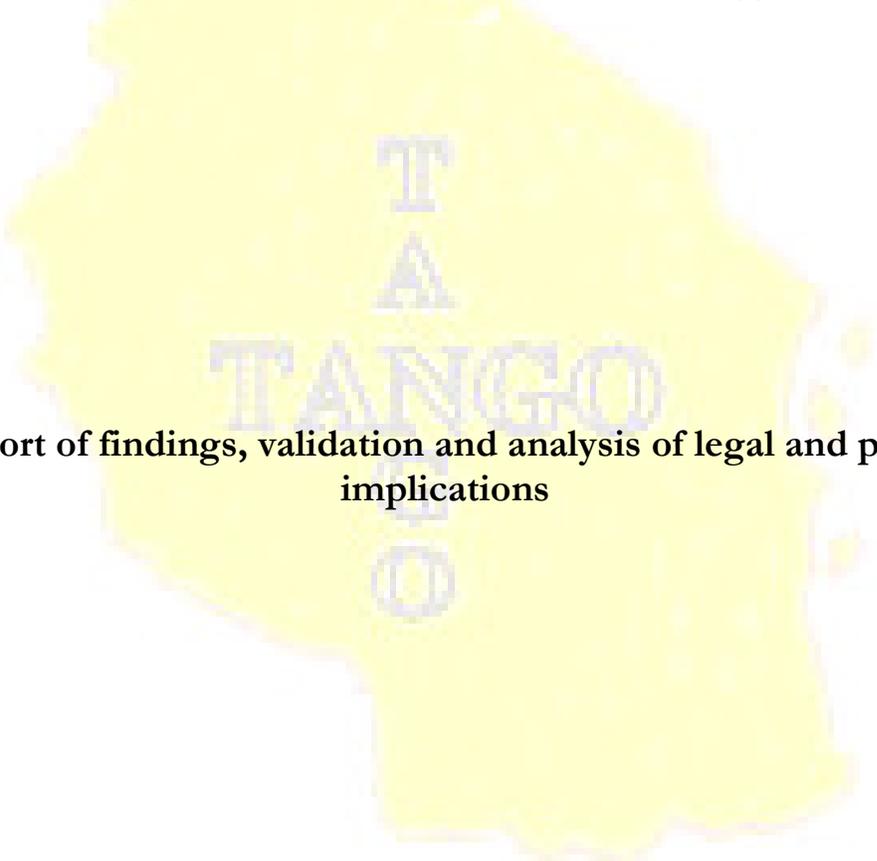


# **REVIEWING TANZANIA'S NON PROFIT LEGISLATIVE REGIME AND NEED FOR A NEW REGULATORY FRAMEWORK**



**Report of findings, validation and analysis of legal and policy  
implications**

November 2013  
Tanzania Association of Non-Governmental Organizations

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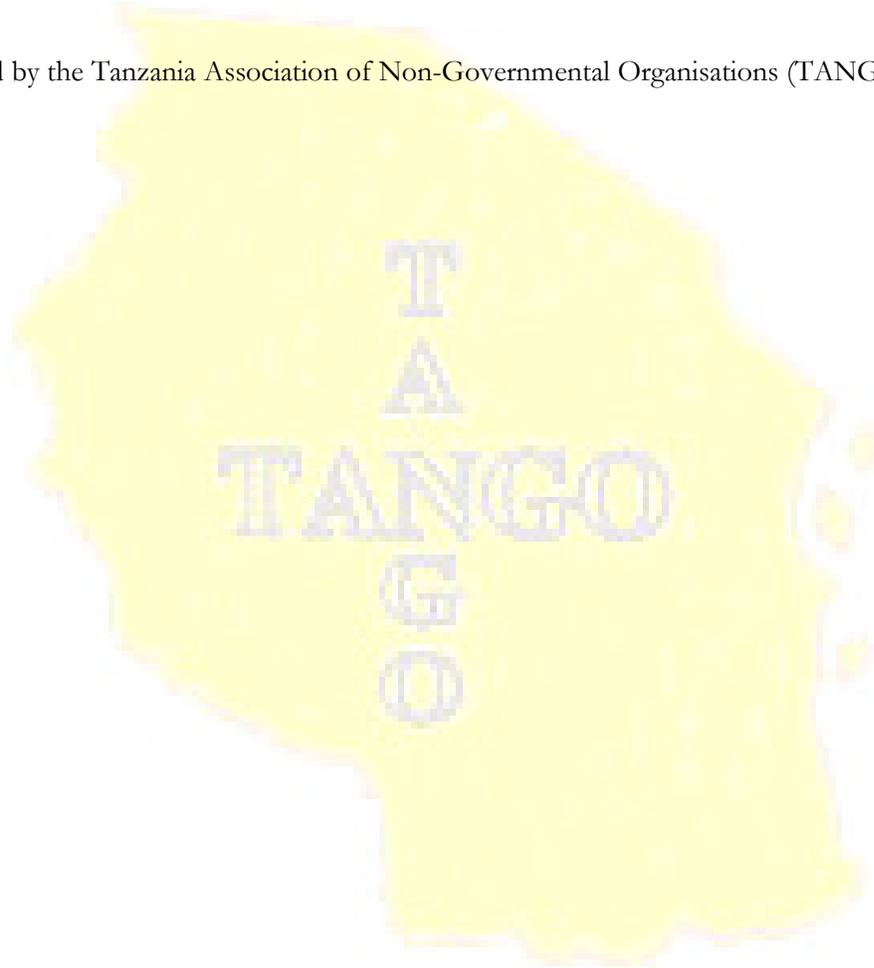
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First Edition November 2013

"REVIEWING TANZANIA'S NON PROFIT LEGISLATIVE REGIME AND NEED FOR A NEW REGULATORY FRAMEWORK"

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## 1.0 EXECUTIVE SUMMARY

This report presents the findings of a survey carried out in 20 districts in mainland Tanzania, from July through August 2013, to review and find out how existing laws governing the NGO sector in Tanzania hinder or facilitate NGO operations and the achievement of their desired outcomes. The report also provides information on the subsequent validation session in August and then November 2013 on the findings. The validation workshop in August 2013 brought together more than 25 representatives from the NGOs which participated in the field survey. The report was then subjected to expert analysis to determine the legislative and policy implications from the survey findings.

The purpose of the review was to get feedback from NGOs on their experiences in applying and complying to the existing laws, and solicit recommendations as far as review and amendment of the laws is concerned. Therefore the findings will be used as inputs and advocacy material in lobbying for review of the laws.

A total of 401 organizations were surveyed sampled from 20 selected districts. Findings show that in spite of its reported limitations, most NGOs (75%) have complied to the NGO Act No.24 of 2002. This reflects a positive aspect of the Act in that it has provided a starting point or benchmark for harmonizing the registration process and requirements. However, majority of the NGOs not in compliance are already registered by local government authorities. More than a quarter of the NGOs had a membership size of 11-20 and HIV/AIDS emerged as the main activity for a sizable number of NGOs followed by education and environment. In terms of the organizational mission majority of the NGOs (68%) have a mission which has a combination of both service delivery and advocacy.

Bureaucracies and extra costs associated with the registration process have been reported as the main cause for delays in registration as per the Act leading to more than a quarter of the NGOs beginning operations for more than a year before being officially registered. Despite the seemingly cumbersome registration process, most of the NGOs were granted registration and a few (10%) were denied mainly due to missing documentation. However only 5% of those denied chose to appeal against the decision.

On oversight and inspection, slightly over half of the NGOs reported not having been visited by the any authority. Most of the visits to those who reported visitations were from the NGO Board and in many occasions, the outcome of the visits was good in that the NGOs were found to be compliant. About half of the organizations surveyed know about the NGO code of conduct and many of them are compliant. However for those not aware of the code of conduct reported to having and applying their own internal codes of conduct and other self regulation standards.

Majority (87%) of the organizations do submit annual financial and activity reports to particularly, the relevant line ministries, TRA, BRELA, and the NGO Board. There are however other entities demanding similar reports such as the donors, beneficiaries, etc; and this creates extra burden and confusion to the NGOs reducing compliance and compromising quality of the reports.

Overall the study has revealed that a growing number of NGOs believe it is time to review and amend legislation with a view of doing away with restrictive and punitive laws. These laws have been identified as those on centralized registration, and the status and scope of the NGO Board,

NACONGO, and NGO networks. On NGO existence and survival, the number one factor threatening NGO existence and survival is the lack of and unpredictability of financial resources.

Despite the somewhat hostile nature of the NGO legislation, about 60% of surveyed organizations acknowledged existence of 'good' relations with the government at all levels, and that generally the government is supportive of their work. This implies that the 'good' relations are mainly born out of building personal relationships and rapport with key government officials more than from the policy and legislative requirements or environment.

The NGO sector in Tanzania believes that the public has a mixed perception with respect to their strengths, operations, and achievements. While the side of negative perception is mainly due to lack of information by the public, the positive side it is mainly attributed to public outreaches and transparency by the NGOs.

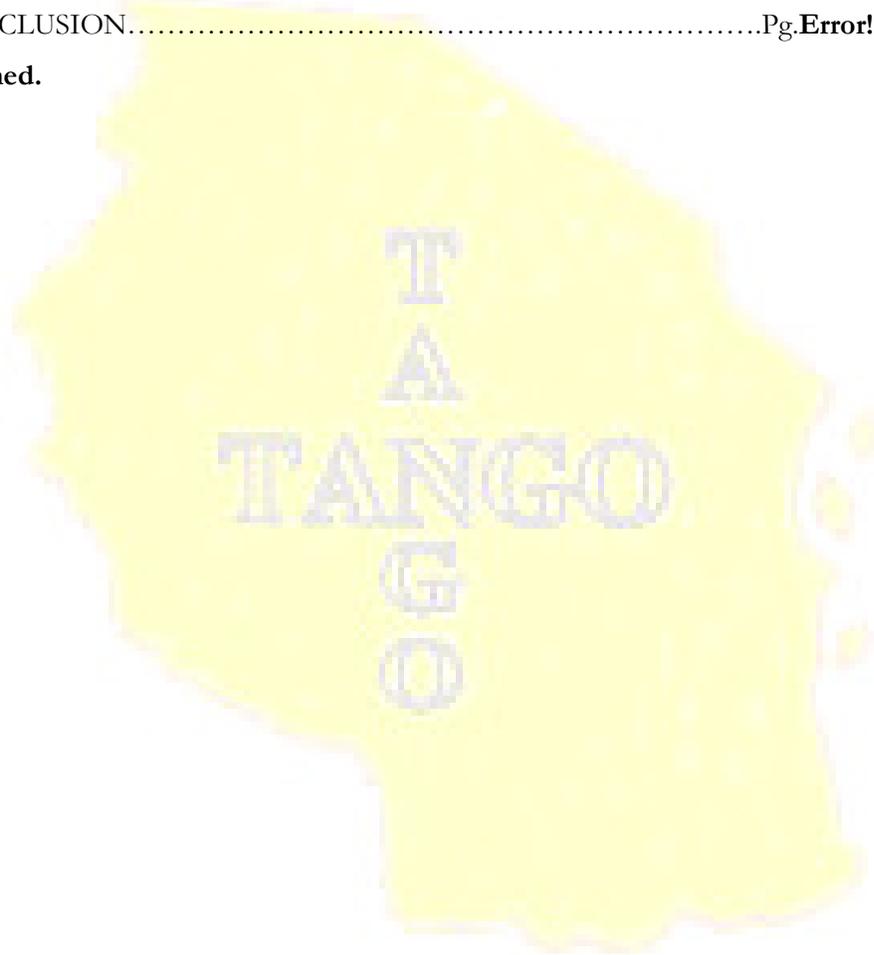
On the way forward, it has been suggested that TANGO should enlist the buy in and support of other stakeholders particularly NACONGO in lobbying to the government for the review of the laws. Improved communication and interaction between NGOs and the government and other stakeholders (donors and beneficiaries) was also noted as imperative. A clear and simple format for NGO reporting to government is one such tool in that regard. It was further advised that annual NGO conferences should be introduced which will discuss NGO challenges and achievements with stakeholders.

It is very clear from the review findings though, that a new or amended legal framework is not the only solution, more needs to be done to back that up with political will of decision makers and a mass support of the people especially the NGOs. The review has revealed numerous issues which need to be addressed be it through legal means, activism, enforceability strategies or and other way that would be lawful and legitimate. It is pertinent that there should be a detailed schedule of amendment supplementing this analysis for purposes of advocating for a better legal framework that would create a more enabling environment for NGOs to operate.

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## ACRONYMS

BAWATA	Baraza la Wanawake Tanzania
BRELA	Business Registration and Licensing Agency
CBO	Community Based Organisation
CSO	Civil Society Organization
FBO	Faith Based Organization
FCS	Foundation for Civil Society
FGM	Female Genital Mutilation
HAKIARDHI	Land Rights Advocacy Alliance
HAKIELIMU	Education Rights Advocacy NGO
ICNL	International Centre for Non-profit Law
KEPA	Finnish Centre for Development Cooperation
LHRC	Legal and Human Rights Centre
MAT	Medical Association of Tanzania
NACONGO	National Council of NGOs
NGO	Non Governmental Organization
TANGO	Tanzania Association of NGOs
RITA	Registration and Insolvency Authority
TRA	Tanzania Revenue Authority

## **FOREWORD**

This review emerges out of TANGO's need to understand the policy and legislative regime governing CSOs in Tanzania. TANGO also believes that if NGOs operate in an enabling and free environment they have great potential of propelling social development in Tanzania.

Owing to the broad span of the policy and legislative regime of CSOs in Tanzania and TANGO's vision, we decided to take an iterative approach starting with the study of policy and legislative framework for NGOs which form about 80% of the total number of CSOs operating in Tanzania.

Another reason for this engagement by TANGO is that before the survey not much was known regarding the issues and areas on which NGOs focus.

The lack of clarity on the NGO's take regarding the policy and legislative environment in which they operate has been noted by TANGO and other capacity building organizations as reason for their failure to take workable remedial measures which ensure an enabling policy and legislative regime for NGOs in Tanzania.

Further, the review was merited by increasing government restriction and dwindling funding opportunities that impact on NGO ability to effectively participate in the policy dialogue and influence national development processes in general.

TANGO believes that by this survey it is contributing to the opening up of operating space for Tanzanian NGOs, because understanding the policy and legislative challenges facing NGOs in Tanzania will enable all stakeholders to deliberate the policy and legislative environment with a view of capacitating the NGOs to allay the policy and legislative challenges facing the NGOs.

In order to allay the policy and legislative challenges facing NGOs will need collective and joint efforts by the NGO capacity builders, self-regulation platforms and state regulatory agencies therefore this survey forms basis and evidence on which the cooperation can be structured.

Therefore it is important to read this review report with a view of trying to understand the relationships which have developed between NGOs and the state as a result of the current policy and legislative regime in which Tanzanian NGOs operate. The aim is to build a linkage between the state and 'potential' policy changes and legislative amendments that may emanate from this review.

**Evod Mmanda**  
*Chairperson, TANGO*

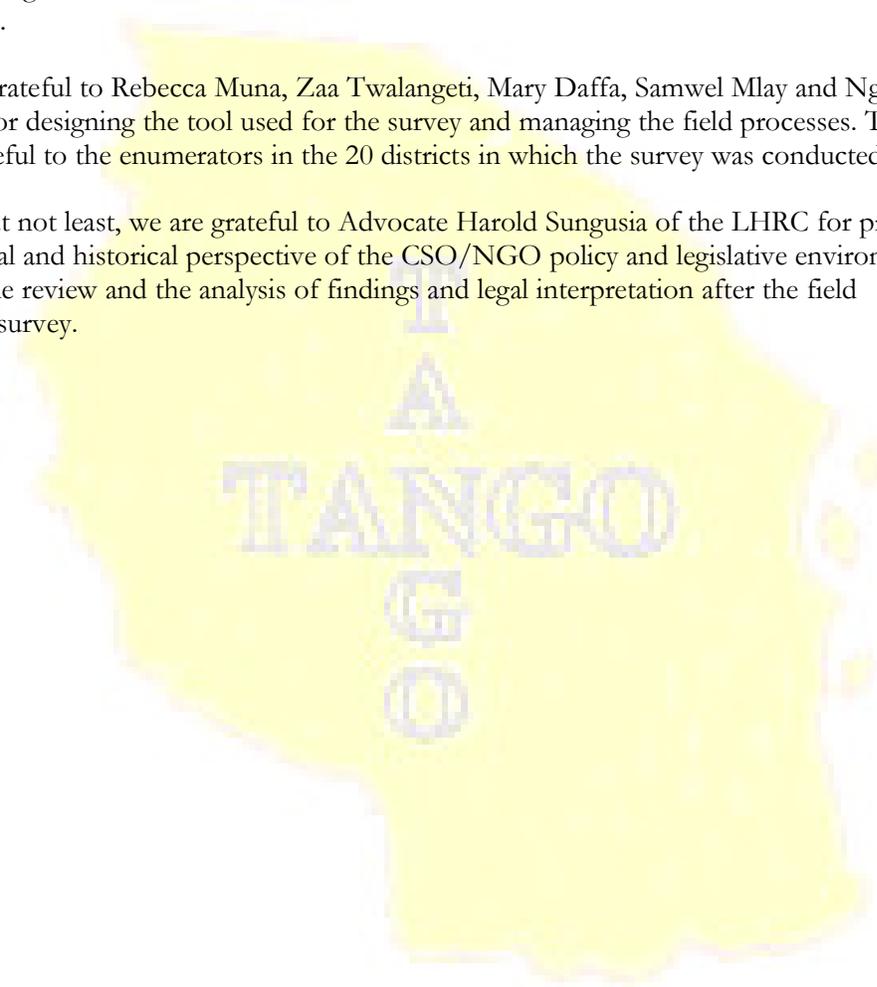
## **ACKNOWLEDGEMENT**

TANGO is grateful to KEPA for supporting the initial steps that helped to organize and conduct a preliminary survey to establish the general policy and legislative challenges facing CSOs in Tanzania. The support by KEPA formed the basis for a more detailed, NGO-focused survey which concentrated on the policy and legislative regime for NGOs in Tanzania.

TANGO would also like to express its gratitude to the International Centre for Non-profit Law (ICNL) for its financial and technical support in undertaking the entire review of existing NGOs policy and legislative regime survey which covered more than 400 NGOs which included individual, generic and thematic networks of NGOs in 20 selected districts in mainland Tanzania.

We are grateful to Rebecca Muna, Zaa Twalangeti, Mary Daffa, Samwel Mlay and Ngunga Tepani for designing the tool used for the survey and managing the field processes. TANGO is also grateful to the enumerators in the 20 districts in which the survey was conducted.

Lastly but not least, we are grateful to Advocate Harold Sungusia of the LHRC for providing a contextual and historical perspective of the CSO/NGO policy and legislative environment before the review and the analysis of findings and legal interpretation after the field reviews/survey.



## 2.0 CONTEXT

### 2.1 Introduction

#### Context and legal framework in which Tanzanian NGOs/CSOs operate

50 years of Tanzania(Mainland) Independence 1961 – 2011 up to date, there has been numerous challenges to NGOs which suggests that the legal framework has never been [strictly to say] serious and objective in safeguarding the freedom of Association in Tanzania.

The trend and history of the legal framework for regulation of NGOs in Tanzania can be divided into three major epochs. The first part was the colonial legal framework; secondly the post colonial legal framework operational during the one party system; lastly is the legal framework at the era of market economy and liberal/multi party democracy. In principle except for what came to be defined as NGOs in 2002, the rest of the NGOs begun to be regulated by the legal framework initially set up by the colonial government. Reasons and justifications for regulating such NGOs were manifested by the enactments and enforceability of the same. In addition, limitations, restrictions and standards imposed on NGOs were essentially dictated by the socio-economic and political interests. Before addressing the said epochs it is important to discuss the conceptual matters in respect to NGOs and legal framework.

#### 2.1.2 NGOs during the Pre Independence Era

During colonial time some of the laws applicable for registration and formalization of NGOs included German Missions Societies and Associations Reverting Ordinance.<sup>1</sup> This was an Ordinance to provide for the re-transfer of their property to certain German Missions Societies and Associations. It became operational on 30th October, 1931. Other laws were like the Boy Scout Ordinance;<sup>2</sup> an Ordinance to further and protect the activities and interests of the Boy Scouts Association in the Tanganyika. It became operational, since 5th July, 1935. This one went hand in hand with the Girl Guides Ordinance.<sup>3</sup> An Ordinance to further and protect the activities and interests of the Girl Guides Association in the Territory. It came into operation on 5th July, 1935. Moreover, the Trustees Act of 1893;<sup>4</sup> and the Trustees Incorporation Ordinance Cap.375. An Ordinance that provided for the incorporation of certain Trustees and for the repeal of the Land (Perpetual Succession) Ordinance.

Broad laws that governed most of the NGOs were like the Companies Ordinance.<sup>5</sup> An Ordinance to regulate trading companies and other associations. It was operational since 1st October, 1932. Likewise, was the Co-operative Societies Ordinance.<sup>6</sup> This Ordinance provided for the constitution and regulation of Co-operative Societies. It became operational on 12th February, 1932. Arguably, after the outbreak of resistant local groupings in Kenya in early 1950s, the colonial government enacted the **Societies Ordinance**.<sup>7</sup> An Ordinance to provide for the registration of societies and other matters incidental thereto and connected therewith. It was operational since 1st June, 1954. Moreover, there was enacted the Trustees Incorporation Ordinance.<sup>8</sup> An Ordinance to provide for the incorporation of certain Trustees and for the repeal of the Land (Perpetual Succession) Ordinance. It came into force on 25th May, 1956.

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<sup>1</sup> CAP 238 - An Ordinance to provide for the re-transfer of their property to certain German Missions Societies and Associations.- Operational, 30th October, 1931.

<sup>2</sup> CAP.68 - An Ordinance to further and protect the activities and interests of the Boy Scouts Association in the Territory.

<sup>3</sup> CAP.69

<sup>4</sup> 56 & 57 VICT. C. 53

<sup>5</sup> CAP. 212

<sup>6</sup> CAP. 211

<sup>7</sup> CAP. 337

<sup>8</sup> CAP. 375

Professional NGOs were recognized through their specific legislation such as the Tanganyika Law Society Ordinance.<sup>9</sup> This was the law that incorporated the Tanganyika Law Society and provided for other matters appertaining thereto and connected therewith. It became operational on 1st January, 1955. Comparably, was the Building Societies Ordinance: which was an Ordinance to provide for the formation and registration of Building Societies and other matters incidental thereto and connected therewith. It was operational, since 20th August, 1954.

Save for the Companies Act, the rest of the laws that deal with regulation of NGOs are calculated to serve the state interests rather than the freedom of those who would like to associate. This is evident for instance when considering the registration of any NGOs, the NGOs Act, the Societies Ordinance and the Trustee's Incorporation Act have weaknesses that undermine the whole essence of voluntarism and freedom of association. NGOs have proved to be very instrumental in the development of the country. It is absurd to undermine their contribution as it has been evident that NGOs have assisted the public and private sector to reach out some segments of the population with services, awareness and empowerment that the state and its partners would not have managed to provide. The complementarily and supplementary roles of NGOs to the state need not be over emphasised. The legal framework under which NGOs operate should thus appreciate the great role of NGOs. The legal framework should also create a very conducive environment for NGOs to prosper and flourish for the benefit of the majority of the marginalised groups in the Tanzanian society

### **2.1.2 NGOs during the Post Colonial – Single Party Era**

The legal framework through which NGOs operated in this period of time in Tanganyika was thus characterized by an oppressive legal system within which the law is used by the state to coerce its citizens rather than to confer rights upon them.<sup>10</sup> Such a legal system is tainted by series of "rightless laws",<sup>11</sup> a system that confers wide discretionary powers on the President. This always would lead to severe restriction or outright suppression of the NGOs as they fall outside the state structures. For that reason, the post colonial government bears a strong resemblance to its colonial predecessor.

For more than three decades since independence 1961, the functioning of civil society organisations and particularly Non-governmental Organizations in Tanzania was weak and almost negligible.<sup>12</sup>

Indeed, the post-colonial state inherited almost all the colonial laws and institutions.<sup>13</sup> The Societies Ordinance which had been the lynchpin of colonial control over civil society was also adopted without any substantial amendments other than the removal of the more obviously colonial, and therefore embarrassing, references such as that to "the Governor".<sup>14</sup> The term was now replaced by the term 'president'. The object and purpose of that law and its underlying philosophy of authoritarianism that had informed colonial law and practice was, therefore retained.

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<sup>9</sup> CAP. 344

<sup>10</sup> Such laws include the Deportation Act, Preventive Detention Act, amendment of the Societies Act; etc.

<sup>11</sup> See Shivji, ed. (1985) for a thoroughgoing examination of state authoritarianism in Tanzania.

<sup>12</sup> Kiondo, *Supra*.

<sup>13</sup> See Shivji, *Supra*.

<sup>14</sup> See for instance Acts Nos. 76 of 1962; 54 of 1963; 51 of 1964; 45 of 1965; 16 of 1969; 6 of 1971; 13 of 1991 5 of 1992; G.Ns Nos. 236 of 1961; 478 of 1962

Save for religious organizations, trade unions and professional associations the number of mainstream NGOs was relatively low in this period of time. For the records, the number of NGOs in Tanzania between 1961 to 1980 was only 25 registered ones.<sup>15</sup> It needs to be noted that in all this period of time, Tanzania did not have a Bill of Rights in its Constitutions. This meant that freedom of association as one of basic rights was not protected. Other applicable laws for identification of NGOs were the Cooperative Societies Ordinance (Amendment) Act; the Companies Ordinance; the Trade Unions Ordinance (Amendment) Act; Dar es Salaam Club(Dissolution) Act, National Sports Council of Tanzania Act, 1967; Public Trustees Ordinance Cap. 31;

Most entities that were formed under this epoch had legal personality save for the associations whose personality was derived from its office bearers and members on their personal liability. Nevertheless state control was at its climax. At this era most of political activities were highly restricted under the political monopoly of TANU and ASP the rest of political parties were constitutionally banned. The Societies Ordinance retained its colonial ambition. The registrar is allowed to refuse registration of a NGO as a society where he is satisfied that such local society is a branch of, or it affiliated to or connected with, any organisation or group of a political nature established outside Tanzania. In that case NGOs are required among other things to remain non-partisan.

Most of the contemporary weaknesses of NGOs can justly be attributed to the advent of a single party system in 1965 and the promulgation of the Arusha Declaration in 1967, which prescribed for policies of Socialism and self-reliance. At that time, very few NGOs were in operation. Only 17 NGOs were registered between the years 1961-1978, 7 were registered in the 1960s and only 10 in the 1970s.<sup>16</sup>

### **2.1.3 NGOs during the Multi Party Era**

This contemporary period as from 1990 to date has demonstrated unique features. In the early 1990s, Tanzania passed through a serious social economic and political wave of change that was sweeping through out many parts of world. This seemingly renaissance era brought radical transformation in the management of state affairs but mainly, there were tangibly felt changes in the management of political and social affairs. There were policy changes where liberalism was favoured in the place of socialism. Free trade policies in economy, political pluralism and liberalization of social realm led to the re-birth and adoption of multi-party democracy in the country and ushered in proliferation of civil society and expansion of voluntary sector in general. There was also tremendous increase in activities of civil societies dealing with a cross-section of issues, such as human rights, environmental protection, and HIV-AIDS awareness, as well as many other areas of the development of society.

The operation and activities of civil societies have since then increased with new ones occasionally being registered. Notably, there was a tremendous change in 1990s which witnessed the increase of NGOs to the extent of counting 3000 NGOs in 2001<sup>17</sup>. Accordingly, the

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<sup>15</sup> According to FES (2000) between 1961 and 1980, there were only 25 NGOs registered

<sup>16</sup> Kubini, M, **Law and Development of NGOs in Tanzania**, *LLB Dissertation*, Faculty of Law, University of Dar-es-salaam.1998/99. See also, Kiondo, A.S, “**Structural Adjustment and the NGOs in Tanzania**” in Gibbon,P. (ed),*Social Changes and Economic Reforms in Africa.*, Scandinavia Institute of African studies, Sweden.,1993. p.165-167

<sup>17</sup> see the NGOs policy 2001.

recorded number of NGOs that were registered from the year 1992-1998 was 1450. By the year 2002, the government records showed almost 13,000 NGOs.

In an attempt to establish a mechanism to smoothen NGOs operations, the Government in November 13<sup>th</sup> 2002, submitted a Bill for enactment of new legislation for NGO regulation. The new law was discussed and passed by the Parliament and thereafter was assented by the President to become the NGOs Act of 2002.<sup>18</sup> An Act to provide for registration of Non-Governmental Organizations with a view to coordinate and regulate activities of Non-Governmental Organizations and to provide for related matters.

One of the fundamental discrepancies in this law is its difference in spirit with the National NGO policy. The Government sees the NGOs, especially the advocacy NGOs, as irritants; and generally sees the NGOs as intruders who are competing with the Government for development assistance funds.

The public sees NGOs as organizations that have ingenious ways of obtaining and appropriating to themselves funds from donors. The problem is also raised of NGOs, which are “owned by influential people” and compete with other NGOs. These problems are often blown out of proportion; there is indeed some lack of accountability in the NGO sector. Following the political liberalization process in the 1990s, NGOs mushroomed in Tanzania and an adequate framework for regulating them is yet to be put in place without compromising the freedom of association.

One of the motivating factors for this drastic increase has been explained to be the favorable environment for operation of civil societies as result of inclusion of the Bill of Rights in the Constitution of the United Republic of Tanzania and the reforms that took place in 1992. The reforms created much more freedom for establishment and operations of the Civil Society in general.

#### **2.1.4 Current Status and Issue with Regards to NGOs in Tanzania**

Currently there are six legislation through which a NGO can be registered. These includes the *Societies Act*;<sup>19</sup> The *Co-operative Societies Act*;<sup>20</sup> The *Trustees' Incorporation Act*;<sup>21</sup> *Companies Act*;<sup>22</sup> The *National Sports Council of Tanzania Act*;<sup>23</sup> *The Non-Governmental Organisations Act*;<sup>24</sup> Every law is applicable to regulate NGOs registered there under. However there are reasons for and inevitability of at least minimum regulation by the state to NGOs through laws and institutions. The difficulty is always on the extent that a system of regulating NGOs should go without undermining the whole concept of voluntarism.

Between 1990 and 1993 the number rose to 224, and from 1996 there has been more than 6,000

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<sup>18</sup> NGOs Act no 25 of 2002 as amended by

<sup>19</sup> Cap. 337, R.E. 2002

<sup>20</sup> Cap. 211, R.E 2002

<sup>21</sup> Cap. 318, R.E. 2002

<sup>22</sup> Cap. 212, R.E. 2002

<sup>23</sup> of 1976, (now Cap.49, R. E. 2002)

<sup>24</sup> Act No. 24 of 2002)

registered NGOs. According to the Registrar of Societies, Tanzania had 8,499 NGOs as of September 1998. By December 2000, there were more than 10,000 registered NGOs.<sup>25</sup> This number is far higher than in Uganda where there are slightly over one thousand and in Kenya where there are more than six hundred NGOs registered under the national council of NGOs.<sup>26</sup>

Although registration of NGOs was governed by different legislation and authorities such as under the Societies Ordinance, the Companies Ordinance and/or, the Trustees Incorporation Ordinance, the speed at which registration took place in all offices after the 1992 reforms was remarkably terrific.

It has been argued that the emergence of associational autonomy in the 1990s and the often fractious relationship between the state and civil society, has had a greater impact on the quality of democratic life than formal electoral processes and the opposition political parties.<sup>27</sup> Even during the period when the Tanzanian government was opening up to civil society it could still act repressively, banning or threatening organisations.<sup>28</sup> Opposition to government policy, or advocacy, could be interpreted as anti-governmental and result in deregistration or intimidation of NGO.

'NGOs' began to be such legally recognised as 'NGOs' after the enactment of the NGOs Act of 2002. The law at first defined NGOs as a voluntary grouping of individuals or organization which is autonomous, non-partisan, non profit making which is Organized locally at the grassroots, national or international levels for the purpose of enhancing or Promoting economic, environmental, social or cultural development or Protecting environment, lobbying or advocating on issues of public interest of a group of individuals or organization, and includes a Non-Governmental Organization, established under the auspices of a 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.

Following tireless advocacy by NGOs under the leadership of TANGO, LHRC and HAKIARDHI by the financial support by Pact Tanzania as well as technical support from ICNL, the government agreed to make some few amendments out of many suggested. The amendments included to change the definition of NGOs. In 2005 the definition was refined in order to exempt the community based organisations – CBOs.<sup>29</sup> The law then reads as:

a voluntary grouping of individuals or organization which is autonomous, non-partisan, non profit sharing – (a) Organised at the local, national or international level for the purposes of enhancing or promoting economic, environmental, social or cultural development or protecting the environment, lobbying or advocating on such issues: or

Established under the under the auspices of a any religious organization or faith propagating organization' trade union, sports club, Political party, religious or faith organisation or community based Organization;

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<sup>25</sup> V.P. Office, 2004 Calendar.

<sup>26</sup> FES, 2000

<sup>27</sup> Tripp, 2000

<sup>28</sup> Lange et. al. 2000 p18, Mallya 2005 p198, Kelsall 2002 p604

<sup>29</sup> Part III of the Miscellaneous Amendments Act, No. 11 of 2005 that came into force on 24<sup>th</sup> June 2005

But does not include a trade, union, a social club, a religious or faith propagating organization or a community based organization.

This refined definition is the one applicable to determine the subset of NGOs that makes NGOs. It has narrowed down the scope of what can be legally be referred to as an NGO. The NGOs Act adds a different layer within the legal framework the identity of this group of NGOs.

NGOs under the leadership of the above nick named 'the Core Group' identified twenty key anomalies in the NGOs Act. The 2005 amendments brought in some safeguards. At first it was the Companies Ordinance and the Trustee's Incorporation Ordinance that provided for an outright legal personality to entities thereby registered. The NGOs Act before June 2005 did not provide for legal personality to NGOs. It was after the said amendments in 2005 when the NGOs were given some legal personality. Now under section 18 state that a registered NGO under the NGOs Act shall be a body corporate capable in its name to sue or be sued; to own property; entering into contract; and do all what a body corporate can do. Details of the anomalies identified and the recommendations thereof are available as annexure.

### **2.1.5 Current Interventions**

TANGO as the chair of the NGOs Core Group, currently wishes to take its leadership role so as to make a survey on NGOs operating space in Tanzania. It has been observed that NGOs from across the Tanzanian spectrum have in one way or the other raised concerns about the restrictive operational environment and legislative regime in Tanzania. However, this has been said in passing and no constructive actions have been taken to deliberate and find ways of allaying the perceived challenges. In a bid to kick-start the process of getting the NGOs input on state of NGOs operation and legislative regime in Tanzania TANGO is currently making this survey so that it can inform the NGOs and relevant authorities as to what and how to ensure/enhance good and conducive NGOs operational environment as well as a friendly and enabling legislative regime to NGOs in Tanzania.

### **2.2 Background**

Eleven years after the enactment of the NGO Act No.24 of 2002, the formation of the NGO Board and National Council of NGOs (NACONGO) in the same year, amendment of the NGO Act in 2005, Formulation of the NGO Code of conduct in 2008. the NGO Policy and Act are unknown pieces of legislation among most locally based NGOs in Tanzania.

On the other hand, several local and international NGOs and other development partners who are more aware of the legislative environment for NGOs in Tanzania (the Act, policy and related structures and processes) hold the opinion that the NGO Act was enacted with an ill intention of curbing the gradual increase of NGOs and thereby their ability to influence government's planning and policy decisions / processes than the ideal aims of democratically enacted NGO laws which are to:

- provide for an environment in which non-profit organizations independent of government can flourish; and
- establish administrative and regulatory framework within which the non-profit organizations can self-regulate.

National level generic umbrellas, coalitions and thematic networks of NGOs fail to effectively engage in and support the Act's attendant structures / bodies because they are of the view that the NGO Act and structures were introduced to control and restrict NGO operations even though they are dully registered entities. This effectively means that the legislation and

regulations are also aimed at undermining NGOs and diminishing the space in which NGOs can operate as evidenced by cases of several NGOs that have over the years been threatened from being banned or completely de-registered including Baraza la Wanawake Tanzania (BAWATA), HakiElimu and Medical Doctors' Association of Tanzania (MAT).

The thinking of the civic population across Tanzania with regard to NGO legislations and the attendant structures is that the two are instruments that enable the Government of Tanzania to shift from outright repression of democracy, human rights and civil society activists and groups to more subtle government efforts to restrict the space in which CSOs/NGOs and other democracy and rights-oriented groups to operate and flourish. While earlier regimes in Tanzania before 2002 used various methods to suppress NGO/CSO engagement in the social, economic and democratic processes among them imprisonment, disappearance and harassment, the post 2002 regimes have resorted to more sophisticated measures such as legal and administrative obstacles, barriers to entry, bureaucratic paperwork and stringent requirements for registration. Other obstacles include arbitrary dissolution of NGOs, stringent oversight and control by state, as well as the creation of such government predetermined control mechanisms as the NGO Board.

## ***2.2 Rationale for the Survey***

Despite concerns by NGOs at districts level that they face a number of challenges in terms of setting-up NGOs and operating at that level, no deliberate efforts have been taken by NGOs to study the state of play in the sector in Tanzania and how these relate to the Policy (approved in 2001) and the NGO Act (of 2002) at the local level. Therefore, this project by TANGO seeks to map out the situation in 20 districts of mainland Tanzania; validate them in a large gathering of NGOs; engage drafting experts (with technical assistance from ICNL) to draft amendments; present them to the government; and disseminate to other stakeholders including the public through the media.

The district action-based survey sought to solicit the views and experiences of the people with regard to implementation of the NGO Policy, Act and the Code of Conduct and seek recommendations for future review. Further, it seeks to establish the relationships between the NGO Board and other attendant structures / bodies on one hand and NGOs at the District level.

The findings were analyzed in the context of global good practices in enabling legislative and administrative frameworks and thereby propose amendments (bills) which will result into an enabling legislative, administrative and self-regulatory framework for NGOs in Tanzania.

## **3.0 THE SURVEY**

In planning out the survey, TANGO laid out two main stages of implementation.

The first stage involved soliciting the views and experiences of sampled NGOs on the current NGO Act and its impact on the local operational environment of the NGOs. This was particularly on the restrictive nature of the Act to the NGOs and the extent to which it is supportive to the freedom of association as enshrined in the country's constitution and other international and regional protocols. Various measures or indicators are used such as how cumbersome and bureaucratic the registration process is, extent to which NGO fundraising

activities are controlled, how state-centric are the NGO Boards and decision-making around NGO issues, and how the Boards are appointed.

In addition, this is the stage where collection of views and assessment of NGOs experiences in applying the NGO Act, Code of Conduct and relationship with Board of NGOs and attendant structures was done.

The second stage involved conducting regional validation sessions aimed at reviewing the legislation governing NGOs to identify the laws and by-laws which restrict CSO engagement in the development discourse, partly or wholly informed by findings from the survey.

### ***3.1 Objectives of the survey***

The overriding purpose of the survey was to gauge the state of play of CSO affairs at the district level because that is where most development activity takes place. The survey thus gathered information and opinions from NGOs about current laws and regulations affecting NGOs and changes that might be made to them.

### ***3.2 Survey team***

The survey was managed by TANGO. Key personnel for the survey included a Lead Researcher, District Research Coordinators, Programmer and Data Entrants.

### ***3.3 Methodology***

#### ***3.3.1 Sampling***

The survey used purposive sampling in its sample population so that the quality of findings reflect the key question of 'enabling environment' for NGOs in Tanzania. Twenty (20) administrative districts in mainland Tanzania were selected with one district being sampled from each region. A minimum of twenty (20) respondents; each from non-governmental or community based organisations participated in the survey. Criteria for selecting NGOs for the sample considered the following factors: location, type of registration, nature of the organization, and the core function of the organization.

#### ***3.3.2 The questionnaire***

The questionnaire used in the survey was revised from a previous pilot survey where more than eighty (80) civil society organisations took part. The survey questionnaire contained nine (9) sections and thirty questions. The nine sections included general information [since respondents answered the questions on behalf of their organisations]; establishment and registration; right to appeal; inspection and oversight; self-regulation and reporting.

Most of the questions were leading questions but several questions were open ended especially in sections that solicited challenges and recommendations from the respondents.

To assure respondents that their responses will be confidential and anonymous, coding each of the questionnaire was to be applied instead of revealing the identity of the respondent or even the organisation where they come from.

#### ***3.3.3 Data collection***

The questionnaire was administered at the districts level by the district survey coordinators through a common gathering or venue. The respondents filled the questionnaire by ticking the appropriate answers and in some questions providing explanation to the choices made in the preceding question.

The filled-in questionnaires were then collected by the coordinators for central processing.

### ***3.3.4 Data entry and processing***

Data entry was done at a central location in Dar es Salaam where collation of questionnaires, installing a software, assigning codes to variables and software analytical reports, which make part of this report, were done.

### ***3.3.5 Data quality***

Since the questionnaires were administered in a meeting setting, the quality of data entered in the questionnaires was very good and about 99.9% of the questions were completed. However, there remained a few respondents who could not fill in property or failed to explain the open ended questions.

### ***3.3.6 Limitations***

Most of the NGOs are located in urban areas although most also operate in rural areas and this caused a low level of participation from rural based organisations (Morogoro Rural which had 17 respondents as CBOs is an exception).

As well, the respondents were allowed to answer the open-ended questions in any of the Kiswahili or English language. This meant that during data entry the coding process created problems to the data entrants and might have a bearing on the findings. However, care has been taken by the Lead Research and programme personnel at TANGO to reconcile the data with the coding so that findings reflect what the respondents had filled in.

## **4.0 SURVEY RESULTS**

The following are the findings from the entire sample population of twenty districts with at least twenty respondents each, presented in sections as arranged in the questionnaire.

### **PART I. General information**

This section sought to get the general pattern of organisations that were represented in this survey by looking at, among others, legislation or authority that registered them, kinds of organisations, mission and main area of activities.

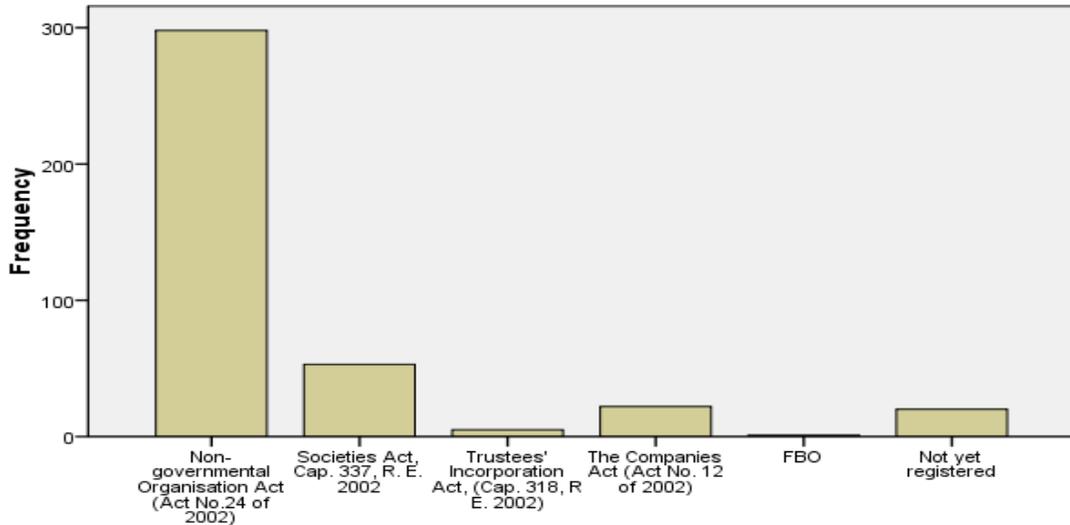
The survey found out that most organisations (about 75%) were registered under the NGO Act No. 24 of 2002. About 13% and 6% were registered under the Societies and Companies Acts, respectively. The reader must note that the questionnaire provided for a multiple level of choice taking into account that there could be a possibility that the respondents' organisation is registered in more than one piece of legislation. For example an organisation might have initially been registered under the Societies Act and later on complied with the NGO Act.

**Table 1: Laws organisations are registered under**

<b>Law or piece of legislation</b>	<b>Frequenc y</b>	<b>Valid Percent</b>
Non-Governmental Organisation Act (Act No.24 of 2002)	298	74.7
Societies Act, Cap. 337, R. E. 2002	53	13.3
Trustees' Incorporation Act, (Cap. 318, R E. 2002)	5	1.3

The Companies Act (Act No. 12 of 2002)	22	5.5
FBO	1	.3
Not yet registered	20	5.0
<b>Total</b>	<b>399</b>	<b>100.0</b>

**which laws is your organization registered under**



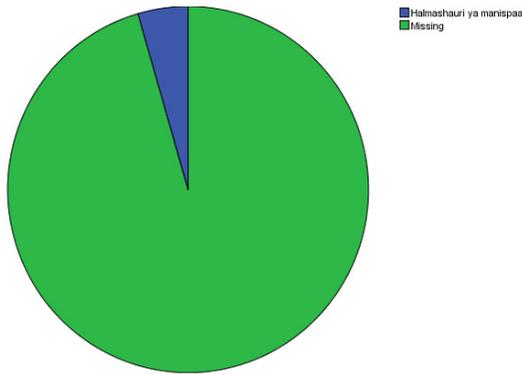
**which laws is your organization registered under**

It is important to note that about 5% of organisations surveyed answered / ticked on "Other" when asked about the registering authority (shown by **Not Yet Registered** above). We wanted to know what other registering authorities there are. Overwhelmingly, all of these were quasi-registered by the district or municipal councils (see pie chart below, the green part shows those that are registered by the listed laws).

**Table 2: If not yet registered, which other authority is organization operating under**

Authority		Frequency	Valid Percent	Cumulative Percent
Valid	Halmashauri ya Manispaa	18	100.0	100.0
Missing	Not applicable	383		
<b>Total</b>		<b>401</b>		

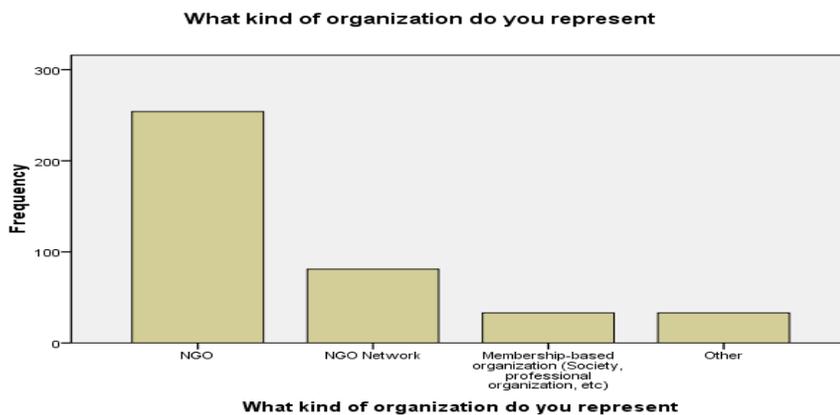
if not register, then working under whose authority



We also asked the respondents what kind of organisations do they represent, and the overwhelming response was that over 60% were NGOs followed by NGO / CSO networks (about 20%).

**Table 3: Kind of organisations surveyed**

Kind of organisation	Frequency	Valid Percent
NGO	254	63.3
NGO Network	81	20.2
Membership-based organization (Society, professional organization, etc)	33	8.2
Other	33	8.2
Total	401	100.0



Those who chose "Other" account for 5% of the surveyed population. Community Based Organizations - CBOs (in Kiswahili - Kikundi cha Kijamii) accounted for approximately 80% of this category.

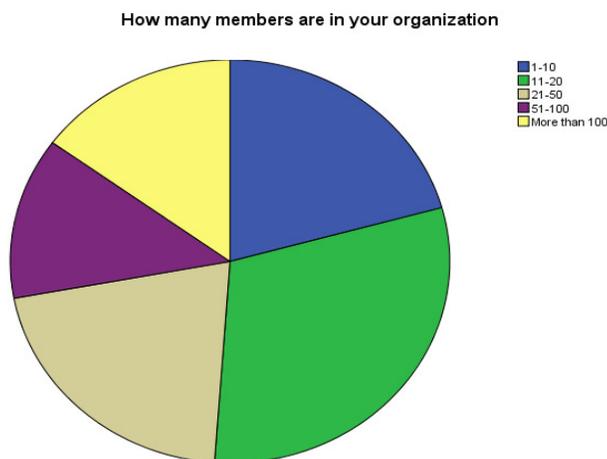
**Table 4: 'Other' category - which kind of organisation**

If replied 'other' specify which kind		Frequency	Valid Percent
Valid	CBO	23	79.3
	Company	3	10.3
	FBO	2	6.9
	FOUNDATION	1	3.4
	Total	29	100.0
Missing	NA	372	
Total		401	

Regarding the number of members that are part of the organisations surveyed, 30% of organisations surveyed fell between 11 and 20 members each followed closely by those with 1 to 10 and 21 to 50 members each; at 21% respectively.

**Table 5: Number of members per organisation**

Number of members per organisation	Frequency	Valid Percent
1-10	83	20.7
11-20	122	30.4
21-50	84	20.9
51-100	52	13.0
More than 100	60	15.0
Total	401	100.0



The main activity for the surveyed organisations was HIV / AIDS (11.7% ) closely followed by education (10.7%), environment issues (10.2%), youth (9.6%), children (9.5%), human rights (9.3%) and health (9%) out of the 400 that responded. In this question, respondents were asked to tick all that apply.

**Table 6: Main area of activities**

	Responses	
	N	Percent
main activities <sup>a</sup> Human Rights	138	9.3%
Health	133	9.0%
Economic Development	124	8.4%
Environmental Issues	151	10.2%
Education	158	10.7%
Youth	142	9.6%
Children	141	9.5%
Women's Right	103	7.0%
People with Disabilities	86	5.8%
HIV/AIDS	173	11.7%
Agriculture	86	5.8%
Other	44	3.0%
Total	1479	100.0%

a. Dichotomy group tabulated at value 1.

Organizations that chose "Other" as one of their main area activity had the following characteristics:

**Table 7: Other main area of activity**

<b>"Other" main area of activity</b>
CULTURE AND DEVELOPMENT
DISASTER MANAGEMENT
ELDERLY CARE AND MARGINALISED PEOPLE SUP
FGM
GENDER BASED VIOLENCE
GOOD GOVERNANCE
GROUP CONFLICTS
SAVINGS AND CREDIT INITIATIVES
ORPHANS AND DISABLED

PASTORALIST ISSUES
POLICY RESEARCH
TUBERCULOSIS
WATER

Most organizations missions' include both service delivery and advocacy covering about 68% of those surveyed. Interestingly, advocacy-only organisations were double the number of service-only organizations.

**Table 8: Nature of organisation's mission**

	Frequency	Percent
Valid Service Delivery	36	9.0
Advocacy	75	18.7
Both Service delivery and advocacy	273	68.3
Other	16	4.0
Total	400	100.0
Missing No response	1	.2
Total	401	100.0

You will note that 16 organisations (making up 4% of respondents) responded by choosing "Other" mission. Their explanation is shown in the table below:

**Table 9: Nature of mission other than stated**

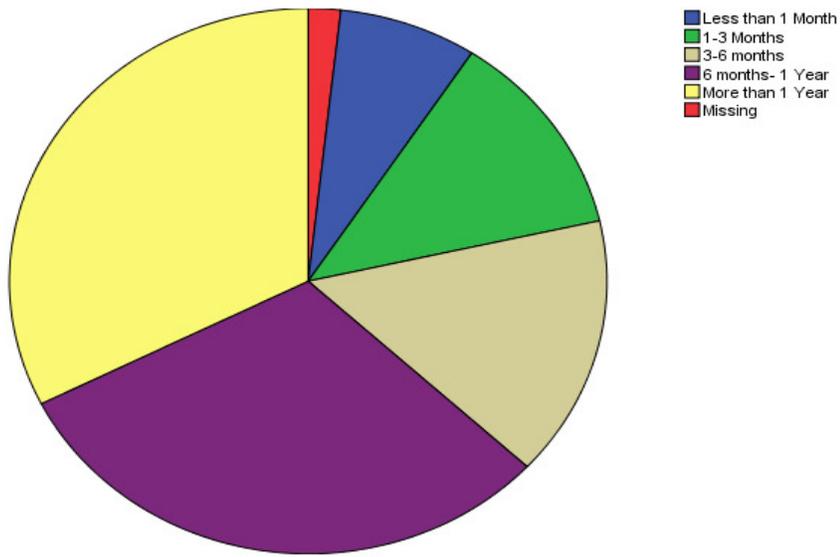
<b>Other nature of mission specified as:</b>
BUSINESS AND ENTREPRENEURSHIP
RESEARCH AND DEVELOPMENT

**PART II. Establishment, Registration and Compliance**

This section sought to establish what experiences or challenges organisations face before and during the registration process and/or whether they were required to comply with the NGO Act No. 24 of 2002.

We started this part by asking:

**How long did your organization exist before registration process**



The reasons for the time-taken above were:

**Table 10: Reasons for time taken before process began**

	Frequency	Valid Percent
Valid Initiation and registration follow-up	54	70.1
Own Constitution	15	19.5
Cumbersome bureaucracy	5	6.5
No sufficient funds	2	2.6
Through Annual Meeting Decision Making	1	1.3
Total	77	100.0
Missing No response	324	

**Table 11: How long did it take for your registration application to be processed**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than 1 Month	70	17.5	18.4	18.4
	1-3 Months	125	31.2	32.8	51.2
	3-6 Months	89	22.2	23.4	74.5
	6 months - 1 Years	58	14.5	15.2	89.8
	More than 1 year	39	9.7	10.2	100.0
	Total	381	95.0	100.0	
Missing	No response	20	5.0		
Total		401	100.0		



Organizations were almost equally split in their response to the question: was there any unnecessary or unwanted delay or difficulty you experience in registering your organization?

**Table 12: Any unwanted delays or difficulty faced?**

	Frequency	Valid Percent
Yes	199	49.6
No	181	45.1
Missing	21	5.2
Total	401	100.0

Those who responded saying "**YES**" gave the following listed reasons, when asked:

**Table 13: Type of delays or difficulties faced; listed**

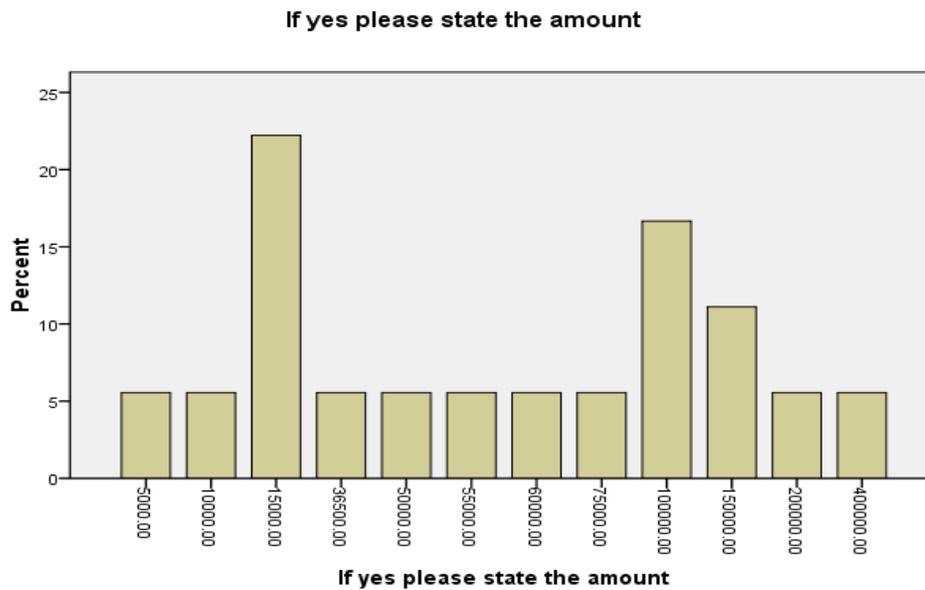
		Frequency	Valid Percent
Valid	Bureaucratic Delays	98	50.5
	Missing Documents	58	29.9
	Internal Delays (within your organization)	20	10.3
	Corruption/bribery	13	6.7
	Other	5	2.6
	Total	194	100.0
Missing	Not Applicable	207	
Total		401	

Those who responded by choosing "Other" mentioned the following reasons for the delays:

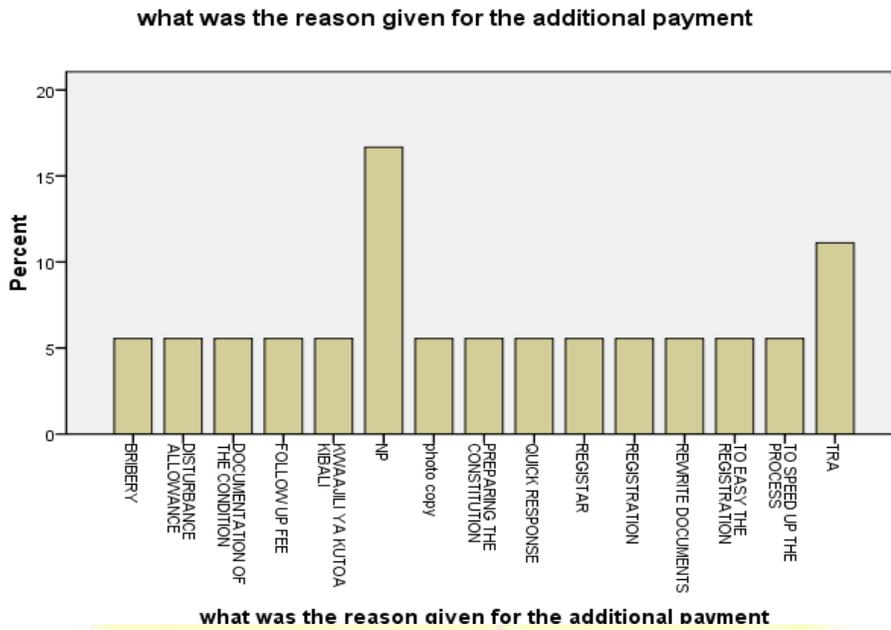
**Table 14: Reasons other than those listed**

Valid	PERSISTENT COSTS IN FOLLOWING UP REGISTRATION
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The 5% who replied "YES" to the question: were you required to make any other payment apart from the registration fee cited the following amounts:



The amount was justified for the following listed services or requirements by authorities:

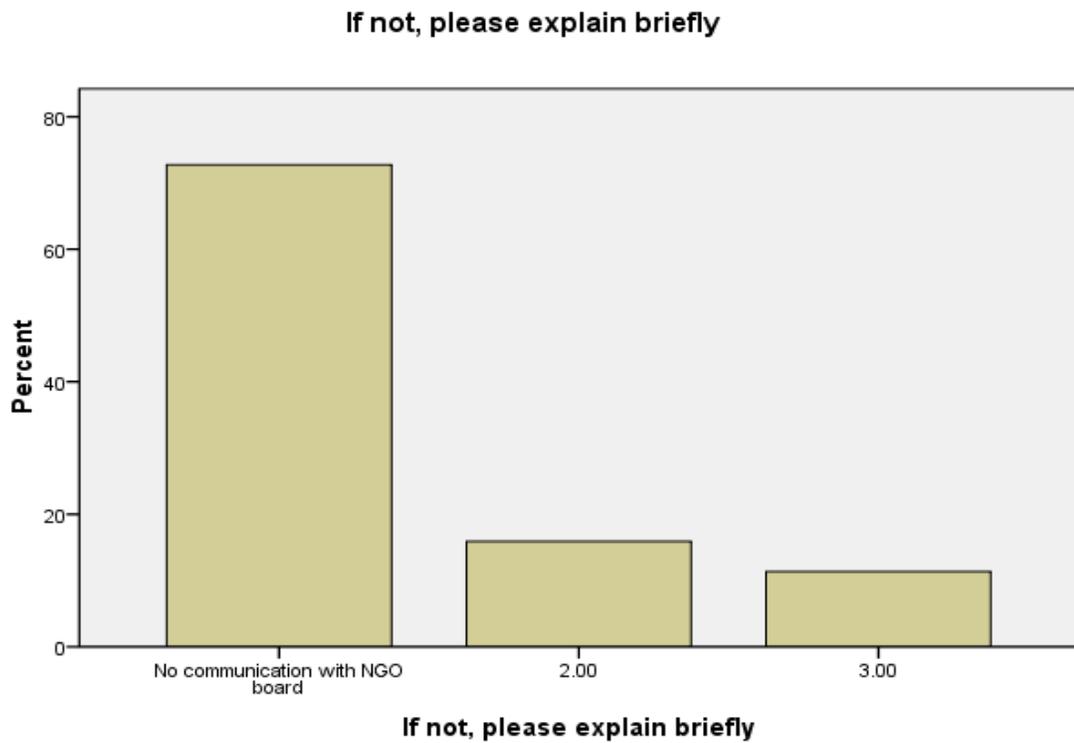
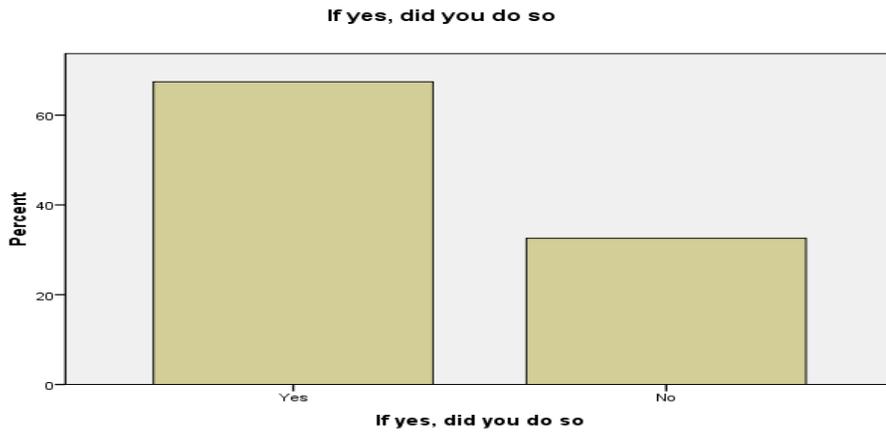


**Table 15: Extra payments to institutions**

The following listed institutions were involved or demanded the extra payments:

Valid	BRELA
	GOVERNMENT REGISTRY OFFICES
	DISTRICT ADMINISTRATIVE SECRETARY OFFICE
	MIDDLE MAN
	RITA
	TRA

Wer asked respondents whether they were forced to comply with the NGO Act; those who replied "YES" were asked:



### **PART III. Right to Appeal**

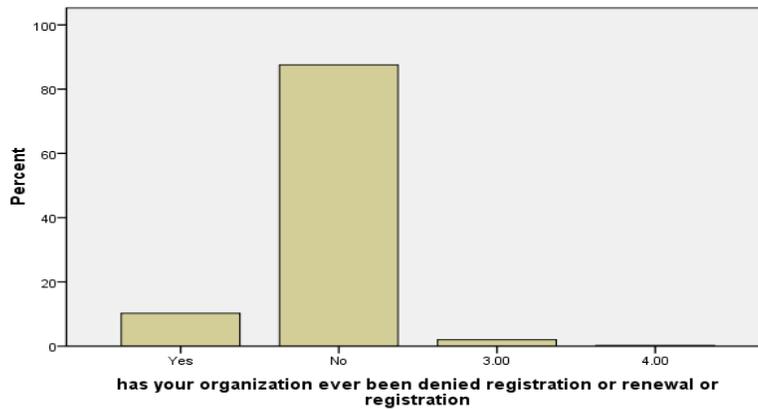
This section sought to establish experiences or challenges organisations contend with in face of penalties imposed, suspensions, dissolution, reasons behind, the outcomes and whether they were afforded reasonable space and time to appeal the authorities' decisions. Finally it seeks recommendations from respondents for an independent appeal process.

**Table 16: Denial of registration or renewal**

Has your organization ever been denied registration or renewal of registration?

	Frequency	Valid Percent
Yes	41	10.2
No	351	87.5
3	8	2.0
4	1	.2
Total	401	100.0

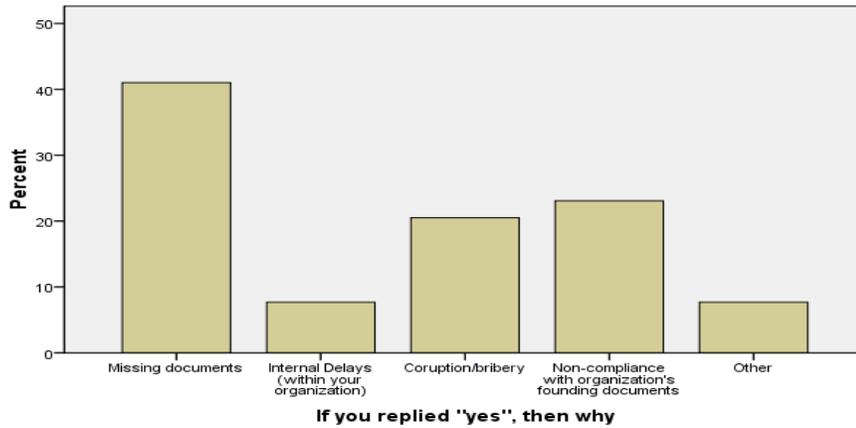
has your organization ever been denied registration or renewal or registration



**Table 17: Reasons for denial of registration or renewal**

If yes, why?		Frequency	Valid Percent
Valid	Missing documents	16	41.0
	Internal Delays (within your organization)	3	7.7
	Corruption/bribery	8	20.5
	Non-compliance with organization's founding documents	9	23.1
	Other	3	7.7
	Total	39	100.0
Missing	Not applicable	360	
	System	2	
	Total	362	
Total		401	

**If you replied "yes", then why**



**Has any organisation authority at any time sought to suspend your organization's registration/certificate of compliance or dissolve your organization**

	Frequency	Valid Percent
Valid Yes	80	20.2
No	317	79.9
Total	397	100.0
Missing No response	4	
Total	401	

**If yes then , why?**

	Frequency	Valid Percent	Cumulative Percent
Valid Failure to fulfill reporting requirements	34	55.7	55.7
Missing documents	18	29.5	85.2
Corruption/bribery	5	8.2	93.4
Non-compliance with organization's founding documents	2	3.3	96.7
Other	2	3.2	98.4
Total	61	100.0	
Missing Not applicable	338	84.3	
System	2	.5	

Total	340	84.8	
Total	401	100.0	

**Has your organization ever appealed a decision of the registering entity**

Valid	Yes	22	5.5	5.5	5.5
	No	375	93.5	93.5	99.0
	3	1	.2	.2	99.3
	999	3	.7	.7	100.0
	Total	401	100.0	100.0	

**If you replied "yes" to whom did you appeal**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	None	2	.5	15.4	15.4
	NGO Board	8	2.0	61.5	76.9
	Total	13	3.2	100.0	
Missing	Not applicable	388	96.8		
	Total	401	100.0		

**Do you think an NGO should have the right to appeal any adverse decision by the NGO Board, department, agency or government ministry to an independent court**

		Frequency	Percent	Valid Percent	Cumulative Percent
	Yes	354	88.3	89.6	90.1
	No	39	9.7	9.9	100.0
	Total	395	98.5	100.0	
Missing	Not applicable	6	1.5		
	Total	401	100.0		

**PART IV. Inspection and Oversight**

This section sought to establish whether or not organisations were subjected to regular inspection for compliance by authorities under the laws that they are registered. Also to gauge the severity of outcome of the inspections where applicable.

**Table 18: Inspection and oversight**

Has any authority ever visited your organization to assess its compliance with the laws or regulations?

	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	186	46.4	47.2	47.5
No	207	51.6	52.5	100.0
Total	394	98.3	100.0	
Missing No response	7	1.7		
Total	401	100.0		

**If yes, to which entity conducted the inspection**

	Frequency	Percent	Valid Percent	Cumulative Percent
NGO board (under NGO Act)	46	11.5	33.1	33.8
Minister Responsible for NGOs	21	5.2	15.1	48.9
Registrar for NGOs	34	8.5	24.5	73.4
Line Minister (Health, Education, etc)	10	2.5	7.2	80.6
Other entity	27	6.7	19.4	100.0
Total	139	34.7	100.0	
Missing Not applicable	262	65.3		
Total	401	100.0		

	Frequency	Percent	Valid Percent
DISTRICT COMMUNITY DEVELOPMENT OFFICE	23	6.0	60.53
DONOR	11	2.7	28.95
MINISTRY OF AGRICULTURE	1	.2	2.63
TACAIDS	2	.5	5.26
TRA	1	.2	2.63
Total	38	9.5	100.0
Missing Not applicable	218	54.4	
No response	145	36.2	
Total	363	90.5	
Total	401	100.0	

**What was the outcome**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid No outcome	1	.2	.6	.6
Organisation was found to be compliant	82	20.4	49.1	49.7
Verbal warning/letter of warning	14	3.5	8.4	58.1
fine	63	15.7	37.7	95.8
Suspension	2	.5	1.2	97.0
Dissolution	4	1.0	2.4	99.4
Other	1	.2	.6	100.0
Total	167	41.6	100.0	
Missing No response	233	58.1		
System	1	.2		
Total	234	58.4		
Total	401	100.0		

**PART V. Self-regulation**

The aim of this section was to find out whether organisations are aware that there exist instruments for self-regulation of the NGO sector; have encountered these instruments or use such and other similar tools in their daily operations.

	Frequency	Percent	Valid Percent
yes	204	50.9	51.4
no	193	48.1	48.7
Total	397	99.0	100.0
Missing not applicable	3	.7	
System	1	.2	
Total	4	1.0	
Total	401	100.0	

**If you replied "yes", have you**

	Frequency	Percent	Valid Percent	Cumulative Percent
Just heard about it	62	15.5	32.5	33.0
Seen it in publication(s)	35	8.7	18.3	51.3
Read and understood its contents	92	22.9	48.2	99.5
Other	2	.4	1.0	100.0
Total	191	47.6	100.0	
Missing Not applicable	208	51.9		
System	2	.5		
Total	210	52.4		
Total	401	100.0		

	Frequency	Percent	Valid Percent
Yes	198	49.4	55.9
No	155	38.6	43.8
3	1	.2	.3
Total	354	88.3	100.0
Missing No response	47	11.7	
Total	401	100.0	

	Frequency	Percent	Valid Percent
Yes	313	78.1	81.3
No	72	17.9	18.8
Total	385	96.0	100.0
Missing No response	15	3.7	
System	1	.2	
Total	16	4.0	
Total	401	100.0	

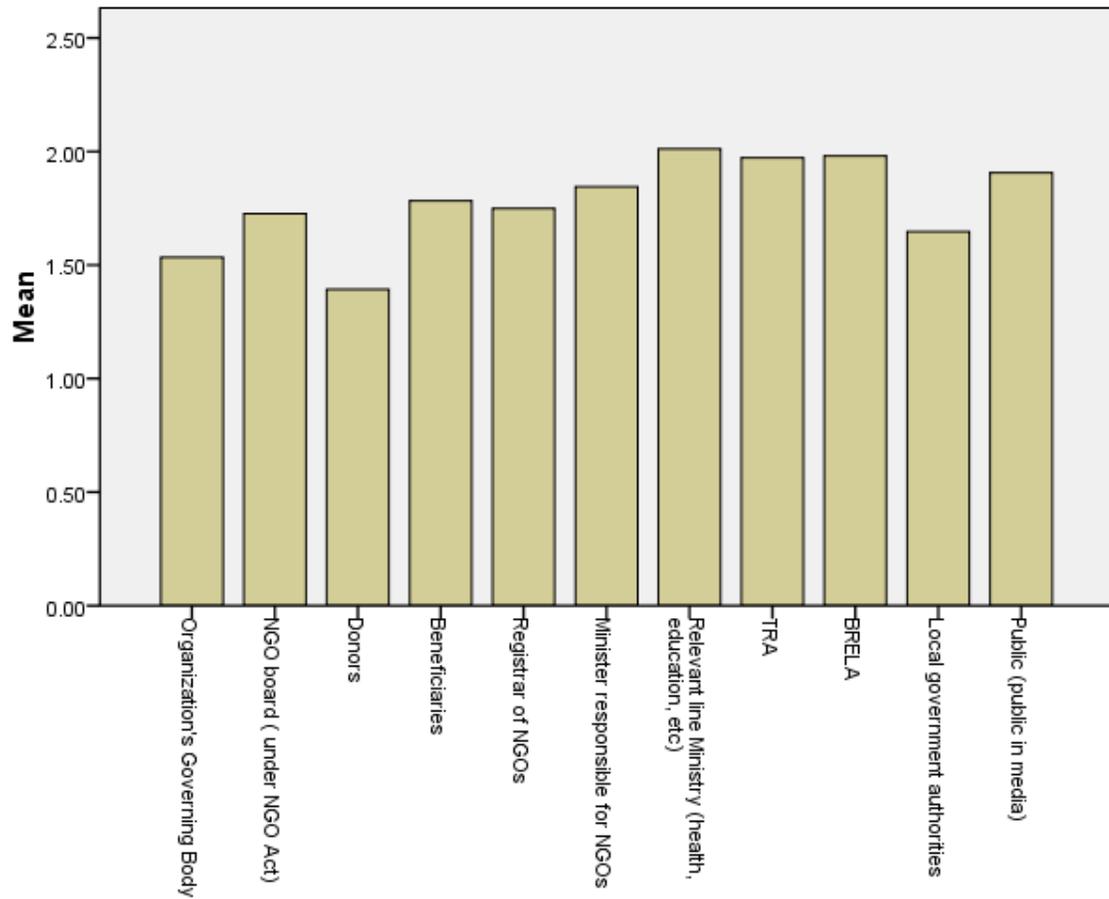
	Frequency	Percent	Valid Percent
NGO Act of 2002	138	34.4	34.4
NACONGO	30	7.5	7.5
Standards your governing board has adopted	132	32.9	32.9
Other	12	3.0	3.0
No response	89	22.1	22.1
Total	401	100.0	100.0

### **PART VI. Reporting**

This section wanted to find out whether organisations make mandatory and regular reporting to authorities including registering authorities, look at incidences of multiple reporting and the challenges it poses.

	Frequency	Percent	Valid Percent
Valid Yes	350	87.3	87.5
No	50	12.5	12.5
Total	400	99.8	100.0
Missing System	1	.2	
Total	401	100.0	

If yes, to which entity does your organisation report? tick all that apply



If you replied "other" please state

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid				
District/Municipal Council	2	.5	20.0	20.0
District/Regional NGO Network	6	1.0	60.0	100.0
Total	10	2.5	100.0	
Missing NO RESPONSE	391	97.5		
Total	401	100.0		

**Reporting to more than one authority has this caused any significant problems or confusion**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	127	31.7	33.5	33.5
	no	252	62.8	66.5	100.0
	Total	379	94.5	100.0	
Missing	No response	22	5.5		
Total		401	100.0		

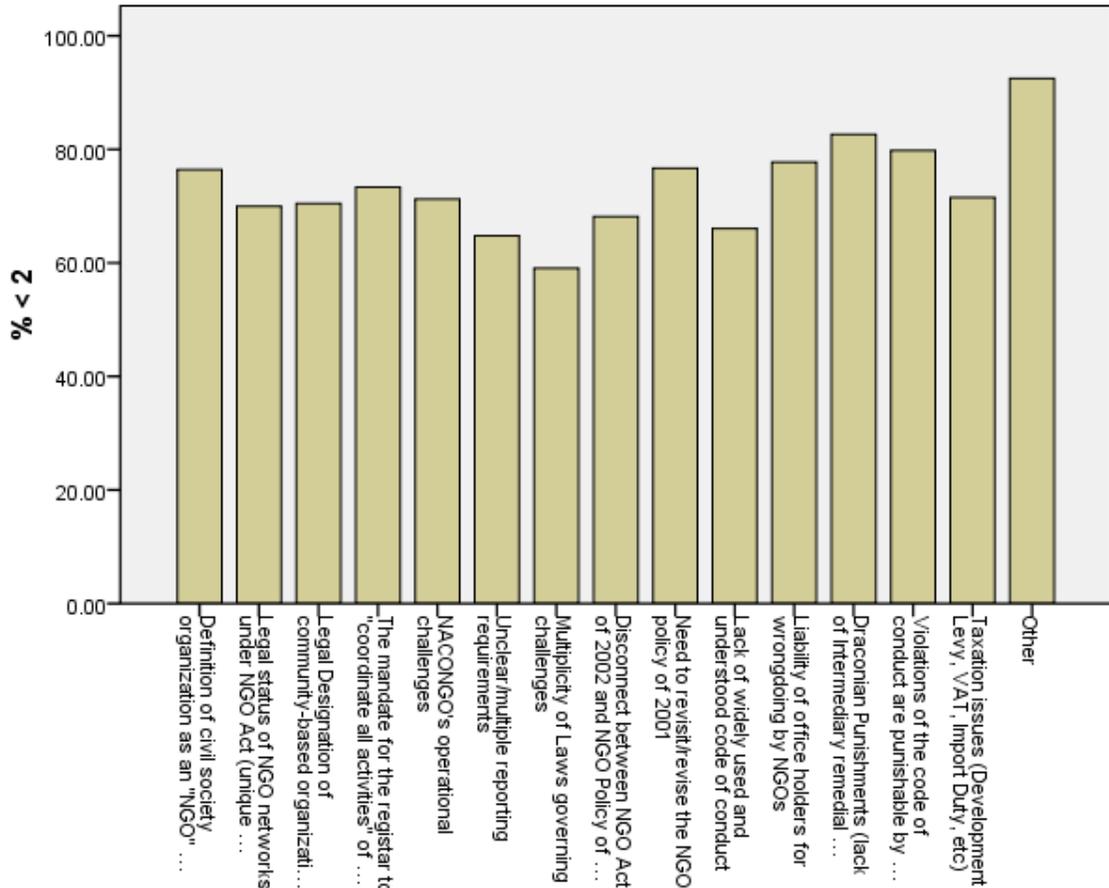
**If yes please explain**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Different format and legal status with unnecessary costs	33	8.2	71.7	71.7
	<Left blank>	13	3.1	28.3	100.0
	Total	46	11.5	100.0	
Missing	No Response or not applicable	348	86.8		
	System	7	1.7		
	Total	355	88.5		
Total		401	100.0		

**PART VII. Policy and Legal challenges**

This section looked at the kind of policy and legal challenges organizations face, delving deeper to soliciting recommendations for enforcement and the improvement of the NGO code of conduct (self-regulatory environment for NGOs in Tanzania).

**Rank most important policy and legal challenges - scale of 1 to 5 with 1 being the most important**

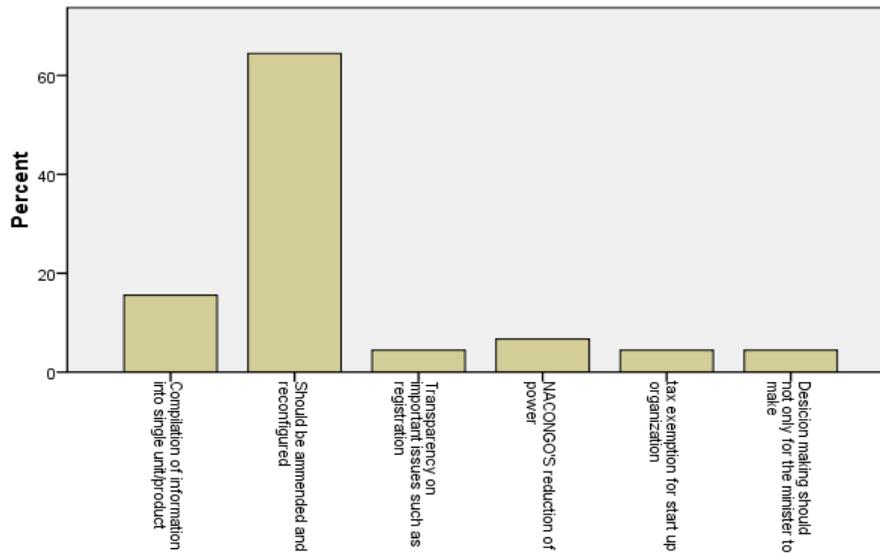


**Recommendation in relation to Laws, regulation and policy regulating NGOs**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Compilation of information into single unit/product	7	1.7	15.6	15.6
Should be amended and reconfigured	29	7.2	64.4	80.0

Transparency on important issues such as registration	2	.5	4.4	84.4
NACONGO'S reduction of power	3	.7	6.7	91.1
tax exemption for start up organization	2	.5	4.4	95.6
Decision making should not only for the minister to make	2	.5	4.4	100.0
Total	45	11.2	100.0	
Missin No response	356	88.8		
Total	401	100.0		

### Laws, regulation and policy regulating NGOs



### Enforcement of laws, regulation and policy regulating NGOs

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Reduce good's time at the harbour	3	.7	6.1	6.1

	Laws and regulation should not be controlled by one body like NACONGO only	10	2.5	20.4	26.5
	Clarity on NGO owning / disposing of properties	6	1.5	12.2	38.8
	District councils to monitor and support NGOs activities	9	2.2	18.4	57.1
	NGOs should not be dismissed from operation but the person found guilty	6	1.5	12.2	69.4
	Changing of the NGO law into Kiswahili	4	1.0	8.2	77.6
	Prior notification before penalty	10	2.5	20.4	98.0
	NGO should have mandate to go to court against the legislation	1	.2	2.0	100.0
	Total	49	12.2	100.0	
Missing	No response	352	87.8		
Total		401	100.0		

#### NGO code of conduct

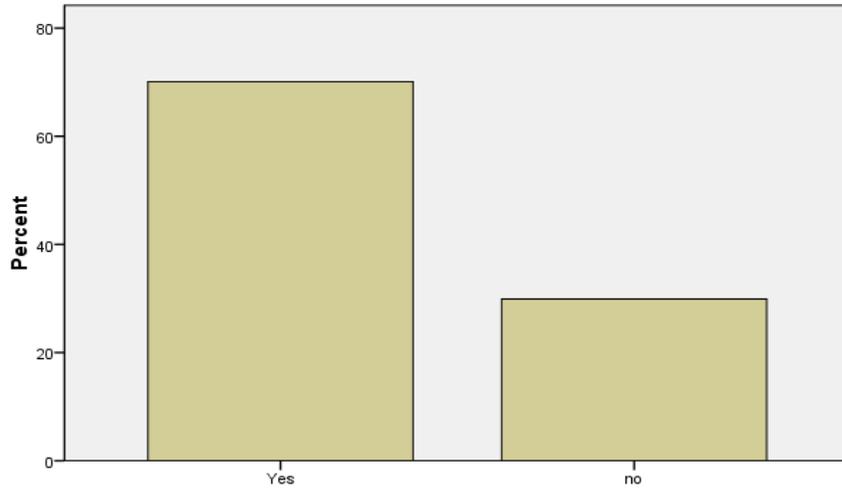
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Should have uniform code of conduct	10	2.5	22.7	22.7
	Proper training of NGO code of conduct to registered NGO	11	2.7	25.0	47.7
	Must Be Clearly Understood	7	1.7	15.9	63.6
	Should be amended	6	1.5	13.6	77.3
	Should be distributed	5	1.2	11.4	88.6

	Should be translated in Swahili	4	1.0	9.1	97.7
	<Left blank>	1	.2	2.3	100.0
	Total	44	11.0	100.0	
Missing	No response	357	89.0		
Total		401	100.0		

**What other suggestions regarding the CSO operational space and enabling environment**

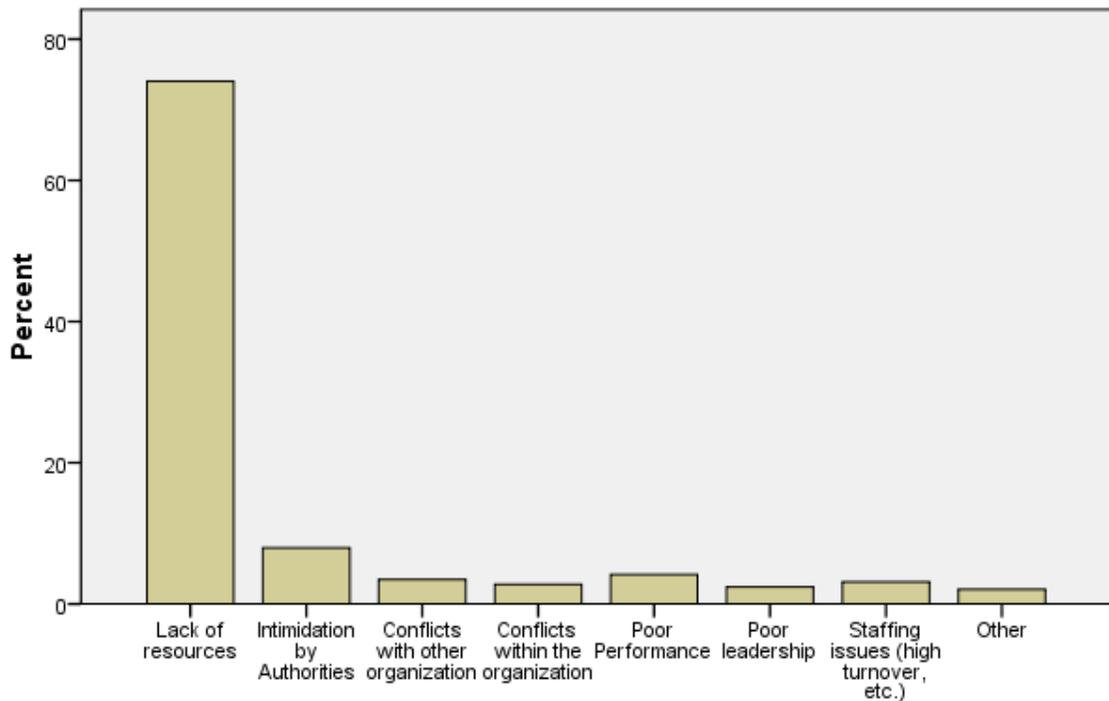
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Transparency and accountability	9	2.2	18.0	18.0
	Tax exemption to goods helping the civil society	8	2.0	16.0	34.0
	Single registration centre for NGOs	5	1.2	10.0	44.0
	Freedom of operation and new law for NGOs policy	6	1.5	12.0	56.0
	Information sharing	12	3.0	24.0	80.0
	Recruiting professions	3	.7	6.0	86.0
	Financial Support	5	1.2	10.0	96.0
	Review policy to support NGOs	2	.5	4.0	100.0
	Total	50	12.5	100.0	
Missing	No Response	351	87.5		
Total		401	100.0		

**is your organization facing any imminent threats to its existence**



**is your organization facing any imminent threats to its existence**

**if you replied "yes", what type of threat**

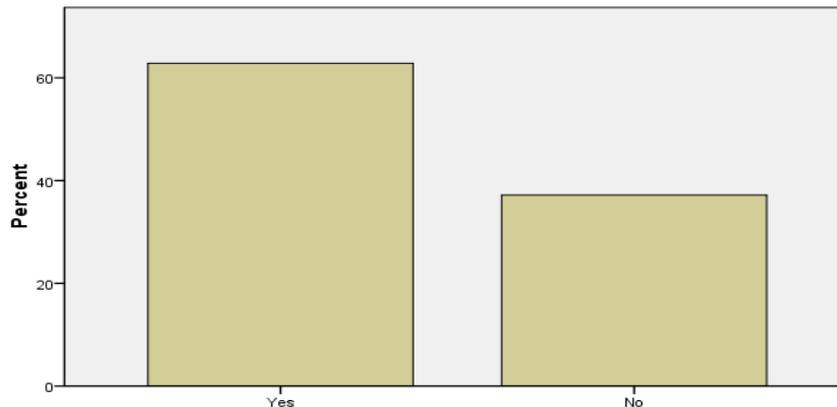


**if you replied "yes", what type of threat**

**PART VIII. Civil Society - Government Relations**

This section dealt with the difficult aspect of NGO/CSO identity and role played by them in society especially its relations with the state at all levels of governance.

**do the GOV agencies and ministries at all levels know that your organization deals with understanding the nature, roles and important of NGO**

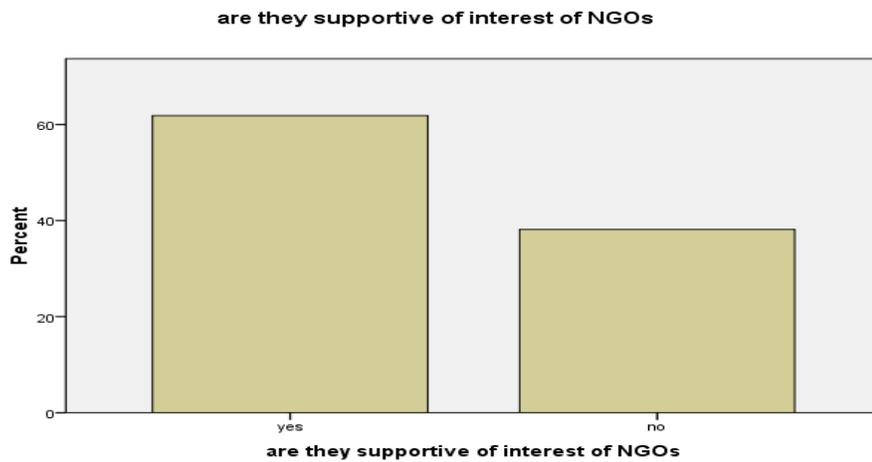


**do the GOV agencies and ministries at all levels know that your organization deals with understanding the nature, roles and important of NGO**



**If yes or no, please explain**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	poor relationship	65	16.2	49.2	49.2
	Cooperation in project implementation	53	13.2	40.2	89.4
	Involvement and supervision	11	2.7	8.3	97.7
	not at all levels	2	.5	1.5	99.2
	Conflict over resource use due to fear of activities taking over from the district level by NGO	1	.2	.8	100.0
	Total	132	32.9	100.0	
Missing	Not applicable	269	67.1		
Total		401	100.0		



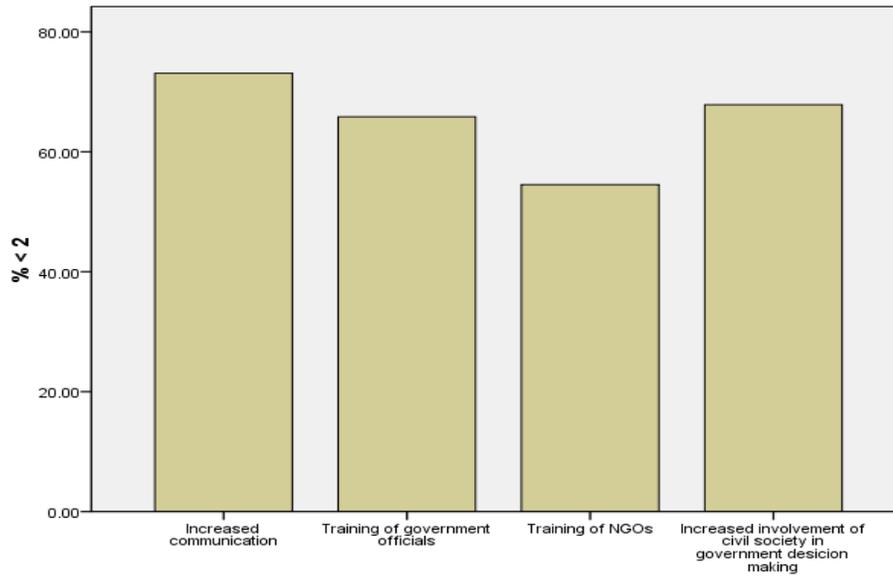
**Are GOV agencies and ministries generally fair and reasonable in dealing with NGOs**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid yes	181	45.1	45.1	45.1
no	219	54.6	54.6	99.8
999	1	.2	.2	100.0
Total	401	100.0	100.0	

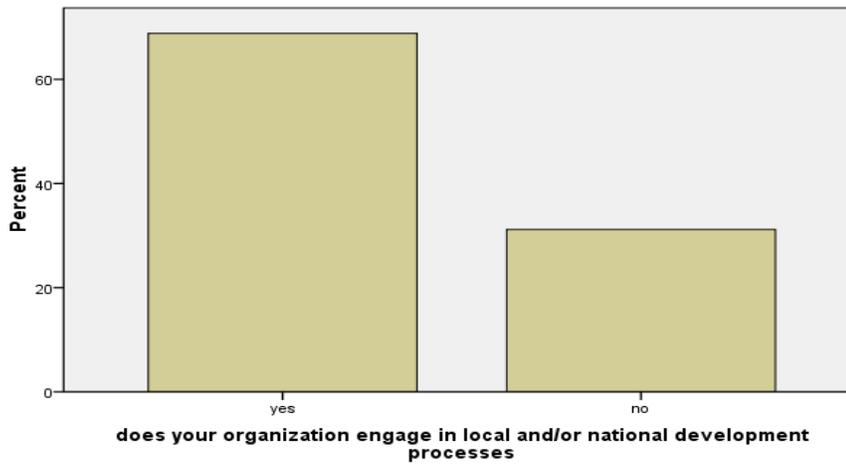
**Why do you think so, please explain**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Progress in main issues	9	2.2	2.2	2.2
Invitation to various activities	10	2.5	2.5	4.8
Cooperation as stakeholders	24	6.0	6.0	10.8
Shared resource use	5	1.2	1.2	12.0
Overcame difficult and cumbersome bureaucratic system	10	2.5	2.5	14.5
Partnership with NGOs	6	1.5	1.5	16.0
Joins our Anti-Corruption drive	4	1.5	1.5	17.5
Not applicable	330	82.3	82.5	100.0
Total	400	99.8	100.0	
Missing System	1	.2		
Total	401	100.0		

Proposal for improving relationship between NGOs and the government



does your organization engage in local and/or national development processes



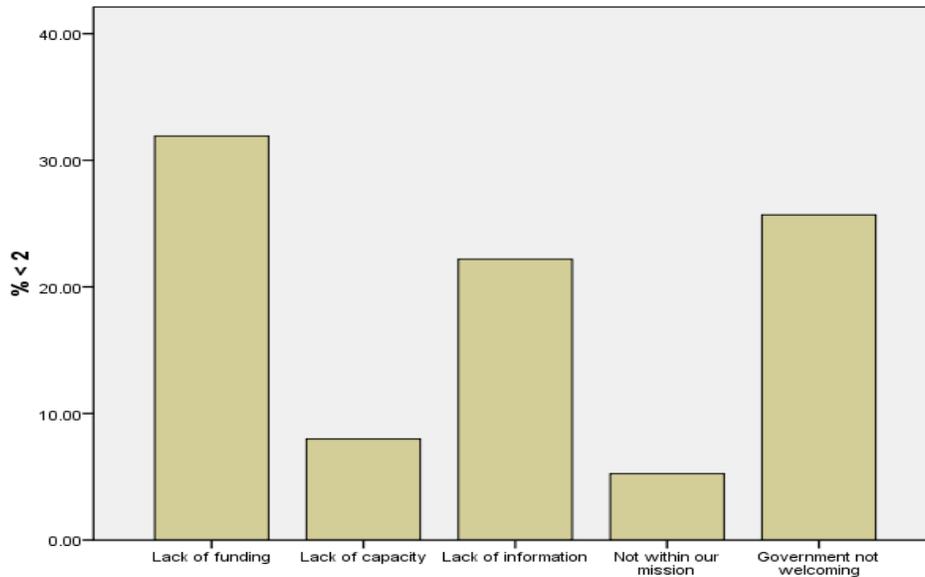
If yes, do you face any challenges

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	198	49.4	56.9	56.9
	No	150	37.4	43.1	100.0
	Total	348	86.8	100.0	
Missing	Not applicable	53	13.2		
Total		401	100.0		

**IF YES, WHAT ARE THESE CHALLENGES**

CUMBERSOME PROCESSES  
 BUREAUCRACY  
 COMMUNITY ANTICIPATING FINANCIAL BENEFITS  
 COMMUNITY OVERDEPENDENCE ON NGOS  
 DELAY IN TAKING ACTIONS GOV  
 DEMANDED MORE MONEY..  
 DIFFICULTY IN MEETING INTERNATIONAL STANDARDS  
 FINANCIAL AND HUMAN RESOURCE CHALLENGES  
 GETTING WORK PERMIT FOR VOLUNTEERS  
 CHALLENGES ON DELIVERY OF ENTITLED BENEFITS  
 POOR COMMUNICATION  
 RELYING ON SAME DONOR FUNDS  
 WORKING IN MORE THAN ONE REGION  
 Total

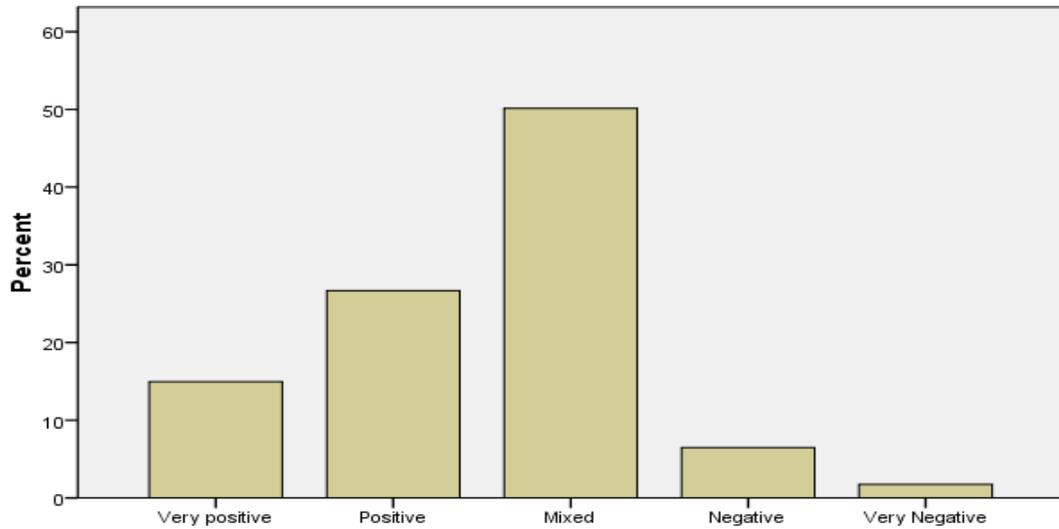
**If your organization does not engage in those processes, tick all that apply**



**PART IX. Public perception**

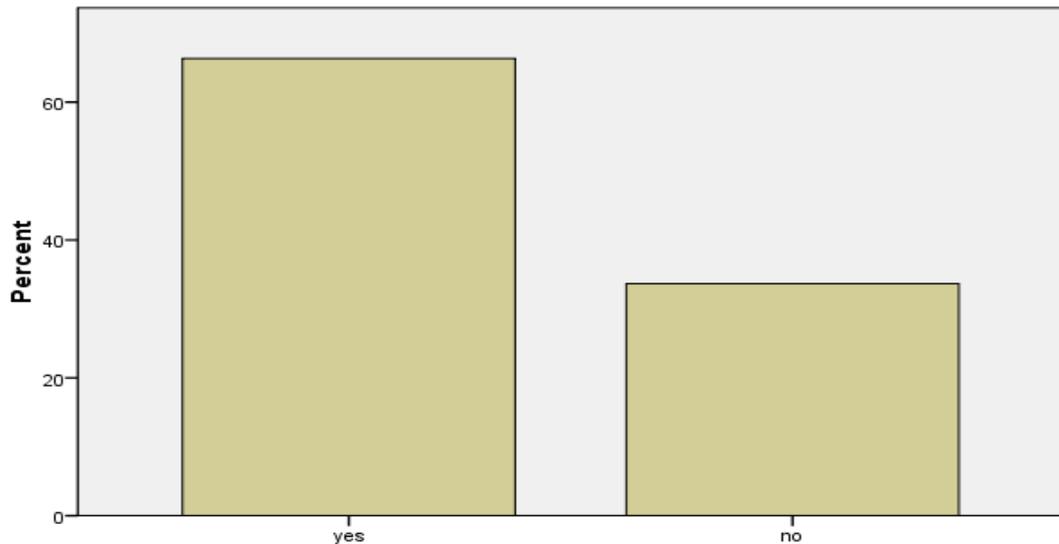
This was the last section and dealt with the sophisticated issue about our image as NGOs/CSOs to the society - NGOs/CSOs as a collective as well as individually. We sought to get experiences and attributes about both negative and positive public perception of NGOs/CSOs in the country.

**how do you characterise public perception on NGOs in Tanzania**



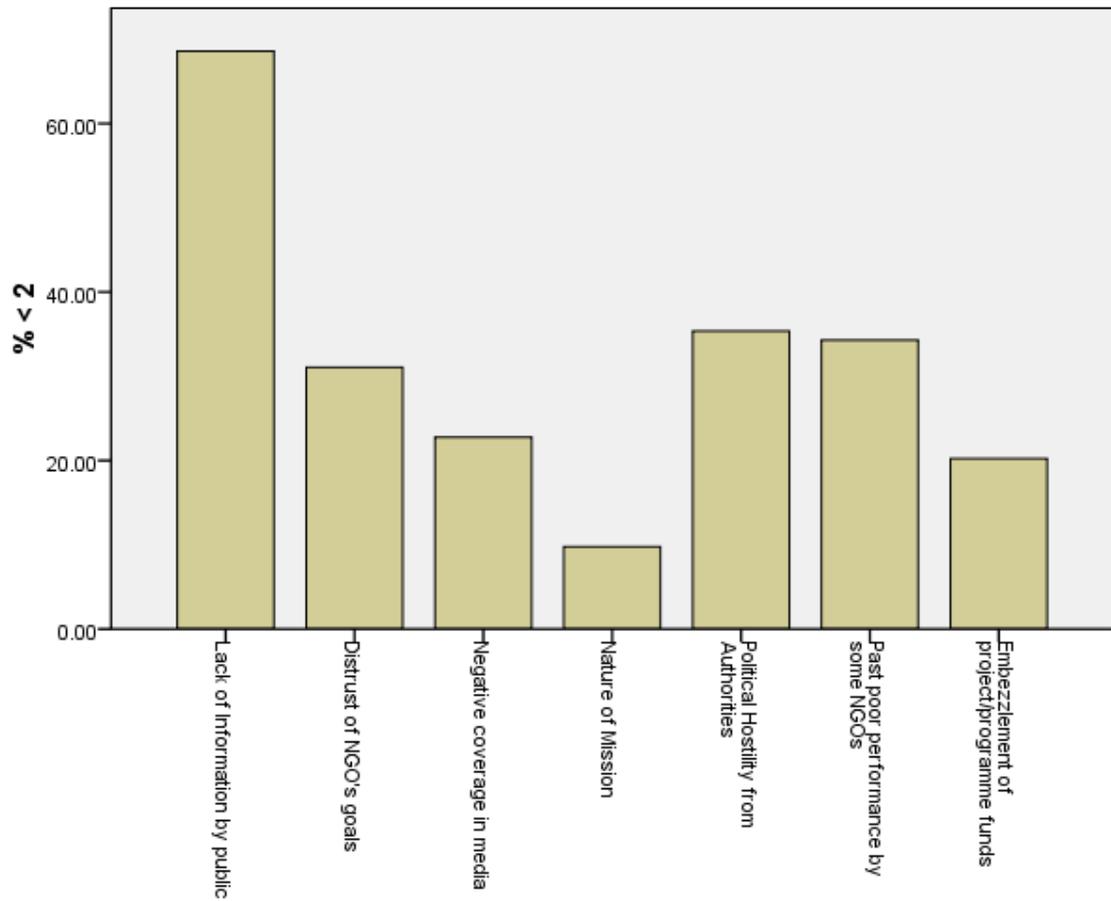
**how do you characterise public perception on NGOs in Tanzania**

**have yo faced any challenges regarding public perception of your NGO**

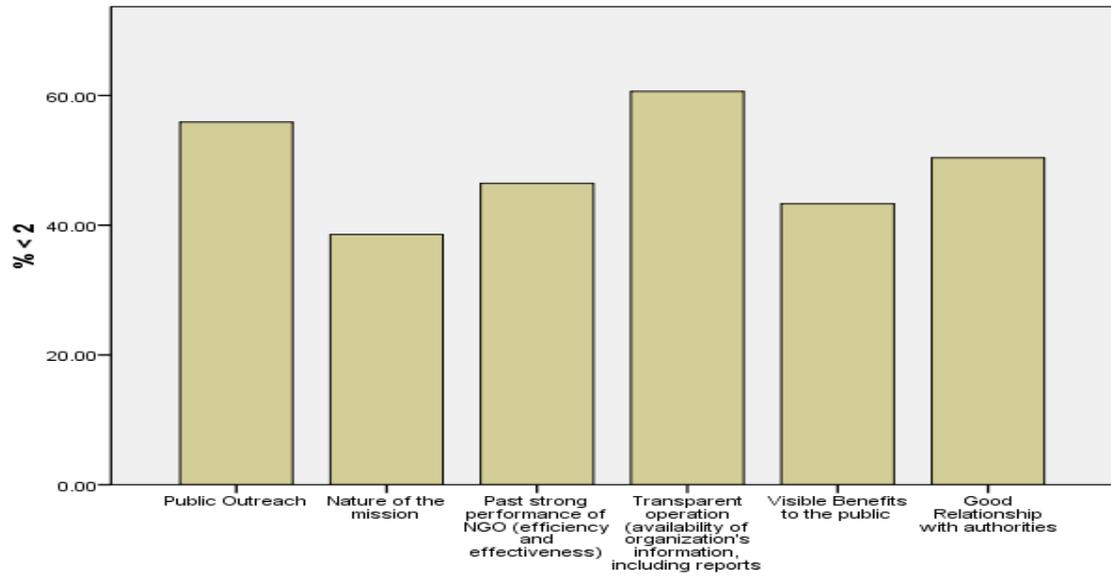


**have yo faced any challenges regarding public perception of your NGO**

If yes, to what do you attribute these challenges (tick all that apply)



If not, to what do you attribute positive public perception of your organisations (tick all that apply)



## **5.0 THE VALIDATION WORKSHOP**

In the second stage of the review project, TANGO in collaboration with Network of NGOs in Dodoma Region (NGONEDO) organized a validation workshop in Dodoma involving representatives of the NGOs which were the respondents in the survey. The purpose of the validation workshop was to present the initial findings from the survey and request the respondents to authenticate and complement the survey results. Also the workshop was aimed at providing an opportunity for the NGOs to discuss and identify laws and by-laws which restrict them in engaging in development discourse. They also discussed challenges they face in applying the NGO policy, code of conduct and other legislative systems. The findings from the survey were used as reference information.

The meeting was attended by 50 participants from the 20 districts which had participated in the field review/surveys.

### **5.1 Outcomes of the Validation Workshop**

During the Validation Workshop, participants provided feedback on the findings from the survey; section by section, and finally came up with specific recommendations and the way forward in so far as legislation on NGO activities in Tanzania is concerned.

After the Lead Researcher had presented the survey, the general feedback received from the participants was that the survey methodology was sound and questionnaire was comprehensible, well-structured. It was emphasized that this was a very useful and pertinent exercise for gathering information and evidence to be used in advocating and supporting efforts towards amending the legislative framework governing NGO operations in the country.

The specific feedback and recommendations are outlined below.

#### **5.1.1 Main area of activities**

Participants advised on re-clustering of the ‘main areas of focus’ which included the following:

- Youth is not at area of activity, it is just a focus area
- FGM should be included in ‘Women’s Rights’ activity area instead of ‘others’
- Microfinance should be categorized under ‘Economic Development’ activity area
- Forestry should be included under ‘Environmental issues’
- Orphans should be put under ‘Children’
- Pastoralists under ‘agriculture’
- PETs should be included in ‘Good governance’ activity area

#### **5.1.2 Delays in registration**

Table 11 depicts how long it took NGOs in completing the registration. Participants noted that even for those that took less than one month, a common feature was that it involved it all involved a lot of back and forth visits to the Registrar.

The once point to noted here was that registration of NGOs is done in Dar es Salaam only making it more difficult and time consuming for most NGOs which are located outside of Dar es Salaam.

#### **5.1.3 Other charges paid other than required by the law**

Participants elaborated and emphasized more on the extra costs associated with the registration process. The average fee paid was out at TShs. 15,000/-.

#### **5.1.4 Compliance**

Survey results showed that more than a quarter of the NGOs took more than a year to comply to the NGO Act. Participants observed that in addition to the reasons of bureaucracy and costs related to registration, most did not comply to the Act because the procedure of compliance as well as the benefits were not well articulated to the NGOs and understood.

#### **5.1.5 Denial of registration or renewal of registration**

Table 17 depicts that most NGOs were denied registration or renewal due to 'Mission documents'. Participants to the validation workshop explained that this is mainly because NGOs are afraid of submitting annual reports, audited reports, etc because they have outstanding fees and payments. Some assume and hope that the Registrar will not follow-up the NGOs.

Most of the risks that NGOs face regarding de-registration are related to not meeting the reporting demands of the Registrar.

In that regard it was suggested that networks should regularly disseminate to their members information on the process and procedure in meeting the Registrar's requirements.

#### **5.1.6 Inspection and Oversight**

The responses on Inspection and Oversight (Table 18) need to be interpreted with care. Participants indicated that there was ambiguity on the meaning and scope of 'inspections; while some counted mere visits as inspection, others did not. Also visits by TRA, donors and the local government authority officials (e.g. the District Development Officer) were treated and reported differently by the NGOs in the context of 'inspections and oversight'.

#### **5.1.7 Self Regulation**

As per Table 19 more than half of the respondents indicated to have knowledge of the NGO code of conduct. However, a cross examination of the participants in the validation workshop showed that 73% did not understand the contents of the code of conduct itself. Most of them are using internal standards and codes of conduct to govern their work.

#### **5.1.8 Reporting**

Survey results show that reporting is done mainly to the line ministries. However participants emphasized the fact for some NGOs there are still many other stakeholders who demand reports. These multiple reporting requirements create additional confusion and burden to the NGOs.

### **5.2 Recommendations and the Way Forward**

At the close of the validation workshop, participants were requested to provide recommendations and suggest the way forward for improving the NGO legal and operating environment in light of the results obtained from the survey.

The recommendations highlighted below relate to amendments to the existing laws that were recommended by the participants, while the way forward that is suggested relate to practices and actions that will make the amended legal framework work and delivery effectively for the advancement of the NGOs and the development outcomes they are working on.

#### ***5.2.1 Recommendations:***

- The law should provide NGOs the right to appeal to an independent court any adverse decision by the NGO Board, Department or Government ministry.

- The many existing laws that touch on key NGO issues (registration, operations, reporting, oversight, appeals, etc) should be rationalized and harmonized to create one overarching legislation. This will reduce confusion and enhance compliance.
- The National Council of NGOs (NACONGO) should be reformatted to provide oversight at lower levels and make way for regional and district councils of NGOs.
- The localization of the NGO councils should go hand in hand with giving legal mandate to the local government authorities in undertaking inspection and other oversight functions. This will greatly reduce multiple inspections and reporting which currently exist involving different entities.
- The law should be amended and require that the chief executives of NGOs be appointed based on prescribed competences instead of being elected. This will strengthen the operational capacities of the NGOs.

### ***5.2.2 Way forward:***

- Findings from this survey should be presented to the Registrar, NGO Board, and NACONGO to make sure that they understand and are on board. TANGO and NACONGO should then lobby together to the government for review of the laws.
- Communication and interaction between NGOs and the Government and donors should be improved at all levels
- Once it is produced, popular versions (in both English and Kiswahili) of the new policy and legislation of NGOs should be published and widely disseminated.
- A simple clear format for NGO reporting to the Government should be formulated
- An annual NGO forum or conference should be organized to provide space for NGOs to review their working environment, the existing laws, achievements and challenges. This would be an opportunity to showcase NGO work in Tanzania and strengthen the relationship with the government, donors and the beneficiaries.
- NACONGO and umbrella organizations and networks should devise and roll out management and leadership trainings for the NGOs

## **6.0 LEGAL ANALYSIS AND INTERPRETATION OF FINDINGS**

### **6.1 Introduction**

As indicated and well explained in the survey report, there were findings show that 75% of the NGOs interviewed were/are registered under the NGOs Act. This is evidence that the NGOs Act of 2002 is very pertinent when it comes to establishment, regulation and operationalization of a certain NGO. This fact, justifies the effort of analyzing this particular law and make practical recommendations thereafter.

Moreover, reading from the research findings, one would note that the legal framework for regulation of NGOs in Tanzania as has demonstrated four major and salient features. These include:

- Legal norms and standards that are sufficiently catering for the NGOs operations in Tanzania
- Legal issues that are contravening the whole essence of having a voluntary sector of which one would recommend amendments
- Legal issues that portray lacuna in the legal framework of which one would recommend enactment of various provisions and regulations
- Practical issues with regards to enforcement of the standards enunciated in the laws of which one would recommend changes in the policies, structures and practices.

From this setting, it is empirical to venture into a detailed analysis of each of the major features stated above. The analysis will lead to propositions that may rectify the mischief, irregularity or anomaly embedded in the law, police and practice. Eventually, there would be established a more conducive legal and practical environment for the NGOs to flourish and deliver.

This analysis, therefore covers the above mentioned four major features of the legal framework with regards to NGOs in Tanzania.

#### **1. LEGAL NORMS AND STANDARDS THAT ARE SUFFICIENT**

This part addresses the legal norms and standards that are sufficiently catering for the NGOs operations in Tanzania. Reading from the research findings one would conclude that it is not the whole NGOs Act which is faulty. There may be several provisions that are supportive to the NGOs work in Tanzania.

***a) Registration Duration***

The research among many suggestions indicated that 74.6% of all registered NGOs spent between weeks and six months to secure registration. This is an indication that despite some challenges as those mentioned, the legal framework for registration of NGOs is somehow reasonable.

In other words, the provisions in the law and regulations that addresses registration seem to be providing for a conducive environment for almost ¾ of all NGOs to get their registration in a period of less than six months. If interpreted otherwise, one would still say that it is too much time spent for a person's to wait even after has lodged his application for registration of NGO.

The statistics show that 25% of the applicants spend between 6 months to more than one year waiting for their applications for registration of NGOs to be processed. This is a bad indicator that would necessitate setting a limitation of time upon which a certain NGOs must be registered or otherwise be given reasons for the denial of its registration.

Besides, the statistics are showing that about 29% of those whose registration were delayed the reasons thereof are self attributable to the said NGOs, either due to some missing documents or due to NGO's internal delays. Moreover 71% of those who were denied registration it was due to similar reasons of missing documents, internal delays, and non conformity with objectives of the said NGO as per its founding documents.

Nevertheless, there seems to be a problem here. If one reads the law it is clear that a minimum number of months to get registration is six months. I.e. Three months for determination by the registrar and three months for determination by the NGOs Board. This practice creates unnecessary bureaucracy. The law states that:

*14.-(1) The Registrar shall, within three months after receiving an application and its relevant documents under subsection (2) of section 13 refer the matter to the Board for consideration and determination.*

*(2) The Board shall, within the period of three months after receiving all the documents from the Registrar consider and determine the matter.*

*(3) The Board may, in determining the matter under subsection (2) -*

*(a) grant the registration and instruct the Registrar to register the Non- Governmental Organization upon payment of prescribed registration fee; or*

*(b) refuse an application and instruct the Registrar to inform the applicant accordingly.*

*(4) Notwithstanding the provisions of subsection (3), where the Board has not replied to an applicant within three months, it shall be lawful for the applicant to continue with activities applied for, as if the application has been granted.*

The survey is showing that 50.5% of all NGOs faced the challenge of bureaucratic delays. These delays are unfortunately facilitated by the law somehow. It is hereby therefore suggested that there can be minimal delays if the Registrar would be vested with the duty to effect registration, this section 14 therefore should now read:

*“(1) The Registrar shall, within the period of three months after receiving an application and the accompanying documents consider and determine the matter.*

*(2) The Registrar may, in determining the matter –*

*(a) grant the registration and register the Non Governmental Organization upon payment of the prescribed registration fee; or*

*(b) refuse an application and inform the applicant accordingly.*

*(3) Notwithstanding the provisions of subsection (2), where the Registrar has not replied to an applicant within three months, it shall be lawful for the applicant to continue with the activities applied for, as if the application has been granted.”*

### ***b) Self Regulation***

In essence the law provides in principle for the concept of self regulation of NGOs. This is one of the fundamental standards that need to be upheld in the law. It may however happen that the provisions of the law are inadequate but recognition of this fundamental principle is very essential for the whole voluntary sector. The Survey indicated that 78% of the NGOs want the concept to be improved and upheld. Moreover, 55% of all NGOs indicated that they were complying with the NGOs code of conduct, which is one of the key tools for self regulation of NGOs in Tanzania despite the fact that 43% of the NGOs do not comply with. Worse still, 48% of the NGOs interviewed indicated that they had never seen the code of conduct for NGO! These statistics are somehow contradicting the above statistics. Nevertheless is amazing as to how NGOs may be in conformity with the code of conduct where they have no idea of the same code?

## 2. LEGAL ISSUES THAT ARE CONTRAVENING THE ESSENCE OF NGOS

Legal issues that are contravening the whole essence of having a voluntary sector of which one would recommend amendments

### *a) Delay in registration*

The research shows that 25% of NGOs had to wait for 6 to more than one year in order to get registration and reasons for the delay are not necessarily attributable to them. This may be caused by the provisions of section 6 which provides that:

*6.-(1) The functions of the Registrar shall include -*

- (a) to register all national and international Non-Governmental Organizations operating in Tanzania with their precise sectors, affiliation and locations of their activities after receiving instructions from the Board;*
- (b) to keep proper register of registered Non-Governmental Organizations;*
- (c) to keep various records and reports regarding Non-Governmental Organizations; and*
- (d) to attend all Board meetings as the Secretary to the Board; and*
- (e) to perform such other duties as may be assigned to him by the Board or as may be required.*

It is noted that subsection (1) (a) implies that the Registrar will register a given NGO only if and when the Board instructs him/her to do so. The Registrar must therefore wait for specific approvals. The provision should instead read “to register Non-Governmental Organizations in accordance with guidelines made by the Board from time to time”.

This proposition is supported by the facts that the Registrar should be able to register an NGO in accordance with guidelines, rather than wait for the Board to give approvals for the registration of each NGO. This is because the Board may meet just once in three months (see first Schedule) and its members will probably not have the time and expertise to consider all pending applications promptly. The Board should have an appellate function in respect of registration.

In addition, it is necessary to consider other provisions that perpetrate delays. When reading section 15 one will note the fault. The section states

*15.—(1) The Registrar shall upon registration under section 14 issue to the applicant a certificate of registration in respect of the registered Non-Governmental Organization.*

*(2) The Certificate of registration issued under subsection (1) shall be as may be prescribed and shall contain:*

- (a) the name and address of the Non-Governmental Organization;*

- (b) the area of operation of the Non-Governmental Organization;*  
*(c) its date of expiry; and such terms and conditions as may be determined by the Board to be observed by the holder of the certificate.*

This section has defects and negative implications: Subsection (2) (b) will create unnecessary bureaucratic hurdles for an expanding NGO. Subsection (2) (c) will create a room for avoidable bureaucratic processes involved in applications for re-registration. It will also introduce too much discretion and additional costs. Subsection (2) (d) gives the Board excessive discretion. It is a principle of international best practice that there should be a minimum of discretion in the registration process. It is hereby suggested that subsections (b), (c) and (d) should be deleted in order to reduce bureaucratic processes and discretion.

***b) Harmonizing the work of NGOs to National Policies***

The NGOs law requires among other things that there should be a harmonization of the NGOs activities with the national development policies or plans. It states that:

However, according to the research findings, it was revealed that The main activity for the surveyed organisations was HIV / AIDS (11.7% ) closely followed by education (10.7%), environment issues (10.2%), youth (9.6%), children (9.5%), human rights (9.3%) and health (9%) out of the 400 that responded. This variation does not automatically suggest that it is easy to harmonise.

On the contrary there was another finding on the mission statements of all these NGOs respondents. Most organisations missions' included both service delivery and advocacy covering about 68.3% of those surveyed.

Interestingly, advocacy-only organisations at 18.7% twice the percentage of the number of service providers organisations which are 9%! This finding concludes that it is a misnomer to require 87% of NGOs to conform to and harmonise their activities in order to be in line with the same national policies which are subject of these NGOs mission to change. This legal requirement is unattainable.

Section 8. states that *-(l)The functions of the Board shall include-*  
*e) to facilitate and co-ordinate the activities of Non-Governmental Organisations operating in Tanzania;*

It is hereby submitted that this provision threatens two principles i.e. independence and innovation of NGOs. That internationally, it is accepted that independence and innovation are the hallmarks of an NGO. It is thus recommended hereby that the subsection should be deleted. If one reads the NGOs Policy: (in para 3.1) there is recognition of the fact that “They [i.e., NGOs] ... bring creativity and innovation ...” to bear on issues. Why then discourage these acclaimed virtues?

Similarly, the requirement of harmonizing the NGOs activities as stated in Section 8(1)(k) That: *to provide policy guidelines to the Non-Governmental Organisations for harmonizing their activities to the national development plan for Tanzania;*

For reasons stated above this part need to be deleted as 87% of NGOs have missions to do advocacy which may not necessarily be compatible with the national plans and policies which in some cases happen to be subject to debate and even reasons for establishment of some NGOs in order to change the said policies.

It is fatal to require 87% of NGOs to abandon their missions by requiring them harmonize their activities to the national development plan, which the government prepares. International best practice recognizes advocacy as one of the primary roles of NGOs. This will be threatened by the provision.

It is hereby suggested that the provision should be deleted. Moreover the provision contradicts in letter and spirit the provisions of the national NGOs Policy: The Policy (para 3.1) recognizes that “NGOs address diverse issues ranging from lobbying, advocacy and human rights to service provision”, and goes on to hail them as “development actors in their own right”. Why discourage advocacy?

### ***c) Compulsory Registration for NGOs to Operate***

The survey findings showed that there was 5% of NGOs that operate without being registered. The survey found out that most organisations (about 75%) were registered under the NGO Act No. 24 of 2002. About 13% and 6% were registered under the Societies and Companies Acts, respectively. It is important to note that the survey questionnaire provided for a multiple level of choice taking into account that there could be a possibility that the respondents' organisation is

registered in more than one piece of legislation. For example an organisation might have initially been registered under the Societies Act and later on complied with the NGO Act.

This multiple layer/parallel registration is something to be dealt with in the subsequent parts. In this area is important to consider the legal implications of compulsory registration. The 5% of NGOs that are not registered are in fact committing offences under the law. The Act provides in section 12. That:

*(1) Each Non-Governmental Organization shall, before operating be required to register with the Board under this Act.*

*(2) No Non-Governmental Organisation shall operate in Tanzania unless it has been dully registered with the Board pursuant to the provisions of this Act.*

This provision is contravening the fundamental freedom of association requires that registration should not be compulsory and failure to register should not be compulsory. However, registration can be made compulsory for NGOs who wish to access some benefits that come with registration.

As suggested earlier on it would be good if section 12 should be replaced with the following: *“No Non-Governmental Organization operating in Tanzania Mainland shall qualify for any of the benefits specified in the Second Schedule unless it is been duly registered pursuant to this Act.”*

It is suggested here that there should be a *Second Schedule* to the law that will specify the benefits to be enjoyed by registered NGOs instead of imposing heavy penalties to this voluntary sectorians.

By having such a progressive provision one would be in line with the NGOs Policy (in para 4.0 (iii) ) which recognizes the safeguarding of freedom of association as one of its specific objectives, and these provisions inhibit the enjoyment of that freedom. Another specific objective of the Policy (in para 4.0 (vi) ), is the facilitating of mechanisms for Government support to NGOs.

#### ***d) Imposition of Penal Sanctions to NGOs***

Even where the survey did not address this issue adequately, there are indicators from the available statistics showing the negative side of the legal provisions supporting penal sanctions to NGOs. The amendments that were made in 2005 introduced *inter alia* the concept of corporate

liability. Whereas NGOs registered under the law become body corporate capable of suing and being sued in their own names. Corporate liability does not require infliction of personal liability where an entity has committed an offence. Strangely the NGOs Act still provides for imprisonment of the office bearers of the NGOs.

Part VIII of the survey addressed the Civil Society -Government Relations. It indicated that poor relationship between the two constituted 49%; implementation constituted 40.2%; while 8% stated that their relationship was tainted by conflict over resource use due to fear of activities taking over from the district level by NGOs. This situation in other words shows that 57% of NGOs are having an uncomfortable relationship with the government authorities. This is a big risk since it the government authorities that are vested with criminal jurisdiction to apprehend, arrest, prosecute, sentence and even enforce a penalty imposed against any given NGOs office bearer. In other words, having penal sanction of having a nature of sentencing an office bearer to prison for an offence committed by and NGOs as a legal person is not proper.

The said section 44. states that:

*(1) Any person who or an organisation which operates contrary to the registration requirement under this Act, commits an offence and upon conviction -*

*(a) in a case of an organisation shall be liable to a fine of five hundred thousand shillings; and*

*(b) in case of an individual shall be liable to a fine of five hundred thousand shillings or to imprisonment for a term of one year or both fine and imprisonment.*

*(2) Upon sentence, the court may order that the whole or part of the fine not less than fifty thousand, be remitted to the accounts of the Board to defray the cost of its operations.*

*(3) Any person or an organisation convicted of an offence under this section shall be disqualified from holding office in any Non-Governmental Organisation operating in Tanzania.*

This section abrogates the fundamental freedom of association which requires that registration should not be compulsory and failure to register should not give rise to a criminal offence. It is likely that a number of NGOs will fail to register for a number of reasons – such as lack of awareness, lack of capacity, lack of incentive – and by so doing individuals will become criminals. If legislation is not enforced uniformly, as this probably will not, then it can be enforced in an arbitrary way. It is hereby thus suggested that the whole section be deleted in order to abolish the criminal offence. If this is done, then it will result in compliance with international best practice.

It is important to note that the NGOs Policy does not mention or propose creation of criminal offences in the voluntary sector but rather propounds the necessity for creating a conducive and enabling environment for NGOs to flourish. The imposition of any criminal offence to voluntary sector can be against the overall objective of the Policy.

#### **4. LEGAL ISSUES THAT PORTRAY LACUNA<sup>30</sup>**

Reading from the survey report one would certainly note that there are legal issues that portray *lacuna* [i.e. legal gaps] in the legal framework of which one would recommend enactment of various provisions and regulations. The gaps are with regards to right to appeal against various decisions made under the law; inadequacy in self regulation mechanism; and the legal silence on possible and potential benefits for a registered NGO such as tax exemptions.

##### ***a) Appeals***

When a person is aggrieved by any decision has right to appeal to a superior body/organ that can determine and decide on the matter held by its subordinate. The survey indicated that 89.6% aggrieved NGOs would wish to appeal to the court of law where are dissatisfied by a decision of a Board. However the NGOs Act does not have a provision for such kind of appeals even where there is no finality clause in the law. This is an obvious lacuna that needs to be filled by a legal provision. For instance the law states in sections 22 to 24 state that:

*22.-(1) Any applicant who is not satisfied with the decision of the Board under section 18, 20, and 21 shall have a right to file an appeal with a copy of proceedings and decision of the Board to the Minister.*

*(2) The Minister shall, within two months from the date of receiving the appeal consider and determine the appeal and may -*

*(a) vary or affirm the decision of the Board;*

*(b) require the Board to revise or review its decision;*

*(c) require the Board to inquire into specific information from the appellant for further consideration and decision.*

*23.-(1) Where the applicant is not satisfied with the decision of the Board after review under subsection (2) of section 22, the may appeal to the Minister against the decision of the Board.*

*(2) The appellant shall in filing an appeal to the Minister under subsection (1) submit*

*(a) a copy of proceedings and original decision of the Board.*

*(b) a copy of the decision of the Minister; and*

*(c) a copy of proceedings and decision of the Board after review.*

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<sup>30</sup> This means legal vacuum/ gaps

24. *The Minister shall within two months days from the date of receiving an appeal from the appellant, consider and determine the matter.*

As stated earlier, reading from these provisions, there is no ultimate right of appeal to the courts. This means that the rights of citizens may be finally determined without judicial pronouncement. In order to secure a right to appeal to the court as supported by overwhelming 89% of respondents, there is a need to add a *proviso* to the section 24 and avoid the purported finality clause. The following should be added to the provision:

*“provided that where the appellant is dissatisfied with the decision of the Minister, he may appeal to the High Court.”*

### ***b) Self Regulation***

As indicated earlier on there ...% of NGOs that require self regulations however the kind of legal provisions in the law need to be refined so as to facilitate the self regulation. Section 30 of the Act is dedicated to this issue. The section reads:

*30.—(1) There shall be established a national apex organisation for Non-Governmental Organizations to be known as the National Council for Non-Governmental Organisations.*

*(2) The Council for Non-Governmental Organizations established under subsection (1) shall be a collective forum of Non-Governmental Organisations for the purposes of co-ordination and networking of all Non-Governmental Organisations registered in Tanzania.*

*(3) The Council shall be composed of members as may be appointed by registered Non- Governmental Organizations to represent their respective Non-Governmental Organizations or group or groups of Non-Governmental Organizations as the case may be.*

*(4) No person or body of persons shall, after the establishment of the Council, claim to be or function or do anything which the Council is empowered or required to do under this Act.*

The section has a *lacuna* in sense that it does not describe the kind of forum, manner and powers of appointments, mandate and procedures through which the council members representing different NGOs would be obtained from. The law only states that the Council shall be composed of members as may be appointed by registered Non- Governmental Organizations to represent their respective Non-Governmental Organizations or group or groups of Non-Governmental Organizations as the case may be. It is thus suggested that the law must clearly state the manner and forum through which those council members would be appointed.

In addition, subsection (4) means that nobody can be engaged in co-ordination or networking of

NGOs. It thus outlaws umbrella bodies, coalitions and networks. It appears to contradict section 38 (1) (c) which requires international NGOs to participate in relevant NGO umbrellas and networks. The implication is that it will decrease networking and co-ordination of NGOs particularly in thematic and/generic areas including aspects such as gender and AIDS. It is hereby suggested that the subsection should be deleted because it contradicts the letter and spirit of the NGOs Policy which intended the national body of NGOs to facilitate networking, not to carry out networking itself.

***c) Tax reliefs/exemptions***

The NGOs Law should explicitly provide for tax reliefs to NGOs. The NGOs Act is unnecessarily silent on the benefits of registration of an entity under the law. The Survey shows that 64.4% of NGOs are of the view that the NGOs law must be amended and reconfigured where as it is suggested by 16% of the NGOs that tax reliefs and exemptions for goods and services that are meant for not for profit must be considered. 4.4% of the NGOs wanted tax exemptions for any NGO struggling to start. These recommendations are for introduction of such benefits to NGOs as tax reliefs or exemptions.

**5.PRACTICAL ISSUES ON ENFORCEMENT OF THE STANDARDS**

Practical issues with regards to enforcement of the standards enunciated in the laws of which one would recommend changes in the laws structures and practices. This part addresses such issues which were raised in the survey findings such as corruption, intimidation, poor relationship between NGOs and the government officials, public perception of NGOs and lastly issues concerning information sharing.

***a) Corruption***

It is a fact that the law cannot adequately address everything. However it should lay a good ground that would enable addressing almost all important issues. Reading from the survey findings one would note that 18% in total, of the respondent NGOs raised the issue of bribery and corruption as one of the factors that inhibit the performance of NGOs. 5% of the respondents admitted that there might be poor working environmental between NGOs and the Government due to corruption. In case of registration of NGOs delays were perceived to have been perpetrated by corruption and bribery. In this issue 13% of NGOs which experienced delay and difficulties during their registration attribute such delay to corruption and bribery. The law

itself can not address the issue of corruption in the absence of a political will and quest for change by the people.

***b) Intimidation and threat to de-registration***

As stated earlier the survey also assessed and sought to establish whether or not organisations were subjected to regular inspection for compliance by authorities under the laws that they are registered. It Also tried to gauge the severity of outcome of the inspections where applicable on. The results show that 47.2% of the NGOs were visited by certain authorities and got inspection. On the other side 52.8 % of NGOs f have never been visited nor being inspected by some kind of authority.

Details show further that most of the NGOs inspected were found being compliant. However a considerable number making it 61.5 % of the NGOs ended up being penalized either by the inspecting authorities. Penalties ranged from fines (37.7%) to verbal warning (9.4), suspension (12%) or dissolution(2.4%) of and NGO. Although compliance is a legal requirement, it is all the same a practical aspect where both legal and practical measures can be suggested. These kind of inspections may pose as a threat or intimidating factor against the general existence of NGOs.

***c) Relationship between NGOs and the government***

Another area of contentions is on the relationship between the NGOs and the government or the state authorities. 49.2% of the respondents stated that the relationship between certain governments and the NGOs. The law might not be adequate in handling the matter of relationship between the two sides. It is thus emphasized that the working relationship and partnership between the two sides be nurtured and cultivated with mutual trust for the benefit of the people.

***d)Public perception of NGOs***

It was also observed that there is prevalent mixed view of public perception on NGOs this was slightly above 50%. The rest of public stated as follows: that 15% saying it is too- positive to deal with NGOs, slightly at 30% stated that they had positive view of the NGOs. All these can be justifiable by the fact that most NGOs either provide social services for free to the people or do kind of advocacy work support the peoples demands. In these results it is as if more than 80% of the members of public were satisfied by the kind of work done by the NGOs

***e) Information sharing among NGOs***

3% of NGOs were of the view that there should be adequate information sharing among the NGOs 'facilitated by the legal framework'. The information sharing would in turn be a tool to create a more conducive environment and space for NGOs to operate in Tanzania. In essence information sharing among the NGOs would be very valuable since it would help NGOs to avoid duplicity of efforts; it would enhance the learning processes among the NGOs; it would strengthen the missing solidarity among NGOs and finally it would shape the public image of the whole voluntary/not for profit sector for the benefit of the people..



## 7.0 CONCLUSION

The review of existing NGO legal framework in Tanzania was timely and the results extremely useful in informing the nature and scope of potential amendments to the existing laws. The field survey together with the validation workshops has provided a good insight on how the laws can hinder or promote the strengthening of NGOs.

This report provide the reader with a detailed description and 'policy & legal' profile of the NGO sector in Tanzania in terms of compliance to the relevant laws. The other utility value of the review was the validation workshop in which respondents provided further clarifications to the survey findings, providing an opportunity for the NGOs to give specific recommendations for amending the laws and the way forward as outlined in the foregoing section.

From the foregoing analysis, it is important for the policy and legal frameworks to be amended so as to expand the space and improve the environment for the NGOs to operate in Tanzania. It is very clear from the findings though, that a new or amended legal framework is not the only solution, more needs to be done to back that up with political will of decision makers and a mass support of the people especially the NGOs. The review has revealed numerous issues which need to be addressed be it through legal means, activism, enforceability strategies or and other way that would be lawful and legitimate. It is pertinent that there should be a detailed schedule of amendment supplementing this analysis for purposes of advocating for a better legal framework that would create a more enabling environment for NGOs to operate.

