

HANDBOOK ON THE DUTIES AND FUNCTIONS OF THE NGO DEPARTMENT IN THE MINISTRY OF ECONOMY

**Prepared by the
International Center for Not-for-Profit Law (ICNL) and
the NGO Department of the Ministry of Economy of the
Islamic Republic of Afghanistan**



This publication was made possible through support provided by the U.S. Agency for International Development and Counterpart International, under the terms of the Initiative to Promote Afghan Civil Society (I-PACS), Award No. 306-A-00-05-00511-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of Counterpart International, the United States Agency for International Development or the United States Government.

HANDBOOK ON THE DUTIES AND FUNCTIONS OF THE NGO DEPARTMENT IN THE MINISTRY OF ECONOMY

The NGO Department within the Ministry of Economy serves as the primary regulatory body for the more than 1750 national and international NGOs currently registered in Afghanistan. It is responsible for implementation of the NGO Law, as enacted in June 2005. This Handbook outlines the Department's duties and functions, which include:

- Registering NGOs established under the NGO law;
- Maintaining a central public registry of all registered NGOs;
- Supervision and monitoring of NGOs;
- Serving as a liaison with the NGO community in Afghanistan;
- Dissolution of NGOs.
- Visa Services for the International Staff of NGOs
- Tax Exemption for NGOs
- Use of Communication Equipments
- Provision of Analytical Reports and Information

Regulatory Framework: A Brief Overview

The NGO Law, enacted in June 2005, governs the establishment, registration, activities, reporting duties, and dissolution of legal persons organized as Non-Governmental Organizations (NGOs) in Afghanistan. NGOs are also subject to a number of other regulations that apply to all legal persons, including income tax and labor laws.

The NGO Law was a top priority for the new Afghan Government, which began to develop draft legislation immediately after coming into power in January 2005. Placing such priority on the enactment of a new NGO Law reflected the need to replace the inadequate Taliban-era *Regulation on the Activities of Domestic and Foreign Non-Governmental Organizations in Afghanistan*. Moreover, while NGOs were making many important contributions towards the rebuilding of Afghanistan in the fields of health, education, promotion of democratic processes, and humanitarian assistance, the views of many in Government toward civil society was turning increasingly hostile. An improved legal framework was one critical means to improve the Government-NGO relationship. Indeed, the NGO Law, which was drafted with input from the NGO community and from ICNL, did provide for a more enabling legal environment.

As regulatory officials, employees in the NGO Department need a solid understanding of the NGO sector generally and the technical requirements of the NGO Law. The Law provides the basis for many of the decisions the Department will need to make. In

addition, the NGOs will look to the Department for guidance and interpretation of the provisions of the NGO Law. ICNL has published a number of educational materials, including the NGO Law Commentary, the NGO Registration Brochure and the NGO Reporting Guidelines, all of which are available on the NGO Department's website (<http://www.ngo-dept.gov.af/index.htm>). This Handbook is specifically targeted to assist the NGO Department in fulfilling its regulatory duties under the law.

The Law complies with international standards and good regulatory practices in a number of critical areas. To highlight a few examples, the Law:

- *Properly defines NGOs* as not-for-profit entities and bound by the non-distribution principle, thereby separating them clearly from businesses (see Article 5);
- *Permits NGOs to pursue a wide range of purposes*, including both mutual benefit and public benefit purposes (see Article 5);
- *Establishes progressive establishment criteria*, permitting both Afghan nationals and foreigners, and both natural persons and legal entities to form NGOs, and requiring a minimum of only 2 founding members (see Article 11);
- *Requires registration for an NGO to operate as a legal entity in Afghanistan and sets out processes for registration*, by defining required documentation for both domestic and international NGOs, and the roles of the Technical Commission and High Evaluation Commissions (see Articles 15-20);
- *Includes procedural safeguards during the registration process*, including limited and objective grounds for refusal of registration, the requirement of a written explanation to the applicant in case of denial, and the ability to appeal in case of denial (see Articles 17-19);
- *Recognizes the right to form umbrella groups* and coordination bodies, and to join international organizations and create branch offices (see Articles 9-10);
- *Permits NGOs to seek and secure funding from a variety of sources*, including from related economic activities, through government contracts, and through grants and donations (see Articles 22 and 25);
- *Provides for certain minimum standards of accountability*, through record-keeping, financial auditing, and semi-annual reporting requirements (see Articles 27 and 31).

Primary Duties of the NGO Department

A. Registration. The NGO Department is responsible for registering all new NGOs. In order to discharge this duty, the NGO Department will:

1. *Issue information as to where and how NGOs should register.* The NGO Department can seek to facilitate the registration process by making information about registration

procedures easily available. ICNL has provided the NGO Department with the NGO Registration Brochure, which is available on the NGO Department website.

2. *Review and, if necessary, adapt application forms for standardized registration process.* An application form helps to make the registration process uniform and efficient. Application forms enhance the efficiency of the process by assuring that applicants are clearly informed of the information to be provided, providing an easy-to-use checklist of required documents for reviewers, and standardizing the review so that all applicants are treated the same.

3. *Receive, review the applications for registration.* Government reviews of registration applications involve both the Technical Commission and the High Evaluation Commission.

(a) The role of the Technical Commission is to:

- *Make initial assessment of application to verify that all documentation has been submitted as required; and*
- *Forward the application to the High Evaluation Commission.*

(b) The role of the High Evaluation Commission is to:

- *Review the application, and decide on approval or denial within 15 days of the date of submission;*
- *Approve registration of applicants who have complied with all legal requirements;*
- *In case of approval, issue a registration certificate;*
- *Deny the application only based on one of the 3 grounds listed in Article 19;*
- *In case of denial, issue a written explanation of the reasons for denial to the applicant.*
- *In case of defects in the application, return the documents to the applicant within 30 days from the receipt of the application, and provide the applicant with 20 days to correct the application.*

3. *Assign and train employees to review registration applications.* Employees of the NGO Department are responsible for the initial review – that is, the review by the Technical Commission. In reviewing registration applications, employees should ensure that:

- all the information required for registration has been submitted;
- the statute and registration documents are not contrary to the terms set forth in the NGO Law; and

- the applicant organization has a unique name, *i.e.*, does not have the same name or a name so similar to a previously registered NGO or governmental organization or private company or private enterprise that that confusion is likely to result.

4. *Engage in periodic reviews of procedures and forms, including:*

- *Procedures* for notifying applicants of decisions, issuing certificates, and seeking additional information from applicants.
- *Certificates of registration.*
- *Model letters* of denial with explanations of grounds for denial and letters seeking additional information or clarification.

5. *Establish procedures for appeal processes.* NGOs may appeal from adverse decisions on applications for registration. The appeal mechanism has never functioned, largely because of the failure to constitute the Dispute Resolution Commission detailed in Chapter 6 of the NGO Law. The NGO Department will need to play the leadership role in seeking to form the Commission.

B. Public Registry. The NGO Law does not specifically require the NGO Department to establish and maintain a public registry of NGOs. Article 21 requires the “related department” to make “previously registered documents” available to an organization “where needed by the organization.” The Law should go further and require the NGO Department to maintain a registry of NGOs and to make publicly available, upon request and for a reasonable copying fee, basic (and non-confidential) information relating to any registered NGO.

Indeed, the NGO Department has assumed this responsibility. A publicly accessible registry is an important way of enhancing the transparency of NGOs and the registration process. Through a publicly accessible registry, other government agencies, businesses, donors, the media and interested members of the public can easily obtain basic information relating to NGOs, including the name, stated purposes and activities, and registration date of an organization.

ICNL provided assistance to the Department in setting up a computerized database and in setting up a website, which contains the database of registered NGOs. Thus, the NGO Department should:

1. *Update as necessary and maintain the registry.* Establish a system whereby each time an NGO is registered, the appropriate information is included in the registry within 3 days.
2. *Use the NGO Department website to make the registry publicly accessible.* The NGO Department should ensure that the registry is accessible through its website. Recognizing that many members of the public may not have Internet access, the NGO Department should also be prepared to make information relating to registered NGOs available upon request and for a reasonable copying fee.

C. Supervision and Monitoring. After registration, the main function of the NGO Department is a supervisory one. The NGO Law requires NGOs to submit annual and semi-annual reports (Article 31) and to prepare an audit of its annual financial statements (Article 27). It is the NGO Department's duty to review these reports, and carry out limited other supervisory tasks. In order to carry out these functions, the Unit will:

1. *Receive and review annual and semi-annual reports.* (Article 31) The NGO Department is required by the NGO Law to analyze and assess the semi-annual report within 90 days of receipt. To facilitate this process, the NGO Department will:

- *Make reporting forms easily available to NGOs, alongside guidance on how to complete the reports.* The *NGO Reporting Guidelines*, prepared by ICNL, may be particularly useful in this respect.
- *Consider providing for electronic submission of reports, through the NGO Department website.*
- *Review the reports within 90 days of receipt.*
- *Consider preparing an evaluation checklist form to assist staff in reviewing the reports professionally.*
- *Provide feedback to NGO, if appropriate, or contact NGO with questions, if necessary.*
- *Review and, if necessary, update procedures and a tracking method for identifying and notifying NGOs of failure to file reports, or of incomplete reports.*

2. *Conduct on-site inspections of NGOs, where necessary and appropriate.* (Article 32) Based on its review of the NGO reports, the NGO Department may decide to undertake an on-site inspection of an NGO. There is no obligation to inspect any specific NGO or all NGOs; rather this supervisory tool should be used sparingly (in light of limited resources) and is available where the NGO Department has reasons for concern with the operations of a given NGO. Where such an inspection is considered necessary, the NGO Department will:

- *Provide reasonable notice to the NGO of the time planned for the inspection and the reason for undertaking the inspection; and*
- *Conduct the inspection with a focus on the quality and quantity of the work being carried out by the NGO.*

3. *Receive and review audited financial statements from certain NGOs.* (Article 27) In fulfilling this responsibility, the NGO Department will:

- *Consider providing for electronic submission of audit reports, through the NGO Department website.*
- *Consider preparing an evaluation checklist form to assist staff in reviewing the audit reports professionally.*

- *Provide feedback to NGO, if appropriate, or contact NGO with questions, if necessary.*
- *Exempt those organizations that cannot afford to prepare an audit from this requirement, or prepare an alternative method, in consultation with the NGO coordination bodies, to gather the information.*

4. *Assign and train employees to review annual, semi-annual and audit reports.* In fulfilling this duty, the NGO Department will:

- *Consider preparing an evaluation checklist form to assist staff in reviewing the reports professionally.*
- *Consider preparing a model letter of inquiry, in order to seek additional information from NGOs, when necessary.*
- *Engage in periodic reviews of the reporting forms.*
- *Make the NGO Reporting Guidelines, prepared by ICNL, readily available to NGOs to support compliance with reporting requirements.*

D. Liaison with the NGO Community. The NGO Law does not require that the NGO Department liaise with the NGO community through any specific mechanisms or in specific ways. Nonetheless, in light of its registration and supervision roles, the NGO Department is, in fact, the central government's first and most important liaison with the NGO community. Fortunately, the NGO Department has assumed this responsibility. In fulfilling this duty, the Department will:

1. *Be prepared to provide information on the NGO law to both local and international NGOs seeking to operate in Afghanistan.*
2. *Develop and distribute brochures and other educational materials explaining the laws governing NGOs, through the website and in hard copies.*
3. *Make available an employee to answer questions and assist applicants with registration and reporting forms.*
4. *Provide periodic bulletins of information regarding changes in regulations and policies affecting NGOs, through the departmental website or through the NGO Mirror or otherwise.*
5. *Take on a leadership role in developing, in cooperation with the NGO sector, improved rules and procedures governing NGO operations.*

E. Dissolution of NGOs. The NGO Law provides for dissolution of an NGO in Article 35. Given the serious consequences for the NGO of any governmental decision to

dissolve the NGO, the NGO Department must approach this responsibility with the utmost responsibility and caution. Article 35 provides five grounds for dissolution, of which only two are grounds for forced dissolution: where the NGO fails to file its annual report within one year of the end of the fiscal year, and where the activities of the NGO are contrary to the public interest, provisions of this law and other valid laws.¹ There are no other reasons for forcibly dissolving an NGO.

Where the NGO Department believes dissolution is appropriate, the Department will:

1. *Notify the NGO in writing of the deficiencies and the grounds for potential dissolution, making clear that the NGO has the opportunity to rectify the problem and respond within 30 days. Subsequently:*

- *If the NGO fails to rectify the problem within 30 days, inform the High Evaluation Commission of the potential dissolution. Dissolution is only possible after the Commission has supplied verification or confirmation that dissolution is appropriate.*
- *If the time period established for appeal has expired, notify the NGO in writing of the dissolution and delete the NGO from the registry.*

2. *In case if dissolution, ensure that all organizational assets (after payment to creditors) is distributed to an NGO with similar activities, with approval of the High Evaluation Commission. More specifically:*

- *Review NGO's statute and organizational documents to verify whether or not another NGO is identified to receive remaining assets;*
- *If no such organization is identified, then conduct review of NGO registry to identify potential candidate organizations to receive the remaining assets;*
- *If no such organizations are identified, then assets may be transferred to the Afghan Government.*

3. *Establish procedures for appeal processes.* NGOs may appeal from dissolution decisions. The appeal mechanism has never functioned, largely because of the failure to constitute the Dispute Resolution Commission detailed in Chapter 6 of the NGO Law. The NGO Department will need to play the leadership role in seeking to form the Commission.

Other Duties of the NGO Department

A. Visa Services for the International Staff of NGOs

The Filing and Coordination Unit of the NGO Department is the responsible body for issuing visas to the international staff of NGOs. Internationals who are contracted with NGOs should submit their contracts, work permit and CV. International staff who do not

¹ Another basis for dissolution – the failure to re-register within 6 months – is no longer applicable.

have contracts or work permits from the Ministry of Labor and Social Affairs will not enjoy this service.

B. Tax Exemption for NGOs

The NGO Department is responsible for providing a letter confirming the registration status of an NGO, in order to enable the NGO to be recognized as a tax-exempt organization by the Ministry of Finance.

The tax-exempt status relates to the income of the NGO itself, and not to the tax on salaries of the NGO staff, visa tax or airport tax.

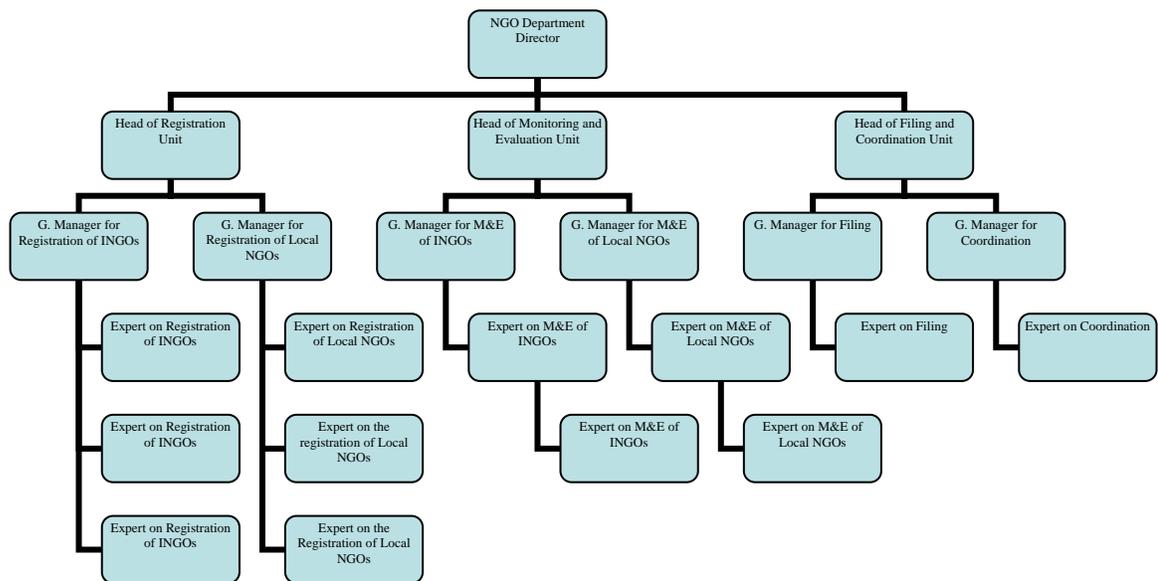
C. Use of Communication Equipment

The NGO Department is responsible for providing NGOs (both national and international) with a letter confirming their registration status, in order to enable them to secure a license from the Ministry of Communication for importing and activating communication equipment. (See Article 28(4) of the NGO Law)

D. Provision of Analytical Reports and Information

Based on the request of other governmental departments, the NGO Department also assumes the responsibility to develop and prepare reports on the quality and quantity of the projects implemented by NGOs. The information compiled and made available by the NGO Department is based on the annual and semi-annual reports submitted by NGOs.

Actual Staff and Organizational Structure of the NGO Department



Number of staff

| | |
|---------------|-----------|
| Grade 1: | 1 |
| Grade 2: | 3 |
| Grade 3: | 6 |
| Grade 4: | 6 |
| Grade 5: | 5 |
| Grade 6: | 2 |
| Total: | 23 |

Number of labor

| | |
|-----------------------------|----------|
| Second grade IT specialist: | 3 |
| Second grade driver: | 1 |
| Third grade Housekeeper: | 1 |
| Sixth grade postman: | 3 |
| Total: | 8 |

Planned Structure

