barred from NGO employment for two years. This clause aims to uphold ethical standards in public service. However, the lack of specificity regarding the type of crime could lead to overreach and potentially unfair penalization for minor offenses. A clearer definition of the nature and severity of crimes warranting such restrictions would enhance fairness and relevance.

5. Operational Framework and Compliance Process

- **Registration and Licensing (Article 4, Point 1):** NGOs must register themselves with the Ministry of Economy and obtain an operating license.
- **Introduction to Sectoral Authorities (Article 4, Point 4):** Depending on the project type, NGOs will be introduced to the relevant sectoral authority by the Ministry of Economy.
- **Signing Memoranda of Understanding (MoU) (Article 4, Points 8 and 9):** NGOs are required to sign an MoU with the relevant

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sectoral authority for project implementation. The sectoral authority should complete the phases of the MoU and sign it within 15 working days. In emergency situations, work can proceed based on an agreement with the sectoral authority.

- **Project Implementation and Coordination (Article 4, Points 5, 6, and 7):** NGOs must organize and implement surveys and projects in consultation and coordination with the sectoral authority. In case of disagreement on survey locations or identification of deserving individuals, efforts are made for mutual agreement, with the sectoral authority's view being preferred. Urgent and emergency projects are selected and implemented in coordination with sectoral organs and ANDMA (Afghanistan National Disaster Management Authority).
- **Monitoring and Control of Project Implementation (Article 4, Points 12 and 19):** Sectoral authorities are responsible for monitoring and controlling project implementation as per the MoU. Following project implementation, NGOs and sectoral authorities must share signed project documents with the Ministry of Economy for evaluation and approval.
- **Reporting Mechanism (Article 6):** NGOs must submit reports on their budgets, expenditures, plans, objectives, and results to the Ministry of Economy on an annual and quarterly basis. Reports on project implementation and distribution of humanitarian assistance must be submitted after approval by the relevant sectoral authority.
- **Project Delivery Mechanisms (Article 7):** Upon completion of projects, the relevant sectoral authority must formally submit the project to the Ministry of Economy and report on it, ensuring technical assurance of the MoU or contract's implementation.
- **Procurement Restrictions (Article 4, Point 17):** NGOs must procure necessary items, goods, and materials primarily from domestic

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sources, resorting to foreign sources only if items are unavailable domestically.

- **Coordination Mechanisms:** NGOs are mandated to collaborate closely with relevant sectoral authorities. This partnership is designed to ensure that NGO projects are in harmony with the DFA's priorities. However, it also places NGOs in a position where they may have to navigate complex bureaucratic channels and possibly face constraints in their operational autonomy.
- **Reporting Mechanism:** A stringent reporting mechanism requires NGOs to submit detailed reports concerning their budgets, expenditures, and project outcomes. This level of scrutiny, while ensuring transparency, could potentially add administrative burdens on NGOs, impacting their efficiency and responsiveness.

IV. Impacts

1. Positive Impacts:

- The Procedure could lead to more structured NGO operations by providing a clear regulatory framework. This structure can enhance the efficiency and effectiveness of humanitarian aid distribution and project implementation.
- Increased oversight might result in heightened accountability and transparency in NGO operations, aligning their activities more closely with the DFA's governance model and priorities.

2. Negative Impacts:

- Excessive regulatory controls might impede the operational flexibility of NGOs, especially in responding to emergent and dynamic humanitarian needs. This could result in delays and reduced effectiveness in crisis situations.

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- The talent pool available to NGOs could be constrained by employment restrictions, potentially impacting the quality of humanitarian and development work.

V. Concerns

In reviewing the "DFA Procedure on Coordination and Regulation of NGOs," several areas of concern and gaps emerge:

- **Need for Enhanced Definitions and Criteria:** The Procedure could benefit from more detailed definitions and criteria. This would aid NGOs in understanding and adhering to the requirements for project evaluation, equitable aid distribution, and compliance with DFA regulations.
- **Operational Flexibility vs. Regulatory Control:** The current regulatory framework might impact NGOs' ability to respond swiftly and effectively to humanitarian needs. There appears to be a need for a balance that supports both accountability and operational agility.
- **Stakeholder Engagement:** The involvement of NGOs in the development and refinement of these procedures seems limited. Greater collaboration could lead to more effective implementation and a mutual understanding between the DFA and civil society.
- **Monitoring and Evaluation Framework:** The Procedure lacks a comprehensive mechanism for monitoring and evaluating its impact on NGO operations. An effective framework could ensure that objectives are achieved without overly burdening NGOs.

VI. Recommendations

While these provisions are aimed at addressing real concerns within Afghanistan's governance and civil society interaction, they also bring potential challenges:

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1. **Reduced Flexibility in Human Resource Management:** These restrictions could limit the ability of NGOs to hire experienced and skilled professionals, especially those with government experience who can provide valuable insights.
2. **Potential Talent Drain:** Stringent rules might discourage skilled professionals from joining the public sector due to perceived limitations on future employment opportunities.
3. **Balanced Approach:** A more balanced approach might be beneficial. While it is important to prevent conflicts of interest, there should be pathways for skilled professionals to transition between the government and NGO sectors under regulated and transparent mechanisms.
4. **Ethical Employment Practices:** Ethical employment practices should be promoted, ensuring that individuals leaving the government sector for NGOs do so in a manner that respects their governmental responsibilities and avoids conflicts of interest.
5. **Strengthened Monitoring:** Implementing a robust monitoring system to oversee these transitions can ensure compliance with the regulations while maintaining the flow of expertise between sectors.
6. **Enhancing Definitions for Clarity:** It might be beneficial for the Procedure to offer more precise definitions, particularly for broad terms such as 'crime' linked to employment restrictions. Offering detailed explanations could assist in ensuring a balanced and fair interpretation, thus avoiding overly stringent enforcement that may not align with the intended spirit of the Procedure. This approach could contribute to a more equitable application of the rules, aligning with both legal standards and ethical considerations.
7. **Collaborating with NGO Representatives:** Involving representatives from NGOs in the drafting of regulations could be beneficial, enhancing the practicality and relevance of policies to both NGOs' operational needs and DFA's strategic

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goals. This approach promotes a regulatory environment conducive to effective humanitarian and development efforts.

VII. Conclusion

The "DFA Procedure on Coordination and Regulation of NGOs" introduces a regulatory framework for NGOs operating in Afghanistan. This document outlines various obligations and restrictions, aiming to regulate NGO activities in alignment with the DFA's governance structure. The Procedure mandates registration, coordination with governmental bodies, and specific employment practices, reflecting the DFA's approach to NGO oversight. While it establishes clear operational guidelines, the Procedure also raises concerns about potential limitations on NGO autonomy and the broader impact on humanitarian efforts. The effectiveness of this framework will depend on its practical implementation and the extent to which it balances regulatory objectives with the operational needs of NGOs. The Procedure's impact on the NGO sector in Afghanistan remains to be seen, contingent on its application and the evolving relationship between the DFA and civil society organizations.

VIII. References

For Additional Context on Related Legislation, Please Refer to the Following Resource on the [ARLO](#) Website:

- **[Ministry of Foreign Affairs Circular on Health Project Execution Guidelines](#)** dated 09 September 2023: Issued by the Ministry of Foreign Affairs of the DFA, this circular communicates directives from the Ministry of Public Health to United Nations agencies and international organizations in Afghanistan. The mandate, effective from 30 August 2023, stipulates guidelines for health-related projects, including prohibitions on cash disbursements to patients by staff and restrictions against staff visits to civilian residences near project sites. These guidelines aim to ensure compliance and adherence to specific protocols during

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project implementation, emphasizing the importance of transparency and accountability in health project operations. This circular is essential for international organizations engaged in health projects in Afghanistan, underscoring the need for alignment with the stipulated operational and conduct standards.

- **The directive from the Deputy Ministry for Finance and Coordination on the Prohibition of Females from Working in NGOs**, dated December 24, 2022: Issued by the Ministry of Economy of the DFA, this directive mandated all national and international NGOs to suspend their female staff from working. The directive addressed concerns about non-compliance with the Islamic Hijab and laws enforced by the DFA by women working in these organizations. The Ministry of Economy, serving as the coordinating body for NGO operations, emphasized its role in enforcing laws and regulations. Failure to comply with this directive could have resulted in the revocation of the NGO's operating license. This directive was crucial for understanding the operational constraints faced by NGOs at the time, particularly in terms of gender-related workforce policies under the DFA of Afghanistan. It reflected the broader legal and regulatory environment influencing NGO operations in the country.
- The **Cessation of Proposals and Suggestions for Unnecessary Projects (Public Awareness) letter**, issued by the Ministry of Economy of the De Facto Authority (DFA) in Afghanistan, mandates a significant redirection of donor and NGO activities. Under Directive No. 17, organizations, including international bodies, must shift their focus from public awareness, advocacy, peacebuilding, and dispute resolution to essential humanitarian aid and infrastructure development. This policy, grounded in the Procedure on Coordination and Regulation of NGOs (2022) and specifically under the auspices of the Ministry of Economy, applies to all national and international organizations in Afghanistan. Its main objective is to stabilize society and ensure effective resource allocation, primarily impacting future projects without retroactively affecting ongoing ones. This directive is pivotal for guiding NGO operations and priorities within Afghanistan, as dictated by the DFA's Ministry of Economy.

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