



Compendium of Laws Governing Civil Society Organisations in Tanzania

Supported by





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Abbreviations

1. **ACHPR** African Charter on Human and Peoples' Rights
2. **ADV.** Advocate
3. **ANGOZA** Association of Non-Governmental organization of Zanzibar
4. **AU** African Union
5. **BRELA** Business Registrations and Licensing Authority
6. **Cap.** Chapter
7. **CBOs** Community Based Organizations
8. **CEDAW** Convention on the Elimination of All Forms of Discrimination against Women
9. **COSTECH** Act Commission of Science and Technology Act
10. **CRC** Convention on the Rights of the Child
11. **CSOs** Civil Society Organizations
12. **Dr.** Doctor
13. **ECOSOC** Economic and Social Council
14. **ELRA** Employment and Labour Relations Act
15. **FBOs** Faith Based Organizations
16. **FCS** Foundation for Civil Society
17. **FOCAC** Forum on China-Africa Cooperation
18. **GOs** Governmental Organizations
19. **HIV/AIDS** Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
20. **HRDs** Human Rights Defenders
21. **ICCPR** International Covenant on Civil and Political Rights
22. **ICERD** International Convention on the Elimination of All Forms of Racial Discrimination
23. **ICESCR** International Covenant on Economic Social and Cultural Rights
24. **ICCPR** International Covenant on Civil and Political Rights
25. **ICPPED** International Convention for the Protection of All Persons from Enforced Disappearance

26. **ICRMW** International Convention on the Protection of the Rights of All

		Migrant Workers and Members of Their Families
27.	ILO	International Labour Organization
28.	IMF	International Monetary Fund
29.	INGOs	Non-Governmental Organizations
30.	LA	Land Act
31.	MEMART	Memorandum and Articles of the association
32.	Mr.	Mister
33.	Mrs.	Missuss
34.	Ms.	Miss
35.	NaCoNGO	National Council of Non-Governmental Organizations
36.	NGOs	Non-Governmental Organizations
37.	NHRIs	National Human Rights Institutions
38.	NIMR	National Institute of Medical Research
39.	NSSF	National Social Security Fund
40.	OHCHR	Office of the United Nations High Commissioner for Human Rights
41.	PAYE	Pay As You Earn
42.	REPOA	Research on Poverty Alleviation
43.	R.E	Revised Version
44.	RITA	Registration of Insolvency and Trusteeship Agency
45.	TANGO	Tanzania Association of Non-Governmental Organizations
46.	TAWIRI	Tanzania Wildlife Research Institute
47.	THRDC	Tanzania Human Rights Defenders Coalition
48.	TLS	Tanzania Law Society
49.	TRA	Tanzania Revenue Authority
50.	TZS /TSHs/Tshs	Tanzanian Shillings
51.	UDHR	Universal Declaration of Human Rights
52.	UN	United Nations
53.	UPR	Universal Periodic Review
54.	USD/US \$	United States of America dollars
55.	VAT	Value Added Tax
56.	VLA	Village Land Act

List of Legal Instruments

The International Legal Framework for Civil Society Organisations

- (i) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- (ii) Convention on the Rights of the Child (CRC), 1989
- (iii) Convention Against Torture (CAT)
- (iv) ILO Convention on Freedom of Association (No. 87 of 1948)
- (v) International Covenant on Civil and Political Rights (ICCPR), 1966
- (vi) International Covenant on Economic Social and Cultural Rights (ICESCR), 1966
- (vii) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965
- (viii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- (ix) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)
- (x) Universal Declaration of Human Rights (UDHR) 1948
- (xi) United Nations Convention Against Corruption, 2004
- (xii) Vienna Convention on the Law of Treaties 1069

Legal framework for Registration, Operation and Regulation of CSOs in Tanzania

- (i) Legal Aid Act (2017)
- (ii) National Sports Council Act, Cap 49 [R.E 2002]
- (iii) Societies Act (2003)
- (iv) The Cooperative Societies Act (2013)
- (v) The Companies Act (2006)
- (vi) The Non-Governmental Organizations Act (2002)
- (vii) The Tanganyika Law Society Act Cap 307
- (viii) The Trade Union Act 1871; The Para-legal Act (2017)
- (ix) The Trustees Incorporation Act (RE: 2002)

Other Laws

- (i) Constitution of the United Republic of Tanzania (1977)
- (ii) Environmental Management Act, 2004
- (iii) The Courts (Land Disputes Settlements) Act (2002)
- (iv) The Forest Act (2002) and Written Laws (Miscellaneous Amendment) Act (No. 19 2004)
- (v) The Land Act (1999), Land (Amendment) Act (2004) and associated regulations
- (vi) The Land Acquisition Act (1967)
- (vii) The Land Use Planning Act (2007)
- (viii) The Mining Act (2010)
- (ix) The Tanzania Investment Act (1997)
- (x) The Village Land Act (1999) and the Village Land Regulations (2001)
- (xi) The Wildlife Conservation Act (2009)

Tax Legislations

- (i) Customs and Excise Act 1964 as Amended by the Taxation Laws Amendments
- (ii) Income Tax Act (RE: 2008)
- (iii) Finance Act, 2017
- (iv) Tanzania Revenue Authority Act (1996)
- (v) The Stamp Duty Act (RE: 2006)
- (vi) The Value Added Tax Act (2014)

Labour Laws & Workers Rights

- (i) HIV/AIDS Prevention and Control Act (2008)
- (ii) The Employment and Labour Relations Act (2004)- ELRA
- (iii) The Occupational Health and Safety Act (2003)
- (iv) The Workers' Compensation Act (RE: 2015)

Immigration Laws

- (i) The Immigration Act (1995)
- (ii) The Non-Citizens (Employment Regulations) Act, 2016

Criminal /Penal Laws

- (i) Anti-Trafficking in Persons Act, 2008
- (ii) Economic and Organised Crimes Control Act 1984 (Cap 200 R.E 2002)
- (iii) National Defence Act, (Cap. 192 R.E. 2002)

- (iv) Proceeds of Crime Act [R.E 2002]
- (v) Tanzania Penal Code, (Cap 16 R.E 2009)
- (vi) The Anti-Money Laundering Act (Cap 423 2012)
- (vii) The Drugs and Prevention of Illicit Traffic in Drugs Act, 1995
- (viii) The Police Force and Auxiliary Services Act (Cap 322 R.E)
- (ix) The Prevention and Combating of Corruption Act, No. 11 of 2007 (Cap 329)
- (x) The Prevention of Terrorism Act, 2002
- (xi) The Statistics Act (2015)
- (xii) The Tanzania Commission for Science and Technology Act, 1986 (COSTECH ACT)
- (xiii) The Tanzania Communications Regulatory Authority Act (2003)

The legal framework for Research and Publications

- i. Records and Archives Management Act, 2002
- ii. The Access to Information Act, 2015.
- iii. The Copyright and Neighbouring Rights Act, 1999
- iv. The Cybercrimes Act 2015
- v. The Media Services Act, 2015
- vi. The National Research and Development Policy 2010
- vii. The NIMR Parliamentary Act No. 23 of 1979

DISCLAIMER

1. This compendium covers general issues that in totality concern CSOs. The Compendium does not necessarily cover specific thematic areas addressed by CSOs in Tanzania.
2. The laws referred herein are not reproduced in whole. A reader is given the general principles, therefore it would be more useful for the reader to make reference to the actual legislation and read it as one with this compendium.
3. Legislations are not static, therefore the laws referred herein are subject to changes. The reader is encouraged to follow up any such amendments made from time to time while THRDC may update it accordingly.

Preface

The Tanzania Human Rights Defenders Coalition (THRDC) is honoured to coordinate the compilation of laws, policies and regulations governing CSOs in Tanzania in the form of a compendium. THRDC is the first and only Human Rights Defender organization which addresses rights of Human Rights Defenders (HRDs)/CSOs in specific and comprehensive ways. THRDC was established in 2012 specifically to address the rights of HRDs in Tanzania through advocacy, capacity building and protection of HRDs by providing legal aid and counselling.

Human Rights Defenders and the Civil Society sector have recently witnessed a bad trend in which their operational scope in the country has continued to shrink. There have been attempts to crack down Civil Society Organizations and creating environments not conducive for their work. One of the constraints is the fragmented and complicated legal and policy framework governing CSOs in the country. This makes it difficult for CSOs to comply as most of grass root CSOs' awareness is still low and there is not much awareness programs on the same.

Because of lack of awareness of the laws and regulations governing the sector, CSOs have found themselves in constant challenges. These challenges range from coordination, regulations (compliance issues), funding, and sustainability of the sector, harmonious working relationship, management and succession plans. Others are skewed accountability, reporting, lack of transparency and promotion of objectives contradicting government's policies rules and regulations.

Therefore, for the past five years, THRDC through its advocacy program has been working for the improvement of the legal and policy framework addressing HRDs as well as fostering solidarity among HRDs. The Coalition has conducted several programs on improvement of HRDs rights and widening of the civil society space. These programs have been conducted in the form of dialogues, meetings, trainings, round table discussions and sometimes engaging with the government in implementing issues affecting CSOs space.

The idea to have this compendium was suggested and endorsed on the 13th and 14th of October 2017 when Civil Society Organizations in Tanzania celebrated 30 years of operation. More than 70 Civil Society Organizations representatives from Tanzania gathered at the Mount Meru Hotel, in Arusha for a two-day CSOs Self Reflection Meeting regarding three decades of operation. During this meeting, CSOs directors, veteran CSOs directors, representatives from government, academicians and other stakeholders held a joint self-reflection session by setting aside time to quietly and honestly review the CSOs sector after 30 years of full operation.

During that meeting, various recommendations were made for the smooth operation of the sector. One of the recommendations was the need to compile a compendium of all laws, policies, regulations and rules governing the operations of the CSO sector in Tanzania. Consequently, THRDC in collaboration with the Foundation for Civil Society (FCS) engaged consultants for the development of this compendium which analyses and documents various laws governing CSOs in Tanzania.

Sources and Methodology used in developing this compendium included thorough desk review of national, regional and international laws relevant to CSOs, formal and informal consultations with lawyers, leaders of prominent CSOs in the country, state officials, visiting important libraries including the Attorney General Chambers library and soliciting of inputs, ideas and improvements through stakeholders meetings.

This Compendium therefore consolidates CSOs national laws, regulations, policies, rules and highlights on international standards and commitments relevant to civil society. It is expected that the Compendium will be a useful tool for raising CSOs awareness on various aspects of the Legal Framework through which CSOs are registered and the operation guidelines they are required to comply with thus creating a vibrant, stronger, unified, coordinated and sustainable CSOs sector.

General Introduction & Background Information

1.0 Introduction

This chapter presents key information about Civil Society Organizations in Tanzania. It defines the identity of CSOs, the meaning, types of CSOs and history of CSOs in Tanzania. This chapter also illustrates the essence and the reasons for development of this compendium.

1.1 Identity and Definition of CSOs

In the modern society, there are three common sectors. These are: Public Sector, which is the government and its branches; the Private sector, which includes businesses and corporations and a Civil Society or Civic Sector formed by groups working as not for profit organizations, in the interest of the citizens but operating outside of the government. The CSOs operate at many different levels, including the global, regional, national and local levels. Organizations and institutions that compose civil society sector include Non-Governmental Organizations, community groups, research institutions, cooperatives society, think tanks, advocacy groups, academic institutions, parts of the media and faith based institutions.

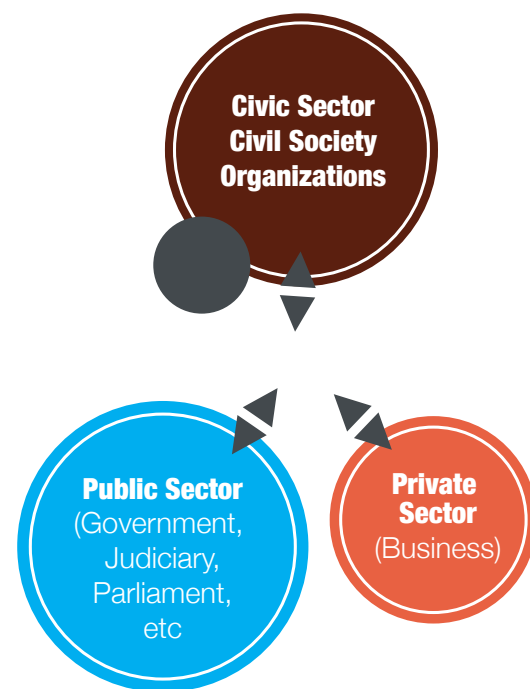


Figure 1: Three Common Sectors in a Modern Society

For more than three decades now, the number of Civil Society Organizations has been increasing dramatically all around the world. These range from Non-Governmental Organisations, community-based organisations, trade unions, community foundations, civil society platforms, coalitions, umbrella institutions, and network bodies. This tremendous increment has also been witnessed in Tanzania in particular. Just as their numbers have soared so has the evolution of their roles, responsibilities and position within the community, society or sector to which they belong.

The work of civil society spans a wide range of issues within the societies they are located in. Among these issues include but not limited to; service delivery as supplementary work to government agencies; advocacy and raising awareness about human rights violations, environment or trade concerns; and also developmental aid programmes and emergency responses to natural and human induced disasters. Recently, Civil Society Organisations (CSOs) have been acknowledged by the international community as development actors in their own right.¹

In this compendium, the term “civil society” is confined to its narrow sense of “not-for-profit” organizations, which therefore include the following types of organisations:

- (a) Membership based organisations, Trusts, NGOs and CBOs;
- (b) Voluntary and self-help groups, community based groups and societies;
- (c) Social movements and networks of organisations, professional associations, foundations and non-profit companies;
- (d) Faith based organisations;
- (e) Research institutes working in economic and policy analysis; and
- (f) Non-profit media organizations.

It excludes other organisations which are often included in the broad definition of the term civil society, including:

- (a) Trade unions;
- (b) Private sector associations;
- (c) Employers’ associations;
- (d) Co-operatives
- (e) Media; and
- (f) Academia.

For as much as these entities have a great role to play in civic sector, they do not form part of this compendium. This compendium deals mainly with NGOs, FBOs, Associations, Trusts, CBOs and professional associations.

1. OECD, (2008), “The Accra Agenda for Action”, Accessed at <http://www.oecd.org/dac/effectiveness/34428351.pdf>.

Figure 2: CSOs Family Tree



1.2 Evolution of CSOs in Tanzania

For the case of Tanzania, the historical development of Civil Societies reflects the changing social, economic and political environment that has taken place from the colonial period to the present day.² It is however important to note that during the colonial period the emergence and formation of the civil society/NGOs was influenced by an attempt by the colonial masters to engineer significant changes in the economic roles of their colonies while exerting control over social and political processes in the colonies.³

Civil Society Organizations (CSOs) have since the colonial period played a major role in socio-economic development in Tanzania. This role has increased in the post-independence period, especially from the 1980s -1990s following the demonstrated failure of the state all over the Africa continent, as a credible provider of basic needs and services to the poor both in the rural and urban areas (Oyugi, 2004). Since the adoption of structural adjustment programmes by the Tanzanian government in the 1980s and early 1990s, the role for civil society in development and service delivery has increased dramatically, encouraging explosive growth in the non-government sector ⁴. The insights gained from these studies suggest that the civic sector is an important partner in the development process. This view is also supported by Lange et al (2000), who argued that social scientists commonly see contemporary societies as consisting of three sectors: the governmental sector, the private sector and the civil sector. In this regard, the civil sector is an important element in the governance domain.

After independence, control over CSOs/NGOs continued and when the country adopted "One Party" political system, the previously autonomous civil society organized around labour and peasantry (Cooperatives) was gradually integrated into the mainstream of the state machinery (as re-organized affiliates of the Political Party). During that time expansion of free civil society organization was restricted, for instance, between 1961 and the late 1970s only 7 NGOs were formed. The number rose to eighteen towards the end of the 1980s.⁵

2. Kiondo, A. & Mtatifikolo, F (1999). Developing and Sustaining NGOs in Tanzania: Challenges and Opportunities in the New Millennium. Dar es Salaam: Political Science and Economics Department, University of Dar es Salaam.

3. Ibid.

4. REPOA (2007). "Tanzanian Non-Governmental Organisations-Their Perceptions of their Relationships with the Government of Tanzania and Donors and their Role in Poverty Reduction and Development", Special Paper 07.21: Mkuki Na Nyota Publishers, Dar es Salaam, at pg. 1.

5. Ibid

From the mid-1980s it had become evident that the role of the state as the sole (or even the primary) service provider and controller of all social and economic activities was disintegrating, as a result of globalization. This was evident when the government of Tanzania signed agreements with the World Bank and the International Monetary Fund (IMF) to adopt structural adjustment programs, whose conditionalities, inter alia, required the government to reduce its expenditure on social services.⁶ It is these World Bank and IMF conditionalities that saw the expansion of the role of Civil Society Organizations (CSOs) and NGOs in the development and service delivery. The number of registered NGOs in Tanzania shot up.⁷

From 1990's NGOs became more active in filling gaps as the government retreated from its front-line service role due to severe budgetary restrictions. As people realized the willingness of donors to give direct support to NGOs and Community-Based Organizations (CBOs), the number of organizations exploded.⁸ Thus, while the decade prior to liberalization (1971 – 80) saw the formation of 18 NGOs (registered with TANGO), the decade of initial liberalization efforts (1980 – 90) saw the formation of 41 new civil society organizations. By 1992 there were about 100 District Development Trusts and other standard NGOs and Civil Society Organizations, by 1999 were about 9000.⁹

As a result of rapid development and expansion of NGOs sector in 1990s, the NGOs sector faced several challenges such as lack of information on who should register, inadequate information of what is an NGO and to some extent, cumbersome process of registration and existence of Organizations registered under other laws but operating as NGOs. There was no proper NGOs coordination and self-regulation mechanism.

While their roles and functions have been evolving, CSOs have also come under increased scrutiny from the government, the private sector, the general public and civil society itself. Since CSOs often propound that they speak on behalf of minority voices, they regularly demand greater accountability from other sectors and manage increasing volumes of public funds. CSOs are therefore required to improve their practices internally, amongst themselves and in their relations with other stakeholders.

There have been repeated calls for higher professional standards within the civil society sector, greater information disclosure, increased financial transparency and greater cooperation between CSOs themselves. In recent years, following the global financial crisis that precipitated declining resources from the Donor community and new restrictions on civil society space, the focus on value for money pushes CSOs even more to demonstrate their good use of tax payers' money while managing to be more effective, closer to their constituencies and beneficiaries, and constantly prove their relevance.¹⁰

6. Ibid

7. Ibid

8. Ibid

9. Ibid

10. CIVICUS, (2013): State of Civil Society Report (2013): Creating an Enabling Environment, p.300 and CIVICUS, (2013): Enabling Environment Index report, p. 32.

In reaction, CSOs have also been working for decades on developing their own initiatives to address these demands, as they recognized the importance of finding effective ways of regulating and balancing their rights with their responsibilities. As a result, the three-part concept of legitimacy, transparency and accountability emerged.

1.2.1 Legitimacy of CSOs

The legitimacy of a Civil Society Organisation can be defined as the perception by other stakeholders of a CSO's actions as being "justifiable and appropriate."¹¹ Legitimacy needs to be distinguished from 'representativeness', which is an organisation can be deemed legitimate enough to speak about an issue without necessarily being elected or appointed as a representative. Legitimacy is mainly derived from a CSO's compliance with the laws of the land in terms of registration or incorporation and living up to its embedded ideals and objectives. Transparency refers to the level of openness and the disclosure and dissemination of information concerning a CSO's values, processes and procedures.¹²

1.2.2 Accountability of CSOs

Accountability means the CSO's willingness and its ability to answer and take responsibility for its actions, activities and messages. It also indicates the justification for each of the CSO's activities and communications to all stakeholders. Four levels of CSO accountability have been defined, each one is based on the different stakeholders to whom a CSO must be accountable: upward to donors and regulators; downward to beneficiaries; outward to peers, members and partners; and inward accountability to staff, board and volunteers.¹³

1.2.3 Transparency of CSOs

This means that when decisions are made, they are made in a way that those involved observe the rule of law and the regulations that are put in place to regulate such processes. In addition, those who are to be affected by decisions need to be kept fully informed. Furthermore, such information on decision making process needs to be easy to be understood to all parties concerned.

1.3 Standards of CSOs

Standards are specific norms or models which serve as guidelines to attain a set of principles and a means to measure how well they are being accomplished.¹⁴ They can be considered as the actual actions which need to be undertaken in order to fulfil the principles of accountability and transparency. Standards are very often introduced through a breakdown of key dimensions that need to be addressed. Typically standards will address three main domains: the CSOs' financial practices, its programmatic work and its governance.¹⁵

11. David L. Brown, Jagadananda, (2007) "Civil Society Legitimacy and Accountability: Issues and Challenges", Scoping Paper, Hauser Center and CIVICUS, p. 43.

12. Naidoo, K (2004) "The End of Blind Faith? Civil Society and the Challenge of Accountability, Legitimacy and Transparency", Accountability Forum 2, p.14-25; CIVICUS (2010). Turning Principles into Practice – A guide to Legitimacy, Transparency and Accountability, p. 44.

13. Ibid.

14. CIVICUS, (2014): Accountability for Civil Society by Civil Society: A Guide to Self-Regulation Initiatives

15. Ibid.

1.3.1 Financial standards

Financial standards will seek to increase the level of transparency on how funds are managed and used by CSOs. Basic standards may include:

- having a bank account	- having proper financial controls in place
- annual financial reporting	- using proper accounting standards
- regular audits	- having a budget system in place.

1.3.2 Programmatic standards

Programmatic standards will address how programmes are planned and implemented according to the guiding principles. Basic standards may include:

- having a programmatic plan	- applying the organization's own principles in its day to-day work (such as respecting the environment, gender equity and fulfilling human rights obligations).
- documenting the organization's work	
- having monitoring and evaluation systems	
- Including different stakeholders (particularly beneficiaries) in the development and implementation of the programmatic work	

1.3.3 Governance standards

Governance standards will regulate how organizations are run in order to meet the established principles. Basic standards may include:

- being legally registered	- having a board
- having a constitution	- having responsible policies for governing how board members are selected
- publication of the organization's vision, mission and values	- Having systems to avoid conflicts of interest
- publication of the organization's address and contact information	- Responsible recruitment policies for both staff and volunteers - ensuring there are annual reports.

1.4 Essence of the Compendium

Civil Society Organisations in Tanzania celebrated 30 years of operation in the year 2017. On 13th and 14th of October 2017, more than 70 civil society organisations gathered at the Mount Meru Hotel in Arusha for a two-day CSOs Self Reflection Meeting after 30 years of operation. During this meeting, representatives from government, academicians and other stakeholders had a joint self-reflection meeting. During the meeting, various recommendations were made for the smooth operation of the sector. One of the recommendations was the need to compile a compendium of all laws, policies, regulations and rules that govern the operations of the CSO sector in Tanzania. Consequently, the Tanzania Human Rights Defenders Coalition (THRDC) in collaboration with the Foundation for Civil Society (FCS) engaged consultants for the development of this compendium which analyses and documents the laws governing CSOs in Tanzania.

The CSOs constituency in Tanzania is not yet well defined and there is yet to be an up to date list of CSOs in Tanzania. Organizations can be registered under various bodies of the Government of Tanzania. Similarly, laws, regulations and policies governing establishment/ registration and operation of CSOs in the country are diverse and at times it may be uncertain as to which particular law, regulation or policy is applicable in a given situation. Thus this compendium provides for the particular laws, regulations and policies that shade some light on freedoms and other fundamentals guidelines in the CSOs and HRDs' registrations and operations.

1.5 Objectives of the Compendium

This compendium is therefore the first attempt to consolidate CSOs national laws, regulations, policies, rules and highlights on international standards and commitments relevant to civil society. It is a work in progress, for the main idea is; developing a comprehensive compilation of all laws, policies, regulations and rules that govern the operations of the CSO sector in Tanzania, identifying challenges faced by the sector and propose necessary legal reforms. The current compendium, which is considered as volume one, is limited to identification, collection and analysis of the Laws, Policies, Regulations and Rules governing the CSO Sector in Tanzania.

It is expected that the second volume will focus on the identification and discussion of the challenges facing the CSOs in Tanzania and propose the necessary legal reforms. From the above mentioned interventions, engagements and undertakings, it has become clear that the CSOs constituency needs more clarity and guidance around a number of issues relating to the establishment and operations of CSOs in Tanzania as addressed in this compendium.

To achieve this, the compendium in its current form addresses the following issues, among others: -

- (a) General Introduction and Background information
- (b) International, Regional and Sub regional legal framework relevant to CSOs.
- (c) Legal and Policy framework for the Registration, Operation and Regulation of CSOs in Tanzania including;
 - i) Provisions of the NGOs Act
 - ii) Provisions of the Companies Act
 - iii) Provisions of the Trustees Incorporation Act
 - iv) Provisions of the Societies Act
- (d) Laws governing information research and publication in Tanzania
- (e) Criminal/Penal Laws and CSOs in Tanzania
- (f) Selected Economic and Administrative Legislation Applicable to CSOs;
 - i) Land and Investment Laws related to CSOs in Tanzania
 - ii) Tax Laws and CSOs in Tanzania
 - iii) Labour related legislations and CSOs in Tanzania
 - iv) Immigration Legislations and CSOs in Tanzania
- (g) Legal and Regulatory Framework Governing Other Civil Society Organisations
 - i. Tanganyika Law Society (TLS)
 - ii. Legal Aid Providers
 - iii. Trade Unions
- (h) References.

In a nutshell this compendium aims to serve as a comprehensive guide for civil society actors and stakeholders in Tanzania. It provides for a comprehensive guide on the laws, policies, regulations and rules that govern the registration and operations of CSOs sector in Tanzania.

Chapter 02

The International & Regional Legal Framework Governing Civil Society Organisations in Tanzania

2.0 Introduction

Engagement with United Nations, Regional and Sub-regional human rights mechanisms and treaty bodies is a powerful tool for promoting human rights both at national and international levels. However, it is important to carefully consider if and how to engage in such bodies so as to ensure that CSOs regardless of their meagre resources, are still capable of accessing, importing and domesticating international human rights standards and principles in order to generate as bigger impact and domestic change as possible. Therefore, CSOs must learn how to strategically engage a particular treaty body on a right issue, at the right time and in the right way. The number of CSOs engaging with these international mechanisms in Tanzania is extremely low. Majority of CSOs are not conversant on how and when to access such extraterritorial mechanisms.

This chapter therefore, seeks to provide members of CSOs in Tanzania some key information on available regional and international mechanisms relevant to CSOs. The chapter briefly outlines the different types of mechanisms that are available in the UN and regional system and how they may be relevant to CSOs. This section accordingly collates and consolidates various commitments made by national governments-both regionally and at the UN level as a way of safeguarding space of civil society. It is intended to be a reference point for civil society organisations and human rights defenders in their efforts to realize such rights, commitments and watch against infringements.

The international and regional legal frameworks governing CSOs operations both at a regional and international levels are protected by a wide range of international and regional agreements, conventions, charters and other legal instruments. International agreements are commonly called treaties in the context of international law. Depending on the nature and purpose of a treaty, it can also be referred to as a covenant, convention, charter, accord, protocol or agreement. A treaty is generally a legally binding instrument meaning that the implementation

of the obligations undertaken by its state parties can be enforced by international law.¹⁶ Nevertheless, this engagement must have the express consent of the parties to the treaty. A state can become a party to a treaty by ratification, accession or succession.

Ratification is the formal consent of the state to be bound to the obligations expressed in the legal instrument. The effect of accession is similar to ratification, the difference being in the process (countries that have not signed a treaty prior to its coming into force, accede to a treaty rather than ratify it). A state may also become a party to a treaty by succession, when there is a specific provision in the legal instrument or by a declaration. States can also make reservations to a treaty. This means that the state which ratifies the treaty does not agree to be bound by specific provisions in the legal instrument. This can be done only if the reservations do not defeat the purpose or the objectives of the treaty.

Core civil society freedoms of expression, association and assembly are also found in other international instruments that are not inherently legally binding, such as international declarations, proclamations, standard rules, guidelines, recommendations and principles. Nevertheless, states are expected to adhere to them as a moral obligation to the international community and to their own populations.

2.1 International Legal Framework

For the purposes of this compendium, international legal framework refers to all UN legal instruments relevant or governing CSOs operations at international level. This framework includes international instruments that guarantee the rights of CSOs. This section will outline both binding and non-binding UN legal instruments and provisions relevant to CSOs.

2.1.1 The United Nations Charter of 1945

The United Nations Charter of 1945 is the UN founding documents that guides all the undertakings of the UN activities and affairs of UN member states. There is only one provision of the UN Charter which talks of CSOs participation in UN activities and meetings. This is Article 71 of the Charter, which reads;

“The Economic and Social Council may make suitable arrangements for consulting with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organisations after consultation with the member of the United Nations concerned.”¹⁷

Today, because of this provision, thousands of Civil Society Organizations (CSOs) participate in the major UN conferences and participate in many other UN activities - increasingly as active participants, not just observers. This UN legal instrument has laid a good foundation for the current space and CSOs participation in the UN mechanisms.¹⁸ Therefore, the UN Charter was an entry point for more CSOs engagement with UN activities from 1960s up to date.

16. See Article 2 Vienna Convention on the Law of Treaties 1969 - Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. – ratified by the United Republic of Tanzania on 12 April 1976

17. United Nations Charter 1945, Article 71.

18. Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16.

Until recently, the United Nations has been the only inter-governmental organization to enshrine NGO relations in its founding charter.¹⁹ The Department of Public Information was also charged with regard to NGOs as amongst its clients since its creation in 1946 (General Assembly Resolution 13 (I) of 1946) and has an NGO Section for this purpose.²⁰

The space and the roles of CSOs at the UN fora kept on expanding yearly. For instance, from 1960 up to 1980s, the number of NGOs increased significantly in various UN meetings and forums. This increment went together with expansions of the roles of CSOs in those forums from observers only to important members with specific roles to play such as report presentations, panel discussions and regular briefings. This gradual role-expansion led Secretary General Boutros Boutros-Ghali to say (in September 1994) that NGOs:²¹

“are a basic form of popular participation in the present-day world. Their participation in international organizations is, in a way, a guarantee of [their] political legitimacy”;

He also observed that the UN is no longer a forum for sovereign states alone and that NGOs are now considered full participants in international life.

The table below indicates the development and participation of CSOs in various UN Conferences and forums from 1960s to 2000s.

Table 1. CSOs Participation (numbers) in Major UN Conferences

Year	Hosted at	Conference Issue	New NGOs accredited	Parallel NGO Forum Participants
1968	Tehran	Human Rights	57	None
1972	Stockholm	Human Environment	>300	Not known
1975	Mexico City	International Women’s Year	114	6000
1985	Nairobi	End of Women’s Decade	163	13,500
1992	Rio de Janeiro	Environment & Development	1378	18,000
1993	Vienna	Human Rights	841	c.a. 1000
1994	Cairo	Population & Development	934	-

19. Ibid.

20. Accreditation to “consultative status” with ECOSOC and can be admitted into one of three categories: General Status (large international NGOs whose interests extend to most of ECOSOC’s agenda); Special Status (those with “special competence in a few of the fields of activity of the Council”) and Roster NGOs (those primarily concerned with one or more specific issues who can be consulted on an ad hoc basis).

21. On 25th July of 1996, ECOSOC adopted Resolution 1996/31 implementing Article 71.

1995	Copenhagen	Social Development	1138	c.a. 30,000
1995	Beijing	4 th World Conf. On Women	2600	300,000
2001	Durban	Racism	1290	c.a. 15,000
2002	Monterrey	Financing for Development	107	-
2002	Johannesburg	Sustainable Development	737	35,000

Sources: Clark et al 1998; UN Secretariat, 25 May 2001; Foster 2002

As the global authority on human rights, the Office of the United Nations High Commissioner for Human Rights (OHCHR) is responsible for leading the United Nations human rights programme and for promoting and protecting all human rights established under the Charter of the United Nations and international human rights law. Its vision is of a world in which the human rights of all people are fully respected and enjoyed. OHCHR strives to achieve the protection of all human rights for all people, to empower people to realize their rights and to assist those responsible for upholding such rights in ensuring that they are implemented.²² OHCHR is head-quartered at Palais Wilson in Geneva, Switzerland, and has an office in the United Nations headquarters in New York. Comprising of more than 900 staff members, over half of whom work in the field, its presences include country teams and offices, regional offices, human rights advisers, and human rights components in the United Nations peace missions.

OHCHR is part of the Secretariat of the United Nations and is led by the High Commissioner for Human Rights, a position created in 1993. It collaborates with an ever wider range of actors, including Governments, National Human Rights Institutions (NHRIs), Non-Governmental Organizations (NGOs) and other civil society actors.²³ As the United Nations principal human rights official, the High Commissioner acts as a moral authority and a voice for victims. The High Commissioner guides the Office's mission and values, identifies its priorities and drives its activities. The High Commissioner makes public statements and appeals on human rights situations and crises; engages in dialogue with CSOs and others.

22. UN (2008) Working with United Nations Human Rights Programme. A Handbook for Civil Society. In pg 1.

23. See General Assembly resolution 48/141 of 20 December 1993. The work of OHCHR is also guided by the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, including the 1993 Vienna Declaration and Programme of Action and the 2005 World Summit Outcome Document (General Assembly resolution 60/1 of 16 September 2005).

2.1.2 Universal Declaration on Human Rights (UDHR) 1948

The UDHR was adopted by the United Nations General Assembly in 1948 after the end of the Second World War as a common standard of achievement for all peoples and all nations.²⁴ Apart from core civil society rights of expression, association and assembly, the UDHR assures fundamental human rights to all people - civil and political as well as economic, social and cultural rights. The UDHR is the source of the development of various human rights treaties and instruments. Although conceived as a Declaration as opposed to a treaty, today, the UDHR is widely regarded as part of international customary law.²⁵

The adoption of the Human Rights Declaration represented the first major impact of NGOs on the newly created UN. The NGOs involved were primarily 'consultants' included in the US delegation and their involvement shaped the later 'consultative' arrangements that ECOSOC adopted for civil society engagement (Korey, 1998).²⁶

The UN human rights declaration (UDHR) is basically a document that laid the foundations for human rights including those related to formation and operation of CSOs. The declaration outlines freedoms of association and assembly which UN member states must adhere and respect. Article 20 points out that, "Everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association."

2.1.3 CSOs and UN Human Rights Mechanisms

The grounds as set in Article 71 of the UN Charter and the ECOSOC Resolution 1996/31 have endorsed numerous NGOs to successfully enter into the key platform for human rights protection and development of relevant legal standards. Today thousands of Non-Governmental Organizations (NGOs) and Civil Society Organizations (CSOs) participate vitally in major UN conferences and in the UN system, as active participants, and not just as observers. Civil society has become both a source of knowledge and expertise and a potential partner in the decision-making process.

One of the UN mechanisms mostly engaged by CSOs is human rights mechanism. UN human rights mechanisms are broadly divided into two groups: charter-based (political) and treaty-based (expert) bodies. In the political bodies, the main actors are the member States of the UN; while in the expert bodies, actors are private individuals who are expected to be independent of any government, and experts in the issues addressed by the respective groups. For many years, thousands of CSOs have been engaging with these two interconnected groups in different capacities as illustrated by figure 4 below.²⁷

24. UN General Assembly Resolution 217 A (III) of 10 December 1948 Text: UN Document A/810, p. 71 (1948).

25. See Office of the High Commissioner for Human Rights, United Nations Staff College Project, and Human Rights: A basic handbook for UN staff, United Nations (2000), p.11. Available at <http://www.unhchr.ch/html/menu6/handbook.pdf>.

26. Un System and Civil Society - An Inventory And Analysis Of Practices Background Paper For The Secretary-General's Panel Of Eminent Persons On United Nations Relations With Civil Society (May 2003)

27. Engaging with UN Human Rights Mechanisms: An Introduction 2013 © International Rehabilitation Council for Torture Victims

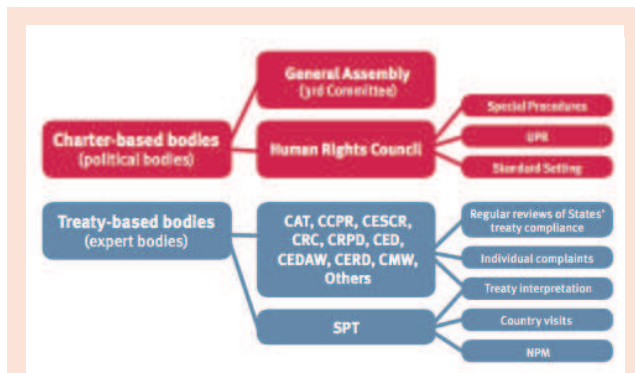


Figure 3 - The UN Human Rights System

It is undisputed that non-governmental organizations (NGOs) play a very important role in the international system by monitoring State activities, performing fieldwork, fiercely advocating their policies and presenting their findings. While helping to deliver reliable information and form standards and rules of human rights protection, NGOs are considered the prime engine of the human rights movement.²⁸ Their influence is significant and desirable, as expressed by many governmental delegations as well as international organizations, especially the United Nations, and treaty bodies.

Human rights Non-Governmental Organizations are freely created entities for the sole purpose of helping the governments and governmental entities at the international and national level in the fight against human rights violations and assisting groups of people affected by those violations.²⁹ The former UN High Commissioner for Human Rights had this to say:

“Civil society actors’ contribution has also enriched the work of the independent experts that belong to other long-established human rights mechanisms, such as the human rights treaty bodies and special procedures. Crucially, their weight and knowledge have also been brought to bear in the operations of the Human Rights Council, the new intergovernmental body that, in June 2006, replaced the Commission on Human Rights. Human Rights Defenders, non-governmental organizations and all other civil society stakeholders carry out their human rights work in a variety of ways: they share information; advocate and scrutinize implementation of human rights; report violations, assist victims of abuses; and campaign for the development of new human rights standards. They do so by taking the pulse of their communities and constituencies. They give voice to the powerless in venues that may, otherwise, be out of the victims’ reach, including international human rights forums and mechanisms. Clearly, there is a need on the part of civil society actors to deeply understand and master the modus operandi of national, regional and international human rights institutions.” **By Navanethem Pillay-United Nations High Commissioner for Human Rights**

This sub-chapter will therefore guide CSOs on how they can access the main two levels of human rights mechanisms at UN level. CSOs at the end of the day, will be informed on how and when to use both mechanisms. CSOs have human rights obligations under both UN treaty bodies and under UN charter based mechanisms.

28. S. Hobe, Human Rights, Role of Non-governmental organizations, Max Planck Encyclopedia of Public International Law (Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2012) 1, accessible at: (University of Pennsylvania Press Philadelphia 2001) 151.

29. Ibid. See also infra, Reports of the Human Rights Council and Commission on the Status of Women, and documents referenced in Appendix I.

(a) CSOs Obligations under UN Treaty Mechanism

The CSOs family has several obligations created by various international treaties. This section therefore presents those key roles established by treaties as part of ensuring alternatives voices and reporting. The “human rights treaty bodies” are various committees of independent experts that monitor the implementation of the United Nations human rights treaties by States parties. They do this by reviewing reports submitted periodically by States parties and CSOs on steps taken to implement human rights treaties obligations. Most human rights treaty bodies are competent to receive and consider individual complaints, while several do conduct inquiries.³⁰

i) How CSOs can engage with UN Treaty Bodies?

The UN treaty body system plays a pivotal role in promoting and protecting human rights. Most committees, in carrying out their activities, interact with civil society on a regular basis for information, contacts, and thematic expertise. Civil society can engage with treaty bodies as follows;³¹

- Promote ratification of a treaty;
- Participate in the treaty body reporting process:
- Monitor a State Party’s compliance with its treaty obligations;
- Submit shadow (or “parallel”) reports as part of the State reporting process;
- Participate in treaty body sessions;
- Follow up on a treaty body’s concluding observations for a State Party;
- Participate in General Discussion Days;
- Submit an individual complaint/communication; and
- Provide information to prompt a confidential inquiry into grave or systematic violations of human rights;
- Depending on the rules of each human rights treaty body, CSOs may also participate in human rights treaty body sessions as observers or through oral submissions;
- Providing information to generate confidential inquiries (Committee against Torture and Committee on the Elimination of Discrimination against Women);
- Providing information for early warning and urgent procedures (Committee on the Elimination of Racial Discrimination); and
- Making submissions to the annual inter-committee of the human rights treaty bodies.

The reporting process presents an important opportunity for a State Party to evaluate what has been achieved and what more needs to be done to advance human rights in a particular country. The reporting process consists of multiple stages, many of which provide opportunities for civil society engagement.

30. UN(2008),page 31

31. Ibid

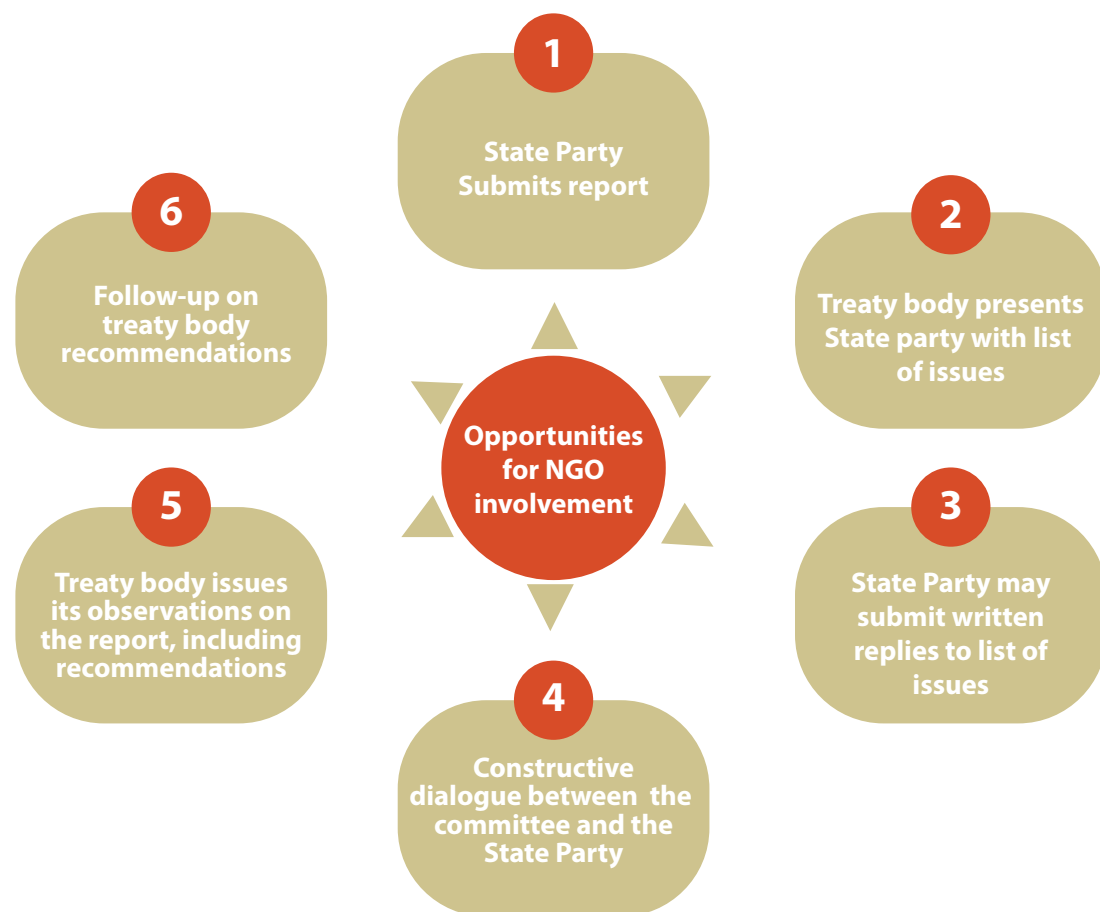
Figure 2: Opportunities for civil society to participate in the treaty body reporting cycle

Reporting Stage	What to do
Before the State Party Submits its Report	Participate in consultations with the State party as it prepares its report.
	Raise public awareness about the treaty and the reporting process.
	Lobby the State party to meet reporting deadlines.
Before the Treaty Body Meets to Adopt its List of Issues	Prepare a List of Issues in the report, identifying key human rights issues that warrant additional attention during the reporting process.
	Write to the Treaty Body to express interest in participating in the Pre-Session Working Group (If permitted).
During the Meeting of the Pre-Session Working Group	Make an oral intervention during the Pre-Session Working Group (if permitted).
Before the Treaty Body's Examination of the State Party	Research, write and submit a shadow report on a human rights issue in the State Party.
During the Treaty Body's Examination of the State Party	Attend the session in person (if the group has ECOSOC status) or via web-cast.
	Make an oral intervention during the examination.
	Participate in informal briefings with committee members.
	Circulate "one-pagers", in person or via email, highlighting key concerns identified in the shadow report.
After the Treaty Body Publishes its Concluding Observations	Conduct awareness-raising activities.
	Lobby for legislation and other reforms to implement the treaty body's recommendations and engage in consultation with the government to participate in the implementation of recommendations.
	Monitor and document the implementation of the treaty body's recommendations.
	Submit interim shadow report assessing implementation of priority recommendations.
	Inform treaty body immediately if the State Party engages in reprisals for participation in the review process.

ii) How CSOs can Engage with States in Reporting Process?

The State should also consult with civil society as these organizations often have valuable comments to make on the success of implementation measures taken at the ground level. However, in many countries, the participation of civil society in the drafting process is a challenge and their views may not be fully taken into account in the State Report. In this context, CSOs should be prepared to participate in the reporting process on their own. If the Committee is to carry out a complete and effective review, it therefore needs information which fills these gaps in the State Report. CSOs are often able to provide this information, as well as presenting a view from outside the government and administrative systems.³²

CSOs have a major role to play throughout the reporting process of the Human Rights Committee. In order to do this, it is crucial that they get organized and be ready to participate in all the stages of the process.³³ The President invites CSOs to deliver brief statements and afterwards time is allocated for Committee members to ask questions and for CSOs to reply.³⁴



32. Centre for Civil and Political Rights (2010) UN Human Rights Committee. Participation in the Reporting Process, Guidelines for Non-Governmental Organisations (NGOs)

33. See the CCPR website for deadlines: www.cccprcentre.org/en/next-sessions

34. "A Guide for NGO Reporting to the Committee of the Rights of the Child (CRC)"

Therefore, as illustrated above, CSOs have obligations to participate in various UN treaty bodies' mechanisms and present shadow reports. The following is the list of the Current UN Treaty Bodies that CSOs can participate in their reporting mechanisms:

b) The List of UN-Treaty Bodies:

- (i) The UN Human Rights Committee: Oversees implementation of the International Covenant on Civil and Political Rights (ICCPR) and may receive individual communications relating to States parties to the First Optional Protocol to the ICCPR.
- (ii) The Committee on Economic, Social and Cultural Rights (CESCR): Monitors compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and may receive individual complaints relating to States parties to the Optional Protocol to the ICESCR (that entered into force in 2013).
- (iii) The Committee on the Elimination of Racial Discrimination (CERD): This Committee oversees implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and may receive individual complaints against States parties that have made the relevant declaration under Article 14 of the ICERD.
- (iv) The Committee on the Elimination of Discrimination against Women (CEDAW Committee): Monitors compliance with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and may receive individual communications relating to States parties to the Optional Protocol to CEDAW.
- (v) The Committee Against Torture (CAT): Oversees implementation of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment (Convention against Torture) and may accept individual complaints against States parties that have made the relevant declaration under Article 22 of the CAT.
- (vi) The Subcommittee on Prevention of Torture (SPT): It was established pursuant to the Optional Protocol to the Convention against Torture (OP-CAT), to visit places of detention and advise States and National Preventive Mechanisms on best practices to prevent torture and ill-treatment.
- (vii) The Committee on the Rights of the Child (CRC): Monitors compliance with the Convention on the Rights of the Child and its two Protocols. It began to accept individual complaints against States parties that have ratified the Third Optional Protocol on Communications Procedure on April 2014.
- (viii) The Committee on Migrant Workers (CMW): Oversees implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW). An individual complaints mechanism is pending and will begin operating when 10 States parties have made the relevant declaration pursuant to Article 77 of the CMW.

- (ix) The Committee on the Rights of Persons with Disabilities (CRPD): It is a committee responsible for monitoring compliance with the International Convention on the Rights of Persons with Disabilities (ICRPD) and may receive individual complaints against States parties to the Optional Protocol to the Convention.
- (x) The Committee on Enforced Disappearances (CED): Monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and may consider individual complaints against States parties that have recognized the Committee's competence pursuant to Article 31 of the Convention.

(c) CSOs Obligations Under UN Charter Based Mechanisms

The UN human rights mechanisms that derive their power from the UN Charter (the treaty that created the United Nations) include the Human Rights Council and Special Procedures. "Charter-based" human rights bodies have the authority to review human rights practices of all members of the United Nations, regardless of whether a particular state has ratified a particular human rights treaty or not. Charter based mechanisms are established to address human rights issues provided in general within the Universal Declaration of Human Rights 1948. They include;

- i) Human Rights Council
The Human Rights Council is the principal United Nations intergovernmental body responsible for human rights. Established by General Assembly resolution 60/251, it replaced and assumed most mandates, mechanisms, functions and responsibilities previously entrusted to the Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights (OHCHR) is the secretariat for the Human Rights Council, as it was for the Commission on Human Rights.

The Human Rights Council is an intergovernmental body of 47 member States based in Geneva. It meets for at least 10 weeks a year spread over no fewer than three sessions, and can also hold special sessions. While the Commission was a subsidiary organ of the Economic and Social Council (ECOSOC), the Human Rights Council is a subsidiary organ of the General Assembly. Its role includes addressing violations of human rights, including gross and systematic violations, and the promotion of effective coordination and the main-streaming of human rights within the United Nations system.³⁵ On 18th June, 2007, one year after its first meeting, the Human Rights Council agreed on a package that established the procedures.

- ii) How to access and work with the Human Rights Council
In resolution 60/251 the General Assembly acknowledged the important role played by Non-Governmental Organizations (NGOs) and other civil society actors nationally, regionally and internationally in the promotion and protection of human rights.³⁶ The participation of observers, including NGOs, in the sessions

35. UN(2008) Page 75.

36. Ibid.

of the Council is based on arrangements and practices observed by the former Commission. These practices and arrangements continue to develop and evolve, with the Council required to ensure “the most effective contribution” of observers.

While consultative status with ECOSOC is required for NGOs to be accredited as observers to the Human Rights Council’s sessions, NGOs without such status and other civil society actors can contribute to the overall work of the Human Rights Council and its mechanisms in a number of ways. Furthermore, its meetings are broadcast live on an OHCHR web-cast, and a broad range of documentation and information is available on the Council’s homepage and Extra-net. Session-specific information is normally posted on the homepage two weeks before each regular session.

2.1.4 Key contacts relating to the Human Rights Council

- (a) The Human Rights Council Branch
Human Rights Council Branch Office of the United Nations High Commissioner for Human Rights Palais des Nations 8–14, avenue de la Paix CH–1211 Geneva 10 - Switzerland Phone: +41 (0)22 917 92 56 Fax: +41 (0)22 917 90 11
- (b) The Civil Society Unit
OHCHR Civil Society Unit Office of the United Nations High Commissioner for Human Rights Palais des Nations 8–14, avenue de la Paix CH–1211 Geneva 10 - Switzerland Phone: +41 (0)22 917 90 00 E-mail: civilsocietyunit@ohchr.org

2.1.5 For requests or information relating to consultative status with ECOSOC

- (a) United Nations headquarters:
NGO Section United Nations Department of Economic and Social Affairs Section One UN Plaza, Room DC-1-1480 New York, NY 10017 Phone: +1 212 963 8652 Fax: +1 212 963 9248 E-mail: desangosection@un.org
- (b) United Nations Office in Geneva (UNOG):
NGO Liaison Office Office of the Director General Office 153, Palais des Nations 8–14, avenue de la Paix CH-1211 Geneva 10 - Switzerland Phone: +41 (0)22 917 21 27 Fax: +41 (0)22 917 05 83 E-mail: ungeneva.ngoliation@unog.ch

2.2 Universal Periodic Review (UPR)

Established by General Assembly resolution 60/251, the universal periodic review (UPR) is a new human rights mechanism. Through it the Human Rights Council reviews, on a periodic basis, the fulfilment by each of the 192 United Nations Member States of their human rights obligations and commitments. The UPR is a cooperative mechanism and is intended to complement, not duplicate, the work of the human rights treaty bodies.

Human Rights Council resolution 5/1 sets out the periodicity and process. The UPR operates on a four-year cycle and consists of several stages, for instance: Preparation of the information upon which reviews are based, including: information prepared by the State under review (national report); a compilation of United Nations information on the State under review prepared by the Office of the United Nations High Commissioner for Human

Rights (OHCHR); and a summary of information submitted by other stakeholders (including civil society actors), also prepared by OHCHR.

This mechanism also consists of a Working Group on the UPR, which is composed of the 47 member States of the Council, and takes the form of an interactive dialogue between the State under review, the members and observer States of the Council. The Working Group meets in three two-week sessions each year and reviews 16 States at each session—a total of 48 States each year; A group of three rapporteurs (“troika”), drawn from among the Council’s member States, facilitates the review of each State and the Working Group’s adoption of an outcome document at the end of each review.

2.2.1 How to Participate on UPR Sessions?

Resolution 5/1 provides for the participation of all relevant stakeholders in the process. Accordingly, the participation of regional intergovernmental organizations, national human rights institutions (NHRIs), as well as civil society representatives, including non-governmental organizations (NGOs), human rights defenders, academic institutions and research institutes, is envisaged at relevant stages.

Consultative status: the United Nations Economic and Social Council (ECOSOC) is required to attend sessions of the Working Group on the UPR and sessions of the Human Rights Council. However, civil society actors may contribute to work of the UPR, inter alia, by:

- Participating in consultations held by Governments to prepare their national reports on the human rights situation in their countries;
- Preparing submissions on the human rights situation in States under review for potential inclusion in the summary of stakeholders’ submissions prepared by OHCHR.
- Contributing to the follow-up of the implementation of review outcomes.

UPR	What to do
Before the Review	Participate in consultations with the government of the country under review as it prepares its national report.
	Research, write and submit a stakeholder report on a human rights issue in the country under review.
	Lobby UN member countries to educate their representatives on issues and concerns to be raised during the review. Outreach may target embassies, consulates, and missions to the United Nations in Geneva.

During the Review	Attend the interactive dialogue in person (if the group has ECOSOC status) or monitor it via web-cast.
	Hold a press conference or write a press release.
	Host a side event.
After the Review	Lobby the government to accept recommendations
	Address the Human Rights Council during the plenary session when it adopts the report of the working group (if the group has ECOSOC status)
	Release a written statement
Between Reviews	Report reprisals
	Advocate for legislation and other reforms to implement recommendations
	Engage in consultation with the government to participate in the implementation of recommendations
	Monitor the implementation of recommendations
	Contribute to UPR-info's Mid-Term Implementation Assessment
	Document human rights conditions relating to accepted recommendations and any emerging human rights violations in preparation for the next UPR cycle.

Figure 3: CSOs participation Process on UPR

The Working Group's sessions are broadcast live on an OHCHR web-cast, and a broad range of UPR documentation and information is available on the UPR section of the OHCHR website and on the UPR page on the Human Rights Council's Extra-net.

Operating on a four-year cycle, the UPR is composed of several stages, including the preparation of the documents that reviews are based on, the review itself, and follow-up to the conclusions and recommendations stemming from reviews. The participation of regional intergovernmental organizations, National Human Rights Institutions (NHRIs), as well as civil society representatives, including non-governmental organizations (NGOs), human rights defenders, academic institutions and research institutes, is envisaged at relevant stages of the review process.

2.2.2 Key contacts relating to the Universal Periodic Review

- (a) OHCHR Human Rights Council Branch
Office of the United Nations High Commissioner for Human Rights Palais des Nations 8–14, avenue de la Paix CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 917 92 69 Fax: +41 (0)22 917 90 11
- (b) OHCHR Civil Society Unit
Office of the United Nations High Commissioner for Human Rights Palais des Nations 8–14, avenue de la Paix CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 917 90 00 E-mail: civilsocietyunit@ohchr.org

2.3 Human Rights Complaint Procedure

The United Nations system focuses largely on the obligations of States and operates at the level of governments. However, its human rights system also provides for different procedures that are open to individuals and groups seeking United Nations action on a human rights situation of concern to them. These are called human rights complaint procedures.

2.3.1 Procedures

Human rights complaint procedures are mechanisms for bringing cases of alleged human rights violations to the attention of the United Nations. Through these procedures, individuals may bring a human rights concern to the attention of the United Nations, thousands of people around the world do so every year. There are three such mechanisms: 1. Individual complaints under the international human rights treaties (petitions); 2. Individual communications under the special procedures of the Human Rights Council; and 3. The complaint procedure of the Human Rights Council.

Each procedure has its own requirements, advantages and limitations. These need to be carefully considered before deciding which one to use: Individual complaints of human rights violations can be submitted under five of the core international human rights treaties;

- Individual communications operate under the thematic and geographic mandates of the special procedures of the Human Rights Council.
- The Council's complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. Any civil society actor, with due regard to the specific requirements of each procedure, is able to access these mechanisms, regardless of his or her nation's status with the United Nations.
- Complaints under each of these procedures can be submitted by the individual who has suffered the alleged human rights violation or by third parties on that person's behalf,

for example, a complaint may be submitted by a Non-Governmental Organization (NGO). Civil society actors can often act as a conduit for individuals seeking redress from human rights abuses by preparing, submitting or lodging a complaint on their behalf. However, anyone submitting a complaint on behalf of an individual should ensure that they obtain the consent of that individual and that the individual is aware of the implications of making a complaint. The requirements for each procedure should be carefully followed to ensure that the complaint is admissible.

2.3.2 How do the complaint procedures work?

It is important to consider carefully which complaint procedure is best suited to a particular case. Each procedure has its own strengths, specific requirements and limitations. They need to be considered in the interests of the victim(s) and of the individual(s) or organization(s) presenting the complaint.. See the attached Form.

2.4 Protection of Civic Space at International Level

The legal recognition and protection of human rights defenders is crucial in ensuring that they can work in a safe, supportive environment which is free from attacks, reprisals and unreasonable legal restrictions.³⁷The struggle for recognition of HRDs has never been easy, despite the world marking 50 years ever-since the Universal Declaration of Human Rights in 1948. In December 1998, HRDs were accorded with recognition and protection after 12 years of negotiations. The UN adopted the;

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms on December 9, 1998 (Declaration of Human Rights Defenders)

The adoption of this salient document marked a historic achievement in the struggle towards better protection of those at risk for carrying out legitimate human rights activities. This Declaration was the only UN instrument that openly and comprehensively defined and recognized the work and protection of HRDs.³⁸

The Declaration is a well-defined international instrument that codifies and puts together standards to protect activities of human rights defenders all over the world. It recognizes the legitimacy of human rights activity and the need for this activity and protection for those who execute it. The declaration imposes a duty to every State to protect Human Rights Defenders in accordance with the International Law. Civil authorities and law enforcement organs in each country are also primarily responsible to protect HRDs.

37. See more at: <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqccKj.dpuf> (Accessed on 23rd December 2017)

38. THRDC(2013) Protection and security needs for Human Rights Defenders in Tanzania- needs assessment report at pg 4.

1. Table 1. HRDs rights protected under the Declaration

1. To conduct human rights work individually and in association with others;	2. To get unhindered access to and communication with non-governmental and intergovernmental organizations ;
3. Formation of associations and non-governmental organizations ;	4. To benefit from an effective remedy;
5. To meet or assemble peacefully;	6. To the lawful exercise of the occupation or profession of a human rights defender;
7. To seek, obtain, receive and hold information relating to human rights;	8. To effective protection under the national laws in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result into violations of human rights;
9. To develop and discuss new human rights ideas and principles and to advocate their acceptance;	10. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad);
11. To submit to governmental bodies, agencies and organizations concerned with public affairs criticism and proposals to improve their functioning, and to draw attention to any aspect of their work that may impede the realization of human rights;	12. To attend public hearings, proceedings and trials in order to assess their compliance with national laws and international human rights obligations;
14. To file complaints about official policies and conducts relating to human rights and to have such complaints reviewed;	15. To offer and provide professional legal assistance or advice and assistance in defence of human rights;
16. Effective protection under the law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result into violations of human rights.	

States such as Norway, Switzerland, Ireland and the Netherlands are great examples for recognition of HRDs as they have facilitated the adoption of the UN declaration. They have also published guidelines directing their diplomats and decision-makers to prioritize the protection of human rights defenders and civil society space abroad.

In 2015, Finland passed landmark guidelines for protection of HRDs as progressive measures towards the recognition of HRDs globally. The Finnish Guidelines recognize the vital role of human rights defenders in preventing conflict, addressing discrimination and inequality, promoting security and the rule of law, and exposing and seeking accountability for violations where they occur. The Guidelines also recognize the significant risks and threats that many defenders face because of this work, particularly women human rights defenders, and those working on SOGI and minority rights³⁹

The aforementioned Guidelines outline a range of actions for Finnish diplomats and missions to achieve their objective of 'promoting and enabling a conducive environment and the capacity of human rights defenders', including⁴⁰:

- consulting closely with human rights defenders on their support and protection needs;
- publicly recognizing and promoting the valuable work of human rights defenders and the risks they face, including through regular meetings and events;
- advocating both publicly and privately, and both bilaterally and through multilateral mechanisms such as the UN, in relation to the situation and safety of defenders;
- providing financial support and assistance to national and international human rights NGOs;
- appointing a human rights focal point within diplomatic missions;
- monitoring trials of human rights defenders;
- promoting the invaluable work of defenders through media and social media;
- continuously monitoring and regularly reporting on the situation of human rights defenders, through field trips and investigations; and
- Where necessary and appropriate, assist to relocate human rights defenders within their own countries or to another country so as to ensure their security.

On 29/11/2013, the UN adopted a landmark resolution on Protection of Women Human Rights Defenders⁴¹. The resolution urges States to put in place gender-specific laws and policies for the protection of women human rights defenders and to ensure that the defenders themselves are involved in the design and implementation of these measures. Ms. Bjerler said, the 'Effective implementation of such measures by States will be key to enabling women human rights defenders to carry out their important and legitimate work.'⁴²

39. Public Guidelines of the Foreign Ministry of Finland on the implementation of the European Union Guidelines on Human Rights Defenders 2015

40. See more at: <http://www.ishr.ch/news/finland-new-guidelines-will-strengthen-protection-human-rights-defenders#sthash.7us1EmZi>

41. UN Resolution on Protection of Women Human Rights Defenders See more at: <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders#sthash.NJ12LaQH.dpuf>

42. Ibid.

2.5 Regional Legal Framework

This section highlights various commitments made by national governments at the African regional level to assure necessary space of civil society. It is intended to be a reference point for civil society organisations and human rights defenders in their efforts to realize such rights and commitments to development at the African Regional level. The Focus will be on how CSOs are interacting with the African Union, African Commission on Human and People's Rights and the African Court on Human and People's Rights.

2.5.1 CSOs Space and Obligation at the African Union

Unlike the UN Charter, the first African document establishing Organizations of African (OAU) had no specific provisions on participation of CSOs in various OAU forums and meetings.⁴³ However, later under African Union Constitutive Act⁴⁴, the space of CSOs was recognized through the Economic Social and Cultural Council (ECOSOCC), established under the Constitutive Act to provide a permanent space for civil society to advise African governments collectively via the AU. This is an important window for CSOs to influence AU policy processes and inclusion in its membership. Nevertheless, a civil society can also engage with the AU via the Citizens Directorate or directly with the Commission's thematic Directorates.

Another main Window in which CSOs can effectively participate in AU affairs is through the African Commission on Human and People's Rights Established under the African Charter on Human and People's Rights of 1981. NGOs and CSOs have been good partners of the Africa Union when its comes to promotion and protection of human rights in the Continent.

- (a) Statutes of the Economic, Social and Cultural Council of the African Union (2004) -ECOSOCC

The pre-Summit Forum, where CSOs gather to meet on the fringes of the biannual AU Summit, is considered by many to be an important space to influence continental policy.⁴⁵ . Almost exactly a year later, shortly before the inaugural session of the AU, a second OAU Civil Society conference took place, again in Addis Ababa, this time to flesh out the mechanisms and modalities for CSO engagement with the nascent AU. ⁴⁶

A key outcome of the second conference was the establishment of a Working Group, to be made up of members of civil society and the OAU Secretariat, to develop the ECOSOCC statutes,⁴⁷ which spelt out the composition, procedures for election and accreditation, and ECOSOCC structures. Another important objective for the Working Group was to come up

43. Charter of the Organization of African Unity (1963/1963).

44. AU Constitutive Act, OAU Doc. CAB/LEG/23.15 (2001).

45. See Civil society and the African Union: Towards a continental Strategy for Wold Vision. https://sarpn.org/documents/d0002580/CSO-AU_Africa_Report_Apr2007.pdf

46. https://sarpn.org/documents/d0002580/CSO-AU_Africa_Report_Apr2007.pdf

47. Articles 5 and 22 of the Constitutive Act;

with a plan for popularizing ECOSOCC as an idea throughout Africa.⁴⁸ The 20-member Group, which included 3 representatives from each sub-region of Africa, as well as sectoral experts and Diaspora representatives, was given two years from July 2002 to deliver on its mandate.⁴⁹ Later on, a Civil Society Division was established for the purpose of coordinating CSOs issues at the African Union. That Division does the following:

- Work with member states and partners to create and strengthen social integration system by ensuring that the contributions of civil society are main-streamed through all aspects of the AU principles, policies and programs.
- The Division is responsible for mapping civil society organizations on the continent. It is assigned to develop a database of African civil society organizations that will serve as a repository of information on these organizations.
- The division also facilitates the identification and utilization of expertise that abounds within civil society organizations across the continent.
- The development of this database also supports the process of ECOSOCC elections by identifying key CSOs that qualify for membership and helps them to harness the expertise of the civil society to the demand of the African union.
- Ensure effective participation of civil society in the activities of the African Union by organizing relevant workshops on understanding the African Union. This helps to facilitate the understanding of the African Union, its organs, key structures and decision making process by key civil society across the continent.
- Encourage the support for inter-continental consultation partnership: AU-EU, FOCAC, etcetera. These consultations help to ensure that African society organizations make regular inputs into the various partnership processes in order to reinforce people to interact across the world and to support Africa's integration and development agenda.
- Having sectorial Dialogues- AU/OATUU Trade Union Partnership forums and African Union interfaith dialogues to promote serious and critical interactions with key sectorial groups in support of Africa's integration and development agenda⁵⁰

i) Objectives of ECOSOCC

ECOSOCC shall amongst other things, and in conformity of objectives of the African Union as provided in the constitutive Act, perform the following functions:

- Promote continuous dialogues between all segments of the African people on issues concerning Africa and its future;

48. Adopted in Addis Ababa, Ethiopia in July 2004 by the AU Assembly, under article 22(2) of the AU Constitutive Act. ECOSOCC is intended to provide a voice for civil society in the AU. The Council held its first meeting in March 2005 in Addis Ababa, Ethiopia. Full text available at www.au.int .Statutes of the Economic, Social and Cultural Council.

49. World Vision (2007). Civil Society Organizations African Union towards a Continental advocacy strategy for World Vision

50. <https://au.int/en/civil-society-division>. Accessed on 13th April 2018.

- Forge strong partnerships between governments and all segments of the civil society, in particular women, the youth, children, the diaspora, organized labour, the private sector and professional groups.
- Promote the participation of African civil society in the implementation of the policies and programmes of the Union.
- Support policies and programmes that will promote peace, security and stability in Africa, and foster development and integration of the continent;
- Promote and defend a culture of good governance, democratic principles and institutions, popular participation, human rights and freedoms as well as social justice.
- Promote, advocate and defend a culture of gender equality.
- Promote and strengthen the institutional, human and operational capacities of the African civil society.

ii) Composition of ECOSOCC

Article 3 the ECOSOCC Statutes provides the composition of the ECOSOCC as an advisory organ of the AU. The composition brings together members of CSOs. These CSOs include but are not limited to the following:

- Social groups such as those representing women, children, the youth, the elderly and people with disability and special needs;
- Professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups;
- Non-governmental organizations (NGOs), Community Based Organisations (CBOs) and voluntary organisations;
- Cultural organisations.
- ECOSOCC shall also include social and professional groups in the African Diaspora, and other organizations in accordance with the definition approved by the Executive Council.

iii) How to Join ECOSOCC

Article 6 provides eligibility requirements for CSOs to join or become members of ECOSOC as follows:

- Be national, regional, continental or African Diaspora CSO, without restriction to undertake regional or international activities.
- Have objectives and principles that are consistent with the principles and objectives of the Union as set out in Articles 3 and 4 of the constitutive Act.
- Be registered in a member State of the Union and/or;

- Meet the general conditions of eligibility for the granting of observer status to Non-Governmental Organizations;
- Show a minimum of three (3) years proof of registration as either an African or an African Diaspora CSO prior to the date of submission of application, including proof of operations for those years.

(b) The African Charter on Human and People's Rights of 1981

The African Charter on Human and People's Rights, also known as the 'Banjul Charter' protects and promotes human rights in the African Continent. It was brought into existence under the guidance of the Organization of African Unity (now replaced by the African Union). The responsibility for oversight and interpretation of the African Charter vests with the African Commission on Human and People's Rights head-quartered in Banjul, The Gambia.

i) CSOs and the African Commission on Human and People's Rights

The ACHPR was created by Article 30 of the African Charter on Human and People's Rights in 1986. The Commission is comprised of 11 commissioners nominated by States and approved by heads of States and government of the African Union for a mandate of 6 years that can be renewed. All commissioners serve in their personal capacity⁵¹

Since its creation in 1986 opportunities for civil society engagement with the African Commission have changed beyond all recognition. As the body mandated to promote and protect human and people's rights in Africa, as well as to interpret the provisions of the Charter, it is highly relevant for Human Rights Defenders working in Africa to participate in the African Commission. Civil Society Organizations (CSOs) with observer status at the African Commission have a wide range of ways to engage with the Commission⁵²

The Commission's mandate includes the protection, promotion and interpretation of the rights enshrined in the Charter. Although the examination of State reports is an important element of the Commission's mandate, it is important to note that the ACHPR develops other activities including: country visits to follow the promotion of the Charter; participating in public fora in member States; consideration of communications submitted by African Union States, CSOs or individuals; and undertaking fact finding missions. In addition, the Commission has created a number of specialized mechanisms dealing with particular thematic areas, including working groups and special rapporteurs. The ACHPR also issues public statements, which can be useful in drawing attention to a particular issue⁵³

51. International Service for Human Rights (2011) Road Map for Civil Society Engagement State Reporting Procedure of the African Commission on Human and Peoples' Rights, September /2011

52. Shire Hassan (Undated) Good Practices for CSOs Participation at The African Commission on Human and People's Rights. les' Rights

53. Ibid.

ii) How CSOs can Engage with the Commission?

Non-government organizations can engage with the commission in accordance with Rules 75 and 76 of the Commission's rules of procedure through;

- Participating in the public sessions of the Commission and its subsidiary bodies
- Direct consultation with the commission on various human rights issues
- NGOs can also engage with the commission by submitting communication/complaint with respect to violation of human rights under Rule 93 of the Commission's rules

CSOs and State parties can also propose the adoption of items into the agenda through formal communication with the commission at least ten weeks in advance of the session. This is easier for NGOs with observer status and can be a useful mechanism for promoting ACHPR's sessions, and those that often do not focus on the State reporting procedure. In addition, available advice on CSO engagement with the ACHPR focuses relatively little attention on this procedure.⁵⁴

One of the principal functions of the Commission is to protect the rights and freedoms guaranteed in the Charter under conditions laid down therein. To achieve this, the Commission is empowered, among other things, to receive and consider:

- Communications submitted by one State claiming that another State party to the Charter has violated one or more of the provisions in the Charter (Articles 48-49); and
- Other Communications from individuals and organizations (CSOs) alleging that a State party to the Charter has violated one or more of the rights guaranteed therein (Article 55).
- Other communications submitted to the Commission pursuant to Article 55 of the Charter are considered within the framework of a written procedure (see Rules 102-120 of the Commission's Rules of Procedure). The author of a communication can withdraw his or her communication at any stage. The Commission in such a case will discontinue proceedings on it without taking any written decision. According to rule 111 of its Rules of Procedure, prior to forwarding its final decisions (recommendations) on a communication to the State party concerned, the Commission may inform that State whether it considers interim measures desirable to prevent irreparable damage to the victim.

iii) Registration of Communications

Communications meant for the African Commission are usually directed to the Secretariat of the Commission which is based in Banjul, The Gambia. Once a communication is received, it is registered under a file number in the Commission's Official Register of Communications kept at the Secretariat of the Commission. The Secretariat acknowledges receipt of the author's letter of complaint. If more information is required, the author will be informed accordingly.

54. Ibid.

Where the facts of the complaint reveal that the latter is not against a State party to the Charter, the complaint will not be registered and the author will be informed accordingly. The Secretariat will acknowledge receipt of the complaint by sending the author a standard letter enclosing any vital information about the functioning of the Commission including the text of the Charter.⁵⁵

One major factor in the opening of space for civil society at the African Commission has been the growth of the Forum on the Participation of NGOs (commonly known as the NGO Forum), first held in 1990. As one of the main avenues to facilitate civil society actors' access, the African Commission NGO Forum has been organized by the African Centre for Democracy and Human Rights Studies since 2000, with input from the Steering Committee of NGO representatives from the different sub-regions of Africa as well as from the African diaspora. The Forum's influence has steadily grown, with hundreds of activists attending each session.

The NGO Forum exists to foster closer collaboration and cooperation among CSOs – and with the African Commission – for the promotion and protection of human rights in Africa; to provide a discussion platform for organizations working on democracy and human rights issues in the continent; and to promote networking between organizations and across regions.

iv) Conditions for submitting a communication

Article 56 of the African charter outlines seven conditions that must be met before a communication can be considered by the Commission. These are as follows:⁵⁶

- The communication must include the author's name even if the author wants to remain anonymous
- The communication must be compatible with the Charter of the OAU and with the present Charter
- The communication must not be written in insulting language directed against the state or the OAU
- The communication must not be based exclusively on news from the media
- The complainant must have exhausted all available domestic legal remedies
- The communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies
- The communication must not deal with a matter which has already been settled by some other international human rights body.

v) Who can submit Communications?

Anybody, either on his or her own behalf or on behalf of someone else, can submit a

55. OAU: African Commission on Human and Peoples Rights: Information Sheet No. 3

56. http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf

communication to the commission denouncing violation of human rights. Ordinary citizens, a group of individuals, NGOs and states Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned.

Complaining on behalf of someone else, for example, a prisoner who can't submit a communication himself or who does not want the authorities to know that he is petitioning is very helpful.

vi) How to Become a Member?

Any CSOs which wants to become a member to the African commission must seek an observer status. The NGOs with observer status from the commission can effectively participate in the ordinary sessions and other forums of the commission. The organizations can engage with the commission through the above procedures provided they have obtained the observer status with the Commission in accordance with Rule 68 of the Commission's rules of procedures.⁵⁷

In terms of a resolution 361 on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa adopted by the Commission at its 59th Ordinary Session held from 21 October to 4th November, 2016 in Banjul, the Commission subjects the granting of observer status to a set of criteria⁵⁸

All Non-Governmental Organizations (NGOs) applying for observer status with the Commission shall be expected to submit a documented application to the Secretariat of the Commission, with the view to showing their willingness and capability to work for the realization of the objectives of the African Charter on Human and Peoples' Rights (the African Charter). All NGOs applying for observer status with the Commission shall consequently:

- Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the African Union (AU) Constitutive Act, the Preamble to the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)
- Be NGOs working in the field of human rights in Africa; and
- Declare their financial resources
- GOs applying for Observer Status with the Commission are required to provide, at least three months prior to the Ordinary Session, the following documents
- A letter of application addressed to the Secretariat requesting Observer Status with the Commission;

57. OAU: African Commission 'Resolution on the Criteria for the Granting and Maintaining of Observer Status to Non-Governmental Organisations working on Human and Peoples' Rights in Africa', adopted at 59th ordinary session held from 21 October-4 November 2017 in Banjul, The Gambia, preambles paras 8 & 9.

58. AU (2016) Guidelines For The Submission Of Communications Organisation Of African Unity Fact Sheet No. 2. See Also THRDC Report on the Situation of Human Rights Defenders of 2017.

- A list of the Board of Members, and other members of the NGO
 - The signed and authenticated Constitutive Statute of the NGO
 - The Certificate of Legal Status of the NGO issued by the relevant Government authority, in the country in which the NGO is based
 - The sources of funding of the NGO
 - The latest independently audited financial statement of the NGO; and
 - The latest Annual Activity Report of the NGO
- vii) Advantage of Obtaining an Observer Status
- All NGOs with Observer Status (observers) shall be invited to be present at the opening and closing sessions of the Commission subject to the manner provided for in the Rules of Procedure governing the conduct of its sessions.
- All observers shall have access to the documents of the Commission subject to the conditions such documents provide
 - The distribution of general information documents shall be free of charge
 - The distribution of specialized documents shall be on a paid-for basis, except where reciprocal arrangements are in place
 - Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them
 - Observers may be authorised by the Chairperson of the Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead-time, to the Chairperson of the Commission through the Secretary of the Commission
 - The Chairperson of the Commission may give the floor to observers to respond to questions directed at them by participants.
 - Observers may request to have issues of a particular interest to them included in the provisional agenda of the Commission, in accordance with the provisions of the Rules of Procedure of the Commission.
 - Observers shall undertake to establish close relations of co-operation with the Commission and to engage in regular consultations with it on matters of common interest.
 - Observers shall present their activity reports to the Commission every two years.
 - Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

Currently the Commission has about 600 CSOs with observer status. Surprisingly out those, only six (6) are from Tanzania. Also, very few communications to the African commission have been channelled through HROGs from Tanzania. Therefore there is a great chance of contributing to realize human rights in the country through engaging with the regional human rights systems in particular the African commission on Human and people's Rights.

Chapter 03

Legal and Policy Framework Governing Civil Society Organizations in Tanzania

3.0 Introduction

The legal framework in Tanzania Mainland today with regard to registration of civil societies is governed by about 10 different laws; The Constitution of the United Republic of Tanzania of 1977 as amended, the Trustees Incorporation Act, Cap 318 [R.E 2002], the Societies Act, Cap 337 [R.E 2002], the National Sports Council Act, Cap 49 [R.E 2002], the Companies Act, Cap. 212 and the Non-Governmental Organizations Act, 2002; The Tanganyika Law Society Act Cap 307; The Trade Union Act, 1991; The Paralegal Act of 2017 and The Co-operative Societies Act;⁵⁹ This multiplicity of laws has brought confusion when it comes to registration and regulation of Civil Society Organizations in Tanzania Mainland in particular.

For the purpose of this compendium the focus and concentration will be on the main four laws governing CSOs sector in Tanzania; these laws are the NGOs Act, the Trustees Incorporation Act, the Societies Act⁶⁰ and the Companies Act. In particular, this chapter presents key information about registration, regulation, operations, coordination and obligations of CSOs under the four main laws. This stands as the guidance to CSOs, as most of them are not conversant with laws and policies governing them.

3.1 The Constitution of the United Republic of Tanzania of 1977

The Tanzania Constitution itself does not make direct reference to space occupied by civil society, but there is a general reference in the Bill of Rights enshrined in the Constitution in 1984,⁶¹ more than 50 years after independence. Some of the most important CSOs constitutional guarantees under the United Republic of Tanzania Constitution 1977 include the rights to freedom of information and expression, freedom of assembly and association, citizen participation and non-discrimination rights.

59. Cap. 211, R.E 2002

60. Cap. 337, R.E. 2002

61. Act No. 15 of 1984 which currently constitutes Article 12 to 29 of the Constitution of the United Republic of Tanzania 1977.

3.1.1 Freedom of information and expression

The United Republic of Tanzania Constitution stipulates the right to seek, receive and/or disseminate information regardless of national boundaries as provided for under Article 18.⁶² Moreover, paragraph (d) of the same Article provides for the right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society. This right to freedom of information is, however, constrained by the presence of some restrictive legislation. One such legislation is the Statistics Act passed in 2015.⁶³

This Act places restrictions on communication media such as radio stations, television stations, newspapers, magazines, websites and any other media to communicate or publish official statistics without authorization from the National Bureau of Statistics (NBS).⁶⁴ The penalties stipulated in the Act are high with fines ranging from about USD 500 to USD 5000 and/or imprisonment for six months, one year or three years – all as minimum penalties for different violations under the Act. These provisions limit access to government statistics and can prevent access to critical information.

3.1.2 Freedom of Assembly and Association

The cornerstone of democratic governance and constitutional liberalism is the freedom of association. This freedom enables people who share similar interests to come together and form organizations that represent their interests and views. For example, the freedom of association allows formation of political parties, trade unions, cooperatives, non-governmental organizations (NGOs) and other civil society organizations (CSOs).

Freedom of association helps citizens to monitor the state, to ensure appropriate discharging of public functions, and to demand government compliance as articulated in legislation. In so doing, it helps to ensure transparency and accountability. In addition, freedom of association enables individuals and organizations with different views on public policy to come together and develop a strategy to voice their positions to the government as well as to the public. In short, freedom of association enables the populace to be a participant in the day to day management of the country. Freedom of assembly and association is provided by Article 20 of the Constitution subject to “procedures provided by the law” governed by various legislation.⁶⁵

Furthermore, the right to peaceful public assembly is limited in the country through restrictive regulations⁶⁶ such as the need to get the sanction of the police at least 48 hours before the assembly. The Police Force and Auxiliary Services Act 2002 gives the police force powers to

62. Article 18 (b) of the Constitution of the United Republic of Tanzania 1977 cap 1

63. Statistics Act 2015 (Act No. 7 of 2015).

64. See Sections 37 (2), 37 (5); and 37 (6) & (7) *ibid*.

65. There are different legislations regulating the enjoyment of freedom of association, including Political Parties Act, No 5 of 1992, the Trade Unions are governed by the Organization of Tanzania Trade Unions Act of 1991, the Cooperative Societies Act, No 6 of 2013 etcetera.

66. For legal analysis on the policing of peaceful assembly in Tanzania see Mount S. (2012). Policing of Public Assemblies in Tanzania: Analysis of the Legal Framework. Commonwealth Human Rights Initiative Available at http://www.humanrightsinitiative.org/programs/aj/police/intl/docs/CHRI%20Brief_The%20Law%20regarding%20Policing%20of%20Public%20Assemblies_summary.pdf Accessed on 13th April 2018.

deny permission to hold the assembly. The Societies Act restricts the activities of NGOs by demanding that they register to become legal organizations to operate in the country.

It requires that any branch of an organization exceeding 10 members be registered as an independent society. And it requires NGOs to furnish the Registrar with audited financial statements of their financial dealings. Above all, the Registrar is given power to de-register any NGO whenever he or she deems fit. The requirements and the powers of the Registrar effectively restrict NGO activities, especially advocacy and independent monitoring of the state.

3.1.3 Citizen Participation

The Constitution of the United Republic of Tanzania under Article 5(1) provides for the right of every eligible citizen (above the age of 18) to vote in any elections. This right is elaborated under Article 21 of the Constitution, which guarantees the right to freedom of every citizen to participation in public affairs. Nevertheless, the same Constitution under Article 41(6) and (7) negatively impacts citizens' participation first by, allowing the President to be elected by simple majority, and second, by denying the jurisdiction of any court to inquire into the election of a presidential candidate. In addition, the Constitution under Article 39(1)(c) does not allow independent candidates, which means that citizens who would like to run for office outside the agenda of political parties are denied their right to participate.

3.1.4 Implications to CSOs

The implications of these constitutional guarantees and their restrictions for civil society and NGOs as well as their efforts to promote development, social equity, and environmental management are clear. On the one hand, effective advocacy is dependent on an enabling environment that provides important rights, including the freedoms of association, expression, and information. Without them, civil society has little political space and few opportunities to hold the government accountable.

On the other hand, sound environmental management is both a public interest-national and global and, in Africa where most household economies are resource-dependent, also a private interest. Historically, particularly during pre Bill of Rights, these and other restrictions forced and still force most Tanzanians to be passive watchers of State-sponsored initiatives, many of which had negative consequences on their lives. Citizens were denied the right to be shapers and masters of their own destiny. The situation was complicated by the absence of a Bill of Rights in the country's Constitution. The government had consistently argued that the Bill of Rights was a political luxury that a poor country like Tanzania could not afford. The government saw it as an impediment to rapid social and economic development.

3.2 Principal Laws Governing Csos in Tanzania

This sub-chapter present four main laws currently regulating registrations and operations of CSOs in Tanzania. These are the Societies Act;⁶⁷The Trustees' Incorporation Act;⁶⁸Companies

67. Cap. 337, R.E. 2002

68. Cap. 318, R.E.2002

Act;69 and The Non-Governmental Organisations Act²⁴. Every law is applicable to regulate NGOs registered there under. The section will also in brief present policies and regulations related to the mentioned four regulations.

3.2.1 Policies, Regulations and Laws Governing Non-Governmental Organisations

The Non-Governmental Organizations (NGOs) form large part of CSOs family in Tanzania. This sub-chapter will be used as the guide to registered NGOs or those wishing to be registered under the NGOs Act. The NGOs Policy of 2000, Regulations and Codes of Conduct related to this law are well presented here as part of empowering the current NGOs in Tanzania.

- A) The NGOs Policy of 2001
- The current NGOs Policy was adopted by the government in 2001 as a result of various consultations that started a way back in 1996. The government initiated the consultations through the Vice President's office in collaboration with the umbrella of NGOs in Tanzania, the Tanzania Non-Governmental Organizations (TANGO), and Tanzania Council for Social Development (TACOSODE) and Association of Non-Governmental Organizations of Zanzibar (ANGOZA). The process of policy initiation involved different stakeholders from zonal and national workshops using extensive discussions, consultations and advocacy. For each phase of the policy formulation, a draft policy was developed and further discussed in the subsequent workshops.

The outcome of the various policy discussions was the formulation of the current NGOs Policy (2001) document. This policy has 14 sections, which are:

- (i) Introduction
- (ii) Current status of NGOs
- (iii) Growth and role of NGOs
- (iv) Justification for the policy
- (v) Objectives of the NGOs policy
- (vi) Policy issues
- (vii) Definition of NGOs
- (viii) Institutional framework
- (ix) Legal framework
- (x) Exchange of information and sharing
- (xi) NGOs accountability and transparency
- (xii) Government- NGOs partnership
- (xiii) Implementation
- (xiv) Conclusions

The fourteen policy areas above are what constitute the current NGOs policy in Tanzania. However, for the purpose of this compendium, this section will only present key policy areas such as Objectives, legal and institutional framework established by the policy and implementation strategies.

69. Cap. 212, R.E. 2002

- i) Characteristics of and Definition of NGOs
The Policy defines NGO as a voluntary grouping of individuals or organizations which is autonomous and not-for-profit sharing; organized locally at the grass-roots level, nationally or internationally for the purpose of enhancing the legitimate economic, social and /or cultural development or lobbying or advocacy on issues of public interest or interest of a group of individuals or organizations.

According to the Policy, NGOs shall have specific characteristic which distinguish them from governmental organizations or other registered private groupings. The term NGOs will be applied to organizations, which possess the following defining characteristics:

- i. Organization
This means an established or permanent institution. This is demonstrated by a degree of organizational structure that is to say regular meetings and rules of procedures.
 - ii. Voluntary
These are bodies that are formed freely, willingly, spontaneously by individuals, groups of people or organizations with an element of voluntary participation.
 - iii. Self-governing
Non- Governmental Organizations have their own internal procedures of governance but nonetheless operate within the laws of society as a whole.
 - iv. Not for Profit Sharing
NGOs are not-for-profit sharing organizations. Profit and/or benefits accrued are not for personal or private gain by members or leaders.
 - v. Non Political
NGOs are organizations that do not seek political power or campaign for any political party.
- ii) Justification for the Policy
The government recognized that given the increasing numbers of NGOs, there was a need to enhance self-regulation, transparency and accountability of NGOs and establish modalities for interaction between NGOs and the State and between NGOs and other stakeholders.
 - iii) Objectives of the Policy
The overall objective of the Policy is to create an enabling environment for the NGOs to operate effectively and efficiently in the social and economic transformation of the country. Specific objectives of the NGO policy are:
 - (i) To provide an operational definition of NGOs.
 - (ii) To provide a broad framework for legal and institutional arrangements to facilitate the operations of NGOs of Tanzania.
 - (iii) To put in place registration procedures which are transparent, decentralized and which will facilitate better coordination of NGOs while safeguarding the freedom of association.

- (iv) To strengthen the relationship between the Government and the civil society.
 - (v) To enhance mechanisms for collaborative relations between NGOs, the Government, funding agencies and other stakeholders.
 - (vi) To facilitate mechanisms for the Government support to NGOs.
 - (vii) To promote transparency, accountability and awareness among NGOs themselves, the Government and other stakeholders.
 - (viii) To facilitate exchange and flow of information on NGOs activities in order to maximize utilization of resource and also share experiences or research findings.
- iv) **The Coordination of NGOs**
According to the Policy, the NGO Coordination Board shall be formed and be conferred with a legal personality. Mechanisms will be devised by the law to stipulate the ways the Board will be financed and be accountable.
 - v) **Legal Framework**
The NGOs Policy proposed the legal framework that provides for a registration and regulation mechanisms of NGOs. This mechanism shall be put in place to enable the streamlining of NGOs registration. Hence an NGOs law was proposed to be formulated to cater for the current deficiencies in NGOs registration, de-registration, appeals and termination.
 - vi) **Accountability**
The NGOs Accountability and Transparency policy ensures that each NGO shall maintain its own code of conduct for the purpose of accountability and transparency. The Constitution and other instruments issued by authorities other than the authority of the Constitution of an NGO will be the governing documents and that NGOs shall be allowed to engage in all legally and acceptable fund raising activities.
 - vii) **Government–NGO Partnership**
The policy reiterates that the Government recognizes the significant role and contributions of NGOs in the society and considers them as important partners in the development process. It is, therefore, in the interest of the Government to create a conducive and enabling environment to ensure that NGOs potentials are fully utilized.” That the Government shall work in partnership with NGOs in the delivery of public services and programmes. That is, the government shall be free to subcontract NGOs to undertake programmes, the where NGOs have comparative advantages and have expressed interest. The Government shall develop partnership with NGOs in all sectors and will continue to exempt NGOs from tax / VAT under existing tax laws.

viii) Policy Implementation

The implementation of the National NGO Policy will require the participation of all actors at different levels. The policy identifies key players for implementation as “all local and International NGOs, the ministry responsible for NGOs, coordination, National NGOs Board, Umbrella NGOs and networks, Government ministries and Regional and Local Government Authorities. These shall work together to ensure effective implementation of the National NGO Policy. The Government ministries, state agencies, regional and local Government authorities shall adopt policies, practices and guidelines which are in line with the NGO Policy. They will also maintain up-to-date and accurate information about NGOs operating in their fields and or in geographical areas with which they are concerned.

Governments and International agencies are giving increased recognition to NGOs particularly in enhancing people-centred development. Implementation of the above policy statements will promote efficiency and accountability of NGOs and make a maximum contribution to the country’s development process. Likewise, by creating an efficient institutional framework, this policy helps streamline and simplify the procedures for registration of NGOs.

B) The NGOs Act of 2002

This law was enacted by the Parliament in 2002 as Act No. 24 being as an Act to provide for registration of Non-Governmental Organizations with a view to coordinate and regulate activities of Non-Governmental Organizations and to provide for related matters. For the purpose of this compendium some provisions of this Act will be presented to guide NGOs’ registration, operations and compliance processes.

(a) What is an NGO?

According to this law, an NGO is a Voluntary grouping of individuals or organizations which is autonomous, non-partisan, non-profit sharing Organized at the local, national or international level; or Established under the auspices of any religious or faith propagating organization, trade union, sports club, political party, religious or faith organization or community based organization; for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting the environment, lobbying or advocating on such issues. But that does not include a trade union, social club, a religious or faith propagating organization or community based organization.

(b) How to Register an Organization

According to the NGOs Act, NGOs registration can be done in two ways; as a fresh/new registration initiated by a group of persons seeking to apply to register a new NGO under Section 12 of the NGOs Act or as a way of compliance with the mandatory registration requirement by those NGOs already registered in accordance with other written laws under Section 11 of the NGOs Act. The manner in which the two forms of registration are to be effected shall be discussed below. This application process is applicable to all NGOs including INGOs.

- Registration of an NGO for the First Time -Fresh Registration

Section 12 of the NGOs Act allows a group of persons who wish to apply for registration of an NGO to make such an application to the Registrar, in a prescribed form.⁷⁰ In case of a National NGO, the application shall be submitted by one or more persons, being founder members, which shall be accompanied by:

- (a) Three (3) bounded copies of the Constitution of the Non Governmental Organization
- (b) Minutes containing full names and signatures of founder members
- (c) Personal particulars of office bearers that is; CVs for the Chairperson, secretary and the treasurer, or others as the case may be, accompanied by two (2) passport size recent photographs
- (d) Address and physical location of the Head Office of the Non Governmental Organization;
- (e) Currently Tshs.80, 000/=, 100,000/= or 115, 000/= as an application fee for an NGO which operates at the district, regional or national level respectively⁷¹
- (f) An introduction letter from the public officer appointed to by the Registrar to assist him at the district or regional level; and
- (g) Any other particulars or information as may be required by the Registrar.

In case of an International NGO (INGOs), the application for registration shall be submitted by three or more persons, being the founder members and two of whom shall be residents of Tanzania. The application shall be made in a prescribed form⁷² accompanied by;⁷³

- (a) A certificate of incorporation;
 - (b) Three (3) copies of the Constitution of the Non-Governmental Organization;
 - (c) Minutes containing full names and particulars of founder members;
 - (d) Personal particulars of office bearers that is; CVs for the Chairperson, secretary and the treasurer, or others as the case may be, accompanied by two (2) passport size recent photographs
 - (e) USD 350 as an application fee
 - (f) Address and physical location of the head office of the Non-Governmental Organization
 - (g) An introduction letter from a public officer appointed by the Registrar to assist him at the district or regional level; and
 - (h) Any other particulars or information as may be required by the Registrar.
- Area and mandate of operation for an NGO
Where an NGO is intended to operate within a certain district, the application for its

70. The prescribed form is known as NGO Form No. A 1. Stamp duties of Tshs. 1,500/= have to be appended to the prescribed form.

71. These fees are valid as at the time of doing this study. The same might change in the near future.

72. The prescribed form is known as NGO Form No. A 1. Stamp duties of Tshs. 1,500/= have to be appended to the prescribed form.

73. Section 7 of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2005

registration shall only be submitted to the public officer for that district, and where it is intended to operate in the whole region, the application for its registration shall be submitted to the public officer appointed for the region. An NGO whose scope of operation covers more than one region and an International NGO shall be registrable at the national level by the Registrar.⁷⁴

The Constitution and other documents submitted by founder members to the Registrar at the time of making an application for registration or any subsequent constitution and documents submitted to the Registrar shall be the governing documents in respect of such an NGO. No NGO shall operate or perform its functions contrary to its governing documents.⁷⁵

- **Application Status and Determination**
Within 21 days of receipt of the Application, the Registrar shall refer it together with his recommendations to the Non-Governmental Organizations Coordination Board, hereinafter to be referred to as “the Board”, for the Board’s consideration. The Board shall within a period of two months after receiving the application and recommendations consider and make determination on the application. In determining the application, the Board may approve and direct the Registrar to register the Non Governmental Organization, or refuse to approve the application and direct the Registrar to inform the applicant or applicants accordingly.⁷⁶The Board may refuse registration of an NGO if it is satisfied that;⁷⁷
 - a. The activities of a Non Governmental Organizations are not for public interests or are contrary to any written law; or
 - b. The applicant has given false or misleading information in any material particular; oron the recommendation of the National Council for NGOs, the Non Governmental Organization should not be registered.

Where the Board has refused registration of a Non Governmental Organization, it shall, within twenty one days, notify the applicant of the reasons for the refusal.⁷⁸

- **Appeal Procedures for a Rejected Application**
Where the applicant is not satisfied with the decision of the Board he may apply to the Board for review of its earlier decision. However, if the applicant does not wish to apply to the Board for review, he may appeal to the Minister against the decision of the Board. On receipt of the appeal, the Minister shall, within two months from the date of receiving the appeal consider and make determination of the appeal. In determining the appeal the Minister may uphold, quash or vary the decision of the Board, require the Board to

74. Section 23 (1), (2) and (3) of the NGOs Act

75. Section 30 of the NGOs Act

76. Section 13 of the NGOs Act,

77. Section 14(1) of the NGOs Act,

78. Section 14(2) of the NGOs Act,

revise or review its decision, or require the Board to inquire into specific information from the appellant and make further consideration of the application.⁷⁹

- Status of a Successful Application
Upon registration, the Registrar shall issue to the NGOs a certificate of registration containing its name and address, the area of operation and such terms and conditions in respect of which a certificate is issued.⁸⁰ A certificate of registration shall be a conclusive evidence of the authority to operate as specified in the constitution or in the certificate of registration. A registered NGO shall, by virtue of registration under this Act, be a body corporate capable in its name of;⁸¹
 - (a) Suing and be sued
 - (b) Acquiring, purchasing or otherwise disposing of any property, movable or immovable
 - (c) Entering into contract; and
 - (d) Doing or performing all acts which can be done by a corporate body and which are necessary for the proper performance of its duties and functions.

(c) Registration of an NGOs Already Registered Under Other Written Laws

Section 11(1) of the NGOs Act makes it mandatory for all NGOs to be registered as per the provisions on the NGOs Act. This means that in the event that there is an NGOs registered under other written laws, those NGOs are required to apply to the Registrar for a certificate of Compliance⁸²

A Certificate of Compliance shall be issued upon satisfaction by the NGO of the terms and conditions for registration under the NGOs Act and shall have similar effect as a certificate of registration issued under the Act. No fee shall be chargeable and be payable in respect of making an application for a certificate of compliance. Upon obtaining Certificate of Compliance an NGO shall be required to pay an annual fee of the amount as may be prescribed by the Board.⁸³

(d) Compliance Matters

- Filling Annual Returns

An NGO is required to prepare an annual report of its activities which shall be made available to the Public, the Council, the Board and other stake holders.⁸⁴ It is also required to prepare an annual audited report and submit copies thereof to the Council and the Board.⁸⁵ Where, without any reasonable cause, an NGO fails to file the annual report for two consecutive years, it shall be lawful for the Board to imply that such organization has ceased to exist. In that regard, the Board

79. Section 16 of the NGOs Act

80. Section 17 of the NGOs Act

81. Section 8 of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2005

82. Section 6 of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2005

83. Ibid

84. Section 29 (1) (a) of the NGOs Act

85. Section 29 (1) (b) of the NGOs Act

may issue a notice in writing to the office bearers of the NGO requiring them to submit proof of its existence within 60 days of the notice.⁸⁶

Where the Non Governmental Organization fails to submit to the Board Proof of its existence, the Board may direct the Registrar to cancel the certificate of its registration and remove its name from the register.⁸⁷

- Notification of change of particulars of NGO
Any change in the constitution or names of office bearers by a Non Governmental Organization shall be notified to the Registrar in writing. A notice to the Registrar shall be accompanied by a copy of a resolution certified by office bearers stating that the resolution complies with its governing documents and a copy of the certificate of registration.

The Registrar shall after receiving notification, enter into the register all changes as submitted in the notification. Where necessary, the Registrar may issue a new certificate of registration and remove from the register particulars of the NGO as may be necessary. Where the Registrar has made changes in the Register in respect of the particulars of a Non Governmental Organization, he shall inform the Board.

(e) Matters of General Conduct

It is the duty of every local NGO to respect the laws governing its operations, the culture and traditions of the people and communities in which it operates, unless such culture and traditions are contrary to any other written law⁸⁸

Section 30 (2) states that: "No Non-Governmental Organization shall operate or perform its functions contrary to its governing documents."

For the International NGOs on the other hand, it shall be their duty to foster and promote the capacities and abilities of other Non Governmental Organizations; to participate in activities of the Council; and to refrain from doing any act which is likely to cause competition or misunderstanding among Non Governmental Organizations.⁸⁹ Every NGO registered under the NGOs Act is required to engage in legally acceptable fund raising activities.⁹⁰

e) Offences

There are several offences mentioned in the Act. Collectively, Section 35 provides that:

- (1) Any person who-
 - (a) Forges or, utters any document for the purposes of procuring registration
 - (b) Makes false statements in respect of an application for registration

86. Section 9 of the Written Laws (Miscellaneous Amendment) (No.2) Act, 2005

87. Section 24 (2) of the NGOs Act

88. Section 31 (a) and (b) of the NGOs Act

89. Section 31 (c) of the NGOs Act

90. Section 32 of the NGOs Act

- (c) Conducts fund raising activities contrary to this Act
 - (d) Operates a Non-Governmental Organization without obtaining registration under this Act; or
 - (e) Violates the code of conduct, or contravene any regulation or rules made under this Act, Commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.
- (2) A person convicted of an offence under this section shall be disqualified from holding office in any Non-Governmental Organization operating in Mainland Tanzania for a period not exceeding five years
- (3) Notwithstanding subsection (1), a person who contravenes the provisions of this Act may, in lieu of the institution of the criminal charges against him pursuant to this Act, be proceeded against under the provisions of the Penal Code.
- (g) Suspension or De-registration of an NGO

The Following are grounds provided by the Law for suspension of de-registration of an NGO;

An NGO may be suspended or de-registered on the following circumstances:

- (a) The terms or conditions prescribed in the certificate have been violated
 - (b) The Non-Governmental Organization has ceased to exist
 - (c) The Non-Governmental Organization operates in variance to its constitution; or
 - (d) The Council has submitted, to the satisfaction of the Board, recommendation for its suspension or cancellation.⁹¹
- i) Who has Powers to Suspend/ De-register an NGO?
The Law provides that: Subject to Section 21, the Board may suspend or cancel a certificate of registration if it is satisfied by the above mentioned grounds.⁹²
- ii) Effects of such Suspension/De-registration:
Section 20 (2) provides that: "Where the Certificate of registration has been suspended or cancelled the Board shall direct the Registrar;
- (a) To notify the relevant Non-Governmental Organization; or
 - (b) To order such Non-Governmental Organization to stop its operations; or
 - (c) To remove the name of such Non-Governmental Organization from the register."

91. Section 20(1) of the Non-Governmental Organizations Act, No. 24, 2002 (as amended)

92. Section 20. (1) ibid

(c) NGOs Regulations of 2004

Subsidiary legislation to the NGOs Act may be enacted by three entities which are the Minister, the NGOs Council and the NGOs Coordination Board.

(a) Power to Make Regulations

Section 38 of the NGOs Act provides that:

- a. The Minister may on consultation with the Board make regulations for the better carrying out of the provisions of this Act
- b. Without prejudice to the generality of subsection (1) the Minister may make regulations prescribing:
 - i. Various forms to be used in this Act;
 - ii. Fees payable under this Act;
 - iii. The format of the reports of activities to be submitted by the Non-Governmental Organization; and
 - iv. Any matter which needs to be prescribed under this Act.

c. Regulations made by the Minister shall be published in the Gazette.

These Regulations were made in 2004 for purposes of enabling carrying out of provisions of the NGOs Act.⁹³The Regulations were amended in 2015 vide NGOs (Amendments) Regulations 2015.⁹⁴ Since then the two documents are read as one. Regulation 3 states that the forms appearing therein are meant for better carrying out of the law. These are the forms provided in the 1st Schedule.

Figure 3.1 Various NGOs Forms

Form Number	Enabling Section	Purpose of the Form
NGO A Form No 1	12(1)	Application for registration of NGO
NGO A Form No 2	12(2)	Application for certificate of compliance
NGO A Form No 3	11(3)	Certificate of Registration
NGO A Form No 4	11(3)	Certificate of Compliance
NGO A Form No 5	20(2)	Notification of refusal of registration
NGO A Form No 6	20(1)	Notification of Cancellation
NGO A Form No 7	21(1)	Default Notice
NGO A Form No 8	21(1)	Summons to defend
NGO A Form No 9	33	Notice of change of particulars
NGO A Form No 10	2	Annual Report of NGOs

93. Government Notice no. 152 of 2004

94. Government Notice no. 8 of 2015

Figure 3.2 The second schedule provide for the necessary registration fees as follows:

Level	Fees
Registration	
International NGO	USD 350
National	TSHs 115,000/-
Regional	TSHs 100,000/-
District	TSHs 80,000/-
Annual Subscription	
International NGO	USD 100
Local	TSHs 50,000/-
Search report per file	TSHs 15,000/-
Filing Annual Audited Report	
International NGO	USD 300
Local	TSHs 100,000/-
Change of name or level of operation	
International NGO	USD 350
National	TSHs 115,000/-
Regional	TSHs 100,000/-
District	TSHs 80,000/-

(b) Disposal of NGOs Properties

The regulations provide for the disposal of NGOs properties upon dissolution. Regulation 11 provides that:

“Any Non-Governmental Organisation whose operation has ended, wound up, or dissolved shall transfer the assets to another NGO having similar objectives.

- (2) The registrar shall oversee the whole process of assets disposal and winding up of the organisation by:
 - (a) Requiring members of the dissolved organisation to hold a meeting that will determine and prepare a payment plan that shall be submitted to the registrar within ten days
 - (b) Overseeing the organisation discharge all liabilities within thirty days and submit the report to the Registrar, and
 - (c) Requiring members to submit a report on the list and value of all assets of the organisation and its transfer plan of the assets within forty five days

D) Self- Regulations and Codes of Conduct

The NGOs Act under Section 27(1) states that the The NGOs Council shall develop and cause to be adopted a code of conduct and such other regulations which shall facilitate self-regulation of Non Governmental Organizations. The NaCoNGO has thus formulated and adopted the following subsidiary legislations;

Name of the Instrument	Purpose thereof
NGOs Code of Conduct GN no 363 of 2008	To guide the conduct and ethics of NGOs
NGOs (The National Council Operational) Regulations GN 92 of 2016	To guide operations of NaCoNGO
Election Regulations GN no. 95 of 2016	To guide election of members of NaCoNGO

(a) Provisions of the NGOs' Code of Conduct

Legal Status

The Act provides for the establishment of NGOs Council with the responsibility to develop and cause to be adopted a code of conduct and such other regulations which shall facilitate self-regulation of Non-Government Organizations.⁹⁵

(i) Main Objective

Main purpose of this Code of Conduct is to establish core values and principles that shall guide the conduct and operations of all NGOs working in Tanzania. The Code of Conduct shall provide guidance to NGOs towards meeting the challenges of sustaining democratic and participatory institutions and strengthening of an enabling environmental, in which people shall collectively or individually determine their destiny.

> Specific objectives:

- Promote an open, transparent and enabling environment of work for all NGOs
- Promote and encourage transparency and accountability within the operation of NGOs; and
- Contribute and promote principles and ways of working that endure effective collaboration and coordination among NGOs and other stakeholders.

(ii) NGOs Code of Values:

These include: self-determination, ownership, autonomy and empowerment of the NGOs; respect human rights and promote the people voices; equality, equity and equal opportunities; sovereignty of the nation and autonomy of institutions; diversity of opinion, freedom of expression and open debate. NGOs shall promote these values

95. section 27 (1) of the Non Governmental Code of Conduct GOVERNMENT NOTICE No. 363 Published On 5/12/2008

at all levels while promoting transparency and accountability within the organizations, partnerships and in the society; quality, excellence creativity, self-learning and reflection; principled advocacy for public interest; and mutual partnership and relationships.

(iii) The Code of Conduct

- > Governance of NGOs:
 - Answerable to their own constituencies
 - Work in accordance with national laws
 - Have governing bodies with structures, roles and responsibilities
 - Have written procedures regarding the appointment, responsibilities and terms of members of the governing body and specify the frequency of meetings, quorum, and reporting mechanism
 - Be responsive and accountable to the people it serve without compromising its core values, vision, mission and objectives
 - Develop and adhere to policies that prohibit direct or indirect conflicts of interest by members of the governance structures as well as members, employees and volunteers of the organization
 - Ensure that the leadership of its organization is elected or appointed based on the principles of equal opportunities for all and that it observes and respects peoples' merits, capabilities and is representative of its constituencies.

- > Accountability
 - NGOs shall not enter into contracts which undermine sovereignty of the state and rights of the people
 - They shall recognize and appreciate multiple levels of accountability that is; downward and upward accountability, to and from the people; internal; external; and horizontal accountability; and
 - Regularly communicate, in clear and accessible manner its values, governance structure, mission and objectives.

- > Programmatic and Financial Management
 - NGOs shall develop reasonable budgets that clearly correspond with its programs and plans
 - Systematically monitor, evaluate, document and report on the progress of its programs and plans
 - Conduct periodic independent evaluations that shall examine, among other aspects, the quality of results, effectiveness and impacts of its work; and
 - Compile and make available to stakeholders an annual report that shall state the governing structures; the main achievements, challenges and lessons learned in the course of implementation, as well as the annual incomes, expenditures and balances
 - Manage resources in a manner that is prudent and provides value for money, including where applicable by employing or involving competent personnel;

- Ensure all financial transactions are transparent and fully documented, and that these documents are preserved for a defined number of years;
 - Ensure procurement is undertaken in a manner that provides quality at a least cost, avoids favouritism and corruption, is transparent, documented and otherwise conforms to sound procurement principles;
 - maintain a regularly updated assets register in accordance with sound accounting practice and maintain and manage bank account(s);
 - Develop and adhere to clear policies regarding payments to staff and volunteers to avoid conflict of interests and incentives to distort organizational priorities; and
 - Exercise zero tolerance on corruption and other forms of substantive misuse of funds, and take effective actions to hold persons or institutions responsible accountable
- > Human Resource Management
- NGOs shall develop and adhere to clear, well defined, written human resource and administrative policies and procedures, consistent with the laws of Tanzania
 - Promote and enforce clear policies to avoid conflict of interests, nepotism, favouritism, corruption and ensure an environment where mutual respect and human dignity is fostered; and
 - Promote and practice fairness and non-discrimination in recruitment and to the maximum extent possible promote diversity and gender balance in its staff composition.
- > Networking and Partnership
- International NGOs shall foster and promote the capacities of national or local NGOs, rather than implementation at grass-roots level;
 - NACONGO shall promote and ensure a good working relationship with the Government of the United Republic of Tanzania and other stakeholders at all levels. NGOs representatives who will represent the Tanzanian NGOs sector in any forum within or outside Tanzania shall be required to get the blessings of the Council and thereafter provide feedback to the Council.
- v) Enforcement of the Code
- There are three levels to manage the Code of Conduct, which are; the district, regional and national levels. The NGOs shall, individually and/or collectively, be responsible for assessing and monitoring their performances in relation to the requirements of this Code of Conduct.
- > Regional and District Mechanisms
- The Regional and District Ethics Committees shall on a quarterly basis inform the Council's Ethics Committee at national level on NGOs observance of this Code. The Council's Ethics Committee shall produce a quarterly report which shall be shared among all relevant stakeholders.

The existing NGOs networks shall ensure that their constituencies adhere to this code of conduct. An NGO or a member of an NGO involved in a conflict regarding observance of this Code of Conduct shall appeal to the regional and district NGOs Ethics Committees. The Committee, to which the complaint has been sent, shall carefully review the case using its procedures and provide advice, guidance and recommendation to the responsible parties.

> National Mechanism

The National NGOs Council, through its Ethics Committee shall provide advice, recommendation or compliments to respective NGOs or Networks based on the outcomes of the assessments. Where necessary the Council shall have sound warning signals to NGOs not showing indicators of good performance to the Code of Conduct. The outcomes of the assessments shall be made available to their members and relevant stakeholders at all levels.

The National NGOs Council through its Ethics Committee shall be the last reference point in a conflict with regard to the observance of this Code of Conduct.

> Joint mechanism

The National NGOs Council, through its ethics Committee at regional and district levels or commission of its powers to other existing agents, NGOs networks and coalitions may coordinate and supervise observance of this Code of Conduct. Council members at regional and district levels shall be members of the ethics committees.

vi) Breach of the Code

In case where defaulters, individuals or institutions, to the code of conduct have committed serious offences to jeopardize the lives of people and properties of the organization or the public such as violation of rights, corruption, theft or embezzlement of resources, immediate legal procedures and actions shall come into effect.

vii) Amendment of the Code

The Code of Conduct may be amended from time to time based on recommendations of NGOs and the resolutions of National Council of NGOs.

3.3 CSOS Registered as Companies Limited by Guarantee

3.3.1 Provisions of the Companies Act

The Companies Act, Cap 212 [R.E 2002], hereinafter to be referred to as the Companies Act was enacted in order to provide for more comprehensive provisions for regulation and control of companies and other similar associations.

a) Defining a Company

Under this Act a company is defined as any two or more persons, associated for any lawful purpose by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability⁹⁶

96 Section 3(1)

(b) Types of Companies

The law provides for Three (3) categories of Companies which are; private company, public company and foreign company. A CSO may be registered as a company limited by guarantee. Under the Companies Act, Cap 212 [R.E 2002], hereinafter to be referred to as the Companies Act, there are two types of companies which can be formed in Tanzania; a private and public company. Private companies may be either a company limited by shares, limited by guarantee or unlimited company⁹⁷

A private company which by its Articles, restricts the right to transfer its shares, limits the number of its members to fifty and prohibits any invitation to the public to subscribe for any shares or debentures of the company⁹⁸

More often than not, companies operating as CSOs are private companies limited by guarantee. A company limited by guarantee is a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of it being wound up.⁹⁹

(c) Registration of a CSOs as a company limited by guarantee

Companies limited by guarantee may be registered as local or foreign companies. For local companies, below is the procedure:

(i) Registration of a Local Company

- (a) They first have to do name search. This is to make sure that the name in which the company proposes to be registered under, does not match with the name of another company causing the likelihood of creating confusion to other people. Also to make sure that the name is not morally undesirable. BRELA introduced online name search and name clearance service known as Online Business Names Registration System (OBNRS) in the BRELA website.
- (b) Once the name has been cleared, the applicant has to file a memorandum and articles of association in quadruple to the Registrar at BRELA,
- (c) The MEMART has to be accompanied by forms 14a and 14b issued by BRELA. Form no. 14a gives particulars of directors, notice of the situation of the registered office and physical locations and postal address of the company. Form no. 14b on the other hand gives the particulars with regard to the formation of the company.

(ii) Registration of a Foreign Company

Foreign companies on the other hand, their registration process is slightly different from that of local companies. Foreign companies have to submit to the Registrar:

- a. Certified copies of Memorandum and Articles of Association,
- b. Notice of situation of the registered office in the country of domicile,

⁹⁷ Section 3 (2) of the Companies Act,

⁹⁸ Section 27 (1) of the Companies Act

⁹⁹ Section 3 (2) (b) of the Companies Act

- c. List of Directors of the company,
- d. Persons resident in the country who are the representatives of the company,
- e. Copy of most recent accounts and related reports of the company,
- f. Certificate of compliance, issued after the process.

Once the foregoing requirements are met by both local and foreign companies, the Registrar will issue them with a certificate of incorporation and they become bodies corporate capable to transact, to sue and be sued, among others.

If preparation of a memorandum and articles adapted to suit the proposed business of the company Section 9(1) of CAP. 212 require the MEMARTS to be registered with BRELA which shall be signed by the subscribers to the Memorandum, and shall contain the regulations for the Company as indicated below:

- i) The articles of association contain the regulations for the company.
- ii) Template articles for the management of private companies as well as other types of companies are provided in Tables A to E in the Schedule to the Companies Act.
- iii) The memorandum and articles are public documents and can be accessed by any person who makes a formal request to BRELA. Under section 9(2) these documents shall be:
- iv) In English Language, Printed, Divided into consecutively numbered paragraphs. Signed and dated by each subscriber in the presence of at least one attesting witness (preferably a notary public or commissioner for oaths with their stamp) who shall attest the signature and add his occupation and postal address.
- v) Full names, postal address and occupations of the shareholders/members must be provided.
- vi) Registered office and the address with a copy of any relevant lease must be provided.
- vii) A company must execute these formalities with its company seal.

d) Membership of a CSO Registered as a Company.

- i) A minimum of two members are required in forming a private company limited by guarantee.¹⁰⁰
- ii) It is not necessary to be a Tanzanian citizen, resident or individual.

e) Governance of a CSO registered as a Company

- i) There must be a minimum of two directors
- ii) It is not necessary to be a Tanzanian citizen or resident
- iii) A director can be an individual or a company
- iv) Details of each director must be provided
- v) There must be a company secretary who may be any such person so appointed or can be one of the directors whose details must be provided

¹⁰⁰ Section 3 of The Companies' Act CAP. 212

F) Duties and Obligations of a CSO registered under Companies Act

(i) Operation as per the MEMART

Section 18(1) states that:

“Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members’ thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.”

(ii) Hold Statutory meetings

The law also states that:

“Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year.”¹⁰¹

(iii) Keep books of accounts

The Companies’ Act also provides that:

Every company shall keep in English or Swahili proper books of account which are sufficient to show and explain the company’s transactions.¹⁰²

(iv) Keeping Minutes of AGM

The provisions of Section 150(l) require that:

“The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours be open to the inspection of any member without charge.”

(v) Prepare Report

The law provides that:

“The directors of a company, shall for each accounting period, prepare a report giving a fair review of the development of the business of the company and its subsidiaries during the accounting period and their position at the end of it and the amount, if any, which they recommend should be paid by way of dividend.”¹⁰³

(vi) File annual returns

The law under section 128(1) further provides that:

“Every company shall deliver to the Registrar, successive annual returns each of which is made up to a date not later than the “return date”, that the anniversary of the company’s incorporation.”

(vii) Notify the Registrar of changes

Duty to notify is provided for by the Act and states that:

“A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him: Provided that, where such a resolution is passed, the company shall within fourteen days give notice of that fact in the prescribed form to the Registrar.”¹⁰⁴

101 Section 133 (l) ibid

102 Section 151(1) ibid

103 Section 159(1) ibi

104 Section 170 (7) ibid

G) Offences

There are numerous offences stipulated by the Companies Act as follows:

- i) Failure to give members copies of MEMART
"A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act or Ordinance which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles of such fee as the Minister may prescribe in regulations, and in the case of a copy of an Act, of such sum not exceeding the published price thereof.
(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine."¹⁰⁵
- ii) Improper Use of the term Limited
"If any person trades or carries on any business or profession under a name or title of which "limited", or any contractions or imitation of that word, is the last word, that person, unless duly incorporated with limited liability, is guilty of an offence."¹⁰⁶
- iii) Impersonation
"If any person falsely and deceitfully impersonates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of an offence, and shall on conviction thereof be liable to imprisonment or to a fine or both."¹⁰⁷
- iv) Refusal of Inspection
Section 118 (3): If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine.
- v) Refusal for Inspection of Minutes Books
Section 150 (3): If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine and further to a default fine.
- vi) Failure to Secure Compliance with the law
Section 151(5): If any person, being a Director of a company, fails to take all

105 Section 22(1) *ibid*

106 Section 34(1) *ibid*

107 Section 86 of the Companies Act CAP 212

reasonable steps to secure compliance by the company with the requirements of this section or section 153, or has by his own wilful act been the cause of any default by the company there under, he shall, in respect of each offence, be liable on conviction to imprisonment or to a fine or to both.

- viii) Failure to prepare report
Section 159 (3): If any person, being a Director of a company, fails to take all reasonable steps to comply with the provisions of subsection (1), he shall, in respect of each offence, be liable on conviction to imprisonment or to a fine.
- ix) Delay in Submitting Accounts to AGM
Section 166 (2): The period allowed for laying and delivering accounts and reports shall be seven months from the completion of the accounting period in the case of a public company and ten months from the completion of the accounting period in the case of a private company.

(3) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports as set out in subsection (2), every person who immediately before the end of that period was a director of the company, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- x) Failure to Notify the Registrar about removal of an Auditor
Section 170 (7): A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him: Provided that, where such a resolution is passed, the company shall within fourteen days give notice of that fact in the prescribed form to the Registrar, failing which the company and every officer of it who is in default shall be guilty of an offence and liable to a fine and, in the case of continued contravention, to a default fine.
- xi) Misleading an Auditor
Section 176 (2): An officer of a company commits an offence if, he knowingly or recklessly, makes to the company's Auditors a statement whether written or oral which conveys or purports to convey any information or explanations which the Auditors require, or are entitled to require, as Auditors of the company, and is misleading, false or deceptive in a material particular. A person guilty of an offence under this subsection is liable to imprisonment or a fine or both.
- xii) Failure to file annual returns
Section 128 (3): If a company fails to deliver an annual return in accordance with this Chapter within twenty eight days of the return date, the company and every officer of the company who is in default shall be liable to a fine and, in the case of a continued failure to deliver an annual return, to a default fine. For the purpose of this subsection, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

3.3.2 Subsidiary Legislation under the Companies Act

The Companies Act has subsidiary legislation under it. These include:

- a) The Appointment of Senior Assistant Registrar and Assistant Registrars (Registrar-General's Office) Notice.

This Notice provides for appointment of designated positions that would serve as assistant registrars that may also have powers over CSOs registered as Companies.¹⁰⁸

The Notice provides that:

1. With effect from the 1st day of July, 1960, the Senior Assistant Registrar and every Assistant Registrar in the office of the Registrar-General is hereby appointed to be–

- (a) An Assistant Registrar-General of Births and Deaths under section 5 of the Births and Deaths Registration Act;
- (b) A Deputy Registrar under section 3 of the Business Names (Registration) Act;
- (c) An Assistant Registrar under–
 - (i) Section 3 of the Registration of Documents Act;
 - (ii) Section 3 of the Chattels Transfer Act;
 - (iii) Section 292 of the Companies Act;
 - (iv) Section 2 of the Patents (Registration) Act;
 - (v) Section 4 of the Land Registration Act;
 - (vi) Section 4 of the Trade Unions Act
 - (vii) Section 3 of the Trade and Service Marks Act.

2. [Cancels all previous appointments with effect from 1st July, 1960.]

- (b) The Authorised Investments Order

This Order provides for various investment requirements that a CSO registered as a Company that decides to invest may be required to undertake. Specifically the Order provides that:

- (1) Net investment in current assets including stocks of raw materials, work in progress, finished goods, stores, spares and trade receivables:

Provided that–

(a) The amount so invested shall not exceed one million shillings or ten percent of the net current assets at the close of the immediately preceding financial year, whichever is the lesser sum;

(b) Any such investment shall cease to be an authorised investment if the Treasury Registrar, within thirty days of the receipt of the audited accounts of the company in respect of the fiscal year in which such investment was made and submitted to the Treasury Registrar in accordance with the regulations made under section 371 certifies in writing that such investment shall be deemed not to be an authorised investment;

108 G.N. No. 276 of 1960

- (c) The Treasury Registrar may at any time after receipt by him of the cash flow budget and investment plans in respect of any financial year submitted to him under the Act (but before dividends in respect of such financial year are declared by the company), by certificate under his hand authorise in relation to the company in respect of such financial year an authorised investment in current assets of a sum of money larger than the sum of money which, but for such certificate, could lawfully be treated as an authorised investment in current assets.
- (2) Productive fixed assets:
Provided that–
- (a) The amount so invested shall not exceed one million shillings or ten per centum of the productive fixed assets at the close of the immediately preceding financial year, whichever is the lesser sum;
 - (b) Any such investment shall cease to be an authorised investment if the Treasury Registrar, within thirty days of the receipt of the audited accounts of the company in respect of the financial year in which such investment was made and submitted to the Treasury Registrar, in accordance with the Regulations made under section 371, certifies in writing that such investment shall be deemed not to be an authorised investment;
 - (c) The Treasury Registrar may at any time after receipt by him of the cash flow budget and investment plans in respect of any financial year submitted to him under the Act (but before dividends in respect of such financial year are declared by the company), by certificate under his hand authorise in relation to the company in respect of such financial year an authorised investment in current assets of a sum of money larger than the sum of money which, but for such certificate, could lawfully be treated as an authorised investment in productive fixed assets.
- (3) Ancillary fixed assets:
Provided that–
- (a) The amount so invested shall not exceed fifty thousand shillings or ten percent of the ancillary fixed assets at the close of the immediately preceding financial year, whichever is the lesser sum;
 - (b) Any such investment shall cease to be an authorised investment if the Treasury Registrar, within thirty days of the receipt of the audited accounts of the company in respect of the financial year in which such investment was made and submitted to the Treasury Registrar, in accordance with the Regulations made under section 371 certifies in writing such investment shall be deemed not to be an authorised investment;
 - (c) the Treasury Registrar may at any time after receipt by him of the cash flow budget and investment plans in respect of any financial year submitted to him under the

Act (but before dividends in respect of such financial year are declared by the company), by certificate under his hand authorise in relation to the company in respect of such financial year an authorised investment in current assets of a sum of money larger than the sum of money which, but for such certificate, could lawfully be treated as an authorised investment in ancillary fixed assets.

(4) Any investment in a company or public corporation which the Treasury Registrar may by writing under his hand certifies to be an authorised investment.

(a) The Companies (Regulation of Dividends and Surpluses) Regulations
These regulations provides for various requirements that a CSO registered as a Company may be required to undertake. Specifically the Regulations provide that:

Rule 8: Application to companies other than specified parastatals

This Part shall apply to companies other than specified parastatals or foreign companies.

Rule 9: Treasury Registrar may call for particulars

The Treasury Registrar may, by notice in writing addressed to a company, require such company to submit to him, within such time or at such intervals as may be specified in the notice, all or any of the documents or other particulars which a specified company is or may be, under the provisions of Part I, required to submit to the Treasury Registrar.

Rule 10: Application

This Part shall apply to all companies to which Part I or Part II applies.

Rule 11: Treasury Registrar may require audit

“Where the Treasury Registrar is satisfied that a company is not maintaining its accounts in accordance with the standard accounting practice he may, by notice in writing, require such company to maintain its accounts in accordance with such practice and require the company to have its accounts audited by an auditor approved by the Treasury Registrar”

Rule 12: Forms

“Accounts, particulars and information required to be submitted or given by or under these Regulations shall be submitted or given in such form as the Treasury Registrar may from time to time approve, and where any accounts, particulars or information are not submitted or given in the form approved by the Treasury Registrar, the Treasury Registrar may reject the same and require the company to resubmit such accounts, particulars or information in proper form within such further time, if any, as the Treasury Registrar may specify.”

Rule 13: Enlargement of time, etc.

“The Treasury Registrar may, for sufficient cause, by writing under his hand enlarge the time within which any accounts, particulars or information are required to be submitted or given by or under these Regulations.”

Rule 14: Offences

- (1) Any company which fails to submit or give any accounts, particulars or information required to be submitted or given by or under these Regulations within the time provided for in these Regulations or, where such time is not so provided for, within the time

Specified in any notice given by the Treasury Registrar or, where in the exercise of the power conferred upon the Treasury Registrar by regulation 13 he has extended such time, within such extended time, the company shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings.

- (2) Where any company submits any accounts or particulars, or gives any information, which is false in any material particular, the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings.

(b) The Companies (Winding Up Fees) Rules:

These rules apply in case of a winding up of a Company. They will also apply to all CSOs registered as companies. The Rules provide that:-

Rule 2: Fees

The fees in the Schedule hereto shall be payable in respect of proceedings under the Act in relation to the winding up of companies.

(c) The Companies (Forms) Rules

These rules provide for standard forms that are needed for various undertakings as per the Companies Act. The Most useful forms for CSOs registered under Companies Act include the following:-

FORM NO.	PURPOSE
10	Notice of Increase in Number of Members
111	Notice of Change in Situation or Address of Registered Office
128	Annual Returns
14a	First Directors and Secretary and Intended Situation of Registered Office
14b	Declaration of Compliance
210a	Appointment of a Director or Secretary
210b	Terminating Appointment as a Director Or Secretary
260	Statement of Affairs
345	Return of Final Meeting in a Members Voluntary Winding-Up
434	Return and Declaration Delivered for Registration by a Foreign Company
436b	Return of Alteration in the Address of Registered Office Etc. of a Foreign Company
210C	Change of Particulars for a Director or Secretary
111	Notice of Change in Situation or Address of Registered Office

3.4 CSOs Registered as Trust

Admittedly, scholars and practitioners have found it hard to define the term “Trust.” However, in simple terms, a Trust can be termed as a relationship recognized by equity which arise when property (“the Trust Fund”) is transferred by a person (“ the Settler”), to another person or persons (“the Trustees”), and such Trustees are obliged to hold such property for the benefit of others (“the Beneficiaries”), and they must act at all times in the best interest of the Beneficiaries. The interests of the Beneficiaries are set out in the instrument creating the Trust, (“the Trust Deed”), but there are other interests which are implied or imposed by law.¹⁰⁹

In Tanzania, a trust may be created by a body or association of persons bound together by custom, religion, kinship or nationality, or established for any religious, educational, literary, scientific, social or charitable purpose. Notwithstanding the manner and purpose for which a trust is created, registration is compulsory; a trustee or trustees holding property in trust for any religious, educational, literary, scientific, social or charitable purposes who has not or have not been incorporated under any law or whose incorporation is not provided by any law, is required to apply for incorporation to the Administrator General as provided for under the Trustees’ Incorporation Act, Cap 318 [R.E 2002].¹¹⁰ It is the Trustees’ Incorporation Act, that governs the registration and compliance matters with regard to trusts in Tanzania while the Registration, Insolvency and Trusteeship Agency (RITA) regulates the registration process and compliance matters.

3.4.1 Registration Process

According to RITA,¹¹¹ registration is done by submission of an application form (Form T.I 1) and Annexure “A” accompanied by;

- a. Trust Deed Constitution of the bodies seeking incorporation
- b. Passport size photo of proposed trustees
- c. Recommendation Letter from District Commissioner Office of the District in which the intended body corporate has its headquarters,
- d. Recommendation Letter from the relevant Sectoral Government Institutions if applicable,
- e. Recommendation Letter from relevant supreme religious Institutions if the applicant is a religious organization/body,¹¹² and
- f. Pay appropriate fee (current fee rate is Tshs 100,000/=).

Further, according to the Trustees’ Incorporation Act, and Rules made thereon, the following are some important things to consider before and during registration;

109 Pouti-ffiske B, What is a Trust? What role do Trusts play in succession law, Burges Salmon LLP, at pg 1

110 Sections 2 and 3 of the Trustees’ Incorporation Act, Cap 318, Cap 318 [R.E 2002]

111 Registration, Insolvency and Trusteeship Agency (RITA); <http://www.rita.go.tz/page.php?pg=94&lang=en>

112 All copies submitted should be in duplicate except Letter of Recommendation

1. Before an application for registration is lodged with RITA, it is crucial for the settlor¹¹³ while appointing a trustee(s) to be certain that the appointee has not been convicted of a criminal offence or any offence involving fraud or dishonesty or adjudged bankrupt under any written law or enters into any agreement or scheme of composition with his creditors, or takes advantage of any law for the benefit of his debtors. It is important to note that contravention of this requirement amounts to commission of an offence that attracts a sentence for a term of two years or fine of Tshs. 2000/= or both.¹¹⁴
2. While choosing a name in which the trust is sought to be registered, the trustee(s) should be careful not to choose a name that might be undesirable in the opinion of the Administration General.¹¹⁵
3. All applications, returns and notifications shall be clearly and legibly written, printed or typewritten in the English language. Where any copy of the constitution and rules of a body or association or of any trust instrument or declaration of trust, required to be annexed to an application for incorporation, is in any language other than English, there shall be furnished therewith a verified translation of the same in English.¹¹⁶
4. A copy or translation of any document may be verified by the trustee or one of the trustees, as the case may be, or by an advocate or notary public, or such other person as the Administrator-General may approve, certifying the same to be a true copy or translation of the original.¹¹⁷
5. Every application for incorporation shall be signed by the trustee or by two or more of the trustees, as the case may be. Any other application and every return and notification shall be signed by the trustee or by at least two trustees, as the case may be.¹¹⁸

3.4.1.1 Status After Registration

Upon incorporation and being issued with a certificate to that effect under subsection (1) of section 5 of the Trustees' Incorporation Act, Cap 318 [R.E 2002], the trustee or trustees becomes a body corporate by the name described in the certificate, and shall have;

- (a) perpetual succession and a common seal,
- (b) power to sue and be sued in such corporate name, and
- (c) subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire, transfer, convey therein, assign or demise any land or any interest.

¹¹³ Person giving his/her property in trust

¹¹⁴ Section 4 (1) and (3) of the Trustees' Incorporation Act, Cap 318 [R.E 2002]

¹¹⁵ Section 6 (1) of the Trustees' Incorporation Act, Cap 318, Cap 318 [R.E 2002]

¹¹⁶ Rule 4 of the Trustees' Incorporation Rules, 1956

¹¹⁷ Rule 6 of the Trustees' Incorporation Rules, 1956

¹¹⁸ Rule 5 of the Trustees' Incorporation Rules, 1956

All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustee or trustees as trusts of the body or association of persons or under the trust instrument or declaration of trust, as the case may be. It should be remembered that Section 3 provides that: Notwithstanding section 2, a trustee or trustees holding property in trust for any religious, educational, literary, scientific, social or charitable purposes who has not or have not been incorporated under any law or whose incorporation is not provided by any law, shall apply for incorporation under this Act.

3.4.2 Compliance Matters

i) To Operate as per the Registration Terms and Conditions

Section 8 states that:

(2) All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustee or trustees as trusts of the body or association of persons or under the trust instrument or declaration of trust, as the case may be.

ii) To use common seal

Section 12 provides that:

(1) Every deed to which a body incorporated under this Act is a party shall be executed by such body under its common seal or by an attorney appointed in that behalf under such common seal.

iii) To exercise due diligence

Section 13 provides that:

All trustees incorporated under this Act shall, notwithstanding their incorporation, be chargeable for such property as shall come into their hands or which might by the exercise of due diligence have come into their hands and shall be answerable and accountable for their own acts, receipts, neglects and defaults, in the same manner and to the same extent as if no such incorporation had been effected.

iv) To Reside in Tanzania

Section 15 provides that:

(1) Where a body incorporated under this Act consists of a sole trustee, that trustee shall be a person ordinarily resident in Tanzania.

(2) Where a body incorporated under this Act consists of two or more trustees, not less than two of such trustees shall be persons ordinarily resident in Tanzania.

v) To Notify the Registrar any changes associated with the Trust

A Trust is under obligation to notify the Administrator General of any changes in change of trustees, name of the body corporate, postal address and constitution within one month.

- i. Change of name– a trust can change its name with the approval of the Administrator General, and the said name change be communicated to the

Administrator General within one month of the change.¹¹⁹ The approval sought before the Administrator General is to be done by filling Form No. T.I 2 and the notification of change of name is to be done by filling Form No. T.I 3. Form No. T.I 2 is to be accompanied with a certified copy of minutes of duly authorized meeting which effected the change of name and the original certificate of incorporation which is to be surrendered. This goes hand in hand with paying the prescribed fees, that is Tshs. 20,000/= for each of the Forms and Tshs. 5,000/= for certificate.

- ii. Change of trustees – as indicated in section 16 (2) of the Trustees' Incorporation Act, Cap 318 [R.E 2002], when any person ceases to be a trustee and when any new trustee is appointed and when any trustee changes his name or residence or postal address, the change shall, within one month of the happening, be notified in writing to the Administrator-General, in the prescribed manner, by the trustees for the time being.
- iii. Such a notification, in the Act, shall be done by filling and submitting Form No. T.I 4 together with a certified copy of minutes of duly authorized meeting which effected the change of Trustees. A fee of Tshs. 20,000/= shall be paid upon making such notification.

3.4.3 Offences

Section 28 provides that:

- (1) Where a body corporate created under this Act makes a default in making any return or giving any notice required by or provided for under the provisions of this Act to the Administrator-General within the time limited therefore, every trustee being a member of the body corporate commits an offence and is liable upon conviction to a fine not exceeding one thousand shillings for every month during which the default continues.
 - (2) If any person in any return or notice to the Administrator-General required by or provided for under the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he commits an offence and is liable upon conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
 - (3) Where the offence concerned relates the late filing of returns contrary to sections 6(3) and (4), 16(2) and (3) and 18, the defaulter shall in addition to any other penalty provided pay to the Registrar-General late filing fees of one thousand shillings for every month during which the default continues.
- (a) De-registration of a Trust
- (i) Grounds for De-registration of a Trust
- Section 23 provides that:(1) The Administrator-General may–

¹¹⁹ Section 6 (3) of the Trustees' Incorporation Act, Cap 318, Cap 318 [R.E 2002]

- (a) If he is satisfied that a body incorporated under this Act has obtained its certificate of incorporation by means of any fraud or false representation; or
- (b) If for a period of one month there are no trustees comprising a body corporate created under this Act, or if at any time the number of such trustees ordinarily resident in Tanzania falls below the minimum number of such trustees required to be so ordinarily resident in the case of the body corporate under the provisions of section 15; or
- (c) If he is satisfied that any such body corporate has ceased to hold any trust property and that it is improbable that it will hold such property in the future; or
- (d) If he is satisfied that any such body corporate has failed to fulfil or perform any of the conditions or directions inserted in its certificate of incorporation, or any of its obligations or duties under this or any other Act, or under the constitution and rules, or trust instrument, or declaration of trust, by which it is governed, as the case may be; or
- (e) if the trusts governing any such body corporate are so changed that they are no longer within the provisions of subsection (1) of section 2, serve notice on the body corporate, or, where the body corporate has failed to give notice to the Administrator-General of a change of postal address or cannot be found with the exercise of due diligence give notice in the Gazette that he intends to revoke the incorporation of such body corporate, either unconditionally or unless such conditions as he may determine are satisfied within such period as may be specified in the notice, and a copy of every such notice shall, if practicable, be sent to the body or association, if any, which appointed the trustee or trustees.

ii) De-registration Procedure

Section 23 provides that:

- (1) The Administrator-General may–
 - (e) if the trusts governing any such body corporate are so changed that they are no longer within the provisions of subsection (1) of section 2, serve notice on the body corporate, or, where the body corporate has failed to give notice in the Gazette that he intends to revoke the incorporation of such body corporate, either unconditionally or unless such conditions as he may determine are satisfied within such period as may be specified in the notice, and a copy of every such notice shall, if practicable, be sent to the body or association, if any, which appointed the trustee or trustees.
- (2) At the expiration of such period as aforesaid, the Administrator-General may by notice in the Gazette revoke the incorporation of such body corporate and thereupon the trustee or trustees shall cease to be incorporated and all movable and immovable property vested in the body corporate shall, subject to the provisions of the Land Registration Act iii* or any Act amending or replacing the same, vest in the trustee or trustees for the time being, and if more than one, jointly, or where there is no trustee, in the Public Trustee, upon the same trusts as such movable and immovable property was held by the body corporate immediately preceding the revocation of its incorporation, and all covenants and

conditions relating to any such immovable property enforceable by or against the body corporate before the revocation of its incorporation shall be enforceable to the same extent and by the same means by or against the trustee or trustees or the Public Trustee, as the case may be, and his or their successors in title.

- (3) A body corporate may at any time request the Administrator-General to revoke the incorporation of such body, and upon receipt of such request the Administrator-General shall by notice in the Gazette revoke such incorporation; and thereupon the provisions of subsection (2) of this section as to the vesting of property and the enforceability of covenants and conditions shall apply.
- (4) When the incorporation of anybody corporate has been revoked under the foregoing powers, the trustee or trustees shall forthwith render up the certificate of incorporation to the Administrator-General.

iii) Summary Suspension or De-registration of a Trust

Section 24 provides that:

- (1) Without prejudice to section 23, the Registrar-General may revoke or suspend at any time the incorporation of any trust if it is expedient so to do on the grounds that the body corporate or organisation –
 - (a) Is being used for unlawful purposes or for any purpose prejudicial to or incompatible with the maintenance of peace, order and good governance; or
 - (b) Has altered its objects or pursues objects other than its declared objects; or
 - (c) Has failed to comply with an order issued by the Registrar-General in pursuance of section 20 or 21 within the time stated in the order; or
 - (d) Has breached in any way the trust.
- (2) No revocation or suspension shall be affected under this section unless the Registrar-General has notified his intention to do so and the trustee or trustees concerned had an opportunity, within one month to submit to the Registrar-General reasons why the revocation or suspension should not be affected.

iv) Remedies upon de-registration

Section 27 states that:

Any person aggrieved by the refusal of the Administrator-General to grant a certificate of incorporation or to approve a change of name, or by any conditions or directions inserted in any certificate of incorporation, or by the revocation of the incorporation of anybody corporate may within twenty-one days after the notification of such refusal, conditions or directions or revocation, as the case may be, appeal to the Minister responsible for legal affairs and the Minister may make such order as the circumstances may require and except as aforesaid no appeal shall lie against any such refusal, conditions or directions or revocation.

3.4.4 Subsidiary Legislation under the Trustees Incorporation Act

i) Powers to Make Rules:

Section 31 of the Trustees Incorporation Act provides:

- (1) The Chief Justice may make rules of court for regulating any proceedings before and applications to the court under the provisions of this Act and for the fees to be paid in respect thereof.
- (2) Subject to the provisions of subsection (1), the Minister responsible for legal affairs may make rules for the better carrying out of the purposes and provisions of this Act, including the fixing of fees to be paid in respect of any matter under this Act required to be done, the prescribing of anything which this Act requires to be prescribed, the prescribing of forms, and the regulation of the records to be kept.

ii) The Trustees' Incorporation Rules, 1956

These Rules were made pursuant to Section 31 (2) of the Principal Act and provide for various matters.

Rule 2 states that the forms in the First Schedule hereto shall be used in all matters to which they refer, or are capable of being applied or adapted, with such alterations and additions, if any, as are necessary or desired and the Administrator-General allows.

These are the following forms provided in the 1st Schedule.

Form Number	Purpose of the Form
Form No T.I.1	Application for Incorporation of Trustees
Form No T.I.2	Application for Approval of a Change of Name of a Body Corporate
Form No T.I.3	Notification of a Change of Name
Form No T.I.4	Notification of a Change of Or Concerning the Trustees
Form No T.I.5	Return of Trustees
Form No T.I.6	Notification of Change of Postal Address
Form No T.I.7	Notification of Change of Trust

The second schedule provides for the necessary fees as follows:

Level/Service Needed	Fees
Application for Incorporation	TSHs 100,000/-
Notification of any change of trust	TSHs 20,000/-
Return of notification delivered to the Registrar-General	TSHs 10,000/-
Certificate copy of any document in the Custody of the Registrar or any extra there from	TSHs 3,000/-
Application to inspect any application, certificate or other document	TSHs 5,000/-
Application for consent to acquire any one parcel of land or other property	TSHs 20,000/-

Application made at the same time to acquire more than one parcel of land for each additional parcel	TSHs 15,000/-
For certifying any document or extract there from	TSHs 3,000/-
For issue of duplicate certificate or any registration	TSHs 5,000/-

3.5 CSOs Registered as Societies/Associations

Societies in Tanzania form part of Civil Societies. They are Registered and Regulated by The Societies Act, Cap 337 [R.E 2002], hereinafter to be referred to as “The Societies Act” and the Rules and Regulations made there-from. According to Section 2 of The Societies Act, a society includes any club, company, partnership or association of ten or more persons whatever its nature or objective(s) may be.

3.5.1 Defining a Society

(a) What is a society?

The law provides among others that:

“society” includes any club, company, partnership or association of ten or more persons whatever its nature or object.

(2) Every branch of a society shall be deemed to be a society if such branch consists often or more members.

(3) Where anybody of persons, whether corporate or unincorporated, is a member of a society every member of such body shall be deemed to be a member of such society.¹²⁰

(b) What is not a society?

Section 2(1) provides that Society does not include–

- (i) A company registered under the Companies Act, or any company which has complied with the requirements of section 321 of that Act *(1)
- (ii) Any company, council, authority, association, board or committee lawfully constituted or established under Royal Charter, or Royal Letters Patent, or any Applied Act, or any law for the time being in force in Tanzania;
- (iii) Any Lodge of Freemasons regularly constituted under any of the registered governing bodies of Freemasons in the United Kingdom of Great Britain and Northern Ireland
- (iv) Any trade union registered under the Trade Unions Act *(2);
- (v) Any company, association or partnership consisting of not more than twenty persons, formed and maintained for the sole purpose of carrying on any lawful business;
- (vi) Any co-operative society registered under the Co-operative Societies Act *(3) or any ranching association registered under the Range Development and Management Act *(4), or any agricultural association registered under the Agricultural Associations Act;

¹²⁰ section 2 (1) ibid

- (vii) Any society which the President may, by order published in the Gazette, declare motto is a society for the purposes of this Act;
- (viii) A political party registrable under the Political Parties Act *(5);
- (ix) Any society which has been registered as a sports association under the provisions of the National Sports Council of Tanzania Act *(6), or in respect of which a certificate of exemption from registration under that Act has been issued;
- (x) any society which, in the opinion of the Registrar, is or in respect of which the Minister for the time being responsible for legal affairs has, under section 3, given decision that it is a sports association within the meaning assigned to that term by the National Sports Council of Tanzania Act;

(c) What is an Unlawful Society?

Section 2 provides also that

“Unlawful society” means–

- (a) Any society declared or deemed to have been declared to be unlawful under section 8; and
- (b) Any local society other than–
 - (i) A registered society; or
 - (ii) A n exempted society; or
 - (iii) A local society in respect of which an application for registration has been lawfully made under section 12 or section 16 and remains undetermined or in respect of which an appeal has been lawfully made to the Minister under section 19 and remains undetermined.

Section 8 provides further that:

- (1) It shall be lawful for the President, in his absolute discretion, where he considers it to be essential in the public interest, by order to declare to be unlawful any society which in his opinion–
 - (a) Is being used for any purpose prejudicial to, or incompatible with, the maintenance of peace, order and good government; or
 - (b) Is being used for any purpose at variance with its declared objects.
- (2) Any society declared by order of the President to be a society dangerous to the good government of Tanzania under subsection (2) of section 67 of the Penal Code *(7), shall be deemed to have been declared to be unlawful under the provisions of this section and every such order shall be deemed to have been made under the provisions of this section and shall continue in force until revoked under this Act.
- (3) The President may at any time revoke or vary an order made or deemed to be made under this section.
- (4) Every society against which an order under this section is made or deemed to be made shall be an unlawful society.
- (5) Where an order is made under this section in respect of a registered society or exempted society, such order shall operate immediately to cancel such registration or rescind such exemption, as the case may be.

- (6) No society against which an order under this section is made or deemed to be made shall be registered under this Act or be exempted from such registration or be entitled to make application for registration.

3.5.2 Registration Process

The Societies Act acknowledges the locally registered societies and those that have been registered outside Tanzania and carries on some of their activities in Tanzania.¹²¹ The requirement for registration is provided for under the Societies Act itself but the manner in which such registration should be conducted is provided for under the Societies (Application for Registration) Rules, GN No. 119 of 1954.

The Rules provide for the registration procedure,¹²² which, according to Rule 4 of the Rules, is initiated by filing an application for registration to the Assistant Registrar stationed within the district where the Applicant's office is situated and the application shall be made in duplicate in the forms set out as Forms S.A. 1 and S.A. 2 in the Schedule to these Rules, be signed by two of the office-bearers where there are two or more and by the sole office-bearer in other cases, and should be accompanied by two copies of the constitution and rules of the society. This registration procedure relates to societies both locally registered or those that have been registered outside Tanzania but carrying on some of their activities in Tanzania.¹²³

Upon receipt of the application, the Registrar may register or refuse to register the society. If the Registrar agrees to register a society, he shall issue to the society a certificate of registration in the form set out as Form S.A. 3 in the Schedule to these Rules.¹²⁴ However, where the Registrar refuses to register a local society he shall send to the society notification of his refusal in the form set out as Form S.A. 5 in the Schedule to these Rules.¹²⁵ The reasons which might prompt the Registrar to refuse to register a society include;

- a. Where he is satisfied that such local society is a branch of, or it affiliated to or connected with, any organization or group of a political nature established outside Tanzania;
- b. Where it appears to him that such local society is being or is likely to be used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good government; or
- c. Where he is satisfied that the application does not comply with the provisions of this Act or of any rules made thereunder; or
- d. Where he is satisfied that the local society does not exist; or
- e. Where the name under which the local society is to be registered—
 - i) is identical to that of any other existing local society; or
 - ii) so nearly resembles the name of such other local society as, in the opinion of the Registrar, to be likely to deceive the public or the members of either society; or

121 Sections 7 and 12 of the Societies Act

122 Rule 3 of the Societies (Application For Registration) Rules, GN No. 119 Of 1954

123 Ibid

124 Section 12 (4) of the Societies Act and Rule 5 of The Societies (Application For Registration) Rules, GN No. 119 Of 1954

125 Rule 7 of The Societies (Application For Registration) Rules, GN No. 119 Of 1954

iii) is, in the opinion of the Registrar, undesirable.

Registration of a society shall be entered into a register which, subject to the payment of the prescribed fee, may be searched and examined by any person during the usual office hours on application being made to the Registrar.¹²⁶ The Registrar shall also publish in the Gazette notice of the registration, exemption from registration or refusal of registration of any society.¹²⁷

However, any society that is aggrieved by the Registrar's refusal to register the same, shall within 21 days of the decision, or any other extended time as the case may be, appeal to the Minister responsible for matters relating to societies.¹²⁸ The said appeal or application for extension of time shall be in writing signed by two of the office-bearers of the society where there are two or more and by the sole office-bearer in other cases, set out the grounds upon which the appeal or application is based, and be sent to the Permanent Secretary or to the Ministry of Home Affairs.¹²⁹ The decision of the minister on an application for extension of time to appeal or on the appeal itself shall be final and conclusive.¹³⁰

3.5.3 General duties, Obligations and Compliance

i) To Furnish Information to the Registrar

Section 21 provides that:

- (1) The Registrar may at any time, by notice under his hand, order any registered society to furnish him in writing with—
 - (a) A true and complete copy of the constitution and rules of such society in force at the date of such order;
 - (b) A true and complete list of office-bearers and members of such society residing in Tanzania or present therein at the date of such order;
 - (c) a true and complete return of the number of meetings held by such society in Tanzania within the period of six months immediately preceding such order, stating the place or places at which such meetings were held;
 - (d) Such accounts, returns and other information as may be prescribed.
- (2) An order given under subsection (1) of this section shall specify the time (not being less than twenty-one days) within which the information shall be supplied: Provided that the Registrar may, on application made to him and on good cause being shown, grant an extension of time at his discretion.

ii) To Provide Audited Accounts

Section 24 provides that:

- (1) The Registrar may, at any time, by notice under his hand, order any registered society to furnish him, within a time to be stated in such order (not being less than one month), with duly audited accounts of such society.

¹²⁶ Section 15 of the Societies Act,

¹²⁷ Rule 9 of The Societies (Application For Registration) Rules, GN No. 119 Of 1954

¹²⁸ Section 19 (1) of the Societies Act

¹²⁹ Rule 8 of the Societies (Application For Registration) Rules, GN. No. 119 Of 1954

¹³⁰ Section 19 (2) of the Societies Act

- (2) For the purposes of this section “duly audited” means audited by an auditor approved by the Registrar and such approval may be given either generally or for any particular audit.
- (3) Without prejudice to the provisions of subsections (1) and (2) of this section the Registrar may at any time by notice under his hand order any registered society, within a time to be stated in such order, to permit its accounts to be inspected by himself or by a person authorised by him in writing.
- (4) Every office-bearer and every person managing or assisting in the management of a society in respect of which a notice under subsection (3) of this section has been served shall supply to the Registrar or the person authorised by him such information relating to the accounts of the society and other matters incidental thereto as the Registrar or such authorised person may require and, when the inspection is undertaken by a person authorised by the Registrar, such person shall make a report of his inspection and shall at the earliest practicable opportunity submit such report to the Registrar with such recommendations as he may deem fit to include.
- (5) Where the accounts of a society are inspected by a person authorised by the Registrar there shall be paid to such person (if he is not in the employment of the Government) out of funds allocated for that purpose from the general revenue of Tanzania in respect of the inspection such reasonable fee as the Registrar may allow.
- (6) A registered society which, on the ground of its failure to comply with an order under this section, has had its registration cancelled under section 17 shall not be entitled to apply for registration until such order has been complied with.

3.5.4 Offences

i) By Office Bearers

Section 25 provides that

- (1) Any office-bearer and any person managing or assisting in the management of any unlawful society shall be guilty of an offence and liable, on conviction, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.
- (2) Subject to the provisions of the Criminal Procedure Act *(8), an offence under this section may be tried by a subordinate court presided over by a District magistrate of a resident Magistrate.

ii) By Member of Unlawful Society

Section 26 provides that:

“Any person who is or acts as a member of an unlawful society or attends a meeting of an unlawful society shall be guilty of and liable, on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.”

iii) By Others

Section 27 provides that:

Any person who knowingly allows a meeting of an unlawful society or of members of an unlawful society, to be held in any place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and liable, on conviction, to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

3.5.5 De-registration of a Society

Section 17 provides that:

The Registrar may, in his discretion, cancel at any time the registration of any local society effected under section 12 if he is satisfied that it is expedient so to do on the ground that the society concerned–

- (a) Is a branch of or is affiliated to or connected with any organisation or group of apolitical nature established outside Tanzania; or
 - (b) Is being used or is likely to be used for unlawful purposes or for any purpose prejudicial to or incompatible with the maintenance of peace, order and good government; or
 - (c) Has altered its objects or pursues objects other than its declared objects; or
 - (d) Has failed to comply with an order made under section 22 within the time stated in such order: Provided that, prior to cancelling any registration, the Registrar shall notify his intention to the society concerned and shall give it an opportunity to submit reasons why the registration should not be cancelled.
- Remedies if any

Section 19 provides that

- (1) Any local society, other than a local society in respect of which an order made or deemed to be made under section 8 is in force, which is aggrieved by the Registrar's refusal to register such local society or his decision to cancel the registration thereof may, within twenty-one days or such extended period as the Minister may allow, from the date of such refusal or cancellation, appeal against such refusal or decision to the Minister.
- (2) On any such appeal the decision of the Minister shall be final.

3.5.6 Subsidiary Legislation under the Societies Act

The Societies Act has led to the formulation and adoption of the following subsidiary legislations.

(a) The Societies Act (Application) Order

1. This Order may be cited as the Societies Act (Application) Order.
2. The societies described in the Schedule hereto are hereby declared not to be societies for the purposes of this Act.

Schedule

1. All schools intended to provide or further a general, technical or religious education.
2. All educational authorities, boards, committees and training institutions approved by the Commissioner for Education.
3. All societies within any registered school or training institution or any school intended to provide or further a general, technical or religious education which have been approved by the Principal of such a school or institution.
4. Congregations which assemble exclusively for the purpose of religious teaching and worship other than congregations affiliated to, or under the auspices of, a society which is an unlawful society.
5. Building Societies registered under the Building Societies Act *(1).

(a) The Societies Rules (G.N 165) of 1954

These Rules Made under Section 32 of the Principal Act, provide for important operational issues for societies operating in the country. Most importantly are the following:

1. Every registered society which receives money from any source, whether by way of subscription, donation or otherwise, shall keep one or more books of accounts in which shall be entered details of all moneys received and payments made by the society.
2. Every office-bearer and every person managing or assisting in the management in Tanzania of a registered society in respect of which the provisions of this rule are not complied with shall be guilty of an offence against these Rules and shall be liable on conviction to a fine not exceeding four thousand shillings or imprisonment not exceeding six months or both such fine and such imprisonment unless he establishes to the satisfaction of the court that he exercised due diligence and that the failure by the society to comply with this rule was due to reasons beyond his control.
3. (1) where any office-bearer of a registered society ceases to hold office or any person is appointed to be an office-bearer of a registered society; such registered society shall within fourteen days send notice thereof to the Assistant Registrar stationed in the district in which its office is situated.

4. Every notice sent under the provisions of paragraph (1) of this rule shall be in the form set out as Form S.A. 6 in the First Schedule hereto and shall be in duplicate.
5. Every office-bearer and every person managing or assisting in the management in Tanzania of a registered society in respect of which the provisions of this rule are not complied with, shall be guilty of an offence against these Rules and shall be liable on conviction to a fine not exceeding two hundred shillings and for a continuing breach thereof to a fine not exceeding ten shillings in respect of each day on which such breach continues unless he establishes to the satisfaction of the court that he exercised due diligence and that the failure to comply with this rule was due to reasons beyond his control.
6. (1) where any registered or exempted society changes the situation of its registered office or changes its postal address it shall, within fourteen days, send notice thereof to the Assistant Registrar stationed in the district in which its office is situated.
(2) Every notice sent under the provisions of paragraph (1) of this rule shall be in one of the forms set out as Forms S.A. 7 and S.A. 8 in the First Schedule hereto, whichever may be appropriate, and shall be in duplicate.
(3) Every office-bearer and every person managing or assisting in the management in Tanzania of a registered society or exempted society in respect of which the provisions of this rule are not complied with, shall be guilty of an offence against these Rules and shall be liable on conviction to a fine not exceeding two hundred shillings and for a continuing breach thereof to a fine not exceeding ten shillings in respect of each day on which such breach continues unless he establishes to the satisfaction of the court that he exercised due diligence and that the failure by the society to comply with this rule was due to reasons beyond his control.
7. The Registrar may require any registered society to produce within a time to be specified by the Registrar for his inspection–
 - (a) All or any of the books of accounts of the society; and
 - (b) Any minutes or written records of the proceedings of the society or of any committee or governing or executive body thereof, and where the Registrar so requires the production of any such books of accounts or minutes or written records and these are not produced within the time specified in such requirement, such registered society shall be deemed to be in breach of the provisions of this rule.

Laws Governing Information, Research and Publications in Tanzania

4.0 Introduction

This chapter presents laws, policies and regulations that oversee research activities, information and publications in Tanzania. Civil Societies Organizations conduct several studies and publish different reports. Before conducting research and publishing reports, CSOs need to understand laws that guide research activities and publication. The legal foundation of research is inferred from the right to information as provided under the Constitution of the United Republic of Tanzania. Article 18 (1) provides for the right to seek and impart information. Article 18 (2) provides that every person has a right to information on events and developments inside and outside Tanzania that is relevant to his or her being and also to be informed on the general matters relevant to the society.

One of the methods of imparting or seeking information is by way of undertaking research. Also, in order to fully enjoy the right guaranteed under Article 18 (2), research in a variety of disciplines must be undertaken. It should also be known that the importance of research has been given prominence by the Constitution as a factor that can cement relations within the Union structure. This partly explains why research and statistics (an important component of research) have been included in the list of Union matters provided for under the First Schedule to the Constitution of the United Republic of Tanzania. In addition to the Constitutional guarantees, it should also be borne in mind that Tanzania is a party to a number of international human rights instruments and conventions which require Parties to provide its citizens with avenues to access information.

Research plays a very crucial role in the socio-economic development of any society and many CSOs are now and then called upon to conduct research either as part of their project activities or as may be required as part of their needs assessment or preliminary surveys. However, due to limited knowledge on the legal and policy requirements for conducting research in the country, many of the CSOs may end up getting in conflict with government authorities vested with mandates to control and monitor research and information dissemination activities. The legal and Policy framework for Research, Information and Publication in Tanzania is comprised in the following legal and policy instruments:

- I. The Constitution of the United Republic of Tanzania 1977
- II. The National Research and Development Policy 2010
- III. The Tanzania Commission for Science and Technology Act 1986
- IV. The NIMR Parliamentary Act No. 23 of 1979
- V. The Copyright and Neighbouring Rights Act, 1999
- VI. The National Sports Council of Tanzania Act
- VII. Records and Archives Management Act, 2002
- VIII. The Access to Information Act, 2015.
- IX. The Statistics Act, 2013
- X. The Cybercrimes Act 2015
- XI. The Media Services Act, 2015
- XII. The National Research Registration and Clearance Guidelines, 2018
- XIII. Electronic and Postal Communications (Online Content) Regulations, 2018

4.1 The National Research and Development Policy 2010

The 2010 Research and Development Policy aims at providing guidance on how research should be conducted in all sectors of the economy; to establish an appropriate coordination and management system of research activities in the country; to set clear and realistic priorities for research on short, medium and long term basis; to rationalize the use of the country's natural resources through scientific and technological research and development activities; and to ensure adequate budgetary allocation by the government to research and set a mechanism for increasing the share of the private sector in funding research and development. The policy applies not only to the government Ministries, Departments and agencies, but it equally applies to the private sector, NGOs, CBOs, FBOs, professional associations and development partners.

One of the policy objectives is to increase the contribution of research in socio-economic disciplines and ICT for national development, and increase the use of ICT in research. The need to ensure that research activities are carried out in accordance with acceptable ethical requirements, taking into account such matters as protection of research subjects and safeguarding the environment; acknowledging sources; copyrights and patents; integrity in connection with fabrication of data, cheating and non-transparency; disclosure of confidential information; plagiarism and falsification.

The policy (item 4.4.5) requires the complementary input from CSOs, particularly in the provision of knowledge, information, capacity building and mobilization of resources at the grass-root level. They will also play a crucial role in setting research priorities. They similarly play a crucial role in popularizing new technologies.

4.2 The Tanzania Commission for Science and Technology Act.

This Act establishes the Tanzania Commission for Science and Technology (COSTECH) to be the principal advisory organ of the Government on all matters relating to scientific research and technology development. According to this law, and through Circular No. MPEC/B/10/1

of 4th May 1980, the Government assigned COSTECH predecessor the role of research clearing house as part of research coordination. Thus, individuals and organisations wishing to carry out research in the mainland of Tanzania have to seek research clearance from COSTECH. For those seeking to conduct research in Zanzibar normally they should contact the Office of the Second Vice-President, Zanzibar. COSTECH developed Research Guidelines which apply to all institutions and organisations as mandated in the COSTECH Act (revised).

The Tanzania Commission for Science and Technology (COSTECH) is a public institution established by the Act of Parliament No. 7 of 1986. COSTECH was successor to UTAFITI which had been in existence since 1972. The Commission is under the Ministry responsible for Science and Technology and is the principal advisory organ to the Government on all matters relating to research and technology. COSTECH developed guidelines in 2018 as the best way to provide guidance on the processes for registration and clearance of all research activities conducted within Tanzania mainland. The guidelines shall guide community based organizations, professional bodies, individual researchers, CSOs, government agencies, business communities and higher learning institutions. The Guideline is attached at the end of this document.

a) Guidelines

According to Guidelines, the following categories of persons/organisations need research clearance before they embark on any research in Tanzania:

- i) All foreign researchers;
 - ii) All Tanzanians studying abroad who are in need of doing research in the country;
 - iii) All Tanzanians except staff and students from institutions of higher learning as well as staff from affiliated research institutions or government ministries who are required to do research as part of their duties.
 - iv) The guidelines establish key processes, procedures, practices and minimum mandatory requirements for research approval, registration and carrying out research in Tanzania. COSTECH identifies and recognize the following three categories of research based on their duration:
 - (a) Short-term research (for a duration of one year or less)
 - (b) Medium-term research (for a duration between 1-3 years)
 - (c) Long-term research (for a duration beyond 3 years).
- (b) Application procedures

Applications for research clearance must be submitted to the Director General COSTECH at least three month before commencement of research. Application forms and templates of the required supporting documents are available on the COSTECH website; <http://www.costech.or.tz>.

Approval of Research Ethical Clearance from the following appropriate subject matter authorities is required prior to grant of permit by COSTECH:

- i) National Institute of Medical Research (NIMR) for research studies involving medical, public health and/or human subjects (health).
- ii) Tanzania Food and Drugs Authority for Clinical Trials.
- iii) Tanzania Wildlife Research Institute (TAWIRI) for research studies involving wildlife and natural resources conservation.

(c) Fees

A non-refundable research clearance application fee of US \$ 50.00 is payable to COSTECH and an ethical clearance fee of varied amount is also payable to subject matter authorities. For NIMR, the fee ranges between US \$ 250.00 for international researches to Tshs. 350,000 for Tanzanian researches. These rates change from time to time.

(d) Permits

Permits are given for a period of one year or for an appropriate duration and can be renewed for similar period provided satisfactory progress reports for the previous periods are received by COSTECH. If and when these formalities have been satisfactorily completed (which may take several months), an applicant will receive a formal written offer of a research clearance. Foreign research applicants should not make any irreversible preparations to leave for Tanzania unless and until he/she receives this offer letter. Soon after obtaining a research permit, the researcher will be required to proceed to the Immigration Department and apply for class C residence permit.

All researchers granted research permits that involve collecting human, plant or animal materials/data that will be exported outside Tanzania must submit a signed Material Transfer Agreement (MTA)/Data Transfer Agreement (DTA) between Tanzania host institution and the foreign counter part. The MTA/DTA will indicate terms for collecting, storing/managing, transporting, disposal or returning of the materials/Data to Tanzania after the closure of the research project.

An applicant who has been permitted to conduct research in Tanzania is obliged to submit a soft copy and two (2) printed copies of the research report/thesis to COSTECH on completion of the research. There are Legal consequences of conducting research without research permit in Tanzania.

4.3 The Copyright and Neighbouring Rights Act

The objectives of the Act are; to protect the moral and economic interests of authors (creators) relating to their works, to provide protection for expression of folklore, to protect interests of performing artists, producers of cassettes and broadcasting organizations and lastly to provide for civil remedies and criminal sanctions against an infringer and pirates.

In a general outlook, this law is comprised of 53 sections fitted in seven (7) parts. Part one of the Act is on preliminary provisions, which provides for the objectives of the law, its application and definitions of some terms used. Part two of the Act discusses copyright law in general; part three is on the protection of expressions of folklore against illicit exploitation. Part four covers the protection of performers, producers of sound recordings and broadcasting organizations. Part five provides for general sanctions on copyright infringers and part six is on measures, remedies and sanctions against abuses in respect of technical means of protection and right management of information. Lastly is part seven which is on transitional provisions.

(a) Liability for infringements of Copyright

The Act provides that, if a person infringes another person's copyright, he will then be liable for civil and criminal sanctions or penalties. The weight of the sanction varies depending on the circumstance, extent of the infringement and losses incurred by the copyright owner. These sanctions include a fine not more than five million shillings or an imprisonment term not exceeding three years (for first time offenders) and a fine not exceeding ten million shillings and an imprisonment term of not more than five years (for subsequent offenders). Section 26 provides that, a person is allowed to use copyrighted material without authorization in circumstances where it is for educational purposes, research purposes and where it is utilized by way of illustration but with fair practice. Additionally, if a person gives authorization on behalf of performers without being appointed as the performers' representative, he/she is guilty of a criminal offence and will be liable for a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years.

(b) Specific protection

Furthermore, the Copyright and Neighbouring Rights Act, 1999 contains specific rules on situations whereby copyright protection is available to:

- Situations whereby the publication, production, performance, broadcasting, etc was not carried out in Tanzania.
- Situations whereby the publication, production, performance, broadcasting, etc was not carried out by a Tanzanian national.
- Unpublished works and works first published in a foreign country by authors of foreign nationality.
- Expressions of foreign folklore.

4.4 The Statistics Act, 2015

This law was enacted for the purpose and as an object to provide for the coordination of National Statistical systems, and to make better provisions in relation to their functions. The Act defines "statistics" to mean data required for the production of organised statistical information, obtained from census and statistical surveys or administrative records.

(a) Scope of the law

The scope of the Act extends far beyond the institutions usually covered by statistics legislation according to the African Charter and other international standards. Including giving NGOs, development partners and others, means that they would also be subject to the same duties and responsibilities as the National Bureau of Statistics and other government institutions.

(b) Applicability of the law

The objective of the inclusion of non-governmental agencies becomes clear in section 18 of the act which deals with the “relation with other agencies”. The section says that “only the Director General [of the Bureau] may commence an official statistical collection” and that “no person or agency may authorize the commencement of an official statistical collection except with the approval of the Director General”. This means that any NGO, research institute or development partner that wishes to undertake statistical research need the prior approval of the Bureau.

Analysts of the Act expresses concern about the lack of clarity of the term “official statistics” in the Act. Section 20 (1) uses the exact wording of the AU quoted above: “the body of statistical information produced, validated, compiled and disseminated by Statistics Authorities”, specified as “the Bureau” and “Government institutions”. However, there is an added subsection (c) including “agencies” which are defined as “research institutions, Non-governmental organizations, development partners or any other user or producer of statistics”.

According to section 37(1)(b) any person who without lawful authority publishes or communicates to any person otherwise than in the ordinary course of his employment any information acquired by him in the course of such employment ...commits an offence”. Furthermore section 37 (2) outlaws the publication of such information “disclosed in contravention of the provisions of this Act”.

The Act fails to provide a public interest defence for cases where disclosure of statistical information takes place for legitimate purposes, such as investigative journalism or research. In addition, such a provision would contradict section 23 of the Access to Information Act which provides for whistle-blowers by protecting persons in the service or employment of any information holder against sanctions for releasing information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment, as long as that person acted in good faith and in the reasonable belief that the information was substantially true.

Furthermore, publication of “false official statistical information” is also prohibited by this law. Section 37(4) and (5) makes it an offence for a director, manager, controller or any other person who is concerned with the management of any communication media (defined to include radio station, television station, newspaper or magazine, website or any other media.) to allow or causes to be published false official statistical information; or for an agency (which may include research institutions, NGOs, development partners, or any other user or producer of statistics) or any other person or agency to publish or communicate “official statistical information which may result in the distortion of facts.” Upon conviction, such person or agency shall be liable to a fine of not less than 10 million shillings or to imprisonment of a term of not less than three years or to both.

It has been pointed out correctly that especially in the case of statistics it is notoriously hard to determine what is right or false as this will largely hinge on contextualization and interpretation. Statistical figures are by their very nature potentially controversial.

While these provisions may be seen to have no problems in the eyes of an ordinary person, they are problematic if measured against international standards. The United Nations General Assembly Resolution on Fundamental Principles of Official Statistics sets out a principle in this regard which is more appropriate for democratic societies than invoking punitive measures. Principle 4 provides that the statistical agencies (e.g. NBS) are entitled to comment on erroneous interpretation and misuse of statistics.

These provisions limit access to government statistics and can prevent access to critical information and this imposes severe restriction on all statistics-related activities by CSOs, research institutions and the media, requiring them to get prior approval of the Director General before collecting, analysing, disseminating or even possessing such official statistics.

4.5 The Media Services Act, 2016

Reading from the long title, the Act was intended to make provisions for promotion of professionalism in the media industry, for establishment of the Journalists Accreditation Board, Independent Media Council and framework for regulation of media services. However, as shown in individual provisions, the Act ended up restricting the independence and freedom of the media in Tanzania by way of, among others, establishing a statutory media council (called "media services council"), requiring journalists and media houses to obtain an official license, affirming the government-controlled 'public broadcaster' as state broadcaster, introducing severe sanctions for a number of media-specific offences and allowing for the banning of newspapers as well as the import of publications.

(a) Scope of Application

The Act regulates all media, defined under section 3 (Interpretations), as "the industry, trade or business of collecting, processing and dissemination of content through radio, television or newspapers and include online platforms. Print media" is defined as "newspapers, journals, magazines, newsletters" and "editor" is "a journalist who is in charge of production of content for radio, television, newspaper, journals and magazine, and includes online platforms for radio, television and newspaper. Furthermore, the Act covers social media defined as "online interactions among people in which they create, share, and exchange information and ideas in virtual communities, networks and their associated platform of new technology".

The inclusion of journals, magazines and newsletters means that all small publications, even those published by NGOs, companies' etcetera are also subject to the restrictions of the Act.

According to section 47 (1) "Any person who makes use by any means, of a media service for the purposes of publishing-

- (a) Information which is intentionally or recklessly falsified in a manner which
 - (i) Threatens the interests of defense, public safety, public order, the economic interests of the United Republic, public morality or public health; or
 - (ii) Is injurious to the reputation, rights and freedom of other persons;
- (b) Information which is maliciously or fraudulently fabricated;
- (c) Any statement the content of which is-
 - (i) Threatening the interests of defense, public safety, public order, the economic interests of the United Republic, public morality or public health; or
 - (ii) Injurious to the reputation, rights and freedom of other persons;
- (d) Statement knowingly to be false or without reasonable grounds for believing it to be true;
- (e) A statement with maliciously or fraudulent intent representing the statement as a true statement; or
- (f) Prohibited information, commits an offence and upon conviction, shall be liable to a fine of not less than five million shillings but not exceeding twenty million shillings or to imprisonment for a period not less than three years but not exceeding five years or to both".

In part, this section takes its cue from article 19 (3) of the ICCPR which allows for restrictions on freedom of expression "for the protection of national security or of public order (ordre public), or of public health or morals". However, the bill goes much further by including the interests of defense, public safety and the economic interests of the State as justifiable grounds for restrictions.

In regard to "morals" the Human Rights Committee cautions:

... the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.

For all these reasons, the Declaration on Principles of Freedom of Expression warns in its article XIII:

Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

(c) Seditious Offences and CSOs

Of particular relevance to CSOs is section 52 and 53 of the Media Services Act. Section 52.(1) provides that if an offence is committed by a company or a body corporate, a society, an association or a body of persons, then the leaders (director, coordinator or an officer with the management of the affairs or activities of the CSO), shall be liable and upon conviction will be sentenced to a fine of not less than fifteen million shillings but not exceeding twenty five million shillings; unless it is proved that the leader had no knowledge and could not, have had knowledge of the commission of the offence.

Section 53 imposes criminal liability to the principal or employer if the offence under the Act is committed by an agent or employee. The offender will be liable on conviction to a fine of not less than fifteen million shillings but not exceeding twenty five million shillings unless he proves to the satisfaction of the court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

Historically, seditious offences were mainly aimed at protecting the government and any lawful authority from hatred, contempt and disaffection. Law of sedition was a tool used for repression of political dissent by intolerant and intransigent regimes. In most of the established democracies, the laws on sedition have now been either formally repealed or have been largely defunct. Pronouncements by Courts of law and Law Reform Commissions in a number of countries support the contention that the law of sedition serves no useful purpose, is anachronistic, undemocratic and it is unconstitutional encroachment on the right to freedom of expression.

In Tanzania, the history of seditious offences is traced from the Penal Code (Cap 16) which was a colonial legislation, also aimed at among other things, controlling political opponents. The Offence was later re-enacted into the Newspapers Act in 1976 which was itself repealed and replaced by the Media Services Act in 2016. The offence of sedition is thus currently found under the Media Services Act, and while the offence is found to be obsolete in many democracies as indicated above, it has recently gained momentum in Tanzania where any disliked statement can currently be interpreted as seditious in the country. The central element of the offence of sedition is the seditious intention which is defined under section 55 of the Penal Code (Cap 16) and section 49 of the Media Services Act. It includes the intention to do following:

- i) Bringing into hatred or contempt or to excite disaffection against the lawful authority of the government of the United Republic,
- ii) Excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established;
- iii) Bringing into hatred, contempt or to excite disaffection against the administration of justice in the United Republic;
- iv) Raising discontent or disaffection amongst a section of people in the United Republic, or
- v) Promoting feelings of ill-will and hostility between different categories of the population of the United Republic.

Any person who does or attempts to do any act or omission with the above intentions commits the offence of sedition, and if found guilty will be required to serve a prison sentence of between three to five years for first offender, or five to ten years for subsequent offenders, or pay a fine of between Tanzanian shillings five to ten million (if first offender) or seven to twenty million if subsequent offender, or to both. However these provisions are in very broad terms, and would apply to almost all criticism against the government or any government official.

4.6 The Access to Information Act, 2016.

The Access to Information Act was passed in September 2016. The Access to Information Act was expected to give greater meaning to clauses in the Tanzanian Constitution, specifically Articles 18(1) and 18(2) which provide for the right to information. The Act allows a broad exemption in cases where another law governs the handling or release of information. In international best practice, access to information laws are given priority over other legislations in situations where the laws conflict.

(a) Scope of Application

On the right and scope of access to information, section 2 is a starting point. It provides that the Act shall apply to (a) public authorities; (b) private bodies registered under any written law which (i) utilize public funds; or (ii) are in possession of information which is of significant public interest.

This is a broad provision such that the law does not just cover all government agencies, but also covers a large number of private bodies – including any that use public funding (such as contractors and suppliers of goods and services to government, subsidized industries, political parties, and more) and any that holds information of significant public interest. Potentially, this last sub-clause could include a very wide range of organisations, including civil society organisations, the media companies in extractive industries, etc.

(b) Procedure to Request Information

Section 10 provides for the procedure for request information. A request for access to information shall be made in a prescribed form and addressed to the information holder, with sufficient details to enable the information holder to identify the information and shall include name and address of the person requesting the information.

(3) For purposes of subsection (1), a request shall be treated as made in writing where the text of the request

(a) Is delivered by hand, postal, or transmitted by electronic means

(b) Is received in legible form in the manner prescribed in the regulations; and

(c) Is capable of being used for subsequent reference.

(4) A person requesting who, because of illiteracy or disability is unable to make a written application for access to information, may make a request orally, and the officer to whom the request is made shall reduce the request into writing in the prescribed form and provide a copy of the written request to the person requesting.

In responding to requests for information, sections 11, 13 and 16 outline the key procedures to be followed by information holders. This includes the time allowed for responses:

Section 11 (1) provides that where access to information is requested, the information holder to which the request is made shall, as soon as practicable but not exceeding thirty days after the request is received-

- (a) Give written notice to the person who made the request as to whether the information exists and, if it does, whether access to the information or a part thereof shall be given; and
- (b) If access is to be given, promptly give the person requesting access to the information or a part thereof in the manner prescribed under this Act.

(2) Where the information holder requires further information in order to identify and locate the information requested, it shall, within fourteen days of receiving the request for information, notify the person requesting of the need for such further information and in that case, the period of fourteen days shall be reckoned from the date on which such further information is received.

(3) Where the information holder is satisfied that the information requested

- (a) Does not exist; or
- (b) Has already been published and it is in public domain, the information holder shall inform the person who made the request to that effect.

13 (1) Where the information holder to which a request for information is made considers that another information holder is the appropriate holder of the information requested, the information holder to which the request is received, transfer the request to such other information holder and give a written notice of the transfer to the person who made the request.

- (1) For the purpose of subsection (1), the period specified in section 11 shall apply to the information holder to which the request is transferred with effect from the date on which the request is transferred.

There are several minor concerns here that could usefully have been addressed. First, 30 days (clause 11 (1)) is longer than is provided in many access to information laws. A 20-day limit, or even 14 days, is more common. Second, there is no requirement for information holders to acknowledge that a request has been received. This potentially introduces confusion as to whether a request has been received, and when the 30 day (or shorter) time limit applies. Third, the provision to transfer a request to a different organisation (clause 13) is unusual and problematic.

By allowing an information holder to transfer a request merely because they “consider” that another body is “the appropriate holder of the information requested”, the bill provides a very easy means for information holder to avoid providing information. Potentially, this could create a lengthy or unending process of institutions passing on requests to each other without the requester ever being provided with the information needed.

Section 17 explains the means of providing requested information:

17.-(1) Access to information may be provided to a person in any of the following forms:

- (a) provision of a copy of the information;
- (b) delivery of a copy of the information in electronic form;
- (c) in the case of an information that is an article or another thing from which sounds of visual images are capable of being reproduced, by making arrangements for the person to hear or view sounds or visual images;
- (d) in the case of an information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in shorthand writing or codified, by provision of a written transcript of the words recorded or contained in the information;
- (e) in the case of a person with a sensory disability, by provision of a record in a format that allows the person to read or listen to the record of the information.

(2) Where a person who made the request has requested access in a particular form, the information holder may issue the information in a form he deems proper.

(3) Where the form of access requested:

- (a) Contravenes the provisions of the National Security Act;
- (b) Interferes unreasonably with the operations of the information holder;
- (c) Is detrimental to the preservation of the information or having regard to the physical nature of the information it is not appropriate;
- (d) Would involve inordinate huge cost or time to the information holder; or
- (e) Would involve an infringement of copyright other than a copyright owned by the government subsisting in the information, access in that form may be refused and given in another form.

Therefore, the right to access information is a fundamental right provided for by many Tanzanian laws as seen above. It also has international standards governing it as enunciated in this chapter. This right goes parallel with guidelines in production and possession of such information through research and publication, protection of the information from copyright infringement and liability in case of giving false information, misuse of information and other related offenses as provided for in this Chapter.

Chapter 05

Penal Laws and CsoS in Tanzania

5.0 Introduction

Civil Societies Organizations like any other entities are not excluded from criminal liability. The liability may be to the Organization or for the individual working with a certain organization. General criminal laws apply to individuals involved with civic organizations just as with other legal persons. Thus besides offences prescribed under specific laws discussed in this compendium, some of the main criminal/penal laws that provide for offences relevant to CSOs in Tanzania are as follows:

- i) The Police Force and Auxiliary Services Act (Cap 322 R.E)
- ii) Penal Code (Tanzania) Cap 16 R.E 2009)
- iii) The Wildlife Conservation Act, 2009
- iv) Environmental Management Act, 2004
- v) Economic and Organised Crimes Control Act 1984 (Cap 200 R.E 2002)
- vi) The Prevention and Combating of Corruption Act, No. 11 of 2007 (Cap 329)
- vii) The Anti-Money Laundering Act, No.160 of 2007 (Cap 423)
- viii) The Drugs and Prevention of Illicit Traffic in Drugs Act, 1995
- ix) Proceeds of Crime Act [R.E 2002]
- x) Anti-Trafficking in Persons Act, 2008
- xi) The Prevention of Terrorism Act, 2002
- xii) National Defence Act, (Cap. 192 R.E. 2002)
- xiii) The Tanzania Communications Regulatory Authority Act

5.1 Corporate Crimes and criminal Liabilities of CSOs

Once a CSO is registered, it is expected to perform its functions diligently and preserve its credibility including that of its leaders. In criminology, the term corporate crimes refers to crimes committed either by a CSO or corporation (i.e, a business entity having a separate legal personality apart from the natural persons that manage its activities), or by individuals that may be identified with a corporation or other business entity. The individuals are considered to be so much in command of the CSO that their acts are treated as if they were acts of the corporation. Corporate crime overlaps with white-collar crimes because the majority of individuals who may act as or represent the interests of the corporation are employees or professionals of a higher social class. It further overlaps with organized crimes because criminals can set up a CSO either for the purposes of crime or as a vehicle for laundering the

proceeds of a crime. Every country in the world has faced a corporate crime of one type or the other. The countries have different ways and legislations dealing with corporate crimes and Tanzania is not an exception.

In Tanzania, the law recognizes that any registered CSO has dual identity as an association of persons, taking an example of a company which requires that for it to be formed there should be an association of at least two persons and as a person, it becomes distinct from its members. In the latter case, it is recognized that it requires a human agent to fulfil the mission and carry out the business of a corporate entity. Consequently, while in many cases the activities of a corporate entity will be identified with it as a person, there are instances where the law will hold its members or officers responsible for its actions, as to hold otherwise would lead to absurdities.

Thus in Tanzania, criminal liability may arise in some offences committed under the Penal Code, the Economic and Organised Crimes Control Act 1984, the Prevention and Combating of Corruption Act 2007, the Anti-Money Laundering Act 2007, the Proceeds of Crime Act 1991, the Drugs and Prevention of Illicit Traffic in Drugs Act, 1995, the Prevention of Terrorism Act, 2002, the Anti-Trafficking in Persons Act 2008, the National Defence Act 1966 and many other penal laws.

5.1.1 The Police Force and Auxiliary Services Act, 1969

This Act was enacted to provide for the organisation, discipline, powers and duties of the Police Force, a Police Reserve and an Auxiliary Police Force and for other related matters.

(a) CSOs and the Offence of Unlawful Assembly

The right to freedom of assembly is provided under Article 20 of the Constitution of the United Republic of Tanzania as discussed in Chapter 3 of this compendium. However, the same is restricted under different Penal laws in the country. Section 74 of the Penal Code makes it an offence for three or more persons to assemble with intent to commit an offence or to carry out some common purpose. This is criminalized as an unlawful assembly punishable by one year imprisonment. The Police Force and Auxiliary Services Act, though has no direct connection to CSOs but sections 43 and 44 of the Act provide for conditions for assembling and prescribes penalties in case of violations. Section 43 provides for the requirement to submit a written notification of impending assembly or procession, to the police officer in charge of the area specifying:–

- i) the place and time at which the meeting is to take place;
- ii) the general purpose of the meeting; and
- iii) such other particulars as the Minister may provide from time to time, by notice published in the Gazette, specifically.

The main problem with these provisions is that the same can easily be abused as it often happens, on allegations that from intelligence information, the intended assembly or procession is likely to cause a breach of the peace or to prejudice the public safety or public order or to be used for any unlawful purpose(s). CSOs may originate from cultural, traditional and jurisdictional environments different from Tanzania or Africa. Some of the acts considered lawful elsewhere may be grave offences here in Tanzania.

5.1.2 Offences under the Penal Code

(a) Offences against Morality and Unnatural Offences

The Tanzania Penal Code Act, Chapter XV as amended by the Sexual Offences Special Provisions Act, provide for “Offences Against Morality”. These include among others; rape, unnatural sexual offences, procuring persons for sexual intercourse or other kinds of prostitution, trafficking of persons for the purpose of trading in sex, child sexual abuse, and sexual exploitation of children, female genital mutilation and sexual harassment. On unnatural offences, both male and female same-sex sexual acts are criminalized under the Tanzanian Criminal/Penal legislation.

Tanzania has imposed relatively high mandatory minimum sentences for several sexual offences; its minimum sentences are amongst the highest of countries surveyed. Penalties of 30 years or life imprisonment apply to such offences as rape, gang rape, attempted rape, sodomy and bestiality, incest by a woman and unnatural offences. The statutory framework for the offence of rape targets recidivism, but for other sexual offences, mandatory minimum penalties do not increase with the second offence. The Act also mandates compensation to victims of sexual offences.

This Section helps to prevent victimization of individuals working under or for CSOs and those seeking employment there by making it an offence to abuse them sexually under the seen provisions.

(b) Fraud, False Accounting, Forgery and similar offences.

The law against corporate fraud and false accounting is provided in the Penal Code under Sections 314-317. It does not target a corporate body but its directors and other officers of the corporation including trustees who defraud destroys the organization’s properties or convert it to any use not authorized by the trust to commit an offence and upon conviction, such a person is liable to imprisonment for seven years.

Under section 315 of the Penal Code, any person, being a director or officer of a corporation or company who misappropriates the corporation property, or defraud the finances of the corporation or company commits an offence, and is liable to imprisonment for fourteen year.

Furthermore, under section 316 of the Penal Code, any person who, being a promoter, director, officer or auditor of a corporation or company, who utters false statements, with intent to deceive or to defraud the corporation or company, or assist any other person to do so, commits an offence and is liable to imprisonment for seven years. Likewise, section 317 deals with a clerk or any other employee of the corporation or company who makes fraudulent accounting to commit an offence and is liable to imprisonment for fourteen years. The law also criminalizes all acts amounting to forgery of documents, including making false documents, altering documents, introducing unauthorized documents, or signing documents by impersonating another person without the authority or knowledge of that other person. This part of the law is very relevant to CSOs as in the course of their daily operations, such offences may be committed hence infiltrating the welfare of the CSOs.

5.1.3 Corruption and Organised Economic Crimes

(i) Context

The problem of embezzlement and fraud is said to take place in organizations of all types and at all levels. There is a widespread suspicion among common people that whoever gets access to foreign funds will embezzle them. Many CSOs are mainly donor dependent, but increasingly, donors prefer posting a foreigner to control the use of the money or risk the misappropriation of the aid. Although this may not be a workable advice, it is not only encouraged, but a greater degree of transparency on the side of the CSOs should also be demanded.

CSOs have a great role to play in the fight against corruption through sensitization of the community in realizing that corruption is an enemy that brings social injustices. However, given the limited capacity of most of the CSOs in carrying out these responsibilities, some CSOs instead of fighting against corruption and being examples of good practices, they found themselves engaging in corrupt practices.

In order to effectively fight against corruption, Civil Society Organizations require being active and be guaranteed with freedom of speech and association which are currently relatively weak in Tanzania. At the initial stage of developing the NACSAP, the government strived to involve NGOs, the media, religious leaders, and the private sector, with limited success. NGOs involved in the Triangular Partnership Programme, however, are reportedly to be rather weak. There are a number of other active coalitions, such as the Policy Forum which coordinates NGO input into official policy processes in recent years. However, according to experts consulted within the framework of this query, the government sometimes excludes the Policy Forum from important events such as annual reviews connected to general budget support.

The 1971 Prevention of Corruption Act which was amended in 2002 constitutes the core of Tanzania's anti-corruption legal framework. In 2007, the Prevention and Combating of Corruption Act was revised to allow for the implementation of the UN and Africa Union Conventions against corruption. It seeks to bring together anti-corruption institutions, expand the range of corruption offences and address private sector corruption. The Anti-Money Laundering Act was enacted in 2006 and amended in 2012 to intensify the fight against capital flight and financing of terrorism (Business Anti Corruption Portal 2013).

5.1.4 Offences under the Prevention and Combating of Corruption Act

The PCCA, like many other Statute does not have a straight definition on corruption. However, section 15-34, and 28(1) of the said Act has enumerated circumstances (or 'offences') which constitute an act of corruption. In contrast, the Black's Law Dictionary (8th Ed., 1999) defines corruption as depravity, perversion, or taint, impairment of integrity, virtue or moral principles especially impairment of a public official's duties by bribery, or the act of doing something with intent to give some advantage inconsistent with official duty and rights of others; fiduciary or an official's use of station or office to procure some benefit either personally or for someone else, contrary to the rights of others. From the above approach, one may conclude that corruption is an act or omission intending to obtain unfair advantage and the abrogating of the rightful person's entitlement. Dr. G.E. Hoseah (PCCB) divides corruption in three (3) major classes;

- i) Petty Corruption (small scale): form of corruption used in all social delivery services; e.g. bribery, kickbacks, favouritism/Cronyism/Nepotism and etc.
- ii) Grand Corruption (medium scale): form of corruption found in big government contracts such as construction industry, tendering and procurement.
- iii) Psychotic/State Capture Corruption (large scale): form of corruption among top officials of the government which tend to suffocate or mortgage the national resources and turn them into personal foreign accounts, e.g. Mobutu, Abacha, Doe and etc.

The Act establishes the Prevention and Combating of Corruption Bureau (PCCB), which is responsible for investigating suspected corruption cases and prosecuting offenders in coordination with the DPP and educating the public about corruption. The Anti Corruption Act No. 11 of 2007 brings Tanzanian laws into conformity with the United Nations Convention Against Corruption. Additionally, Tanzania has instituted a National Anti-Corruption Strategy and Plan of Action, which brings together a coalition of stakeholders including CSOs to combat corruption and aims to reduce corruption through increased transparency and efficiency of regulations and raising public awareness. Indeed, a 2010 Global Integrity Country Report gave Tanzania a score of 100 (strong) in relation to having anti-corruption laws in place.

5.1.5 Offences under the Economic and Organized Crimes Control Act.

Economic Crimes are identified under the First Schedule to the Economic and Organized Crimes Control Act. This Act was enacted in 1984 when the first real adverse effects of organized crime began to bite. The enactment of this Act was aimed at making better provisions for the control and eradication of certain crimes and culpable non-criminal misconduct through the prescription of modified investigation and trial procedures, and new remedies for connected matters.

A number of new offences notorious for their adverse effect on the economy of the country were created and enshrined in the first schedule of that Act. These crimes include: offences relating to exchange control, bribery and corruption, hoarding of commodities, hoarding of money, occasioning loss to specified authorities, theft of public property, stock theft, offences against conservation of wildlife, illegal prospecting for minerals, gemstones and leading organized crime.

The legislation gives powers to the relevant authorities to search buildings, vessels, carriages, boxes, receptacles or places and to seize any property involved in the commission or facilitation of commission of an economic crime. Further, the police have the power to arrest and prosecute persons suspected of committing organized crime.

Additionally, on conviction of an economic offence, the court may order forfeiture of the guilty party's property that was involved in the commission or facilitation of the offence. Further, the property may be disposed subject to the right of a third party and the proceeds be paid to the Consolidated Funds.

In efforts to intensify the fight against corruption, in 2016, the parliament enacted the Written Laws (Miscellaneous Amendment). Among other things, this new Amending Act, adds value in anti-corruption and economic crimes laws as follows:-

- i) It introduces the Corruption and Economic Crimes Court within the High Court of Tanzania, aimed at the determination of grand corruption cases. This Court commenced in July, 2016.
- ii) The current Anti-corruption law, the Prevention and Combating of Corruption Act, No.11 of 2007 has been amended, and all the offences save for the offence under section 15 of the Act relating to giving and receiving bribes, are made to be economic offences.
- iii) The amendment of the law also provides the minimum sentence for convict (20 minimum and maximum of 30 years imprisonment).
- iv) All corruptly obtained assets shall be confiscated to the Government.

The new law is aimed at fighting grand corruption cases which undermine and distort the economy of the country.

5.1.6 Offences under Wildlife Laws, Forestry Laws and Environmental Laws and other Laws.

Referred to as taking, trading (supplying, selling, trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild flora and fauna in contravention of national or international law; e.g. poaching, illegal pollution, illegal fishing and etc. In other words, this is illegal (or illicit) trading (or dealing) in wildlife (or biodiversity). It is a wider offence which covers even environmental pollution.

5.1.7 Offences Relating to Proceeds of Crimes

Under the United Nations Convention Against Corruption, proceeds of crime means any property derived from or obtained, directly or indirectly, through the commission of an offence. The United Republic of Tanzania has ratified the UN Convention Against Corruption and other relevant international conventions and has instituted laws allowing for government seizure of such property connected to illegal activity. The Proceeds of Crime Act describes proceeds in relation to an offence as: any property that is derived or realized, directly or indirectly by any person from the commission of the offence and proceeds of crime as any property that is derived or realized, directly or indirectly, by any person from (a) the commission of any serious offence; (b) any act or omission which (i) occurred outside the United Republic; (ii) related to a narcotic substance; and (iii) would, if they had occurred in the United Republic, have constituted an arrestable offence or a serious narcotic offence; and proceeds of an offence or profits of crime shall be construed accordingly.

This Act was designed to introduce a new law fashioned to provide the most effective weaponry so far against major crimes. Its purpose, according to the bill sent to parliament for debate, is to strike at the heart of major organized crimes by depriving persons involved of the profits and instrumentalities of their crimes. By so doing, it was envisaged that the Act will suppress criminal activity by attacking the primary motive, profit, and prevent reinvestment of that profit in further criminal activities. Generally speaking, the Act contains provisions of a coordinated international effort designed to target both the pushers and others involved in criminal activities as well as those who reap the most reward from such crimes.

This Act also provides a mechanism for the tracing, freezing and confiscation of the proceeds of crime such as drug trafficking. It also confers on the Police new powers to assist in following the money trail. Furthermore, the Act creates a few new offences such as money laundering and organized fraud.

The Proceeds of Crime Act, when taken together with the Mutual Assistance in Criminal Matters Act, enables freezing and confiscation orders made by courts in our country to be enforced abroad. Likewise, they enable orders made in foreign countries in relation to foreign offences to be enforced against assets located in Tanzania. Hence legally safeguarding the welfare of CSOs.

5.1.8 Offences under the Money Laundering Act

CSOs receive funds from different donors to implement their day to day activities. These funds need to be properly channelled to the Organization and implement the activities for which they were requested. The law sets out offences which an organization may commit an offense as far as money (fund) is concerned.

The following are some specific provision of the law that have direct connection with CSOs; Section 71(3) (a) (b) of the Proceeds of Crime Act (1991) provides that the offence of money laundering is committed where a person receives, possesses, conceals, disposes of, brings into or removes from the United Republic, any money or other property which is the proceeds of crime, while he knows or ought to know or to have known that the money or other property is or was derived or realized, directly or indirectly, from some form of unlawful activity.

The above position has been refined (though not repealed) by section 3 of Anti-money Laundering Act (2006) which define money laundering as an engagement of a person/s, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoids the legal consequences of such action.

Section 12 of the Act enumerates acts which constitute money laundering. Thus, the offence of money laundering is committed if a person or association:

- (a) Engages, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offence;
- (b) converts, transfers, transports or transmits property while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence, for the purposes of concealing, disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence to evade the legal consequences of his actions;
- (c) conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence;

- (d) acquires, possesses, uses or administers property, while he knows or ought to know or ought to have known at the time of receipt that such property is the proceeds of a predicate offence; or
- (e) participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels the commission of any of the acts described in paragraphs (a) to (d) of this section, commits an offence of money laundering.

Money laundering is a complex process, which is accomplished through three main phases. The first phase is the physical disposal of the cash, i.e. placing the proceeds of predicate criminal activities into bank or non-bank financial institutions in order to disguise their illegal origins and make them appear to be legitimate funds. This may include the use of front businesses such as hotels, cinemas or casinos that may reasonably claim to do business in cash. It may also involve the use of smurfing techniques, through which launderers make numerous deposits of amounts of money that are small enough to avoid raising suspicion or triggering reporting mechanisms. This process is called placement.

The second phase is the movement of funds from institution to institution to hide their origins and ownership, termed. It consists of putting the funds, which have entered into the financial system, through series of financial operations to mislead potential investigators and to give the funds the appearance of having legal origins. For this launderers use financial institutions that provide legally protected banking or offshore mechanisms.

The final stage is to integrate criminal assets into the mainstream of commerce and investment in an ostensibly legitimate business. This is termed integration. The funds may be re-introduced into the economy through, for instance, the purchase of luxury items or through investment in assets such as shares in companies and real estate.

The main objectives of money launderers are thus to place their funds in the financial system without arousing suspicion, to move them around, often after a series of complex transactions crossing multiple jurisdictions so that it becomes difficult to identify their original sources, and finally to move the funds back into the financial and business systems so that they appear legitimate.

Money laundering is performed systematically and clandestinely, making it difficult to identify exactly how much money is involved, what methods are employed and what the magnitude of the problem is. Likewise, secrecy makes it difficult to establish the magnitude of funds used for the funding of terrorism.

Of particular importance as far as CSOs are concerned is section 14 of the Act which provides for offences by corporate bodies. Where the offence is committed by a corporate body or an association of persons, every person who, at the time of the commission of the offence, was (a) a director, manager, controller or partner; or (b) concerned in the management of its affairs, may be convicted of the offence of money laundering. A person found guilty of this offence shall be liable to a fine or imprisonment or both. Penalties for the offence of money laundering are significant and show the government's intention to punish offenders. Penalties include fines of up to five hundred million shillings and not less than one hundred million shillings or to a term of imprisonment not exceeding ten years and not less than five years or both.

If the offence is committed by a corporate body, its fine may be up to one billion shillings and not less than five hundred million shillings or be ordered to pay the amount equivalent to three times the market value of the property, whichever amount is greater.

Economic Offences are generally triable by the High Court. However the Director of Public Prosecutions may, by certificate, confer jurisdiction on a court subordinate to the High Court to try economic offences.

5.1.8 Offences under the Drugs and Illicit Traffic in Drugs Act of 1995

This legislation strengthens laws relating to drugs. Also, it provides for the control, regulation and forfeiture of property related to drugs and prevents illicit trafficking in drugs. The legislation can be viewed as a form of domestication of the Vienna Convention.

The Act provides for the establishment of the National Drug Control Commission, whose main role is to define, promote and co-ordinate government policy on the control of abuse and trafficking in drugs. It is required, among other things, to develop and implement the national plan of action for drug control and implement the provisions of international conventions on drugs, and to update and adopt drug control laws and regulations. The Commission is required to report to parliament on the national situation and developments regarding the supply of and demand for drugs.

In essence, the Act prohibits the possession of drugs and their consumption, cultivation, processing, manufacturing, preparation, sale, purchasing, distribution, storage, importation into and exportation from Tanzania. Also prohibited in relation to drugs are; financing, the commission of offences and attempting to commit offences. Penalties for contravening the Act include the payment of fines ranging from Tsh5,000,000 to Tsh10,000,000, and/or imprisonment for periods ranging from 30 years to life.

In addition, the law empowers police or revenue officers to seize any illegal drugs and all materials used in the commission of offences related thereto. The court may order disposal of the seized property subject to third party Claims. Additionally, the property owned by a person convicted of an offence under the Act on the date of conviction may be forfeit. The Act provides further that the government may enter into agreements with other states to facilitate the tracing, forfeiture and confiscation of the property used or relating to commission of offences relating to drugs.

5.1.9 Offences under the Prevention of Terrorism Act

This Act criminalizes the commission and financing of terrorism. The legislation is a form of domestication of the UN Convention for Suppression of the Financing of Terrorism of 1999.

Section 4 of the Act enumerates various acts that constitute terrorism. They include those acts that:

- may seriously damage the country or an international organisation;
- are intended to seriously intimidate the population, unduly compel the government to perform or seriously destabilize or destroy the fundamental political, constitutional, economic and social structures of the country or an international organisation;
- involve attacks on personal life that may cause death;
- attack a personal physically;
- kidnapping;
- are designed to disrupt computer systems, communications infrastructure, banking or financial services utilities, transport or other services and provision of emergency services (e.g. police and civil defence);
- are prejudicial to national security or public safety or which are intended to threaten the public or force the government or an international organization to do or refrain from doing any act; and
- have the purpose of advancing or supporting terrorist acts, or arranging, managing, assisting, providing logistics, equipment or facilities to or attending meetings of terrorist groups.

The Act provides that to constitute terrorism an act or threat should:

- involve serious bodily harm to a person or serious damage to property;
- endanger a person's life;
- create a serious risk to the public health or safety;
- involve the use of firearms or explosives; or
- release into the environment or expose the public to hazardous or harmful radioactive, toxic chemical, microbial or biological agents.

The legislation gives the police power to enter and search any place, premises or vehicle where there is evidence of commission of an offence. Additionally, they may seize, remove and detain anything that contains evidence of commission of a terrorist offence and arrest and detain any person suspected of committing such an offence. Further, the police can apply to the court to intercept communications received or transmitted, or about to be received or transmitted, by a communication service provider, which communication is related to terrorist activities.

The Act prohibits the financing of terrorism and criminalizes provision or collection of property or funds for terrorist acts. Upon an application by the Attorney-General, the funds, property or economic resources of persons who commit, attempt to commit or facilitate the commission of terrorists acts or of terrorist groups, can be forfeited and be disposed of as directed by the court. Additionally, the law gives the relevant authorities the power to freeze the funds, financial assets or other economic resources of terrorists or terrorist entities.

Moreover, the legislation imposes a duty on any person to disclose to the police any information they may have relating to property or transactions relating to the commission of terrorist acts. Additionally, every financial institution has the duty to report to the relevant authorities every three months that they are not in possession or control of any property owned or controlled by or on behalf of terrorists or terrorist entities and to report the particulars of persons, accounts and transactions involved in terrorism. Further, if a financial institution has reasonable grounds to suspect commission of terrorist acts, it must report such suspicions to the police. Failure to comply with these requirements is punishable by imprisonment for not less than 12 months.

The Act also prohibits the provision of any form of support to persons or organisations involved in terrorist acts. It requires Tanzania to deny safe haven to those who finance, plan, support or commit terrorist acts. Additionally, it is prohibited to commit or facilitate the commission of terrorist acts in another state. Terrorism and acts associated with it are serious criminal offences. This is reflected in the sentences imposed on persons found convicted of offences under the Act, which range from imprisonment for not less than 12 months to life imprisonment. The Act provides for exchange of information and extradition of offenders between Tanzania and other countries. Such information relates to terrorist groups, terrorist actions and movements of weapons and materials by the terrorist groups and their use of communications technology. Additionally, it provides for co-operation between Tanzania and other states for extradition of persons suspected of committing offences under counter-terrorism conventions.

5.1.10 Trafficking in Persons/Human Trafficking/Modern-day Slavery

Trafficking of persons is the “i) recruitment, transportation, transfer, harbouring or receipt of persons, ii) by means of threat, use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the receiving or giving of payment to a person having control over another person, iii) for the purpose of exploitation. The Penal Code (Cap. 16) under section 139A(1)(a) define trafficking of person as an act of buying, selling or bartering of any person for money or for any other consideration.

The specific law on human trafficking in Tanzania is the Anti-Trafficking in Persons Act (2008) which under section 4(1)(a)-(g) list instances or situations in which a person/s commit ‘acts of trafficking in persons’. A comprehensive definition is adopted by Article 3(a)-(c) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) which defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. [See also section 139A (1)(a)(b) of Cap. 16).

Article 3 provides further that consent of a trafficked person/s is irrelevant to the intended exploitation where force or fraudulent means have been used to convince the victim. Besides, recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation amount to trafficking in persons even if it does not involve forceful or fraudulent means.

The above definition covers three (3) major elements;

- i) The Act involves recruitment, transportation, transfer, harbouring or receipt of a trafficked person/s.
- ii) The means -refers to ways/methods traffickers use to get their victim i.e. threat, use of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
- iii) The purpose of Trafficking -The end result of trafficking in persons is to exploit them i.e. exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

All these criminalizations may serve as a haven for the welfare of CSOs and HRDs by safeguarding the organization as a corporate body from misuse and abuse, legally securing the individuals concerned with the organizations against abuse or may simply be the actions that an organization should never undertake both individually or as a corporate body as they are offences and the penalties thereto are shown in this chapter.

Chapter 06

Other Laws Related to Governance and Operation Of Csos in Tanzania

6.0 Introduction

This chapter explores the laws governing property ownership, investment, taxation, employment and labour related legislations, social security and immigration services. It seeks to give Civil Societies Organizations some insights related to the laws that govern the aforementioned categories so they can fully comply.

6.1 Property Ownership and Investment

CSOs are legal entities that are capable of owning properties. Some of the CSOs own properties under trusteeship while others own properties using their legal names. In the same heart, CSOs invest in different sectors for the betterment of their beneficiaries. It is therefore imperative that CSOs understands the laws that govern property ownership and investment so that they can fully comply with what the law says.

The following are the various pieces of land, investment and related legislation that are applicable to CSOs in Tanzania;

- (i) The Land Act, 1999, Land (Amendment) Act, 2004 and associated regulations of 2001
- (ii) The Village Land Act, 1999 and the Village Land Regulations, 2001
- (iii) The Courts (Land Dispute s Settlements) Act, 2002
- (iv) The Land Use Planning Act, 2007
- (v) The Land Acquisition Act, 1967
- (vi) The Mining Act, 2010
- (vii) The Wildlife Conservation Act, 2009
- (viii) The Forest Act, 2002 and Written Laws (Miscellaneous Amendment) No 19, 2004
- (ix) The Tanzania Investment Act, 1997

6.0.1 Land Allocation, Land Administration and Management in Tanzania.

The 1999 Land and Village Land laws were enacted for the purpose of implementing the 1995 Land Policy. Under these legislations, the administration, management and allocation of land are placed squarely in the Executive arm of the Central Government under a centralised bureaucracy, that specifically highlights the following aspects of the LA, 1999; it provides for a land market, but retains discretion to refuse or cancel sales at will, without assistance from the courts; and it does not require land to be auctioned, so it is free to allocate land at prices below market value;

(a) Accessing Land for Investment

National investors can acquire granted rights of occupancy in general and reserved lands in accordance with the LA, 1999 and customary rights of occupancy in accordance with provisions of the VLA, 1999. Foreign investors can acquire granted rights of occupancy in accordance with provisions in the LA, 1999 and the Tanzania Investment Act, 1997 provides for foreign investors to acquire land for investment purposes.

Section 3 of the Land Amendment Act of 2004 which amends subsection (2) of s 19 of the LA, 1999 and Section 19(1) and 20 (1) define how a non-Tanzanian citizen can acquire a granted right of occupancy, presumably on either general or reserved (in accordance with other statutory instruments) under the land.

Under these provisions a person or a group of persons whether formed into a corporate body under the Companies Ordinance or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are non-citizens, may only obtain:

A right of occupancy for purposes of investment approved under the Tanzania Investment Act, 1997. This is under the administration of the Commissioner and could be issued for general or (presumably) reserved land. Although the later would have to be in accordance with requirements of the relevant statutory instrument. This is seemingly straight forward, although presumably there is not a great deal of available land to be granted, being only 2% of the total land area (and excluding the controversial reference to “unoccupied or unused village land” in the definition of general land in the LA, 1999. There have been grievances over investors taking over land and property previously held by state run enterprises. There was an expectation from local communities that this land would be reverted back to them as the original occupiers.

(b) A derivative right for purposes of investment approved under the Tanzania Investment Act, 1997.

This could be a derivative right for land held by the TIC in their Land Bank, either for land that TIC has title for or alternatively from any other holder of land willing to allocate their land for investment purposes. This is the simplest way for investors to obtain land.

However, the reality is that there is very little readily available land in the Land Bank. Either because most of the land identified is Village Land and the necessary transfer processes have not been undertaken or the TIC has been unable to acquire the granted rights of occupancy, usually due to a lack of funds. As noted earlier much of the land parcels are also considered to be too small and too scattered. Any interest in land under a partial transfer of interest by a citizen for purposes of investment approved under the Tanzania Investment Act, 1997 in a joint venture to facilitate compliance with development conditions is a possible arrangement. This arrangement is managed by the Commissioner of Lands. Section 20 (1) goes on to state “for avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act, 1997”.

A foreign investor as an individual or majority shareholder cannot directly acquire customary rights of occupancy for investment or any other purpose in Village Land. However, a non-village organisation where Tanzanian citizens are the majority shareholders can apply for a customary right of occupancy which implies a foreign investor could have a minority share. The only way a foreign investor can access village land is for it to be transferred to general land first. This provision under the VLA, 1999 is being used as part of an acquisition process which whilst not fully provided for by the laws is commonly followed (Olenasha, 2011) as an alternative way of obtaining land rather than from TIC's Land Bank. It involves investors starting negotiations from the village level. This process will be discussed after a discussion of the village land transfer provisions under the VLA, 1999.

(c) Land Issues from CSOs

The key issues from CSOs include the need for stakeholders, especially the government, to make sure that there is a win-win situation between all parties involved in land-based investments. The need to avoid conflicts between communities, investors and the government is very clear. There is also a need to protect the weak and marginalized communities' inland based investments. There is also another need for the government to make it relatively easier for investors to access land in such a way that will benefit all involved parties. Discussions on how all of the above can be achieved in a sustainable way are very important.

a) Specific land issues from CSOs include:

- i) There are controversial land deals involving allocation of huge tracks of land to few companies and individuals (land grabbing). However, there is no much involvement of CSOs in the processing of these deals;
- ii) Corruption by public officials in land deals and bad land governance;
- iii) Modes of community as well as local firms benefits from landbased investments need to be thoroughly discussed for the benefit of the communities.;
- iv) Proper and adequate compensations in relation to evictions to pave way for landbased investments need to be discussed. This includes the need for provision of alternative and better land. There is also a need to provide continuous/perpetual sources of incomes instead of oneoff monetary compensation. This includes but is not limited to provision of new sources of livelihoods which may call for capacity building for those evicted;
- v) CSOs work on improving policies, laws, regulations etc to take into account community and national interests for a win win situation in acquisition of investments in land.
- vi) Impact of land based investments on livelihood systems of entire society need to be discussed and taken into account.

6.1.2 Tax Legislation and CSOs in Tanzania

Many of the Civil Society Organizations in Tanzania are registered and operate not for profit making. However, there are different consultancies and other related activities conducted by these CSOs which require complying with tax laws. CSOs therefore need to ensure they fully understand these laws in order to avoid possible sanctions they may face in case they do not comply.

There are various tax laws that are applicable to NGOs in Tanzania:

- i) TRA Act
- ii) Income Tax Act, 2004
- iii) Value Added Tax
- iv) Custom and Excise Duty
- v) Stamp Duty Act .
- vi) Finance Act

6.1.2.1 Tax Payer Identification (TIN) for CSOs

A Non-Governmental Organization has to apply for the Taxpayer Identification Number to the Tanzania Revenue Authority by filling the ITX 100.01.B form. An application must attach Constitution of the organization, certificate of compliance from the registrar of the Non-Governmental Organizations, and copies of founders' Identifications.

6.1.2.2 Tax Compliance

Under the Value Added Tax Act no 24 of 2002, the law provides for an exemption to items that are relevant to the activities of CSOs. Such exemption is granted for the importation or local purchase of goods, services, advancement of religion, relieving persons from the effect of natural calamities, hazard or disaster. Section 85(1) (a) of the same Act provides for the refund of any amount paid by the Charitable organization prescribed by the regulations to the extent that the organization is entitled.

6.1.2.3 Income Tax for CSOs

Section 10 of the Income Tax Act empowers the minister to exempt any income from Taxation. It provides that the minister may by order in the Gazette provide that any income derived from United Republic of Tanzania shall be exempted from tax.

6.1.2.4 Withholding Tax

Withholding tax refers to the amount of tax retained by one person when making payments to another person in relation to goods supplied or services rendered by the payee. The requirement for payment of Withholding Tax is provided for under Subdivision A of Division II of Part VII (Sections 81-87) of the Income Tax Act 2004. Types of services attributable to payment of service fee that are subject to withholding tax are detailed under the Practice Note No. 01/2013 dated August 2013 issued by the TRA under section 130 of the Income Tax Act.

The rates of withholding tax differ depending on the type of payment and also depending on whether withholder is a resident or non-resident.

The following sources of income are subject to withholding taxes as follows:

Source of Income	Resident (%)	Non-Resident (%)
Dividends to companies controlling 25% of shares or more	5	10
Technical and management service to mining companies	5	15
Rental for Land and buildings	10	15
Rental for residential house if exceeds TZS 500,000 per annum.	10	15
Natural resources payments	15	15
Services fees	5	15
Payment for goods to the Government of Tanzania	2	N/A
Insurance premium	0	5
Commission on mobile money transfer	10	N/A
Annual Director's fees (other than full time service director)	15	

6.1.2.5 Skills and Development Levy (SDL)

Skills and Development Levy: is a levy collected by TRA under the Vocational Education Training Act and Income Tax Act. The rate is 5% of the monthly gross emolument for Tanzania Mainland and Zanzibar.

Exempted employers from SDL

- i) A government department or a public institution which is wholly financed by the Government;
- ii) Diplomatic Missions;
- iii) The United Nations and its organizations;
- iv) International and other foreign institutions dealing with aid or technical assistance;

- v) Religious institutions whose employees are solely employed to administer places of worship, to give religious instructions or generally to minister religion;
- vi) Charitable organizations;
- vii) Local Government Authority;
- viii) Farm employers whose employees are directly and solely engaged in farming.

Note:

The gross emoluments include wages, salary, leave pay, sick pay, payment in lieu of leave, fees commission, gratuity, bonuses, any subsistence, travelling or entertainment allowances.

6.1.2.6 Pay As You Earn (PAYE)

This tax is normally collected by the employees having deducted the amount required to be taxed from the employees earning. Income from employment is one among of the tax basis in Tanzania. The law under section 5 of the Income Tax Act provides that, the total income of a person shall be the chargeable income of the year of income from each employment. The Act under subsection 3 of section 7 provides for what is to be excluded in calculating gains or profit from employment, these are as follows; medical services, entertainment, benefits from the use of motor vehicle where the employer do not claim any deduction and benefits derived from the use of residential premise. Under section 7(2) the law provides for what is to be included and what should not. On what should be included there are payment of wages, salary, payment in lieu of leave, fees, commission, bonuses, service rendered, payment for individual agreement, retirement contribution. A P.A.Y.E calculator is also available at TRA website.

6.1.2.7 Stamp Duty

This law applies to all instruments specified in the legislation. The term instrument is defined to mean any document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished, or recorded. The law requires an instrument to be stamped within thirty days from the date of its execution.

CSOs like other such entities, engage in leasing, rental agreements, purchase of property, and sale or dispose of chattels. Every such transaction is subject to the Stamp Duty Act. Copies of such instruments are required to be sent to TRA with a payment of 1% as stamp duty.

The risk of not stamping the rental agreements is more on the tenants. Most CSOs are tenants who are at peril if after paying the rents in advance and signing a rental agreement the same will remain unenforceable.

6.1.2.8 Tax Exemption for Charity Organisations

The Income Tax Act under section 64 (6) provides that once an organization enjoying a charitable status ceases to be a charitable organization during the year of income, the organization shall be treated as conducting a business other than its previous charitable businesses, then from there shall be taxed. Moreover the law also recognizes charitable organizations businesses to be treated as conducting charitable business with respect to its

functions referred under subsection 8 when the entity established and functions solemnly as an organization for the relief of poverty or distress of the public, advancement of education and provision of general public health, water or road construction or maintenance.

6.1.3 Labour Related Legislations and CSOs in Tanzania

CSOs in Tanzania play an important role in the development and welfare of citizens. The sector contributes a lot in creating job opportunities to various groups of people in the community. In Tanzania there are numerous laws that govern the employer-employee relationships. CSOs in a way, despite being voluntary organisations, are also employers whose number of employees differs from one CSO to another. This subsection therefore looks at how best CSOs (employers) in the private sector can comply with numerous laws governing employment and labour relations in Tanzania. Laws that are relative to labour and employment include;

6.1.3.1 Workers' Rights

In Tanzania workers have the following set of rights:

- i) Freedom from forced labour
Section 6 of the ELRA – no one shall be subjected to forced labour
- ii) Freedom from discrimination
Section 7 of the ELRA -No employer shall discriminate, directly or indirectly, against an employee, on basis of colour; nationality; tribe or place of origin; race; national extraction; social origin; political opinion or religion; sex; gender; pregnancy; marital status or family responsibility; disability; HIV/AIDS; Age; or status of life.
- iii) Freedom of association
Section 9 of the Employment and Labour Relations Act provides that employees have right to form or join a trade union of their choice. Employers also have right to join or form employers' associations of their choice.
- iv) Right to collective withdrawal of labour
Right to strike and right to lockout. Section 75 of the ELRA – Subject to the provisions contained in this Part -(a) Every employee has the right to strike in respect of a dispute of interest; and (b) every employer has the right to lockout in respect of a dispute of interest.
- v) Right to collective bargaining
Section 67.-(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit shall be entitled to be recognised as the exclusive bargaining agent of the employees in that unit.

- vi) Right to annual leave
Section 29 states that an employee of less than six months in employment is not entitled for annual leave. However section 31 provides that 31.-(1) An employer shall grant an employee at least 28 consecutive days' leave in respect of each leave cycle, and such leave shall be inclusive of any public holiday that may fall within the period of leave.
- vii) Right to maternity/paternity leave
Section 33 and 34 provides that an employee shall be entitled, within any leave cycle, to at least-84 days' paid maternity leave; or 100 days paid maternity leave if the employee gives birth to more than one child at the same time. Moreover, Section 34 provides that during any leave cycle, an employee shall be entitled to at least 3 days paid paternity leave if the leave is taken within seven days of the birth of a child; and the employee is the father of the child.
- viii) Right to just remuneration
Section 27 states that an employer shall pay to an employee any monetary remuneration to which the employee is entitled.
- ix) Protection against unfair termination
Section 39 provides that in any proceedings concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair.

6.1.3.2 Duties and Obligations of CSOs as Employers

Civil Society Organization plays an important role in job creation in Tanzania. There is no accurate statistics of the number of employees employed in the Civil society sector, but it suffices here to say that civil society sector employs a lot of Tanzanian. It is with this notion that CSOs sector need to be versed with requisite knowledge of the laws that govern employment and labour relations so they can be in a position to fully implement their duties and safeguard the rights of employees. The following are the categories of duties that the CSOs employer have;

(a) Social Security Schemes for Pension

In Tanzania it is a statutory requirement that all employees are required to be members of any social security based on his or her demand. The employer will require the employee to visit the social security of her or his choice for the purpose of being registered as member, following registration data items are recorded as the minimum requirements for every member. Civil Society Organizations being among employers in Tanzania are supposed to comply with the law by remitting compulsory statutory contributions as required by the law.

There are various schemes such as National Social Security Fund (NSSF), PPF Pension Fund, Public Service Pension Fund (PSPF), Local Authorities Pension Fund (LAPF), Workers Compensation Fund, and Government Employees Provident Fund (GEPF)

(b) Workers Compensation

Under the Workers' Compensation Act, 2008 all employers are required to contribute to the WCF. All private sector employers must now contribute 1%, and public sector employers must contribute 0.5% of their annual tax bill for one year from 1 July 2015. Contributions are due on a monthly basis.

The Act imposes the following obligations on employers:-

- To register with the Director General of Workers' Compensation Fund (WCF) within the prescribed period. Where an employer enters into an agreement with a contractor for the provision of services, the contractor is obliged to register as an employer and pay the necessary contributions for their employees. Where the contractor fails to register as an employer, the employer who contracted them will be deemed liable for the assessment of the contractor's employees and in turn will pay the necessary assessment fees.
- To keep a register and other records of earnings for a period of not less than three years.
- To submit a return of earnings at each workplace by 31st March following the calendar year in question.
- To provide and finance the transport of employees from the place of any accident to a hospital, and eventually to the employee's residence regardless of whether the employer believes the accident or illness was caused in the course of employment or not.
- To pay the employee compensation within one month of any such accident or occupational illness.
- To inform employees of their rights under this Act, and to display a clearly visible notice at the place of work.

6.1.3.3 Other rights of employees are stipulated in other pieces of laws including:

- (a) Workers Compensation Fund Act, 2015
Assurance of compensation for injuries sustained in the course of employment.
- (b) HIV/AIDS Prevention and Control Act, 2008
Prohibits discrimination of HIV Positive employees.
- (c) The Occupational Health and Safety Act, 2008.
Requires employers to ensure that a place of employment is conducive for the health of the employees.
- (d) Penal Code – Special Provisions on Sexual Offences
Criminalization of use of one's position to require sex in exchange with favour of any kind. It is a rape offence if an employer or a supervisor will require sex from his employee(s)

6.1.4 Immigration Legislation and CSOs in Tanzania

Civil Society Organizations work with different partners both from internal and outside Tanzania. There are organizations that receive foreigners coming to Tanzania on different missions. These are supposed to comply with certain set procedures by the Immigration department. These includes work permits, visa on arrival etcetera. It is therefore important that CSOs fully understand the laws which guides foreigners wishing to come to Tanzania on different activities.

6.1.4.1 CSOs and Foreign Employees/Volunteers

On, 30th, December, 2016, the Minister of State, Prime Minister's Office, Policy, Parliamentary Affairs, Labour, Youth, Employment and Persons with Disability, published through the Government Notice No. 331, the Non-Citizens (Employment Regulations) Regulation, 2016.

The new Regulations were enacted to supplement the main law on employment of non-citizens in Tanzania on various matters with regards to employment of non-citizens in Tanzania.

The matters that were supplemented include inter alia, Criteria and conditions for issuance of each type of work permit. The Regulations have pointed out the documents that should accompany an application of work permit.

- (a) The documents that should accompany an application for work permit Class B, C and D
 - i. Contract of employment or engagement duly signed by relevant parties
 - ii. Job or engagement description
 - iii. Curriculum vitae of non-citizen
 - iv. Two recent passport-size photographs
 - v. Copy of academic or professional certificates of non-citizen
 - vi. Copy of accreditation certificate from respective professional entities (where applicable)
 - vii. Certified translation of certificates or documents by competent authority like Embassy, Consular etcetera.
 - viii. Copy of a valid passport
 - ix. Previous work permits (for renewal application)
 - x. Operating license
 - xi. Business name
 - xii. A succession plan (for renewals)
 - xiii. Sectoral approval (where applicable)
 - xiv. Certificate of Incentive (if any)

- (b) Types of Work Permits Available of the INGOs' Employees
The Application for Work Permits to the Labour Commissioner shall be in the form set out in the First Schedule to the Non-Citizens (Employment Regulation)

Act, 2015 and shall be accompanied with prescribed fees and other documents specified in the second schedule to the Act.

The law under section 13(1) provides for the types of work permit available in Tanzania for the non-citizens. This section state as follow:

“There shall be five categories of work permits as follows:

- i) Class A which shall be issued to a foreign investor who is a self-employed;
 - ii) Class B which shall be issued to a non-citizen who is in possession of a prescribed profession;
 - iii) Class C which shall be issued to a non-citizen who is in possession of a such other profession;
 - iv) Class D which shall be issued to a non-citizen employed or engaged in a Registered religious or charitable activities; and
 - v) Class E which shall be issued to refugees.”
 - vi) The type work permits which suitable for INGOs employees are work permits Class C and D as most of INGOs employees are professionals and engaged in charitable activities in Tanzania.
- (c) Duration - ordinary duration through which a person gets a work permits
It may take up to up to one month for a none-citizen to get a work permits In Tanzania.

Some work Permits take a long time due to the following reasons;

- i. Lack of coordination between institutions
- ii. Improper paper work
- iii. Bureaucracies within the responsible authority.

The Responsible Authority shall make sure that all stakeholders of issuance of work permits are accountable and the coordination between institutions like Ministry of Labour and Immigration for efficient and effective issuance of work to none-citizen in Tanzania.

Chapter 07

The Legal And Regulatory Framework Governing Other Civil Society Organizations

7.0 Introduction

This chapter provides for the legal and regulatory framework governing other types of organizations grouped under CSOs not covered in the second and third chapters of this compendium. The chapter therefore covers the framework of laws and policies governing the Bar association that is the Tanganyika Law Society(TLS), Legal aid Providers(LAP's) and labour organizations, in particular, trade unions and labour federations. The narration under this chapter provides for these CSOs legal procedures concerning registration, operation and cessation/de-registration.

7.1 The Tanganyika Law Society

The Tanganyika Law Society (TLS) is the Bar association of Tanzania Mainland, founded in 1954 by an Act of Parliament – the Tanganyika Law Society Ordinance 1954. The Tanganyika Law Society is currently governed by the Tanganyika Law Society Act, Cap 307 R.E. 2002, which repealed the earlier legislation.

TLS was established with several statutory objectives, including but not limited to maintaining and improve the standards of conduct and learning of the legal profession in Tanzania; facilitating the acquisition of legal knowledge by members of the legal profession and others; assisting the Government and the Courts in all matters affecting legislation and administration and practice of the law in Tanzania; representing, protecting and assisting members of the legal profession in Tanzania as per regards to conditions of practice and otherwise, protecting and assisting the public in Tanzania in all matters touching, ancillary or incidental to the law.

- (a) Establishment/ Registration of the TLS
The legal establishment and existence of the TLS is provided by the Act of the Parliament.¹³¹ Section 3 of the Act provides for the establishment of the Society. The provision establishes the TLS and once established it becomes a body corporate with perpetual succession and a common seal, with power to sue and be sued in its corporate name.

¹³¹ Tanganyika Law Society Act, Cap 307 R.E. 2002.

(b) TLS Operations, Rules and Regulations

Under the TLS Act, the law which governs the society's operations, the TLS is versed among other things with the duty to the improvement of the professional conduct, education to both the profession and the public and also provision of assistance to the government and the public on matters of law. These roles entitle the society to play part in the overall legal and political platforms in the country mainly supporting or opposing the particular legislation.

The society being a professional and membership based, can engage actively in facilitating access to justice to the public through legal aid provision, pursuing human rights and constitutional litigation in order to protect the Bill of rights and preserve the rule of law in the country.

For the proper management of the affairs of the Society, the law establishes the governing council which is assisted by the secretariat. The Council has powers to make regulations binding on members of the Society over various matters prescribed in the law. All decisions concerning the society are made and endorsed by resolutions in general meetings.

(c) Cessation/De-registration of the Law Society

As stated above, the law society is a statutory body. The society can only cease its operations by repealing the Tanganyika Law society's Act Cap 307 R.E. 2002. Repeal has been defined in the Interpretation of laws Act to include rescinding, revoking, cancel or deleting. The procedure for repealing the law involves passing of another law to revoke, cancel or delete the existing law. Therefore the Law society can only be de-registered through the proper process of legislation in Tanzania.

7.2 Legal Aid Providers

Legal aid is a composite term for various activities that are aimed at ensuring those who cannot afford legal representation are provided with the same. It is referred to as legal aid when it is free (or there menial charges) on the part of the end user (as opposed to being free in so far as the service provider is concerned.¹³²Legal aid includes both advice (legal advice and counselling) and practical help in the form of preparation of documents, representation in court as well as coaching for self-representation.

The legal aid provision scheme in Tanzania is regulated by; international, regional and domestic laws. Tanzania has ratified international and regional instruments which provide access to justice and in specific access to legal aid services. However, Tanzania has in place domestic legal framework which provides space for provision of legal aid though does not mandate state to provide legal aid. Following below is the brief synopsis of the legal framework governing the provision of the legal aid services in the country.

132 Legal Services Facility, Baseline Survey on Tanzania Mainland and Zanzibar for Legal Services Facility, 2012 p25

7.2.1 International legal framework

Tanzania ratified international conventions, human rights treaties and subscribed to principles in soft law and international declarations. In relation to access to justice and legal aid, the international conventions include; the Universal Declaration on Human Rights, 1948 and the International Covenant on Civil and Political Rights (ICCPR), 1966 and The Convention on the Rights of the Child (CRC).

a) Universal Declaration on Human Rights, 1948:

Tanzania ratified the UDHR, which provides for human rights. Under this declaration, articles 7 and 11 are related to access to justice and legal aid as elaborated in the extract below:

- Article 7 of the UDHR states that: all people are equal before the law and are entitled to equal protection of the law, without any discrimination.
- Article 11 (1) everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(b) International Covenant on Civil and Political Rights (ICCPR), of 1966

The ICCPR is a legally binding treaty that was ratified by Tanzania on 11th June 1976. ICCPR lays down specific requirements to how criminal trials should be conducted. These rights are also provided for in Article 14 of the ICCPR, which provides that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

- Articles 14, 15 and 16 of the ICCPR provides for the rights of the accused and the right to a fair trial.
- Article 14 establishes the right to a speedy trial, to counsel and for the accused to be present to call and examine witnesses.
- Article 14 (3) (b) of the ICCPR provides that any person accused should, '... have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. Article 14 (3) (c) provides for timely justice '... be tried without undue delay.'
- Article 14 (3) (d) stipulates that any person charged of a criminal offence shall, "... be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

(c) The Convention on the Rights of the Child (CRC)

Tanzania ratified the CRC on 10th June 1991 and it came into force on the 11th July 1991. Tanzania also enacted the Law of the Child Act 2009, which is in line with the CRC. The Convention on the Rights of the Child lays down some specific requirements to legal aid when children are accused of crimes.

- Article 40 (1) stipulates that parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
- Article 40 (2) obliges state parties to offer legal aid to children charged of criminal offenses. According to Article 40 (2) (b) every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and
 - To have legal or other appropriate assistance in the preparation and presentation of his or her defense.
- Article 40 (2) (b) (iii) states to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

7.2.2 Regional legal framework

At regional level, Tanzania ratified regional instruments which have articles related to legal aid services. They include the African Charter on Human and People's Rights (Banjul Charter), the African Charter on the Rights and Welfare of the Child and The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol).

(a) The African Charter on Human and People's Rights (Banjul Charter)

- In Article 7 (1) (c) the Charter provides for the right to fair trial and that the accused has "the right to defence, including the right to be defended by counsel of his choice." However, the ACHPR does not explicitly provide for legal aid in civil cases.

(b) The African Charter on the Rights and Welfare of the Child

This Charter has been ratified by Tanzania and entails some provisions that are relevant for legal aid.

- According to Article 17 (1) "every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others".

Article 17 (2) (c) (iii) requires the state to ensure that minors are “afforded legal and other appropriate assistance in the preparation and presentation of his defence”.

The above provisions oblige state parties including Tanzania, to offer legal assistance to children involved in criminal offenses. However, it has been observed in Tanzania that minors may not be guaranteed this right because although Tanzania has enacted the Child Act which prevails in case of any contradiction in the law.

- (c) The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol)

Tanzania signed the Maputo Protocol which promotes women’s rights in relation to legal aid.

- Article 8 provides for access to justice and equal protection before the law. Article 8 (a) provides that women have “effective access ... to judicial and legal services, including legal aid” and Article 8 (b) encourages “support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid”.

7.2.3 Soft Law Instruments and International Declarations

Tanzania has subscribed to the principles embedded in declarations and soft law, which are not legally binding but indicate the commitment of the nation to recognize and support human rights. These relevant instruments and declarations include the Dakar Declaration, Lilongwe Declaration, and the Kyiv declaration.

- (a) The Dakar Declaration

The African Commission on Human and People’s Rights’ Resolution of 1999 on the Right to a Fair Trial and Legal Aid in Africa (the Dakar Declaration) emphasizes the importance of access to justice as part of the right to a fair trial, and places the primary responsibility for ensuring legal aid in criminal cases on the government.

The Declaration recommends;

- That state parties to the Banjul Charter “urgently examine ways in which legal assistance could be extended to indigent accused persons, including through adequately funded public defender and legal aid schemes”.
- That the state parties “in collaboration with Bar Associations and NGOs enable innovative and additional legal assistance programs to be established including allowing paralegals to provide legal assistance to indigent suspects at the pre-trial stage and pro bono representation for accused in criminal proceedings”
- The declaration also articulates a need for the state parties to encourage “the contribution of the judiciary, human rights NGOs and professional associations” in delivering legal aid.

(b) The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 2004

The Lilongwe Declaration was a result of a conference organized by Penal Reform International between 22nd and 24th November 2004 that was attended by 128 delegates like government officials, judges, lawyers, academics, representatives from civil society organizations and others from 26 countries, including 21 African countries.

The declaration which was adopted by consensus at the closure of the Conference with the request that it be forwarded to national governments, the African Union Commission on Human and Peoples' Rights, and the African Union Commission.

- The preamble of the Declaration sets the background for legal aid in criminal matters in countries similar to Tanzania. Explicitly the preamble provides as follows, '...Bearing in mind that access to justice depends on the enforcement of rights to due process, to a fair hearing, and to legal representation;'.
Recognizing that the vast majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights; recognizing that the vast majority of ordinary people in Africa, especially in post-conflict societies where there is no functioning criminal justice system, do not have access to legal aid or to the courts and that the principle of equal legal representation and access to the resources and protections of the criminal justice system simply does not exist as it applies to the vast majority of persons affected by the criminal justice system.
- Section 1 of the Lilongwe Declaration basically recognizes and supports the right to legal aid in criminal justice. All governments have the primary responsibility to recognize and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. Governments are encouraged to adopt measures and allocate sufficient funding to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice.
- Legal aid has been defined in the declaration to include '...legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions.
- In section 6 the Lilongwe Declaration has provided for the diversification of legal aid delivery systems:
"Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility to provide equitable access to justice for poor and vulnerable people, there are a variety of service delivery options that can

be considered. These include government funded public defender offices, judiciary programmes, justice centers, law clinics - as well as partnerships with civil society and faith-based organizations. Whatever options are chosen, they should be structured and funded in a way that preserves their independence and commitment to those populations most in need."

· Section 8 encourages provision of legal aid by lawyers. It recognizes that the legal profession has a responsibility for promoting legal aid services: "It is universally recognized that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably.

(c) The Kyiv Declaration on the Right to Legal Aid, 2007

The Kyiv Declaration on the Right to Legal Aid, adopted by a 2007 conference which was attended by 115 delegates from 25 countries including government officials, legal aid practitioners, academics, and representatives from human rights, legal advocacy, and legal and justice sector reform organizations, between 27-30 March, 2007, to discuss and identify best practices in the protection and promotion of human rights through the provision of legal services.

The declaration recognizes that the poor and vulnerable have a right to legal aid, and stipulates that the state has the primary responsibility for creating legal aid schemes. The Declaration encourages;

· Governments to cooperate with other legal aid providers: "Governments should establish cooperative arrangements with a wide range of stakeholders – such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academic institutions – and ensure effective public participation in the formulation of legal aid policies, programs and legislation."

7.2.4 Domestic Legal framework

At domestic level various steps have been taken to ensure access to legal services by all. These are divided among the various stakeholders including the Government, Judiciary and Civil Society Organizations notable of them being provision of legal aid to ensure access to legal aid for the poor and marginalized in the country. The domestic Legal framework governing the provision of legal aid in the country is governed by the Constitution of the United Republic of 1977, The Legal Aid Act 2017 and the Legal Aid Regulations 2018.

(a) The Constitutional Guarantee for Legal Aid Provision

Article 13(6)(a) of the Constitution provides for the right to a fair trial. Other than this, no provision in the Constitution of the United Republic of Tanzania guarantees people the right to legal representation, this right is interrelated in the ambit of interpreting the right to a fair trial as well as the right to equality and protection before the law as proclaimed in Article 13(1).

(b) The Legal Aid Act 2017

Tanzania enacted the Legal Aid Act, in 3rd March 2017. The Law regulates issues related to the provision of free legal aid and paralegals in the country. The law opens a new chapter, enabling Tanzania to implement meaningful reforms that will guarantee effective access to justice for all, including the poor and vulnerable.

The law opens a new chapter, enabling Tanzania to implement meaningful reforms that will guarantee effective access to justice for all, including the poor and vulnerable. This law has harmonized the existing efforts which were in place as provided below and has repealed the Legal Aid (Criminal Proceeding) Act which was regulating provision of Legal Aid in Criminal cases.

The legal Aid Act provides for Registration of legal Aid providers, administration and coordination of legal aid providers, recognition of paralegals and the general provisions regarding legal aid provision.

i. Registration of Legal Aid Clinics Under the legal Aid Act and the Legal Aid Regulation

The legal Aid Act establishes the Registrar of legal aid providers who deals with the Legal aid department in the Ministry of Legal Affairs. His functions according to Section 7 are to register legal aiders, investigate complaints on malpractice of the legal aid providers, and to suspend or cancel the registration of a legal aid provider. The requirements set by the law for the legal aid institution to exist are; being registered under the relevant laws, one of its core functions has to be the provision of legal aid services; it is required to have office and facilities.

The process of registration is provided for under Part III of the Regulations as follows; Section 5.-(1) every institution that intends to provide legal aid services shall apply to the Registrar for registration as a legal aid provider in terms of the provisions of the Act.

- (2) An application for registration shall be made in a form prescribed in the Second Schedule to these Regulations.
- (3) Application form shall be signed by the head of the institution or a person acting in that behalf and shall be stamped or sealed by the official stamp or seal.
- (4) Application form shall be accompanied by:
 - (a) Fees prescribed in the Third Schedule;
 - (b) Information relating to past activities related to legal aid, if any;
 - (c) A clearance letter from the District Commissioner of the district where the applicant intends to operate;
 - (d) A clearance letter from the Regional Commissioner of the region where the applicant intends to operate;
 - (e) A clearance from Permanent Secretary of the Ministry responsible for local government where it intends to operate in the whole country.

- (5) All payments in relation to application fees shall be deposited in a prescribed bank account.

Determination of application and issuance of certificate;

- 6.- (1) The Registrar shall, after consideration of the contents and other necessary attachments shall make registration of an institution as a legal aid provider.
- (2) Upon registration, the Registrar shall issue a certificate of registration to the applicant.
- (3) The certificate shall be of three levels as prescribed in the Fourth Schedule to these Regulations.

7.o-(1) Where the Assistant Registrar makes registration of a legal aid provider he shall make a report to that effect in the manner prescribed in the Fifth Schedule to these Regulations.

The requirements for registration of Paralegals are provided for in the Regulations under Rule 9 as follows;

9.-(1) Subject to the provisions of sections 19 and 20 of the Act, a person who intends to provide legal aid services as a paralegal shall apply for registration in a form prescribed in the Sixth Schedule to these Regulations.

- (2) The application shall be accompanied by-
 - (a) Certified copies of applicant's qualifications which may include a bachelor degree, diploma or certificate of secondary education;
 - (b) Academic certificate indicating awareness of legal aid;
 - (c) Certificate of character from an immediate supervisor;
 - (d) Certification from a person who has seen the applicant providing legal aid;
 - (e) Certificate of character from the hamlet leader where his operational officer is located; and
 - (f) Fees prescribed in the Third Schedule;
- (3) All payments for application to provide legal aid shall be deposited in a prescribed bank account.

(c) De-registration/Cancellation of Certificate of Registration

The Legal Aid Act and its regulations provides for the suspension or cancellation by the Registrar. Among the reasons for this are; professional misconduct, legal aid provided is in breach of the code of conduct prescribed by the law, operation is in variance to the institution's constitution, and failure to keep proper records of activities undertaken on behalf of an aided person.

Procedure for suspension or cancellation involves issuing the notice in writing specifying the nature of default. All procedures with respect to the rules of natural justice are required to be followed before suspension. If aggrieved with the decision, the laws provides for the National Aid Advisory Board established under Section 4 as an appellate body.

The Legal aid Regulations provides for procedures of deregistration as follows;

16.-(1) The Registrar may issue a written warning, suspend or cancel certificate of registration of a paralegal who contravenes the conditions set out for paralegals under the Act.

(2) The Registrar may suspend a certificate of registration of a paralegals if a paralegal has-

- (a) Breached a code of conduct for legal aid providers and paralegals;
- (b) Engaged in an activity that is reserved for an advocate; or
- (c) Charged fees from an aided person.

(3) The Registrar may cancel a certificate of registration of a paralegal if he is satisfied that -

- (a) Registration was obtained by mistake, fraud, undue influence or misrepresentation;
- (b) The paralegal has failed to comply with the conditions of registration; or
- (c) The paralegal has been convicted of an offence which touches his integrity, accountability or is subject to an order made under relevant body.

(4) Where the Registrar suspends or cancels certificate of registration, he shall notify the relevant paralegal in writing of the decision and order such paralegal to stop providing legal aid.

(5) The procedure for suspension or cancellation of certificate of registration of a paralegal and appeals shall apply mutatis mutandis the procedures for suspension or cancellation of certificate of registration of legal aid providers as prescribed under section 17 of the Act.

7.3 Trade Unions

Literally, a trade union may be referred to as a union/association composed of workers of the same or of several allied trades. In other words, 'labour union', 'a craft union' or 'multi-craft union', 'industrial union', 'and vertical union'.

The above position is reiterated by the Employment and Labour Relations Act (ELRA) No. 6 of 2004 which interprets trade union to mean any number of employees associated together for the purpose, whether by itself or with other purposes, of regulating relations between employees and their employers or the employers' associations to which the employers belong. This means, a trade union is an association of workers, with exclusion of employers' association (organization).

Trade Unionism has a long historical background in Tanzania. The history of trade unions can be traced from the colonial period especially during independence struggles to post-colonial and liberalization period especially when freedom of association was constitutionally in the Bill of Rights part of the Constitution of the United Republic of 1977. In Tanzania Trade Unions are registered and regulated under the Tanzania Trade unions laws.

7.3.1 International Instruments recognizing trade unions

a. ILO Convention No. 87 of 1948 on Freedom of Association

Tanzania has ratified ILO Conventions 87 on Freedom of Association. The Convention has provisions safeguarding the workers' right to freedom of association. The Convention provides for states obligation as follows;

Article 1

Each Member of the International Labour Organization for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

- (1) Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.
- (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

- (b). ILO Convention 98 Right to Organize and Collective Bargaining Convention, 1949
This convention has also been ratified by the United Republic. The Convention has provisions safeguarding the workers right to organize and collective bargaining. The Convention provides for states obligation as follows;

Article 1

- (1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
- (2) Such protection shall apply more particularly in respect of acts calculated to:
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

7.3.2 Domestic Laws

(a) The Constitution

The 5th Amendment to the Constitution of the United Republic of Tanzania of 1977 (Act No. 15 of 1984) included the Bill of Rights in the Constitution. Section/Article 20(1) of the Act recognized the right to form or join associations or organizations (a person's freedom of association) by providing that;

Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.

(b) The Employment and Labor Relations Act (ELRA No. 6 2004)

Part IV-VIII and the 3rd Schedule to the Employment and Labour Relations Act, No. 6 of 2004 recognize Trade Unions by providing that;

All employees in the private and public sectors have the right to form or join trade unions and to bargain collectively, except for members of the Tanzanian People's Defence Forces, the Police Force, the Prisons Service, and National Service.

i. Registration of Trade Unions and Federations

According to the ELRA, trade and federations have the obligation to register within 6 months of their establishment. S. 43(2) of The Labor Institutions Act No. 7 of 2004 establishes the mandate of the Registrar who is responsible for registration and the regulation of trade unions, and federations. The provision of section 46 of the ELRA provides for conditions which a trade union needs to fulfil before being officially registered. The provision of s.46 on the requisites reads;

46.1) The requirements for registration as a trade union are:

- (a) It is a bona fide trade union;
- (b) It is an association not for gain;
- (c) It is independent of any employer or employer's association;
- (d) It has been established at a meeting of at least 20 employees;
- (e) It has adopted a constitution and rules that comply with provisions of section 47;
- (f) It has adopted a name that does not resemble the name of another union so as to mislead or create confusion; and
- (g) It has an address in the United Republic of Tanzania.

Section 47 provides for the content of the Constitution for trade unions and federations as follows;

47.-(1) The constitution and rules of a trade union, employers' associations or federation shall;

- (a) State that it is an organization not for gain;
- (b) Prescribe the qualifications for membership and the grounds and procedure for termination of membership;
- (c) Prescribe the membership fee or any method of determining the fee;
- (d) Prescribe rules for the convening and conduct of meetings, including the quorum required, and the minutes to be kept of, those meetings;
- (e) Establish the manner in which decisions are made;
- (f) Establish the office of secretary and define its functions;
- (g) Provide for office bearers, officials and define their respective functions;
- (h) Prescribe a procedure for the nomination and election of office bearers;
 - (i) Prescribe a procedure for the appointment or nomination or election of officials-
- (j) Establish the circumstances and manner in which office bearers, officials and trade union representatives may be removed from office;
- (k) Establish the circumstances and manner in which a ballot shall be conducted;
- (l) Provide for the conduct of a ballot of the members in respect of whom-
 - (i) In the case of a trade union, the union may call upon to strike;
 - (ii) In the case of an employers' association, the association may call upon to lock out;
 - (iii) In the case of a federation of trade unions, the federation may call upon to engage in protest action;
- (m) Provide for banking and investing of money;
- (n) Establish the purposes for which its money may be used;
- (o) Provide for acquiring and controlling of property;
- (p) Prescribe a procedure for the amendment of the constitution and rules;
- (q) Prescribe a procedure for affiliation, or amalgamation-
 - (i) In the case of trade unions, with other registered unions;
 - (ii) in the case of employer associations, with other registered associations;
 - (iii) in the case of federations, with other federations;
- (r) Prescribe a procedure for affiliation to an international workers' association or an international employers, association;
- (s) Prescribe a procedure to dissolve the organization or federation;
- (t) Any other prescribed matter.

- (2) A constitution or rules of a registered organization shall not -
- (a) Conflict with -
 - (i) the basic rights and duties set out in Part III of the Constitution of the United Republic of Tanzania, 1977;
 - (ii) the provisions of this law or any other written law; or
 - (b) Evade any obligation imposed by any law.

Section 48 of the Act provides for the procedure of registering a trade Union a federation. The provision reads;

48.-(1) Any organization or federation may apply for registration, Process of by submitting to the Registrar-

- (a) A prescribed form that has been properly completed and signed by the secretary of the organization or federation;
- (b) a certified copy of the attendance register and minutes of its establishment meeting prescribed in section 46(l)(d), (2)(c) or (3)(c) , and
- (c) a certified copy of its constitution and rules.

(2) Notwithstanding the provisions of subsection (1), the Registrar may require further information in support of the application.

ii. De-registration

Once a trade Union or a federation is registered it becomes a body corporate with perpetual succession. It can sue or be sued on its own name and it can also enter into contracts.

The trade union can either dissolve itself or be dissolved by the registrar subject to approval by the Labour court. Section 56 provides for the dissolution of a trade union.

The provision reads;

56.-(1) The Registrar may apply to the Labour Court for the dissolution of any organization that contravenes the provisions of section 45.

(2) An organization or federation may apply to the Labour Court for its dissolution.

(3) Where the Labour Court makes an order for cancelling the registration of an organization or federation under section 55(2), it may in addition make an order dissolving the organization or federation.

7.4 Conclusion

This chapter has provided for the legal and regulatory frameworks governing other selected organizations grouped under the civil society because of the roles they perform in the society. Basically, all analyzed organizations have the legal framework providing for their registration and operation. Because of their imperative role they play in fulfilment of social justice and the promotion of the rule of law, these organizations should also be accorded a friendly working environment for them to operate.

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Appendices

1. FORMS UNDER THE NGOs ACT



NGOA FORM NO. 1

THE UNITED REPUBLIC OF TANZANIA

APPLICATION FOR A REGISTRATION AS NON GOVERNMENTAL ORGANISATION
Made Under section 12(1) of Act No.24 of 2002

To the Director of Non Governmental Organizations:

I/We.....
.....
of P.O. Box.....
Physical Location of Head
Office.....
.....

Hereby make an application to be registered as a Non Governmental Organization pursuant to section 11 of the Act. I/We apply to be by the name ofand shall operate within the area of

The Mission of the Organization is

- Attached herewith is a copy of:-
- a) Certificate of incorporation(For International Non Governmental Organisations)
 - b) Founder members
 - c) constitution/memorandum
 - d) personal particulars of office bearers(CV)
 - e) Others (specify if any)

I/We humbly so submit
Name: Name:.....
Signature:.....



NGO FORM NO. 3

THE UNITED REPUBLIC OF TANZANIA

APPLICATION FOR A CERTIFICATE OF COMPLIANCE

Made Under section 12(1) of Act No.24 of 2002

To the Director of Non Governmental Organizations:

I/We.....

of P.O. Box

Physical Location of Head Office

Hereby make an application to be registered as a Non Governmental Organisation pursuant to section 11 of the Act. I/We apply to be by the name of

.....and shall operate within the area of

The Mission of the Organization is

Attached herewith is a copy of:-

- a) Certificate of incorporation
- b) Founder members
- c) constitution/memorandum
- d) personal particulars of office bearers(CV)
- e) Others (specify if any)

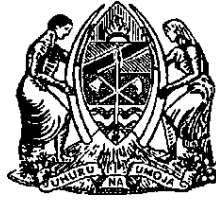
I/We humbly so submit

Name:

Signature:.....

Name:

Signature:.....



THE UNITED REPUBLIC OF TANZANIA
**NOTICE OF CHANGE OF PARTICULARS OF REGISTERED NON-
GOVERNMENTAL ORGANIZATIONS**
(Under Section 33)

TO: Registrar of Non-Governmental Organizations
Ministry of Community Development, Gender and Children
8 Kivukoni Front,
11486 DAR ES SALAAM

WHEREAS, I/We was/were dully registered pursuant to the provisions of Non-Governmental Organizations Act No. 24 of 2002 (As amended in 2005) on the.....day of..... under the Number..... by the name of.....

.....
And WHEREAS a change/changes have occurred/ been made in respect of particulars registered as hereunder mentioned.

Now, I/We the undersigned give you notice that on the.....day of, year
The following change (s) was/were made /occurred in particulars registered.

.....
.....
.....
.....

Signature.....

2. THE COMPANIES ACT-FORMS



Form. 14 a

THE UNITED REPUBLIC OF TANZANIA

BUSINESS REGISTRATIONS AND LICENSING AGENCY

First Directors and Secretary and intended situation of Registered Office
Pursuant to Section 14(2) of the Companies Act 2002

Company Number

Company Name in full

Address of Proposed
Registered Office

If the memorandum is
delivered by an agent for
the subscriber(s) give the
agent's name and address

Agent's name

Address

Form 14a
Directors (continued)

First Name(s)		
Surname		
Previous name(s)		
Address		
	Date of Birth	Nationality
Business Occupation		
Other directorships		

I consent to act as director of the Company named on page 1

Consent signature	<input type="text"/>	Date	<input type="text"/>
First Name(s)			
Surname			
Previous name(s)			
Address			
	Date of Birth	Nationality	
Business Occupation			
Other directorships			

I consent to act as director of the Company named on page 1

Consent signature	<input type="text"/>	Date	<input type="text"/>
-------------------	----------------------	-------------	----------------------

Page 3
Form 14a

Directors (continued)

First Name(s)		
Surname		
Previous name(s)		
Address		
	Date of Birth	Nationality
Business Occupation		
Other directorships		

I consent to act as director of the Company named on page 1

Consent signature Date

This section must be signed by either an agent on behalf of all subscribers or the subscribers (i.e. those who signed as members on the memorandum of association).

Signed	<input type="text"/>	Date	<input type="text"/>
Signed	<input type="text"/>	Date	<input type="text"/>
Signed	<input type="text"/>	Date	<input type="text"/>
Signed	<input type="text"/>	Date	<input type="text"/>
Signed	<input type="text"/>	Date	<input type="text"/>

Form 14a

Notes for completion

1. Show for an individual the full First Name(s), NOT INITIALS and Surname, together with any previous First

Name(s) or surname(s).

If the director or secretary is a corporation, show the corporate name on the Surname line.

Give previous First Name(s) or Surname(s) except that:

-for a married woman, the name by which she was known before marriage need not be given.

-names not used since the age of 18 or for at least 20 years need not be given.

Address:

Give the usual residential address.

Subscribers:

The form must be signed personally either by the subscriber(s) or by a person or persons authorised to sign on behalf of the subscriber(s).

2. Directors known by another description:
A director includes any person who occupies that position even if called by a different name.
3. Directors' details:
Show for each individual director the director's date of birth, business occupation and nationality.
4. Other directorships:
Give the name of every company of which the person concerned is a director or has been a director at any time in the past 5 years.
If there is insufficient space on the form for other directorships you may use a separate sheet of paper, which should include the company's number and the full name of the director.
5. Use photocopies of pages 2 and 3 to provide details of joint secretaries or additional directors.

Form 14 b



**THE UNITED REPUBLIC OF TANZANIA
BUSINESS REGISTRATIONS AND LICENSING AGENCY**

*Declaration of Compliance on Application for the Registration of a Company
Pursuant to Section 14 (4) of the Companies Act 2002*

Company Number

Company Name in Full

I (Full name),

of (Address)

do solemnly and sincerely declare that I am (*delete as necessary*) [an advocate of the High Court engaged in the formation of the company] [a person named as [director] [secretary] of the company in the statement delivered to the Registrar under section 14(2) of the Act] and that all of the requirements of the Companies Act 2002 in respect of the registration of the above company and of matters precedent and incidental to it have been complied with.

AND I make this solemn declaration conscientiously believing the same to be true.

Declarant's Signature

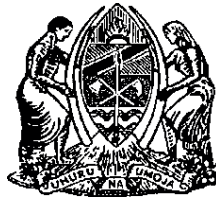
Declared at

on

Before me (please print name)

Signed **Date**

A commissioner for oaths or Notary Public



THE UNITED REPUBLIC OF TANZANIA

BUSINESS REGISTRATIONS AND LICENSING AGENCY

Annual Return of a Company Pursuant to Section 128 of the Companies Act 2002

Company Number

Company Name
(in Full)

The information in this return is made up to:

Address of registered office of Company.....

Company type.....

(If the company does not have a share capital there must be annexed to the return a statement containing particulars of the total amount of indebtedness of the company in respect of all mortgages and charges required to be registered under the Act)

Principal business activities.....

.....

If different from the registered office, state address where the register of members or any register of debenture holders is kept

Register of members

Register of debenture holders

Company Secretary

Name

Previous name(s)

Address

**Form 128: Annual Return
Directors**

(use additional copies of this sheet if necessary)

Name	Business occupation
Previous name(s)	Nationality
Address	Date of birth
Other relevant past or present directorships	

Name	Business occupation
Previous name(s)	Nationality
Address	Date of birth
Other relevant past or present directorships	

Name	Business occupation
Previous name(s)	Nationality
Address	Date of birth
Other relevant past or present directorships	

**Form 128: Annual return
Issued share capital**

Enter details of all the shares in issue at the date of the return.

	Class	Number of shares issued	Aggregate nominal value
1			TSh
2			TSh
3			TSh
4			TSh
5			TSh

Totals:	TSh
----------------	------------

List of past and present members
A full list is required if one was not included with either of the last two returns.

There were no changes in the period

A list of changes is enclosed
(pages 4 and 5)

A full list of members is enclosed
(pages 4 and 5)

I certify that the information given in this return is true to the best of my knowledge and belief.

Signed.....

Date.....

Director / Secretary.....

LIST OF PAST AND PRESENT MEMBERS (Continued on page 5)

(use additional copies of this sheet if necessary)

	Names and addresses
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	

LIST OF PAST AND PRESENT MEMBERS (Continued from page 4)

(use additional copies of this sheet if necessary)

No	Number of shares or amount of stock held by existing members at date of return	Particulars of shares transferred since the date of the last return (or, in the case of the first return, of the incorporation of the company) by (a) persons who are still members, and (b) persons who have ceased to be members (note 12)		Remarks
		Number/ amount transferred	Date of registration of transfer	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				

3. SOCIETIES ACT (FORMS)

FORM S.A. 1

APPLICATION FOR REGISTRATION THE SOCIETIES (APPLICATION FOR REGISTRATION) RULES

(Rule 4(1))

Application is hereby made for the registration under the Societies Act of

.....
(hereinafter called "the society")

1. The office of the society is situated at.....
.....
2. The postal address of the society is
.....
3. The objects of the society are
.....
4. We annex hereto marked "A" two true copies of the constitution and rules of the society.
5. We annex hereto marked "B" a form of statement of particulars which we have completed to the best of our knowledge, information and belief.

.....
.....
.....

(Signature(s) and Designation(s)
of office-bearer(s))

**STATEMENT OF PARTICULARS TO SUPPORT AN
APPLICATION FOR REGISTRATION
THE SOCIETIES (APPLICATION FOR REGISTRATION) RULES**

(Rule 4(1))

All the following questions must be answered before an application is considered.

Name of Society

1. Is the society a branch of or affiliated to or connected with any other organisation or group either within or outside Tanzania? If so, give full particulars of such other bodies.
2. Is membership of the society restricted to any? And if so, to what class or classes of persons?
3. What is the present number of members of the society?
4. When was the society formed?
5. In what district or districts of Tanganyika? does the society carry on its activities?
6. Has the society any interest in land? If so, give details, where possible by reference to registration.
7. What are the titles of the office-bearers (if any) of the society and who are the present holders? For what term do they hold office?

.....
.....
.....

(Signature(s) and Designation(s)
of office-bearer(s))

4. TRUSTEES' INCORPORATION FORMS
THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF CONSTITUTIONAL AFFAIRS AND JUSTICE
Form T.I. 1 Fee: Tshs. 200,000/=
REGISTRATION INSOLVENCY AND TRUSTEESHIP AGENCY (RITA)
THE TRUSTEES INCORPORATION ACT [CAP 318-R.E 2002]
(Section 2)
Application for Incorporation

WE (USE ANNEXTURE "A" ATTACHED)

(Insert full names, residence postal addresses of trustees, e-mails, websites, mobile, telephones, fax, location etc)

HEREBY APPLY for incorporation as a body corporate, and WE solemnly and sincerely DECLARE as follows:-

1.	The proposed title of the body corporate is	(The title must include the words "The Registered Trustees")
2.	The physical and postal address of the proposed body corporate will be	(Substitute
3.	We are ordinarily residence in the Territory.	"The following of us are ordinarily resident in the territory;" where appropriate) (Refer to
4.	The trust to which we are subject are those contained in	constitution constitution and rules or trust instrument or declaration of trust)
5.	The number of trustees not be less than.....nor more than.....	
6.	Persons cease to be trustees in the following circumstances :-	
7.	New trustees may be appointed / elected by	
8.	The proposed device of the common seal is	(Draw the seal & Insert the name of the body corporate "Insert the word The Registered Trustees")
9.	The common seal will be affixed to documents in the presence of	
10.	The following lands will vest in the proposed body corporate if and when incorporated	
11.	Annexed to this application are verified copies of the following documents	

(Copies of constitution and rules and of any trust instrument and declaration of trust must be annexed)

I / WE.....

DO SOLEMNLY AND SINCERELY declare that the particular contained on the other side hereof are true and correct; AND I/WE make this declaration conscientiously believing the same to be true and in accordance with the provisions of the Oaths and Statutory Declarations Act, [CAP 34 R.E. 2002]

This Declaration is made and subscribed by:-

- 1. Signature.....
- 2. Signature.....
- 3. Signature.....
- 4. Signature.....
- 5. Signature.....
- 6. Signature.....
- 7. Signature.....
- Signature.....
- 9..... Signature.....
- 10. Signature.....

Who is known to me personally (or who has been identified to me by
.....
the latter being known me personally) this.....day of.....
.....
(Name, Signature, qualification and address of the person taking the declaration).

RITA

LA Form No. 002

139

SECOND SCHEDULE
(Made under Regulation 5(2))

APPLICATION FORM FOR REGISTRATION AS A LEGAL AID PROVIDER

No. Particulars

1. Name and address of
the Institution
.....
2. Location and area of
operation of the
Institution
.....
3. Services to be provided
or nature of the
activities of the
Institution
.....
4. Names and particulars
of the advocates
.....
5. Names and particulars
of the lawyers / paralegals
.....
6. Other information
.....

RITA

LA Form No.006

140

SIXTH SCHEDULE

(Made under Regulation 9(1))

APPLICATION FORM FOR REGISTRATION AS A PARALEGAL

No. Particulars

1. Name and address of the Institution
2. Location and area of operation
3. Legal status of an institution/paralegal
4. Services to be provided or nature of the activities conducted.....
5. Names and particulars of the Paralegals
6. Name and address of the Institution Affiliating the Paralegals
7. Other information
8. Signature Date...../...../20.....
9. Name and Title of Authorised person Stamp

FOR OFFICIAL USE ONLY:

HUMAN RIGHTS COUNCIL COMPLAINT PROCEDURE FORM

- You are kindly requested to submit your complaint in writing in one of the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) and to use these languages in any future correspondence;
- Anonymous complaints are not admissible;
- It is recommended that your complaint does not exceed eight pages, excluding enclosures.
- You are kindly requested not to use abusive or insulting language.

I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author

Individual Group of individuals NGO Other

Last name:

First name(s):

Nationality:

Address for correspondence on this complaint:

Tel and fax: (please indicate country and area code)

E-mail:

Website:

Submitting the complaint:

On the author's own behalf:

On behalf of other persons: (Please specify:)

II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s):

III. Facts of the complaint and nature of the alleged violation(s)

The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).

.....

.....

.....

.....

.....

.....

.....

IV. Exhaustion of domestic remedies

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the courts and other public authorities as well as national human rights institutions¹³³, the claims made, at which times, and what the outcome was:

.....

2- If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail:

.....

V. Submission of communication to other human rights bodies

1- Have you already submitted the same matter to a special procedure, a treaty body or other United Nations or similar regional complaint procedures in the field of human rights?

.....

2- If so, detail which procedure has been, or is being pursued, which claims have been made, at which times, and the current status of the complaint before this body:

.....

VI. Request for confidentiality

In case the communication complies with the admissibility criteria set forth in Council resolution 5/1, kindly note that it will be transmitted to the State concerned so as to obtain the views of the latter on the allegations of violations.

133 National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

Please state whether you would like your identity or any specific information contained in the complaint to be kept confidential.

Request for confidentiality (*Please tick as appropriate*): No Yes

Please indicate which information you would like to be kept confidential

Date: Signature:

N.B. The blanks under the various sections of this form indicate where your responses are required. You should take as much space as you need to set out your responses. Your complaint should not exceed eight pages.

VII. Checklist of supporting documents

Please provide copies (not original) of supporting documents (kindly note that these documents will not be returned) in one of the six UN official languages.

- Decisions of domestic courts and authorities on the claim made (a copy of the relevant national legislation is also helpful);
- Complaints sent to any other procedure mentioned in section V (and any decisions taken under that procedure);
- Any other evidence or supporting documents deemed necessary:

VIII. Where to send your communications?

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
Fax: (+41 22) 917 90 11
E-mail: CP@ohchr.org
Website: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>

Relevant Online Links

- Forms and Laws for Registration of NGOs:-
http://www.mcdgc.go.tz/index.php/publications/category/policies_/
- Forms for Registration and Operation of Companies:-
<http://www.brela.go.tz/index.php/companies/forms>
- Registration of Trusts:- <http://www.rita.go.tz/page.php?pg=100>
- The Ministry of Home Affairs:- <http://moha.go.tz/>
- Research Projects Clearance:- http://www.costech.or.tz/?page_id=2223
- Tax Clearance:- <https://www.tra.go.tz/index.php>



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