

Nonprofit Law in Afghanistan

Current as of April 2024

This section describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in Afghanistan, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 17-53.

These reports have been prepared by the [International Center for Not-for-Profit Law](#) (ICNL). Please direct corrections and comments to [Lily Liu](#).

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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I. Summary

On April 27, 2022, the Interim Taliban Authorities (ITA) announced a new legal framework for domestic and international organizations: the Procedure on Controlling and Regulating Activities of Domestic and International NGOs. The ITA did not make any announcements to repeal the two existing laws governing non-profit organizations: the Law on Associations and the Law on Non-Governmental Organizations (NGOs). Therefore, the 2022 Procedure is considered the primary legal framework for domestic and international NGOs in Afghanistan. Where the Procedure is silent, the government implements the Law on NGOs.

The government has not renewed the operating licenses of any NPOs that registered as "associations" since 2021. Because registration certificates last three years, there are no longer any legally operating associations in Afghanistan. For this reason, this Note has been updated to provide information on the major recognized form of NPO: the NGO.

A. Types of Organizations

The non-governmental organization (NGO) is currently the only legally recognized form of non-profit in Afghanistan. As of April 2024, there are currently 2,339 NGOs, including 2,064 domestic NGOs and 275 international NGOs.

Several other types of NPOs are largely excluded from this Note. [\[1\]](#)

B. Tax Laws

The Income Tax Law establishes a category of exempt organizations, which includes organizations that meet the following criteria:

- The organization must be established under the laws of Afghanistan;
- The organization must be organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes; and
- Contributors, shareholders, members or employees of the organization must not benefit from the organization either during its operation or upon its dissolution.

Qualifying organizations are exempt from taxation on contributions received and on income from "necessary operations."

NGOs and associations generally benefit from the same exemptions on customs fees for materials and equipment related to and necessary for not-for-profit and charitable purposes. Material imported by government departments, government organizations, and charitable and development NGOs, as well as fuel and certain medical goods are generally exempted as well.

II. Applicable Laws

- [The Constitution of the Islamic Republic of Afghanistan](#), Official Gazette no. 818 of 2004
- [Law on Associations](#), Official Gazette no. 1114 of 2013
- Amendments to Law on Associations, Official Gazette no. 1275 of 2017
- [Law on Non-Governmental Organizations](#), Official Gazette no. 857 of 2005
- Regulation on Procedure of Establishment and Registration of Associations, Official Gazette no. 1138
- Income Tax Law, Official Gazette no. 976 of 2009
- Customs Law, Official Gazette no. 1235 of 2016
- Labor Law, Official Gazette no. 966 of 2008
- [Civil Code of 1977, Madani Qanun Decree no. 1458 of 1977](#)
- The Procedure on Controlling and Regulating Activities of Domestic and International Organizations, Ministry of Economy of ITA, April 28, 2022
- The Decree on Extension of the Registration License of NGOs, Decree No. 1480, January 21, 2024, The Prime Minister of ITA
- Ban on Female Employees of Domestic and International NGOs, Order 4293, Ministry of Economy, March 2022
- Oder 17 on Banning Public Awareness Projects, Ministry of Economy, December 30, 2023
- Logistic and Construction Contracts, Order No. 3275, Ministry of Economy, March 11, 2024

III. Relevant Legal Forms

A. General Legal Forms

There is currently one recognized legal form of NPO in Afghanistan: the non-governmental organization (NGO). NGOs are governed by the 2022 Procedure on Controlling and Regulating Activities of Domestic and International Organizations and the 2005 NGO Law, which governs where the 2022 Procedure is silent.

NGOs are defined broadly to include both domestic and foreign non-governmental organizations. A domestic NGO is simply "a domestic non-governmental organization which is established to pursue specific objectives" (NGO Law Article 5(2)). To register, NGOs must submit an application to the Ministry of Economy (NGO Law Article 4). Domestic NGOs must extend their registration license every 3 years.

B. Public Benefit Status

The Law on Non-Governmental Organizations does not create a public benefit status for NGOs. At present, NGOs are able to pursue any legal purpose, whether mutual benefit or public benefit in nature (See also [Law on NGOs](#) Article 8, which enumerates functions that are prohibited for NGOs). Similarly, the Law on Associations enables associations to pursue a broad range of purposes, including both mutual benefit and public benefit purposes.

Afghanistan follows the U.S. approach by creating a category of "tax exempt organizations" in the Income Tax Law. Article 10 of the Income Tax Law restricts "exempt organization" status to those organizations "organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes." Organizations dedicated to these public benefit purposes and meeting other mandatory criteria are exempt from taxation on "contributions received and income from the necessary operations" ([Income Tax Law](#) Article 10).

IV. Specific Questions Regarding Local Law

A. Inurement

NGOs are bound by the non-distribution constraint and by a prohibition against private inurement, as follows:

- An NGO cannot distribute its assets, income or profits to any person, except for the working objectives of the organization ([NGO Law](#) Article 5(5)).
- 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 ([NGO Law](#) Article 5(5)).

B. Proprietary Interest

The Law on NGOs provides that an NGO may use its assets for accomplishing its not-for-profit purposes and goals, and that movable and immovable property shall be registered in the name of the organization. Even more directly, the Law states that the organization's "movable and immovable properties may not be purchased or registered in the name of the founders, board members, employees, or their close relatives" ([NGO Law](#) Article 26(3)).

C. Dissolution

In the case of dissolution of an NGO, the organization's remaining assets "shall be distributed to an organization with similar activities, with the approval of the High Evaluation Commission. If there are no such organizations, the movable and immovable properties belong to the government" ([NGO Law](#) Article 36.1). The High Evaluation Commission is composed of representatives from the Ministries of Economy, Foreign Affairs, Finance, Justice, and Labor and Social Affairs (NGO Law Article 17). Article 36.2 provides additional protection by prohibiting the remaining assets from being distributed "to any ... founders, members, directors, officers, employees, donors and/or their relatives." In addition, a presidential decree issued in 2005/2006 established a Commission to address the liquidation process of NGOs. Members of the Commission include representatives from the Ministries of Foreign Affairs, Finance, Economy, Interior, Justice, and Labor and

Social Affairs; as well as from the Control and Audit Department, Attorney General's Office, Intelligence Department, and the NGO coordination bodies.

D. Activities

1. General Activities

The 2022 Procedure limits NGOs' activities to the following sectors: health, humanitarian aid, refugees and IDP support, agriculture, irrigation and livestock, rural rehabilitation and development, emergency and urgent assistance, education and higher education, and technical and professional projects (2022 Procedure Article 5).

Article 8 of the NGO Law also lists prohibited activities and notably includes "[p]articipation in construction projects and contracts." Article 8.8 provides an exception to the prohibition: "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." Several embassies and donor organizations have concluded a memorandum of understanding with the Ministry of Economy in order to allow for participation in construction projects. Nonetheless, the prohibition has had a definite impact on the many NGOs engaged in community development projects that include a construction component. In March 2024, the Ministry of Economy issued Order No. 3275, which requires all NGOs to officially invite representatives of the Ministry of Economy as observers for logistical and construction project contracts.

The Ministry of Economy issued an Order in December 2023 that bans public awareness projects (Order No. 17). This includes all activities on or related to raising public awareness, peacebuilding, advocacy, and conflict resolution. The government introduced NGOs working in these areas to the High Evaluation Commission of the Ministry of Economy for termination.

The 2022 Procedure introduces a requirement for NGOs to sign an agreement with the authority overseeing the relevant sector related to planned projects before the project implementation. The NGO must obtain permission from the Ministry of Economy in advance of signing an agreement with the sector authority (2022 Procedure Article 4).

2. Public Benefit Activities

As stated above, NGOs are generally permitted to undertake any legitimate activities, whether mutual benefit or public benefit. The NGO Law does not limit the ability of NGOs to pursue public benefit activities, except to the extent that the prohibition against construction activity (as stated above) may affect community development and other kinds of projects such as building schools and health clinics.

Similarly, the Law on Associations allows associations to pursue any mutual and public benefit activities.

3. Economic Activities

Under the NGO Law, "an organization can perform economic activities to reach the statutory not-for-profit goals of the organization." The Law also specifies that the income derived from the economic activities "may only be used to carry out the specified goals of the organization" ([NGO Law](#) Article 22(1) and 22(2) respectively).

The Law on Associations neither specifically allows nor prohibits the carrying out of economic activities. The Civil Code specifies that an association "may not carry on any financial business" (Civil Code Article 418), which could be interpreted to restrict economic activity for associations. But there is no evidence that such a restriction is being enforced; indeed, in practice, associations are performing economic activities without interference from government.

4. Political Activities

Among the illegal activities listed in Article 8 of the [NGO Law](#) are "(1) Participation in political activities and campaigns" and "(2) Payment to and fundraising for political parties and candidates." Although the Law does not define "political activities," the context suggests that the phrase refers to campaigning and electioneering, as opposed to public advocacy.

Somewhat similarly, Article 5(2) of the Law on Associations restricts associations from performing "political activities," without further defining what such activities consist of. The expectation is that the phrase is intended to limit campaigning and electioneering and not public advocacy.

E. Discrimination

Article 22 of the Constitution states that "[a]ny kind of discrimination and privilege between the citizens of Afghanistan are prohibited" and that "[t]he citizens of Afghanistan - whether man or woman - have equal rights and duties before the law." No laws, however, address discrimination in private education, and nothing in the NGO Law or Law on Associations specifically addresses discrimination.

F. Control of Organization

Under the [NGO Law](#), it is possible that an NGO may be controlled, perhaps indirectly, by a for-profit entity or by an American grantor charity (which requires that the charity specifically provide as such in the affidavit).

V. Tax Laws

A. Tax Exemptions

Afghanistan's Income Tax Law, enacted in 1965 and amended in 2005, was modeled on U.S. tax law. The Income Tax Law defines a category of

"Tax Exempt Organizations" (Income Tax Law Article 10). To qualify as an exempt organization, an organization must be (1) "established under the laws of Afghanistan;" (2) "organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes;" and (3) "[c]ontributors, shareholders, members or employees either during the operation or upon dissolution of the organization ... must not benefit from the organization." The contributions received and income from the necessary operations of qualifying organizations are exempt from taxation ([Income Tax Law](#) Article 10(1)).

The Afghan Ministry of Finance has made available an [Income Tax Manual](#), which provides guidance on application procedures for exempt status, as well as the application form. The Income Tax Manual underscores the fact that it is the Ministry of Finance, and not the organization itself, that determines whether or not the organization qualifies for the exemption.

B. Incentives for Philanthropy

There are currently no tax incentives available for either individual or corporate donors making cash or in-kind contributions to NPOs in Afghanistan.

C. Customs Duties

The Customs Law, in Article 40, exempts from custom charges "[t]he funded materials to government projects through loans and the donated materials imported by government departments, government organizations and charitable and development NGOs (local, foreign and international), or the material imported for them, after verification by respective departments and organizations."

In addition, NPOs may be able to benefit from a few general exemptions, such as those covering fuel and certain medical goods.

Finally, the Customs Law provides the possibility of an exemption to other goods "upon recommendation of Minister of Finance and approval of Council of Ministers as required" (Customs Law Article 40(18)).

In addition, according to Article 30.1 of the Law on NGOs, an NGO is exempted from any kind of customs duty on the importation of material and equipment which are related to and necessary for not-for-profit and charitable purposes. The Law on Associations is silent as to customs tax exemption, but in practice, associations benefit from the same customs exemption as NGOs do in accordance with Article 40 of the Customs Law.

IV. Knowledgeable Contacts

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Footnotes

[1] An assessment prepared by Counterpart International, Inc. concluded that, as was the case before the recent legal reforms, two additional, broad categories of civil society organizations exist in Afghanistan. The remainder of this Note will not address them, but we describe them here: First, "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 \$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. While this "registration" supports the National Solidarity Program mechanism, the "registration" is not based on specific legislation.

Second, "Shuras" or "Jurgas" 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/Jurgas 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 generally register as a social organization or an NGO under the respective laws. (See *Afghan Civil Society Sector Assessment Report 2005*, prepared by Counterpart International and available on Counterpart's website.)

This Note also does not address political parties, professional unions, endowments (foundations), and institutes.