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# Legislative Analysis

## Cessation of Proposals and Suggestions for “Unnecessary” Projects by NGOs

**Date: January 27, 2024**

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### I. Title of the Document

Cessation of Proposals and Suggestions for Unnecessary Projects (Public Awareness) by National and International Non-Emirate Organizations.

### II. Introduction

- **Summary of the Legislative Document:** Directive No. 17, issued by the Ministry of Economy of the De Facto Authority (DFA), mandates a shift in focus for donors and non-governmental organizations (NGO), including governmental aid agencies, international organizations, and other organizations (hereafter “organizations”). These organizations are required to redirect their efforts from projects related to public awareness, advocacy, peacebuilding, and dispute resolution towards essential humanitarian aid and infrastructural development. This move is part of a broader strategy to stabilize society and allocate resources effectively.
- **Legal Basis for the Document:** The directive is issued under the authority of the Ministry of Economy, specifically through the Office of the Deputy Minister for Finance and Administration and the Directorate of NGOs Coordination, as per [The Procedure on Coordination and Regulation of NGOs \(2022\)](#). This directive aligns with the provisions of Article 4 (16) of this Procedure, which outlines the regulatory framework for NGO operations within Afghanistan. This legal grounding underlines the Ministry's role in defining and guiding the scope and focus of NGO activities in the country.
- **Scope of the Document:** This directive applies to all national and international organizations operating within Afghanistan, defining specific areas for cessation and redirection of efforts. Based on the language used in the directive, particularly in the second paragraph, it appears that the directive's impact is intended to move

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forward, focusing primarily on future projects. This suggests that ongoing projects might not be affected retroactively by this directive.

### III. Description and Analysis

- **Immediate Redirection:** The DFA mandates all those organizations to prioritize urgent humanitarian aid and infrastructure development immediately, moving away from advocacy, peacebuilding, and public awareness.
- **Specific Areas for Cessation:** The directive explicitly targets public awareness, advocacy, and peacebuilding initiatives, calling for these organizations to cease projects in these areas immediately.
- **Implications of Non-Compliance:** Non-compliance with the terms of this directive may lead to serious consequences, including potential dissolution by the High Commission of Evaluation. While this directive does not explicitly elaborate on the High Evaluation Commission, its existence and functions are rooted in the 2005 NGO Law, particularly highlighted in Article 17. The High Evaluation Commission, established under this law, comprises representatives from various Afghan ministries, including the Ministry of Economy, Ministry of Foreign Affairs, Ministry of Finance, and Ministry of Justice, with the Ministry of Economy taking the lead role. This Commission plays a pivotal role in assessing and reviewing applications submitted by NGOs, ensuring compliance with legal and operational standards, as outlined in Articles 16 and 19 of the [2005 NGO Law](#). Despite its origins during the Government of the Islamic Republic of Afghanistan period, it appears that the Commission [continues to operate](#) currently.
- **Points of Concern/Risks:** The directive could significantly limit the operational scope of organizations and impact the civil society space. Ambiguity in defining 'essential needs' and 'infrastructure' could lead to varied interpretations and implementation challenges. Furthermore, the lack of procedural clarity could result in arbitrary enforcement and deprive organizations of a fair recourse system.

### IV. Impacts

- **Potential Positive Impacts:** The directive redirects resources towards humanitarian and infrastructural needs, potentially leading to more immediate and tangible benefits for the population. According to the letter, the MOEc

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intended to reduce the number of overlapping initiatives, possibly enhancing efficiency.

- **Potential Negative Impacts:** This directive from the DFA could notably restrict certain organization's activities, impacting civil society engagement and disrupting ongoing projects, particularly in areas like peacebuilding and advocacy. The sudden shift in operational focus may harm the established trust and rapport between NGOs and local communities, potentially leading to confusion and a sense of loss among those reliant on their services. Additionally, international donors may reduce funding if new directives diverge from their thematic priorities, affecting resource availability for NGOs. This, in turn, could leave vulnerable populations underserved as they lose access to critical services previously provided by NGOs. Overall, this mandate could cause a significant realignment in the NGO sector, impacting their efficacy and relationships with communities and donors alike.

## V. Concerns

- **Complexity in Compliance and Interpretation:** The directive's ambiguity in defining 'essential needs' and 'infrastructure' might lead to subjective enforcement and varied implementation.
- **Absence of Procedural Clarity:** There is a lack of detailed provisions on sanctions, non-compliance, and appeals processes, leading to a lack of transparency and fairness.
- **Insufficient Stakeholder Engagement:** The directive's development and issuance might have overlooked critical input from NGOs, legal experts, and community representatives.

## VI. Recommendations

- **Enhanced Clarification:** Providing detailed definitions for "essential needs" and "infrastructure" would aid NGOs in aligning their projects with the directive's goals and ensuring consistent application.
- **Recognition of Varied Infrastructure Needs:** Acknowledging that infrastructure includes tangible constructions and foundational societal elements, such as education and public awareness initiatives, could facilitate a broader approach to societal development.

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- **Consideration for Exceptions:** Incorporating nuanced provisions for exceptions or specific allowances for projects that contribute significantly to societal stability and development, even if not traditionally viewed as infrastructure, might enhance the directive.
- **Legislative Oversight and Process:** Ensuring changes affecting civil society organizations are processed through a participatory lawmaking mechanism involving legal experts would promote fair governance and safeguard stakeholders' interests.
- **Procedural Transparency:** Establishing clear guidelines for identifying non-compliance, appealing decisions, and seeking clarification would provide NGOs with necessary recourse and enhance the directive's fairness.
- **Stakeholder Engagement in Decision-Making:** Undertaking active consultation with NGOs, community representatives, and legal experts in the decision-making process would lead to more informed and equitable directives. By working collaboratively with these organizations, the DFA could leverage their extensive field experience and expertise, fostering a partnership-oriented approach. Such collaboration could not only align the directive's objectives with ground realities but also promote shared goals for societal development. This partnership, rather than a purely directive-based relationship, could enhance the effectiveness of initiatives and foster a sense of joint ownership and commitment among all stakeholders involved.
- **Clarification on Sanctions and Penalties:** Including a detailed outline of the sanctions and penalties for non-compliance, with clear criteria for their application, would ensure transparency and fairness.
- **Respect for NGO Roles and Rights:** Acknowledging the diverse roles and rights of NGOs within the directive would ensure that essential services are not disrupted and that NGOs can continue to operate effectively.
- **Framework for Dispute Resolution and Appeals:** Establishing a clear and accessible dispute resolution and appeals process within the directive would provide an avenue for redress and ensure just and transparent decision-making.
- **Comprehensive Multi-Sectoral Review:** A thorough review involving various stakeholders, including justice sector ministries, is essential to ensure that the

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directive's economic, legal, justice, fairness, and rights implications are fully considered.

## **VII. Conclusion**

Directive No. 17 aims to refocus donors', NGOs', and other organizations' resources on critical areas; however, it introduces several concerns, particularly regarding its restrictive scope and lack of detailed provisions. As outlined in the recommendations, a more nuanced, inclusive, and transparent approach could mitigate potential negative impacts and enhance the directive's effectiveness in fostering sustainable societal development and infrastructure in Afghanistan.

## **VIII. Reference:**

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

**[The DFA Procedure on Coordination and Regulation of the Activities of Domestic and International Organisations](#)** dated 22 October 2022: Approved by Prime Minister Mullah Mohammed Hassan Akhund, this Procedure outlines a regulatory framework for both domestic and international NGOs operating in Afghanistan. Key aspects include mandatory NGO registration with the Ministry of Economy, sector-specific project guidelines, and detailed reporting mechanisms. The Procedure addresses challenges like transparency, accountability, and project monitoring, emphasizing the need for coordinated surveys, project implementation in line with sectoral authorities, and adherence to legal frameworks. This document is crucial for understanding the operational landscape for NGOs under the DFA.

**[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 project implementation, emphasizing the importance of

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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.

**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 Islamic Emirate of Afghanistan. It reflected the broader legal and regulatory environment influencing NGO operations in the country.