

OVERVIEW

After the rapid regime change of August 2021, the Interim Taliban Authority (ITA) had to address several immediate challenges of managing a state administration. These included securing international recognition, addressing domestic security risks, organising the provision of public services, meeting the population's needs, and regulating a vast humanitarian system (USIP 10/2021).

This report examines one specific aspect of the ITA's engagement with the humanitarian response system: its efforts to shape international and national NGOs. Together with UN agencies, I/NNGOs are important humanitarian responders, service providers, and employers in Afghanistan. They play a substantial role in a weak Afghan economy, which has only recently shown tentative signs of recovery. These organisations will remain critical for Afghan households in the coming years (UNDP 18/04/2023).

The report highlights the dilemmas that arise in a context where a mix of mistrust and pragmatism vis-à-vis humanitarians, especially international responders, drive the ITA's approach to regulating NGOs. It discusses the challenges and risks that arise for NGOs as a result of the ITA's active shaping of humanitarian assistance. The ITA does this through an increasingly restrictive regulatory framework, where humanitarian responders struggle to balance humanitarian principles and maintain access to those in need (DRC 31/05/2023; Humanitarian Outcomes 06/2023). Finally, it considers possible ways of strengthening the humanitarian response by developing more effective methods of working in a context that includes the ITA.

About this report

This report provides an overview of the current regulatory environment for NGOs in Afghanistan, identifying key trends and dilemmas for humanitarian responders. It focuses specifically on the 2022 Procedure for Coordinating and Regulating the Activities of Domestic and International Non-Governmental Organisations (hereafter referred to as the 2022 NGO Procedure),¹ which has not received the same attention and analysis as other measures restricting the work of humanitarian responders in Afghanistan. These measures include the ITA's December 2022 suspension of all female NGO staff, which was extended to UN agencies in April 2023. Considering the full context of NGO regulations in Afghanistan's history and what drives restrictive policies can help identify future developments and set the stage for discussions on how best to mitigate concerns and navigate the regulatory environment.

Methodology

This report is based on an analysis of existing NGO regulatory documents in Afghanistan and the implications of the 2022 NGO regulation for humanitarian responders. As an exploratory analysis, this report draws on primary and secondary sources, including 25 key information interviews (KIIs) conducted between December 2022 and July 2023. We also scanned social media for relevant information and statements and benefited from discussions with NGOs working in Afghanistan. The seven-month time frame for data collection was specifically aimed at identifying policy trends and trajectories.

Limitations

Despite the seven-month research period, it is important to emphasise that the NGO regulatory environment in Afghanistan is constantly evolving, making this report a snapshot in time. Access to ITA policymakers also remains difficult, and the overall environment in Afghanistan remains one of mistrust, making it a difficult environment for primary research.

¹ ACAPS has copies of the procedure in Pashto and English, which the ITA has not published online. The translation is dated April 2022.

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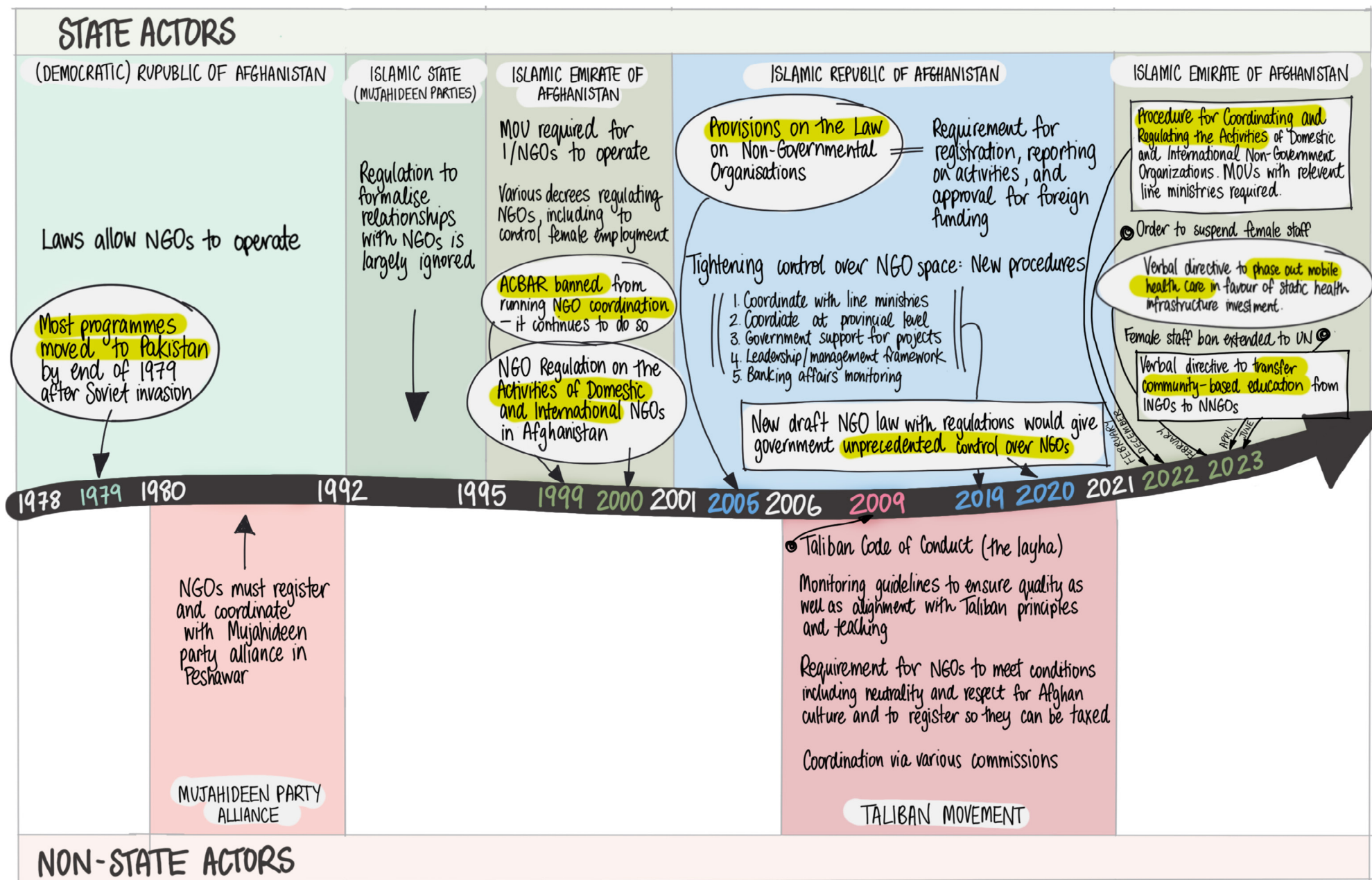
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KEY FINDINGS

- The ITA's approach to regulating NGOs in Afghanistan is based on an incremental process of issuing formal (written) policy, combined with verbal orders and instructions, as well as the granting of conditional exemptions, often at the subnational level. The 2022 NGO Procedure is the only written policy to date. This trend is likely to continue, with more restrictions anticipated, making for a difficult and ever-changing operating environment.
- The ITA's NGO regulatory policies draw on prior policies of the Taliban movement and/or the previous Republic Government. Many such practices of attempting to control the work of NGOs, including administrative processes, programme design and implementation, existed under the previous Government as well. At the same time, I/NGOs today lack the protection from government interference that international donors previously provided as part of the strong donor cooperation with the Republican Government. The restriction on women's employment in the NGO sector, sets the ITA's NGO regulation apart from those of previous governments.
- The ITA's rationale for the 2022 NGO Procedures is to enforce accountability, both upwards and downwards, in a sector that it perceives to be self-serving. In practice, this means actively shaping how, to whom, by whom and what kind of aid is delivered.

- I/NGOs in Afghanistan continue to battle mixed perceptions about their nature, work, and intentions, which in part are a result of historical aid politicisation in Afghanistan that is difficult to reverse. Mistrust is rooted in the view of NGOs as sources of corruption, as a competition for state authority, as proxies of foreign states, or as drivers of social change, which embodies a broader agenda for development and modernisation considered incompatible with the ITA's vision of an Islamic Emirate and the role of women within society.
- As with many policy documents, the 2022 NGO Procedure is broad, leaving room for line ministries and provincial authorities to define in more detail what is required of NGOs in implementation, thus allowing for regional variations. This can provide opportunities for humanitarian responders that have developed good relations with local-level ITA administrations and challenges for those faced with overzealous subnational ITA officials.
- From NGOs' perspectives, the ITA's NGO regulation interferes with the neutrality and independence of humanitarian responders. NGOs report an increasing trend in ITA interference since the publication of the 2022 NGO Procedure. The ITA's NGO regulations concerning women's employment in public organisations including NGOs and the UN, have had a very disruptive effect on the structure and organization of humanitarian aid.
- An obstacle to developing a more effective humanitarian response is the lack of strategic engagement with higher-level ITA officials. Responders frequently pursue bilateral and local solutions, frequently verbal agreements, which are easily overturned by central-level decision makers at any point. Numerous bilateral agreements mean that the rules are applied unevenly.
- The ITA NGO regulatory environment raises several risks and dilemmas that need to be weighed carefully: tolerating some degree of aid diversion, increased humanitarian overhead costs (taxes, fees, etc.) due to lengthy and complicated bureaucratic procedures, and risking staff safety in an ever-changing regulatory environment as a price for maintaining access to people in need.
- It is crucial to consider the broader political environment and the desire for international recognition when examining the ITA's NGO policy and its implementation. This includes considering the ITA's use of tighter regulation of INGOs as a potential bargaining chip in negotiations and interactions with the international community.
- The ITA has expressed a preference for working with Afghan humanitarian actors whom it sees as closer to its own culture, thereby promoting an implicit localisation agenda. There are also rumours that the ITA prefers working with Muslim country NGOs for the same reason.

TABLE 1. KEY NGO REGULATORY MOMENTS IN AFGHANISTAN'S HISTORY BY STATE AND NON-STATE ARMED ACTORS



Sources: Fielden and Azerbaijani-Moghadam (06/2001); Int'l Alert (19/03/2002); Mitchell (13/06/2017); ODI (11/2020 and 10/12/2012); OECD (30/04/2002); Just Security (15/10/2021); AAN (04/07/2011); HBS (13/07/2021)

BACKGROUND TO THE 2022 NGO PROCEDURE AND OTHER NGO REGULATIONS

Immediately after the regime change of August 2021, the ITA started developing its own laws and regulation (ACAPS 21/04/2023). These include the regulation of NGOs in Afghanistan. The whole process is built on the practices of previous governments and non-state responders since NGOs began operating in Afghanistan in the 1960s, as well as the experience of the Taliban since the 1990s (ODI 11/2020; DRC 31/05/2023). That said, it is important to consider the ITA's NGO regulatory policies and directives in a wider political and historical context: "If past is prologue, a look back to the Taliban era of 1996 to 2001 could help us understand how the Taliban will interact with civil society organizations in the coming months and years" (Just Security 15/08/2021). This background involves the following.

- A long historical aid politicisation continues to shape how Afghan entities, including the ITA, view and engage with NGOs (Int'l Alert 19/03/2002; CSIS 25/04/2023; Fishstein and Wilder 01/2012).
- The steady growth of the NGO sector from about 45 active NGOs in 1999 to over 4,000 in 2022 (Int'l Alert 19/03/2002; COF 10/2022). From its humble beginnings in providing humanitarian assistance (e.g. food, medical assistance, and shelter to Afghan refugees during the Soviet-Afghan war), the sector diversified over time working across the humanitarian, development, peace-building activities, and, perhaps most ambitiously, contributing to a Western-led state-building project between 2002–2021 (SIGAR 04/04/2023). This has prompted some observers to describe Afghanistan as a 'republic of NGOs' (VOA 21/03/2022).
- The ITA's overall vision for the Islamic Emirate of Afghanistan, Afghan society in general, and the role of women within society specifically must be considered (ACAPS 21/04/2023). These include the role the ITA sees for NGOs in their state-building project and what role the state has in holding aid responders to account. Here, the ITA uses the regulatory environment as a tool to shape humanitarian assistance, including:
 - the nature of organisations allowed to operate in Afghanistan and in what sectors
 - how and by whom people in need, vulnerable groups, and underserved areas and issues are identified
 - the profile of humanitarian workers (e.g. men, women, and former officials who undergo background checks).

Table 1 highlights several important issues regarding NGO regulation in Afghanistan, which help put the ITA's regulatory approach to NGOs into a historical context. The ITA has plenty of historical precedents to draw on, as evident in the 2022 NGO Procedure and other verbal instructions as well as its implementation.

First, not just state forces but also non-state armed groups, including the Mujahideen parties of the 1980s and 1990s and the Taliban movement, have historically focused on NGO regulation and control (Int'l Alert 19/03/2002; ODI 10/12/2012; ICTD 02/2022).

Second, at various times in the last three decades, NGOs have had to navigate several, sometimes competing regulatory environments, those provided by governments and non-state entities, such as the requirement for NGOs to register with and coordinate their affairs with Mujahideen parties in refugee camps during the 1980s and the Taliban movement after 2009. Some NGOs have had to pay taxes twice, once to the Republic Government and once to the Taliban movement, although the latter is frequently not openly discussed (ICTD 02/2022; ODI 11/2020). Similarly, during international assistance to the 1990s Taliban Emirate, some donors tolerate aid 'wastage levels' of up to 40% in cash for food programmes (Int'l Alert 19/03/2002).

Third, an incremental approach to tightening government control over NGOs was already visible during the Republic Government in the years 2019–2020, when a new draft NGO law was introduced with nine additional regulations for enforcing it (HBS 13/07/2021; ODI 11/2020). Although it did not pass parliament, the intention behind the new draft NGO law was shrinking the working space of NGOs. There were concerns at the time that the law, if passed, would have given the Republic government authorities sweeping powers "to interfere in and control NGOs' organisational structures, hiring practices, policies, financial decisions and assets" as well as more or less designate all NGOs as "implementing partners of the government" (ODI 11/2020). It would also have facilitated the dissolution of NGOs based on citizen or government complaints vis-avis NGO activities, aside from putting pressure on them to include ministry-level salaries and expenses in their budgets and give the government wide access to their bank account information (HBS 13/07/2021).

Several KIIs conducted in December 2022 after the issuing of the ITA's new Taliban NGO Regulation suggested that the ITA was discussing additional directives especially in the space of female NGO staff (KII 12/2022 d and KII 12/2022 e). This observation has materialised. Given the ITA's trend of incremental policymaking or issuance of further restrictions, additional restrictions are likely in the future.

Finally, it is important to consider NGO regulation in Afghanistan in light of a wider trend around the world aimed at containing the operating space of NGOs (Freedom House 05/2019). The broad strokes of the 2022 NGO regulation in Afghanistan appear to follow a wider trend throughout Asia, where "consistency and clarity of laws remain problematic...[opening] the door to excessive state discretion in their implementation, weak judicial or administrative

oversight of executive implementation, and high costs for [civil service organisations] in attempting to comply with inconsistent and vague regulation” (ICNL 2019). This provides space to explore South-to-South or South-East learning on approaches to navigate through and push back against imposed restrictions.

The following sections discuss these regulations and their implications in more detail. The first section focuses on the drivers of ITA NGO regulations. The second provides an overview of the new ‘procedure’, exploring continuity from previous regulations and new features where the ITA aims to shape aid operations through their regulations. The third section details the experiences of NGOs in the NGO regulatory environment. The final section focuses on what will likely come next for humanitarian responders.

DRIVERS FOR TIGHTENING NGO REGULATIONS AND UNCERTAIN/VOLATILE OPERATIONAL ENVIRONMENTS

Several drivers have influenced the relationship between Afghan governments and non-state entities and NGOs more generally and between the ITA and NGOs more specifically. In other words, the current tighter NGO regulation or interference by state or non-state entities in the work of NGOs is far from new, but its character and drivers have evolved (DRC 05/2023). It is important to consider commonalities over Afghanistan’s history against what is unique to how the ITA perceives NGOs.

First, while some officials recognise their economic importance, there has been a long-held suspicion of NGOs working as covers for espionage, moral and other corruption, proselytising, or substituting for the government (AAN 04/07/2011; ODI 10/12/2012; ICVA 10/03/2022). It is important to recall that past Afghan governments did not always have favourable views of NGOs, seeing them as an unwelcome nuisance or competition to the state, if not a government by itself (VOA 21/03/2022). This included perceiving NGOs “as proxies of foreign countries that set the development agenda and goals of the country” (HBS 13/07/2021). Other “populist rhetoric targets ‘greedy’ NGOs and UN personnel who siphon off the aid money and block traffic with their 4-wheel drive vehicles” (Suhrke 01/06/2006).

Secondly, some ITA officials perceive NGOs as a means of promoting radical social change contrary to their vision of a Shari’a-based government and society (KII 12/2022 d, 01/2023 c). This view is shaped by the fact that between 2001–2021, a significant portion of international aid programming directed at Afghanistan contained a broader agenda for development and modernisation along the lines of Western-style liberal democracy, women’s rights promotion, and a capitalist economy (Suhrke 21/09/2007). NGOs were also caught up in the hearts and minds campaign, where international military tried to increase support for the Republic Government through aid projects. As popular support for the Taliban was interpreted by Western decision makers as the result of poverty, most development aid was channelled into insecure areas. This created the perverse incentive of rewarding instability over security,

and contributed to consistent “negative perceptions of aid projects – especially with regard to insufficiency, corruption, and injustice in the distribution of benefits” by many Afghans (Fishstein and Wilder 04/2011).

A recent report highlighted the difficulty of revising a decades-old “negative image of NGOs as puppets and spies of foreigners” by ITA officials (DRC 05/2023) and one KII emphasised that NGOs should consider adopting efforts to positively reshape the image of aid responders (KII 24/07/2023). ACAPS KIIs agree with the findings of a recent study that the “lack of productive dialogue between authorities and aid actors at both the national and subnational levels has exacerbated Taliban suspicion of aid”, which needs addressing (DRC 31/05/2023).

OVERVIEW OF THE ITA’S NGO REGULATORY POLICIES AND DIRECTIVES

Since coming to power, the ITA’s broader approach to governance and its specific regulation of NGOs have gradually and systematically evolved (ACAPS 21/04/2023; CSIS 16/02/2023). This approach includes written policy documents and many informal ad hoc instructions, frequently targeting specific (groups of) organisations. Informal instructions have been communicated verbally in person or through WhatsApp (NYT 17/06/2023; Arab News 08/06/2023). The use of informal ad hoc instructions, together with the restriction on women’s employment in the NGO sector, sets the ITA’s NGO regulation apart from those of previous governments.

Key regulatory moments involving multiple organisations

Main policy: the 2022 NGO Procedure was initially drafted in February 2022 and then reissued in a slightly revised version on 22 October 2022 after ITA/NGO discussions on text clarification. Contrary to what the title suggests, Article 2 of the NGO Procedure states that it covers not only domestic and international NGOs but also UN agencies. That said, there is limited evidence that the regulation has been applied beyond NGOs.

Example of regulations around staff:

- the December 2022 order to suspend all female NGO staff members (TOLOnews 24/12/2022)
- the April 2023 verbal notification to SRSG and Head of UNAMA extending the female staff ban to UN agencies, with exemptions in the health and primary education sectors (VOA 04/04/2023; UNSC 20/06/2023).

Example of regulations around aid delivery formats:

- the February 2023 verbal directive to phase out mobile health teams in favour of investment in static health infrastructure (KII 02/03/2023)
- the June 2023 verbal directive to transfer the implementation of community-based education programmes from INGOs to NNGOs (TOLOnews 16/06/2023; Arab News 08/06/2023).


TABLE 2. OVERVIEW OF THE 2022 NGO PROCEDURE (OCTOBER 2022, PASHTO/DARI VERSION)

CHAPTER	ARTICLES	TOPIC	CONTENT
Chapter 1: general provisions	1	Objectives	<ul style="list-style-type: none"> To ensure that NGOs follow relevant responsibilities and the right conduct in project implementation and the distribution of assistance, taking into account expected results. To evaluate and scrutinise NGO operations. To ensure transparency and the 'correct' (balanced) aid distribution in various sectors by the UN and international aid foundations and organisations. To coordinate (beneficiary) surveys and identify people in need, determine indicators for urgent and emergency projects for "vulnerable and needy" areas, and coordinate aid distribution and project implementation. To ensure that actions by domestic and international organisations are carried out within the framework of the law.
	2	Scope of application	Regulation and management, and/or 'systematisation' of all domestic and international aid organisations and all UN agencies, funds, and programmes to ensure equitable and transparent aid delivery from internal and external organisations and NGOs.
Chapter 2: problems and challenges	3	The existence of problems in I/NGOs	<ul style="list-style-type: none"> Disproportionality in the operational expenditure of NGOs in project implementation. Lack of transparency and accountability in project implementation. Lack of adequate equipment for implementing I/NGO emergency projects. Absence of an adequate mechanism for identifying people in need and vulnerable areas (the section uses the terms nishtūn/nishtwāley and na-maujudiyat, which mean an 'absence' or 'non-existence'). Dissatisfaction of the Afghan population with previous NGO activities.
	4–5	Coordination requirements & working areas	<ul style="list-style-type: none"> NGO registration with the Ministry of Economy Memoranda of understanding (MOUs) with relevant sectoral authorities/line ministries (named in Article 5), which further define project parameters and serve as the basis for monitoring and evaluation. NGO coordination with relevant sectors and ministries in the areas of project development, project location, and beneficiary identification, sharing of the confirmed proposal. Use of locally produced goods where possible. Limiting subcontracting to approved organisations. Reporting of NGO responsibilities.
	6–7	Reporting mechanisms	<ul style="list-style-type: none"> Quarterly & annual reports of budgets, expenditures, plans, objectives, and expected results. Quarterly & annual reports on project implementation and aid distribution after approval by the relevant sectoral authority.
Chapter 3	8–11	Miscellaneous Provisions	Details the prohibition (or two-year moratorium) of hiring current or former government employees, especially if dismissed for absenteeism or misconduct without agreement/approval from the relevant administration.

Source: ACAPS

Besides these formalised positions taken at the central level, NGOs have to navigate the practices of ITA administrative officials at the subnational level (e.g. provincial governors) (Humanitarian Outcomes 06/2023). These practices include banning female NGO workers from refugee projects despite negotiated exemptions (Afghanistan Time Twitter 23/06/2023), or extracting taxes, levies or other contributions from NGOs (Kabul Now 19/03/2023; SIGAR 04/04/2023).

The ITA's 2022 NGO Procedure contains three brief chapters and eleven articles, with some repetition (see Table 2). ACAPS has reviewed several drafts, including the February 2022 draft in Dari/Pashto and the 27 April 2022 draft in English, which formed the basis for negotiations with the ITA to clarify statements (KII 07/06/2023, KII 11/07/2023). Implementation of the NGO Procedure began in August 2022 (OCHA 28/12/2022). It was printed in Dari/Pashto in October 2022. According to OCHA, the NGO Procedure has been in operation since August 2022 (OCHA 28/12/2022). It is positive that the UN and NGOs were able to negotiate the language clarifications in the NGO Procedure from the first draft, which would have left considerably more room for a different application than in the final policy document.

As with many policy documents, the 2022 NGO Procedure is broad and leaves room for line ministries and provincial authorities to define in more detail what is required of NGOs, allowing for sectoral and regional variations. The brief opening preface to the Procedure acknowledges the importance of humanitarian aid and makes several references to transparency and the fair distribution of aid.

Despite this positive introduction, it is important to recognise that the 2022 NGO Procedure quite explicitly highlights the ITA's long-harboured distrust towards the NGO sector as discussed in the previous section. It is important to recall that the anti-corruption messaging formed a core part of the Taliban's strategic narrative during their war with the Republic Government between 2004 and 2021. The Taliban consistently accused the former Republic Government and those they saw supporting them of moral and financial corruption (Carnegie 2009).

This demonstrates how the ITA perceives aid in Afghanistan as negative and biased, which matches some of their public messaging that has questioned "the transparency of the aid distribution and criticized aid organizations, including the UN agencies, for not delivering on their promises and for being untransparent" (RAND 2023). This perception is based on a history of aid politicisation documented in available literature and supported by "local perceptions of eligibility, fairness and transparency in aid distribution" frequently "conflated with malpractice and corruption, as past experiences of nepotism and a pervasive 'zero-sum' mentality often lead communities to assume the worst" (ACSM unpublished; Int'l Alert 19/03/2002; Fishstein and Wilder 01/2012; SIGAR 09/2018; Carnegie 2009).

Article 3 of the Procedure indicates that the regulation intends to address dissatisfaction among Afghan citizens with the quality of NGO work. This suggests that for the ITA, the

2022 Procedure is an attempt to improve aid accountability, which the ITA intends to achieve by monitoring NGOs more closely. This includes ensuring that NGOs fulfil their roles and responsibilities, monitoring and evaluating of their activities, including appropriate mechanisms to identify people in need, and preventing self-interested NGO activities. The latter is based on the language used in the first draft of the Procedure.

The ITA's regulation of I/NGOs and humanitarian programming includes greater control over recipient surveys and selection. A particular concern for humanitarian organisations is losing control over recipient selection according to needs and the diversion of aid towards certain areas and groups irrespective of need. In some provinces, the ITA has actively shaped aid distribution away from beneficiaries living in areas where substantial parts of the population were affiliated with the Republic Government (e.g. former members of the Afghan National Defense and Security Forces) (ACSM unpublished). Reports about ITA officials at the subnational level demanding the prioritisation of Taliban families in receiving humanitarian assistance or for NGOs to hire their associates are also common (KII 12/2022 d; KII 01/2023 f).

The 2022 NGO Procedure and other NGO regulations are examples of policy continuity, either drawing on prior policies of the Taliban movement or the previous Republic Government, which are discussed in the next section.

Continuity of ITA with Republic-era NGO legislation

Several aspects of the ITA's regulatory framework, except for the ban on female staff from humanitarian organisations and the ad hoc information directives, were inherited and/or adapted from the NGO regulatory environment of the Republic Government. This includes the 2005 NGO Law, which remains on the Ministry of Economy website, and the 2019–2020 draft NGO law, which – although not passed by parliament – provided a blueprint for extensive government oversight and interference in NGO and civil society activities (ODI 11/2020). Given that the ITA inherited some administrative staff from the Republic Government for advice on how to run the new administration, including the Ministry of Economy, which is responsible for NGO regulation, some of the previous administration's views may have been transferred (KII 12/2022 d). Similarities include the following:

- **Registration requirements** for I/NGOs, as well as the presentation of projects for approval and the signing of MoUs with line ministries: in practice, this has meant that the ITA could take stock of NGO operations and refuse permits to organisations working on issues outside of the ITA's interests, such as peace-building/governance and gender equality (SIGAR 04/04/2023).
- **Reporting requirement:** the Republic Government required NGOs to submit forms to report on their activities biannually to ensure that they would not operate outside the areas they had obtained approval for. The ITA continues to use some of the same forms (ICNL 2012 a; ICNL 2012 b). Article 6, Sub-article 1, of the 2022 NGO Procedure requires

NGOs to report quarterly, which is challenging for many NGOs, especially smaller ones (KII 09/02/2023) (see Section below).

- **Tax exemptions** on NGO activities: the Procedure sets certain tax exemptions for NGOs, although it still requires them to deduct income tax, rent, and payments to contractors from their employees' salaries and transmit them to the Afghanistan Revenue Department every six months or face penalties (ICVA 02/2022). There are allegations that the ITA is exploring other means of bolstering public finances through humanitarian responders, such as by imposing additional fees or through informal taxation, which it denies (O'Donnell 24/07/2023; BBC 25/07/2023). There are, however, already reports of illegal taxation in some provinces (OCHA 13/07/2023, KII 09/06/2023).
- **Curbing NGO autonomy by giving state entities more control over NGOs:** the Governments led by Hamid Karzai and Ashraf Ghani regularly imposed limitations on NGOs, including the deregistration of civil society organisations, restriction of their space, and persuasion of donors to shift funds from NGOs to government ministries (HBS 13/07/2021). In 2019–2020, a new draft NGO law gave the Government more robust managerial authority over NGOs, including NGO accreditation (ODI 11/2020). What the Republic Government had planned at the time mirrors Article 4 of the ITA 2022 NGO Procedure, which provides government officials with the final say when it comes to disagreement over a programmatic decision between an NGO representative and a representative of the respective government directorate.

Continuity of ITA NGO regulations with the first Islamic Emirate

The broad strokes of the 2022 Procedure policy are similar to the 2000 Taliban NGO regulation during the first Islamic Emirate, which at the time was interpreted as also allowing for “scope for interferences” (OECD 30/04/2002; Just Security 15/10/2021).

Another similarity is the limited view of and tight regulatory stance over NGO activities (Just Security 15/10/2021). The 2000 regulation and the new Procedure can be considered testaments to the ITA's preference for ‘tangible’ projects and rejection of programmes that aim at social change or transformation. The ITA's 2022 Procedure narrows down the sectors NGOs should work in. Article 5 explicitly states these sectors as health; humanitarian aid for martyrs and people with disabilities, refugees, and IDPs; agriculture, irrigation, and livestock; disaster management; and education (including higher education). There is no mention of work on human rights, conflict resolution, or peace-building, implying a much narrower scope of NGO activities than under the Republic Government. The ITA views the perceived focus of Western NGOs' programming on women's rights, civil society, and democracy with mistrust, seeing it as a source of moral corruption (KII 12/2022 b).

The ITA's policy decisions on education and measures taken to restrict women's access to jobs (with NGOs, the UN, and public institutions) also reproduce regulations from the first Islamic Emirate (ACAPS 21/04/2023; Fielden and Azerbaijani-Moghadam 06/02/2001). What is new are the strong moral overtones on the need for NGO accountability. The drastic measures curtailing women's employment in NGOs and the UN mirror a larger ITA project aimed at curtailing rights, especially that of women, and expanding social control over but also shaping Afghan society (ACAPS 21/04/2023). This means that shaping the aid sectors is just one building block to what the ITA sees as establishing a pure Islamic state guided by Shari'a law.

Shaping state/society through the NGO landscape: the localisation agenda

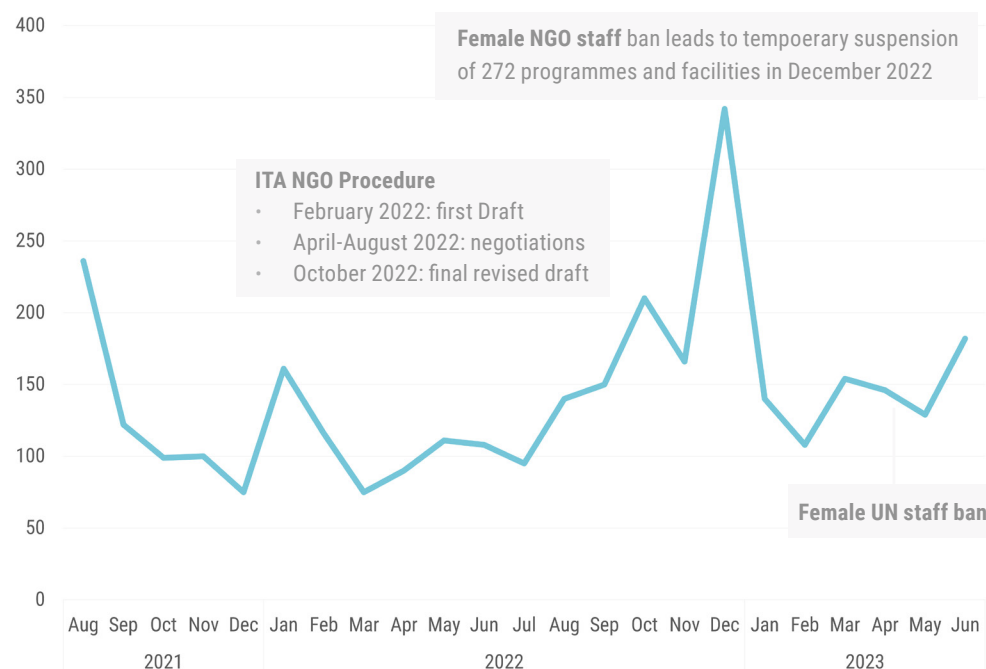
The ITA's shaping of aid programming by defining the sectors NGOs should work in appears to go together with defining what type of organisation may work in each sector. This is apparent in the Ministry of Education (MOE) 6 June 2023 verbal instruction to transfer all education programmes to NNGOs in one month, a deadline which was later extended. KIIs suggest that the MOE frames its decisions in explicit reference to ‘localisation’, which in the humanitarian sector implies a shift in decision-making towards and an empowerment of local responders in affected countries to lead and deliver humanitarian aid (ECHO accessed 02/07/2023).

Although details about the verbal directive, shared via WhatsApp, remain unclear, the transfer of community-based education programmes to NNGOs can be understood as another step in taking control of Afghan school curricula. As early as December 2020, the Taliban movement had begun reviewing the Republic-era education curriculum and presented a list of 26 changes based on the view that foreigners designed the previous curriculum and did not adequately promote the ITA's values and beliefs (Hasht e Subh 17/12/2022). Interventions in the education sector are part of a longstanding social struggle between progressives and conservatives in Afghan society and resonate with a domestic ultra-conservative constituency inside Afghanistan (AAN 29/06/2017). Interestingly, when speaking with NGOs and UN agencies about the directive, the ITA does not stress its social conservatism but demonstrates an idiosyncratic understanding of ‘localisation’ (KII 13/06/2023 and 28/06/2023).

Similarly, more restrictions in the field of education had been expected prior to the MoE decision of 6 June 2023 to transfer all education programmes to NNGOs. The prior shutting down of all educational institutions in the provinces of Kandahar and Helmand, as well as the much earlier communication (September 2021) by the ITA on changing schools' curricula by purging them of Western influences, had raised the concern among main aid responders about additional restrictions on education. Therefore, while humanitarian responders expected additional regulations in the education sector, the transfer of education projects from INGOs to NNGOs came as a surprise (KII 13/06/2023 and 28/06/2023).

NGO EXPERIENCES WITH ITA NGO REGULATIONS

Figure 1. Reported humanitarian access incidents by month (from August 2021 to June 2023)²



Sources: OCHA 13/06/2023; OCHA 09/03/2023; OCHA 13/09/2022; OCHA 09/09/2021

This section discusses NGO experiences during the implementation of NGO-related regulations. Many of the administrative and programmatic compliance procedures that the ITA has required of NGOs (e.g. registration, obtaining operating permits, project approval, signing of MOUs, recipient selection, intervention areas, and staff recruitment) date back to the 2005 NGO Law of the Government of the Republic or past practices of the Taliban movement as an insurgency. What has changed is the increased scrutiny of NGOs and their activities, which often prolongs already lengthy processes given the need to involve ITA officials at all levels (national, subnational) to ensure smooth project implementation (DRC 31/05/2023; KII 09/02/2023; KII 09/03/2023).

After the Taliban came to power in August 2021, they visited and searched the premises of several national and international NGOs over several weeks, in some instances occupying compounds of humanitarian responders in Kabul (OCHA 09/09/2021). Such unannounced visits to NGO offices across the country included inquiries about the nature of their project, request the signing of MOUs, has continued and increased since then (SIGAR 04/04/2023). The extent of interference is not uniform across the provinces and districts but depends on the individual officials in place, some of whom have positive views of I/NGOs insofar as they are critical to ensuring economic stability and supporting Afghan villagers (ICVA 02/2022; KII 01/2023 f, KII 13/06/2023).

From the ITA's perspective, NGO regulation is a way of enforcing upward and downward accountability and involves actively shaping how, to whom, by whom, and what kind of humanitarian aid is delivered (KII 13/06/2023). From the NGO perspective, the ITA interferes with the neutrality and independence of humanitarian responders, who report an increasing trend of imposed bureaucratic and physical constraints since the publication of the NGO Procedure (OCHA 28/12/2022). These constraints are particularly difficult to meet by smaller NGOs (KII 09/02/2023). As Figure 1 shows, these constraints fluctuate over time and space.

The fact that at least some fine-tuning is left to bilateral negotiations between NGOs and sectoral authorities/line ministries, resulting in MOUs (Article 4 of the Procedure), can make for mixed experiences depending on the negotiation skills of individual NGOs, with women-led organisations particularly reporting difficulties (KII 09/02/2023). In the absence of clear operational guidance in the 2022 NGO Procedure and the lacking strict central oversight, application of regulations across the country has been uneven. Furthermore, the terminology of the Procedure itself is open to different interpretations of what needs regulating. This ambiguity provides opportunities for some humanitarian responders with good relations with local-level ITA administrations and obstacles for others faced with overzealous subnational ITA officials (KII 09/06/2023, KII 13/06/2023). Finally, it may take some time for the 2022 NGO Procedure to reach all corners of Afghanistan and be understood and applied by all ITA officials. In at least one remote province covered in a KII for this research, not all relevant officials had heard about or knew the details listed in the Procedure (KII 09/06/2023).

Reported access incidents briefly spiked in December 2022 after the ITA announced its ban on female NGO staff, resulting in a temporary suspension of 272 programmes and facilities across the country until NGOs were able to secure exemptions (OCHA 09/03/2023). The extent of interference was not homogenous across the provinces and districts but depended on the individual officials in place, some of whom had positive views of and experience with NGOs insofar as they were critical to ensuring economic stability and supporting Afghan villagers (ICVA 02/2022; KII 01/2023 f).

² UN OCHA collates the monthly humanitarian access incident reports they receive from humanitarian responders and publishes the data in the monthly Humanitarian Access Snapshot Infographics to inform about the reported experience of NGOs and UN responders when providing humanitarian assistance.

The decision to restrict women's ability to work for humanitarian organisations, which clashes with humanitarian principles and universal human rights, is the most frequently cited and discussed impediment for humanitarian responders (UNSC 20/06/2023; SIGAR 04/04/2023; OCHA 13/07/2023). Anecdotal evidence suggests that at the subnational level some NGOs had received letters indicating that they would face consequences if they did not comply with the regulations around women's mobility (Mahram requirements) and dress codes that preceded the staffing ban (KII 12/2022 j).

This suggests that regulations around female NGO staff are more consistently enforced than other issues, because the ITA's view of women's role in society is a crucial pillar of their vision for Afghan society (ACAPS 21/04/2023). As a result, women-led and women-focused NGOs struggle the most with ITA regulations given the nature of their work and their staffing structure (KII 09/02/2023; KII 13/06/2023). This can lead to the suspension of NGO operations, as was recently the case for a NNGO based in Herat. The ITA terminated the NNGOs operations and seized all its assets based on allegations of conducting activities outside its approved mandate (UNSC 20/06/2023). Although such allegations had existed under the Republic Government, the lack of due process under the ITA creates a very unpredictable operating environment.

Larger numbers of programme suspensions tend to be linked to the issue of new regulatory requirements, such as the ban on female NGO aid workers in December 2022 and the more recent order to transfer community-based education programmes from INGOs to NNGOs (OCHA 13/07/2023). There are also examples of geographic programme suspensions, such as in Ghor province, where local ITA officials have taken a very heavy-handed approach to NGO regulation, systematically divert aid, and extract tax from humanitarian responders (Hasht e Subh 10/05/2023; KII 09/06/2023). In some cases, NGOs are unable to wait for the situation to be resolved and disperse humanitarian assistance elsewhere (KII 13/06/2023).

Frequently, information on geographic access impediments is not shared publicly. Even though humanitarian access maps indicate the level of difficulty for aid delivery, narratives refrain from mentioning specific provinces or districts, possibly to avoid drawing unnecessary attention.

UN data suggests that besides ITA NGO regulations, financial limitations for many humanitarian responders constrain access (UNSC 20/06/2023).

- On the one hand, ITA regulations make humanitarian operations more challenging and costly, at the minimum slowing down humanitarian response and at worst leading to temporary programme suspensions (98 alone in June 2023) (OCHA 13/07/2023).
- On the other hand, donor interest may decrease exactly because of challenges and fears of aid diversion (OCHA 12/06/2023).

WHAT COMES NEXT FOR HUMANITARIAN RESPONDERS?

Given the incremental policymaking of the ITA generally and in the space of NGO regulation specifically, the ITA will likely continue to refine and operationalise its regulatory environment and tighten the operational space not just for NGOs but also possibly for UN agencies. Given that the NGO Procedure applies to both NGOs and UN agencies, it is plausible that the ITA could decide to apply it across the spectrum of humanitarian responders (DRC 31/05/2023).

Further regulations will create additional complications for humanitarian responders in Afghanistan, who are already "held to higher standards and more intense pressure from both donors and national authorities than under the Republic" (DRC 31/05/2023). As a result, staying operational in Afghanistan has become a difficult balancing act of I/NNGOs. Since NGOs are forced to negotiate bilateral agreements and conditional exemptions with ITA authorities at different levels, it is easier for the ITA to divide-and-rule and to slowly erode the humanitarian community's confidence in a collective bargaining process. It has also created an aura of distrust as to who negotiated what with whom.

It is important to recall that the successful re-negotiation of the text of the 2022 NGO Procedure demonstrated that humanitarian responders can successfully engage with the ITA on an issue if it is done in the form of careful collective bargaining. However, how much can be achieved through such collective bargaining processes also depends on the specific content or sector concerned. For example, some negotiations may have been possible for maintaining mobile health teams but have proven more difficult for community-based education. This shows the importance the ITA attaches to shaping the education sector.

According to the recently published Revised Humanitarian Response Plan for June–December 2023, the UN anticipates bureaucratic obstacles to become more challenging in the future (e.g. heavy reporting requirements; lengthy, unclear, and non-standard MOU signing processes; visa challenges for international staff; work permits for national staff). Combined with labour-intensive negotiation processes, these obstacles will affect the speed and effectiveness of humanitarian delivery (OCHA 12/06/2023). There are also concerns about:

- a loss of humanitarian neutrality given the ITA's desire to influence recipient selection and programme design (e.g. replacing mobile health teams with physical health infrastructure)
- movement restrictions for humanitarian responders (e.g. checkpoints or roadblocks, denial of access, the Mahram requirement for female staff)
- pressure on humanitarian workers and community volunteers (many of whom have stepped in to replace female aid workers) in the form of arrests, threats, harassment, and physical violence
- aid diversion through informal taxation

- other “violations of humanitarian principles (e.g. presence of armed personnel during delivery, assessment and monitoring, with implications for the protection of civilians; requests to share sensitive information with implications for beneficiaries)” (OCHA 12/06/2023).

Additional restrictions may include:

- making the process of registering and obtaining operating permits for new NGOs and approval for projects more cumbersome (bureaucratic impediments) or costly (requiring NGOs to deposit money in a designated bank and to exchange a certain percentage of their foreign currency holdings into the Afghani currency) (Just Security 15/10/2021)
- more intensive and aggressive involvement by the Ministry for the Propagation of Virtue and the Prevention of Vice and the General Directorate of Intelligence to monitor NGO compliance and vet new NGO applications
- requiring NGOs to pay fees (outside of income taxes on salaries).

Importantly, it is important not to lose sight of the larger political economy that has driven the NGO regulatory environment, with the Taliban seeing it as one of the tools to shape the future of the Afghan state and society, and what role the ITA sees for NGOs in their project. This suggests that the ITA will likely continue to pursue a localisation trend and increasingly replace INGOs with NNGOs or MNGOs, which they perceive as closer to and more respectful to their own cultural values. Not all ITA leaders may share this view, but KII suggest that dominant voices within the ITA favour such a trend (KII 12/2022 a; KII 12/2022 b). One KII also reported that the ITA encouraged the establishment of new NNGOs (KII 12/2022 e).

It is also important to consider the wider political environment and the role that the ITA's desire for international recognition may play in its pursuit of a localisation strategy. It is possible that INGOs have become a bargaining chip in this process quest. Already, the requirement for donors to maintain political distance to not legitimise the ITA while providing humanitarian assistance has “created challenges for principled programming” (DRC 31/05/2023; Humanitarian Outcomes 06/2023). Risks and stakes are high for NGOs and may reduce the scope of humanitarian operations, because of potential aid diversion. Bureaucratic and physical impediments will increase humanitarian overhead costs (e.g. taxes and fees) at a time when donor fatigue is setting in and humanitarian funding pledges do not yet meet needs. The operating environment for humanitarian responders will remain challenging, with organisations having to balance humanitarian principles with maintaining access to people in need and the ability to continue operations in Afghanistan.

Besides continuing to strengthen collective bargaining and finding some common grounds around aid priorities, aid organisations should address the negative image of aid responders in Afghanistan. In doing so, they should keep in mind the ITA officials as well

as Afghan communities, which are important allies in negotiations with the authorities to keep bureaucratic and physical impediments to a manageable level. Reshaping long-held belief systems may take time but, if systematically addressed, can improve the operational environment for NGOs in Afghanistan.