

Registration Brochure for Non-governmental
Organizations
(NGOs)

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A Brochure for Compliance with Registration Requirements
under the NGO Law

Prepared by: the International Center for Not-for-Profit
Law (ICNL) – 15, May, 2012

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Preamble

The Registration Brochure is for Compliance with Registration Requirements under the NGO Law. The purpose of this Brochure is to provide guidance to (1) individuals (natural and legal) and groups seeking to establish non-governmental organizations (NGOs) in Afghanistan and to (2) the Ministry of Economy and provincial governmental departments regarding proper implementation practices, with a goal of improving the professionalism and consistency of implementation.

The Brochure has been prepared by the International Center for Not-for-Profit Law, with input from NGO Department within the Ministry of Economy. The Brochure has been reviewed and approved by the head of NGO Department. While it has been reviewed and prepared with input from the NGO Department, the views expressed herein are those of the author and do not necessarily reflect the official views of the Afghan Government or other organizations. Instead, the information in this brochure is *unofficial guidance* reflecting the author's understanding of laws and regulations currently in effect in Afghanistan, and does not constitute legal advice or opinions. Please note that the legal situation in Afghanistan is in a state of flux, and new laws,

regulations, and administrative directives may affect the accuracy of the information contained in this brochure. We strongly encourage you to inform yourself of new developments.

ICNL would welcome any comments on the content of this brochure (including the correction of any mistakes). For further information on issues relating to NGO registration, NGO reporting requirements, or civil society development, or for more copies of this brochure, please contact Mohammad Maqsood, ICNL legal advisor in Afghanistan (maqsood@counterpart-afg.org) (0093702151604).

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Introduction to NGO

NGOs are part of the larger fabric of civil society. It is important to recognize the wider context of civil society and the place of NGOs in that context. This is the goal of this introductory section.

What is Civil Society?

There is no single 'correct' definition of "civil society". There have been, however, many attempts to define civil society. Here are but two:

"Civil society" refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a

diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith based organizations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups.¹

“Civil society” refers to the space of uncoerced human association and also the set of relational networks – formed for the sake of family, faith, interest and ideology – that fill this space.²

What forms of civil society organizations exist in Afghanistan?

“Civil society” is made up of various legal forms and informal groups. These can include non-governmental, not-for-profit organizations (NGOs), social organizations, trade unions, political parties, religious

¹ See http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm for the definition used by the London School of Economics

²Nicholas Deakin, in search of civil society, © 2001, quoting Michael Walzer, Toward a Global Civil Society, ©1995.

groups, and in formal community-based organizations, just to name a few.

According to the Afghan Civil Society Assessment Report 2005³, prepared by Counterpart International, one can identify four categories of civil society organization in Afghanistan:

Shuras/Jergas are traditional local councils that villages or tribes establish themselves, usually for the purpose of self-government but also to represent a community's interests to other parts of society. Shuras/Jergas are local decision-making bodies that are arguably the most traditional building blocks of civil society in Afghanistan. They generally consist of the village elders and operate on an informal basis (that is, as unregistered groups). Any Shura that wants to become eligible for a grant will have to become registered as a legal entity.

Village organizations are local aid committees formed by donors to advise or oversee the administration of a particular form of assistance. They include community development councils, educational committees, and other development committees. The number of village organizations has increased dramatically in recent years due to the Afghan Government's National Priority Programs. Foremost among the National Priority Programs is the National Solidarity Program, a mechanism intended to provide block grants of up to

³ See Afghan Civil Society Assessment Report 2005, prepared by Counterpart International and available on Counterpart's website (www.counterpart-afg.org)

\$200 per family to communities for infrastructure-related community improvement projects. Applications for the block grants must come through community development councils (CDCs); in response, more than 5,000 CDCs have been created. The CDCs register with the Ministry for Rural Rehabilitation and Development (MRRD). While this “registration” supports the National Solidarity Program mechanism, the “registration” is not based on law, and such organizations are not necessarily bound by not-for-profit constraints.

Social organizations are defined by the November 2002 Law on Social Organizations as “the voluntary unions of natural persons, organized for ensuring social, cultural, educational, legal, artistic and vocational objectives” (Article 2). Social organizations must seek registration with the Ministry of Justice and consist of no fewer than 10 members (Article 6(1)). While not specifically defined as not-for-profit organizations, the Law does limit the use of their assets to “achieving the goals of the organization” (Article 16). Significantly, however, the Law does not include the non-distribution constraint, which would prohibit Social Organizations from distributing organizational profit or assets to anyone. Moreover, the Law does not prohibit conflicts of interest, private inurement, or self-dealing. Foreign NPOs may not set up branch offices under the Law on Social Organizations, unless those foreign NPOs are “administered by Afghans” (Article 10.2). Foreign citizens can obtain honorary membership of Social Organizations after receiving permission from the Ministry of Justice (Article 18). Assets remaining after

dissolution will be transferred as specified by the governing statute, or if no provision addresses the distribution of assets, to another Social Organization with similar goals (Article 14). As of April 15, 2012, 3100 Social Organizations were registered with the Ministry of Justice.

Non-governmental organizations (NGOs) are defined broadly in the June 2005 Law on Non-Governmental Organizations (NGO Law) to include both domestic and foreign nongovernmental organizations. Domestic organizations are not defined according to specific organizational forms, such as associations and foundations, or membership and non-membership organizations. Instead, a domestic NGO is simply “a domestic nongovernmental organization which is established to pursue specific objectives” (Article 5.2). Thus, the Law seems to leave the door open to a variety of underlying forms, provided they meet the broad definition of a non-governmental, not-for-profit organization under the Law. How the Law is interpreted and applied, however, depends on the NGO Department within the Ministry of Economy, which is responsible for both registering and supervising NGOs. As of April 30, 2012, 2581 local and 384 foreign NGOs have been registered and 874 local and 92 foreign NGOs have been dissolved. Now based on NGO department, 1707 local and 292 foreign NGOs are actively operating throughout Afghanistan.

Does the Afghan constitution protect civil society activity?

Yes. In January 2004, a new Afghan Constitution was adopted. Article 35 of the Constitution grants Afghans (real and legal persons) the “right to form social gatherings for the purpose of securing material or spiritual aims in accordance with the provisions of the law.” The “right to form social gatherings” seems to embrace the concept of freedom of association and the ability of citizens to act collectively for “material and spiritual aims”. Articles 34 and 36 protect the closely linked freedoms of expression and assembly (or “demonstration”). Taken together, these constitutional rights provide clear legal space for civil society activity in Afghanistan.

Are there protections for civil society in the international legal framework?

Yes, Article 7(1) of the Afghan Constitution states that “The state shall abide by the U.N. Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.”

The Universal Declaration of Human Rights (1948) holds that “Everyone has the right to freedom of peaceful assembly and association.” The International Covenant on Civil and Political Rights (ICCPR) (1976), which Afghanistan ratified in 1983 (and has been ratified by more than 140 countries), similarly protects the freedom of association: “Everyone shall have the right to

freedom of association with others, including the right to form and join trade unions for the protection of his interest.” (ICCPR, Article 22)

Most recently, the U.N. issued a Declaration (a resolution of the General Assembly), which states specifically:

For the purposes of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet and assemble peacefully; (b) to form, join and participate in NGOs, associations and groups; (c) to communicate with NGOs and intergovernmental organizations.

These rights embodied in international law – especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights – which Afghanistan has recognized in its Constitution and through the ratification process, respectively, take precedence over national legislation. Thus, under international law, the freedom of association is clearly protected in Afghanistan. Alongside other fundamental freedoms, the freedom of association forms a crucial legal basis for civil society activity under international law.

What Afghan national legislation impacts on civil society?

National legislation is necessary to ‘actualize’ the rights contained in the Afghan Constitution and protected by international law. In addition to the Afghan Constitution, there are two key laws that govern the establishment, registration and operations of civil society organizations: the Law on Social Organizations (enacted November 2002) and the Law on Non-Governmental Organizations (enacted June 2005). Of the four categories of civil society organizations listed above, social organizations and NGOs are the two forms of civil society organizations, which are registered as legal entities.

Here is a list of the key national laws that impact on civil society:

- The Constitution of the Islamic Republic of Afghanistan, Official Gazette no.818/2004
- Civil Code of 1977, Qanun Madani Decree no. 1458 of 005/01/1977
- Law on Social Organizations, Official Gazette no. 804/2002
- Decision of the Cabinet of Ministers, issued 24 January 2005
- Law on Non-Governmental Organizations, Official Gazette no. 857/2005
- Implementing Regulations for the Law on Non-Governmental Organizations(2005)
- Income Tax Law, Official Gazette no. 845/2005
- Customs Law, Official Gazette no. 848/2005

- Labor Law, Official Gazette no. 790/1999

In addition, NGOs and social organizations, as legal entities, are subject to all other laws applicable to legal subjects, such as the Criminal Code, and Banking Law.

Definition

The remainder of this brochure focuses on NGOs and explains how NGOs are established and registered under the existing legal framework.

What is an NGO?

An “NGO” is a domestic or foreign non-governmental, non-political and not-for-profit organization. (Article 5.1)

What does it mean to be “non-political”?

An NGO shall not participate in political activities and campaigns, and shall not fund or fundraise for political parties or candidates. (Articles 8.1, 8.2)

What does it mean to be “not-for-profit”?

An NGO cannot distribute assets, income or profit to any person, except for the working objectives of the

organization. An NGO cannot use its assets, income or profits to provide private benefits, directly or indirectly, to any founder, member, director, officer, employee, or donor of the organization, or their family members or relatives. (Article 5.5)

What are the forms of NGOs the law permits?

An NGO may either be domestic, foreign or international. A domestic NGO is established in Afghanistan to pursue specific objectives. A foreign NGO is established outside of Afghanistan according to the law of a foreign government. An international foreign NGO is established outside of Afghanistan according to the law of a foreign government and is operating in more than one country. (Articles 5.2, 5.3, 5.4)

What are the goals and objectives an NGO may pursue?

An NGO may pursue specific objectives. (Article 5.2)

Are there restrictions on the permissible goals and activities of an NGO?

An NGO is prohibited from performing the following activities:

1. Participation in political activities and campaigns;

2. Payment to and fundraising for political parties and candidates;
3. The promotion of violence and participation in military activities;
4. The production, import, or trading of weapons and ammunition and military training of individuals;
5. Engagement in terrorist activities or support, encouragement or financing of terrorism;
6. Assistance in the cultivation, production, processing, trading, import, export, supply, storage, use, transport and ownership of narcotics or providing facilities in that regard;
7. The use of financial resources against the national interest, religious rights and religious proselytizing;
8. Participation in construction projects and contracts. In exceptional cases, the Minister of Economy may issue special permission at the request of the Chief of the Diplomatic Agency of the donor country;
9. Import and export for commercial purposes;
10. The performance of other illegal activities.

(Article 8)

Establishment Criteria (applicable to domestic NGOs)

How can an NGO be established?

An NGO is established when the founders complete an establishment document and statute. (Article 11.1)

How many people are required by law to establish an NGO?

A minimum of two (2) persons must serve as founders of an NGO. One of the two founders must have a residence and exact address in Afghanistan. (Article 11.1)

Who may serve as a founder?

A founder may be a natural or legal person, and either domestic or foreign. If a natural person, that person must be of legal age. (Article 11.1)

There are certain restrictions on who may serve as a founder. The President, vice presidents, chair-persons and members of the National Council, the Chief Justice and members of the Supreme Court, ministers, deputy ministers, members of the leading body of the Attorney General, heads of independent commissions, heads of independent governmental departments, and heads of political parties do not have the right to establish or join an organization. (Article 11.2)

What documents are needed to establish an NGO?

To establish an NGO, founders need prepare two (2) documents: an establishment act and statutes. (Article 11.1)

What information must be contained in the Act of Establishment?

- 1) Official name and acronym of the organization;
- 2) Address of the organization;
- 3) Identification of the founders;
- 4) Organizational structure;
- 5) Period of organizational activity;
- 6) Goals and types of activity;
- 7) E-mail address for keeping communication, if applicable.

(Article 13.3)

What information must be contained in the Statute?

- 1) Official name and address;
- 2) Goals and scope of activities;
- 3) Procedures for election and dismissal of board of directors;
- 4) Procedure for holding meetings;
- 5) Power and responsibilities of general assembly and board of directors;
- 6) Procedures for reporting to general assembly and board of directors;
- 7) Power and responsibilities of officers and members;
- 8) Procedures for using assets of the organization;
- 9) Rules and procedures for amending the statute, merger, separation, transformation and dissolution of the organization;
- 10) Procedures for use and distribution of the assets of the organization in the event of suspension or dissolution, and termination;
- 11) Procedures for internal supervision of organizational activities;
- 12) The beginning and end of the organization's fiscal or working year.

(Article 14.1)

Registration as Voluntary Choice

Must all groups that conduct non-governmental, not-for-profit activities register as NGOs?

No. There is no requirement for individuals acting collectively to register an NGO. The decision to become a legal entity through registration is purely voluntary one. That said, registration is necessary to enjoy the benefits of legal entity status. (See below.)

Moreover, a group seeking registration may choose, if it meets the definition and criteria, to pursue registration as a social organization under the 2002 law on social organizations.

What are the advantages that registration brings?

Upon the issuance of a certificate of registration, an NGO has the status of a legal entity in Afghanistan, which brings the following advantages:

- A registered NGO can open a bank account, employ staff and have assets in its own name.
- A registered NGO is responsible for its action, and the board members and staff are insulated from personal liability.
- A registered NGO is in a better position to find funding. Donors have more trust in a registered NGO, and are more likely to award grants and contracts to a registered NGO.
- A registered NGO is in a better position to demonstrate accountability and transparency.

What are the disadvantages of NGOs being registered?

At the same time, there may be good reasons not to seek registration:

- The expenditures (preparing paperwork, registration fee) and the time spent to file for registration.
- Potential reporting and or tax implications as a registered legal entity.
- If a group is very small, does not manage money, or does not plan economic activity or to attract grants or donations, it may not make sense to be registered.

Registration Procedures

Which governmental authority is responsible for registration?

The Ministry of Economy is responsible for registration. (Article 4)

How can an NGO be registered?

An NGO must submit a registration application (a standard application form issued by NGO department and received from NGO Department and provincial departments of Ministry of Economy in the provinces) to the Ministry of Economy in Kabul or to its provincial departments in the provinces. (Article 15.1)

What information and documents are required for registration?

An NGO must submit the following documents for registration:

- 1) Application form issued by the Ministry of Economy;
 - 2) Act of establishment and;
 - 3) Statutes;
 - 4) Personnel chart;⁴and
 - 5) Personnel list with duty distinction and departments.⁵
- 6) The application form issued by the Ministry of Economy requires the NGO to submit its name, acronym, names of founders, statute, organizational structure, economic objectives, initial capital, exact address in Afghanistan, and a list of its relevant equipment and material. (Article 15.2) The application form can be received from the NGO Department at the Ministry of Economy, and the NGO Department staff can assist and guide NGOs to complete the forms correctly and accurately. The application form and all related documentation should be signed by the founders or designated representative.

The contents of the establishment act and statutes are listed above.

A foreign NGO must submit, in addition to the documents listed above, the following documents:

⁴ It is not a legal requirement.

⁵ It is not a legal requirement.

- 1) Valid proof of its registration and operation in another country;
- 2) Written statement of the foreign NGO's headquarters, stating its goals and activities in Afghanistan.

Where should an NGO submit the registration application?

An NGO must submit its registration application to the NGO Department within the Ministry of Economy or to its provincial departments in the provinces. (Article 15.1)

A foreign NGO must first submit the required additional documentation to the Ministry of Foreign Affairs (MFA), and after receiving confirmation from the MFA, then to the Ministry of Economy. (Article 15.3-4)

How long should the registration process take?

There is no fixed time period within which the government must act on the registration application.

The application is initially reviewed by the Technical Commission within the NGO Department of the Ministry of Economy, or the provincial departments of the Ministry of Economy. (Article 16.1)

The application of a foreign NGO, if there are defects in the documentation, may be sent to the Ministry of

Foreign Affairs for assessment. The Ministry of Foreign Affairs has one week for its assessment. (Article 16.2)

Following the initial review by the Technical Commission within the NGO Department, the application is submitted to the High Evaluation Commission for final review. (Article 16.1)

The High Evaluation Commission is comprised of authorized representatives from the Ministry of Economy, Foreign Affairs, Finance, Justice and Labor and Social Affairs. (Article 17.1) The High Evaluation Commission must decide on the approval or denial of the application within 15 days of the submission of the registration application. (Article 17.2)

What happens in case there are defects in the submitted documentation?

In case of defects in the documentation submitted to the High Evaluation Commission, the Commission shall, within 30 days from the date of receipt of the application, remand the documents to the applicant through the Technical Commission to rectify the application. In this case, the applicant shall rectify the application and re-submit it within 20 days. (Article 19.2)

What happens if the registration application is approved?

If the High Evaluation Commission approves the registration, the Ministry of Economy shall issue a

registration certificate signed by the Minister or his authorized representative. (Article 18.1)

What happens if the registration application is denied?

If the High Evaluation Commission denies registration, the Ministry of Economy shall issue a written explanation of the reasons for denial to the applicant. (Article 18.3)

On what grounds can the Ministry deny registration?

The High Evaluation Commission may deny registration for the following reasons:

- 1) In case the statute, registration documents and evidence are contrary to the terms set forth in this law;
- 2) In case the documents are not complete;
- 3) In case the name of the applicant is so similar to a previously registered governmental or non-governmental organization or to the name of a social organization, private company or private enterprise that confusion is likely to result;

(Article 19.1)

What happens if the NGO applicant disagrees with the registration decision?

The NGO, if denied registration, may appeal the denial to the Dispute Resolution Commission. (Article 37.1) As of May 2012, however, the Dispute Resolution Commission has not yet been established.

Is there a registration fee?

Yes. After approval of the registration application and High Evaluation Commission, a domestic NGO shall pay 10,000 Afghanis as a registration fee to the government account. (Article 15.2)

After approval of the registration application, a foreign or international NGO shall pay 1000 USD as a registration fee to the government account. (Article 15.2)

When does the NGO actually acquire legal entity status?

An NGO acquires status as a legal entity in Afghanistan upon issuance of a certificate of registration from the Ministry of Economy. (Article 20)

Is it possible for the public to see information on registered NGOs?

Documents of registered NGOs will be made available where needed by the NGO or by an official request. (Article 21) It is not clear, however, if the documents of

previously registered NGOs shall be made more broadly available to members of the public. Practically, the information regarding NGOs is available through some umbrella organizations, such as ACBAR, AWN, ANCB and the website of Ministry of Economy.

Registration Forms

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