



PAWANKA
FUND | 10
Years

A close-up portrait of a smiling woman, likely Maasai, wearing traditional beaded jewelry including large hoop earrings and multiple necklaces. She is wearing a red patterned shuka. The background shows a savanna landscape with a tree and a blue sky.

Processes for Obtaining Legal
Status by Indigenous Organizations
in Kenya and Mexico

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1. Presentation

This summary reflects the key points of two case studies, in Kenya and Mexico, aimed at describing the official registration processes of indigenous organizations to obtain legal status, the requirements for doing so, and the situation and limitations of indigenous organizations in obtaining the status of non-governmental organization (NGO).

The Kenya case specifically focuses on the Gabbra Community organization, Tokkumma Aadda Trust. Tokkumma Aadda Trust is a community organization working to protect the cultural and land rights of the Gabbra community in Marsabit County, Kenya. In the case of Mexico, it describes the experience of the Xkolelob collective, based in the State of Quintana Roo, and discusses the experiences of other indigenous organizations at both the national and state levels in Quintana Roo.

Both case studies reflect technical, organizational, administrative, financial, and legal limitations that community organizations face in obtaining legal status. The importance of obtaining legal status lies in its requirement for gaining direct access to financial resources, a topic on the global agenda of Indigenous Peoples worldwide. In addition to the aforementioned limitations, in both countries, social and political aspects must be taken into account, which the leadership of indigenous organizations, undertaking the task of achieving NGO status, must stoically confront, such as institutional discrimination and racism.

In general terms, the objective of creating non-governmental organizations (NGOs) that operate on a non-profit basis is to offer various services to members of specific communities or population groups. Sometimes, the activities of these NGOs complement those of the government in a specific locality, or they fulfill a solitary mission in the absence of services that the national government should provide.

The philosophical basis of NGOs, whether at the local, regional, or international level, is to advocate for the common interests and concerns of their members, target-specific groups, or the public. They serve social, cultural, or scientific purposes committed to environmental management, poverty alleviation, and the defense of human rights.

2. Context

2.1 Global Context

The year 1992 represented a historic milestone for Indigenous Peoples of the Abya Yala continent, now called America, marking 500 years of continuous struggle since the arrival of Europeans on this territory. Since then, the indigenous movement has significantly strengthened, initiating important advocacy efforts for both their collective and individual rights. By 1989, the International Labour Organization (ILO) had adopted Convention 169, a legally binding instrument, now ratified by 22 states, 14 of which are in Latin America. This instrument grants rights to prior consultation, self-determination, and recognition of cultures and traditions. In 2007, after 20 years of advocacy and struggle, the United Nations adopted the Declaration on the Rights of Indigenous Peoples. Although non-binding, this declaration includes key aspects such as equality and diversity, contribution to diversity, prohibition of racism, rights to land, territory, and resources, as well as the right to prior, free, and informed consent.

These two instruments have opened up opportunities for Indigenous Peoples to engage in various advocacy platforms, including biodiversity, land rights, climate change mitigation and adaptation, environment and development, among others.

In this sense, relationships have been established between philanthropic entities and Indigenous Peoples, creating spaces to continue the struggle for their rights. The financial resource chain created to support Indigenous Peoples typically involves donors or providers, intermediaries, and Indigenous Peoples. Unfortunately, colonialist approaches still persist within this chain, which need to be overcome. This has prompted Indigenous Peoples to demand direct access to financial resources.

Thus, grassroots Indigenous organizations seek to institutionalize themselves in various forms such as associations, cooperatives, territorial governments, communal governments, and others, transitioning into non-governmental organizations (NGOs) at different levels: community, national, regional, and international.

The NGO framework provides a platform for Indigenous organizations to defend their rights and represent the interests of their communities. By formalizing as NGOs, these organizations can access legal resources and tools to advocate for the protection of their lands, cultures, and traditional ways of life. Moreover, it enables them to access funds and donations from various sources, including governments, foundations, and international organizations, including multilateral banks. As recognized NGOs, Indigenous organizations can participate in international forums such as the United Nations, where they can voice their concerns and proposals. This not only allows them to influence global policies and demand financial resources related to indigenous rights, environment, sustainable development, education, health, and environmental conservation in indigenous communities.

Acquiring legal status as NGOs enables Indigenous organizations to design and implement programs and projects from their own worldview to address the needs of their communities and seize existing opportunities within them.

2. Context in Kenya

In Kenya, the northern region has been marginalized by successive governments since the colonial era. However, with the establishment of a devolved governance system, there has been a pathway to rewrite this narrative, allowing for improvements in these areas, primarily due to the incredible work carried out by non-governmental organizations (NGOs), which cannot be underestimated, ignored, or overlooked.

Nevertheless, the 1990 Non-Governmental Organizations (NGO) Act requires all NGOs to be registered with the NGO Coordination Board, a state corporation. The Board's mandate is to regulate, register, facilitate, empower, and coordinate all NGOs operating in the country. Additionally, the Board advises the government on the contributions of NGOs to national development, provides policy guidelines aligned with national priorities, and analyzes the annual reports of NGOs. The Board commenced operations in 1992 and currently falls under the Ministry of Interior and National Government Coordination.

Since the enactment of Kenya's National Constitution in 2010, government offices often collaborate with Non-Governmental Organizations (NGOs) and Community-Based Organizations (CBOs) in policy formulation and project implementation.

3. Context in Mexico

The study area in Mexico focused on the Quintana Roo region, where indigenous organizations lack financial support to undergo the process of acquiring legal status. They also lack qualified personnel¹ for institutional management, accounting, auditing, and technical aspects. Additionally, individuals wishing to organize and establish themselves as an organization have limited time to attend to organizational matters, as they must attend to their livelihoods, being people with low incomes.

In Mexico, philanthropic organizations led by indigenous leaders have been established and have managed to be recognized and accepted by the Mexican state and society at large. However, the problems faced by Indigenous Peoples are ongoing, and the struggle to address them is continuous. From a competitive standpoint, this differs from civil society NGOs, as acquiring financial resources is challenging for indigenous organizations. Official bodies and donor communities often believe that rural residents lack the same capacity as themselves to carry out certain activities. Unlike philanthropy in civil society, which seeks social and economic development in its beneficiaries, Indigenous Peoples seek to secure collective rights such as access to their lands and territories and the right to self-determination.

In many cases, Indigenous Peoples work to secure their rights to health, adequate education, jus-

¹ Many leaders did not have access to quality education during their childhood due to colonialist and discriminatory systems.

tice systems in their own mother tongue, among many other issues.²

2. Objective of the case studies

This task was specifically carried out to:

- (i) Document the systematic process of becoming a legal NGO in Kenya and Mexico
- (ii) Analyze and identify facilitating factors and barriers in the legal registration process.

4. Research Methodology and Findings

4.1. Kenya

Specifically in Kenya, the objective was to document the systematic process of obtaining legal status as an NGO and to identify and analyze facilitating factors and barriers in the legal registration process. In doing so, they selected the Tokkumma Aadda Trust organization as a case study. The methodology involved data collection from primary sources through key informants and secondary sources, allowing for an intensive and detailed review of available documentation within the Tokkumma Aadda Trust organization.

Specifically, the legal registration process for non-governmental organizations (NGOs) in Kenya, according to the report, includes the following key steps:

- a). Name Search: This is conducted through the E-Citizen platform (a digital platform) proposing 3 names and paying a fee. This process takes one day.
- b). Registration: After the name is approved, an online application form is completed, and the required documents are uploaded along with payment of the corresponding fee. The process must be completed within 90 days of payment.
- c). Requirements: Personal data of board members, scanned copies of the organization's statutes, passport-sized photographs, certificates of good conduct, and a one-year budget proposal, among others, must be provided.
- d). Costs: Costs vary depending on whether the NGO is national or international, and there are fees associated with the name search and registration process.

² According to the opinion of the writer of this report, consultant Dennis Mairena, there is a simple yet fundamental difference between civil society and indigenous peoples, and that is that the latter are bearers of individual and collective rights established in national and international legal instruments that members of civil society do not have access to.

The experience of Tokkumma Adda Trust in its attempt to register as an NGO was such that its initial endeavor faced significant challenges, leading to a three-year process without success. Consequently, they embarked on a second attempt, which involved concerted actions among five YAA clans. However, this process was slow and required extensive explanations to enable decision-making by the leaders.

This undertaking involved hiring specialized personnel for these tasks, incurring a total cost of Ksh. 100,000 (equivalent to \$714.3 USD). Unfortunately, no results were obtained. A year later, the organization's board decided to work through a new agent, restarting the online registration process for a second time. This time, they spent Ksh. 50,000 (equivalent to \$357.1 USD), which covered facilitation costs and the registration process.

Meanwhile, Tokkumma Adda Trust managed to legally register as a Community-Based Organization (CBO), a process that only took three months. The registration took place at the county level within Marsabit County. The registration process and logistical costs for obtaining CBO legal status amounted to Ksh. 50,000 (\$357.1 USD).

The process to become an NGO is still ongoing; however, there have been no advances in the last five months.

1. Mexico

In Mexico, the study aims to understand the situation and registration process of civil organizations in the Quintana Roo area, specifically those self-defined as indigenous organizations. It also seeks to identify the challenges they face in differentiating themselves from other standard organizations in Mexico. These indigenous organizations aim to bring about positive change for the well-being of their indigenous communities, with indigenous members themselves proposing the best solutions for their contexts.

In the case of Mexico, the Xkolelob collective organization followed the methodology known as "Tsikbal"³, which is a common informal conversation style among Maya communities in the Yucatán Peninsula. This method represents a form of gathering or research among elders in the Maya region and has been formalized as a standardized research method. The methodology includes:

- a). Interviews and field visits: This allowed for extensive conversations with indigenous organizations and their leaders to understand their daily experiences and their efforts to obtain legal registration for their organization.
- b). Use of relevant secondary information: This was highly beneficial as it allowed for the precise formulation of research and provided a deep understanding of the topics of interest. It also facilitated the transmission of indigenous knowledge to new generations.

³ Tsikbal is a Mayan concept associated with conversation across time and space and is considered a method for data collection. Tsikbal not only constructs new reflexivity but also explores the spaces of noise and fear, residues of colonization, through dialogue among interlocutors that reverberate the flow of words in spaces of mutual trust. Tsikbal, as a triadic historical and temporal process of memories/recollections/forgetting, challenges colonial discourses of knowledge production so that silence resonates in decolonizing spaces.

Additionally, the report from Mexico presents a series of structural situations that limit the registration of indigenous organizations as indigenous NGOs. The legal framework does not recognize these as "indigenous organizations" but rather as civil society organizations. Therefore, they must also register as such; however, this has serious implications from the indigenous perspective.

The Mexico case study identified the following steps to achieve legal status:

- Define why you want to establish an NGO.
- What are the motives, ideals, and dreams of that organization?
- Identify which problems they want to address: poverty, inequality, pollution.
- Define whom they want to help (women, elderly, among others).
- In which area will they work? Educational sector, cultural sector, community organization, human rights, among others.
- Define the name of your organization.
- Choose the right people for the positions of president, treasurer, and secretary to establish an organizational structure.
- Define the three internal organs: The board of directors; the assembly of members, and the supervisory board or audit committee.

The report recommends that to have the possibility of accessing federal public funds, at least one of the 2 activities of Civil Society must be included and be conditioned to register in the federal registry of civil society organizations:

- Cooperation for community development in urban or rural settings.
- Promotion and development of actions that strengthen social fabric and citizen security.

With these powers of attorney, the legal representative will have the authority to open a bank account and sign contracts on behalf of the organization. These powers of attorney will be outlined for the legal representatives in the organization's bylaws. Once the draft bylaws are prepared, the Promoter Commission must convene the constituent assembly, which serves as the foundational act of the organization. Attendees or members of the organization must provide copies of their INE personal identification, residential address, and birth certificate during this assembly

The constitutive deed must be drafted, respecting all the sections required. Submit a request on the Secretary of Economy's website, where the applicant must have an electronic signature.

- Three names for the organization must be provided, in order of preference.
- The resolution will only be presented to the person who requested it and/or to anyone authorized by them.
- This procedure has a validity period of ninety business days as a margin to formalize and register the constitutive act of the organization in the public property registry.

Next, you must register it in the Public Property Registry, where you must submit:

- Original and certified copy of the constitutive deed.
- Hand-filled application form.
- Official identification (INE).
- Payment of fees at the bank.

Next, you must complete the process of obtaining the RFC (Federal Taxpayer Registry⁴) for the organization, within 30 days after the signing of the constitutive deed. The notary must provide a constitutive deed with the original notary seal, including the legend "for tax purposes". Subsequently, you need to carry out the procedures with the Tax Administration Service (SAT)⁵ and obtain an electronic signature. This will allow the organization to share information and identify itself with this signature, thereby obtaining legal registration for the civil organization, comprised of individuals who self-identify as indigenous to the organization.

According to the Ministry of Finance and Public Credit, in the Official Gazette of Monday, September 13th, 2021, Annex 1-A of the Second Amendment to the Miscellaneous Tax Resolution for 2021, published on September 10th, 2021, presents a detailed and complex system for registering organizations such as unions, religious associations, trusts, agrarian or social legal entities. In section 309/CFF Application for registration in the RFC of indigenous or Afro-Mexican peoples and communities, the following information is provided: the description of the process, who, and when the process is submitted, the steps to follow at the Secretariat, the requirements to meet, and the conditions. (see reference in annex 2).

5. Challenges and **General Recommendations**

Despite notable differences in language, culture, livelihoods, and other aspects among indigenous peoples in Mexico and Kenya, the challenges encountered in the process of legal registration of indigenous organizations in Kenya and Mexico are similar. These include:

- a) High Costs:** Hiring legal advisors and agents, as well as registration fees, prove to be financially burdensome. It's worth mentioning that only Kenya provides indications of processing costs. Currently, financial resources to cover these costs must be obtained through grants. In Mexico, the current government has opened avenues to facilitate such funding.
- b) Limited Knowledge:** Community members lack familiarity with legal document development, leading to unnecessary expenses.
- c) Digital Platforms:** Accessing and navigating platforms for NGO registrations proves difficult for

⁴ The Federal Taxpayer Registry (Registro Federal de Contribuyentes) is a composite alphanumeric code that the government uses to identify individuals and legal entities engaged in any economic activity in Mexico.

⁵ The Tax Administration Service (Servicio de Administración Tributaria) is a Mexican governmental institution responsible for administering and overseeing taxes in the country. It ensures compliance with tax and customs obligations for both individuals and legal entities

individuals who do not have daily access to electronic formats and have not attained adequate education levels due to discrimination and exclusion from the national education system.

d) Limited Accessibility: In Kenya, the offices of the Board authorizing these processes are not easily accessible in many parts of the country. In Mexico, an organization must register with a notary public to establish itself and then with government agencies to obtain legal status.

e) Simplified Process for Community Organizations: For a community organization, simply presenting its assembly minutes is sufficient for it to be considered a legal entity⁶.

f) Insufficient and Unskilled Human Resources: There is a lack of dedicated, adequately trained personnel with sufficient time to fulfill the requirements of acquiring legal status. This is common in both Kenya and Mexico, as a solid, reliable, responsible, transparent organization requires personnel with technical, administrative, accounting, financial, and legal knowledge.

g) Lengthy and Bureaucratic Process: The registration process is tedious and filled with bureaucratic procedures. Reports indicate that there may be more facilitation in Mexico due to the application of Indigenous Peoples' rights. However, it remains a slow, time-consuming, and costly process.

h) Fatigue and Exhaustion: The time consumption and slow or lack of response to demands create institutional fatigue, although indigenous peoples persist, insist, and patiently await responses.

i) Discrimination and Racism: Furthermore, representatives of indigenous peoples face discrimination and even racism from officials of other ethnic groups, subjecting them to mistreatment and discrimination.

j) Community Concerns: Lack of clarity about the NGO concept and concerns about losing the identity of the organization as a traditional institution when becoming an NGO due to lingering colonialist schemes.

k) Expectations and Cooperation: In Kenya, this process raised high expectations in the community but also encountered hostility and lack of cooperation from some government agencies and individuals, as well as challenges in networking with international NGOs.

l) Insecure Financial Resource Base: Legal, financial, and technical support for transitioning to an independent legal entity must be supplemented with external resources.

m) Exploring Organizational Options: The struggle to become an NGO is not necessarily required; there is a range of organizational options to consider, such as association models, cooperatives, companies, unions, and others.

⁶ Entrevista con Matias Baltazar, del Instituto Nacional de los Pueblos Indígenas, de México.

6. Conclusions

- Legalization and official registration of organizations enhance the credibility and legitimacy of NGOs in the eyes of governments, donors, partners, and beneficiaries. Many funding agencies, both local and international, require locally-led community organizations to be legally registered to be eligible for grants and other forms of financial support.
- Legal registration enables the organization to acquire a distinct legal identity, allowing it to enter into contracts, own property, and participate in various national and international platforms.
- Legalization demonstrates a commitment to transparency, accountability, and compliance with legal requirements, which can help build trust and attract support to improve access to financing and resources to effectively implement their programs.
- The legalization process requires greater support and assistance for Pawanka's partners, both in terms of financial resources and capacity building in technical, administrative, accounting, and auditing areas.

7. Annexes

Annex 1 - Organizations Recognized by the Government of Kenya

According to the author of this report, the types of organizations recognized in Kenya are as follows:

Chartered Companies:

These are companies to which the government has granted a royal charter. They often have specific privileges and responsibilities.

Statutory Corporations:

Statutory corporations are established by an act of Parliament or other legislative bodies. They serve specific purposes and operate under legal provisions.

Registered Companies:

These are the most common types of companies. They are registered under the Companies Act and can be private or public. Registered companies have separate legal identities from their owners.

Non-Governmental Organizations (NGOs):

NGOs, soon to be referred to as Public Benefit Organizations (PBOs), play a crucial role in various sectors. They focus on social, environmental, or humanitarian causes.

Trusts:

Trusts are legal entities created to hold and manage assets for specific beneficiaries. They can be charitable or private trusts.

Societies:

Societies are associations formed for various purposes, such as cultural, educational, or recreational activities. They operate under the Societies Act.

Companies Limited by Guarantee:

These companies have no share capital. Instead, their members guarantee a specific amount in case the company faces financial difficulties.

Limited Liability Companies:

These companies limit the liability of their shareholders to the extent of their shareholding. They can be private or public.

Partnerships:

Partnerships involve two or more persons or entities coming together to carry out business activities. They can be general partnerships or limited liability partnerships.

Cooperatives:


Cooperatives are organizations owned by their members that operate for the mutual benefit of their members. They can be agricultural, consumer, or housing cooperatives.

Please note that each type of organization has its legal framework and unique requirements. If you are considering establishing an organization in Kenya, it is essential to understand the specific regulations that apply to your choice.

Annex 2 - Tax Procedures. Ministry of Finance and Public Credit of Mexico

It is recommended to review the Official Gazette dated September 13, 2021. Ministry of Finance and Public Credit, Annex 1 - A of the Second Resolution of Amendments to the Miscellaneous Tax Resolution for 2021, published on September 10, 2021. Tax procedures. Sections:

- 309/CFF Application for registration in the RFC of indigenous peoples and Afro-Mexican communities.
- 310/CFF Application for the generation of the e.signature certificate of indigenous peoples and Afro-Mexican communities.

A close-up photograph of an elderly woman on the left and a young child on the right. The woman has deeply wrinkled skin and is wearing a traditional patterned headscarf. The child has dark hair and is looking directly at the camera. The background is softly blurred, showing other people in a crowd.

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