



**WESTMINSTER  
FOUNDATION FOR  
DEMOCRACY**

# **BACKGROUND PAPER**

**on the State of Legislation for Civil Society  
Organizations in the East African Community  
and its Effect on CSO Operating Environment**

**Morris Odhiambo**

Kumekucha Africa Consultants

Client: Westminster Foundation for Democracy (WFD)  
Final Paper, March 20<sup>th</sup> 2017

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# LIST OF ACRONYMS AND ABBREVIATIONS

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**ACAT** – Christians Action for the Abolition of Torture

**ACHPR** – African Charter on Human and People’s Rights

**ACPPDT** – African Charter on Popular Participation in Development and Transformation

**AMINA** – The Association of Non-Active Military

**APRODH** – The Association for the Protection of Detainees and Human Rights

**BAKE** – Bloggers Association of Kenya

**BBC** – British Broadcasting Corporation

**CIVICUS** – World Alliance for Citizen Participation

**CSO** – Civil Society Organization

**CBO** – Community Based Organization

**CRECO** – Constitution Reform and Education Consortium

**DNMC** – District NGO Monitoring Committee

**EAC** – East African Community

**EACSOFF** – East African Civil Society Organizations’ Forum

**EACT** – East African Community Treaty

**ESAFF** – Eastern and Southern Africa Farmers’ Forum

**EU** – European Union

**FORSC** – The Forum for the Strengthening of Civil Society

**FOCODE** – Forum for Consciousness and Development

**Fontaine Isoko** – The Fountain Isoko of Good Governance for Integrated Development

**GCG** – Grand Coalition Government

**GLISS** – Great Lakes Institute for Strategic Studies

**HRD** – Human Right Defender

**HRW** – Human Rights Watch

**ICC** – International Criminal Court

**IFES** – International Foundation for Election System

**INGO** – International Non-Governmental Organization

**KCK** – Kituo Cha Katiba

**KHRC** – Kenya Human Rights Commission

**KNCHR** – Kenya National Commission on Human Rights

**LGBTI** – Lesbian, Gay, Bisexual, Trans, and/or Intersex

**Maison Shalom** – The Association Maison Shalom

**MUHURI** – Muslims for Human Rights

**NHRC** – National Commission on Human Rights in Burundi

**NGO** – Non-Governmental Organization

**NGONEDO** – NGO Network for Dodoma Region

**OLUCOME** – Observatory for Fight Against Corruption and Economic Embezzlement

**PARCEM** – Word and Action for the Awakening of Consciences and Evolution of Mentalities

**PEV** – Post-Election Violence

**PBO** – Public Benefits Organizations

**PBORA** – Public Benefit Organization Regulatory Authority

**RCC** – Relief and Rehabilitation Commission

**RCP** – The Network of Concerned Citizens

**RGB** – Rwanda Governance Board

**RWAMREC** – Rwanda Men’s Resource Centre

**SCNMC** – Sub-County NGO Monitoring Committee

**SPPDF** – Synergy of Partners for the Promotion of Women’s Rights

**TACCEO** – Tanzania Civil Society Consortium on Election Observation

**UNGOF** – Uganda NGO Forum

**ULA** – Uganda Land Alliance

**UNMISS** – United Nations Peacekeeping Mission in South Sudan

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# 1. INTRODUCTION

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## 1.1. Background

The critical question of operating environment for Civil Society Organizations (CSOs) has been an issue of concern globally as well as in the East African Community (EAC) region. In its 2013 State of Civil Society Report, the World Alliance for Citizen Participation (CIVICUS) concludes that the conditions in which civil society operate globally, “are shaky at best and deteriorating in many parts of the world”. The reasons for this conclusion are, in summary, “a litany of threats to civil society, from outright violence against civil leaders to legal restrictions on Civil Society Organizations to dramatic funding cuts”.<sup>i</sup> In EAC, both the 3<sup>rd</sup> and 4<sup>th</sup> Annual EAC Secretary General’s Fora discussed the operating environment for CSOs in the region and came up with various resolutions.<sup>ii</sup>

The meaning of civil society has historically been an issue of contestation mainly between the Liberal and (neo)Marxist world views. The debate is also largely framed in terms of the relationship between states (as such) and civil society. While the liberal view stresses the distinction between states and civil society, the Marxist view sees the state as being inexorably embedded in society’s socio-economic relations.<sup>iii</sup> Liberals further see the state as a neutral arbiter in the affairs of society while Marxists see it as a tool for exploitation in the hands of ruling elites.<sup>iv</sup> This paper adopts the definition of civil society in the East African Community Treaty (EACT), as, “the realm of organized social life that is voluntary, self-generating, self-supporting, autonomous from the state and bound by a legal order or set of shared values”.<sup>v</sup>

Operating environment simply means the conditions within which civil society works. It has to do with the “forces that shape and influence the size, extent and functioning of the civil society ‘space’”.<sup>vi</sup> Certain characteristics or factors make the operating environment enabling for CSOs while others make it disabling. Similarly, there are conditions that can be said to be restrictive, thus making it hard for CSOs to operate.<sup>vii</sup> Some of the factors that are said to be enabling are: having good connections between different civil society forms, adequate resourcing, widespread

acceptance of the role of civil society, sustained spaces for inclusive dialogue with governments, and laws and regulations that make civil society operations easy and straightforward.<sup>viii</sup>

The situation in the EAC Partner States in terms of CSO operating environment is the subject of this paper.<sup>ix</sup> It takes a critical look at the developments within the EAC region, mapping out the trends in each country and making conclusions as to whether or not the civic space is shrinking. In terms of approach, the study is set on the following pillars: a human rights based approach; analysis of trends in terms of legislation over time in all the EAC Partner States; comparing aspects of the EAC Partner State CSO legislation; basing the analysis on pre-selected themes and themes that will emerge from the study and learning lessons and recording the challenges CSOs face in the different environments. The paper also delves into different country contexts in which CSOs operate in the EAC region.

This introductory section provides the background, discussing the rationale and methodology of the study that informed the paper. The rest of the paper discusses the findings under different headings: CSO Operating Space in EAC: understanding the trends, restrictions on CSO operating space: understanding the key drivers, impact of the restrictions on CSOs and CSO operating space from a country perspective. It then presents a summary of the findings as discussed in the body of the paper followed by a conclusion.

## 1.2. Rationale for the research

Generally, studies into CSO operational environment are motivated by the need to anchor evidence-based advocacy interventions to improve the working environment for CSOs. They take note of changes in the key features of the operating space such as legislation and socio-political trends that affect the operations of CSOs. Such trends can either be towards further opening or closing of the space. However, there has been widespread concern globally about shrinking civic space as a result of actions of governments.<sup>x</sup>

Broadly, the study is guided by the democratic theory and its key tenet of citizen/public participation. In *theories of public participation in governance*, Quick and Bryson<sup>xi</sup> assert the importance of citizen participation directly or indirectly in governance. Indirect participation involves electing leaders to represent the interests of citizens in decision-making while direct participation involves taking actions directly as citizens. According to Roberts, public participation is a fundamental part of the public—government relationship in democratic governance.<sup>xii</sup> Civic space is a key enabler of direct democracy. It facilitates the growth of CSOs that act to bridge the gap between those who lead and those who are led.

Citizen participation is an aspect of direct democracy. Direct democracy departs significantly from indirect democracy (representative democracy). One of its core tenets is its assertion that all aspects of social life are political in some sense and should therefore be the object of democratic autonomy.<sup>xiii</sup> Another major criticism of representative democracy by proponents of direct democracy is that it offers very limited possibilities of participation to ordinary citizens, which leads to a de-politicized public with little influence over their own lives.<sup>xiv</sup>

From a more practical perspective, the study aims to develop a position paper on CSO legislation in EAC. The paper will guide deliberations towards the development

of a model law on CSOs in EAC. Through EACSO and its members, it is expected that some level of advocacy will be carried out both at regional and country levels towards realizing the regional CSO law. From this perspective, both the study and the paper that emerged from it have relevance in terms of policy/legislation.

### 1.3. Methodology

The study relied primarily on qualitative methods. The key approach was review of documents including Partner States’ constitutions and CSO laws and reports by CSOs and other institutions assessing CSO operating environment. Official governance reports such as Rwanda’s Joint Governance Assessment Report<sup>xv</sup> as well as those compiled by organizations like Freedom House were also visited. Various internet sources were used to collect evidence of positive and negative developments involving CSO legislation and government actions impacting on CSOs. More than fifty documents including newspapers and a collection of different internet based materials were reviewed. Twelve (12) key informant interviews were conducted via skype with CSO representatives in all the EAC Partner States. Notes of all the interviews were prepared for analysis. The interviews were spread in EAC Partner States as indicated in the table below.

**Table 1: Country spread of key informant interviews and organizations reached**

Country	No. of key informants	Organizations they represent
Uganda	2	- Kituo Cha Katiba (KCK; Centre for Constitutional Development) - Uganda NGO Forum (UNGOF)
South Sudan	1	- A governance consultant working with CSOs in the country
Rwanda	1	- Rwanda Men’s Resource Centre (RWAMREC)
Tanzania	2	- EACSO secretariat - NGO Network for Dodoma Region (NGONEDO)
Burundi	3	- Forum for the Strengthening of Civil Society (FORSC) (two interviews) <sup>xvi</sup> - Eastern and Southern Africa Farmers’ Forum (ESAFF)
Kenya	3	- Constitution Reform and Education Consortium (CRECO) - Amkeni Wakenya (UNDP Governance Facility) - Kenya Human Rights Commission (KHRC)

Source: Author interviews with individuals representing organizations in EAC Partner States, February 2017

The key informant interviews were important in clarifying the various issues arising from the review of documents. The qualitative analysis involved interrogating the different themes of study such as definition of CSOs, registration of CSOs, and funding.

Comparisons were made based on different country perspectives thus enriching the understanding of civic space and its dynamics in the region. Below is an elaborate discussion of the findings based on different headings.

## 2. CSO OPERATING SPACE IN EAC: UNDERSTANDING THE TRENDS

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The review revealed that different laws exist in different countries to regulate the conduct of CSOs. Countries were found to put emphasis on different aspects of CSO work. In South Sudan, for instance, there is more emphasis on humanitarian work as opposed to advocacy work. The presence of laws regulating the work of CSOs is an indication of the importance that the governments put in the work of CSOs. The laws create frameworks that guide registration, funding, membership, and the structure of CSOs, among other important aspects of CSO institutional aspects and programmatic interventions. However, the nature of the laws and the degree to which they restrict the work of CSOs is an indication of the tension that exists between CSOs and the governments. Nonetheless, there was evidence of collaboration between CSOs and governments in coming up with CSO legislation. In Uganda, CSOs took part in discussion on the NGO Act, 2016, even though they continue to express dissatisfaction with aspects of the law.<sup>xvii</sup> The Kenyan case with the Public Benefits Organizations Act at the same time demonstrates the possibility of government—CSO collaboration in coming up with legislation that promotes the work of CSOs and the tensions in government—CSO relationships.

It also revealed that in some countries there is a multiplicity of laws that govern CSOs. In Tanzania, for instance, it was found that organizations are registered under the Non-Governmental Organizations Act, 2012, The Societies Ordinance, 1954 (Cap. 337)<sup>xviii</sup>, The Trustees Incorporation Act, 1956 (Cap. 318)<sup>xix</sup>, and the Companies Ordinance. These laws operate under the auspices of different ministries implying that organizations are regulated by different ministries. Although a similar situation exists in Kenya, there was evidence that in the latter country attempts had been made by government and civil society to harmonize the legislation through the Public Benefits Organizations (PBO) Act of 2013.<sup>xx</sup>

Existing laws categorize organizations differently. In Rwanda, for instance, there are different laws for national and international NGOs. Thus, Law Number 04/2012 of 17/02/2012 governs the Organization and Functioning of National Non-Governmental Organizations, while Law Number 05/2012 of 17/02/2012 governs the Organization and Functioning of International Non-Governmental Organizations<sup>xxi</sup>. South Sudan's Non-Governmental Organizations Act, 2016 and the Relief and Rehabilitation Act, 2016, govern both national and international organizations. However, the international organizations have additional registration requirements including a country agreement.<sup>xxii</sup>

The review also indicates a general trend across the region towards restricting or closing of civic space. The following characteristics of the relationship indicates a mostly negative relationship: arbitrary actions taken against CSOs by regulating authorities including attempts at deregistration, reluctance on the part of authorities to work with CSOs towards defining standards and enacting more enabling CSO legislation, harassment of human rights activists and media personnel, disappearance or murder of human rights activists and journalists, accusing organizations of funding terrorism where there is no evidence of such involvement, freezing of bank accounts of CSOs, and selective auditing of CSOs by the responsible authorities basically amounting to intimidation. The table below itemizes some of the reported cases based on four parameters: legislation, victimization of organizations especially those working in the thematic area of human rights and governance, attacks on human rights defenders and violations of the rights to freedom of speech and expression.<sup>xxiii</sup>

**Table 2: Actions that indicate constricting or closing of operating space for CSOs in EAC region**

	Legislation	Victimization of organizations in the thematic areas of human rights and governance	Attacks on Human Right Defenders (HRDs)	Violation of freedom of speech and expression
<b>Kenya</b>	<ul style="list-style-type: none"> <li>- Attempts to amend the PBO Act, 2013, and inordinate delays in commencing the Act</li> </ul>	<ul style="list-style-type: none"> <li>- Muslims for Human Rights (MUHURI) and HAKI Africa, had their bank accounts frozen and were accused of financing terrorism</li> <li>- Attempts to deregister the Kenya Human Rights Commission (KHRC) on allegations of tax evasion</li> <li>- Attempts to stop the International Foundation for Election System (IFES) from operating in Kenya on grounds that it is not registered in the country</li> </ul>	<ul style="list-style-type: none"> <li>- The alleged murder of Peter Wanyonyi Wanyama in 2013<sup>xxiv</sup></li> <li>- The alleged murder of Hassan Guyo in 2013<sup>xxv</sup></li> <li>- Murder of human rights lawyer, Willie Kimani in June 2016</li> </ul>	<ul style="list-style-type: none"> <li>- Report by the Bloggers Association of Kenya (BAKE) reveals that more than 60 bloggers were arrested in 2016.<sup>xxvi</sup></li> <li>- Blogger arrested over social media postings on land grabbing<sup>xxvii</sup></li> <li>- Death of freelance photographer, Dennis Otieno, after men demanded a photo from him<sup>xxviii</sup></li> </ul>
<b>Uganda</b>	<ul style="list-style-type: none"> <li>- Enactment and implementation of the NGO Act, 2016 without sufficiently addressing concerns raised by CSOs</li> <li>- Enactment and implementation of the Public Order Management Act, 2013 without sufficiently addressing concerns raised by CSOs</li> </ul>	<ul style="list-style-type: none"> <li>- Threats of de-registration of Oxfam and Uganda Land Alliance (ULA) on the basis of publishing report highlighting land grabbing<sup>xxix</sup></li> <li>- Unexplained office break-ins<sup>xxx</sup></li> <li>- Orders for Investigations and de-registration of the Great Lakes Institute for Strategic Studies (GLISS)<sup>xxxi</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Arrest of youth activists for holding press conference<sup>xxxii</sup></li> <li>- Several activists were arrested after police raided a beach pride parade in Entebbe <sup>xxxiii</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Unexplained media office break-ins<sup>xxxiv</sup></li> </ul>
<b>Tanzania</b>	<ul style="list-style-type: none"> <li>- Enactment of the Cybercrimes Act, 2015 despite opposition from civil society and without sufficiently addressing their concerns</li> </ul>	<ul style="list-style-type: none"> <li>- Raiding of Tacceo offices and impounding computers and other electronic equipment<sup>xxxv</sup></li> <li>- Threats to ban NGO that deals with LGBTI rights issues<sup>xxxvi</sup></li> </ul>		<ul style="list-style-type: none"> <li>- Banning of the <i>East African</i> newspaper in 2015</li> </ul>

	Legislation	Victimization of organizations in the thematic areas of human rights and governance	Attacks on Human Right Defenders (HRDs)	Violation of freedom of speech and expression
<b>Burundi</b>	<ul style="list-style-type: none"> <li>- Amendments to the NGO Bill, 1992 with negative impacts on civil society</li> <li>- Press laws</li> </ul>	<ul style="list-style-type: none"> <li>- Suspension of 10 CSOs accused of organizing an 'insurrection' against President Nkurunziza</li> <li>- 5 of the 10 suspended organizations were banned</li> <li>- Ban of the ITEKA League<sup>xxxvii</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Alleged attempted assassination of Pierre-Claver Mbonimpa in August 2015 and lack of investigations thereof by authorities<sup>xxxviii</sup></li> <li>- Freezing of personal accounts of activists</li> <li>- Negative profiling of human rights activists by putting their names on 'wanted list' forcing some to go into exile<sup>xxxix</sup></li> <li>- Those in exile have to apply for assistance which is not certain<sup>xl</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Only organizations such as NHRC and media houses that are controlled by the government are allowed to operate</li> <li>- No independent media.<sup>xli</sup></li> </ul>
<b>South Sudan</b>	<ul style="list-style-type: none"> <li>- Enactment of the National Security Service Bill, 2014</li> <li>- Enactment of the NGO Act, 2016, which attempts to restrict CSO work to humanitarian work and delimit the geographical and thematic reach of organisations</li> <li>- Enactment of the Relief and Rehabilitation Commission Act, 2016 and attempted deregistration of various organisations in 2016 for being political and not humanitarian<sup>xliii</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Most NGOs deal in humanitarian work</li> </ul>	<ul style="list-style-type: none"> <li>- Alleged assassination of Human Rights activist Emmanuel Wani in 2016 and failure by authorities to conduct investigations and bring the culprits to book<sup>xliiii</sup></li> <li>- Alleged victimisation of activists for having attended a meeting with The United Nations Peacekeeping Mission in South Sudan (UNMISS) in September 2016<sup>xliiv</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Lack of independent media because of operating environment</li> </ul>



	Legislation	Victimization of organizations in the thematic areas of human rights and governance	Attacks on Human Right Defenders (HRDs)	Violation of freedom of speech and expression
<b>Rwanda</b>	<ul style="list-style-type: none"> <li>- Law 04/2012 of 17/02/2012 National NGOs</li> <li>- Law 05/2012 of 17/02/2012 (INGOs)</li> <li>- Law no. 02/2013 (Media law)</li> <li>- The Constitution of Rwanda (2015 revised)</li> </ul>	<ul style="list-style-type: none"> <li>- Most CSOs are controlled by the government</li> </ul>	<ul style="list-style-type: none"> <li>- Allegations that human rights defenders face harassment, intimidation, arbitrary arrests and unfair trials.<sup>xlv</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Alleged resignation of Rwanda’s Media Commission Chairman, and media personality Fred Muvunyi as a result of alleged pressure from authorities in May 2015<sup>xlvi</sup></li> <li>- Indefinite ban on BBC broadcasts over genocide documentary<sup>xlvii</sup></li> <li>- Journalist and three co-defendants sentenced for allegedly conspiring against the government.<sup>xlviii</sup></li> </ul>

Source: Various documents and interviews with Key Informants

The actions summarized above are indicative of a negative relationship between CSOs and governments in the region. They are also indicative of attempts to

close the civic space and make it difficult for CSOs to operate in the region. Below, we look at the key drivers of this trend.



Participants discuss legislative solutions at regional level in East Africa to combat closing civil society space at WFD and EACSOF conference, March 2017.

### 3. RESTRICTIONS ON CSO OPERATING SPACE: UNDERSTANDING THE KEY DRIVERS

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The trends noted in terms of restriction to CSO space can be explained by factors that are both global and regional/local. The global embrace of liberal democracy and its key tenets including citizen participation seems to be waning. Liberal democracy therefore seems to be on retreat as nationalism and populism are on the rise. Both the financial and immigration crises that faced Europe are seen as key contributors to rising nationalism and populism. The role of CSOs, generally associated with the spread of liberal democracy globally, is facing a serious test.<sup>xlix</sup>

Realities and challenges that face the state in Africa such as inability to provide services and continued elite corruption continued to expose the contradictions with the state. On the one hand, CSOs have played an important role of assisting the state to meet its service delivery obligations by mobilizing resources from donors and providing services directly to citizens. On the other hand, CSOs have also continued to question the inability of governments to provide services particularly in view of widespread official corruption.<sup>l</sup> This has left the state and the ruling elite exposed and threatened. The reaction has been to bring CSOs under more tight scrutiny and control.<sup>li</sup>

Even though terrorist organizations and other non-state actor groups have become an important source of instability and human rights abuses in many countries, the state and its institutions continue to be framed as the leading abuser of human rights. Certainly, failure in many cases to act on the sources of instability and to provide effective protection for citizens has continued to raise questions as to the possible involvement of the state in human rights abuses. A particular concern is on the way states have used anti-terrorism legislation as a weapon to silence dissent. The case of the Muslim for Human Rights (MUHURI) organization and HAKI Africa in Kenya is an apt illustration of this trend. In this case, after alleging that the two organizations were involved in funding terrorism, the government, with the intelligence and security infrastructure available to it, was unable to produce evidence to support the allegations in court.<sup>lii</sup> In the meantime, the state, through the NGO Coordination Board, had proceeded to deregister the organizations and freeze their bank accounts thus disrupting their

programs.

James Petras is one of the scholars who have argued that NGOs serve the interests of imperialism. His core argument is that NGOs advance the neo-liberal agenda by taking over and “speaking for” the exploited while at the same time being dependent on donor funding.<sup>liii</sup> The issue of ‘foreign funding’ for CSOs has often been used by governments to claim that CSOs serve the interests of foreign governments. Also, governments have tended to associate foreign funding with the promotion of certain practices and ideologies. Thus, organizations that promote certain aspects of human rights such as LGBT rights are often castigated as propagating foreign practices. The tussle in Uganda over the Anti-Homosexuality Bill was illustrative of this trend. The politics of the International Criminal Court (ICC) in Kenya could also be an apt illustration of this line of thinking. All these have strained CSO—government relationships in the region.

In order to purportedly curtail the perpetuation of foreign agenda and practices, EAC Partner States have therefore made attempts to control funding that comes to CSOs. In its suggested amendment to the PBO Act, the Kenya government proposed that CSOs may not receive more than 15% of their budgets from foreign sources. The question that often begs answers is why the same governments receive funding from foreign governments for projects or as direct budget support and what this means to assertions regarding state independence and sovereignty in the realm of state—state relationships and international politics.

Furthermore, wielders of power in the domestic sphere may equate CSOs to political opposition thus seeing them as competitors for power. Oftentimes, CSOs, opposition political parties and other formations work together in demanding accountability from the government hence the association. This is what happened in Burundi when advocacy against the ‘third term’ was led by CSOs. CSOs were therefore treated like opposition political parties seeking to replace those in power. This led to an initial purge in which 10 CSOs were suspended. Eventually, 5 of the 10 were banned. The May 2015 attempted *coup d’état* brought more

reprisals. On broader strokes, CSO advocacy may have the ability to influence the distribution of power in society in favor of the marginalized and less powerful. This potential is threatening to those who wield power.

The EAC falls within the Horn of Africa Conflict Zone. Part of the legacy of armed conflict in the region is quasi-military regimes. Even though they lead 'civilian' regimes, the leaders of these regimes may consider that the military constitutes one of their important constituencies. This in turn may influence the way they relate with civilians. A leadership steeped in military tradition that demands total obedience may not be easily convinced to embrace democratic ideals including the need to facilitate the participation of citizens in governance and with it the growth of civil society.

Another legacy of conflict in the region is the long-term effects of the genocide that took place in Rwanda in 1994. There is thus a feeling that attempts to raise accountability issues with the Rwandan Government in

this case may return the country back to the days of mass violence and instability. This creates grounds for continued violations and nurtures a culture of silence. This is an environment in which CSOs cannot thrive and citizens may not enjoy constitutionally guaranteed freedoms.

In Kenya, the legacy of the 2007/8 Post-Election Violence (PEV) and its aftermath still define CSO—government relationships. The intervention by the International Criminal Court (ICC) after government's failure to institute a local tribunal became a key cleavage and political tool in the run-up to the 2013 general elections beginning a trend of vilification of CSOs that has been sustained beyond the 2013 elections. CSOs as well as the public human rights institution, the Kenya National Commission on Human Rights (KNCHR), were involved in documenting human rights violations. 10 years on, the bad-blood created by appeals to identity politics is yet to dissipate and the regime continues to treat CSOs as its enemy.



## 4. IMPACT OF RESTRICTIONS ON CSOs

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Actions instigated by governments against CSOs have had significant negative impact. This ranges from disruption of programs and activities to complete shutdown of organizations in some cases. In Burundi and South Sudan, some organizations have had to close down their operations while others have had to relocate. CSO leaders from Burundi had to go to exile in the aftermath of the post-election rupture and particularly so after the July 2015 coup. Restrictive press laws in Burundi have also made it difficult for organizations to inform the world about the goings on in their country. The situation is such that even those caught listening to any material critical of government are said to be arrested, tortured and detained.<sup>iv</sup>

In Kenya, the freezing of accounts of local CSOs and international organizations have disrupted their activities and alienated them from their constituencies. In the case of MUHURI and HAKI Africa, a lot of time has been wasted going to court to pursue cases with obviously trumped up and frivolous charges. The arbitrary manner in which directives are issued and instructions given to different agencies to take action against specific organizations has created an environment of uncertainty. One outcome of this is self-censorship—that is, organizations fearing to pursue certain issues that otherwise are within their mandate,

preferring to handle ‘safe’ issues. The effect of similar actions in Tanzania and Rwanda has led to lack of vibrancy and creativity in the sector.<sup>lv</sup>

Continued harassment and freezing of CSO accounts also has the potential to alienate organizations from funding sources. Donors design and implement funding programs with strict time lines for implementation and reporting. Achievement of results within given timelines is a key feature of programming. Thus, any disruption of activities is bound to have negative effects on implementation, reporting and realization of results.

In situations of conflict such as South Sudan and Burundi, permanent disruption has occurred in situations where CSOs have had to relocate and where CSO leaders have had to go to exile. Allegations abound of human rights activists and journalists disappearing, being detained and tortured or being killed. This means they have been permanently alienated from their constituents. Where they have opted to stay in their countries, they spend a lot of their time hiding or concealing their movements to avoid victimization. It becomes rather difficult to sustain activities and create impact in this environment. It has also been difficult to secure legal assistance for victims in the case of Burundi as the lawyers. CSOs assisting the activists may also face victimization.

## 5. CSO OPERATING SPACE FROM A COUNTRY PERSPECTIVE

### 5.1. Kenya

Before the enactment of the PBO Act, 2013, Kenyan CSOs were mainly registered as NGOs under the NGO Co-ordination Act, 1992. However, some organizations opted to be registered under other laws such as the Companies Act and Societies Act. Community Based Organizations (CBOs) were registered under the ministry in charge of social services.<sup>lvi</sup> The PBO Act was enacted towards the end of the tenure of the Grand Coalition Government (GCG) and assented to just before the March 2013 general elections. The Act was the result of a collaborative effort between CSOs, government agencies notably the NGO Coordination Board and a private member who moved the bill in parliament.<sup>lvii</sup>

The PBO Act aimed to cure some of the shortcomings of the NGO Act, 1992, including on questions of CSO accountability. It sought to widen the definition and conceptualization of CSOs. The NGO Act defined NGOs as “a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and services.”<sup>lviii</sup> The NGO Coordination Act was, therefore, “exclusionary as it assumed that if an organization is not governmental then it is an NGO.”<sup>lix</sup> More importantly, the Act described what organizations were not, not what they were.<sup>lx</sup>

The PBO Act on the other hand, defines a PBO as “a voluntary membership or non-membership grouping of non-partisan, non-profit making and which is- (a) organized and operated locally, nationally or internationally; (b) engages in public benefit activities in any of the Areas set out in the Sixth Schedule; and (c) is registered as such by the Authority.” The Act further defines a public benefit activity as “an activity that supports or promotes public benefit by enhancing or promoting the economic, environmental, social or cultural development or protecting the environment

or lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organizations.”

Some of the reasons that led to formulation of the PBO Act are as follows<sup>lxi</sup>:

- NGOs were dissatisfied with the legal regime enacted in 1992. It did not provide room for growth of organizations. For instance, there was no provision of opportunity for CSOs to engage in income generation as a way of achieving sustainability. This was a key consideration while formulating the PBO Act
- Even though the Kenyan political, social and economic situation has undergone changes over time, the law had remained the same and therefore was insufficient to deal with issues in the environment. For instance, NGOs felt there was need to enhance collaboration between government and CSOs but this collaboration could not be undertaken within the framework of the NGO Act
- The Non-Governmental Organizations’ Council, which had been put in charge of regulating the sector had largely failed in its functions. The Council itself had split into two parallel bodies causing confusion in the sector and contributing to conflicts within the sector
- There was victimization of CSOs especially those that dealt in human rights and governance related thematic areas. These organizations were often critical about the performance of government in key areas of governance. They did not enjoy good relationship with any government of the day because of their areas of operation. There was need for a law that would promote understanding of the work of these organizations as well as provide for their protection. This is where the broad issue of protection of human rights defenders falls
- The NGO Act gave too much discretion to the NGO Board. This discretion had not always been used positively for the benefit of the sector or society at large. There were cases where human rights NGOs

had been arbitrarily denied registration, among other grievances

- Grounds under which an organization may be denied registration were vague and ambiguous (Section 14 and 16)
- A lot of discretion was given to the NGO board and on exempting an NGO from registration .Section 10(4), and
- There was no time limit within the NGO board must act on the applications.

The PBO Act introduced a number of innovative sections to deal with the challenges above. Among the objects and purposes of the Act were to: (i) encourage and support PBOs in their contribution to meeting the diverse needs of the people of Kenya by, among others, creating a conducive environment for the growth of the PBOs sector and for the operations of the registered PBOs; (ii) give meaningful protection to the internationally recognized freedoms of expression, association, and peaceful assembly; (iii) promote the development of self-regulation among PBOs; (iv) promote compliance by PBOs with their legal obligations to exercise effective control and management over the administration of their activities and funding; (v) facilitate a constructive and principled collaboration between PBOs, the Government, business, donors and other actors in order to advance public interest; (vi) provide registration procedures, which are transparent, and which will facilitate establishment of PBOs while safeguarding freedom of association.<sup>lxii</sup>

According to a report of CSO dialogues in Kenya, full implementation of 2013 PBO Act would be a stepping stone for CSOs in Kenya as it enshrines self-regulation, disclosure and public accountability through the introduction of a PBO Regulatory Agency, creates a single identity and framework for voluntary migration of all PBOs, integrates the development, democracy and governance thematic sectors, encourages corporate and individual giving, tax exemption and domestic resource mobilization, establishes a new PBO Authority, Federation, Dispute Tribunal and Self-regulatory groups with parliamentary oversight, and establishes an administrative and regulatory framework within which PBOs can conduct their affairs, among others.<sup>lxiii</sup>

In terms of definition, the PBO Act departs significantly from the NGO Act. The NGO coordination Act was “exclusionary as it assumed that if you are not governmental then you are an NGO”<sup>lxiv</sup> while the PBO Act defines “Public Benefit Organization” as a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is organized and

operated locally, nationally or internationally; engages in defined public benefit activities; and is registered by the Authority. The PBO Act describes what a PBO does.<sup>lxv</sup>

There was a lot of resistance to commencement of the PBO Act. Several amendments were proposed. The amendments aimed to remove obligation by the government to provide “an enabling environment for PBOs”, to make compulsory the re-registration, regulation and control of all agencies doing public benefits work, and introduce a vague dual registration and ‘recognition’ process. They also sought to re-introduce a 15% cap on PBOs foreign funding and delete all clauses around corporate and individual giving. Finally, the amendments sought to remove public, judicial and parliamentary oversight in the appointment and management of the officials of the PBO Authority.<sup>lxvi</sup> CSOs challenged the amendments in court and secured a favorable ruling.<sup>lxvii</sup> The Act is yet to commence however.

The PBO Act’s other strengths are: that powers of the Authority to cancel or suspend registration of PBOs are limited to specific instances and are to be exercised in line with clear procedures, aimed at safeguarding PBOs (Section 18 and 19); that the powers and functions of the Public Benefit Organization Regulatory Authority are clearly stated (Part IV) and that there is a clear and straightforward criteria for registration of PBOs and a clear, explicit timeline for processing an application for registration (Section 6-13). Further, it is a requirement that an application has to be acted upon within 60 days (Section 9 (1)).<sup>lxviii</sup>

With regards to registration of PBOs, the PBO amendments by the ministry in charge of devolution and planning had sought to give the Regulatory Authority powers to periodically and with full discretion impose terms and conditions for the grant of certificates of registration, permits of operation and PBO status (Section 10A which contradicts PBO Act’s objectives section 3 (f)). This could have increased the amount of discretion on this body and invited the possibility of arbitrary application to the disadvantage of PBOs.

The NGO Coordination Act never imposed any limits on funding. The PBO Act maintained this position. However, the amendments sought by the authorities partly aimed to cap funding to CSOs. First, was the proposal that any funding of a PBO shall be made through the Federation and not by an individual member organization (Section 27 A (1)). Second, the amendments sought to limit foreign funding to PBOs to a maximum of 15% of its total funding (Section 27 A (2)). This provision could have resulted in the closing down of critical areas of service provision such as health and education, while governance CSOs would cease operations as the majorly rely on foreign funding. CSOs could have found it difficult to reach their constituencies

hence losing legitimacy.<sup>lxix</sup>

The Income Tax (Charitable Donations) Regulations, 2007<sup>lxx</sup>, provide a framework for individuals to make donations to charitable organizations. The amount of donation is deducted when computing one's income tax. The regulations define a charitable organization as, "a non-profit making organization established in Kenya and which, (a) is of a public character; and (b) has been established for purposes of the relief of poverty or

distress of the public, or advancement of education". The law is applicable to charitable organizations registered or exempt from registration under the Societies Act or the NGO, 1990, and whose income is exempt from tax under paragraph 10 of the First Schedule of the Income Tax Act, 2014, or to any project approved by the Minister for Finance. Though generally a positive development for charitable organizations, the limitations imposed by the Act make it difficult to apply to organizations that deal with governance and human rights advocacy.

**Table 3: Summary of key provisions of Kenya CSO law based on identified parameters**

<p><b>Definition</b></p>	<p><b>The NGO Coordination Act</b> - Assumed that all organizations that were not under government were NGOs regardless of their activities.</p> <p><b>PBO Act</b> - Gives a more elaborate definition - Describes what organizations under this Act should do (Section 2)</p>
<p><b>Registration and membership</b></p>	<p><b>NGO Coordination Act</b> - Conditions for denial of registration are vague and ambiguous (Section 14 and 16) - There is wide discretion given to the NGO board and the minister on exempting an NGO from registration [Section 10 (4)] - There is no fixed time within which the NGO board must act on applications</p> <p><b>PBO Act</b> - Gives Authority limited powers to cancel or suspend registration of PBOs and also clear procedures (Section 18 and 19) - PBOs are to be registered under the Public Benefit Organization Regulatory Authority(Part IV) - There is clear and straightforward criteria for registration of PBOs and timeline (Section 6-13)</p> <p><b>PBO Amendments</b> -Give the authority in charge powers to periodically and with full discretion impose terms and conditions for the grant of certificates of registration, permits of operation and PBO status (Section 10A which contradicts PBO Act's objectives section 3 (f))</p>
<p><b>Funding</b></p>	<p><b>NGO Act and PBO Act</b> - Did/does not impose any limits on funding</p> <p><b>PBO Amendments</b> - Any funding of a PBO shall be made through the Federation and not by an individual member organization (Section 27 A (1)) - PBO shall not receive more than 15% of its total funding from external donors (Section 27 A (2))</p> <p><b>The Income Tax (Charitable Donations) Regulations, 2007</b> - Provide a framework for individuals to make donations for charitable purposes. However, the limitations it imposes make it challenging to apply to organizations pursuing governance and human rights</p>



<p><b>Freedom of speech and expression (and other freedoms)</b></p>	<p><b>NGO Coordination Act</b> Does not mention any clear responsibilities of the government to NGOs in this regard</p> <p><b>PBO Act</b></p> <ul style="list-style-type: none"> <li>- Section 20 provides for freedom of association</li> <li>- Spells out the government’s responsibility to PBOs (Section 4) which includes creating an enabling environment for PBO activities</li> <li>- States that PBOs may engage freely in research, education, publication, public policy and advocacy (Section 66 and 67)</li> </ul>
<p><b>Protection of human rights defenders</b></p>	<p><b>NGO Coordination Act</b></p> <ul style="list-style-type: none"> <li>- Did not make reference to protection of human rights defenders</li> </ul> <p><b>PBO Act</b></p> <ul style="list-style-type: none"> <li>- Does not directly mention protection of human rights defenders</li> <li>- However, defense of human rights defenders can be construed from provisions assigning responsibility of creating an enabling environment for PBOs</li> </ul>



WFD and EACSOE hosted a two-day conference in March 2017 in Nairobi, Kenya, to explore barriers for civil society organisations in the region.

## 5.2. Uganda

Uganda’s Non-Governmental Organizations Act, 2016<sup>xxi</sup> was passed in parliament in November 2015 and assented to on 30<sup>th</sup> January 2016. It commenced on 3<sup>rd</sup> March 2016, replacing the NGO Registration Act cap. 113. Among others, the Act provides for the establishment of the National Bureau for Non-Governmental Organizations and its board of directors. The Bureau has a decentralized structure with regional offices. It also provides for an elaborate NGO monitoring system with District NGO Monitoring Committees (DNMCs) and Sub-County NGO Monitoring Committees (SCDNMCs). One out of seven of the members of the DNMCs is a representative of organizations in the

district. The rest are government bureaucrats working in the districts. The SCDNMC has five members. One of the members is a representative of organizations in the sub-county.

The law has its genesis in the controversy surrounding discussions and eventual passage of the Anti-Homosexuality Act in 2014. It was signed into law on 24<sup>th</sup> February 2014. A group of CSOs challenged the law in court and the Constitutional Court ruled against it on 1<sup>st</sup> August 2014 on the basis that it was passed without quorum. The subsequent introduction and passage of the NGO Act, 2016, was seen by some CSOs as an attempt by government to restrict CSO activity especially in regards to LGBT (Lesbian Gay

Bisexual Transgender). More broadly, it was seen as an additional layer to further constrict the voice of CSOs especially those that engage in good governance and human rights.<sup>lxxii</sup>

A positive aspect of the new law is that it creates a better registration regime (part VIII) than the former Act.<sup>lxxiii</sup> The NGO bureau (section 5 and 6) headed by an Executive Director is in charge of approving the registration of NGOs. This has created a seamless process of registration as opposed to the previous regime that took more time. It has made the process clear and straight-forward.<sup>lxxiv</sup> Under the previous law, registration of an NGO was approved by a board of directors who met once in a while hence elongating the registration process.<sup>lxxv</sup>

The major areas of concern are the establishment of a National Bureau for NGOs under section 5 that is granted broad powers, which under Section 7 includes the power to revoke an NGO's permit.<sup>lxxvi</sup> Under Section 39 (3)(b) there is a requirement to not only disclose sources of funding but also present work plans. The government reasons that "anyone who has nothing to hide wouldn't have a problem submitting these documents".<sup>lxxvii</sup>

The challenge on the part of CSOs is whether it is practical to require them to produce work plans. What happens in cases where a work plan is not fully implemented due to issues of funding? Will this not create a situation where government claims that an organization is not being transparent?<sup>lxxviii</sup> Organizations have no problem disclosing funding as this has always been part of reporting procedures. However, the way the issue has been debated in public suggests that organizations deliberately hide their funding sources. This has become a deliberate propaganda against organizations mainly to create some form of tension between them and the constituencies they serve by raising issues of credibility.<sup>lxxix</sup>

There is possibility of arbitrary application of the offences and restrictions (Section 40) against governance and human rights CSOs. Section 44 of the Act, on special obligations (a) prohibits an NGO from carrying out "activities in any part of the country unless it has received the approval of the DNMC (District Non-Governmental Monitoring Committee) and the local government of that area and has signed a memorandum of understanding with the Local Government to that effect". Further, an NGO (44(b)) may "not extend its operations to any new area beyond the area it is permitted to operate unless it has received a recommendation from the Bureau through the DNMC of that area". Again, it is a requirement that an NGO (44(g)) shall "be non-partisan and not engage in fundraising or campaigning..." and generally political issues. It however says nothing about who would decide whether an activity is partisan or non-partisan, or political for that matter, thus raising concern over arbitrary application.<sup>lxxx</sup>

Under 44(h), the Act requires an NGO to "have a memorandum of understanding with its donors, sponsors, affiliates, local and foreign partners, if any, specifying the

terms and conditions of ownership, employment, and resources mobilized for the organization and any other relevant matter". This section contradicts the Protection of Personal Liberty (section 23) of the Constitution.<sup>lxxxi</sup> Section 45 (a) (iii) states that while registering an NGO one must produce a document "indicating the period for the replacement of its foreign employees with qualified Ugandans". Government seems to be worried about foreign employees. It may have suspicions that they serve interests that are inimical to the interests of the Ugandan State.<sup>lxxxii</sup>

The Public Order Management Act, 2013<sup>lxxxiii</sup> compounds the situation of CSOs in Uganda particularly those dealing with governance and human rights. The law, which was assented to on 27<sup>th</sup> October, 2013, provides for the regulation of public meetings; the duties and responsibilities of the police, organizers and participants in public meetings, and provides measures for safeguarding public order. The law defines public meetings as "a gathering, procession, assembly, or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning, or expressing views on a matter of public interest."

The law gives too much power to the police who in the first place take their time when it comes to granting permission for requests on meetings. Even then, permission may be denied without any reasonable explanation.<sup>lxxxiv</sup> According to section 6(3) "where the authorized officer notifies the organizer or his or her agent that it is not possible to hold a proposed public meeting on the date or at the venue proposed, the public meeting shall not be held on that date or at that venue. Under Section 8 (1) the responsible officer has powers to "stop or prevent the holding of a public meeting where the public meeting is held contrary to the Act", and (2) "...order for the dispersal of the public meeting, as are reasonable in the circumstances." The law generally contradicts Article 29 (1) (d) of the Constitution, which guarantees "freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition..." and Article 43 on general limitation on fundamental and other human rights and freedoms of the constitution.<sup>lxxxv</sup>

In its analysis of the Act, Article 19 notes the following shortcomings in terms of addressing issues of the rights to freedom of expression and freedom of assembly:

- That the Act fails to establish a presumption in favor of freedom of peaceful assembly or the duty on the state to facilitate peaceful assemblies
- It establishes a *de facto* authorization procedure for peaceful assemblies that is unnecessarily bureaucratic with broad discretion for the state to refuse notifications
- Prohibits public meetings at and around "democratic institutions" such as Parliament and Courts
- Allows the interior minister broad powers to designate "gazetted" areas where assemblies are absolutely prohibited<sup>lxxxvi</sup>

**Table 4: Summary of key provisions of Uganda CSO law based on identified parameters**

<b>Definition</b>	<b>NGO Act 2016</b> - Definition of a foreign organization, indigenous organization, international organization and organization (Section 3)
<b>Registration and membership</b>	<b>NGO Act 2016</b> - Presence of a bureau as opposed to the earlier board of directors hastens the process (section 5 and 6) - National Bureau for NGOs has the power to revoke permit of an NGO (section 7) - Foreign employees replacement with qualified Ugandans [section 45(a)(iii)]
<b>Funding</b>	<b>NGO Act 2016</b> - Disclosure of sources of funding and work plan [section 39(3)(b)]
<b>Freedom of speech and expression (and other freedoms)</b>	<b>NGO Act 2016</b> - Restriction on areas of operation and activities to be undertaken (section 44)  <b>Public Order Management Act, 2013</b> - Restricts assemblies and gives too much power to the police
<b>Protection of human rights defenders</b>	- No direct provision

### 5.3. Tanzania

The United Republic of Tanzania is made up of Tanzania Mainland and Zanzibar. The main laws that govern CSOs are the Non-Governmental Organizations Act, 2012<sup>lxxxvii</sup> applicable in Mainland Tanzania and the Societies Act, no. 6 of 1995 applicable in Zanzibar. Other laws under which CSOs are registered are The Societies Ordinance, 1954 (Cap. 337), The Trustees Incorporation Act, 1956 (Cap. 318), and the Companies Ordinance. The fact that CSOs are registered under different legal frameworks poses a challenge when it comes to change in directives as organizations are uncertain whether the directives apply to all of them or those registered under the particular legal framework.<sup>lxxxviii</sup>

The NGO Act defines an NGO as “a voluntary grouping of individuals or organizations which is autonomous, non-partisan, non-profit making, which is organized locally at grassroots, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting the environment, lobbying or advocating on issues of public interest of a group of individuals or organizations, and includes a Non-Governmental Organization, established under the auspices of any religious organization or faith propagating organization, trade union, sports club, political party, or Community

Based Organization; but does not include a trade, union, a social club or a sports club, a political party, a religious organization or a community based organization.” The Act further defines public interest as “all forms of activities aimed at providing for and improving the standard of living or eradication of poverty of a given group of people or the public at large.”

The law provides for the appointment of the director for NGOs Coordination, a presidential appointee who is also the Registrar of NGOs and the official link between NGOs and the Government. The director operates under the direction of the Non-Governmental Organizations Coordination Board established under section 6 of the Act. The Board has overall powers to approve registration of NGOs, to facilitate the implementation of the national NGOs policy, to facilitate and coordinate activities of NGOs, to approve application for registration or certificate of compliance, to direct suspension or cancellation of any NGOs, to examine the annual reports of NGOs, and to provide policy guidelines to NGOs for harmonizing their activities in the light of the national development plan.

Registration for each NGO must be approved by the National NGO Coordination Board [Section 7 (1) (a) and (d)] which also has the mandate “to facilitate and coordinate activities of Non-Governmental Organizations (c) and when need arises “to direct suspension or



cancellation of any Non-Governmental Organization; (e) Section 11 (3) allows an NGO registered or established under any other written law to “apply to the Registrar for a certificate of compliance” for which no fee would be charged. Section 14 (1)(a) states that an NGO seeking registration may be denied registration if “the activities of a Non-Governmental Organizations are not for public interest or are contrary to any written law...”

The NGO Act does not impose restrictions on funding. Section 32 allows NGOs registered under this act “to engage in legally acceptable fund raising activities.” This may be taken to mean any funding obtained in a way that does not contravene the law or other laws. The law does not put any caps on funding or the uses to which funds may be put.

The Societies Act (Act no. 6 of 1995) in Zanzibar, defines a Society as “any society for the time being registered under this Act, but does not include a society the registration of which is for the time being suspended, cancelled or revoked but may, where appropriate, include unregistered society applying for registration”. The definition does not say what societies are and what they do and the emphasis seems to be placed only on the fact of their registration under the law. The law also contains elaborate provisions on “unlawful” societies which include discretionary powers of the minister in charge of societies to declare societies unlawful. There are also elaborate provisions pertaining to the penalties for those found to engage with unlawful societies. Managing unlawful societies and being members of unlawful societies are among the many offences described by the law.

Further provisions of the Act include those relating to registration, the conduct and administration of societies, financial, property and investment provisions, and special provisions for religious societies. The law provides for the appointment of the Registrar of Societies by the Minister in charge of societies. Societies seeking registration are required to apply within 28 days of being founded and cannot operate without registration. No timeline is given within which the registrar is required to conclude the registration process. However, the law allows associations denied registration a period of 21 days to appeal to the High Court. Elaborate provisions exist describing the conditions under which registration can be denied or cancelled. Some of these grounds may be subject to arbitrary interpretation and application. A good example is the condition that allows the minister to deny registration if it “appears to him that the society is being used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good governance”.

Societies are allowed to invest funds in their custody as long as a decision to invest is made by a two-thirds majority of the trustees. Funds can be invested in

the following among other instruments; in the saving or fixed account in any licensed banker operating in Tanzania; (b) in purchasing Government or other public securities; and (c) in purchasing or developing real property. There is no provision that limits the uses to which funds generated through investments can be put. This creates the possibility that a society can secure institutional and programmatic sustainability.

The Constitution of Tanzania guarantees various freedoms including the freedom of expression. According to Article 20(1), “Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.” Article 18 guarantees freedom of expression. Respect for these constitutional provisions came into question with the banning of the *East African* regional newspaper. The initial reason given for the ban was that there were questions about the registration of the newspaper in Tanzania. However, other sources claimed that the real reasons had to do with government’s discomfort with the newspaper’s reporting and analysis including the opinion pieces it carries. It was accused of harboring a negative agenda for Tanzania.<sup>lxxxix</sup>

The police have also been shown to have powers that can impinge on the freedom of assembly. All assemblies require police approval and critical political demonstrations are at times actively discouraged.<sup>xc</sup> In March 2015, police banned a protest they had initially approved that would have criticized the government for failing to protect albino Tanzanians from violence. Police issued a letter to demonstrators claiming “an investigation had uncovered the possibility of an outbreak of violence and a breach of peace during the protest” as the reason for the ban.<sup>xcii</sup> In September 2016, Tanzania threatened to ban NGOs that “promote” the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people.<sup>xciii</sup>

The Cybercrimes Act, 2015, is another piece of legislation that has been criticized for impinging on CSO operating space as well as the media. CSOs argue that the law might criminalize some of their activities. Part IV, for instance, gives police and law enforcement officers the right to “enter into any premise and search or seize a device or computer system (and) secure the computer data accessed” if he or she has “reasonable grounds to suspect or believe that a computer system may be used as evidence in proving an offence”.<sup>xciii</sup> Even though only remotely connected, the October 2015 police action against the Tanzania Civil Society Consortium on Election Observation (TACCEO), where 28 computers and 26 mobile phones were confiscated and 36 data clerks arrested, is an indication of the kind of actions this law can spur.<sup>xciv</sup>



**Table 5: Summary of key provisions of Tanzania CSO law based on identified parameters**

<b>Definition</b>	<p><b>NGO Act 2002</b> - NGO and public interest are defined in part I</p> <p><b>Societies Act (Zanzibar)</b> - Law defines societies, unlawful societies and registered societies</p>
<b>Registration and membership</b>	<p><b>NGO Act 2002</b> - NGO Coordination Board approves registration for each NGO [Section 7 (1) (a) and (d)] - NGO Coordination Board suspends and cancels NGOs (e) - NGO under any other written law could apply for a compliance certificate [section 11 (3)] - Denial for registration [section 14(1)(a)]</p> <p><b>Societies Act (Zanzibar)</b> - Membership is implied. Associations are required to keep a register of members, which include date of admission to membership</p>
<b>Funding</b>	<p><b>NGO Act 2002</b> - Allowed to engage in legally acceptable fundraising activities (section 32) - Does not impose restrictions</p> <p><b>Societies Act (Zanzibar)</b> - Raising of funds by association is implied - Law requires association to keep “one or more books of account in which shall be entered details of all moneys received and payments made by the society”. - Law allows the association to invest funds</p>
<b>Freedom of speech and expression (and other freedoms)</b>	<p><b>NGO Act 2002</b> - NGO council to represent respective interests of NGOs (section 25)</p>
<b>Protection of human rights defenders</b>	<p>- No direct provision</p>

## 5.4. Burundi

The law governing registration of CSOs, the *Decret-loi No1/011 du 18 avril 1992 Portant Cadre Organique des Associations Sans But Lucratif*, was first put in place in 1991. It was reviewed in 1992. The objective of the law is to “govern the organization and functions of all non-profit making associations that are (currently) not amenable to any law”.<sup>xcv</sup>

According to the law, a non-profit making association is “one which does not engage in commercial and/or industrial activities, and whose principle objective is not to make material or pecuniary profit for its members”.<sup>xcvi</sup> Though they are non-profit, organizations are allowed to engage in “certain commercial activities aimed at facilitating the realization of their objectives.”<sup>xcvii</sup> This is a positive development that may improve sustainability of organizations.

The law sets out an administrative structure for CSOs. This comprises the General Assembly as the ultimate decision-making body, an Executive Committee nominated by the General Assembly whose work is to run the organization on a day to day basis and a legal representative nominated by the Executive Committee.

Registration of associations is undertaken by the Ministry of Home/Internal Affairs. Through the law, both individual CSOs and coalitions can be registered. Requirements include (i) that founder members must not have criminal records, (ii) that this is ascertained through production of judicial certificates showing they have no criminal records, (iii) presentation of a constitution outlining the objective of the association, (iv) stating the field in which the organization shall work, and (v) showing that the organization seeking registration shall be a non-profit organization. Applications for registration

are analyzed by a technical committee of the Ministry of Home/Interior which advises the minister whether or not to register an organization. Upon registration, an organization is issued with a certificate of registration.

Among others, the law also requires foreigners or foreign based organizations to be registered to operate in the country.<sup>xcviii</sup> However, the registration of international organizations follows a different procedure. They first apply for registration with the Ministry of Foreign Affairs then apply for registration (“recognition”) with the parent ministry under which their work falls.<sup>xcix</sup>

Under the *Decret-loi No1/011 du 18 avril 1992 Portant Cadre Organique des Associations Sans But Lucratif*, the Home/Interior Affairs Minister can deregister an organization. However, the decision to deregister is not only the ministers to make; it is taken in consultation with the technical committee of the Ministry in charge of non-profit organizations.

The following shortcomings were noted in regard to *Decret-loi No1/011 du 18 avril 1992 Portant Cadre Organique des Associations Sans But Lucratif*:

- The law does not specify the time that the minister should take before acting on an application. This gives too much discretion to the minister. Organizations have often registered their complaints regarding the long periods of time it takes to secure registration
- All registration processes are centralized in Bujumbura making it difficult for organizations or individuals who may not have the resources to reach the capital to exercise their right to register organizations

Amendments to the *Decret-loi No1/011 du 18 avril 1992 Portant Cadre Organique des Associations Sans But Lucratif* were effected in 2015 after the eruption of violence caused by third term issue. According to some CSO leaders, the regime took advantage of the fact that most CSO leaders were in exile to effect the changes. Earlier attempts to introduce the changes in 2013 had not been successful.<sup>c</sup>

Contentious requirements introduced by the changes include annual renewal of certificate of registration, which CSOs fear could make it difficult for them to have long term plans as they would be uncertain of continuing with operations. In the current circumstances in which CSOs and their leaders are viewed as opposition, it is postulated that the government may take advantage of this and deny renewal to CSOs that are critical of the regime.<sup>ci</sup>

The requirement that CSOs bank accounts with the central bank instead of commercial banks is seen as

an attempt by the government to maintain constant surveillance on the finances of CSOs. Whereas under the old law CSOs could freely form coalitions (with coalitions being registered as such) a new requirement that CSOs can form coalitions only with organizations working in the same sector limits freedom of association. For example, CSOs working on child rights cannot partner with those working on anti-corruption or gender. Fourthly, the minister for home affairs has the power to ban civil societies. Before, he could only suspend an organization for a maximum of two months. Fifth, CSOs are not allowed to comment, write or go anywhere without informing the authorities. This means that even the media is not allowed to print anything without approval.<sup>cii</sup> As a general concern, CSOs that seem to work ‘against’ the government such as those involved in democratic governance are discriminated against.<sup>ciii</sup>

Burundi has a history of arresting and detaining human rights activists. Examples are given of the October 1997 and March 2007 arrest and detention of the president of the teachers trade union because of her union activities, the arrest and detention of the president of OLUCOME in 2004 and 2006 because of release of reports on corruption in government departments and the arrest and detention of the president of CIVIC, an NGO.<sup>civ</sup> Defense of human rights defenders has clearly never been a priority.

The conflict that started in 2015 on the issue of the third term only exacerbated the situation. The president’s announcement that he would stand for a third term led to a campaign by CSOs called *Halte au Troisieme Mandat* (stop the third term), which brought together over 300 CSOs and was supported by the leadership of the Catholic Church.<sup>cv</sup> Many people, including political opponents, civil society activists, journalists and ordinary citizens, have had to flee the country amid widespread allegations of torture, disappearances and murder.<sup>cvi</sup> However, the National Commission on Human Rights in Burundi released a report claiming that 25 organizations had gathered to organize the ‘insurrection’. It recommended the prosecutor general to prosecute these organizations and their legal representatives.<sup>cvii</sup>

On 23<sup>rd</sup> November 2015, the Prosecutor General addressed letters to commercial banks instructing them to make available bank statements for individuals and the organizations. The accounts were frozen and out of the 25 organizations mentioned in the National Commission report, 10 were suspended.<sup>cviii</sup> In October 2016, 5 of the 10 suspended organizations were banned<sup>cix</sup> while Ligue ITEKA was added to the list on 22<sup>nd</sup> December 2016. It is noteworthy that no formal letters were addressed to these organizations with most of them getting communication through the media, including social media. Government sources claimed

they were banned on grounds that they were “disturbing the peace of the country” and “portraying poor images of war in the country.”<sup>cx</sup>

The government controls all the media in such a way that it is difficult for the outside world to know what is going on inside the country. Some civil society leaders expressed the view that the leadership of National Commission on Human Rights in Burundi has been compromised and sides with the government. NHRC

once challenged Amnesty International for investigating the existence of mass graves in the country. The Commission also denied the existence of torture and disappearances.<sup>cx</sup>

The National Council of Communication, which controls content and format of broadcasting, once threatened to shut down a radio station called ‘Isanganiro’ because it played a song that displeased the government.<sup>cxii</sup>

**Table 6: Summary of key provisions of Burundi CSO law based on identified parameters**

<b>Definition</b>	<b>NGO (Amendment) Act</b> - Annual renewal of certificates
<b>Registration and membership</b>	<b>NGO (Amendment) Act</b> - Minister for home affairs has the power to ban NGOs and not just suspend them as before.
<b>Funding</b>	<b>NGO (Amendment) Act</b> - NGOs indicate source of funding - NGOs open bank accounts with the central bank
<b>Freedom of speech and expression (and other freedoms)</b>	The Constitution provides for freedoms of assembly and association; however, a 2013 law on public gatherings imposes restrictions on the right to assemble, including a one-day limit on the duration of demonstrations. The law holds the organizers of public gatherings liable for any legal infractions by participants and allows authorities to interrupt or cancel gatherings that pose a risk to public order <sup>cxiii</sup>  <b>NGO (Amendment) Act</b> - NGOs are to form coalitions in which they would work within and not step outside their thematic area. - CSOs are not allowed to take any actions without informing the authorities (also applies to media).
<b>Protection of human rights defenders</b>	

## 5.5. Rwanda

A number of changes were made to Rwandese law guiding the work of CSOs in 2008. The Organic Law no. 55/2008 of 10/09/2008 was enacted following extensive consultations.<sup>cxiv</sup> However, according to Civic Freedom Monitor, Rwanda, there has been inadequate implementation of the law hence the difficulty of assessing its impact. The main laws and regulations affecting civil society include:

- Organic Law 55/2008 of 10/09/2008 Governing Non-Governmental Organizations; (repealed by Organic Law 10/2012 of 15/01/2013)<sup>cxv</sup>
- Law Number 04/2012 of 17/02/2012 Governing the Organization and Functioning of National Non-Governmental Organizations;

- Law Number 05/2012 of 17/02/2012 Governing the Organization and Functioning of International Non-Governmental Organizations<sup>cxvi</sup>

Law 04/2012 of 17/02/2012 Governing the Organization and Functioning of National Non-Governmental Organizations<sup>cxvii</sup> defines an NGO as “an organization which is comprised of natural persons or of autonomous collective voluntary organizations whose aim is to improve economic, social and cultural development and to advocate for public interests of a certain group, natural persons, organizations or with the view of promoting the common interest of their members.” In Article 3, Public interest organizations are defined as organizations that “...carry out activities in the development of various sectors including civil society, economy, social welfare, culture, science and human rights.”

In terms of registration, Article 16 states that the

“Rwanda Governance Board (RGB) shall be the authority in charge of registering, granting legal personality and monitoring of the functioning of national non-governmental organizations.” Article 17 stipulates that a “temporary certificate of registration issued to national non-governmental organizations shall be valid for a period of twelve (12) months. A national non-governmental organization shall apply for legal personality nine (9) months after the issue of the temporary certificate.”

National NGOs may be denied a temporary certificate of registration or grant of legal personality for failure to comply with the “registration requirements provided by law” or “convincing evidence that the organization intends to jeopardize security, public order, health, morals or human rights” (Articles 20 and 24). Article 31, 32 and 33 give provisions on warning, temporary and final suspension of an organization if an NGO “does not cease to be wrongful and does not explain to the competent authority the reasons thereof...” In article 33, final suspension may be given “where the organization jeopardizes security, public order, health, morals and human rights.”

A positive aspect in the law regarding funding is the creation of room for income generation by NGOs. In Article 4, an NGO “may conduct commercial activities only when it is authorized to do so and the profit from such activities is meant to be used in activities related to its objectives.” The requirement for authorization in this case could portend challenges for organizations that do not enjoy good relations with the government of the day. Provision of funding for NGOs by government is also a positive inclusion. In Article 12, “The government shall include in its national budget funds meant for supporting national non-governmental organizations” whereby “an order of the minister in charge of national non-governmental organizations shall specify modalities for granting such support”.

The only legal limitation on funding relates to instances where organizations fundraise to support political causes. In Article 13, an NGO “shall not be allowed to engage in fundraising or organize public rallies with an intention to support any political organization or any independent candidate campaigning for a political office, registration or any other way to support candidates for public office”. Article 28 states the rights of a national non-governmental organization in particular (2) “to advocate, protect and promote human rights and other national values;” and (3) “to express opinions and views on national policies and legislation.” But the exercise of this right might be limited in the Rwandan situation. According to the Joint Assessment Report, most CSOs in Rwanda are engaged in service delivery or religion-related activities though; still very few are engaged in policy advocacy and oversight of the government.<sup>cxviii</sup> Also, there are limits to the extent

to which INGOs can take part in advocacy. According to Article 17 of 05/2012 on INGOs, an INGO has a right “to advocate within its activities”. This limits the space for involvement in broader issues of governance.

Law 05/2012 of 17/02/2012 Governing the Organization and Functioning of International Non-Governmental Organizations<sup>cxix</sup> defines an INGO as “an organization that was established in accordance with foreign laws and the objective of which is related to public interests.” Article 6 of the law puts The Directorate General of Immigration and Emigration in charge of the registration of INGOs as well as “monitoring their functioning”. On requirements for registration, Article 7, paragraph 2 states that “An order of the Minister in charge” of INGOs “may determine additional requirements for registration...” This may be subject to arbitrary application. Article 9 provides for reasons for refusal to issue a certificate, including “failure to fulfill requirements for registration prescribed in this law” or “convincing evidence that the organization seeking registration may jeopardize security, public order, health, morals or human rights.” Article 24, 26 and 27 gives provisions on warning as well as temporary and final suspension of an INGO.

The single restriction on funding regards expenditure by INGOs. Article 18 (4) states that an INGO must “not exceed 20% of its budget on overhead costs in programs that are not in the interest of its beneficiaries.” Any intending to do so shall provide “explanations in writing, to The Directorate General of Immigration and Emigration.” Some CSO leaders reason that the 20% cap is reasonable. “The ‘20%’ limit on overhead costs of INGOs is due to the fact that INGOs used to use so much money on administrative costs which would mean that about 70% of the budget goes back to their country. A good example is in the hiring of too many expatriates. The government put the restriction to ensure that a good amount of money funds local NGOs and developmental work in Rwanda.”<sup>cxix</sup>

The Constitution of the Republic of Rwanda (2003; revised 2015) guarantees various freedoms. Article 37 ensures “freedom of thought, conscience, religion, worship and public manifestation thereof” is guaranteed. Notably, propagation of ethnic, regional, racial discrimination or any other form of division is punished by law.<sup>cxix</sup> According to Article 34, “Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honor, good reputation and the privacy of personal and family life. It is also guaranteed so long as it does not prejudice the protection of the youth and minors. The conditions for exercising such freedoms are determined by law.”<sup>cxix</sup>

According to Article 38, “Freedom of press, of expression and of access to information are recognized and guaranteed by the State.” Further, “Freedom of



expression and freedom of access to information shall not prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honor and dignity and protection of personal and family privacy. Conditions for exercising and respect for these freedoms are determined by law.”

Even though there are numerous radio and TV stations in Rwanda, many restrictions to freedom of speech exist and pro-government views still dominate domestic media.<sup>cxixiii</sup> The suspension of the BBC’s Kinyarwanda broadcasts minimizing the 1994 genocide was seen by activists as an affront to freedom of speech. However, according to one source, many Rwandans thought that the documentary which led to the ban, titled, *Rwanda’s Untold Story*, was an affront to the memory of the genocide victims.<sup>cxixiv</sup>

Particular concern has also been expressed in regard to the laws on divisionism and genocide ideology, which have the potential to constrain the activities of CSOs. According to the UN Special Rapporteur on freedom of association and peaceful assembly, Organic Law 01/2012/OL (particularly articles 136, 451 and 463), as well as Law 84/2013 on the crime of genocide ideology and Law 47/2001 on the crime of discrimination and sectarianism - all of them contained in the Penal Code - are ‘overly broad and open to abuse with a view to limiting any opposition, even moderate and peaceful, to the Government’.<sup>cxixv</sup> Article 19 has specifically urged the Government of Rwanda to review these laws and to decriminalize defamation.<sup>cxixvi</sup>

**Table 7: Summary of key provisions of Rwanda CSO law based on identified parameters**

<b>Definition</b>	<p><b>Law 04/2012 on National NGOs</b> - Defines an NGO (article 2) and public interest organization (article 3).</p> <p><b>Law 05/2012 on International NGOs</b> - Definition of an I/NGO (article 2)</p>
<b>Registration and membership</b>	<p><b>Law 04/2012 on N/NGOs</b> - Rwanda Governance Board is the authority in charge (Article 16) - NGOs need temporary certificates then after 9 months may apply for legal personality (Article 17) - Denial of a temporary certificate registration or grant for legal (Articles 20 and 24) - Warning, temporary and final suspension (Article 31, 32 and 33)</p> <p><b>Law 05/2012 on I/NGOs</b> - The directorate General of Immigration and Emigration is the authority in charge (Article 6) - I/NGOs Registration requirements (Article 7) - Reasons for denial of a certificate (article 9) - Provisions on warning, temporary and final suspension of an I/NGO. (Article 24, 26 and 27).</p>
<b>Funding</b>	<p><b>Law 04/2012 on N/NGOs</b> - Authorized commercial activities may be conducted to fundraise for the operation of the NGO. (article 4) - Budget allocation by government to funding NGOs. (article 12)</p> <p><b>Law 05/2012 on I/NGOs</b> - no exceeding 20% of budget on overhead costs in programs that are not in the interest of its beneficiaries [article 18(4)]</p>
<b>Freedom of speech and expression (and other freedoms)</b>	<p><b>Law 04/2012 on N/NGOs</b> - No supporting of political organization or candidates for political office. (article 13) - Rights of a N/NGO (article 28)</p> <p><b>Law 05/2012 on I/NGOs</b> - Rights of I/NGOs (article 17)</p>
<b>Protection of human rights defenders</b>	<p>- No direct provision</p>

## 5.6. South Sudan

The political context of South Sudan is mainly characterized by the civil war that broke out in December 2013. Operations of civil society are therefore constricted by this reality. However, some civil society leaders believe that the trend towards limited civic space had begun even before the conflict. Human rights defenders and journalists have continued to face harassment, arrest and detention for reporting and conducting advocacy on issues that state actors deem to be contrary to their interests.<sup>cxxvii</sup>

There are two main laws that govern CSOs in South Sudan. These are the Non-Governmental Organizations Act and the Relief and Rehabilitation Commission Act, both of 2016. Both laws were enacted and signed into law at the same time. Broadly, the NGO Act, which repealed the Non-Governmental Act, 2013, outlines the principles and objectives of voluntary and humanitarian work, provides for the procedure of registering NGOs, monitoring and evaluation of NGOs, employment by NGOs and ceasing of operations of NGOs.

The law provides definitions for a CSO, an NGO, a national and international NGO and a Community Based Organization. A CSO, according to the law, is “a Non-Governmental and a Non-Profit Organization that has presence in the public life, expressing the interests and values of their members or others, based on ethical, cultural, scientific, religious or philanthropic consideration”.<sup>cxxviii</sup> An NGO is a non-profit voluntary organization formed by two or more persons, not being public bodies, with the intention of undertaking voluntary or humanitarian work. A national NGO is “any National Non-Governmental Organization registered in accordance with section nine of the (NGO) Act. An INGO is “any non-governmental or semi-governmental organization established in a foreign country and registered in South Sudan in accordance with section 9 of the (NGO) Act”. Further, it defines a Community Based Organization as “a public or private, non-profit including religious entity, which is representative of a community, or a significant segment of a community, and is engaged in meeting human, educational, environmental or public safety community needs.”

The Relief and Rehabilitation Act, 2016, establishes the Relief and Rehabilitation Commission (RCC) with the key mandate of registering NGOs. Other mandates include raising awareness of the ‘correct concept’ of humanitarian work, deploying NGOs to areas of need in South Sudan, working with the relevant ministry to coordinate relief, repatriation, rehabilitation, and reintegration of internally displaced persons and returnees, training in the management of disasters at all levels and to mobilize resources, formulate and develop comprehensive measures to address disasters.

There is discomfort among CSO leaders with the fact that the law talks about coordination but does not explain what it entails. Similarly, the requirement of monitoring and evaluation of NGOs poses challenges for CSOs for its ability to be applied arbitrarily. Secondly, the law seems to dwell a lot on the aspect of humanitarian work. Section 7 of the Act, on objectives of NGOs, for example, is overly narrow and does not adequately cater for NGOs/CSOs that focus on governance and accountability issues and carry out advocacy. Even though the focus on humanitarian work is important in view of on-going conflict and the state of development and levels of poverty in South Sudan, CSO leaders opine that advocacy work is equally important in making the government accountable to its citizens. As a matter of fact, critics point out that this is an attempt by government to limit NGO work to delivery of humanitarian assistance only.<sup>cxxix</sup>

Even though many of the requirements for registration of NGOs are not limiting, some are subject to arbitrary application. These include requirement (v) “areas of operation for new organization to be agreed on”, and requirement (vii) “all known or probable sources of funding”. It is not possible to know all sources of an organizations funding whether the organization is a new one or has been in operation. Funding dynamics change all the time. The requirement for agreeing on areas of operation seemed to be pegged on the idea that all organizations will be working around humanitarian issues. It therefore does not consider the possibility of an organization carrying out work of an advocacy nature, which may not be geographically defined or limited.

Some of the conditions that may lead to refusal to register an organization are vaguely stated as to invite conflict between CSOs and the registering authorities. The best illustration of this is the principles under section six, for example, subjective interpretation of the principle, “fairness in selection of geographical areas for allocation of projects,” could open up windows for conflict since the law does not say what fairness means in this case.<sup>cxxx</sup> It is on record that at the end of the period of re-registration of organizations under the new Act, the RCC wrote to several organizations informing them that they would be shut down for being “political and not humanitarian”. This action not only demonstrated the arbitrariness with which some of the provisions of the law could be applied, but also cast doubt on the overall intention of the legislation.

Some of the mandates of the RRC are also worded in a way that could invite varied interpretation as to their exact meaning. For example, the chairperson of the RCC has powers to “direct” the operations of NGOs. S/he can also “supervise, monitor and evaluate the activities of NGOs”. Thirdly, s/he has the role of organizing and coordinating the work and programs

of the organizations with geographical and sectorial limits”. These roles are capable of misinterpretation and are therefore open to arbitrary application and interpretation.<sup>cxxxix</sup>

NGOs just have to file an application at the RRC and get one certificate, which is different from before as NGOs had to get a certificate from the Ministry of Justice and the RRC which meant having two certificates”.<sup>cxxxix</sup>

Some CSO leaders admit that the new law has improved some aspects of registering organizations. “Today,

**Table 8: Summary of key provisions of South Sudan CSO law based on identified parameters**

<b>Definition</b>	<b>NGO Act 2016</b> -CSOs, National NGOs and International NGOs are defined. (section 5)
<b>Registration and membership</b>	<b>NGO Act 2016</b> - NGOs’ Requirements for registration (section 9) - Section [9(1) (b) (x)] mentions a prescribed fee (no specifics on range) - Section [9(1) (b) (xi)] –copy of country agreement with government of South Sudan - Not less than 80% of the employees are to be South Sudanese nationals. [Section 18(2)(c)]  <b>RRC Act 2016</b> - The Relief and Rehabilitation Commission has the function to “register and license NGOs. [section 7(2)] - Rejection or revoking of registration of NGOs [Section 20(1)(c)]
<b>Funding</b>	<b>NGO Act 2016</b> - All known or probable sources of funding for the organization [9(1)(b)(vii) - NGOs are to open bank accounts in South Sudan [Section 9(1) (b) (xiv)]
<b>Freedom of speech and expression (and other freedoms)</b>	<b>NGO Act 2016</b> - Areas of operations for new organizations to be agreed upon [section 9(1)(b)(v)]  <b>RRC Act 2016</b> - The commission would be involved in direct deployment of NGOs to areas of need in South Sudan [Section7(3)]
<b>Protection of human rights defenders</b>	-No direct provision

## 6. SUMMARY OF FINDINGS

This review established that the space for civil society work in the EAC region is shrinking. Out of the 12 key informants interviewed, only one gave a contrary view, giving the large numbers of organizations registered as an illustration of opening space.<sup>cxxxiii</sup> The shrinkage is being effected mainly through laws that accomplish a number of things: limiting the amount of donor (external) funding that an organization can get, limiting both the geographical and thematic reach/operations of organizations, defining the mandate of organizations narrowly and limiting or undermining their governance and advocacy roles in favor of service provision, for instance, in the humanitarian area. In at least one country, the government has made an attempt to set up a fund for civil society and to commit some minimal resources to it. The idea in this case is to interest donors to also put their funds in one basket. This has not achieved success yet. One possible reason for this is discomfort on the part of donors as to the possible impact of government control of donor funds on civic space.

There are various concerns that governments in the EAC region harbor, which could explain the trend of closing civic space. These include concerns over the agenda pursued by organizations that operate on funds provided by foreign donors, 'infiltration' by mainly foreign workers employed by both national and international organizations, propagation of practices considered 'foreign' such as homosexuality, the "political" role that advocacy organizations play at the national level and flow of information which could incriminate some leaders in crimes especially in countries experiencing conflict.

Civil society on the other hand has engaged different strategies in attempts to enhance the civic space. These are (i) through litigation including in the East African Court of Justice (EACJ), (ii) through petitions and protests at country level, (iii) by working closely with institutions such as parliament to draft and advocate for better laws, and, (iv) by developing closer working relationships with government departments. In Kenya and Uganda, for instance, CSOs engaged institutions of the state in coming up with new laws: the PBO Act in Kenya and the NGO Act in Uganda. However, in both

cases the success of the initiatives remains contested. In Kenya, the PBO Act has never been implemented since it was enacted in 2013. The new regime that came to power in that year's election opted to amend the law before implementing it leading to conflict with CSOs. In Uganda, CSOs still harbor reservations about the law that was eventually passed. The enactment of other laws that restrict certain freedoms has further compounded the situation.

CSOs are concerned that the actions of governments in the region could lead to the demise of many organizations since many of them depend on donor funds. This could undermine accountability of governments to their populations. They cite widespread infringement on the rights of citizens, misuse of resources and corruption as some of the reasons which necessitate their interventions. They claim that in the absence of their interventions, more abuses could happen.<sup>cxxxiv</sup>

The following were cited as benefits of having a regional law for CSOs:

- (i) Increased credibility: a regional CSO law will lead to further recognition of the role of CSOs in the EAC region. It would therefore increase the credibility of organizations and their work regionally and at national levels.
- (ii) Improved collective voice: by creating a common framework of operations through the region, the law will boost cooperation and networking of CSOs in the region and therefore give them collective voice. This will be useful not only at the regional level, but also at the national level. Advocacy organizations would especially benefit since it will be easier to use regional CSO platforms to give strength and protection to organizations at national level. A collective voice in this manner will make CSOs stronger and more influential.
- (iii) Improved conditions and investment in capacity building: capacity building of CSOs would be enhanced both through opportunities for technical training and advancement of skills at a regional level, but also through peer learning. A clearer understanding of regional trends in CSO work would



help organizations to utilize regional platforms for advocacy and other work.

- (iv) Improved protection and security of human rights defenders: building platforms for collective action in the region will boost the security of individual organizations at country level. Sharing of lessons and peer learning in the region will also help to boost security of human rights defenders. It is possible to advocate for regional and national frameworks and laws on defense of human rights defenders.
- (v) Common standards to boost CSO accountability: attempts have been made by CSOs to create common standards so as to boost accountability of CSOs. However, these have happened mainly at national level. Establishing common standards of accountability for CSOs at regional level could lead to more accountability boosted by peer pressure and peer learning.
- (vi) Improved conditions for realization of justice: The realization of justice for citizens in the EAC countries could be boosted through stronger regional civil society platforms. Common regional CSO platforms could lead to more interventions at the East African Court of Justice (EACJ) among other organs of the EAC and strengthen similar initiatives at national levels.

The following were cited as possible threats to such an initiative:

- (i) The idea of a stronger and more vibrant CSO sector is threatening to some of the interests in the

region. The possibility of resistance to actualizing a regional CSO law is therefore real

- (ii) Different countries have different experiences and governance frameworks, which may hinder the success of the initiative
- (iii) CSOs in some countries have close ties with the governments in power, which could jeopardize the collective approach needed to advocate regionally and at country level
- (iv) CSOs in countries that are experiencing violent conflict are already hampered from taking part in such an initiative. They will also face difficulties becoming part of the advocacy at national level for such an initiative
- (v) There will certainly be challenges of implementing the law at country level given the attitude of most countries towards CSOs dealing with human rights and governance, and
- (vi) Most donors have re-directed their focus from governance and human rights issues towards trade. This will pose a challenge in terms of getting the kind of sustained support needed to move forward the initiative.

## 7. CONCLUSION

This paper concludes that the civic space in EAC Partner States is indeed shrinking. Among others, laws are being used by EAC Partner States to effect this shrinkage. The reasons cited for this trend among EAC Partner States are: concerns over the agenda pursued by CSOs that operate on funds provided by foreign donors, possible 'infiltration' by mainly foreign workers employed by both national and international organizations, propagation of practices considered "foreign" such as homosexuality, and the perception that advocacy organizations play a "political" role or are biased against ruling political parties. The

methodology included review of documents in the EAC region including laws under which CSOs operate and reports from CSOs and other sources assessing the operating environment. The author also interacted with 12 key informants from CSOs in the region through skype interviews. The scope of the paper did not allow interaction with government officers who could have provided perspectives different from those held by CSOs. This is a key limitation. The paper has also discussed the benefits and threats of advocating for a regional model CSO law.



WFD and EACSOF conference brought together CSOs, Standardisation bodies, Government and academia to draft principles to formulate a regional bill to promote and protect CSOs in East Africa

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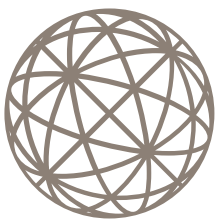
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