

CIVIL SOCIETY AND HRDS AT CROSSROADS



A comparative examination of the effects of
the government legislation on civil society and
HRDs in East Africa

Cases of Tanzania, Kenya, Uganda



CIVIL SOCIETY & HRDs AT CROSSROADS

**A COMPARATIVE EXAMINATION OF THE EFFECTS OF GOVERNMENT LEGISLATION
ON CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS' OPERATING ENVIRONMENT
IN EAST AFRICA**

CASES OF UGANDA, TANZANIA AND KENYA

Publisher; Transformative Leaders Network- Africa (TRANET-Africa).

This research was conducted by the Transformative Leaders Network- Africa in partnership with the Milestone Africa Institute and the Voice of Youth Tanzania for the study in Tanzania.

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LIST OF ACRONYMS

AAU.....	Action Aid Uganda
ACCU.....	Anti-Corruption Coalition-Uganda
BMM.....	Black Monday Movement
CSBAG.....	Civil Society Budget Advocacy Group
CSO.....	Civil Society Organization
DGF.....	Democratic Governance Facility
GISO	Gombolola Internal Security Organization
GIZ.....	Deutsche Gesellschaft Fur International Zusammenarbeit GmbH
NDP.....	National Development Plan
NGO.....	Non-Governmental Organisation
NRM	National Resistance Movement
MGLSD.....	Ministry of Gender Labour and Social Development
MOFPED.....	Ministry of Finance Planning and Economic Development
MoLHUD.....	Ministry of Lands Housing and Urban Development
LASPNET.....	Legal Services Providers Network
ODA.....	Official Development Aid
PBO.....	Public Benefit Organizations Act
PILAC.....	Public Interest Law Clinic, Makerere University
RLP.....	Refugee Law Project, Makerere University
SWGS.....	School of Women and Gender Studies, Makerere University
TRANET-Africa.....	Transformative Leaders Network- Africa
UHRC.....	Uganda Human Rights Commission
UNNGOF.....	Uganda National NGO Forum
UPFYA.....	Uganda Parliamentary Forum on Youth Affairs
URSB.....	Uganda Registration Services Bureau
VOYOTA.....	Voice of Youth Tanzania
VPN.....	Virtual Private Network
YHRD.....	Youth Human Rights Defender
YCSO.....	Youth Civil Society organization
YWHRD.....	Young Women Human Rights Defender

FOREWORD



Over the World, legislation to regulate the activities of the civil society organizations have in the recent past been speedy. In Africa, several countries...Eritrea, Kenya, Uganda, Tanzania, Rwanda, Egypt and among others have enacted laws to regulate the sector usually with the conviction that CSOs are allies of the western countries. While this move is welcome, some legislation has had far reaching effects on the civil society yet the sector remains a significant contributor to development in many ways.

It is on that ground that TRANET-Africa sought to investigate and analyze the combined and multifaceted effects of the laws either directly regulating the sector or those that affect and or influence civil society operations and human rights defenders in one way or the other.

This study employs a comparative approach to evaluate the effects of government legislation on the work of civil society and human rights defenders (HRDs) in East Africa with the cases of Tanzania, Kenya and Uganda. This is a good step towards the efforts of TRANET-Africa in strengthening civil society and

widening civic space for human rights defenders as well as in the sustainability of the sector.

In the course of the last four years, we have enhanced our efforts in deepening understanding in the operating environment for civil society and HRDs. Therefore, this report is a manifestation of that progress and commitment to advancing an environment that enhances CSO sustainability rather failure.

African civil society face a myriad of challenges from high reliance on the western world for funding, to a less developed funding landscape continentally and a negative attitude from both State and Non-State actors.

In the near future we will deepen our efforts on eradicating this narrative and foster a prosperous and self-sustaining African civil society.

On that brief note, I welcome you to read this very interesting study of its kind. On behalf of the Board of Directors of TRANET-Africa and the Secretariat, I continue to urge potential partners, individual donors as well as institutional givers to support our efforts.

If you have comments, feedback and or would like to partner with us, kindly contact the Secretariat through info@tranetafrica.org or through donations@tranetafrica.org
Yours sincerely,

Ms. Viola Karungi
CHAIRPERSON BOARD OF
DIRECTORS, TRANET-AFRICA

EXECUTIVE SUMMARY

The Study, *Civil Society and HRDs at Crossroads; a Comparative Examination of the Effects of Government Legislation on Civil Society Governance and Human Rights Defenders' Operating Environment in East Africa; cases of Uganda, Kenya and Tanzania* seeks to establish and identify the government legislation regulating the operating environment for civil society/HRDs, establish the level of comprehension of the legislation by both CSO and state actors, examine the effects of the legislation on the governance, resourcing and general operating environment for civil society organizations and human rights defenders while assessing the challenges CSOs face in ensuring compliance and identify the approaches through which compliance to or improvement of government legislation can be enhanced in East Africa and Africa as a continent.

The **overall purpose** of the study was to establish the existing legislation apparently regulating the operating environment for civil society organizations/HRDs, establish the level of comprehension of the legislation, and examine the effects of the legislation on the governance, resourcing and general operating environment for civil society organizations and human rights defenders while assessing the challenges CSOs face in ensuring compliance and identify the approaches through which compliance to or improvement of government legislation can be enhanced in East Africa.

The following were the specific objectives of the study at the time of the research design: to establish the various government legislation that seek to regulate the operating environment for civil society/HRDs and to ascertain the level of comprehension of the legislation by civil society actors and HRDs in East Africa, to examine the effects of government legislation on the governance, resource mobilization and general operating environment for civil society organizations and human rights defenders in East Africa and to evaluate the challenges CSOs face in meeting the obligations of and identify the mechanisms in enhancing compliance to government CSO legislation in East Africa.

For the purpose of this study, civil society is understood to mean the space outside the family, market and State (wef, 2013). What constitutes civil society has developed and grown since the term first became popular in the 1980s and it now signifies a wide range of organized and organic groups including Non-Governmental Organizations (NGOs), trade unions, social movements, grassroots organizations, online networks and communities, and faith groups (vandyck, 2017; wef, 2013). Civil society organizations (CSOs), groups and networks vary by size, structure and platform ranging from International Non-Governmental Organisations (INGOs) and mass social movements (e.g. the Arab spring) to small, local organisations (e.g. coalition of Jakarta residents opposing water privatization)¹

It has been observed that Civil Society Organizations exist in many forms depending on the nature of registration, formation and or purpose. The common nature of civil society organizations includes non-governmental organizations both locally formed and or international. Community based organizations, pressure groups usually without any form of legal registration, groups such as in communities that seek to get themselves together for purpose of pulling resources together to advance the economic wellbeing and provide the needs for their members among others. These groups most times lobby from anyone irrespective of their religious, political and or tribal affiliations. Therefore, for the sake of this study, self-help groups such as community savings groups, community investments

¹ What is Civil Society, its role and value in 2018? K4D Helpdesk report accessed via, https://assets.publishing.service.gov.uk/media/5c6c2e74e5274a72bc45240e/488_What_is_Civil_Society.pdf on the 1st June 2022

groups as well as groups established for the purpose of income generating have been excluded from this study.

The findings of this study have been able to inform this report that while reference to international and regional legal and policy frameworks may occasionally be made, national laws and policy frameworks were most likely to inform regulation and monitoring of civil society organizations and the operating environment for human rights defenders. Under this section, we establish and seek to examine if and whether the laws and policies directly regulate and or influence the activities of civil society organizations and human rights defenders in one way or the other.

In summary, the study observed that the East African Community as a Regional Economic Block has, to date, no specific policies/ legal frameworks on fostering freedom of speech, expression and assembly and protecting human rights defenders. Similarly, Uganda, Kenya and, Tanzania had no legal frameworks to protect human rights defenders although in Uganda the bill to protect human rights defenders was still being debated at the time of documenting this report.

The following legal and or policy frameworks were identified to regulate, influence and or affect the working environment for civil society organizations and human rights defenders in Uganda, Kenya and Tanzania. These include; NGO Act of Uganda 2016, NGO Act of Tanzania 2002, Public Benefits Organizations Act in Kenya, NGO Amendment Regulations 2019 of Tanzania, NGO Regulations 2017 of Uganda, Companies Act 2012 in Uganda, National Youth Policy of Kenya, Tanzania and Uganda. The National Youth Council Acts of Uganda, Kenya, and Tanzania. The Anti- Money Laundering Act of Uganda, Kenya and Tanzania. The Uganda Communications Commission Act, Online Content Regulations Act, Computer Misuse Act of Uganda, Presidential Directives on Covid-19. At the regional level, the East African Youth Policy, African Youth Charter 2006, the African Union Agenda 2015 were among the policies and frameworks identified to influence and or regulate the working environment for CSOs and HRDs. The UN Declaration on Fundamental Human Rights and Freedoms, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms were among the international legal instruments identified to guide and or regulate the work of HRDs and CSOs.

In conclusion, the study observes that steps taken by the respective governments to streamline and regulate NGOs have far reaching implications on their internal governance, financial resourcing, and sustainability among others. While matters of national security cannot be underestimated, the implication of the regulations to the civil society operations need be looked into with an open heart rather than a preconceived perception of the civil society and HRDs as enemies of the State and agents of the western world. Globally, the private sector, the public sector as well as civil society organizations are interdependent of each other. Therefore, viewing only one sector through a biased lane is detrimental to the development of society as a whole. None the less, civil society organizations have already showed willingness to collaborate with government to ensure that this partnership works mutually.

Therefore, governments need work closely with civil society and diplomatic missions to bring on board key alternatives that could be pursued to mitigate the issue of twin track approaches between the government and civil society.

Crippling the operations for civil society means that those who have been direct and indirect beneficiaries of the civil society organizations will plunge into more plight. This will cause more problems for the government as it won't have handy solutions to the needs of the affected. Therefore, while legislation in itself is not bad for society, the intensions for which certain policies and laws are made are questionable.

Generally, **the study recommends** that there is need for the governments, civil society and other development actors to enhance the capacities of government workers who are charged with the responsibility to work with institutions that monitor the activities and the work of civil society organizations as well as those involved in crafting policies and laws seeking to regulate the civil society operations both at the national and district levels to be able to comprehend the working of civil society organizations, their challenges and the Human Rights Based Approach to Development , that the government and the agencies charged with the mandate to monitor the activities of civil society make decisions taking into consideration the effects of the measures employed to curb the spread of Covid-19 for the time only essential offices were allowed to operate in some countries and the implications to the civil society organizations and their operations in regard to meeting the provisions of the NGO regulations and the NGO acts in their countries, that there is need to document success stories of the civil society in the various communities and share them with the civil society actors to deliberate on acceptable NGO Code of corporate governance so as to foster self-regulation taking into consideration the plight and challenges of the various institutions.

CHAPTER ONE: INTRODUCTION

1.1 Introduction

This chapter introduces the study on, *“Civil Society and HRDs at Cross Roads; a comparative examination of the effects of government legislation on civil society governance and human rights defenders’ operating environment in East Africa”*, the back ground of the study, the purpose and specific objectives, methodology and limitations of the study. In this Chapter we provide an understanding of the meaning of civil society and the nexus between the civil society and human rights defenders.

Civil society is widely understood as the space outside the family, market and State (Wef, 2013). What constitutes civil society has developed and grown since the term first became popular in the 1980s and it now signifies a wide range of organized and organic groups including Non-Governmental Organizations (NGOs), trade unions, social movements, grassroots organizations, online networks and communities, and faith groups (Vandyck, 2017; Wef, 2013). Civil society organizations (CSOs), groups and networks vary by size, structure and platform ranging from International Non-Governmental Organisations (INGOs) and mass social movements (e.g. the Arab spring) to small, local organisations (e.g. coalition of Jakarta residents opposing water privatization)²

Civil society organizations exist in many forms depending on the nature of registration, formation and or purpose. The common nature of civil society organizations includes non-governmental organizations both locally formed and or international. Community based organizations (CBOs), pressure groups usually without any form of legal registration, groups such as in communities that seek to get themselves together for purpose of pulling resources together to advance the economic wellbeing and provide the needs for their members among others. These groups most times lobby from anyone irrespective of their religious, political and or tribal affiliations.

For the purpose of this study therefore, civil society shall denote any grouping and or association of two or more persons formed with the purpose of advancing the wellbeing of the members and or of the general public by either advancing their rights and or by providing needs based support. These among others shall include, groupings registered and or identify as non-governmental organizations, companies limited by guarantee, community based organizations, community and national pressure groups and any faith based grouping seeking to support group members and or the general public most times through their religious groups or those out of their religious setting.

Human rights defenders for the purpose of these study shall refer to all individuals and or organizations, pressure groups, advancing the rights of their members or of other individuals out of their groups in accordance with the UN Declaration on Universal Fundamental Human Rights and Freedoms together with 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.

1.2 Background to the Study

² What is Civil Society, its role and value in 2018? K4D Helpdesk report accessed via, https://assets.publishing.service.gov.uk/media/5c6c2e74e5274a72bc45240e/488_What_is_Civil_Society.pdf on the 1st June 2022

In March 2020, the World Health Organization (WHO) declared Covid-19 a global pandemic. Many countries across the globe including in the African Continent moved swiftly to implement WHO's guidelines to curb the spread of the virus. Each country made additional guidelines that have had far reaching effects to CSO and HRD operating environment and serious gross human rights violations. The implementation of the guidelines critically narrowed civic space in such countries where the guidelines were implemented. Normal operations of many institutions; in the private sector, public sector and the civil society sector inclusive were and continue to be disrupted. The Pandemic has affected various organizations and the most hit are those with irregular, short-lived and most times absent funding. Amidst this crisis is a growing lethal hand towards civil society by governments across the globe manifested in the form of legislation.

Civil society organizations and human rights defenders who are at the fore front of championing rights, accountability and enhancing good governance among others are facing serious security and protection needs at the hands of unaccountable governments.

Covid-19 and the measures imposed have had to force funding agencies to rethink and redirect their funds to address the negative impacts of Covid -19. While many of the civil society organizations are grappling with addressing the negative impacts of Covid-19, there is observed an increased negative perception about civil society by both State and Non-State actors. A number of African countries have tended to adopt laws that significantly constrict space for their people to freely mobilize and form themselves into organizations and or associations among others. Academics have observed that countries with increased civil society action are depictive of the government's failure to provide the basic services and enhance good governance. Therefore, civil society has to either cover the gap or hype the advocacy so as to pile pressure on the government to address the existent challenges.

A common phenomenon being advanced by a number of governments in countries across the globe and especially in the African countries while adopting or enacting unfair legislation towards civil society is that the organizations have become agents of the western world against the African governments. Aside from service delivery, civil society also plays an increasingly important advocacy role – pressing for legal reform and implementation, ensuring non-discrimination in government policy and advocating for the protection of human rights. However, rather than engage with these critical voices, governments have frequently chosen to silence them, often through harassment, intimidation, threats of closure and even arrests.

In Africa, a continent with diverse and complex social, economic and political patterns, it is imperative to examine the effect of the government legislation on the operating environment for civil society and human rights defenders and establish possible alternative approaches through which government legislation can be engineered in such a way that it does not have a killing end result rather than the collaborative between government and civil society for the good and benefit of the civil society, the State and the public. In many African countries, the lack of actual protection for human rights and justice, halting democratic reforms, the existence of deep-rooted poverty, harmful traditional practices, restrictive laws and social attitudes all pose serious threats to the work of civil society activists in the region. As a result, several African countries have and or are in the processes of enacting laws to “regulate” the operations of the civil society organizations. Notable among them are Eritrea, Egypt, Tanzania, Kenya, Rwanda and Uganda among others.

It is in light of that brief background that TRANET-Africa found it necessary to examine the effects of the government legislation on the governance and operating environment for CSOs and HRDs and establish the challenges civil society is facing in attempting to adhere to the laws and most importantly to devise approaches on how to enhance compliance by and foster a favourable legal environment for civil society.

This study is focusing on the East African Regional Economic Block with the case studies of Uganda, Kenya and Tanzania with a view of establishing and comparing the pitfalls and advantages of each law and how civil society in the three countries can work collectively to respond to the negative effects of the legislation.

1.3 Purpose and Objectives of the Study

a. Overall purpose of the study

The overall purpose of the study was to establish the existing legislation apparently regulating the operating environment for civil society/HRDs, establish the level of comprehension of the legislation, and examine the effects of the legislation on the governance, resourcing and general operating environment for civil society organizations and human rights defenders while assessing the challenges CSOs/HRDs face in ensuring compliance and identify the approaches through which compliance to or improvement of government legislation can be enhanced in East Africa.

b. Specific objectives of the study

- i. To establish the government legislation that seek to regulate the operating environment for civil society/HRDs and ascertain the level of comprehension of the legislation by civil society actors and HRDs in East Africa.
- ii. To identify and examine the effects of government legislation on the governance, resource mobilization and general operating environment for civil society organizations and human rights defenders in East Africa.
- iii. To evaluate the challenges CSOs face in meeting the obligations of and identify the mechanisms in enhancing compliance to government CSO legislation in East Africa.

1.4 About the comparative examination of the effects of government legislation on civil society governance and human rights defenders' operating environment in East Africa

1.4.1. Methodology

The chapter highlights how the study was conducted, lists and explains the choice of research approaches, the research design, tools and techniques applied.

1.4.2. Scope of the study

The study was a regional comparison study focusing on the East African Community with the cases of Uganda, Kenya and Tanzania. While the study was seeking to establish the effects of government legislation, the study focused on comparing data from the three countries to arrive at conclusions.

1.4.3. Delivery Methodology

Both quantitative and qualitative data collection methods were used during data collection. The Quantitative data collection methods relied on both purposive and random sampling. Structured data collection tools/instruments that fit diverse experiences into predetermined response categories were equally employed. Data collection forms were designed in a way that summarizing, comparison, and generalization would be easier. These methods included; administering interview guides, online data collection forms as well as face-to face and telephone interviews were utilized. During the process of data collection, both open and closed ended questions were employed. However, the use of closed ended questions was minimized to apply to only situations that had been known before while rhetoric and open ended questions were preferred for purpose of creating an environment where respondents spoke freely and from their own experiences as opposed to the imagination and conclusion of the researchers.

Qualitative data collection methods were very instrumental in providing an important foundation in the study by providing information useful to understand the processes behind observed results and assess changes in people's perceptions of their well-being. Furthermore, qualitative methods were used to improve the quality of survey-based quantitative data collection methods by helping expound the study hypothesis, strengthening the design of survey questionnaires and expanding or clarifying quantitative study findings. The qualitative methods used in the study were classified into two broad categories of in-depth interview and literature review.

The study used both primary and secondary data. The secondary data was acquired through desk review, assessment of various human rights processes and mechanisms as well as academic studies and reports on the rights of human rights defenders, civil society organizations, national and international legal frameworks and policies on the youth, national and international organizations and intergovernmental agencies among others.

1.4.4. Techniques of Engagement and Data Collection

The primary data was collected from three countries; Uganda, Kenya and Tanzania. In Uganda the primary data was collected in Arua, Nebbi, Tororo District and Kampala City. The three countries were selected based on their membership to the EAC and secondly for having enacted laws seeking to regulate the NGO sector. In Kenya the data was collected from Bungoma, Busia and Nairobi Counties. In Tanzania data was collected in Arusha and Dar- Es- Salam Regions. However, primary data was also collected using online survey forms that were randomly circulated. A significant number of the respondents were distributed randomly across the three countries.

Focus civil society organizations were randomly selected while others were targeted respondents due to their prior publically known engagement and or implication by regulating bodies. However, while randomly selecting civil society organizations, the research design was such that all the various categories of civil society were identified to participate in the study. These included; youth led, youth founded/ youth focused organizations, youth focused but none youth led/youth founded organizations, women's rights organizations, community based organizations, national level organizations as well as regional focused organizations/ networks. The HRDs were either affiliated to certain organizations or had a high likelihood of operating individually without any affiliation to any civil society organizations.

A total of 80 civil society organizations were assessed; 20 from Tanzania, 50 from Uganda and 10 in Kenya. The assessment was done through online data collection forms, online and phone calls as well as physical visits to their offices. A total of 100 civil society leaders/ founders were interviewed; 50 from Uganda, 30 from Tanzania and 20 from Kenya. A total of 50 individual human rights defenders were interviewed; 30 in Uganda, 15 in Tanzania and 5 in Kenya. Out of the 100 civil society leaders/ founders interviewed 80 of them were from the organizations assessed while the 20 were from organizations selected randomly though not assessed. Meaning that a total of 120 founders/ civil society leaders were interviewed.

Two consultative dialogues we conducted with civil society leaders/ founders in Uganda and Tanzania and none for Kenya. The consultative meetings brought together 40 participants from Uganda and 20 in Tanzania.

Several research tools and techniques were employed to acquire primary information. A total of five tools were used in the collection of the primary data and these included; questionnaires, Key Informant Interview guide, a survey instrument/ tool for human rights defenders' organizations. A total of 6 focus group discussions of 4-7 participants were conducted with civil society organizations; 3 in Uganda, 2 in Tanzania and 1 in Kenya. 3 for HRDs/CSOs and 3 for the people in the community. Community focus group discussions were held only in Uganda. For purpose of this research, information obtained from analysis of the laws, policies and legal frameworks was considered primary data since the focus of the research was on the legal environment surrounding civil society organizations and human rights defenders. Therefore, Primary Data Analysis and online random data collection forms were employed.

1.4.5. Data analysis and quality control

Data analysis and interpretation involved the use of inference, assumptions and outcomes of the consequences of civil society organizations and human rights defenders in regard to the legal and policy environment prevalent before and during the time of the study arrived at from both the primary and secondary the data obtained.

Data was organized and managed in Open Data Kit (ODK) tools, and analyzed using Micro soft Excel and Statistical Package for Social Science (SPSS), to identify themes indicating the working environment, challenges, loopholes and implication of the legal and policy frames works on the operating environment for civil society and human rights defenders. A codebook listing each theme followed by a detailed description that was used during data analysis. After attainment of codes, one coder systematically applied the codebook to all interviews.

Robust data quality control measures were applied and these included among others having an online system/tool that was used to capture data and the monitoring of appropriate interviewer behaviors. Data obtained from the field was critically examined to ensure they meet the set standards and expectations of the research.

1.4.6. Sampling

The study employed both purposive and random sampling. Purposive sampling for the purpose of this study was employed as a deliberate choice of participants due to the qualities [he/s] possesses. Purposive sampling enabled us to reach pre-identified respondents with whom we conducted key

informant interviews both virtually or through face-to-face engagement. Random sampling was employed to enable us reduce chances of being able to miss out important information as a result of purposive sampling. Through random sampling, organizations and individuals who were not predetermined during the study design were reached to through online forms and randomly reaching out to any organization and or individual.

1.4.7. Population Characteristics and Sample Size.

The study was designed to include a sufficient number of participants from civil society, donor agencies, government and community members among others to ensure that saturation would be reached and also tri-angulations of data could be achieved. Secondary data was obtained by comprehensive analysis of laws and policy frameworks at the target country level, regional level and at the international level. The study population comprised of the following:

- a) civil society organizations
- b) civil society leaders/ founders
- c) Donor organizations
- d) Experts in civil society, international relations and governance
- e) Youth policy makers and youth human rights defenders
- f) Representatives of select government agencies
- g) Leaders of national youth councils
- h) University and tertiary students/ leaders and activists
- i) Individual human rights defenders

1.4.8. Research ethics

The following research ethics were employed throughout the study. These included informed consent, right to withdraw from interviews and cancel the use of their information, anonymity, respect to privacy and personal security among others. Participants were asked prior to the interviews if they had any concerns with any of their information being publically made available so as to protect the identity of the respondents or not and or if they had had any prior security issues or not.

1.4.9. Limitations of the study

Throughout the study there was an aura of fear among respondents in such a way that critical information would not be divulged for fear of being followed by the State and intelligence agencies. A significant number of potential respondents shied away from the study. However, this was resolved by conducting focus group discussions and consultative dialogues where participants felt freer to engage in discussions with fellow civil society leaders and or activists who in many instances were known to each other.

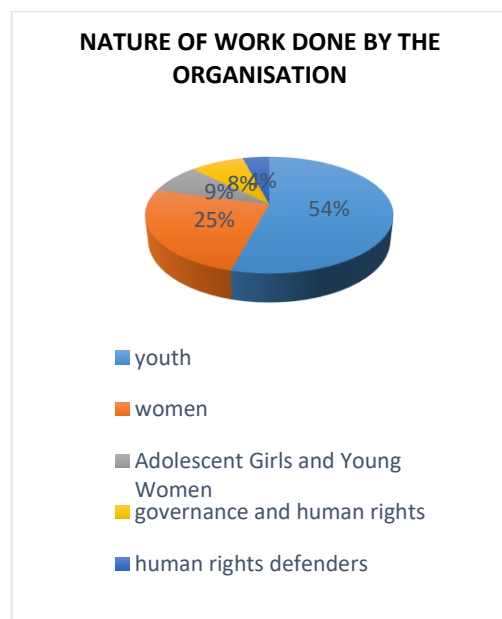
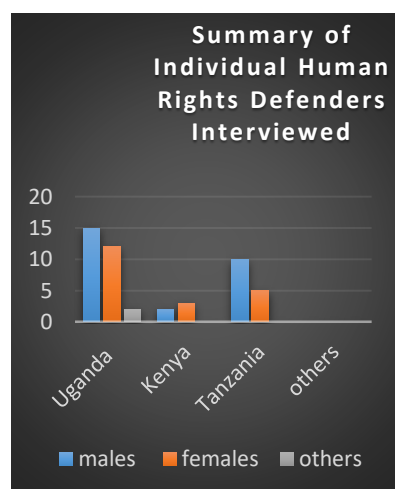
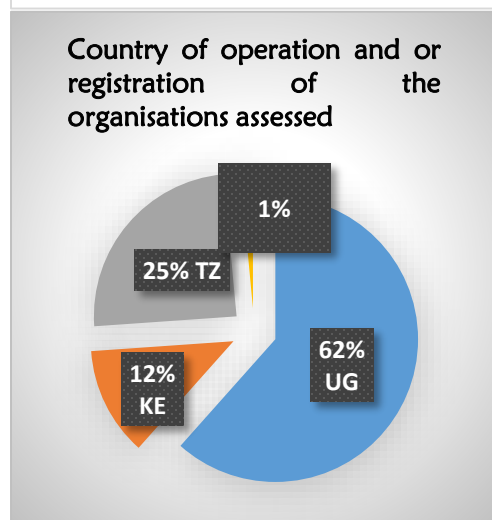
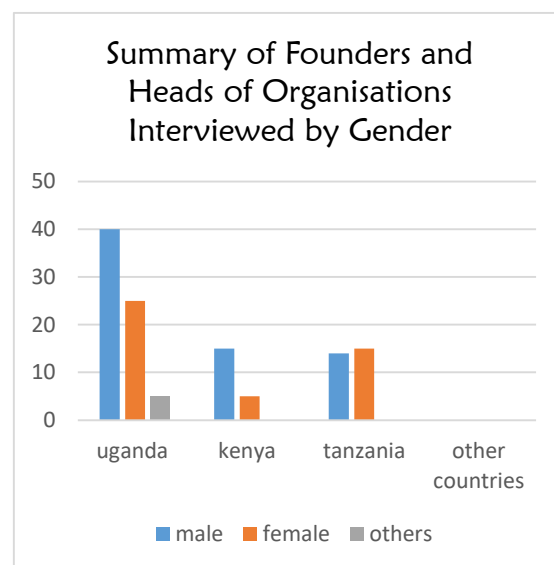
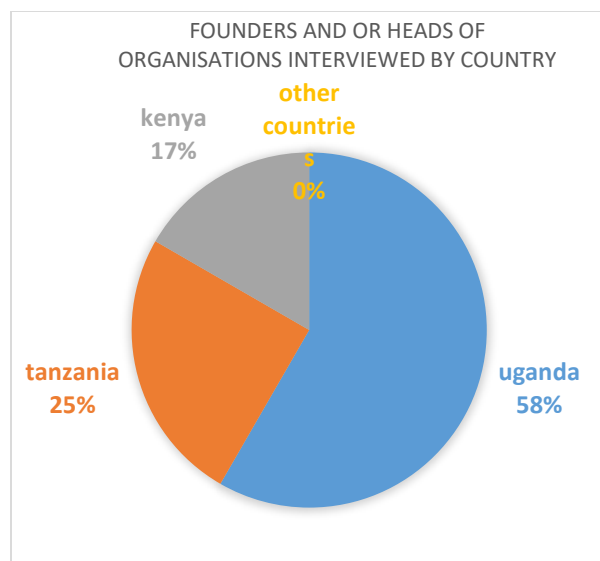
Some Laws enacted are in contradiction with programs, which advocate youth development. The apparent discrepancy in the definition of who a youth among the East African countries and globally. For instance, the National Youth Policy 2016 defines youth as all young persons; female and male aged twelve (12) to thirty (30) years. The National Youth Act 1993 of Uganda defines a youth as a person between the age of eighteen (18) and thirty (30) years. While in Tanzania, The National Youth Development Policy of 1996 defines a youth as stipulated by United Nations, which is the age group of 15 - 24 years. This is in contradiction with actual practice in Tanzania where young persons between 15 to 35 years are treated as youth and are involved in most of the youth development programs. For example, the Law of marriage Act, 1971 allows a girl aged 15 years to get married contrary to the

Adolescence Reproductive Health Strategy which prohibits early marriages. This calls for harmonization of laws, which are not youth friendly. At the international level, the United Nations Secretariat, defines a youth as any person between 15 and 24 age cohort while the African Youth Charter defines a youth as every person between the ages of 15 and 35 years yet it is binding on all states that have signed it. This was however resolved by using the definition of the African Youth Charter, 2006 and the EAC Youth Policy, 2013 that define youth as every person between the ages of 15 and 35 years.

Limited financing towards this study was a challenging factor as the study could not be completed within the stipulated period of time as per the study design. This was however resolved by increasing the time frame for the study. Prolonging the study time frame enabled the research team to unearth critical information that has been very vital in informing the various aspects of this study.

Table 1 - Target Population Samples in the East African Community

Sample Target	Location	Target sample size	Actual sample size obtained	Abstained/ withdrew
Individual Human Rights Defenders (including student activists, grassroots activists not affiliated to any organization)	Uganda Kenya Tanzania	170	150	20
civil society organizations	Uganda Kenya Tanzania	100	80	10
Donor organizations	Uganda Kenya Tanzania	10	5	5
civil society leaders/ founders	Uganda Kenya Tanzania	80	100	-
policy analysts and experts in civil society and international relations	Uganda Kenya Tanzania	10	15	-
Representatives of government agencies	Uganda Kenya Tanzania	20	10	10
Leaders of national youth councils	Uganda Kenya Tanzania	15	5	-



CHAPTER TWO:

LEGAL FRAMEWORK PROVIDING REGULATION AND GOVERNANCE OF CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS' OPERATIONS

In this section, we establish and seek to examine if and whether the laws and policies directly regulate and or influence the activities of civil society organizations and human rights defenders in one way or the other.

General observation: The findings of this study are in such a way that while reference to international and regional legal and policy frameworks may occasionally be made, national laws and policy frameworks appear to form the bench mark for regulation and monitoring of CSOs and HRDs' operating environment.

In summary, the study observed that the East African Community as a Regional Economic Block had no specific policies/ legal frameworks on fostering freedom of speech, expression and assembly and protecting human rights defenders although in Uganda the bill to protect human rights defenders was being debated in parliament.

The following legal and or policy frameworks were identified by the study participants and believed to, in one way or the other, influence, affect and or regulate the working environment for civil society organizations and human rights defenders in Uganda, Kenya and Tanzania. These include; NGO Act of Uganda 2016, NGO Act of Tanzania 2002, PBOs Act in Kenya 2013, National Youth Policy of Tanzania, Kenya and Tanzania. The Companies Act 2012 in Uganda, Kenya and Tanzania. National Youth Council Acts of Uganda, Kenya, Tanzania. The Anti- Money Laundering Act of Uganda, Kenya and Tanzania. Uganda Communications Commission Act, Online Content Regulations Act, Computer Misuse Act of Uganda 2011, Presidential Directives on Covid-19 in Uganda and partly in Kenya, East African Youth Policy 2013, African Youth Charter 2006. Others are, Regulation of Interception of Communication Act, 2010 in Uganda, Anti-Terrorism Act, 2002, Uganda Communication Act 2017 as amended among others.

These laws and policies shall be classified as those that seek to directly guide and or regulate the work of civil society and those that in one way or the other seek to indirectly influence the participation of civil society and human rights defenders into governance and or human rights processes.

1. National

a. Covid-19 Prevention guidelines

In March 2020, the World Health Organization (WHO) declared Covid-19 a global pandemic. Many countries across the African Continent moved swiftly to implement guidelines that they believed would be suitable to curb the spread of the virus. The implementation of the guidelines led to serious gross human rights violations and critically narrowing civic space in the countries especially by the armed forces. In East Africa, Uganda and Kenya implemented guidelines that prevented people from moving as well as stopping business operations and work for institutions deemed non-essential.

In Uganda, Civil society operations were greatly disrupted especially those involved in human rights, democracy, social justice, accountability and good governance among others as their services were considered non-essential. It was observed that 90% of civil society leaders who participated in this study acknowledged being hit by the negative effects of covid-19. Specifically, the pandemic has

prevented them from accessing funding especially between the years 2020, 2021 and a significant part of 2022 since the activities proposed in the grant proposals were considered not being possible to be implemented amid the government restrictions. This phenomenon has left many organizations either nonoperational or at the verge of collapse.

Civil society organizations with no core operating costs or with no funding at all have had a big challenge meeting the needs of their employees and volunteers as the Covid-19 measures implemented have resulted into increased cost of living and operation. This is evidenced by the doubling of public transport fares which were reduced later by a very smaller margin. The resultant effects of the Covid-19 Pandemic have gravely affected the private sector upon which the civil society relies on as an important sector to be able to meet their daily routines. As a result of high living costs, high public transport costs among others, most civil society organizations are unable to have their employees and volunteers present in office and worse still even when they work remotely, they are mostly unproductive as they need internet connectivity which costs their organizations are unable to meet.

“We are struggling to get back on our feet. We have applied for funding over five times from different organizations in the last two years, but all we keep being told is that our activities cannot be implemented due to the Covid-19 measures implemented in the country” an HRD and founder of a civil society organization in Eastern Uganda narrates.

On the other hand, donor organizations as well as individual givers have gravely been affected by the Covid-19 since the Global North where most of the funding for civil society in the Global South comes from was worst hit. Covid-19 is believed to have killed or highly incapacitated individual givers who are mostly of the old age that is considered vulnerable to the Covid-19 Virus. As a result, individual as well as group giving has largely been affected in the Global North since they were highly worst hit by Covid-19. Consequently, this has a bearing on the donor recipients in the African Continent and the East African Community is not spared. A representative of a donor organization based in Uganda with their Regional Office in Nairobi Kenya who participated in the study on condition of anonymity told a TRANET-Africa staff that they were unable to fund most civil society organizations due to the effects of Covid-19.

“Covid-19 has largely affected our organization and as a result, currently we are not giving funds to new partners as our donations have been largely redirected to our previous donor recipients to enable them to respond to the emerging effects of Covid-19. This is largely because our resource envelope has dwindled drastically due to the Covid-19 Pandemic” he responded.

Additionally, due to the effects of Covid-19 prevention guidelines, civil society organizations have been unable to meet the needs of the NGO Act 2016 and the NGO Regulations 2017 for the case of Uganda where they are required to file annual returns and annual reports. 70% of civil society leaders who participated in this study said that the measures imposed by the President of the Republic of Uganda to prevent the spread of Covid-19 posed a big challenge to them as they were unable to file annual returns and or annual reports. This is attributed to the fact that the Uganda national NGO Bureau has no online systems to enable CSOs to file returns remotely. They had to physically present their documents to the offices of the NGO Bureau yet public transport and movement for non-essential institutions and individuals had been halted for close to three years.

“They want us to file annual returns, as well as audited books of accounts yet they stopped us from going to work. Most of our information is in our desk top computers in our offices which we could not access because the President said we are not essential workers. How do we audit our organizations and file returns yet there was no way to travel to office and or even go to the NGO Bureau who at the worst don’t even have an online platform to enable us file annual returns remotely?” A disgruntled representative of one of the civil society organizations indefinitely suspended by the NGO Bureau observed.

Civil society leaders say they have failed to file annual returns with the NGO Bureau, the Uganda Revenue Authority as well as the Uganda Registrations Services Bureau since the Covid- 19 restrictions affected their operations.

The Covid-19 measures at the time of their imposition did not consider civil society organizations as essential actors, but the resultant effects are here to haunt civil society whose plight the National NGO Bureau, Uganda Registrations Services Bureau and the Uganda Revenue Authority the other bodies charged with the mandate to regulate and or oversee the activities of the CSOs in one way or the other. This means that CSOs shall be deemed non tax compliant for instance if they fail to file pay as you earn and other income taxes. The inability of CSOs to file annual returns with URSB means their documents cannot be certified consequently denying them the chance to benefit from other services in situations where they might seek to open bank accounts, register telephone lines, board resolutions, meeting minutes among others.

In Tanzania, the civil society operations were not affected as the government of Tanzania did not impose lock down to prevent movement of people not even impose restrictions on numbers of people to attend public gatherings such as public dialogues. In Kenya, while the Covid-19 prevention measures affected movement of people in one way or the other, the operations of the civil society organizations were not affected to a greater extent. However, generally, civil society organizations who rely on and or were hoping to get funding from donor organizations in the region were dealt a blow as they could not get funding except for those who were already being funding by those donor institutions.

b. NGO Act of Tanzania, Uganda and Kenya

This section provides an analysis of both the NGO acts and the NGO Regulations. The NGO Amendment Act 2016 of Uganda, the NGO Act 2002 of Tanzania and the PBOs Act 2013 all establish the NGO Regulations 2017, NGO Amendment Regulations 2019 and the PBOs regulations 2020.

Tanzania, Kenya and Uganda have all enacted the NGO Act 2002, 2013 and 2016 respectively. The NGO Act in Kenya is referred to as the Public Benefit Organizations Act. The Act in Kenya and Tanzania establish a single path or institution through which the NGOs have to be registered unlike in the case of Uganda where the organizations first have to be incorporated by the Uganda Registrations Services Bureau and later seek for registration with the Uganda National NGO Bureau that is charged with the responsibility to regulate the NGO sector.

The NGO Act 2002 of Tanzania and 2016 of Uganda as well as PBOs Act, 2013 of Kenya require all NGOs to present a work plan and budget for the first year while seeking registration with the NGO Bureau. NGOs have to provide proof of physical address.

The NGO Act 2016 in Uganda and the NGO Act 2002 of the United Republic of Tanzania both introduce NGO Regulations 2017 and NGO Amendment Regulations of 2019 respectively upon which the guidelines for registration of NGOs is provided.

The NGO Amendment Regulations 2019 of Tanzania, the NGO Regulations, 2017 of Uganda and the Public Benefit Organizations Regulations, 2020 of Kenya are all established under the respective NGO acts. The regulations are meant to provide guidance, requirements and obligations of the NGOs at the time of registration, compliance and or implementation of their activities.

In Tanzania, according to the NGO Amendment Regulations of 2019, Organizations are required to submit funding contracts to the Registrar of Non-Governmental Organizations for grant agreements of 20 million Tanzania Shillings and or more. The Registrar reserves the right to reject and or approve it. The regulations further require organizations to submit quarterly reports on their activities stating when they were implemented, what the nature of the activities implemented were and when they were implemented.

In Uganda, while seeking registration, the following are requirements NGOs operating nationwide and or regionally are required meet. Firstly, they have to get incorporated with the Uganda Registration Services Bureau (URSB), and later begin the process to get registered with the Uganda National NGO Bureau to obtain NGO Registration Certificate and Operating Permit. To register with URSB, an individual or group of individuals have to apply for name reservation valid for 30 days. The name can be applied for either as a company limited by guarantee or NGO. Upon approval of the name, the applicants shall submit a constitution and or articles of Association and Memorandum of Understanding for NGOs and Companies Limited by Guarantee respectively. They also have to submit passport photos and IDs of members/ Directors, apply and pay for a box number, pay the registration fee and stamp duty among others. Thereafter, once the certificate of registration is issued, it has to be certified if it is to be accepted by other institutions such as banks, telecom companies, National NGO Bureau among others.

To register with the National NGO Bureau, NGOs/ Companies limited by guarantee have to provide a certified copy of a certificate of incorporation, a copy of the organizations constitution or governing documents, a chart showing the governance structure of the organization, proof of payment of the prescribed fee, source of funding of the activities of the organization, copies of valid identification documents of two founder members, minutes and resolutions of the members authorizing the organization to register with the Bureau, a statement complying with section 45 of the Act, a recommendation from the District Non-Governmental Organizations Monitoring Committee where the headquarters are located and Chief Administrative Office or Town Clerk, the responsible ministry or government department, cover letter addressed to the Executive Director National Bureau for NGOs.

For Community based organizations (CBOs), they have to be registered by the District NGO Committee; the applicants submit an application letter addressed to the secretary, Division/ District NGO Monitoring Committee, submit form A duly filled and signed by at least two promoters, a recommendation letter from Local Council I, recommendation letter from Local Council II, recommendation letter from Local Council III, a recommendation from two sureties, work plan, for

the first year of operation, itemized budget for first year of operation, copy of the constitution, and two files submitted among others.

In Kenya, if you have an organization and desire to be registered under the PBO Act 2013, you must first seek from the Authority, approval of the name in which the organization is to be registered in accordance with section 4 of the regulations. This ensures that the proposed name is not identical with another legal entity or is inconsistent with any other law. Once approved, the name is reserved for a maximum of 60 days as the application process proceeds. An applicant for registration has to undertake various prerequisites and follow the following steps: 1. Fill in Form 3; 2. Any of the three top officials of the proposed organization must sign the form; 3. Pay a fee as specified in the regulations; 4. The registration form should be submitted to the Authority together with a copy of the minutes of the meeting of the proposed organization authorizing the filing of the application, two copies of the constitution of the proposed organization, specifying the matters set out in section 82 of the Act ; and a notification of the situation of the registered office and postal address of the proposed organization in Form 4 set out in the First Schedule signed by the chief officer of the proposed organization. Once an organization is successfully registered under regulation, the Authority shall register the proposed organization by entering in the register of organizations kept for that purpose issue a certificate of registration in Form 4. But if the Authority refuses registration of a proposed organization under section 16 of the Act, it shall notify the applicant of the refusal in Form 5.³

International NGOs not registered under the Act can apply for PBO status by filling and submitting to the Authority Form 4 accompanied by relevant minutes, a certified copy of the organization's constitution, the proposed office and postal address. Once registered the international PBO must maintain an office in Kenya and demonstrate that at least a third of the members of its governing Board of Directors should be Kenyan Citizens.

Other than organization registered under the Act, the Authority under section 7 of the Act has the power to bestow the status of a Public Benefit Organization if that organization is not registered under the Act. Section 12 of the regulations provide for the process of the Authority in bestowing public benefit status on an organization. An organization not registered under the Act or other written laws and seeking such public benefit status shall fill and submit form 10A.

The Authority considers when determining if to bestow Public Benefit Status to an Organization; a report on activities of the previous year and a plan of the current year's activities; annual accounts of the organization in conformity with the requirements of the law of trusts, or companies under which it is registered; constitutive document of the applicant organization indicating that the applicant organization is set up to perform the public benefit activities; tax compliance; activities are conducted for the benefit of the public in general, or a sufficient section of the public; public benefit activities are the only statutory activities of the organization and the constitutive documents have provisions for avoiding conflict of interest and dealing with it where it arises.

³ A Guide. The Public Benefit Organisations Regulations, 2020 **Compiled, Illustrated and Designed by:** Faith Mutege and Regina Mutiru. First published in Nairobi in 2020 by Poverty Eradication Network (PEN)

Table 2. Summary of the notable differences and similarities between the NGO acts of Uganda, Kenya and Tanzania

	NGO Act of Tanzania 2002	Public Benefit Organizations Act of Kenya, 2013	NGO Amendment Act of Uganda, 2016
Notable differences in the provisions	<p>The government established an online registration platform for registration, filing annual returns as well as reports among others.</p> <p>NGOs have to submit funding contracts of 20 million and over to the registrar for approval or rejection.</p> <p>NGOs are required to file quarterly activity reports</p> <p>NGOs obtain a registration certificate valid for 10 years and is enough proof to foster their work.</p> <p>States organizations can undertake legal resource mobilization activities but does not provide what denote legal resource mobilization activities and what illegal resource mobilization activities are.</p>	<p>Ensures and respects the freedoms of association and assembly and provide an enabling environment for public benefit organizations to be established and to operate.</p> <p>Ensures all State organs determine and co-ordinate the implementation of its policies and measures in a manner that promotes, support and provides an enabling environment for public benefits organizations to perform their functions.</p> <p>Provides a period of six months from the elapse of the financial/ calendar years of the PBOs to file reports and audited books of accounts.</p> <p>The Act clearly describes how the Public Benefit Organization may obtain income as being; donations of cash, securities, and in-kind contributions; bequests; membership fees; gifts; grants; real or personal property; and income generated from any lawful activities undertaken by the public benefit organization with its property and resources.</p> <p>The Act further states that a Public Benefit Organization may own and manage property and assets for the accomplishment of its not-for-profit purposes.</p> <p>The Act grants the rights to PBOs to engage freely in research, education, publication and advocacy with respect to any issue affecting the public interest, including criticism of the policies or activities of the State or any officer or organ thereof, express its views on any issue or policy that is or may be debated or discussed in the course of a political campaign or election.</p>	<p>No online platform. This was functional only in 2019 when the Ministry of Internal affairs required all NGOs to register afresh.</p> <p>Requires national level organizations to obtain letters from LCI, II, III, IV, V, district NGO Monitoring Committee and the line ministry/ government agency to be eligible to register with the National NGO Bureau.</p> <p>Organizations have to first be incorporated with the Uganda Registrations Services Bureau.</p> <p>NGOs have to obtain a certificate of incorporation from URSB, a certificate of registration and operating permit from the NGO Bureau valid at most for five years.</p> <p>NGOs not allowed to operate if it has not obtained an operating permit even if it has a certificate of registration.</p> <p>No clearly prescribed resource mobilization activities an NGO can undertake.</p> <p>Is not elaborate on the role of the State in fostering a conducive operating environment for civil society</p>

Notable Similarities	<p>All the NGO acts establish a body to regulate civil society activities in each of the three countries. The acts require;</p> <ul style="list-style-type: none"> NGOs to file annual returns NGOs to file annual reports NGOs to file audited books of accounts. NGOs obtain certificate of registration
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c. Anti- Money Laundering Act in Uganda, Tanzania and Kenya

Civil society organizations and human rights defenders especially in Uganda and Tanzania have decried the use of the anti-money laundering and anti-terrorism laws to frustrate their activities more so resource mobilization.

Uganda, Kenya and Tanzania all have an anti-money laundering act. While this law is necessary to ensure that countries do not lose money through illicit financial flows, civil society organizations and human rights defenders have however been affected, severally innocent though.

In Uganda, prominent human rights lawyer, Mr. Nicolas Opiyo of the Chapter Four was arrested and detained under the Anti-Money Laundering Act as the country geared for the 2021 general elections in what the State termed allegedly receiving money well knowing it was proceeds of crime worth about 340,000 US dollars through the organization he heads, Chapter Four⁴. Chapter Four was subsequently suspended among other 50 organizations. The suspension would later be lifted.

Another organization that preferred not to be named had about 60,000 US dollars of their money withheld by the Bank of Uganda in the year 2016 on claims of money laundering.

In Tanzania, an organization based in Arusha has had about 70,000 US dollars of their money raised through crowd funding held by Equity Bank Arusha Branch since 2017 to date on orders from the intelligence agencies with claims of money laundering yet the State has failed to provide sufficient evidence on their claims. The founder of the organization was arrested and detained for several days before being released. Most of his properties including those of his wife who is a government employee in one of the districts have been frozen yet the money was meant for the organization.

d. Companies' Act of Uganda, Kenya and Tanzania

The Companies Act of 2012, in Uganda provides for the registration of not for profit organizations commonly known as the companies limited by guarantee. These may be associations and or groups among others. In Uganda, most civil society organizations identify as not for profit organizations registered as companies limited by guarantee. According to the NGO Regulations of 2017 in Uganda, the National NGO Bureau requires both the institutions incorporated under the act to get certificates of registration and operating permits from the National NGO bureau. What is not clear is that if the NGO Act requires all companies limited by guarantee to register with the NGO Bureau.

⁴ Uganda drops money laundering charges against human rights lawyer, September 14, 2021 2:59pm published from www.voanews.com

In both Kenya and Tanzania, the PBO Act and the NGO Act of 2002 clearly separate the companies limited by Guarantee from NGOs. In Uganda, companies limited by guarantee and or NGOs have to file annual returns with both URSB and the NGO Bureau respectively. If the NGOs and or companies limited by guarantee fail to file annual returns with the Uganda Registration Services Bureau for about five consecutive years, they will be deregistered.

e. The Computer Misuse Act in Uganda, Electronic and Postal Communications (Online Content) Regulations of 2018, Tanzania and Computer and Cyber Crimes Act of Kenya

In Tanzania, since 2015 a more troubling pattern set in: New regulations severely restrict social-media critics and criminalize the publication of data not endorsed by the government. Bloggers and others running online platforms in Tanzania are required to register with the government or face fines and jail time. The new law in Tanzania targets online platforms like blogs, podcasts and others streaming live content, for example via YouTube channels. In 2018, the Tanzania Communication Regulatory Authority said the owners of online platforms must pay about \$900 (about TShs 2,070,000 million) to get a license. The state agency also said it would use suspensions to force the removal of content it deems in violation of the law. Those who fail to comply with the new regulations could face fines and up to a year in jail.

Consequently, in the morning of February 29, 2020 according to a report published by the Tanzania Media Council, police arrested three *unregistered online TV journalists* based in Njombe Region, on Tanzanian Southern Highlands, for operating online TV platforms illegally in breach of the Electronic and Postal Communications (Online Content) Regulations of 2018. These include Prosper Daud Mfugale, who was arrested for running an unregistered YouTube Channel, the Njombe TV and Ibrahim Godfrey Mlele who owns Mlele Online TV. Mlele also reports for TV E. The third journalist is Dickson Kanyika, a Star TV reporter. Kanyika, who also owns Habari Digital, arrested in Morogoro and sent back to Njombe Police Station for questioning. The three journalists were arrested together with the owner of Njombe Yetu TV, Benedict Kisawa. According to the Njombe Press Club Chairperson, Hamis Kasapa, the suspects were not given bail and were remanded in custody from February 29, 2020 to March 4, 2020. Efforts were made by the Media Council of Tanzania (MCT) in collaboration with Tanzania Human Rights Defenders Coalition (THRDC) to ensure all the journalists were released on bail⁵⁵.

In Kenya, despite being a member of the Freedom Online Coalition, in May 2018 the government signed the Computer and Cyber Crimes Act into law yet a legislation that deals with such issues already existed. The Kenya Information Communication Act and the Penal Code and its regulations already criminalized several cybercrimes. Analysts however contend that it could have been amended to, for instance, increase the penalties for certain crimes. Instead its provisions have been superseded by the Computer and Cyber Crime Act.

The Act is too vague when it comes to important details, particularly those that deal with the issue of surveillance. The Act also criminalizes the publication online of false information or hate speech. But

⁵⁵ Report of Press Freedom Violations 2020, by the Tanzania Media Council accessed on 3rd January 2022

it does not explain what “hate speech” entails in this context, and seems to lean towards outright censorship in parts.

In Uganda, in 2017 alone for instance, Uganda registered the highest number of Ugandans ever arrested for their online expression. These arrests are clearly targeted crackdowns on the free flow of information and speech on the Internet. These cyber laws do not only negate constitutional guarantees but also criminalize online expression.

f. Public Order Management Act

Participants to the study however were convinced that much as the public order management act was a stumbling block to their work, a majority of the human rights defenders and civil society organizations said they were not currently affected by the law especially after a section of it had been repealed by a court ruling.

g. National Youth Policy of Tanzania, Kenya and Uganda

However, in spite of the above mechanisms, the level of youth participation remains significantly low. In 2016, the government of Uganda launched the National Youth Policy whose aim among others is to enhance effective youth participation and create opportunities for the youth to be actively involved in designing, shaping, and influencing policy development and implementation processes. However, the policy largely remains silent on youth and human rights.

The National Youth Policy, under Youth Participation in Decision Making recognizes that Civil Society Organizations (CSOs) and other non-state actors provide alternative spaces for youth participation. The document further emphasizes that the Uganda National Youth Policy (2016) is guided by the following principles; Non-discrimination, Inclusion and Participation, Gender Inclusiveness, Innovativeness and Adaptability, Multi-sectoral Collaborations, Good Governance and Decentralized Service Delivery.

The NGO regulations make it difficult for youth to start up organizations and or validate already existing organizations hence shadowing the national, regional and international instruments on youth participate and freedom of assembly among others.

Under Chapter Three of the National Youth and Development Policy of Tanzania under 3.0 policy issues and statements, (3.17) *under, Coverage of Youth issues by Local Government and Regional Administration (LGRA) Structures observes that* the structures at the local level do not cover adequately youth issues, and there are no specific officers at local Government dealing with youth development. This makes the coordination of youth activities from the national level to district level problematic.

In the Policy Statements it is provided that The Ministry responsible for Local Government in collaboration with other relevant Ministries shall put in place a regulatory framework to coordinate youth development activities from ward to national level and that the Central Government in collaboration with Local Government shall ensure establishment of youth carder at regional and district level and employ Youth Development Officers to coordinate youth issues at these levels.

Chapter Four of the National Youth and Development Policy of Tanzania under 4.0 roles of stakeholders provide under part 4.2 provide that Community Based Organizations Non-

Governmental Organizations, Religions Institutions and Private Sector Shall collaborate and compliment government efforts in youth empowerment programs and awareness creation in youth development services.

Table 3. Summary of the good takes from the national youth policies of Uganda, Kenya and Tanzania and how they aid the work of CSOs and YHRDs.

	National Youth Policy of Tanzania	National Youth Policy of Kenya	National Youth Policy of Uganda
How it aids the work of civil society and youth human rights defenders	Provides that Community Based Organizations Non-Governmental Organizations, Religions Institutions and Private Sector Shall collaborate and compliment government efforts in youth empowerment programs and awareness creation in youth development services.	<p>Clearly defines the rights of the youth</p> <p>The policy provides that private sector, CSO's and the Government should encourage and promote initiatives from youth groups by providing them with necessary skills (technical and financial assistance) to build their capacity; support and initiate income generating activities by providing youth friendly micro-finance credit facilities and allocate funds specifically, for young entrepreneurs;</p> <p>The policy establishes a clear link between the national youth policy and the national youth council and clearly stipulates the responsibility of the national youth councils in regards to the implementation, review and coordination of the national youth policy and the line ministry for youth affairs.</p>	<p>Grants that civil society organizations collaborate with MGLSD on matters of mainstreaming youth issues</p> <p>Monitor the operationalization of international instruments on youth</p> <p>Participate in Sector Working Groups and local Government planning and budgeting processes to advance the rights of youth</p> <p>Develop and implement programmes that address key Policy intervention areas for youth</p> <p>Under Youth Participation in Decision Making recognizes that Civil Society Organizations (CSOs) and other non-state actors provide alternative spaces for youth participation.</p>

h. National Youth Council Act; Uganda, Kenya and Tanzania

Uganda, Tanzania and Kenya have all enacted the National Youth Council Acts. In Tanzania, the National Youth Council Act of 2015 provides for the establishment of the National, Regional, District and Ward Youth Councils. The Act also provides for the establishment of Regional Youth Assemblies where at least two youth organizations would be represented. However, to date, the National Youth Councils of Tanzania have never been operationalized. If operationalized, it would be a fertile ground for young people to not only participate in governance issues, but would provide a legal basis for youth to advocate for youth concerns.

The National Youth Council Act of Kenya is explicit on the role of civil society organizations and their involvement with the National Youth Council of Kenya. The Act grants the following powers to the council; regulate and co-ordinate activities and initiatives relating to the youth being undertaken by youth groups, youth focused community based organizations, non-governmental organizations, civil society movements and other organizations; the Act gives the national youth council the powers

to promote and popularize the national youth policy and other policies that affect the youth; facilitate the periodic review of the national youth policy in line with other government policy statements; mobilize resources to support and fund youth programmes and initiatives; lobby for legislation on issues affecting the youth; liaise with other organizations to ensure that the youth gain access to resources and services appropriate to their needs; promote relations between youth organizations and other bodies both nationally and internationally with similar objectives or interests; formulate operational guidelines that protect the youth against any form of abuse or manipulation and act as a voice and bridge to ensure that the Government and other policy makers are kept informed of the views and aspirations of the youth;

Table 4. Summary of the good takes from the National Youth Council acts of Uganda, Kenya and Tanzania and how they aid the work CSOs and YHRDs.

	National Youth Council Act of Tanzania	National Youth Council Act of Kenya	National Youth Council Act of Uganda
Notable provisions	<p>The law creates a nexus between the youth council and civil society organizations.</p> <p>If operationalized, youth civil society organizations would be represented in the regional youth assemblies</p>	<p>Under section 6 (d), the Act grants the youth council powers to among others, enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which it is established;</p>	<p>Establishes youth councils at the national, district and sub county/ division/ municipal levels</p> <p>Establishes youth committees at national, district, sub county, parish and zonal/ ward levels.</p>
How it aids the work of civil society and youth human rights defenders	<p>If implemented, the Act provides for representation of at least two youth organizations at the Regional Youth Assemblies. This would provide the youth organizations to provide an alternative lens to policy implementation in regard to youth issues.</p>	<p>Clearly states how the national youth council can collaborate with the civil society organizations</p>	<p>Makes coordination of youth activities easier in situations where the elected youth leaders are active and self-driven.</p>

i. Tax act in Tanzania, Kenya and Uganda

All NGOs are required to register with the revenue bodies in their countries irrespective of their registration status. In Uganda, URA makes it mandatory for all individuals, companies and or non-governmental organizations to register for income tax among others. They are required to begin filing monthly PAYE returns. Without TINs, NGOs cannot open bank accounts in all the three countries.

j. Institutions of higher learning policy and other learning communities.

Generally, public universities in Uganda, Kenya and Tanzania tend to grant space to students to mobilize themselves into associations, clubs and groups among others. Many of these associations and clubs are however usually in the nature of tribal, religious and or political affiliations as well as course based associations. Private universities as well as some public universities in Tanzania on the contrary grant no space or very minimal space for political groupings and especially human rights focused groupings. Political groupings are aligned to the core national political parties. In Private institutions mostly, political groupings are not allowed. Most universities and other tertiary institutions have a predetermined code of conduct that students have to follow. Students found to be participating in protests and demonstrations whether peaceful or not are likely to be faced with serious consequences such as warning, suspensions and at worst expulsion from the institutions of learning or even being denied to graduate.

While public universities tend to be tolerant to a greater extent as compared to the private institutions, for the human rights defenders who are non-teaching staff, they are likely to be faced with serious consequences ranging from withholding of salary, suspension from work among others. There has been observed a trend where teaching staff in some of the public universities have suspended or expelled some of their teaching staff for speaking out about human rights violations, corruption, and bad governance among others. In Makerere University in Uganda, Dr. Deus Kamunyu and Dr. Stella Nyanzi faced serious repercussions for speaking out about unfair university policies towards students, teaching staff and non-teaching staff. Overall, this study found out that almost all of the institutions of learning in Kenya, Uganda and Tanzania do not have any legal frameworks to safeguard human rights defenders nor even provide a department/ agency that conducts human rights violations analysis and handling of human rights violations cases.

In lower learning institutions like secondary and primary schools, human rights defenders were considered much more of hooligans and were likely to be automatic cases of hooliganisms and gross indiscipline even when the issues they were advancing were highly likely to be of gross human rights violations. In Uganda, during a consultation meeting that TRANET-Africa held with Student Leaders from secondary schools in Northern Uganda in 2018, student leaders unanimously agreed that the schools did not condone activism though they had some gender policies.

2.3 Regional

a. EAC Youth Policy 2013

The EAC Youth Policy states that the youth are defined by the Constitution of each EAC Partner State. According to the policy, it recognizes that in Kenya, youth are persons in the age bracket 18 to 35 years, whilst in Burundi and Tanzania, youths are defined as persons between the ages of 15 and 35 years. Uganda's Constitution defines youths as any male and female between the ages of 18 and 30 years, while the Rwandan National Youth Policy defined the youth as females and males between the ages of 14 and 35 years. For the purpose of this EAC Policy, youth are persons between the ages of 15 to 35 years.⁶

⁶ EAC Youth Policy (2013), EAC Secretariat August 2013 available online

The policy provides that no youth shall be subject to arbitrary or unlawful interference with his/her privacy, residence or correspondence, or to attacks upon his/her honour or reputation. However, the policy just like the national policies of Kenya, Tanzania and Kenya as well as the African Youth Charter is lacking in the protection of youth human rights defenders in situation of danger to their lives and families as result of their legitimate acts.

The policy provides for the rights of youth notable among them is the right to Participation. The policy state that the Youth shall have the right to be involved in the design, implementation, monitoring and evaluation of national and regional development plans, policies and poverty reduction strategies. However, how, when and where youth participate in national planning is what remains wanting. While some initiatives have been put in place to foster youth participation in the governance and decision making processes within the EAC, there appears to be no clear framework for exclusive youth CSO engagement with EAC Secretariat.

b. African Youth Charter

The African Youth Charter 2006, provides that national youth coordinating mechanisms shall be set up and shall provide a platform as well as serve as a linking agent for youth organizations to participate in youth policy development as well as the implementation, monitoring and evaluation of related programmes; The Charter to a greater extent provides for the protection of youth and their rights in situations of danger. However, the Charter is not explicit on the protection of youth human rights defenders and civil society organizations at risk as a result of their legitimate work.

c. African Union Agenda 2063

In 2015, the African Union (AU) adopted the ‘Agenda 2063’ that sets out seven key aspirations of the African people. The document under Aspiration 6 envisions an Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children. Specifically, it states that, “The youth of Africa shall be socially, economically and politically empowered through the full implementation of the African Youth Charter” and that “All forms of systemic inequalities, exploitation, marginalization and discrimination of young people will be eliminated and youth issues mainstreamed in all development agendas”. Furthermore, under ASPIRATION 4, the African Union envisions a peaceful and secure Africa and recognizes that a prosperous, integrated and united Africa, based on good governance, democracy, social inclusion and respect for human rights, justice and the rule of law as the necessary pre-conditions for a peaceful and conflict free continent.

Aspiration 3 of the Agenda 2063 envisions an Africa of good governance, democracy, and respect for human rights, justice and the rule of law. Specifically, the AU promises that Africa shall have a universal culture of good governance, democratic values, gender equality, and respect for rights, justice and the rule of law.

Yet however, over the past five years after the adoption of the agenda, young people continue to be targeted by both state and non-state actors. Young Human Rights Defenders are murdered, tortured, illegally detained beyond the time provided in the law and international human rights instruments, disappeared and or suspended from institutions of learning. From young women human rights defenders, to land rights activists, student human rights defenders and minority rights defenders, the aspirations of AU much as well-intentioned continue to be a mere illusion.

All the aspirations of the AU are envisaged to be achieved by working with the AU's recognized Regional Economic Blocks (RECs) in which the East African Community (EAC) where Uganda, Kenya and Tanzania are member countries, is among the recognized Regional Economic Blocks.

d. Guidelines on Freedom of Association and Assembly in Africa

The Fundamental Principles of the Guidelines on Freedom of Association and Assembly in Africa provide that; any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights. Key among the provisions is the **political and social participation of an independent civil society: the guidelines provide that** the independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social and cultural life of their communities shall be enabled. The other notable provision is the **Human rights compliance** where it requires all constitutional, legislative, administrative and other measures to comply with the full extent of regional and international human rights obligations, deriving from the rights to freedom of association and assembly and all other guaranteed rights.⁷

e. African (Banjul) Charter on Human and Peoples' Rights (ACHPR)

Under Chapter, Article 1, the charter states that the Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them. Under Article 2 it states that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Under Article 3 (1) states that every individual shall be equal before the law and (2) states that every individual shall be entitled to equal protection of the law and under Article 9 (1) it states that every individual shall have the right to receive information and (2), every individual shall have the right to express and disseminate his opinions within the law.

2.4 International

a) UN Declaration on the Universal Fundamental Human Rights and Freedoms.

In 1948 the UN adopted the Fundamental Human Rights and Freedoms. These are deemed universal and inalienable. Key among them are the freedom of assembly and expression. Being part of or organizing people into groups and or associations such as civil society organizations is part of assembly and association. While this rights are guaranteed, some countries ignore their universality and

⁷ Guidelines On Freedom of Association and Assembly in Africa

inalienable nature by constricting the space through legislation that in one way or the other prevents citizens from organizing and or participation in groups.

b) UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Under Article 3 of the Declaration, it states that, Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

c) International Covenant on Civil and Political Rights

The ICCPR was adopted in 1976 and it enables people to enjoy a wide range of human rights, including those relating to: freedom from torture and other cruel, inhuman or degrading treatment or punishment, fair trial rights, freedom of thought, religion and expression, privacy, home and family life and equality and non-discrimination among others.

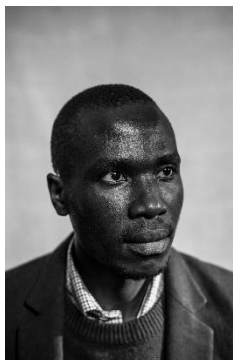
What people are saying about the laws and the operating environment for civil society and human rights defenders?



"The Non-Governmental Organizations Act and the Regulations, to a greater extent make it challenging for Organizations in Tanzania leading them to fail to carry out many of their activities for fear of being in conflict with the government. The Tanzanian government needs to create an atmosphere that is conducive for these organizations to work without interference as long as they do not violate the culture, traditions and customs of the country. For instance, instead of already registered organizations having to go to the regional and of district administrations to get letters to allow them to implement their activities, government can have a single online system where all regional and or district administrations can search to get to know the registration status of the organization to identify all organizations instead of each organization having to write to identify themselves in that district or region." Idd Ninga, Founder and Executive Director Dunia Salama Foundation, DUSAFO in Tanzania



"The civil society has and continues to contribute to the development agenda of government. Therefore, it is not fair to treat them like they are only doing wrong things and fighting government" Anonymous from Kenya



"To some of us that civil society played a great role in paving paths we never thought we could travel, seeing the governments making laws castigating civil society as agents of the western world, not only pains but also gives an impression that the government does not have a good understanding of the challenges and operating context for civil society as a sector. There is need for the government to rethink their attitude, perception towards civil society and while enacting other laws, take into consideration the detrimental effects on the overlapping laws on the civil society since the sector is as good as any other" EKAKORO FREDRICK ETOORI, EXECUTIVE DIRECTOR

CHAPTER THREE:

LOOPHOLES IN THE GOVERNMENT LEGISLATION AND HOW IT AFFECTS THE WORK OF CIVIL SOCIETY ORGANIZATIONS AND HUMAN RIGHTS DEFENDERS

1. Ambiguity of The NGO Act of Tanzania, Kenya and Uganda and NGO Regulations of Uganda and Tanzania

Under section 24 (1) of the Non-Governmental Organizations Act of Tanzania of 2002, the act states that where the board has reason to suspect that a nongovernmental organization has ceased to exist it may issue a notice in writing to the office bearers of that organization or publish in a newspaper widely circulating in mainland Tanzania requiring it to submit to the board within a period of thirty days, proof of its existence. Under section (2), the act states that where the organization fails to submit to the board proof of existence, the board may direct the registrar to cancel the certificate of registration and remove its name from the register. This provision does not clearly state what would denote (ceasing to exist and the indicators). Considering that many civil society organizations depend on donations none other than those of the founder members, in situations where an organization does not have funding and struggling to resource mobilize, it would fall victim of this ambiguous provision.

Additionally, Section 32 of the Non-Governmental Organizations Act 2002 of Tanzania states that a Non-Governmental Organization registered under this Act shall be entitled to engage in legally acceptable fundraising activities. However, under section 35 (1) of the same Act, (offenses and penalties), it states that any person who- conducts fundraising activities contrary to this act; commits an offense and shall on conviction be liable to a fine not exceeding five hundred shillings or to imprisonment to a term not exceeding one year or to both fine and imprisonment. Neither does the Act list nor explain what legal and illegal fundraising activities are.

All the participants interviewed in Tanzania expressed fear of undertaking certain resource mobilization activities since they feared they could be deemed to be involved in illegal fundraising activities.

“The NGO Act of 2002 and the NGO Amendment Regulations of 2019 have made life difficult for us. We fear to undertake human rights and governance related activities because of possible reprisals from the government of Tanzania. We fear to undertake certain fundraising activities because we might be told we are engaging in illegal fundraising activities. For instance, if my organization received donations from an opposition party in Tanzania like Chama Cha Democracia na Maendeleo (CHADEMA) or from a key opposition figure like Tundu Lisu to implement human rights and governance related activities, would the government consider such illegal fund raising activities given its stance on human rights and governance activities and organizations in the country? A founder of a civil society organization operating in Arusha who spoke on condition of anonymity wondered.

In 2016, the government of Uganda launched the National Youth Policy whose aim among others is to enhance effective youth participation and create opportunities for the youth to be actively involved in designing, shaping, and influencing policy development and implementation processes. However, the policy largely remains silent on youth and human rights.

In August 2019, the Ministry of Internal Affairs announced that all NGOs needed to register afresh. According to the recent survey TRANET conducted, many youth organizations especially at the grassroots have been affected and this negates the National Youth Policy, the African Union Youth

Chatter and the Guidelines on Freedom of Association and Assembly in Africa including the UN Youth Strategy 2018. It hence contradicts the **narrative** that government is committed to involve young people in decision making processes yet civil society organizations especially youth led, and youth focused and other non-state actors provide alternative spaces for youth participation, yet again, the NGO regulations stifle their success.

Table 5. Summary of the gaps in the NGO Acts in Uganda, Kenya and Tanzania and how they affect the work of CSOs and HRDs.

	NGO Act of Tanzania,2002	NGO Amendment Act of Uganda, 2016	PBOs Act, 2013
Differences and how the laws affect the work of CSOs and human rights defenders	<p>The act requires NGOs to report on a Quarterly basis which increases the administration as well as work burden especially for institutions with fewer staff.</p> <p>does not explain grounds under which a contract may be approved and or rejected leaving the decision to the registrar</p> <p>organizations pay an annual fee of 50,000 Tanzania shillings which further increases cost burdens as NGOs are not profit making entities</p> <p>NGOs may end up being deregistered in situations where they fail to proof existence as the law does not clearly stipulate what denotes or shows that an organization is operating whether it is the availability of a physical office, implementing activities or filing annual returns.</p> <p>Requires all NGOs to submit funding agreements/ contracts to of 20 million and over to the registrar for approval and or rejection, but does not provide why this</p>	<p>CSOs first have to be incorporated with the URSB as either an NGO or company limited by guarantee and later with NGO bureau. Act however is quite unclear whether it is mandatory for companies limited by guarantee to register with the NGO bureau.</p> <p>Lack of an online registrations system affects the ability of the organizations to remotely file returns, audited books of accounts/ reports hence increasing the costs of operation</p> <p>NGOs first have to be incorporated by the Uganda registrations services bureau and then register with the National NGO Bureau</p> <p>No definite sector for registration</p> <p>The lack of clear relationships between the National Bureau for NGOs and the Uganda Registration Services Bureau.</p> <p>The companies act does not require companies limited by guarantee to register with NGO Bureau so as to be able to begin operating</p>	<p>The act states that a public benefit organization may engage in lawful economic activities as long as the income is used solely to support the public benefit purposes for which the organization was established.</p> <p>However, the act does not clearly stipulate or explain what constitutes a lawful economic activity and what denotes unlawful economic activity.</p> <p>Defines an international non-governmental organization as nongovernmental organization with its original registration being in a country other than Kenya and operating in Kenya under a certificate of registration issued under section 10 of this Act;</p>

	<p>nature of contracts have to be submit as well as not providing clear explanations under which contracts may be approved or rejected.</p> <p>NGOs have to pay 50,000 Tshs. annually. Failure to pay on the due date attracts, a double charge.</p> <p>NGOS have to obtain permission and or letters of recommendations from regional administrations and or district if they have obtained funding and or if they want to implement activities in a different region.</p>	<p>NGOs have to present a work plan during registration and budget for registration as well as show proof of funding and or source of funds</p> <p>NGOs have to pay annual fee of 50,000 Uganda shillings</p>	
<p>Similarities in the provisions of the acts and their regulations</p>	<ul style="list-style-type: none"> • Require organizations to file annual returns • Require organizations to file audited books of accounts • Require organizations to file annual reports • National level organizations have to register at the national level • No decentralized registration offices at the district level for national and international organizations • Only community based organizations can register at the district level • 		

2. National Youth Policy and National Youth Council Acts of Uganda, Kenya and Tanzania.

The National Youth Policy, under **Youth Participation in Decision Making** recognizes that Civil Society Organizations (CSOs) and other non-state actors provide alternative spaces for youth participation. The document further emphasizes that the Uganda National Youth Policy (2016) is guided by the following principles; *Non-discrimination, Inclusion and Participation*, Gender Inclusiveness, Innovativeness and Adaptability, *Multi-sectoral Collaborations*, Good Governance and Decentralized Service Delivery.

The National Youth Policy of Uganda, Kenya and Tanzania as well as the EAC Youth Policy and the African Youth Charter do not clearly provide mechanisms for the protection of youth human rights defenders in situation where they are under threat as a result of their legitimate and peaceful actions. The EAC Youth Policy largely appears to be non-binding to the states.

The NGO regulations make it difficult for youth to start up organizations and or validate already existing organizations hence shadowing the national, regional and international instruments on youth participate and freedom of assembly among others. This tantamount to discrimination and exclusion. This contravenes the Fundamental Principles of the Guidelines on Freedom of Association and Assembly in Africa that state; any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights in particular, **Political and social participation of an independent civil society:** The independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social and cultural life of their communities shall be enabled. **“Human rights compliance:** All constitutional, legislative, administrative and other measures shall comply with the full extent of regional and international human rights obligations, deriving from the rights to freedom of association and assembly and all other guaranteed rights.”

The National Youth Policy is further silent on the rights, obligations and safety of youth human rights defenders yet out of every ten human rights defenders eight are likely to be young men and women and most probably advancing the rights of young people.

Table 6. Summary of how the National Youth Council (Acts) affect the work of civil society and youth human rights defenders.

	National Youth Council Act of Tanzania	National Youth Council Act of Kenya	National Youth Council Act of Uganda
Gaps in enhancing the work of civil society and youth human rights defenders	<p>the Act is not specific or clear on the protection of youth human rights defenders</p> <p>does not describe the process for the election of youth leaders and does not state what body would be responsible for preparation of election of youth leaders</p> <p>does not explain whether all youth from different political divide I Tanzania are eligible for election</p>	<p>Does not stipulate protection of youth human rights defenders</p> <p>Does not provide for civil society organizations to be represented in the youth councils.</p> <p>Is not elaborate on the role of fellow youth in the election of youth leaders, but paints a picture that most youth council members are appointees.</p>	<p>The Act does not provide for the representation of Civil society organizations at the National, District, Sub-County/ town council/ municipal councils, parish, zonal/ ward youth councils as well Youth Committees.</p>
Differences and how the acts affect the work of civil society and youth human rights defenders	<p>The councils have not been operationalized.</p> <p>Does not guarantee incorporation of youth concerns in government decision making processes such as budgeting for youth issues, since the youth leaders who would have been elected</p>	<p>Denies the youth council the opportunity to hear varying opinions from the civil society</p> <p>Youth are unlikely to hold their fellow youth council leaders accountable as they are appointed.</p>	<p>National Youth councils and committees exist from national to the grassroots, but most structures and positions are merely ceremonial and political.</p> <p>The national, district, sub county youth councils are hardly financed while the committees operate without funding at all and with no</p>

	<p>through the youth councils are nonexistent.</p> <p>Youth Human Rights Defenders and Youth Civil Society have to struggle to forge working relations with ward, district and or regional government administrations which comes with some huddles especially for human rights, governance and anti-corruption organizations in Tanzania do not rank well before the eyes of the government officials.</p>		<p>specific offices or facilities provided for youth leaders to effectively advance their work.</p> <p>Youth structures are used as political vehicles and tools often to mobilize for political leaders in higher political offices such as the president, members of parliament and or high local council leaders after which they remain irrelevant.</p>
HBVFSXXXXXXXXXXSimilarities of the provisions of the acts	<ul style="list-style-type: none"> • All the acts are not clear on specific protection measures for youth leaders who advance the rights of youth in case of danger to their lives, families and or property • 		

Table 7. Summary of how the national youth policies affect the work of civil society organizations and youth human rights defenders

	National Youth Policy of Tanzania	National Youth Policy of Kenya	National Youth Policy of Uganda
Gaps in enhancing the work of civil society and youth human rights defenders	<p>The policy observes that different social categories of people in Tanzania have clearly stipulated rights and obligations provided in specific Conventions and legislation. These groups include children and women. On the contrary youth as a group, lack documented rights and obligations.</p> <p>Under the Policy Statement, it states that, the Government shall facilitate the formation of the National Youth Council and establish a regulatory framework for the functioning of the Council. However, to date, the youth council has not been operationalized in spite of the existence of the youth council act 2015.</p>	<p>Does not describe the rights of youth human rights defenders.</p> <p>The National Youth Council has mandate to oversee implementation of the policy yet the national youth council does not directly manage budgets for the implementation of youth focused development programmes.</p>	<p>The structures at the local level do not cover adequately youth issues, and there are no specific officers at local Government III, IV, and V dealing with youth development. This makes the coordination of youth activities from the national level to district level problematic as they have to rely on the youth officers only found at the ministry of Gender, Labour and Social Development while the rest of the work is left to community development officers.</p>
Similarities and how they affect the work of civil	<ul style="list-style-type: none"> • All the policies are not explicit on the rights and protection of youth human rights in situations of being at risk as a result of their legitimate work. 		

society human defenders and rights	<ul style="list-style-type: none"> • Provides no basis for youth to justify their interventions or cause • Does not clearly stipulate how the civil society organizations and or individual human rights defenders will collaborate with the government at the various levels
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3. Lack of a definite sector for NGOs during registration in Uganda

The Ugandan government has halted operations of some organizations for undertaking activities for which they are not registered by the NGO bureau.

Uganda NGO act requires NGOs to identify sectors of operation to which they will only implement and undertake activities yet this is not the same during the registration process with the Uganda registration services bureau. Constitutions and or companies acts for companies limited by guarantee (Not-for-profit organizations) require the applicants to list objectives of the organizations upon which they will undertake their operations, not listing the sectors in which they will engage. Furthermore, the need for NGOs to identify sectors yet there are no specific government agencies managing certain sectoral issues. For instance, organizations involved in the issue of peacebuilding and conflict resolution. There is no clear government agency that is responsible for peace building.

The Uganda NGO Amendment Act is quite silent on what defines and or constitutes a not for profit organization and does not openly say that all not for profit companies have to register with the NGO Bureau.

Worse to contend with is the fact the Uganda NGO Act and or its regulations do not clearly identify the activities and or programmes civil society organizations can engage in under a specific sector does not clearly define the parameters for a sector and which is the line government agency responsible for that specific programme and or activities. The act and the regulations do not stipulate how many line agencies an organization can get registered with.

This means that civil society organizations have to register with more than one government agency or register with only one and try to pretend they are implementing programmes or activities under one sector which is tricky and risky at the same time since the government reserves the right to determine which activity and or programmes fall under what sector.

This clearly shows that the framers of the act and or the regulations had limited knowledge and or capacity about the operating environment for the civil society. This occurrence affects human rights defenders' organizations and individual human rights defenders as the act and the regulations do not list which line ministry is responsible for which human rights issue.

4. The NGO acts assume all NGOs are equal and similar.

A good Legal environment enhances access to resources for some civil society organizations but critically affects resource mobilization for many others due to lack of confidence for those who have not met the requirements.

The NGO act of Tanzania and Uganda as well as that of Kenya require all NGOs to present a work plan and budget for the first year while seeking registration with the NGO bureau. This is presumptive that all NGOs have money, yet literally the reason for them to seek to register is to be able to access resources to run their organization since registration enhances their legitimacy and credibility.

Majority of the civil society organizations assessed during this study period were between the 5-10 years of their existence and most of them had no core funding. Majority of the organisations were reliant on the finances from especially the founders.

Many other NGOs who have not registered and or obtained a license were unlikely to obtain funding from institutional donors as the donors were unlikely to trust them even for organizations registered as companies limited by guarantee. In Tanzania, Companies limited by Guarantee remain to be the mandate of the Business Registration and Licensing Agency (BRELA) unlike in the case of Uganda where companies limited by guarantee who have not registered with the NGO Bureau are facing suspension by the National NGO Bureau yet the Companies Act of 2012 clearly stipulates the situations under which the company can be deregistered by the Uganda Registrations Services Bureau (URSB).

As stated somewhere in this report, most civil society organizations have no funding and even those that do, for most of them, core funding is a myth. This means that most administrative budget lines are lacking as well.

This puts civil society organizations in different strata since they do not get or have access to funding the same way and have different challenges. By setting the same conditions for all civil society organizations, the act fosters discrimination and social exclusion and assumes that all NGO are equal and similar yet this is total untrue. Civil society organizations advancing human rights, good governance and accountability among others were likely to be handled with higher handedness as compared to their fellow counterparts using a needs based approach.

5. The NGO acts and the revenue authorities (Tanzania Revenue Authority and the Uganda Revenue Authority)

In Tanzania, civil society organizations receive tax assessments and have to pay an annual fee of about 50,000 Tshs. This is expected to be filed by April of each year. Failure to do so, the fee doubles and triples if consecutively not filed for over three times. NGOs are required to pay this amount irrespective of whether they received funding that year or not. This fee is different from income tax such as Pay as You Earn which in Uganda is a normal. The need for civil society organizations to pay annual dues piles the financial burden on the civil society organizations majority of whom do not receive core funding or even project funding. Most civil society organizations rely on the efforts and incomes of the founder members. In situations where the founder members are likely to be many, the

members might not contribute as they might think the one who is appointed the director is benefiting a lot. In the end, civil society organizations and or human rights defenders live a more stressful life amidst threats and blackmail that they occasionally or regularly receive. This worsens the psychosocial wellbeing of civil society leaders and human rights defenders who toil every day to advance human rights and or achieve their goals.

6. Overlapping Legal and Cost Challenges for CSOs

Uganda and Tanzania already enacted laws requiring all NGOs to register afresh for those not yet registered with the new NGO body and ministry respectively. They are required to file annual returns. These include among others, annual reports, annual audited books of accounts. What is different between the Ngo act in Uganda and that of Tanzania is that the NGO act in Uganda requires all NGO's to first get registered with the Uganda Registration Services Bureau and later with the NGO Bureau. After registration with the URSB, the organization is required to obtain letters from the LCI, LCII, LCII/ division/ town council, later from the District NGO Monitoring committee, and the line ministry and submit to the NGO Bureau. Unlike in Tanzania, once an NGO or the person seeking to register an NGO obtains letters from the ward, district and regional administrations, they register directly with the Ministry of Health, Community, Youth, Elderly and Children Affairs.

In Uganda, according to a January 2 2021 letter, President Museveni directed the immediate shut down of the activities of Democratic Governance Facility (DGF). DGF is the biggest Donor Fund in Uganda that runs with support of seven countries Australia, Denmark, Ireland, The Netherlands, Norway, Sweden and the European Union. Later on about 53 civil society organizations would have their activities brought to a hasty halt by the national NGO Bureau, a government agency put in place by the Ugandan government to regulate and “streamline” the activities of civil society. A critical overview of these organizations would reveal that almost three quarters of these organizations had been funded by the Democratic Governance Facility. According to media reports, the Ngo bureau claimed some of the organizations shut down had not complied by filing annual returns, annual reports and engaging in activities not in line with the sector for which they were registered.

In Tanzania, on 18th August 2020, the Tanzania Human Rights Defenders Coalition was forced to shut down temporarily due to what they believed was sabotage by security agencies. The announcement came after police ordered CRDB Bank to block the accounts of the organization for what they believed was signing contracts with donors without consulting the Treasury Office and office of the registrar of NGOs. Another organization based in the northern Arusha Region of Tanzania that preferred not to be mentioned so as to avoid jeopardizing investigations had their bank account in Equity Bank shut in 2017 in what the security agencies claimed was money laundering. About 70,000 US dollars has been held by the bank and investigations into allegations of money laundering have never concluded.

The requirements by the NGO acts both in Uganda and Tanzania make it cumbersome from the NGO leaders and or workers especially those with little or no funding and limited staff to be under pressure and meet the deadlines yet all these processes require money. For instance, appointing an audit firm is the duty of board according to the governing documents of most organizations. Most civil society organizations do not have boards of directors since they can't afford to meet the petty

expenses. At the same time, most civil society organizations do not have ability to hire audit firms or even accountants. This means that they will hardly report or even if they were to report would have to do so when it is late when the reporting period has elapsed. In the end, civil society organizations will appear non-compliant yet the laws are blind to realities of the needs and challenges of civil society organizations.

7. Lack of a clear definition of a youth, youth rights and silence on protection of youth human rights defenders by both the national youth council acts and national youth policies.

Universally, there is no agreed upon age definition of youth. There are various definitions of youth relating to different policies and legislations. The United Nations has defined youth as young men and women between the age of 15 and 24 while the Commonwealth Youth Program has adopted the age category of 16 to 29. In Malaysia youth refers to persons of 15 to 40 years. The EAC Policy defines youth as persons between the ages of 15 to 35 years.⁸ And for the purpose of the African Youth Charter, *youth* or *young people* shall refer to every person between the ages of 15 and 35 years⁹.

The legal definition of youth in Tanzania varies according to specific purpose such as marriage (the Law of Marriage Act of 1971 allows a young person of 15 years to get married), voting rights, employment and criminal issues.

Overall, while the national youth policies and acts of Tanzania, Kenya and Uganda provide civil society organizations as one of the ways through which young people can participate in governance issues, the policies are largely silent and do not explain what the rights of youth are and do not explain how young human rights defenders shall be protected in situations where by in the processes of undertaking their obligations, they shall be protected and by what agency.

8. Some regional and international policy and legal frameworks not binding.

The UN Declaration on the Fundamental Human Rights and Freedoms, 1948 and 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 as well as the Banjul Charter require member countries to domesticate these frameworks for them to be binding.

This means that if a specific country does not pass domestic laws in consonance with the international frameworks, reference can only be made to the internal frameworks which would still leave the issue at hand in the mercy of the government in that country.

⁸ EAC Youth Policy (2013), EAC Secretariat August 2013

⁹ African Youth Charter 2006, definitions, youth ...published by the African Union Commission

CHAPTER FOUR:

IMPACT OF GOVERNMENT LEGISLATION ON THE OPERATING ENVIRONMENT FOR CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS

1. Effects on the civil society corporate governance

This study has revealed unclear and/or multiple laws, and/or expensive and complex procedures for registering and governing CSOs. Selective application of laws/regulations against certain organizations pose significant barriers for smaller CSOs. There are observed lengthy delays for successful registration and burdensome heavy reporting requirements.

Consequently, the negative impact on funding leads to inability of organizations to recruit, retain and or pay staff. This leads to high rates of staff attrition consequently leading to lack of personnel to enable the organization to be compliant. This leads to situations where the founders or certain individuals have to do almost each and everything. The lack of funding caused by lack of compliance or by the negative effects of the law on the CSOs further lead to organizations being unable to put in place systems such as the board or undertake regular internal and external financial audits., requirement for being compliant with the regulatory bodies. This affects corporate governance and further perpetuates sector doubt by the public, the state and the donor community in general.

Unfunded and or less funded organizations were observed to be highly palpable to being less compliant with the existent laws. The inability of civil society organizations to attract sufficient funding critically affects their operational budgets and hence organizations are unable to hire accountants and put in place functional boards for instance. Institutions without Boards are unable to appoint external audits and hence affects the accountability of the organization. This lack of accountability casts further doubt on the organization and a cycle of confusion is repeated over and over.

2. Impact on freedom of association and expression

The Law on NGO registration increasingly shrinking civic space for especially grassroots CSOs. In August 2019, the Ministry of Internal Affairs ordered a fresh validation process for NGOs and CBOs in Uganda. The validation process left thousands of organizations not validated. Whoever was found not to be “validated” is deemed to be operating illegally. The impact of the NGO validation by the NGO Bureau on especially grassroots HRDs and CSOs has limited their capacity to voice out concerns and or lobby for support from donors since they do not have what the government calls “authentic certification”. NGO validation process is costly, needs a lot of requirements to enable one to be certified and get NGO permit. For instance, NGOs and Companies Limited by Guarantee that have not filed annual returns with the Uganda Registrations Services (URSB) shall not be able to have their documents certified and consequently can’t be accepted by the National NGO Bureau.

As a result of many organizations failing to be compliant as a due to multiple and overlapping laws and policies, many organizations especially human rights, accountability and those involved in the governance sector get the fear to speak out because they would be considered illegal and consequently arrested among others. Many local authorities are also least informed about the act and most times, apply their own authority to deny some organizations registration or ask for money to give them recommendations.

3. Fosters negative perception towards certain civil society organizations and or the key people at the helm of the organization.

Study participants observed that government legislation fosters negative attitude and pushback from the public/community towards CSOs/HRDs. This creates a wild reception for civil society workers as well as resistance to civil society interventions.

A significant number of the study participants in Uganda and Tanzania especially reiterated that they had, in one way or the other met serious resistance while implementing some projects. Some community members in study districts in Uganda said they had been told by the RDCs and some government agencies that civil society organizations were working against the government. In the processes, they feared they would miss put on government programmes if they were seen allying with the organizations.

For some CSOs, government agencies charged with the mandate to monitor the activities of NGOs and or the community development offices had used the aspect of the law to manipulate them by asking for money to allow them operate or implement their activities in spite of having all the necessary requirements. This according to them is because the officers are convinced that the top authorities would believe any information they would submit about a certain CSO or HRD hence leaving them under the mercy of the officers in the lower offices.

Study participants were convinced that if an NGO was denied to operate or implement her activities in the country or specific district/ region, the public/community would eventually be convinced that that organization in question is unscrupulous hence perpetuating a dangerous reception for CSOs and HRDs. For fear of the officers influencing the community against them, they usually have to give the officers a little cash to buy their favour.

4. Limits possibilities of compliance in many instances. Due to Non localization of the NGO Bureau offices and nonexistent online infrastructure to manage the decentralization of the registration process.

In Tanzania, Kenya and Uganda, all national serving organizations have to register with the Ministry of Health, Development Affairs, Gender, Children and Elderly Affairs and the Public Benefit Organizations Regulatory Authority respectively. In Uganda, NGOs have to first be incorporated with the Uganda Registrations Services Bureau and later apply NGO certificate and operating permit from the National NGO Bureau respectively. In all the three countries, none of them have localized registration offices as well as offices for filing annual returns/reports. However, in Tanzania, the government has put in place an online registration platform which can be used for filing annual returns and annual reports among others. This is absent in Kenya and Uganda.

In Uganda, while the NGO Act allows registration of community based organizations at the district level, national organizations are required to register with URSB and the National NGO Bureau whose offices are in Kampala Uganda. URSB however has regional offices in Mbale, Jinja, Mbarara, Gulu and Kampala. The online platform for URSB still functions with the need for hard copy documents that have to be submitted to their offices physically. This practice still increases the cost burden for the organizations already registered. For individuals seeking to register afresh, these process is even more costly hence delaying the time they spend trying to formalize their organizations.

Therefore, organizations based at the district levels, yet registered as national level organizations or aspiring to operate as national organizations, in the absence of an online platform face numerous difficulties in attempting to comply with the relevant laws since they have to spend on transport, at times accommodation and meals among other indirect costs. Organizations without running budgets were likely to fail to comply in time or even never comply at all. In all the three countries, Rural based national organizations reported challenges with internet connectivity which they said affects their work to a greater extent hence equally limiting their ability to comply and or access information online. At least a quarter of the respondents in Tanzania believed that poor internet connections in rural areas was likely to be among the key factors limiting them from complying as the online platform freezes and or fails to open at all.

5. Effects on accessing funding and crowd resourcing.

Participants in the study were convinced that there is a combined effect of government legislation on the resource mobilization activities of the civil society organizations. In all the three countries, 90% of the participants were convinced that the regulations and other government legislations to a greater extent have an effect on resource mobilization. From a critical view of the implication of the NGO Act and other laws in entirety, donors are not willing to support organizations not registered with the authorities in charge of NGOs although they already had prior registration such as the Uganda Registration Services Bureau for the case of Uganda.

The Anti-Money Laundering Act in Uganda of 2013 for instance was cited among the laws that are impeding resource mobilization. A number of organizations in Uganda have had their money withheld on orders from the Financial Intelligence Authority (FIA). In Tanzania, the NGO Act of 2002 and the NGO Amendment Regulations of 2019 were among other laws cited by the civil society leaders as affecting their resource mobilization efforts. The NGO Act does not clearly explain what legal and illegal resource mobilization activities are and requires NGOs to submit grant agreements of 20 million and over to the registrar for approval or rejection. This occurrence according to study participants makes it difficult for them to lobby especially from external donors and more so towards activities aimed at enhancing human rights, governance and accountability among others since such organizations tend to be targeted.

Overall, the NGO acts across the study countries were deemed in generality to limit resource mobilization for many civil society organizations in distinct ways especially those that do not have the money to meet the requirements for not only registration but to file annual returns and renew their registration. This phenomenon was likely to cast doubt upon the civil society organizations as they were likely to be considered illegitimate by potential donors.

Small and especially rural/ community based organizations were seen to be at greater risk of losing out on funding as donors considered them to be more vulnerable. Speaking to a staff of TRANET-Africa during the study period, an employee of one of the donor agencies in Kenya backed up this claim. *“No donor wants to give money to an institution where they might be convinced that their money will have no value or where the institution is too risky”*

An employee working for a donor organization based in Uganda speaking to a TRANET- Africa employee on condition of anonymity reiterated that their institution would not support any

organization they considered risky. *“When we receive applications, there are many factors we look at even before we look at the idea. Among them are the legal status of the organization. We grade organizations in three categories; for those we consider most risky, we definitely do not support them however wonderful their ideas are. However, there are those you look at the idea and to a certain extent they some of the things you are looking for. Instead of rejecting them, we support them both with the finances, but with a component of technical capacity building to ensure that their systems are built to reduce vulnerability”* lose out on funding and other opportunities if they were not coalition members.

While there are a few donor organizations supporting unregistered groups and or organizations. It is on rare occasions that such groups get funded and even though that happens, the likelihood is that they would have to get a registered organization with a functional bank account in the name of that organization to receive the funds. This is usually not easy to implement as the applicant has to identify an organization that would help them receive money through their bank accounts.

In Tanzania for instance, study participants believed that the NGO Act of 2002 and the NGO Amendment Regulations of 2019 were not explicit on what tantamount to illegal and legal fundraising activities. Section 32 of the Non-Governmental Organizations Act 2002 of Tanzania states that Non-Governmental Organization registered under this Act shall be entitled to engage in legally acceptable fundraising activities. However, under Section 35 (1) of the same Act, (offenses and penalties), the Act states that any person who- conducts fundraising activities contrary to this Act; commits an offense and shall on conviction be liable to a fine not exceeding five hundred shillings or to imprisonment to a term not exceeding one year or to both fine and imprisonment.

Under the NGO Amendment Regulations of 2019 in Tanzania, NGOs are required to submit funding agreements to the Treasury Office and Office of the Registrar of NGOs for either approval or rejection. The regulations do not mention the grounds under which a funding agreement would be rejected and or accepted. On the 18th August 2020, the Tanzania Human Rights Defenders Coalition (THRDC) was forced to shut down temporarily due to what they believe was sabotage by security agencies. The announcement came after police ordered CRDB Bank to block the accounts of the organization for what they believed was signing contracts with donors without consulting the Treasury Office and Office of the Registrar of NGOs¹⁰

In Uganda, the interlinking effects of several laws and regulations were identified by the participants to critically affect the work of civil society organizations in undertaking fundraising. The Regulation of Interception of Communication Act 2010, Uganda Communications Act 2013 and the Anti-Money Laundering Act were identified as the laws mostly affecting resource mobilization.

In 2021, the government of Uganda through the Uganda Communications Commission issued new guidelines for the registration and validation of telephone numbers. The guidelines prohibit corporate lines from being registered with mobile money accounts and or telephone numbers registered in the name of sole proprietorships other than that of the proprietor of the sole proprietorship.

Crowd funding is currently seen as the best form of resource mobilization as organizations have to compete for small resource envelopes from the few donor institutions. Almost each and every

¹⁰ Tanzania Human Rights Defenders Coalition temporarily shuts down operation, published on Tuesday August 18 2020, accessed on 15th February 2022 <https://www.thecitizen.co.tz/tanzania/news/national/tanzania-human-rights-defenders-coalition-temporarily-shuts-down-operations-2714696>

organization utilizes crowd funding. This involves using online platforms and or mass media adverts and announcements to solicit for support for a cause from various individuals and or organizations. Many of these donations come from individuals who contribute small amounts either as a one off or on a regular planned giving basis. Similarly, the money most times has to be sent to the bank accounts and or to a verified third party receiver. Many people and or institutions prefer to send money to the mobile lines and or bank accounts registered in the name of the organization. In developed countries crowd funding initiatives rely on online payment platforms such as PayPal where people can donate using their credit cards and or debit cards. Unlike Kenya, PayPal does not accept donations to countries such as Uganda and Tanzania. These means that mobile platforms would help in resource mobilization.

For incorporated companies they are required to submit a certified copy of Certificate of Incorporation, certified copy of Particulars of the company directors (Form 7 or 20), Certified copy of the Form 18 showing the registered location/place of business of the company, Copy of TIN certificate issued by URA, Original copy of Valid ID for CEO or MD of company, NID if Ugandan, Passport and Visa if foreigner, Passport if foreigner from EA country, A letter on the company's letter head signed by the MD/CEO authorizing the purchase of the subject SIM cards and the purpose for which the SIM cards are being purchased, Legal undertaking signed by the Managing Director or CEO of the company, Confirmation from URSB about authenticity of company documents provided before SIM activation, URSB search fee is also required of UGX 25,100.

For non-governmental organizations, they are required to submit a certified copy of NGO's permit, Letter of good standing from the NGO Bureau, Letter signed by NGO's accounting officer to MTN requesting for SIM cards. Letter to specify purpose for SIM cards, Copy of TIN certificate issued by URA for those not exempted. For those Exempted from tax, evidence of exemption from URA must be shown, Original copy of Valid ID of NGO's Accounting officer; NID if Ugandan, Passport and Visa if foreigner, Passport if foreigner from EA country, Legal undertaking signed by the Managing Director or CEO of the NGO, Certified copy of Certificate of Incorporation of the NGO, Confirmation from NGO Bureau about authenticity of documents provided before SIM activation, URSB search fee is also required of UGX 25,100.

With the combined effects of the organizations being unable to obtain corporate lines, crowd resource mobilization would be a night mere for many organizations as they have to rely on mainstream donors to support their work whose funding, 80 percent of the study participants prefer to give funds to organizations they have only worked with in the past or current however good the idea is. *"I have had several attempt to do crowd funding for our cause. So many people who have seen the online adverts called me asking if I had a bank account registered in the name of the organization and or telephone line registered in the name of the organization. I couldn't give them all that and they said they can't trust me."* A founder of an organization narrated her painful experience with crowd resourcing.

6. Increasing cost of formalization, operation and administration.

The NGO Regulatory frameworks have a very serious bearing on the operating costs and sustainability of CSOs. Study participants were able to observe that the regulatory frame workers have overlapping effects especially when it comes to registration, validation and formalization of civil society organizations.

For NGOs persons intending to start new registration, they have to part with a significant amount of money for them to have it accomplished and it could take between one month to a year if the resources

are not easily available. This is because NGO registration in Uganda is bureaucratic and time consuming since there are many government institutions to clear them.

Formalization of organizations (for new ones) requires many processes to be undertaken. These include among others, be registered, have a bank account, and have tax identification numbers and corporate telephone lines where applicable. In the case of Uganda, as already observed an organization has to reserve their name with the Uganda Registrations Services Bureau either an NGO and or as Company Limited by Guarantee. After the name has been accepted and reserved, the NGO or company limited by guarantee has to register within thirty days upon whose expiry they are to start afresh. After obtaining a registration certificate with the Uganda Registrations Services Bureau, they then proceed to the National NGO Bureau where they have to pay for registration certificate and operating permit. After that, they use the NGO Certificate to go to the bank and or the telecommunications companies to get bank accounts and corporate telephone lines respectively. The same certificate and license is required by URA and NSSF to be able to get a Tax Identification Number (TIN) and get NSSF Employer Number respectively. Banks do not open bank accounts without the organization presenting tax identification registration certificate, certified copy of the certificate of registration and operating license. This is true for telecom companies where organizations have to present so many requirements including paying search fee with URSB and at times NGO Bureau.

For already registered NGOs, in Uganda, the NGO Regulations, 2017 require organizations to file annual returns and annual reports with National NGO Bureau. The Companies Act at the same time requires all organizations and companies incorporated with URSB to file annual returns and pay about 30,000 UG. Shs. for every calendar year. Additionally, they have to file returns with the Financial Intelligence Authority and file monthly PAYE, other income taxes as well as remit monthly workers' savings to the National Social Security Fund.

Unlike in Tanzania where NGOs are given registration certificates valid for 10 years upon which they are required to renew, in Uganda an organization can only be issued with operating license valid for a maximum of 5 years. Once expired, organizations are required to renew their permit. Each time an NGO or Company Limited by Guarantee requires to open new bank accounts or in instances where their bank accounts went dormant and or closed, they have to present certified copies of the certificate of registration, MOU and or the constitution, forms of directors, address among others. This is the same if an organization or company limited by guarantee wants to obtain telephone numbers in the names of the organization or company. This is equally true of the other countries Kenya and Tanzania.

However, in attempts to obtain corporate lines, according to the recent Uganda communications Commission revised guidelines on registration and management of corporate SIM cards, for the case of the MTN Uganda, the entity requesting for the corporate lines has to present the following; if it is an NGO, it has to present the following; Certified copy of NGO's permit, Letter of good standing from the NGO Bureau, Letter signed by NGO's accounting officer to MTN requesting for SIM cards. Letter to specify purpose for SIM cards, Copy of TIN certificate issued by URA for those not exempted. For those Exempted from tax, evidence of exemption from URA must be shown, Original copy of Valid ID of NGO's Accounting officer...NID if Ugandan and Passport if foreigner from EA country. Additionally, they have to present a duly signed Legal undertaking signed by the Managing Director or CEO of the NGO, Certified copy of Certificate of Incorporation of the NGO,

Confirmation from NGO Bureau about authenticity of documents provided before SIM activation, URSB search fee is also required of UGX 25,100.

These steps are followed if one is requesting for the corporate lines as a company limited by guarantee a form of registration many CSOs identify. If the entity requesting corporate lines is a company limited by guarantee; Certified copy of Certificate of Incorporation, Certified copy of Particulars of the company directors (Form 7 or 20), Certified copy of the Form 18 showing the registered location/place of business of the company, Copy of TIN certificate issued by URA, Original copy of Valid ID for CEO or MD of company... NID if Ugandan, Passport and Visa if foreigner and Passport if foreigner from EA country. On top of that, it has to present a letter on the company's letter head signed by the MD/CEO authorizing the purchase of the subject SIM cards and the purpose for which the SIM cards are being purchased, Legal undertaking signed by the Managing Director or CEO of the company, Confirmation from URSB about authenticity of company documents provided before SIM activation, URSB search fee is also required of UGX 25,100.

While opening bank accounts, the following requirements by banking institutions are a must; certified copy of the registration certificate, TIN, letter from legal representative of a current holder of accounts in the same bank, certified copy of the board resolution, physical address, list of directors. To certify the documents, they have to pay about 5,000 Uganda shillings for the first three copies. To certify the forms, they have to pay for certification. Have to pay search fee which is in the range of 100,000-150,000 Uganda shillings depending on the bank.

Literally, for an organization to have a functional bank account, it takes between one month to a year since the financial institutions have to follow their internal processes to ascertain the legitimacy of the organization applying for the account. The process of obtaining all the said documents come with a lot of costs and for many starters, the money is usually not readily available hence taking quite a lengthy period. This is exacerbated by the many requirements with a less developed ICT landscape to enable an integrated government agency functionality which would help reduce the costs for search for instance.

Participants to the study reported that the existing laws overlap each other creating overlapping expenses that critically affect not only the processes of registration, validation and formalization, but also the administration. At the worst if the CSOs fail to provide the required documents, they could miss out on funding or could have their money withheld on grounds of money laundering among others.

One of the study participants representing a youth organization operating in Kampala for instance narrated how they had to part with 50,000 Uganda Shillings equivalent to about 14 US Dollars to get a letter from the office of the Local Council I Chairperson. They also had to part with about 2,000,000 Uganda Shillings equivalent to about 556 US Dollars to hire lawyers to help in the validation process.

"my dear, we had to sacrifice money to fasten the process of validation. Literally for every Local Council office we entered, had to part with money. You can't imagine, we had to part with 50,000 Uganda shillings to obtain just a mere letter stating that our office is located in that area. If you don't produce money, you might not get the letter required to register with National NGO Bureau. I am telling you this but don't reveal my identity and that of our organization. They might come after us" he lamented.

Another study participant said they had spent close to two years trying to obtain a functional bank account in the name of the organization since the banking institutions kept on asking for one document after the other.

“we have struggled to obtain a bank account all in vain. The financial institutions keep asking for one document after the other. Yet these things take a lot of time and resources. There is a donor who wanted to give us money, we missed because we didn’t have an account in the name of the organization” the distressed lady narrated her ordeal.

SUMMARY OF INSTITUTIONS CSOs HAVE TO COMPLY WITH

No.	Institution/ law			Issues to comply with	Cost of compliance
	UG	KE	TZ		
1.	NSSF	NSSF	NSSF	Remitting monthly workers savings both from the employee deductions and employers contribution	As defined by the law
2.	URA	KRA	TRA	Remitting income tax Remitting pay as you earn Remitting VAT where applicable	As defined by the law
3.	NGO Bureau	PBOs authority	Ministry of health, community and children affairs	Filing annual returns for all the three countries Filing annual reports for all the three countries Filing quarterly activity reports for the case of Tanzania Pay an annual fee of 50,000Tshs for NGOs in Tanzania Presenting funding contracts to the registrar of NGOs for monies starting from 20 Million Tanzania shillings and above	
4.	URS B			Filing annual returns Filing final beneficiaries list Registering new documents and amendments Certifying documents	As defined by the law
5.	Employment laws				
	FIA			File annual returns	

7. Difficulty for organizations and human rights defenders to undertake their legitimate activities.

In all the three countries; Uganda, Kenya and Tanzania there exist national youth council acts and national youth policies. In Tanzania, the National Youth Council Act establish the national youth councils as the policies guide the implementation of youth related and focused initiatives. In the Tanzania the Act was signed into law in 2015, but has not yet been implemented.

Generally, the National Youth Council Act of Kenya is more elaborate on how the councils will work with civil society organizations. The national youth council act of Tanzania provides for representation of about two youth organizations in the Regional Youth Assemblies. However, they have no voting rights.

Similarly, Tanzania adopted the Tanzania National Youth and Development Policy, but it lacks in clarity of the mechanisms for the implementation of the youth rights in Tanzania. There is also an evident lack of clearly defined cooperation avenues between the national youth councils in case they are to be operationalized and the youth civil society organizations and human rights defenders.

Under the policy Statement, the government of Tanzania simply states that the Government in collaboration with other stakeholders shall put in place rights of youth, but these rights are not defined. This lack of clearly definition makes it difficult for youth human rights defenders and youth civil society to decide which rights and when they have to advocate exactly.

The National Youth Policy of Uganda 2016, popular version, provides that the civil society is an alternative avenue for youth to participate in governance and decision making processes. It does not provide a clear mechanism for collaboration between the national youth council and the youth civil society organizations and human rights defenders.

Youth civil society organizations and human rights defenders in Uganda have to struggle to forge working relations with the National Youth Council. In a number of situations, with the exception of some small cases, due to the political nature of the youth councils in Uganda, highly ranking elected youth leaders such as youth members of members of parliament hardly corporate with the youth civil society organizations and human rights defenders.

In about the year 2014, the African Youth Development Link produced what they called a parliamentary scorecard for youth members of parliament ranking them from the best to the worst performing in terms of representation of the youth issues in parliament. One of the Youth Members of Parliament at the time, representing the youth of Northern Uganda Hon. Evelyn Anite promised to deal with the African Youth Development Link (AYDL).

This lack of clarity poses a significant threat to the efforts of youth human rights defenders consequently affecting the youth whose rights are not clearly represented.

8. Difficulty complying with tax obligations and national social protection fund

Civil society organizations as well as any other legally registered entities have to comply with a number of existent laws and statutory instruments such as Postal act, labour/employment laws, Income Tax Act, National Social Security Fund Act, Companies Act, NGO Act among others.

Study participants were convinced that annual returns, Pay as You Earn (PAYE) are all taxes. Three quarters of the Civil society leaders who participated in the study were convinced that the laws were not dynamic and were not considerate of the diversity of the CSOs including the various funding challenges of civil society organizations. Study participants were convinced that while applying for a Tax Identification Number (TIN), URA mandates all applicants to register for income tax without clear understanding of their extent, nature and funding gaps since these are mostly not for profit entities.

The overlapping effects of the law on the civil society organizations were considered to have a far reaching challenge on complying with the tax obligations as well as remitting workers social security savings. The Income Tax Act in Uganda for instance requires any employer paying anyone an amount of 235,000 USHs and above to file Pay as You Earn on a monthly basis. The employer is mandated to file about 30% of the gross payment per employee. While the NSSF Act requires all employers employing five employees and over to remit the workers savings. The employer contributes 10% as the employee contributes 5% of the gross salary. These laws do not take into consideration that while some organizations may pay their workers, many of them do not have the same resource envelop. In the end, they would be considered non-compliant and would hardly receive a certificate of tax compliance among others. This affects the image of the said organization in various ways as a number of donors ask for tax and at times NSSF tax clearance and compliance certificates respectively hence affecting them in various combined ways.

CHAPTER SIX:

FACTORS LIKELY TO INFLUENCE CRUEL GOVERNMENT LEGISLATIONS AND THE MOST AT RISK CSOS AND HUMAN RIGHTS DEFENDERS

In this chapter, we analyze the factors that the study observed as likely to influence cruel legislation against civil society and human rights defenders.

a. Government being blind to the realities of civil society organizations and their diverse needs.

Study participants believe that the laws made by the different governments in one way or the other posture all civil society organizations as being the same in terms of resource access and stability. Civil society organizations vary both in size, time of commencement, access to resources, vision and mission, geographical location and or areas of operation among others. These variations mean that the operations of these civil society organizations differ a lot. The laws made are not specific in their demands from CSOs. For instance, by requiring all CSOs to pay the same amount while filling returns, meeting tax obligations including while renewing permits among others yet all organizations do not have the same income is considered unfair according to study participants. Consequently, having legislation that treats all organizations as the same will affect many of the civil society organizations differently. In Uganda for instance, among the requirements for application for registration with the NGO Bureau under section 29(2) of the Act, an application for registration of an organization under regulation 3, (e), applicants are required among others to show source of funding of the activities of the organization. This requirement perceives all organizations as already having funding, yet many want to register with the Bureau so as to enhance their legitimacy to be able to acquire funding from donors many of whom are currently skeptical of funding organizations not registered with the Bureau.

b. The State being fed with wrong intelligence information

While the issue of national security cannot be underestimated, the State and intelligence agencies maybe relying on wrongful information especially from the grassroots government agencies and disgruntled members of the public. During consultative meeting with civil society leaders in Eastern Uganda, participants believed that government was relying on wrongful intelligence information to take action against civil society and human rights defenders.

Study participants believed that local government leaders and or the Gombolola Internal Security Organization (GISO) were identified as providing wrongful information most times to cover up corruption and human rights violations at lower local government and the grassroots levels. In one of the districts in Eastern Uganda, a former Local Council III (LCIII) Chairperson who was involved in dubious practices of awarding contracts to his wife during his time as the chairperson used his influence as the Sub-County Chairperson and head of security to influence the police and intelligence agencies against a youth organization (name withheld for security and confidentiality reasons) that was strongly opposed to and critical of his nepotism, embezzlement and poor governance. The youth group that had been receiving support from various NGOs was instrumental at providing platforms for young people in that Sub-County to learn, network and participate in income generating activities as well as in governance processes. The group was very critical of the expenditure of youth funds and other development programmes meant to benefit the youth such as Northern Uganda Social Action Fund (NUSAF), Youth Livelihood Programme (YLP), and Community Driven Demand (CDD) Programme among others.

Due to the increasing pressure from the Group, the Chairperson felt this Group was becoming a threat to his political career. He accused the group members of being used by the opposition against the government. Key members of that Group were targeted to deny them public services, and for those who were employed with the government in other sectors, they were followed up to the District Education/ Service Commission so they could be scrapped from the payroll. After all those efforts, the youths remained resilient and never stopped speaking out leading the Sub-County Chairperson to devise another method. He identified some members who could ally with him. He sponsored them to paint a picture that the Group was unaccountable and most members were not benefiting. These group members would later propose that the Chairperson of the Sub-County intervenes to resolve the impasse. Unaware to the group leaders that the Chairperson was the one influencing some of the group members, they accepted the proposal. The LCIII Chairperson “intervened” by taking away the Registration Certificate of the Group as well as the original certified copy of the Constitution. He would later propose to the Group that to avoid future fights, the Group winds up and the assets distributed among members. Considering that many members of the group had been influenced with wrongful information, the majority took the day and the members resolved to wind up the group. At the end, over five youth who were employed full time and part-time by the Group became jobless, the members of the community who were benefitting from the services of the Group were left with no alternative and the majority youths who were benefitting in one way or the other now have no other group providing them with platforms of knowledge sharing, access to basic needs, networking and capacity building among others.

c. Less developed funding landscape locally and lack of a favourable legal framework that supports local giving

Experts in the development sector observed during this study process that the funding landscape locally for civil society organizations is lacking. This leaves civil society organizations with the only option of receiving funding from the western countries. This phenomenon according to them creates an impression from government that civil society are agents of the western world because that is the only option they have yet they are not doing much to create local funding avenues and or provide legal frameworks to guide local giving such as waiving taxes on individuals and corporations that give to organizations.

“Our leaders are making noise that civil society are agents of the western world without providing alternatives. As a result, they put in place very tough measures. Do they want the civil society dead?” a concerned study participant asked.

d. One sided perception of the civil society as agents of the western world against the State without recognizing their contribution.

The study was able to establish that one of the factors influencing unfair legislation against civil society is a biased and one sided perception of the civil society and human rights defenders as agents of the western world ignoring their immense contribution to the socio-economic, governance and development processes. Uganda and Tanzania were among the countries that were observed as having very unfair legislation and a very biased perception by the government towards civil society organizations.

Study participants observed that Human rights defenders and CSOs advancing good governance, accountability and social justice were mostly targeted among others were mostly targeted. They were

further convinced that the laws and policies are motivated by the need to constrict space for HRDs and CSOs. Out of the civil society organizations that participated in the study, all those involved in governance, human rights, accountability and or transparency matters reported having faced numerous challenges in one way or the other while those involved in livelihoods barely reported any challenges or threats. This was mostly noted by study participants from Uganda and Tanzania.

While the current president of the United Republic of Tanzania H.E. Samia Suluhu Hassan, has been observed in several occasions trying to reverse some of the harsh State and government approaches towards civil society by the late President Dr. John Pombe Magufuli administration. However, none of the laws and or regulations enacted during the late President Magufuli administration have been repealed or amended to provide a legally guided fair operating environment for HRDs and CSOs. This leaves HRDs and CSOs in a dilemma. HE. Samia Suluhu Hassan recently met with civil society organizations to see how the relationship between CSOs and the government can be improved. She ordered for the unfreezing of the financial accounts of the Tanzania Human Rights Defenders Coalition yet in another incident, an organization in Arusha continues to have their money withheld by the Equity Bank, Arusha Branch on orders of the government following allegations of money laundering since 2017.

In spite of this apparent change in attitude, HRDs and journalists covering the ongoing eviction of the Maasai people in Loliondo and Ngorongoro Conservation area were denied access and threatened with arrests and detention if they dared cover and or report on the worrying situation that will see the Maasai people evicted from the land they have known as their home to Tanga Region in a move viewed by many to pave way for Arabs to expand their investments in the area.

In Uganda, the situation HRDs and the CSOs remains opaque as the government attitude continues to be even more biased. There is a greater misconception of civil society work as being against the government witnessed towards and after the 2021 general elections. Instead of engaging with these critical voices, the government, has frequently chosen to silence them, often through harassment, intimidation, threats of closure and even arrests and unlawful detention.

According to a January 2nd 2021 letter, President Museveni directed the immediate shut down of the activities of the Democratic Governance Facility (DGF) the biggest donor fund in Uganda that runs with support of seven countries Australia, Denmark, Ireland, The Netherlands, Norway, Sweden and the European Union in the pretext that it is involved in subversive activities. Later on about 54 civil society organizations would have their activities brought to a hasty halt by the National NGO Bureau, a government agency put in place by the government to regulate and “streamline” the activities of civil society organizations. A critical overview of these organizations tends to reveal that almost three quarters of them had been funded by the Democratic Governance Facility and quite a number were undertaking activities in line with or related to governance, human rights, accountability and transparency among others.

A close examination of the CSOs supported by the DGF at the time of her suspension reveals that a significant number of these institutions have been and continue to be involved in strengthening relationships between government and public. Key among them are the Chapter Four, Civil Society Budget Advocacy Group (CSBAG), Anti-Corruption Coalition- Uganda (ACCU), Action Aid Uganda (AAU). The Chapter Four prior to her suspension by the National NGO Bureau had been involved in creating awareness about the new NGO Act and its regulations and asking civil society organizations not to be caught off-guard and be compliant. They published a document simplifying the

understanding of the NGO Amendment Act 2016, to the public and jointly conducted a capacity building in partnership with another organization where a select number of civil society actors were given capacity building on how to comply with the NGO Act and its regulations. The Civil Society Budget Advocacy Group (CSBAG) has been a longtime partner of the Ministry of Finance Planning and Economic Development (MFPED) and other key government agencies involved in the preparation, monitoring and implementation of the national budget. They have and continue in every financial year to analyze the budgets for the previous financial years, developed key alternative budget proposals and conduct researches that have helped government rethink budget allocations and expenditures. One of the notable proposals by the Civil Society Budget Advocacy Group (CSBAG) have been the proposals to the government to cut down expenditure by reducing on the numbers and size of the government ministries and authorities among others. These proposals have been welcomed by the government and adopted and in the year 2021, the government of Uganda announced that they will be scaling down on the number and size of government agencies by merging some and scrapping others; a journey projected to begin in the financial year 2022/2023. The Anti-Corruption Coalition - Uganda (ACCU) has been a long time partner of the Ministry of State for Ethics and Integrity under the Office of the President where they have organized annual events in the commemoration of the anti-corruption week. Apart from that, the ACCU has complemented the aspiration of the State by exposing corruption practices within the government. Action Aid Uganda on the other hand, has had her bank accounts frozen a number of times and is one of the organizations that had been supported by DGF at the time of her suspension. It has been at the forefront just like the ACCU and others in championing anti-corruption campaigns. About a decade ago, Action Aid Uganda and other partners fostered the Black Monday Movement (BMM) aimed at creating awareness about and advocating an end to corruption in public offices. As part of the campaign, the public would be urged to put on black clothes every Monday as a way of mourning the deplorable state of corruption in the country. Every month they published the Black Monday newsletters that clearly documented the corruption cases and the amounts stolen in Uganda. To date, AAU hosts and coordinates the CSO Accountability Forum that brings together civil society organizations to advance joint efforts in advancing accountability in government led programme implementation. However, the State responded by severally arresting the anti-corruption activists some of whom were working with Action Aid at the time. In spite of the aspiration of the State to have a corrupt free society and considering the contribution of the civil society organizations towards the same, they were or continue to be deemed enemies of the State.

In another perspective, the Democratic Governance Facility at the time of her suspension was supporting several State actors that included among others; Kasese District Local Government, Justice Centres Uganda, Institute of Parliamentary Studies, Kitgum District Local Government, Ministry of Lands, Housing and Urban Development (MoLHUD), National NGO Bureau, Nebbi District Local Government, New Vision Printing and Publishing Company, Parliament of Uganda, Public Interest Law Clinic, Makerere University (PILAC), Refugee Law Project, Makerere University(RLP), School of Women and Gender Studies, Makerere University (SWGS), Uganda Human Rights Commission (UHRC), Uganda Law Council and Uganda Law Society. While we could not easily establish what projects and or programmes were supported by DGF in those State institutions, a close examination of the work of some of the institutions can show that a significant number of vulnerable people were supported and or helped in one way or the other. Justice Centres for instance has helped or enabled many people who are unable to afford legal fees among others to get mediation, legal advice and arbitration at no cost except for beneficiaries who visit those centres and from very far places where they have to spend on transport and other associated costs.

e. Non comprehension or intentional avoidance of the Rights Based Approach to Development (RBAD)

Globally, foreign aid shifted from the Needs Based Approach to Development to a Human Rights Based Approach to Development that western countries are using to provide support to monitor the public service delivery for projects or programmes they have supported through Official Development Aid (ODA). Through the Rights Based Approach, development partners believe that since the citizens are the direct beneficiaries of the programmes or projects they support through government agencies, they are at a better position to identify the loopholes in the service delivery process as well as monitor how the resources are being utilized. As result western countries support civil society organizations to advance accountability, anti-corruption, advocate for social justice and protect human rights all of which the Ugandan government just like many other countries across the continent are aspiring to achieve through their government agencies that hardly expose corruption or are easily compromised.

Through this approach civil society organizations are supported to empower the citizens and rights holders to hold the duty bearer in this case the government agencies and or employees accountable. This Study however has been able to establish that most government employees including intelligence agencies especially those charged with the duty to monitor the activities of civil society organizations either intentionally ignore the Rights Based Approach to Development or are less conversant with the development model. This influences their negative attitude towards civil society organizations and human rights defenders.

In Tanzania, while government workers may be aware of the Rights Based Approach to Development, there is a general conviction that organizations involved in the accountability, governance, human rights and governance sectors are against the State serving the interest of western powers. As a result, many civil society actors are concerned of the worrying trend and hence tend to shy away from implementing programmes focused on advocating for human rights, advancing accountability and transparency, good governance and or freedom of expression for fear of repression from the government organs.

Almost all of the organizations that took part in the study were involved in livelihoods as opposed to human rights and or governance.

f. Covid-19 and its impacts on the operating environment for civil society organizations.

Following the outbreak of the global pandemic Covid-19, several countries across the Globe implemented Guidelines from the World Health Organization (WHO) to prevent the further spread of the virus. This was the case in Uganda and Kenya. In Uganda, the government imposed restrictions against all kinds of movements except for certain government agencies and institutions considered essential sectors. Activities of most, if not, all of the CSOs were brought to a standstill for almost three years. Only organizations that were involved in providing health related services were allowed to operate. To date, a number of organizations are struggling to pick up after the negative impact of Covid-19 on the operations of civil society organizations and the disruptions to the funding environment since much of the funding comes from none African countries that were mostly hit by the Covid-19 Pandemic.

The closure of offices and the banning of public transport as well as for most private cars had a significant effect on the compliance levels of many CSOs. Among the most affected compliance issues were filing annual returns with both the NGO Bureau and the Uganda Registrations Services Bureau,

filing tax returns with URA and paying annual box office fees with Posta Uganda. Most organizations were also unable to undertake both internal and external financial audits for close to three years. Consequently, organizations that have not undertaken external financial audit are unlikely to file returns with NGO Bureau and URSB, the two agencies that are very vital in the sustainability of the CSO Sector. Conducting external audit requires hiring an accredited audit firm which further comes with huge costs that most organizations do not have. Considering the implication of the government measures to fight corruption on movement and working from office, it is not evident that there was a functional online system unlike in other countries that have adopted NGO regulations like in Tanzania where civil society actors can file annual returns online. These combined factors while not conclusive, drastically affected and continue to impede the operations and ability of many civil society organizations to file annual returns since the law is blind to the realities of natural disasters and pandemics.

On top of that, due to restriction on movement and public assembly, many civil society organizations who had applied for funding with the proposed activities being public dialogues, community meetings and or sensitization among others were denied funding as the donors were convinced that the activities could not be implemented amid the prevailing circumstances.

In Tanzania, while there were no serious restrictions imposed on movement and assembly, measures imposed by other countries especially on international travel affected the operations of some civil society organizations. An organization involved in bringing into the country international volunteers from other parts of the world said their work was drastically affected by Covid-19 as they could not source and or bring the participants into the country due to these restrictions on movement in the USA and European countries among others. This, according to the Executive Director of United Planet -Tanzania said that they would not at the same time get funding since their activities involved cross border movement yet most borders were shut.

“We missed out on funding because no one was willing to release money to support international volunteers since they knew that there were restrictions on movement globally. The last two years were tough for us since our core areas of work involves creating opportunities for international volunteers to participate in our exchange programmes.” The Executive Director of United Planet- Tanzania said while speaking to a member of the research team in Tanzania.

g. Internal dynamics and the right to complain

Internal dynamics especially among founder members and or for organizations that were involved in recruiting members into their organizations have severally experienced instances of overlapping interests. Glaring cracks in many memberships based organizations provide fertile ground for the State to foster unfair legislation against the civil society organizations.

In Tanzania three organizations reported having had some of their members and or former employees speak ill of the organization especially in instances where they are removed from the governing body and or as employees. These individuals go to the extent of writing emails and letters to the donors, partners in the civil society and even government agencies since they feel disgruntled. Study participants are convinced that such kind of mannerism could influence a biased government policy towards civil society organizations since they might end up being considered whistle blowers yet most times they are spreading wrongful information. In Uganda, about ten organizations reported having faced a challenge with some of their members and or staff.

“Most times, you mobilize people to start up an organization. Most of them relegate themselves to observers leaving you to struggle with the organization. At the time when the organization is not getting funding, they distance themselves. However, when funding begins to come through, they become very concerned and begin to want to audit the organization without knowing how much you have sacrificed in terms of money, time and effort to build the organization, when you don't involve them, they begin to give a biased narrative to the public about you and the organization because they want to fail both you and the organization” a founder of an organization in Tanzania speaking to TRANET-Africa staff.

In Uganda, the NGO Regulations 2017 under Section 37 (1) of the Regulations grants the right to complain where it states that any person or organization alleging that an organization has not complied with the Act or these regulations has a right to complain to the Bureau. This provision according to participants to the study believed that for instance; aggrieved former staff and or members or enemies to some of the members of the organization and or the staff are likely to abuse this provision by providing wrongful information to the NGO Bureau and intelligence organs hence providing a fertile ground for unfair and biased government regulation of the CSO Sector.

Observers and some heads of organizations believe that some self-seeking and dishonest former employees of organizations are likely to spread false and misleading information to the outside world about specific organizations and believe that if this information reaches intelligence and or government agencies, unfair legislation ensues as a result of the false information provided by the jilted former employees. In Tanzania, a head of an organization that has had their money withheld for almost five years now.

“We give people opportunity to work and even pay them and later on they turn against us. Our organization was destroyed by a young man we gave an opportunity. He wrote emails to various people including government agencies making false allegations. The government has tried to investigate us for all those years and have failed to find any evidence of such wrong doing. However, this doesn't change anything as the organization lost many donors including public trust.” A distressed founder of an organization in Tanzania lamented.

Some of the academics who took part in the study are convinced that while there are internal dynamics and overlapping interests within the organizations themselves, the sector overall faces numerous challenges from within ranging from unfair competition, blackmail as a form of having a fair advantage over other organizations especially while competing for funding. They are convinced that this tendency will also foster a biased attitude from government workers towards the sector.

“Unless the civil society abolishes structural discrimination of other organizations and individuals within the civil society and human rights movement, more disgruntled groups will rise against the civil society. There is nothing as worse as having an enemy who emerges from within who knows all the dealings of the civil society than having allies who are literally unfamiliar with the landscapes of the civil society driven development. From the politics of powerful logos, to the quagmire of most important organizations with the “best capacity” to the Ping-Pong of self-seeking individuals who append their signatures to constitutions and contribute less to the growth of the organizations, but have an overwhelming sense of entitlement for benefits, the civil society is a den of its own.” A retired professor in Tanzania stated while speaking to the research team in Tanzania on condition of anonymity.

Some prominent members of the civil society who preferred anonymity for fear of being discriminated and or stigmatized by fellow civil society actors believe that the civil society has played a critical role in supporting government programmes as well as building the capacity of the local leaders among

others. However, according to some of them, they say they cannot rule out that there are also a lot of internal fights and blackmail of other civil society actors and organizations by fellow civil society actors.

CHAPTER SEVEN:

CONCLUSION AND RECOMMENDATIONS

1. CONCLUSION

Partnership is not an option but a fundamental basis for development cooperation both locally and globally. This kind of partnership will ensure that the diversity and plurality of views of different stakeholders will be respected and considered in development policies. They should be aligned to local, regional as well as global efforts for a renewed global partnership for development in support of the 2030 sustainable development agenda especially goal 17, partnerships for development.

Partnerships for development between civil society and government can be meaningful only if mutual respect rather than biased relationship exists. The study observes that steps taken by the government to streamline and regulate NGO operations are not bad. However, the implication of the regulations to the civil society operations is what needs to be thought about before any laws, regulations and or policies are put in place. This can only be possible if civil society are viewed with an open mind rather than a preconceived perception of the civil society as enemies of the State and agents of the western world.

Government needs to work closely with civil society and diplomatic missions to bring on board key alternatives that could be pursued to mitigate the issue of twin track approaches between the government and civil society as civil society organizations have already showed willingness to collaborate with government to ensure that these partnerships work mutually. Tight regulation usually incognizant of the plight of the diverse civil society is crippling the effectiveness and relevance of civil society organizations. This means that those who have been direct and indirect beneficiaries of the civil society organizations will plunge into more plight. This will cause more problems for the government as it won't have handy solutions to the needs of the affected. Therefore, while legislation in itself is not bad for society, the intentions for which certain policies and laws are made need to be questioned.

There is need to put in place mechanisms to foster dialogue with civil society and come up with approaches that seek to foster mutual relationships rather than view civil society as an enemy even when there is sufficient evidence that they have been complimentary to the efforts of the government and or even at most been very helpful where government failed. Therefore, civil society organizations as well as intergovernmental agencies need to advocate, not just for partnership, but for strategic, equitable and sustainable partnerships that will be based on mutual trust, respect, equal participation and solidarity of all stakeholders.

2.1. RECOMMENDATIONS

2.2. General Recommendations

- a. There is need for the government, civil society and other development actors to enhance the capacities of government workers who are charged with the responsibility to work with institutions that monitor the activities and the work of civil society organizations as well as those involved in crafting policies and laws seeking to regulate civil society operations both at the national and district levels to be able to comprehend the working of civil society organizations, their challenges and the Human Rights Based Development Approach .
- b. There is need for the governments and agencies charged with the mandate to monitor NGO activities to make decisions taking into consideration the effects of the directives and measures to curb the spread of Covid-19 for the time only essential offices were allowed to operate and the implications to the civil society organizations operations and in regard to compliance with the law.
- c. There is need to document success stories of the civil society in the various communities and share them with the world.
- d. There is need for civil society organizations as well as the government take serious steps in enhancing awareness about the rights based approach for key government officials as well as community leaders and grassroots civil society organisations.
- e. There is need to enhance awareness within government agencies on the laws and policies providing a ground for non-governmental organizations, human rights defenders and government to interact and collaborate. Especially the laws enforcement agencies such as police, army, security agencies as well as Youth HRDs need to develop and strengthen their skills and knowledge on human rights in order to defend the rights of others competently and also perform at a greater capacity.

2.3. Specific Recommendations

a. To the Government of Uganda

- There is need for the National NGO Bureau to establish a functional online platform for where NGOs can submit the required information to reduce on the administrative burden and ease compliance among civil society organizations as well as enhance environmental conservation by reducing on printing and the amount of inked paper that would have to be in circulation in the environment.
- There is need for government to enact a social enterprise promotions act to foster social enterprise development and or drastically reform the NGO Act to describe the social enterprise mode of resourcing for civil society organizations.
- There is need for the government of Uganda to take serious steps to revise the laws on charities as well as taxation to enhance locally and legally guided philanthropy and resourcing.
- There is need for to put an end to the arbitral violation of the right to freedom of
- The Police officers should demonstrate active protection of the Youth HRDs who are constantly under threat and are a vulnerable group in society from violations and abuses.

a. To the government of Tanzania

- i. There is need to operationalize the National Youth Council of Tanzania so as to provide a clear working environment for youth human rights defenders and youth civil society organizations.
- ii. There is need to create structures and systems at the local government to provide space for dialogue and interaction between the youth human rights defenders, youth civil society, the government and the general public
- iii. Revise the NGO regulations to provide a favourable ground for the civil society organizations to flourish
- iv. There is need to revise the annual fee that NGOs have to pay so as to accommodate for all different NGOs depending on their financial earnings

b. To the government of Kenya

- i. Revise the national youth council act to provide for a clear participation of youth in the election of youth leaders.

c. To the East African Community

- i. Enact a policy frame work that provides for a recognized standard in the protection and promotion of the rights of human rights defenders among the member countries.
- ii. There is need for the EAC to devise appropriate and clear mechanisms for collaboration between the EAC Secretariat and the diverse civil society organizations without fostering discrimination and stigmatization of some civil society organizations while preferring to work with others.
- iii. There is need to standardize the youth age bracket across the region so as to make the work of youth human rights defenders and youth civil society easier.
- iv. There is need to harmonize the definition, parameters and description of what constitutes a national, regional and international organization as each countries appears to have their own definitions and parameters.
- v. There is need to have a regional CSO framework that provide an enabling working environment for CSOs in the EAC Member Countries.

d. To African Union

- There is need for the enactment of the Human Rights Defenders' protection framework that should be ratified by all member countries.
- There is need to provide alternative funding mechanisms for African civil society organizations as opposed to sitting at the AU and member countries deliberating on laws and policies to regulate civil society organizations with the impression they are agents of the western world yet they are not providing alternative of the promotion and enhancement often civil society locally.
- There is need to establish a forum for dialogue with diverse civil society organizations especially the youth civil society organizations who are hardly provided with space and platforms to be able to understand the diverse challenges of the African civil society and strengthen already existing mechanisms for dialogue to foster inclusivity among the diverse civil society organizations.

e. To United Nations

- i. There is need to create a UN agency charged with the mandate to undertake work on issues of civil society, nonprofits and philanthropy among others. This agency should act as medium for dialogue and collaboration between government agencies and civil society organizations.
- ii. There is need to enhance resource mobilization and rethink funding policy and criteria so as to cater for budding emerging and usually marginalized civil society within all UN agencies.

f. To Civil Society Organizations

- i. There is need for CSOs to continuously support individual HRDs through mentorship and capacity building programmes to increase their work ethic, productivity and efficiency.
- ii. There is need for civil society actors to prioritize mental health as part of their work as running institutions without money and especially those involved in advocacy activities comes with costs.
- iii. There is need for civil society leaders to make effort to continuously strengthen systems as well as programmes/ project management capacity of their teams.
- iv. There is need for civil society organizations take deliberate steps in strengthening internal management and governance and accountability systems so as to foster credibility and legitimacy.
- v. There is need for civil society organizations to revise their governing documents and amend their financial year to commence around 30th May of each calendar year and end 31st June of the next calendar year to be able to prepare audited books of accounts and annual reports to submit to the NGO Bureau.
- vi. There is need for the civil society actors to deliberate on acceptable NGO Code of corporate governance so as to foster self-regulation taking into consideration the plight and challenges of the various institutions.

g. To donors

- i. There is need to develop flexible funding approaches to address the diverse needs of civil society organizations and the diverse interventions proposed by the various civil society actors.
- ii. There is need to establish forums to network, dialogue and share knowledge with civil society as a learning processes to help shape funding and philanthropy policies and practices.
- iii. There is need to be open to the diverse civil society organizations and find ways to engage with the different organizations as opposed to telling them to go and work with so and so, most times organizations you are already funding.

h. To Human Rights Defenders (HRDs).

- i. There is need to stay vigilant and stay alert to possible attacks from both state and non-state actors as a means to fostering personal security

- ii. There is need to continue strengthening skills and capabilities in researching, documenting and advocating for reforms and against human rights violations.
- iii. There is need to build meaningful partnerships with both state and state actors to avoid possibilities of falling at risk and ease mitigation of human rights violations.

h. To the media

- a) There is need to undertake deeper and insightful analysis and document the impact and contribution of the civil society to the wellbeing of the people of Uganda and the general development of the country.
- b) There is need to establish meaningful forums where the civil society and government and engage in constant and or periodic dialogue on the relevance and essence of the civil society across the region.

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ABOUT THE TRANSFORMATIVE LEADERS NETWORK-AFRICA (TRANET-AFRICA)

Founded in 2016, TRANET-Africa is a Not-for-Profit Organization registered as a Company Limited by Guarantee with the Uganda Registrations Services Bureau (URSB) on the 14th day of August 2018 under registration number 80020001178149 with a vision of a society where the leadership upholds the ideals of social justice and good governance where social justice defenders enjoy the freedom and security to undertake their legitimate activities and mission to enhance social justice as well as build and protect a cadre of leaders at risk because of their peaceful and legitimate activities advancing processes that eliminate social injustice through research, advocacy, networking and capacity building.

Since her inception, TRANET-Africa has undertaken initiatives that seek to enhance capacities of civil societies amid shrinking civic space, enhance protection and safety of social justice defenders (SJDs/HRDs) to uphold social justice and good governance as well as delving in research, documentation and campaigning for social justice and protection of social justice defenders across the region. TRANET-Africa is a founding member of the Migration Network- Global a group of civil society organizations undertaking work on migrant workers' rights, and addressing causes of irregular and regular migration from the countries of origin across the globe. It is also a member of the Protection Working Group of the Global Coalition, Youth, Peace and Security Coordinated by the office of the UN Secretary General's Envoy on Youth. TRANET-Africa coordinates the African Youth Human Rights Defenders Network, a network of young activists and organizations advancing the rights of young people in their diversity across the African continent.



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