

## Nonprofit Law in Tanzania

Current as of February 2021

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).

### Table of Contents

1. Background
2. Applicable Laws
3. Relevant Legal Forms
4. Public Benefit Status
5. Specific Questions Regarding Local Law
  - a. Inurement
  - b. Proprietary Interest
  - c. Dissolution
  - d. Activities
  - e. Discrimination
  - f. Control of Organization
6. Tax Laws
  - a. Tax Exemptions
  - b. Deductibility of Donations
  - c. Customs Duties, Excise Duties, and Value Added Tax
  - d. Double Taxation Treaty

#### **1. Background**

The United Republic of Tanzania is comprised of two distinct jurisdictions: mainland Tanzania (previously Tanganyika) and the former People's Republic of Zanzibar. Two distinct governments manage the affairs of mainland Tanzania and Zanzibar. Both jurisdictions' legal systems are based on the English common law system, but that of Zanzibar also accommodates Islamic and customary laws. While mainland Tanzania and Zanzibar have similar laws in several areas, each government generally adopts separate

laws that govern each respective jurisdiction. Mainland Tanzania and Zanzibar have adopted some of the same provisions governing taxes, for instance, though they otherwise have different legal frameworks governing non-profit organizations (NPOs) and philanthropy.

The Zanzibar House of Representatives is expected to table a new bill governing non-governmental organizations (NGOs) for consideration in early 2021. If passed, the legal frameworks governing non-profit organizations in Zanzibar, described in this Note, will change significantly.

## **2. Applicable Laws**

The laws governing NPOs and philanthropy in mainland Tanzania are:

- [The Constitution of United Republic of Tanzania](#)
- [The Non-Governmental Organizations \(NGO\) Act, 2002](#)
- [The Companies Act, 2002](#)
- [The Written Laws \(Miscellaneous Amendment\) \(No. 2\), 2005](#)
- [The Written Laws \(Miscellaneous Amendments\) \(No. 3\) Act, 2019](#)
- [The NGO \(Amendments\) Regulations, 2019](#)
- [The NGO \(Renewal and Incentives\) Regulations, 2019](#)
- [NGO \(Rights and Duties of Assistant Registrars\) Regulations, 2019](#)
- NGO (Amendments) Regulations, 2018 (G.N No. 609)
- [The Income Tax Act, 2019](#)
- [The Customs Tariff Act, 1968](#)
- [The Value Added Tax \(VAT\) Act, 2014](#)
- [The VAT \(General\) Regulations, 2015](#)
- The VAT (General) (Amendment) Regulations, 2018
- The Finance Act, 2020

The laws governing NPOs and philanthropy in Zanzibar are:

- [The Constitution of Zanzibar](#)
- [The Societies Act, 1995](#)
- [The Companies Act, 2013](#)
- [The Companies Regulations, 2017](#)
- [The Zanzibar Business and Property Registration Agency Act, 2012](#)
- [The Tax Administration and Procedures Act, No. 7 of 2009](#)
- [The Income Tax Act, 2019](#)
- [The Value Added Tax Act, No. 4 of 1998](#)
- [The Excise Duty Act, No. 8 of 2017](#)

## **3. Relevant Legal Forms**

### **Mainland Tanzania**

The government of mainland Tanzania comprehensively restructured the legal system governing NPOs through the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019. Under the new system, the main form of NPO in mainland Tanzania is a “**non-governmental organization (NGO)**,” which is defined as an institution that is voluntary, self-governing, not-for-profit, apolitical, established (i.e., with regular meetings and rules of procedure); and operating for a public benefit purpose. Such purposes include enhancing economic, social or cultural development; protecting the environment; or advancing good governance, law and order, and human rights.

NGOs must adopt the standard NGO Constitution provided under NGO A-FORM No. 16, under the first schedule of the 2019 Regulations issued under the NGO Act (The NGO Act (Amendments) Regulations, 2019 Section 21)).

Other forms of NPOs in mainland Tanzania include societies and trusts. However, the 2019 Amendments effectively require organizations engaging in activities that benefit the community or public (i.e., benefit those beyond the organization’s members) to register as NGOs (The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019 Section 29). Given this requirement, it is most likely that a US donor would provide a grant to an NGO. Thus, the sections of this Note devoted to mainland Tanzania will focus on explaining issues relevant to making an equivalency determination for the NGO legal form.

## **Zanzibar**

The forms of NPOs in Zanzibar that are most likely to receive US-donor support are societies and companies limited by guarantee. While “NGO” is a much-used term in Zanzibar, Zanzibar does not actually have a formal legal framework governing NGOs. Rather, “NGOs” are registered under and must abide by the Societies Act, which does not use the term “NGO.” The sections of this Note devoted to Zanzibar will explain the relevant issues for the “society” and “company limited by guarantee” legal forms, with the understanding that the rules relating to “societies” also likely apply to “NGOs” in Zanzibar if a potential grant recipient self-identifies as an “NGO.”

The pending NGO bill aims to officially recognize NGOs as a form of non-profit entity, and thus will impact the relevant legal frameworks in Zanzibar if adopted.

**Society:** The Societies Act, 1995, does not define a “society.” Rather than identifying key characteristics of a “society,” the Act states that an organization is considered a “society” if it properly follows registration procedures laid out in the Act (The Societies Act, 1995 Section 3).

**Company limited by guarantee:** a company whose members’ liability is limited by memorandum (The Companies Act, 2013 Section 3(2)(b)).

Companies limited by guarantee must adopt the standard articles of association provided under Table C of Zanzibar’s Companies Act, 2013.

## **4. Public Benefit Status**

### **Mainland Tanzania**

There is no separate “public benefit status” for non-profit organizations. As noted above, all NGOs must operate for the benefit of the community or public beyond its members. Organizations that only serve the benefit of their members must register as societies under the Societies Act (Cap. 337 R.E. 2002).

## **Zanzibar**

Like mainland Tanzania, Zanzibar does not provide a separate “public benefit status” for non-profit organizations. Neither societies nor companies limited by guarantee are required to serve the public benefit. According to a local expert, however, it is generally assumed that all societies serve the public benefit.

### **5. Specific Questions Regarding Local Law**

#### **a. Inurement**

##### **Mainland Tanzania**

The law does not explicitly prohibit NGOs from distributing profits to their members. However, a local expert notes that the requirement that NGOs be “not-for-profit” under Section 2 of the NGO Act, 2002 as amended is understood to mean that NGOs are not permitted to distribute any generated profit as dividends to their members. Furthermore, the NGO Constitution that NGOs are required to adopt states in Article 26 that NGOs must apply any funds obtained solely to the promotion of their objectives (NGO A-FORM No. 16 Article 26).

There are no legal restrictions on salaries or expenses of NGOs. However, according to a local expert, in practice NGOs cannot engage in self-dealing.

##### **Zanzibar**

**Societies:** The Societies Act, 1995 does not explicitly prohibit the distribution of profits to a society’s members. However, a local expert explains that the requirement that societies only use funds to further their stated objectives (The Societies Act, 1995 Section 32), read together with the general understanding that societies must operate for the benefit of the community or public, is understood to mean that societies may not distribute any profits to their members.

The Societies Act, 1995 also does not impose any restrictions on societies’ employee salaries or expenses.

**Companies limited by guarantee:** Companies limited by guarantee may not distribute dividends to their members. Moreover, income generated must be used to promote the objectives of the company (The Companies Act, 2013 Section 8). The law does not impose restrictions on a company limited by guarantee’s employee salaries or expenses.

#### **b. Proprietary Interest**

##### **Mainland Tanzania**

An NGO is the sole owner of its assets or income (The NGO Act, 2002 Section 8(2)).

The relevant laws, including the mandatory NGO Constitution, do not address the content of donor agreements, such as the issue of whether a donor may revoke its contribution to an NGO. Nor can an NGO add a provision to the mandatory NGO Constitution that allows a donor to revoke its contribution. However, it is theoretically possible for a donor to stipulate in its agreement with an NGO that the donor may revoke a contribution in specified circumstances.

Similarly, the relevant laws do not explicitly prohibit a donor or NGO member from determining the destination of their contributed assets upon dissolution of an NGO. However, the mandatory NGO Constitution states that, upon dissolution, an NGO's assets will be used to pay off debts and then will be transferred to another NGO with similar objectives (NGO A-FORM No. 16 Article 29); thus, it is unlikely that a donor or NGO member could specify the destination of contributed assets upon the dissolution of an NGO.

Finally, the relevant laws are silent as to whether members of an NGO may receive their contributions back when they leave or retire from the NGO.

### **Zanzibar**

**Societies:** The Societies Act, 1995 does not explicitly prohibit members, founders, or donors, from retaining proprietary interest in assets of societies. However, a local expert explains that, in practice, surplus assets are typically transferred to similar organizations upon dissolution, thus indicating that members, founders, and donors do not usually retain proprietary interest in the assets of a society.

The Societies Act, 1995 also does not regulate whether donors can revoke their contributions from societies. A local expert acknowledges that it is possible for a society to specify in its founding documents that a donor may revoke its contribution in certain circumstances.

Furthermore, the Societies Act, 1995 does not explicitly prohibit a donor or society member from determining the destination of their contribution upon the dissolution of the society. However, a local expert notes that since the Registrar of Societies issues a scheme for the disposal of assets upon the dissolution of a society (The Societies Act, 1995 Section 37(2)), it is unlikely that members, founders, and donors can determine the destination of their contribution upon dissolution of a society. As noted above, in practice, surplus assets are transferred to similar organizations upon dissolution.

Finally, the Societies Act, 1995 does not explicitly prohibit members from receiving their contributions back when they leave or retire from the society.

**Companies limited by guarantee:** A company limited by guarantee is the sole owner of its assets or income (The Companies Regulations, 2017 Section 38(2)). The Companies Act, 2013 and associated regulations do not specify if donors can revoke their contributions. Furthermore, similar to societies, upon the dissolution of a company limited by guarantee, the Registrar of Companies will distribute any assets remaining after paying off the company's debts to a company with similar objectives, thus seeming to indicate that donors and members cannot determine the distribution of a company limited by guarantee's assets upon dissolution (The Companies Regulations, 2017 Section 38(2)). Additionally, the relevant laws do not explicitly prohibit members from receiving their contributions back when they leave or retire from the company limited by guarantee.

Finally, because companies must adopt the standard articles of association under Table C of the Companies Act, 2013, they cannot amend their founding documents to allow donors to revoke their contributions or determine the distribution of the donation upon a company's dissolution.

### **c. Dissolution**

#### **Mainland Tanzania**

Dissolution of an NGO may be voluntary or involuntary. Members of the NGO may voluntarily pass a resolution to dissolve the NGO in accordance with the NGO's founding documents.

The NGO Coordination Board ("the Board"), working with the Registrar of NGOs ("the Registrar"), can cancel the registration of an NGO (The NGO Act, 2002 Section 20).

The NGO Coordination Board can move to cancel the registration of an NGO on the following grounds:

1. The NGO violated the terms or conditions prescribed in its registration certificate;
2. The NGO has ceased to exist;
3. The NGO operates "in variance to its Constitution"; or
4. The National Council for NGOs has submitted a recommendation to the NGO Coordination Board for the NGO's dissolution.

Where one of the above grounds is met, the Registrar of NGOs will notify the NGO of the grounds for dissolution and provide the NGO with the opportunity to rectify or remedy the situation. If the NGO fails to do so, the Registrar can recommend the Board to cancel the registration of the NGO. If the Board is satisfied with the Registrar's recommendation, it will direct the Registrar to cancel the registration of the NGO (The NGO Act, 2002 Section 21). An NGO may appeal an unfavorable decision by the Board to the Ministry of Health, Community Development, Gender, Elders and Children.

Upon dissolution, an NGO's assets are put towards its remaining debts. Excess assets are then transferred to other NGOs with similar objectives (NGO A-FORM No. 16 Article 29).

### Zanzibar

**Societies:** Dissolution of societies may be voluntary or involuntary. Members of a society may initiate the dissolution of an organization through a three-quarters vote in favor of dissolution (The Societies Act, 1995 Section 38).

Alternatively, the Registrar of Societies may cancel the registration of a society on certain grounds, including if the Registrar believes the society is likely to pursue or be used for any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare, or good order, or which is likely to engender racial hatred; the society's rules are repugnant to or inconsistent with law; or the society contravenes its own governing rules (The Societies Act, 1995 Section 13). A society may appeal the cancellation of its registration before the Zanzibar High Court within 21 days from the date of the cancellation (The Societies Act, 1995 Section 16).

The Minister responsible for societies may also revoke the registration of a society, provided that the Minister notifies the society of its decision at least 21 days in advance of the planned revocation, and provides the society with the opportunity to show that it should not lose its registration. The Minister must also demonstrate a sufficient effort to determine that the society must be de-registered in accordance with the Societies Act. A society typically cannot appeal the Minister's decision unless the Minister has abused his power to revoke the society's registration, in which case the society may appeal the decision to the High Court within 14 days of the Minister's decision (Zanzibar Societies Act, 1995 Section 14).

Upon dissolution, a society's assets are put towards its remaining debts. The Registrar of Societies shall specify a scheme of distribution of remaining assets (The Societies Act, 1995 Section 37(2)).

**Companies limited by guarantee:** A company may voluntarily wind up in the following circumstances:

1. The set period of existence specified in the company's founding documents has concluded, or if the founding documents specify an event that triggers the company's dissolution and that event has occurred;
2. The company passes a special resolution to begin winding up; or
3. The company passes an extraordinary resolution stating that it cannot continue its business and it is advisable to wind up due to its liabilities (The Companies Act, 2013 Sections 224-25).

A company can appeal an unfavorable decision to the Minister of Trade and Industry within 21 days of the decision (The Zanzibar Business and Property Registration Agency Act, 2012 Section 8(2)).

Upon dissolution, a company's assets will be put towards its remaining debts. The Zanzibar Business and Property Registration Agency will distribute any remaining assets to another company with similar objectives (The Companies Regulations, 2017 Section 38(2)).

#### **d. Activities**

##### **General Activities**

###### Mainland Tanzania

NGOs obtain legal personality upon registration (The NGO Act, 2002 Section 18(2)) and thus can enjoy all the rights and responsibilities of legal persons.

As noted above, NGOs may only engage in non-partisan activities that contribute to the benefit or welfare of the community or public. Activities must enhance or promote economic, environmental, social or cultural development, or protect the environment, good governance, law and order, human rights, or lobby or advocate for those issues (The NGO Act, 2002 Section 2).

###### Zanzibar

**Societies and companies limited by guarantee:** Both societies and companies limited by guarantee obtain legal personality upon registration and thus can enjoy all the rights and responsibilities of legal persons.

Zanzibar does not restrict the activities of societies or companies limited by guarantee, requiring only that those organizations operate according to their governing documents.

##### **Economic Activities**

###### Mainland Tanzania

Local experts confirm that NGOs may conduct income-generating activities as long as all profits are put towards the organization's non-profit objectives. The law is silent on whether an NGO may have a for-profit subsidiary.

Tax laws do not distinguish between income from an NGO's income-generating activities and other funding sources. More information on the taxability of an NGO's income is found below, in the section on Tax Laws.

## Zanzibar

**Societies:** The law governing societies does not bar societies from engaging in commercial activities.

**Companies limited by guarantee:** Companies limited by guarantee may conduct commercial activities but must put any income generated from those activities towards the promotion of their objectives (The Companies Act, 2013 Section 19(1)).

Similar to the law in the Mainland, tax laws in Zanzibar do not distinguish between a society or company limited by guarantee's income-generating activities and other funding sources. More information on the taxability of a society or company limited by guarantee is found below, in the section on Tax Laws.

## **Public Benefit Activities**

### Mainland Tanzania

As noted above, there is no special "public benefit status" for NGOs in Mainland Tanzania. Rather, a local expert confirms that it is understood that all NGOs must operate for the benefit of the community or public beyond its members.

### Zanzibar

Also noted above, while there is no special "public benefit status," Zanzibarian societies must serve the public benefit. Companies limited by guarantee are not required to serve the public benefit but are free to engage in public benefit activities.

## **Political Activities**

### Mainland Tanzania

NGOs are by definition "non-partisan" entities (The NGO Act, 2002 Section 2), and thus cannot seek political office or campaign for a political party. However, NGOs may lobby or advocate for issues that fall within their stated objectives, including through lobbying the Parliament to enact or refrain from enacting legislation. As noted above, permissible objectives include, enhancing or promoting economic, environmental, social or cultural development; or protecting the environment, good governance, law and order, and human rights. There is no limit on the percentage of an organization's budget that can be devoted to lobbying or other legislative activities.

### Zanzibar

**Societies:** Societies may not engage in political activities such as seeking political office or campaigning for a political party (See The Societies Act, 1995 Section 20(1)(b)). Moreover, the Zanzibar Registrar of Societies may cancel the registration of a society if the society becomes affiliated with an organization of a political nature (The Societies Act, 1995 Section 13(1)(i)). It is unclear how the Zanzibar Registrar of Societies determines if an organization is "of a political nature," or if a society is "affiliated" with such an organization.

A local expert confirms that in practice societies may engage in legislative lobbying. There is no limit on the percentage of an organization's budget that can be devoted to lobbying or other legislative activities.

**Companies limited by guarantee:** The Companies Act No. 15 of 2013 does not explicitly restrict companies limited by guarantee from engaging in political activities.

A local expert confirms that in practice, companies limited by guarantee may engage in legislative lobbying. There is no limit on the percentage of an organization's budget that can be devoted to lobbying or other legislative activities.

#### **e. Discrimination**

##### Mainland Tanzania

Article 13 of the Constitution of the United Republic of Tanzania prohibits any form of discrimination, including racial or ethnic discrimination. Likewise, Section 56(2) of the Education Act prohibits racial and ethnic discrimination in schools.

##### Zanzibar

Section 11(1) of the Constitution of Zanzibar protects the equality of all people, while Section 12(1) protects the right of all persons to equality before the law without any discrimination.

#### **f. Control of Organization**

##### Mainland Tanzania

The NGO Act 2002 does not prohibit an NGO from allowing foreign donors or organizations to appoint officers within the NGO. Likewise, foreigners or foreign organizations are not restricted from acting as members of an NGO, though an NGO must have at least two national members.

There is no restriction on NGOs' receipt of foreign funding, though an NGO must submit documentation to and obtain approval from the Registrar of NGOs for any funding agreement whose value exceeds TZS 20 million (approximately USD 8,625).

##### Zanzibar

The law does not prohibit societies or companies limited by guarantee from allowing foreign donors or organizations from appointing officers within the organization. Likewise, foreigners and foreign organizations are not restricted from acting as members of societies or companies limited by guarantee.

For both societies and companies limited by guarantee, there is no restriction on the receipt of foreign funding.

### **6. Tax Laws**

#### **a. Tax Exemptions**

In both Mainland Tanzania and Zanzibar, all forms of NPOs (e.g., NGOs in mainland Tanzania, and societies and companies limited by guarantee in Zanzibar) may enjoy a partial income tax exemption by obtaining "charitable" or "religious" organization status. An NPO must submit an application to the Commissioner General of the Tanzania Revenue Authority to be recognized as a "charitable" or "religious" organization. To be considered a "charitable" organization, an NPO must be established and

function solely as an organization for (i) the relief of poverty or distress of the public; (ii) the advancement of education; or (iii) the provision of general public health, education, water or road construction or maintenance (The Income Tax Act, 2019 Section 64(8)(a)).

“Charitable” or “religious” organizations are granted a tax exemption for the following types of income:

- (1) all income that is applied towards the organization’s activities that relieve poverty or distress of the public, advance education, or provide for public health, education, water, or road construction or maintenance, where these activities provide reasonable benefits to residents in the United Republic of Tanzania; and
- (2) 25 percent of the organization’s income from its charitable business (The Income Tax Act, 2019 Section 64).

Any income that a “charitable” or “religious” organization receives that is not put towards its activities during the year will be treated as taxable income.

#### **b. Deductibility of Donations**

In both Mainland Tanzania and Zanzibar, gifts to “charitable” or “religious” organizations may be deducted from an individual’s or entity’s income for the purposes of calculating taxable income (The Income Tax Act, 2019 Section 16(1)(a)). The deduction to the income tax shall not exceed two percent of the income, as calculated under Sections 7 through 9 of the Income Tax Act. Individuals and entities may also claim deductions from the income tax for contributions made to the AIDS Trust Fund and other Tanzanian Government initiatives to fight against COVID-19 (The Finance Act of 2020 Section 31). This deduction does not apply to donations to private sector or NGO efforts to combat AIDS or COVID-19.

#### **c. Customs Duties, Excise Duties, and Value Added Tax**

##### Mainland Tanzania

Goods imported into Tanzania by an NGO that are intended to be used solely by the NPO for certain humanitarian and development purposes can be exempted from customs duties (see The Customs Tariff Act, 1968 Third Schedule Rule 10). The customs duty will become due if the exempted goods are transferred, sold, or conveyed in any way to another person not entitled to the exemption (The Customs Tariff Act, 1968 Third Schedule Rule 10(3)).

To claim an exemption from the customs duty, an NGO must send an application to the Tanzania Revenue Authority with the following attachments:

- (1) Letter from the head of the organization applying for duty and tax remission or on his/her absence the person acting on behalf substantiating the ownership of the goods;
- (2) Copy of the registration certificate(s) of the applying organization;
- (3) Letter from the District Commissioner substantiating the existence of the project in the respective District;

- (4) Letter from the Ward Executive Officer substantiating the existence of the project in the respective Ward;
- (5) Organization's annual procurement plan;
- (6) Organizations utilization report accounting for the remission granted during the previous year;
- (7) Copies of Bill of Lading/Air waybill/Road Consignment Note, Invoice, Packing List, List of beneficiaries, and donation certificate in case of donation; and
- (8) Any other relevant information to support the application.

The value-added tax (VAT) rate is 18 percent. The threshold for VAT registration is TZS 100 million (approximately USD 43,000) (The VAT Act, 2014 Section 28 and the VAT (General) Regulations, 2015 Regulation 14)). Foreign grants are not subject to VAT, nor are NGOs' imports for certain humanitarian and disaster relief (The VAT Act, 2014 Exemption Schedule Part II).

### Zanzibar

Certain goods and services, including those imported by international organizations or aid agencies, are exempt from the excise duty (The Excise Duty Act Third Schedule). Imports by societies and companies limited by guarantee are not included in this list of exemptions from Zanzibar's excise duty. The Excise Duty Act does not lay out a procedure to claim the exemption, but in practice, the Zanzibar Revenue Board adopts the same procedure as the Mainland has in place for claiming customs duty exemptions, noted above.

The VAT rate is 15 percent. The threshold for VAT registration is a taxable turnover of over TZS 50 million (approximately USD 21,500). Foreign grants are not subject to the VAT or similar taxes. As in Mainland Tanzania, the importation of certain goods and services are exempt from the VAT, such as those that provide relief from natural calamities and disasters or contribute to government-approved projects on health, education, water supply, and infrastructure (The Value Added Tax Act, No. 4 of 1998 Third Schedule).

#### **d. Double Taxation Treaty**

The United States and the United Republic of Tanzania have not signed any double taxation treaties.

### **Knowledgeable Contacts**

The Centre for Strategic Litigation ([deus@strategiclawcentre.org](mailto:deus@strategiclawcentre.org))