

Legislation on non-governmental organisations (NGOs) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales

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Question

Please provide comparative overview of legislation on NGOs in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and the UK? Please focus on the following areas:

- *definition of NGOs*
- *functions of NGO Registrars,*
- *a possibility for NGOs to choose to be registered as business and report to a business registration legislation,*
- *reporting requirements on activities and finances, and*
- *transparency requirements on data held by non-state actors*

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The K4D helpdesk service provides brief summaries of current research, evidence, and lessons learned. Helpdesk reports are not rigorous or systematic reviews; they are intended to provide an introduction to the most important evidence related to a research question. They draw on a rapid desk-based review of published literature and consultation with subject specialists.

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1. Summary

This literature review finds evidence of several regulatory requirements for non-governmental organisation (NGO) formation and work in Ethiopia, Kenya, Rwanda, Tanzania, Uganda and England and Wales. Laws have made it mandatory, or more difficult, to register NGOs, and have imposed more stringent reporting requirements in most of the countries surveyed. In Ethiopia and Kenya, however, moves have been made to ease restrictions on NGOs but have yet to be fully implemented.

The review finds that:

- In Ethiopia, NGO legislation has been somewhat liberalised by the 2019 Organization of Civil Societies Proclamation (CSO Proclamation). The previous legislation put limits on the work of NGOs with foreign funding, particularly in the human rights and governance fields. The new legislation promises to remove some of these. Registration is still mandatory.
- In Kenya, the more liberal Public Benefit Organisations (PBO) Act of 2013 has not been implemented at the time of writing. The restrictive Non-Governmental Organizations Coordination Act of 1990 remains in operation. NGOs must register.
- In Rwanda, NGOs must go through an onerous registration process and monitoring. Regulators have wide powers to reject registrations.
- In Tanzania, recent changes to the law mean NGOs must re-register, and face difficult reporting requirements and a registrar with wide powers.
- In Uganda, NGOs must go through a detailed, multi-level registration process and are subject to a registrar with wide powers.
- In the UK, registration with the regulator is mandatory to gain charitable status. A few other organisational forms exist, some of which are regulated by the NGO regulator, some by other bodies. A new law requires NGOs to report sources of foreign funding.

In some countries such as Kenya, England and Wales, and Uganda, NGOs can register under non-profit company legislation. However, this will usually exclude them from the tax benefits of registration as an NGO or public benefit organisation (PBO) and will subject them to other regulation.

NGOs are defined differently in each country's law, with regards to the type of activity they may undertake and their source of income, among other things. **This report uses a broad definition of NGOs as non-governmental organisations working for a charitable purpose.** It therefore includes what may in some countries be called a charity, a civil society organisation (CSO) or a public benefit organisation (PBO). NGOs may be both national (meaning based in the country being discussed) or international (usually based in a developed country). The report notes how each country distinguishes between different organisations based on their funding source, activities or legal personality. For consistency the report uses NGO as a catch-all term to describe these different forms of charitable organisation when not describing specific organisational forms within a country.

This review is based on published versions of legislation pertaining to NGOs. It uses reports on these laws by think tanks and NGOs to provide interpretations of the effect, or likely effect, of this legislation. Some changes in legislation have been very recent, and it is not possible to ascertain their effect on NGOs. In some cases, such as Kenya, legislation is pending, so this review has

included discussion of both the current and pending legislation. As well as the five African countries mentioned, the review also discusses charity law in England and Wales for comparison.

The literature review is gender- and disability-blind.

2. Background

The literature identifies several potential barriers to NGO work:

- Mandating registration, rather than merely notifying the authorities of an NGO's existence (Musila, 2019, p. 8).
- Mandating a minimum number of founding members (Musila, 2019, p. 8).
- 'imposing onerous obligations to periodically provide information such as minutes of meetings, financial data, and project plans' (Musila, 2019, p. 11).
- 'requiring NGOs to grant officials access for impromptu on-site visits and searches' (Musila, 2019, p. 11).
- 'investing broad powers in government officials at multiple levels to monitor and evaluate projects and activities' (Musila, 2019, p. 11).
- Provisions to restrict NGO work on 'national security' grounds (Musila, 2019).
- Restricting the amount of money an organisation can spend on overheads or administration.
- Prior government approval, either for every foreign contribution or prior approval of every organisation permitted to receive foreign contributions (Carothers, quoted in Reddy, 2019, p. 9).
- Stigmatisation of international funding through foreign agents' legislation (Carothers, quoted in Reddy, 2019, p. 9).
- Caps on international funding (Carothers, quoted in Reddy, 2019, p. 9).
- Mandatory routing of funding through government-controlled channels (Carothers, quoted in Reddy, 2019, p. 9).
- Burdensome reporting requirements (Carothers, quoted in Reddy, 2019, p. 9).
- Restrictions on activities supported by international funding (Carothers, quoted in Reddy, 2019, p. 9).
- Restrictions on funding from certain countries or donors (Carothers, quoted in Reddy, 2019, p. 9).
- Taxation of international funding (Carothers, quoted in Reddy, 2019, p. 9).
- Counter-terrorism/ anti-money laundering measures (Carothers, quoted in Reddy, 2019, p. 9).
- Other laws and measures used to restrict the inflow of philanthropy (Carothers, quoted in Reddy, 2019, p. 9).

By contrast, the following factors have been identified as being conducive to NGO activity:

- A single agency is responsible for registration (Musila, 2019, p. 9).
- 'the authorities must respond to applicants by a certain deadline, and grievance or appeal procedures are clearly delineated' (Musila, 2019, p. 9).

Another report notes that in some cases, regulations have been put in place to regularise NGO registration, prevent fraud, and improve access to policy-makers, rather than to limit NGO activity (Chaudhry & Heiss, 2018, pp. 4–5). However, the trend seems to indicate a ‘neighbourhood effect’ of illiberal legislation across East Africa (Reddy, 2019, p. 31). Ethiopia and Kenya have liberalised their NGO laws, but the changes have not yet been implemented.

3. Ethiopia

Ethiopia has recently implemented a more liberal law governing NGOs. The new Organization of Civil Societies Proclamation (CSO Proclamation) was passed on March 12, 2019. It is seen as being less restrictive than the 2009 legislation it replaces. It allows NGOs more scope for activities, excepting voter education and political lobbying, as well as to obtain funding from abroad. Registration is still mandatory, and the regulating agency still has powers of investigation (“Ethiopia - Civic Freedom Monitor - Research Center - ICNL,” 2019).

The 2009 Charities and Societies Proclamation (CSP) will remain in effect for a year. A Freedom House report classifies the 2009 law as ‘not free’ (Musila, 2019, p. 15). The 2009 law is seen as restrictive on foreign NGOs, particularly those involved in human rights and governance work (Oxfam, 2016).

As the 2019 law is yet to come into force, information on the 2009 law is also included.

NGO definition

According to the 2009 law, all charities are classified by the nationality of their staff and the source of their funding (Dupuy, Ron, & Prakash, 2015, p. 426). **The 2009 law classifies NGOs into three types** (Dupuy et al., 2015, p. 426):

- ‘Type 1. Ethiopian charities and societies have Ethiopian citizen members and administrators, as well as budgets that are at least 90% locally sourced.
- Type 2. Ethiopian resident charities and societies have members residing in Ethiopia, but have budgets composed of over 10% in foreign-sourced money.
- Type 3. Foreign charities and societies, are formed under foreign laws, employ foreign staff, are controlled by foreign nationals, and receive substantial overseas funds.

Development organisations are exempted from foreign funding restrictions because the government only aims to reduce the effect of human rights and governance organisations which may be critical of its policies (Musila, 2019, p. 10).

From 2010, only type 1 charities could work on human rights, democracy, national equality, nationalities, gender, religion, the rights of children and the disabled, conflict resolution and reconciliation, justice and law enforcement, elections, and democratization (Dupuy et al, p. 426).

The 2019 law defines a civil society organisation as ‘a local organization formed under the laws of Ethiopia by Ethiopians, foreigners residing in Ethiopia, or both, or it can be a foreign organization formed under the laws of a foreign country and registered to operate in Ethiopia’ (Article 2(2) – (3) quoted in ETHIOPIA Philanthropy Law Report International Center for Not-for-Profit Law, 2017). **The 2019 law appears to remove many of the restrictions on foreign and foreign-funded charity work.** It states that ‘international organizations and local organizations established by foreign citizens who are not residents of Ethiopia are prohibited from lobbying

political parties, conducting voter education, or engaging in election observation (Article 62(5))' (quoted in "Ethiopia - Civic Freedom Monitor - Research Center - ICNL," 2019). However, other forms of human rights, democracy promotion, conflict resolution, minority protection are expected to be allowed for both foreign and domestic NGOs (Degu, 2019).

Function of the NGO registrar/regulator

Under the 2009 law, the Charities and Societies Agency (CSA) is responsible for registering NGOs. Charitable committees must get approval from the CSA before collecting funds or performing any activities (USAID, 2018, p. 67). According to a report on shrinking civil society space in the Horn of Africa, the agency has 'wide powers to refuse registration, and may invoke 'vague' reasons to do so (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla, Maru, Mehari Taddele; Ahmed, & Abdalla, 2017, p. 46). In addition, NGOs must re-register with the CSA every three years (Dupuy et al., 2015, p. 426).

Under the 2019 law, registration is controlled by the **Civil Society Organizations Agency** (*ETHIOPIA Philanthropy Law Report International Center for Not-for-Profit Law, 2017; Organizations of Civil Societies Proclamation - No. 1113/2019, 2019*). **Registration is still mandatory.** The CSA retains broad powers and can 'refuse registration to CSOs whose aims, or activities are contrary to public morals'. Permission from the Agency is needed to open a bank account. If the NGO is unhappy with the decision, it can appeal within 30 days to the Civil Societies Organizations Board, a body consisting of appointees of the Attorney General and representatives of civil society ("Ethiopia - Civic Freedom Monitor - Research Center - ICNL," 2019).

The registration requirements for Ethiopian organisations are (*Organizations of Civil Societies Proclamation - No. 1113/2019, 2019*):

- a) The minutes of the formative meeting indicating the names, addresses and citizenship of the founders;
- b) Copy of the identity card or passport of the founders;
- c) The name of the organisation and its logo, if it has one;
- d) The objectives of the organisation and its intended sector of operation;
- e) The Region where it intends to operate;
- f) The Rules of the organisation approved by the founders;
- g) The Organisation's address

Foreign organisations also need to give:

- a) Duly authenticated certificate of registration showing its establishment from its country of origin;
- b) Duly authenticated resolution of its competent organ to operate in Ethiopia;
- c) Duly authenticated power of delegation of the country representative; Letter of recommendation from the embassy in which the charity is incorporated or in the

absence of such by a competent authority in the country of Origin from Ministry of Foreign affairs of Federal Democratic Republic of Ethiopia and;

d) A work plan for a minimum period of two years.

Reporting and transparency requirements

According to the 2009 law, NGOs must 'file multiple reports with members, beneficiaries, line ministries, and the CSA, in addition to donors' (USAID, 2018, p. 68). NGOs should have sound financial management.

- 'the law requires every organization to have at least an accountant. All CSOs are required to conduct annual independent audits and submit their reports to the CSA, which accredits auditors for this task. Some organizations publish their annual audit reports for public consumption' (USAID, 2018, p. 70).
- NGOs can spend no more than 30% on administration (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 47).
- NGOs must also give the CSA notice of general assembly meetings (Dupuy et al., 2015, p. 426).

The 2019 law appears more liberal with respect to some aspects of funding and spending.

'With the new law both foreign and local CSOs are anticipated to raise funds from any legitimate source. Administrative cost percentage is going to be pulled to be 20% from its former 30% while operational costs have been raised to 80% under the new law. The new law through its following detail directives is projected to lift the restriction on ownership and disposition rights of CSOs' (Degu, 2019).

The 2019 law states that NGOs must keep accounts of all day-to-day income and expenditure, including the name and identity of donors, and keep the records for five years. The accounts must be submitted to the Agency each year. They must be certified by an external auditor, unless the NGO has an income of less than Birr 200,000 (USD 6850) (Section 4, 71, 2 *Organizations of Civil Societies Proclamation - No. 1113/2019*, 2019).

NGOs must also prepare and submit yearly 'major activity reports' for the Agency. The Agency 'may require additional information or explanation (Section 4, 73 *Organizations of Civil Societies Proclamation - No. 1113/2019*, 2019). NGOs must also make their documents available to the public if requested (Section 4, 74 *Organizations of Civil Societies Proclamation - No. 1113/2019*, 2019).

Under the 2009 laws, the CSA has powers to demand a range of information from NGOs. These powers allow the government to conduct surveillance on NGOs (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 47). If more than 10% of their funding is from foreign sources, NGOs are classified as 'foreign agents' and watched by security forces (Musila, 2019, p. 9). Amnesty has said it is 'particularly concerned by the power of the [CSA] to demand any document in an organisation's possession. This could include the testimonies of victims of violations, contravening the essential principle of confidentiality and potentially further endangering victims of human rights violations' (quoted in Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 47).

Under the 2019 law, the Agency has powers of investigation to check if an NGO is operating according to the law. It must have 'sufficient reason' to investigate, and do so 'within a short

period of time [not] in a way that hampers the day to day activities and continued existence of the organization' (Section 4, 77 Organizations of Civil Societies Proclamation - No. 1113/2019, 2019). It is not clear how these powers will be used in practice. The ICNL describes them as 'invasive supervisory oversight and restrictive rules' ("Ethiopia - Civic Freedom Monitor - Research Center - ICNL," 2019).

4. Kenya

The Public Benefit Organisations (PBO) Act of 2013 is meant to replace the Non-Governmental Organizations Coordination Act of 1990. However, as of February 2019, the PBO Act was not operationalised or implemented due to the government's reluctance. This section therefore also talks about the 1990 Act.

Observers believe the new law would make it easier for NGOs to operate, if implemented. It 'would create a more enabling legal environment for NGOs by encouraging them to maintain high standards of governance and management through effective self-regulation, the establishment of an independent regulator, a more transparent registration process, and required government support to NGOs in various ways' (USAID, 2018, p. 105). It would change the definition from an NGO as non-governmental, to a PBO as an 'autonomous, non-partisan, non-profit making...engage[d] in defined public benefit activities' (Odhiambo, 2017, p. 20).

The current (1990) framework is seen to be more confused and restrictive. 'the legal framework is characterized by multiple laws, which are implemented by different Government ministries, agencies and departments. The diverse and sometimes overlapping laws present difficulties for the Government in developing harmonized, systematic and coordinated plans and approaches to civil society. To compound the problem, some of the regulatory agencies are under-resourced and find it difficult to manage their basic functions effectively' ("Kenya - Civic Freedom Monitor - Research Center - ICNL," 2019). According to an Oxfam report, the government's desire to 'limit influence of civil society over the International Criminal Court' and to prevent the influence of Al-Shabab has led it to restrict NGOs' freedom to operate (Oxfam, 2016, p. 3).

NGO definition

Under the NGO Coordination Act (1990), organisations can potentially register under a number of different bodies. Registration is mandatory. NGOs are defined as 'private voluntary groupings of individuals or associations not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry, and the supply of amenities and services' (quoted in Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 50).

Organisations can register under five other categories (Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 50; Odhiambo, 2017, p. 18):

- Societies. These must be established and headquartered in Kenya. They come under the Societies Act (1968).

- Grassroots organisations. They operate mainly at the village or community level (“Kenya - Civic Freedom Monitor - Research Center - ICNL,” 2019)
- Companies under the Companies Act if they promote public causes, are limited by guarantee and do not have share capital.
- Cooperative societies and unions.
- Trusts and foundations.

According to one report, this has been a ‘source of confusion’ for NGOs (“Closing Civic Space: Impact on Development and Humanitarian CSOs,” 2016, p. 3). However, it gives NGOs some scope to decide how they are registered and avoid certain requirements.

The 2013 Public Benefit Organizations Act describes organisations by their functions and is seen to be clearer. It ‘defines a PBO as “a voluntary membership or non-membership grouping of non-partisan, non-profit making and which is (a) organized and operated locally, nationally or internationally; (b) engages in public benefit activities in any of the Areas set out in the Sixth Schedule; and (c) is registered as such by the Authority.” The Act further defines a public benefit activity as “an activity that supports or promotes public benefit by enhancing or promoting the economic, environmental, social or cultural development or protecting the environment or lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organizations” (Odhiambo, 2017, p. 18). **All NGOs under the 1990 Act will come under the PBO Act** (“Kenya - Civic Freedom Monitor - Research Center - ICNL,” 2019). NGOs may register under other laws, if applicable, but will not receive the benefits of a public benefit organisation.

Organisations may undertake advocacy or express its views on political issues, but may not raise funds or campaign for political parties or candidates (Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 52).

The Act states (quoted in Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 55): ‘the income of a public benefit organization may include:

- a. donations of cash, securities, and in-kind contributions;
- b. bequests;
- c. membership fees;
- d. gifts;
- e. grants;
- f. real or personal property; and
- g. income generated from any lawful activities undertaken by the public benefit organization through its property and resources.

A public benefit organization may own and manage property and assets for the accomplishment of its not-for-profit purposes.

Function of the NGO registrar/regulator

The **NGO Coordination Board**, established by the NGO Coordination Act of 1990, registers NGOs (USAID, 2018, p. 105). **The registration procedure has been criticised for the large amount of paperwork needed and the lack of clear criteria for approval or rejection of applications.** ‘Applicants require documents such as “certificates of good conduct” (of NGO officials and board members), “recommendation letters,” or “clearance letters” from agencies other than the one that issues operating licenses’ (Musila, 2019, p. 9). In addition, ‘conditions for denial of registration are vague and ambiguous’ (Section 14 and 16). **There is wide discretion given to the NGO board and the minister on exempting an NGO from registration** [Section 10 (4)]. There is no fixed time within which the NGO board must act on applications’ (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 51; Odhiambo, 2017, p. 20).

NGOs and Societies have to register. However, according to the ICNL, ‘many NGOs that fall within the definition of NGO have opted to register under alternative legal forms’ and the law saying that societies must be registered is ‘rarely enforced’ (“Kenya - Civic Freedom Monitor - Research Center - ICNL,” 2019).

Under the 2013 Act, the Public Benefit Organization Regulatory Authority (PBORA) is responsible for registering NGOs. The new law would end mandatory registration, but organisations would still need to register to claim the benefits of public benefit organisations (*A guide: the Public Benefit Organisations Act 2013*, 2018, p. 15; Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 50). According to a recent report, the new ‘registration procedures and requirements appear to be simple and reasonable’. **PBORA has the power to add new requirements** (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 52). According to a report by the Westminster Foundation for Democracy, PBORA has ‘limited’ powers to cancel or suspend registration and the criteria are clear and straightforward (Odhiambo, 2017, p. 20).

Reporting and transparency requirements

Under the current (1990) law, ‘Organizations registered under the NGO Act must submit annual financial statements to the NGO Board’ (USAID, 2018, p. 108).

Under the 2013 Act, PBORA has ‘the powers to receive and review annual reports of public benefit organizations, and institute inquiries to determine if the activities of public benefit organizations do not comply with the act or any other relevant law. It can also register and de-register public benefit organizations in accordance with the act’. It is not considered to be independent from the government (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 53).

The Act does not include provisions for PBORA to request any personal information relating to the members or staff of an INGO. It asks for an application form, address, a description of its functions, contact details for an authorised agent (Section 8.4 Kenya, 2013).

For organisations registered as societies, the registrar has wide powers of investigation and punishment. According to the ICNL, the ‘Registrar of Societies has wide discretion relating to the investigation, arrest, and search of any society’ and ‘The failure to maintain a register of members or annual accounts may expose a society to heavy penalties, including imprisonment’ (“Kenya - Civic Freedom Monitor - Research Center - ICNL,” 2019).

5. Rwanda

Rwanda's NGO laws were first enacted in 2008 and revised in 2012. They are seen to be restrictive. A Freedom House Report classifies Rwanda's NGO environment as 'not free' (Musila, 2019, p. 15)

NGO definition

- An NGO is defined as 'an organization which is comprised of natural persons or of autonomous collective voluntary organizations whose aim is to improve economic, social and cultural development and to advocate for public interests of a certain group, natural persons, organizations or with the view of promoting the common interest of their members' (Law 04/2012) (Odhiambo, 2017, p. 27).
- In Article 3, Public interest organisations are defined as organisations that '...carry out activities in the development of various sectors including civil society, economy, social welfare, culture, science and human rights' (Law 04/2012) (Odhiambo, 2017, p. 27).
- An international non-governmental organisation (INGO) is defined as 'an organization that was established in accordance with foreign laws and the objective of which is related to public interests' (Law 05/2012) (Odhiambo, 2017, p. 27).

According to Article 4 of Law 04/2012, an NGO 'may conduct commercial activities only when it is authorized to do so and the profit from such activities is meant to be used in activities related to its objectives'. Under the previous law, this had not been allowed. NGOs may not raise funds for political parties or causes (Odhiambo, 2017, p. 28).

Function of the NGO registrar/regulator

All NGOs need to register with the Rwanda Governance Board (RGB). Registration for NGOs is difficult. Domestic NGOs have to get a provisional permit, or collaboration letter, from the local authority of the district in which they are working and submit an action plan for the fiscal year and an authenticated statute to the RGB.

According to a Freedom House report, there are 'excessive documentation requirements' (Musila, 2019, p. 9). These include 'authenticated statutes, an action plan with a budget, and the names and curricula vitae of the organization's legal representative and his or her deputy' (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 58).

NGOs have a probation period. They get a 'temporary certificate' of registration for 12 months, and should then apply for legal personality 9 months after getting their temporary certificate (Odhiambo, 2017, p. 27). Registration needs to be renewed every five years (Musila, 2019, p. 9).

The RGB may refuse registration or de-register an NGO on broad grounds. These include 'convincing evidence that the (applicant) may jeopardize security, public order, health, morals, and human rights' (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 59).

The RGB has wide discretion to decide on whether an INGO can be registered or not. International non-governmental organisations (INGOs) must be registered by the Directorate General of Immigration and Emigration. This ministry also monitors the work of INGOs. The requirements for registration may be determined by the minister rather than pre-defined criteria. Security reasons can be invoked to deny registration (Odhiambo, 2017, p. 28).

The documentation requirements for INGO registration are significant. INGOs must submit documentation on the implementation of their programmes, cost estimates, who will continue their work after the programmes end, and ‘all information relating its geographical establishment throughout the world’ (Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 58).

INGOs are registered for five years.

Reporting and transparency requirements

The RGB monitors service delivery and governance of NGOs and INGOs (Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 58). INGOs cannot spend more than 20% on overheads (Odhiambo, 2017, p. 28).

In addition, ‘each year authorities require the submission of specific reporting documentation and information, including updated planning and cost estimates. These reports also require information about international NGO staff members after they have completed their work assignments’ (Maru,Mehari Taddele;Ahmed, Bashair; Abdalla et al., 2017, p. 58).

Under the PBO law, PBOs will have to provide audited annual reports and reports on activities. They will also have to give ‘contact details of members of its governing body within one month after they are appointed or elected to the governing body. These details include their physical, business and residential addresses’ (*A guide: the Public Benefit Organisations Act 2013*, 2018).

6. Tanzania

Tanzania’s laws have recently been amended by the Non-Governmental Organisations Act (Amendments) Regulations, 2018 and the Written Laws (Miscellaneous Amendments) No. 3 Bill of 2019 (“Tanzania: House Passes Criticised NGOs Law Amendment - allAfrica.com,” 2019). On this basis, a Freedom House report classifies Tanzania as ‘partly free’ (Musila, 2019, p. 15).

Amnesty International has criticised proposed amendments to the NGO Act. It says ‘they give the Registrar of NGOs sweeping and wide discretionary powers to suspend the organizations and evaluate and investigate their operations. The law will also require these organizations, including community-based and self-help groups, to publish their annual audited financial reports in mainstream media imposing a cost burden that could bankrupt small, grassroots organisations’ (“Tanzania: Discard new law restricting human rights | Amnesty International,” 2019).

NGO definition

Under the 2012 Non-Governmental Organizations Act, an NGO is defined as:

‘a voluntary grouping of individuals or organizations which is autonomous, non-partisan, non-profit making, which is organized locally at grassroots, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting the environment, lobbying or advocating on issues of public interest of a group of individuals or organizations, and includes a Non-Governmental Organization, established under the auspices of any religious organization or faith propagating organization, trade union, sports club, political party, or Community Based Organization; but does not include a trade, union, a social club or a sports club, a political

party, a religious organization or a community based organization’ (quoted in Odhiambo, 2017, p. 24).

Public interest is defined as ‘all forms of activities aimed at providing for and improving the standard of living or eradication of poverty of a given group of people or the public at large’ (quoted in Odhiambo, 2017, p. 24). The 2018 amendments do not change the definition of an NGO.

Previously, NGOs could also register under the Business Registration and Licensing Agency (Brela), or under the Registrar of NGOs (Harrison, 2018, p. 11; USAID, 2018, p. 231).

Community-based organisations are easier to register than NGOs because they only need to register at the local level. They are typically staffed and funded by local staff and attract less suspicion from the government (Harrison, 2018, p. 17).

Under the 2018 and 2019 amendments, a stricter separation between NGO and business registration is being enforced as the government has sought to verify the numbers of NGOs. Many organisations had registered under as companies or other forms to avoid the reporting requirements of the NGO Act, but since the government has sought to impose stricter controls on NGOs and ‘they may need to comply with the NGO Act even if they are not registered under the Act’ (Harrison, 2018, p. 13).

Function of the NGO registrar/regulator

The NGO Registrar’s Office is the regulator. It reports to an NGO Board comprising five members nominated by the Minister, one by the President, and four by NGOs. The Registrar can register NGOs, but the Board is required to de-register an NGO (Harrison, 2018, p. 12). Many regulations, such as getting permission from the Ministry of Regional and Local Government before working in a new area, are being applied for the first time after being ignored by many NGOs and regulators (Harrison, 2018, p. 14).

A new registration policy was implemented in September 2018, requiring NGOs ‘to reregister with the government and provide detailed financial records within 30 days, or risk suspension’ (“Tanzania | Freedom House,” 2019). According to a Freedom House report, the ‘current laws give the government broad authority to deregister nongovernmental organizations (NGOs), and officials repeatedly threatened to use that power against critical groups in 2018’ (“Tanzania | Freedom House,” 2019). In 2017, NGOs also had ‘to obtain permits at the regional and district levels before undertaking projects’, even if they had already been authorised at the national level (USAID, 2018, p. 231).

The amendment in 2019 means that NGOs will have to renew their registration every 10 years (“Tanzania: House Passes Criticised NGOs Law Amendment - allAfrica.com,” 2019).

Reporting and transparency requirements

In August 2017, ‘authorities instructed all nongovernmental organizations (NGOs) to verify their registration status by submitting a series of documents or risk deregistration’ (“Tanzania | Freedom House,” 2019).

The 2018 amendment states that NGOs are required to disclose to the registrar, the council, the board and the public the sources of any money raises, what it was spent on, and why it was

obtained, within 14 days of fundraising activities (Part IV, 12 The Non Governmental Organizations Act (Amendments) Regulations, 2018).

The Amendments also state that NGOs with funds of more than 20 million shillings (USD 8,689) should publish bi-annual reports in widely circulated newspapers, submit their contracts with donors to the treasury and registrar, and declare any non-cash resources received to the registrar (The Non Governmental Organizations Act (Amendments) Regulations, 2018, p. Part IV, 13.).

7. Uganda

The Non-Governmental Organisations Act, 2016 has been seen as a way to restrict civil society in Uganda (Mbazira & Namatovu, 2018, p. 76). The 2016 Act replaced 1989 legislation, amended in 2006.

Under the 1989 law, the Non-Governmental Organisations Registration Act governed NGOs. All had to register with the National Board of Non-Governmental Organisations (NGO Board) (Mbazira & Namatovu, 2018, p. 10). A 2006 amendment put representatives from the state security agency on the NGO Board and gave the board the discretion to refuse to register NGOs (Mbazira & Namatovu, 2018, p. 85).

A Freedom House report classifies Uganda as 'not free' with regards to NGOs (Musila, 2019, p. 15).

NGO definition

NGOs are defined as 'a legally constituted non-governmental organisation...which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes'. **They must register with the NGO Bureau** (NGO Act Section 3, quoted in "Nonprofit Law in Uganda | Council on Foundations," n.d.).

Organisations can also register as trusts or foundations to provide grants or loans for NGOs, private or community organisations. Foundations can be registered by the Companies Act (2012) but are not then exempted from any tax as NGOs are.

NGOs are also classified based on whether they are incorporated in Uganda or elsewhere, and where the citizens who control them are based ("Nonprofit Law in Uganda | Council on Foundations," n.d.). Foreign NGOs are subject to a more difficult registration process.

NGOs must be non-partisan, according to section 44(g). They may not do anything prejudicial to 'the interests of Uganda and the dignity of the people of Uganda.' This potentially limits NGO advocacy, human rights or governance work (Mbazira & Namatovu, 2018, p. 87).

Function of the NGO registrar/regulator

The NGO Bureau registers NGOs in Uganda. Registration of NGOs is mandatory (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 67; "Uganda - NGO Law Monitor - Research Center - ICNL," 2019).

The 2016 Act gives ‘wide and discretionary powers’ to the NGO Bureau. These include ‘the power to revoke an NGO’s permit’. It can refuse to register an NGO or give a permit (Odhiambo, 2017, p. 22). It can blacklist an NGO, make public the NGO’s failings, or revoke its permit. (Mbazira & Namatovu, 2018, p. 86).

In addition, **there are local registration requirements and security concerns are considered by the authorities.** To register, an NGO must also sign a Memorandum of Understanding with the local government where it intends to work. State security officials sit on the district non-governmental organisations monitoring committees (DNMCs) and sub-county non-governmental organisations monitoring committees (SNMCs) with which NGOs must register (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 68).

The registration procedures are ‘burdensome’ (“Uganda - NGO Law Monitor - Research Center - ICNL,” 2019). Foreign NGOs need to register with the NGO Bureau, have letters from their embassy and the Ugandan Ministry of Foreign Affairs, recommendations from the relevant ministry and the NGO Monitoring Committee where they will operate (Musila, 2019, p. 9). Moreover, registration needs to be renewed every five years (Musila, 2019, p. 9). There is no time limit for the Bureau to review applications (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 67).

Reporting and transparency requirements

The Ugandan state and the NGO Bureau can request a range of financial information. ‘On April 19, 2018, the Financial Intelligence Authority (FIA) announced that NGOs will be required to declare their sources of funding to the FIA to ensure transparency and avoid money laundering in the sector’ (“Uganda - NGO Law Monitor - Research Center - ICNL,” 2019).

NGOs must also disclose their work plan to the authorities [section 39(3)(b)] (Odhiambo, 2017, pp. 22–23). Moreover, NGOs also require authorisation for any new project, which limits their ability to work flexibly (Mbazira & Namatovu, 2018, p. 87).

The NGO Bureau has wide inspection and disciplinary powers. It can ‘summon and discipline registered organizations through warnings, suspension of registration, exposing the organization to the public, blacklisting or revocation of registration’ (Maru, Mehari Taddele; Ahmed, Bashair; Abdalla et al., 2017, p. 68). The ‘Act grants powers to an inspector, after giving notice of at least three working days to an organisation, to inspect the premises of the organisation and to request “any information” which appears necessary “for purposes of giving effect to the Act”’ (Mbazira & Namatovu, 2018, p. 87).

8. England and Wales

The Charities Act (2006) is the most recent legislation on NGOs in the UK.

NGO definition

To qualify as a charity, an organisation must be established for charitable purposes only, and be for public benefit. Organisations can take the form of (Piper, Reed, & James, 2018):

- A charitable company limited by guarantee (CCLG). They are regulated by both the Charity Commission and Companies House. They have members who cannot share in any profits. If the CCLG is wound up, they must contribute a nominal fee.
- A charitable trust. It 'has no legal identity separate from its trustees', who are liable for the charities losses in some cases. It must report on the Charity Commission.
- A charitable incorporated organisation (CIO). Like a CCLG, a CIO is a limited liability form. However, it does not have to report to Companies House.
- An unincorporated association. This is a simple form of charity, which only needs an executive committee and a constitution. It must make annual filings to the Charity Commission.

Organisations can also set up as a non-profit organisation that is not a charity. They do not get the tax benefits of being a charity and do not have to comply with charity law. They include ("Introduction to legal forms — NCVO Knowhow," n.d.; Piper et al., 2018):

- Non-charitable social enterprises (businesses with social as well as commercial objectives).
- Community interest companies (CICs) which benefit a particular community. They can be run for profit, but a proportion must be reinvested in the CIC. They are regulated by the CIC Regulator.
- Non-governmental organisations which campaign for specific changes in UK law.
- Community benefit societies.
- Non-charitable housing associations.
- A company limited by guarantee, with restrictions on how members can share in any profits.

Table 1: Incorporated legal forms for NGOs in England and Wales

	Controller	Governing document	Regulator	Limited liability ?	Profit distribution ?	Charitable status available ?
Charitable Incorporated Organisation (CIO)	Board of trustees	Constitution	Charity Commission	Yes	No	Yes, automatic
Company Limited by Guarantee (CLG)	Board of directors	Memorandum and articles of association	Companies House (and Charity Commission if it has charitable status)	Yes	Usually no	Yes (if purposes are solely charitable)
Company Limited by Shares (CLS)	Board of directors	Memorandum and articles of association	Companies House	Yes	Yes	Very rarely
Community Interest Company limited by shares (CIC)	Board of directors	Memorandum and articles of	Companies House and CIC Regulator	Yes	Yes, but must benefit wider	No

CLS) or guarantee (CIC CLG)

association

community. Can pay limited dividends to private investors.

Community Benefit Society (BenComms)	Management committee	Rules	Financial Conduct Authority	Yes	No	Yes
Cooperative Society	Management committee	Rules	Financial Conduct Authority	Yes	Yes	Very rarely
Limited Liability Partnership	Partners	Partnership deed	Companies House	Yes	Yes	Very rarely

Source: (“Introduction to legal forms — NCVO Knowhow,” 2019), Licensed under [Attribution-NonCommercial-ShareAlike 4.0 International Licence](#).

Table 2: Unincorporated legal forms for NGOs in England and Wales

	Controller	Governing document	Regulator	Limited liability?	Profit distribution?	Charitable status available?
Unincorporated Association	Management committee	Constitution	Charity Commission	No	No	Yes (if purposes are solely charitable)
Charitable Trust	Board of trustees	Trust deed	Charity Commission	No	No	Yes

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Function of the NGO registrar/regulator

The Charity Commission (CC) regulates NGOs with charitable status in England and Wales. All NGOs seeking charitable status, and with an income of more than £5,000 a year, have to register with the CC. The CC is expected to include all NGOs on a register, except for

some exempt and excepted charities (Piper et al., 2018). Exempt organisations include museums, some schools, universities and military and religious charities.

The CC ensures that NGOs comply with their legal obligations and has 'wide-ranging powers' to investigate, freeze assets, remove trustees or managers, appoint interim staff, or restrict the NGO's transactions (Piper et al., 2018).

NGOs must also apply to Her Majesty's Revenue and Customs (HMRC). This may allow them to get charitable tax exemptions.

Reporting and transparency requirements

Registered charities must file an annual report, annual returns and accounts with the CC ("Charity reporting and accounting: the essentials November 2016 (CC15d) - GOV.UK," n.d.; Piper et al., 2018). Whether the accounts must be externally audited or not depends on the NGO's income ("Charity reporting and accounting: the essentials November 2016 (CC15d) - GOV.UK," n.d.).

Depending on their legal status, they may also have to report to Companies House (a CCLG) or another regulator (the Community Interest Company Regulator, the Regulator of Social Housing – see above).

Reporting requirements have increased recently. The Charity Commission requires information on funding or income from 'overseas governments or quasi-governmental bodies, charities and NGOs' (*Charity reporting and accounting: the essentials (CC15b)*, 2013). It also asks for information on other overseas sources of income, which is voluntary until 2019.

The Commission also requires information on staff pay. It 'will make public how many individuals receive total packages worth upwards of £60,000 in bands (in bands of £10,000 up to £150,000, then in bands of £50,000)' ("Commission listens to charities in making changes to the annual return for 2018 - GOV.UK," n.d.). Bond argues that this will be burdensome for NGOs, particularly small ones. In addition, they say the 'measures will also make it harder for the UK to hold other governments to account, particularly those using similar funding information as a means to restrict civic freedoms by unfairly discrediting NGOs championing democracy and human rights' ("Charity Commission introduces overseas funding declaration for UK charities | Bond," n.d.).

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Key websites

- International Center of Not-for-profit Law, <http://www.icnl.org/>
- Thomson Reuters Practical Law, <https://uk.practicallaw.thomsonreuters.com/>
- UK Government information website, <https://www.gov.uk/>

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