



South Sudan NGO Forum Regulatory Compliance Guide

June, 2013

This Guide has been prepared as a quick reference, to assist NGOs operating in South Sudan to comply with the laws, regulations and government instructions of South Sudan.

Contents

A Message from the Relief and Rehabilitation Commission	5
1. Introduction	7
2. NGO Registration	7
3. Operating in South Sudan	7
3.1 Operating Environment	7
3.2 Legal and compliance matters	8
3.3 Logistics Support	8
3.4 Effective coordination	8
4. Tax regulations relevant to NGO operations	9
4.1 National Customs Duty	9
4.2 National Sales Tax	9
4.3 National Excise Tax	9
4.4 State Taxes and Charges	9
4.5 Local Taxes and Charges	10
5. Taxes on Employees	10
5.1 National	10
6. Employment Law	10
6.1 General Requirements	10
6.2 Engaging National Staff	10
6.3 Engaging International Staff	10
6.4 Regulations Affecting Employment	11
6.5 Terminating Staff	11
7. Winding Down -closing an office/project/NGO	11
8. Other Regulatory Issues	11
8.1 NGO Vehicles	11
8.2 Driving Licences	11
8.3 Traffic Law & Rules of the Road	11
9. Conclusion	12

A Message from the Relief and Rehabilitation Commission

On behalf of the Relief and Rehabilitation Commission (RRC), I would like to thank the NGO Forum for working with us on this important document. This guide is another example of the partnership between the RRC and the NGO community in South Sudan to support development and build capacity to respond to emergencies in the country.

This guide is intended to assist NGOs and humanitarian agencies to familiarise themselves with the laws and regulations of South Sudan. It is the duty of all NGOs working in South Sudan to comply with the laws of the country. We are happy to work with the NGO Forum to support NGOs to better understand their obligations and rights.

We look forward to continuing and strengthening the joint efforts of the RRC and NGO community to assist the people of South Sudan both in development and humanitarian interventions.

A handwritten signature in blue ink, appearing to read 'Peter Lam Both', with a stylized flourish above the name.

Hon Peter Lam Both

National Chairperson

Relief and Rehabilitation Commission

Government of South Sudan

1. Introduction

This guide has been prepared to assist NGOs operating in South Sudan to comply with the applicable laws, regulations and government instructions. The guide is intended to provide an overview or quick reference of the key operating parameters for NGOs. This guide is advisory only. It is important that NGOs make their own inquiries as to the status of the law and seek professional South Sudanese legal advice when needed.

This guide has been prepared by the NGO Forum ('Forum') in partnership with the Relief and Rehabilitation Commission (RRC), Government of South Sudan. The Forum is an independent coordinating body of national and international NGOs working in South Sudan. The Forum exists to serve and facilitate the work of its NGO members.

The NGO Forum has a wealth of materials and documents which NGOs may find useful. This includes copies of legislation and copies of government circular and directions. We also have copies of government forms (such as the NGO registration form). All of these government documents together with further advice and analysis may be found on our website www.southsudanngoforum.org

For NGOs the first point of contact in government is the RRC. To contact the RRC go to www.reliefandrehabilitationcommission.org or visit the RRC office in person within the Government Ministries Complex in Kololo, Juba.

This guide was prepared on 25 June 2013. Laws and government instructions may change and it is important that NGOs ensure that they have the most up to date information.

2. NGO Registration

Before any NGO can work in South Sudan it must formally register with the Government of South Sudan (GoSS). No matter the good intentions of any NGO, none have an automatic right to operate in South Sudan without registration.

As of June 2013, GoSS has not yet passed legislation related to NGOs, as the bill is currently before parliament. Currently, there are two registration processes for International NGOs. The first is to register as a legal entity with the Ministry of Justice. The process is relatively straightforward; however, there are a number of technical aspects to the process. Once an NGO is legally registered with the Ministry of Justice, it is then necessary to register with the South Sudan Relief and Rehabilitation Commission (RRC) as a NGO. This is necessary to access various tax concessions available only to NGOs.

Currently, with both registration processes, annual renewal is required. Once registered, NGOs are required to report regularly to the Government through relevant line Ministries on the status and outcomes of their activities.

3. Operating in South Sudan

Having registered to operate in South Sudan, NGOs need to familiarise themselves with the operating environment, and ensure that in running their operations they comply with the laws of South Sudan.

3.1 *Operating environment*

South Sudan gained its independence in July 2011. The Republic is under a Transitional Constitution and operates under a federal system in which government powers and responsibilities are shared between the national government, 10 state governments and local governments.

Since independence, South Sudan has struggled with the enormity of establishing an independent state. The long conflict left the geographically large country with extremely poor infrastructure, the responsibility to integrate large returnee populations and manage relations between tribal communities within South Sudan. South Sudan will need long term development support to build the capacity of all its organs of state. Some of the challenges in South Sudan include the uncertainty in the status of laws and regulations; the lack of clarity regarding the authority of different parts of government; and inconsistency in the application of rules that do exist.

Often what is 'law' in South Sudan is contained in government instructions, circulars, directions and letters rather than statutes promulgated by parliament. Locating these documents and confirming their currency is one of the key challenges of operating in South Sudan. To assist NGOs, the Forum has established a repository of all current government instructions and circulars which have been brought to the Forum's attention.

3.2 Legal and compliance matters

In order to ensure compliance with the laws of South Sudan, it may be useful to retain a qualified South Sudanese legal practitioner to advise on compliance matters. In South Sudan, this has typically related to:

- Starting up and registering the NGO. The Ministry of Justice registration process specifically requires legal expertise;
- Staffing issues;
- Large contracts such as compound leases or housing/building construction;
- NGOs being sued; and
- NGOs needing to sue other entities (often for damages, breach of contract, etc.).

NGOs should select a solicitor who has a good reputation in South Sudan. Reference should be obtained from previous clients, including other NGOs. The NGO Forum can provide a basic list of registered solicitors and other information on what to look for when selecting a solicitor, however it cannot recommend individual solicitors.

NGOs may also consider engaging an auditor not just for required audits but in order to assist in identifying financial compliance issues and setting up appropriate internal controls and checks. The NGO Forum can provide a basic list of qualified auditors and other information on what to look for when selecting an auditor, however it cannot recommend individual auditors.

3.3 Logistics support

Around half of NGO members of the Forum in 2012 were involved in humanitarian activities. The humanitarian cluster system is active in South Sudan, under the coordination of UNOCHA. The purpose of the clusters is to provide 'well-coordinated and effective' humanitarian response in each sector. The cluster lead agency also acts as a 'provider of last resort.' Cluster leads are responsible to the United Nations Humanitarian and Resident Coordinator.

For humanitarian agencies with logistics issues in South Sudan, the first port of call should be the Logistics Cluster. In 2011, the Logistics Cluster received more than 700 requests for services from 68 different organisations and transported over 4,500 mt of humanitarian relief cargo throughout South Sudan. The Logistics Cluster lead agency is WFP. There is no NGO co-lead. The Logistics Cluster manages the common transport system. Contact details for the Logistics Cluster are: southsudan.logs@logcluster.org and <http://www.logcluster.org/ops/ssd11a>.

3.4 Effective coordination

Good development and humanitarian practice, particularly aid effectiveness principles, encourage strong and effective coordination. For NGOs working on humanitarian issues we recommend contacting OCHA, or the relevant cluster lead or co-lead, for programmatic information. The clusters are: Education; Food Security and Livelihoods; Health; Non-Food Items and Emergency Shelter; Nutrition; Protection; and Water, Sanitation and Hygiene.

Development activities are coordinated by the government, through its 'Sector Working Groups' (SWGs). The ten SWGs are: Infrastructure; Economic Functions; Natural Resources; Health; Education; Social and Humanitarian Affairs; Accountability; Public Administration; Security; and Rule of Law. For each SWG there is a donor co-lead who may assist NGOs in engaging with these fora and provide more information.

In addition to these fora, the Forum also supports coordination amongst NGOs both national and international. The Forum exists to serve and facilitate the work of its NGO members through information sharing, facilitating engagement with the government, the UN and donors, policy advice and supporting the capacity development of National NGOs. The NGO Forum also has an important role in supporting the strengthening of NGO security coordination mechanisms, reinforcing the quality of safety and security information, engaging in contingency planning, and facilitating access to security training opportunities.

We recommend NGOs visit our [website](#) for more information on coordination and aid effectiveness.

4. Tax Regulations Relevant to NGO Operations

All NGOs must comply with the tax laws of South Sudan. Given the essential charitable or humanitarian purpose of NGOs, NGOs are exempt from many, but not all taxes, in South Sudan. It is important for NGOs to be aware of their obligations with respect to taxation as well as the exemptions which apply automatically and those for which an application must be made.

The Transitional Constitution sets out the powers of the national and state governments with respect taxation. It is also important to understand which level of government has responsibility for what aspect of taxation and revenue-raising. In 2013, the national Directorate of Taxation clarified that NGOs should resist any unauthorised demand for taxation. More information is provided on this below.

In this section some of the taxes and fees which are relevant to the majority of NGOs operating in South Sudan are discussed. In addition to these general taxes and fees there may be sector specific taxes that are relevant for NGOs operating in those sectors - for example fees for quality assurance on drugs imported to South Sudan. Please contact the NGO Forum or visit our [website](#) for more information.

4.1 *National customs duty*

Chapter XIII of the Taxation Act 2009, sets out the regime for the collection of a form of customs duty on imports to South Sudan. Under this legislation an exemption is provided for "humanitarian aid when imported by a bona fide organization as prescribed by regulations". This exemption has been confirmed by a MoFEP circular. However, it is important to remember that this exemption is not automatic. Instead, an application must be made for each consignment imported. There is some basic information regarding the procedures for tax exemption in Circular 09/2012, and the RRC's Procedures and Guidelines No 4. The NGO Forum [website](#) has copies of the relevant government documents. For assistance, NGOs may contact the logistic cluster [southsudan.logs@logcluster.org](mailto:logs@logcluster.org) and <http://www.logcluster.org/ops/ssd11a>.

4.2 *National sales tax*

Chapter XVI of the Tax Act imposes a sales tax (currently 15%) on all goods imported into South Sudan, and all goods manufactured in South Sudan. It is not a retail tax like VAT. Instead, sales tax applies at the time of importation or production. For NGOs, it will apply primarily when they seek to import goods into South Sudan.

Government circulars confirm the basis on which NGOs may be exempt from sale tax. The criteria for an exemption from sales tax are different to the humanitarian exemption from customs duty. The exemption will typically operate in two ways. Firstly, large NGOs operating in South Sudan under international funding agreements will need to enter into country agreements that set out tax exempt status. INGOs receiving funding for specific projects from diplomatic missions in South Sudan will need to be exempted by an agreement between the government and the diplomatic mission funding the project. The NGO will need to demonstrate that the goods are directly relevant to the donor-funded project.

4.3 *National excise tax*

Chapter XV of the Tax Act imposes an excise tax on certain products. Products subject to an excise tax that may be relevant to NGOs include: air transport services; insurance services; fuel; and telecommunication services. Excise duty is paid by the importer or producer of the goods and passed on in the costs of goods sold. The excise duty is not paid by consumers directly. There is currently no rebate systems for NGOs with respect to excise payment paid indirectly as part of the purchase of excisable goods. Exemptions may apply in very limited circumstances, and to date, we are not aware of any NGO that has successfully claimed an exemption.

4.4 *State taxes and charges*

Generally, NGOs are not exempt from lawfully imposed state government taxes and charges though they may be granted an exemption under legislation or by ministerial decree or exemption. The Transitional Constitution of South Sudan sets out the powers of State Government with respect to charging state taxes. These powers are not unlimited as a number of revenue sources are reserved for the national government (such as customs duty). In addition, each state has its own State Constitution, which also sets out the revenue or taxation powers of the government. In order for a state tax to be law it must be within the constitutional powers of the state government and be supported by legislation passed by the legislature of the relevant state.

4.5 *Local taxes and charges*

In addition to a National Government and the ten State Governments, South Sudan also has local level governments. Local government is the closest to the people and deals with direct service delivery. The Local Government Act 2009 sets out the powers and responsibilities of local government authorities including those at the county and payam level. Under the Local Government Act, local government authorities have the power to impose certain fees and charges such as property rates. Any local government fees and charges must be lawfully approved by the local government authority. Typically, NGOs do not have exemptions from such fees and charges.

NGOs should be aware that there have been instances of neighbourhood societies passing themselves off as local government authorities and attempting to imposing charges on NGOs. NGOs should check the bona fides of any official seeking to raise revenue on behalf of a government authority.

5. **Taxes on employees**

Under the Taxation Laws of South Sudan, all employers, including NGOs, have responsibility, for deducting taxation from the wages of staff and remitting those funds to the government. This section discusses the taxes payable by NGO employees.

5.1 *National*

The personal income tax (PIT) rates payable by national staff are set out in the Tax Act 2009. The rates are on a sliding scale depending on salary from 0%, 10% to 15% on all income including benefits in kind. PIT is required to be deducted by the employer from each employee's wages. The employer is responsible for remitting the amount deducted from wages for PIT to the national Directorate of Taxation at the Ministry of Finance and Economic Planning (MoFEP). Procedures for payment of PIT are set out in a government circular.

At the time of writing no state government had passed legislation authorising a state government to collect additional state personal income tax. This may happen in the future as article 177 of the Transitional National Constitution permits states to collect state PIT.

6. **Employment Law**

6.1 *General requirements*

NGOs, like all employers, are required to comply with the employment laws of South Sudan. In South Sudan, the Parliament has not yet passed a Labour Law*. Currently, the 1997 Labour Law from Sudan is used as a reference point, although its exact legal status is unclear. Although the Government of South Sudan is developing its own Labour Bill, it is not known when this is likely to be passed.

6.2 *Engaging national staff*

Recruitment by NGOs in South Sudan is subject to a degree of government oversight and involvement that may be unfamiliar to INGOs. When seeking to recruit a staff member it is standard practice to have the job adverts endorsed by the Ministry of Labour (MoL). NGOs need to be aware that if they renew the contract of an employee who has already completed either two contracts or been engaged for two years (whichever is sooner) **the employee will then be deemed to be on an indefinite contract.**

6.3 *Engaging international staff*

There is a general expectation from the government that NGOs will hire national staff and only resort to international staff when there are demonstrated skills required that are unavailable in the local market. On average around 90% of NGOs staff in South Sudan are South Sudanese. In order for an expatriate to work in South Sudan, they must have a valid visa, work permit and register as a foreign national. There is some uncertainty as to whether a work permit should be applied for before the visa or vice versa. Typically international staff apply for a work permit after entering into the country.

*One complication is that the authority to regulate labour-related matters in South Sudan is shared by both the national and state level governments. Article 14 of Schedule B of the Transitional National Constitution grants states powers over "regulation of businesses, trade licenses, working conditions, hours, and holidays within the state". Meanwhile, schedule A grants the national government exclusive power over "the fixing of the minimum wage for both the public and private sectors" (article 36), as well as matters to do with NGOs (article 51).

The policy and procedures for engaging international staff are typically set by INGOs at the headquarters or regional level and accordingly is beyond the scope of this guide, which is limited to the legal requirements of South Sudan.

Visas and Work Permits

The requirements can change regularly. The Forum provides regular updates as part of its [Visa and Work Permits Update](#). Please refer to this update for the most accurate information.

NGOs need to ensure that:

- They have up-to-date knowledge of all known procedures for expatriate staff (eg: to register upon arrival, to obtain work permits, to have a valid visa at all times, etc) and ensure these are complied with;
- All staff arriving at Juba airport are in possession of a valid visa, or an 'Entry Permit'; and a valid Yellow Fever vaccination certificate.
- All newly arrived international staff are registered under the 'Foreign Nationals Registration';

With regards to work permits, Circular 5/2008 requires the following documents to be included in work permit applications:

- Detailed CV
- Copy of passport: this may be interpreted as including a copy of the entry visa
- Copies of academic qualifications: NGOs may wish to ensure that new staff members are aware to bring such copies when they first travel to South Sudan
- Two ID photos
- Copy of government registration certificates.
- Covering letter on official NGO letterhead and endorsed with NGO stamp.

Additional documentation may also be requested with, or helpful to, work permit applications. Further information is available from the NGO Forum.

6.4 Regulations affecting employment

Working Hours and Annual Holidays

The Ministry of Labour, has set out the working hours applicable in South Sudan. These are 8 hours a day, 5 days a week. This supplements the 1997 Labour Law from Sudan which also provides for a maximum of 4hrs overtime per day, and 12hrs per week. The Ministry of Labour's instructions also implicitly allows for "time off in lieu" for overtime instead of payment, provided the employee agrees.

In 2012 a list of the annual holidays was provided by the Ministry of Labour. As of 25 June 2013, no list had been provided for 2013 and holidays are currently announced in advance of each national holiday.

Social Insurance Contributions

For national staff, employers should set aside monthly contributions of 8% from the employee, and 17% from the employer, in a dedicated bank account (pending establishment of a government-managed scheme for South Sudan). These contributions are to be paid back to the employee when they finally finish their employment. NGOs need to ensure they familiarise themselves with the requirements for social insurance to ensure legal compliance and to avoid disputes with staff.

6.5 Terminating staff

International

The policy and procedures for terminating international staff are typically set by NGOs at the headquarters or regional level and so is beyond the scope of this guide. As most international staff's right to stay in the country is tied to their employment, it is important to carefully manage any termination and their departure from the country.

National

As stated above, once a national staff member has had either two contracts or been in a job for two years, whichever comes first, they are deemed to be on an indefinite contract. This is regardless of what the employer writes in their contract. This means that if an NGO issues a third one year contract, the contract is deemed to be indefinite and not just for one year. Indefinite contracts cannot easily be terminated by an employer. An employer does not have an automatic right to terminate an indefinite contract (unlike definite contracts, which the employer can simply decide not to renew or extend).

If an NGO wishes to terminate an employee for gross misconduct or for repeated breaches of their employment contract, the NGO must first seek approval from the MoL. Similarly, if an NGO needs to close a project or field office, or even cease their entire operations in South Sudan, and this necessitates reducing staff, NGOs must first seek the approval of the MoL before terminating any staff. In all cases a detailed justification for the termination, including supporting documentation is required. If approval is not sought from the MoL, or it is not granted, the Sudan Labour Law provides for the employer to pay six months basic salary as compensation for wrongful termination.

On separation of an employee from their employment with an NGO, it is the responsibility of the NGO to ensure that the employee receives all their entitlements.

The RRC has also issued helpful guidelines on the process. For more information and copies of the relevant government documentation see our [website](#) or contact the RRC directly

7. Winding Down - Closing an Office/Project/NGO

Closing a field office, a project or even the NGO's entire operations in South Sudan is one of the hardest to get right from a regulatory compliance perspective. Often the realities of NGOs operations – the short funding cycles, uncertainties about the continuation of, or extension of, funding– are not easily aligned with government expectations about advanced notice to (and approval from) government for any reduction in operations.

It is important to ensure that NGOs inform all relevant actors of the plans for closure, including: RRC, all relevant line ministries, state authorities, local authorities and of course communities and beneficiaries. NGOs need to follow due process regarding staff terminations (including obtaining Labour Office approval before attempting to terminate staff –see section six of this guide). NGOs will also need to manage the disposal of assets in accordance with government requirements and the requirements of their donor funding agreements. The RRC has provided guidance on this issue.

8. Other Regulatory Issues

8.1 *NGO vehicles*

Vehicles are often significant assets of NGOs. For information on the processes for customs clearance see section of 4 of this guide. Once imported, all NGO Vehicle must be registered in South Sudan and registration fees are payable. NGOs vehicles must be registered with NGO number plates not private number plates and this is an issue of compliance that is checked by police and authorities.

8.2 *Driving licences*

International staff with a valid overseas licence may apply for a drivers licence at the local traffic police office. For local drivers without an international license, there is a testing procedure to be observed. Driving schools are available in Juba and some major towns for local drivers. Driver's licenses can also be obtained for most drivers in state capitals.

8.3 *Traffic law & rules of the road*

Traffic can be unpredictable in South Sudan with many drivers unfamiliar with driving in traffic. Compulsory standard rules include use of seatbelts, driving on the right hand side of the road, making way for vehicles with sirens (especially if it is the presidential motorcade), not using mobile phones while driving, and having a valid driver's license with you at all times when driving. It is also advisable to wear shoes and not sandals when driving to avoid accidents.

9. Conclusion

We trust that you have found this guide useful. This guide is intended to be ready reference of the important issues that NGOs should be aware of when operating in South Sudan. More information is available from the NGO Forum and the RRC.

South Sudan NGO Forum

endorsed by:

