

NGO Work in Tanzania

Highlights of relevant facts, policies and laws

EVOD MMANDA (2008)

KEPA'S WORKING PAPERS 25, 2008

ISSN 1796-6469

ISBN 978-952-200-104-7 (PDF)

ISBN 978-952-200-103-0 (PB)

LAYOUT: AAPELI LAHTINEN



KEHITYSYHTEISTYÖN PALVELUKESKUS
TÖÖLÖNTORINKATU 2 A
00260 HELSINKI, FINLAND

TEL +358-9-584-233
FAX+358-9-584-23-200
KEPA@KEPA.FI
WWW.KEPA.FI

SUPPORTED BY OFFICIAL DEVELOPMENT AID FROM THE MINISTRY FOR FOREIGN AFFAIRS OF FINLAND.
OPINIONS PRESENTED HEREIN ARE PERSONAL AND MAY NOT REPRESENT THE THE OFFICIAL POSITION OF KEPA

Table of contents

- 1. Introduction**
- 2. The legal framework of NGO sector in Tanzania**
- 3. The national NGO policy of 2001**
- 4. The NGO Act of 2002**
- 5. Structure of an NGO**
- 6. NGOs constitution requirements**
- 7. Tax treatment of NGOs**
- 8. NGOs financial management**
- 9. Banking system with regard to NGOs**
- 10. Employment procedures and labour relations**
- 11. Public holidays**
- 12. Business and informal sector**
- 13. School ownership by NGO**
- 14. Land use and ownership**
- 15. Corruption and its implications**

1. Introduction

The Service Centre for Development Cooperation, KEPA, is a service base for Finnish NGOs interested in development work and global issues. Almost 300 such organisations belong to KEPA. These organisations vary greatly in character – large and small, local and national, professional and voluntary. KEPA itself is a politically and ideologically non-aligned organisation that operates with funding from the Finnish foreign ministry. As the umbrella organisation for Finnish development NGOs, KEPA helps Finnish civil society to work towards global justice.

According to KEPA's understanding poverty is result of deliberate actions, or simple inaction. Purposeful joint action is needed to eliminate poverty. Everyone can make a valuable contribution. Finnish development organisations and activists can meet each other and forge productive links through KEPA's networks and events. KEPA helps member organisations to be more effective by providing a wide range of training and other vital services. KEPA also actively lobbies in Finland on behalf of its members.

KEPA has country offices in Tanzania, Nicaragua, Mozambique and Thailand for the Mekong –area. KEPA's country offices in the South analyse the local impacts of international development and trade policies, and support Finnish NGO projects in the South.

KEPA's basic task is to encourage, support and organise Finnish civil society to participate in actions that promote global responsibility. Therefore KEPA

- increases Finnish civil society's awareness of global issues, and improves its ability to act by organising information, training, campaigns and service activities for and in cooperation with Finnish non-governmental organisations; and
- strengthens civil societies in the developing countries through support for their own field activities and by building co-operation networks between Finnish and Southern non-governmental organisations.

The Finnish NGOs and their Tanzanian partners have been conducting development projects and other activities in Tanzania for decades. Currently, over 50 development projects involving

Finnish NGOs are taking place in Tanzania. These projects are mostly funded by the Ministry for Foreign Affairs of Finland. One of the main tasks of KEPA Tanzania is to provide project advice to these projects and support them in planning, monitoring and evaluation of the activities.

An adequate knowledge of the working environment is essential in a successful implementation of development co-operation projects. The working environment refers to the infrastructural, political, cultural and societal situation of a certain location where a project is situated.

The knowledge of the economic working environment is crucial for implementation of any project. However, the information and regulations considering the economic working environment are often hard to collect by a single NGO. KEPA commissioned an analysis of economic working environment that would easily provide the basic information and facts for any NGO planning to conduct its activities in Tanzania. This survey will be updated yearly to keep information correct. The updated version will be found at: <http://www.kepa.fi/taustaselvitykset>.

2. The legal framework of NGO sector in Tanzania

NGO laws – the old regime of laws

The laws governing registration of NGOs in Tanzania are rooted in the British common law system which was introduced in 1920 by British colonizers. Under this system of law, laws were enacted and some of those laws are these that are focused on associations that which in the current setting are NGOs. Before the enactment of the NGOs Act of 2002 which was specific for NGOs in the contemporary setting, formation and operations of NGOs in Tanzania was governed by 3 laws. Those were:

- The Societies Act of 1954 which governs societies.
- The Trustees Incorporation Act of 1956 which governs trusts and foundations.
- The Companies Act of 2002 which repealed the colonial Companies Act of 1958 which in the NGO context governs companies limited by guarantee.

Although the NGO Act was enacted to coordinate registration and regulation of NGOs, this new law did not repeal these other existing laws dealing with the registration of NGOs. This means that other laws are still valid and operational except that an NGO registered under these laws should fulfill the conditions of the new NGO Act for registration and qualify for a certificate of compliance. For organizations which register for the first time they do not need certificate of compliance.

An NGO registered as a society does not enjoy a status of juristic person which means having a legal personality whereby it can sue or be sued in its own corporate name and hold and dispose property. To acquire this status an NGO ought to establish a board of trustees registered under the Trustees Incorporation Act. Also a society is not allowed to acquire assets unless it

registers a board of trustees which has powers to acquire and dispose properties.

NGOs registered as a trust, foundation or a company automatically acquires a corporate personality. Although both 3 statutes could be used for registering an NGO, historically they were meant to establish entities with specific purposes. The Societies Act was initially meant for giving room the local community (indigenous) to organize themselves in handling their affairs but the same should be non political. The Trustees Incorporation Act and Companies Act focused on establishing trusts and voluntary charitable organizations to pursue certain goals to the society.

These 3 laws are still valid to date and people are still registering NGOs under these laws. The aspect which was brought by the NGO Act of 2002 is that if an NGO is registered under these laws it must apply to the Registrar of NGO for a certificate of compliance. An NGO applying for the certificate of compliance must fulfill the requirement of being an NGO according to the definition of what is an NGO provided by the NGO Act No. 24 of 2002. One aspect of compliance is that the board in whatever it was it has now to be called Board of Directors and a constitution has to change accordingly.

Registration procedures under the old regime laws

Procedure to register a trust/foundation

A trust is an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (which is called trust property) either for the benefit of persons (who are called beneficiaries) of whom he may himself be one and anyone of whom may enforce the obligation, or for charitable purpose, which may be enforced by the Attorney General.

The trust by its very nature represents a highest form of voluntariness since the beneficiary under the trust is commonly a volunteer, and the trustee usually obtains no personal material benefit from the trust.

Before making application for trustee's incorporation, there must be already in existence a trustee or trustees appointed by a body or as-

sociation of persons. This trustee or trustees collectively can apply for incorporation. An application for a trust is made to the Registration of Insolvency and Trusteeship Agency (RITA).

The Applicant must fill an application form which shall be accompanied with:

- 3 copies of the constitution (trust deed) prepared in English.
- 3 copies of the passport size photographs of the proposed trustees
- 3 copies of the CVs of the proposed trustees.
- Recommendation letter from the District Commissioner of the district which the trust will have its headquarters.
- Recommendation letter from the government sector which the activities of the trust shall fall.
- Minutes of the meeting that passed the constitution and proposed the trustees.
- Prescribed fee of Tanzanian shillings 100,000/=.

The act of incorporation does not create the board of trustees but rather it confers a corporate status on the trustees. The act of incorporation makes the trustee or trustees a body corporate with all the attendant legal incidences of incorporation, rights, duties, powers and authority. Trustees however remain answerable and accountable for their acts, receipts, neglects and defaults as if they had not been incorporated.

Matters to observe after the registration of the trust:

- The trust is not allowed to own land or interest on land without the written consent of the Registrar of Trusts who is the Administrator General.
- The Registrar of Trusts who is the Administrator General must be informed on any changes effected by the trust like trustees, name, address and the constitution.
- Trustees' returns should be filed after every calendar year.

For information about registration and coordination of trusts:
Chief Executive Officer
Registration of Insolvency and Trusts Agency
P.O Box 9183
DAR ES SALAAM
Tel +255-22-215034/6
Fax +255-22- 212335
Website www.rita.go.tz

Procedure to register a society

According to the Societies Act, a society includes any club, company, partnership or association of ten or more persons whatever its nature or object.

The proposed founder members shall submit an application letter to the Registrar of Societies and this letter shall be accompanied by the following:

- Application for registration form filled.
- A statement of particulars to support an application for registration.
- Two bounded copies of the constitution of the proposed society.
- Application fee, Tanzanian shillings 10,000/=.
- Registration fee, Tanzanian shillings 100,000 for local NGOs and United States Dollars 500 for foreign NGOs
- Annual subscription fee, Tanzanian shillings 40,000/= for local NGOs and United States Dollars 30 for foreign NGOs
- Minutes of the meeting which approved the constitution.
- List of not less than 10 members and their signatures.
- Curriculum vitae of office bearers and their photographs.
- A supporting document/letter from the respective authority like the Regional Commissioner or District Commissioner of the area where the NGO shall be based or a letter from a Ministry which is linked with the activities of the NGO.

For information about registration and coordination of societies:
The Registrar of Societies
Ministry of Home Affairs
Ghana/Ohio Streets
P.O Box 9223
DAR ES SALAAM
TEL +255-22- 2112034-9
www.moha.go.tz

Procedure to register a company limited by guarantee

A company is an association of persons formed for the purpose of some business or undertaking carried on in the name of the association. A company is said to be limited by guarantee if its

members have agreed how much to subscribe in case the company is wound up. The memorandum of association of the company must indicate how the liability of members is limited.

The procedure to form a company limited by guarantee is as follows:

- The Applicant shall submit a letter for name clearance to the offices of the Registrar of Companies.
- The Applicant shall prepare and submit the Memorandum and Articles of Association to the offices of the Registrar of Companies
- The applicant shall fill the following types of forms:
 - Form No. 1 – for declaration of compliance with all requirements relating to the formation of the company.
 - Form No. 2 – which gives the particulars of its first Directors
 - Form No. 15 – notice explaining the location of the office (Physical and Postal Address).

A company comes into existence only when it has been registered and certificate of incorporation is issued to it by the Registrar of Companies. The powers of the company are derived from the Companies Act and the memorandum of association

Under the Companies Act and Trustees Incorporation Act an NGO is supposed to submit annually to the Registrar of Companies and Registrar of Trusts respectively. These returns will show if there is any profit made and how the same was spent.

Registration of a foreign NGO

A foreign organization can be incorporated in Tanzania under the Companies Act and Societies Act. By definition these are types of organizations incorporated or registered outside Tanzania, and they come to the country as branches of such foreign organizations. Even if all subscribers in case of a company are nationals of the United Republic of Tanzania, the organization is still regarded as a foreign organization.

The Registration of a foreign organization demands the submission of:

- Certified copies of the constitution of the NGO.
- Notice of the location of the registered office in the country of domicile

- List of subscribers of the company or list of founder members in case it is being registered in the Registrar of Companies and the Registrar of Societies respectively.
- Persons resident in the country who are the representatives of the organization
- Fees payable for registration (in US \$ dollars).

For information about incorporation of companies:

Chief Executive Officer
Business Registration and Licencing Authority (BRELA)
P.O Box 9186
DAR ES SALAAM
Website www.brela.tz.org

Internal structures and management of NGOs

Common aspects found in NGOs that are registered under the above-mentioned three laws are

- *Non partisanship:* NGO should not be inclined to any political party or should not seek political power or campaign for any political party.
- *Autonomy:* An NGO should be able to manage and control its internal affairs with a degree of freedom.
- *Non profit making:* NGOs are not expected to operate in such a way that a profit will be made and the same to be shared by its members. Under the NGO Policy 2001 NGOs are allowed to make profit but not to share among themselves.
- *Membership:* Each NGO is supposed to have a minimum number of members. An NGO registered under Societies Ordinance the minimum number of members is 10 and under other two laws the minimum is 2.
- *Voluntariness:* The basis of forming an NGO is to offer services to the society by people who on their own free will choose to join forces to champion their common cause. Membership in NGOs is free and voluntary and no one can be compelled to join or resign. This right of free association is protected by the constitution of the United Republic of Tanzania in its article 20.
- *Democratic governance:* The laws encourage NGOs to be governed democratically by holding regular elections of leaders/manag-

ers and these have specific term of tenure in office. The exception to this is for founder trustees of trusts who may choose to be life members. Commonly NGO members hold their general meeting once in a year, the boards every quarter (3 months) and secretariats at least once in a month. Extra ordinary meetings in every level are provided for when the situation demands.

- **Accountability:** The element of accountability can be traced in NGOs through their respective constitutions which show the internal structures, powers, answerability and their mandates. The employees are accountable to the board which employed them, the board is accountable to members and members are supposed to be accountable to the constituency (beneficiaries) the NGO is serving. However due to the financial dependency to donors mostly foreign NGOs are also to a certain degree accountable to these donors on matters of finance and management. Depending on the size of finances handled by an NGO, if an NGO handles a fairly big sum of money, it must prepare audited accounts annually. For small NGOs financial statements are used to assess financial management and accountability. However each NGO regardless of size, shall in every calendar year prepare a report of its activities and make it available to the public, council, Board and other stakeholders. For organizations registered as Trust Funds which do not have members accountability to the beneficiaries it is more often not very evident.

3. The national NGO policy of 2001

The National NGO Policy was approved by the government in 2001. This policy was a conclusion of consultations that started in 1996. These consultations were initiated by the government through the office of the Vice President in collaboration with the umbrella NGO organizations namely Tanzania Non Governmental Organizations (TANGO), Tanzania Council for Social Development (TACOSODE) and Association of Non Governmental Organizations of Zanzibar. Different stakeholders participated in the process through zonal and national workshops the processes which involved discussions, consultations and advocacy by various stakeholders. In every stage a draft policy was developed and the same was discussed in the workshops. These workshops generated a lot of information which enriched the final policy document.

The National NGO Policy focuses on the following key areas:

- Roles and responsibilities of NGOs.
- Legitimacy of NGOs.
- Objectives of the NGOs policy.
- Policy issues – Qualities for an organization to qualify to be an NGO.
- Institutional framework of NGOs.
- Legal framework of NGOs.
- Information sharing and exchange.
- Aspects of transparency and accountability of NGOs.
- Partnership between the government and NGOs.
- Policy implementation.

The Policy provided a functional definition of an NGO to guide the law that would follow after the Policy. The Policy defines NGO as *“a voluntary grouping of individuals or organizations which is autonomous and not for profit sharing, organized locally at the grassroots level, nationally or internationally for the purpose of enhancing the legitimate economic, social/and or cultural development or lobbying or advocating on issues of public interest or interests of a group of individuals or organizations.”*

4. The NGO Act of 2002

This law is the product of the NGO Policy. The National NGO Policy noted some deficiencies in the laws that deal with NGOs. The Policy among other things noted existence of 3 functional registrars responsible in registering organizations which are NGOs and some that are not but feature some semblance of an NGO. The Policy therefore advocated streamlining the registration of NGOs by removing the deficiencies. It further sought to harmonize the laws that were in existence and enact one law for NGOs.

The NGO Act however did not repeal or amend other existing laws in the country dealing with registration of NGOs. One can still register an NGO under other laws but must apply for a certificate of compliance under the NGO Act after registration.

According to the Act, an NGO is defined as “a voluntary group of individuals or organization which is autonomous, non partisan, non profit making which is organized locally at the grassroots national or international level for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment, lobbying and advocating on issues of public interest of a group of individuals or organization and includes a Non Governmental Organization, established under the auspices of any religious organization or faith propagating organization, trade union, sports club, a political party or community based organization but does not include a trade union, a social club or a sports club, a political party, a religions organization or a community based organization.”

Key operational and procedural areas of the Act

Registration

- Each NGO is required to register with the Registrar of NGOs.
- A group of persons who wish to apply for registration of an NGO shall make application in the prescribed form to the Registrar.

- An application form shall be submitted by any of the founder members and such application shall be accompanied by
 - a copy of the constitution of the NGO.
 - minutes containing full names and signature of founder members.
 - personal particulars of office bearers.
 - address and physical location of the head office of the NGO.
 - an application fee.
 - any other particulars or information as may be required by the Registrar.
- Within one month after receiving the application the Registrar shall forward the same with his recommendations to the Board with consideration.
- The Board may approve and direct registration of the NGO or refuse to approve the application and shall direct the Registrar to notify the applicant.

Refusal of registration

- Application for registration of an NGO may be refused if the Board is satisfied that the activities of the NGO are not for public interest or are contrary to any written law or the application has given false or misleading information in any material particular. Application can also be refused on the recommendation of the NGO Council that the NGO should not be registered.
- Where the Board has refused registration of an NGO, it shall within 21 days notify the applicant reasons for the refusal.

Appeal against refusal to register

- If the applicant is not satisfied with the decision of the Board, it may appeal to the Minister or apply to the Board to review its earlier decision.
- The Minister after receiving the appeal shall within 2 months from the date of receiving the same consider and make determination of the same.
- In determining the appeal the Minister may do one of the following
 - uphold, quash or vary the decision of the Board.
 - require the Board to review its decision.

- require the Board to inquire into specific information from the appellant and make further consideration of the application.
- If the NGO whose certificate has been suspended or cancelled is dissatisfied may apply to the Board for review and if further dissatisfied may appeal to the Minister.

Certificate of registration

- The Registrar after registering an NGO shall issue a certificate of registration and the same shall contain the following;
 - the name and the address of the NGO.
 - the area of operation of the NGO.
 - such terms and conditions in respect of which a certificate is issued.
- The registration certificate of an NGO is a conclusive evidence of its authority to operate as provided in its constitution or in the certificate of registration.
- Where the Board has approved a registration of an NGO whose employees are not citizens of the United Republic of Tanzania it shall make recommendations to the Civil Service Department which shall further forward its opinion to the Director of Immigration Services for the issuance of working permits to these employees.

Suspension or cancellation of the certificate

- Where an NGO is in default of the terms and conditions of which the certificate was issued or an NGO has ceased to exist, or it operates contrary to its constitution or the Council has submitted to the Board recommendation for its suspension the Registrar may serve the certificate holder a default notice in writing specifying the nature of default.
- After receiving the default notice the NGO shall make presentation in writing to the Registrar explaining how to remedy or rectify the default.
- If the NGO fails to remedy or rectify the default within the time indicated in the default notice or has not made a satisfactory presentation to the Registrar, the Registrar shall submit to the Board recommendation for suspension or cancellation of the certificate.
- If the Board is satisfied that the NGO is in default, it shall direct the Registrar to suspend or cancel the certificate.

Activities and financial reports

- Each NGO shall in every calendar year prepare a report of its activities and make it available to the public, Council, Board and other stakeholders.
- The constitution and other documents submitted by the founder members to the Registrar during the application of registration or such documents presented later shall be the governing documents of the NGO.
- No NGO is allowed to operate or perform its functions contrary to its governing documents.
- Each NGO has a duty to,
 - respect the law governing its operations
 - respect the culture and traditions of the people and the communities in which it operates unless the same are contrary to any written law.
- With regard to an international NGO it has the duty to
 - to foster and promote the capacities of other NGOs
 - participate in the activities of the Council.
 - refrain from doing any act that is likely to cause competition or misunderstanding among NGOs.

Fundraising

- Any registered NGO shall be entitled to engage in legally acceptable fundraising activities.

Change of particulars of NGO

- Any change in the constitution, name or name of office bearers by an NGO it shall notify the Registrar in writing.
- Such notice to the Registrar shall be accompanied by;

- a copy of the resolution certified by office bearers stating that the resolution complies with its governing documents.
- a copy of the certificate of registration.
- The Registrar after receiving the notice of change.
 - enter into register all changes as submitted in the notification.
 - where necessary, issue a certificate of registration.
 - remove from the register the particulars of the NGO as may be necessary
- Any changes made in the register in respect of the particulars of an NGO, the Registrar shall notify the Board.
- Members of public have a right to access and inspect any documents of an NGO at the office of the Registrar.
- The Minister shall from time to time prescribe manners in which such right of access and inspection can be exercised.

Offences and penalties

- The law determines penalties on punishable offence to any person who:
 - forges, utters any document for the purpose of procuring registration of NGO.
 - makes false statements in respect of an application for registration of NGO.
 - conducts fundraising activities contrary to the NGO Act.
 - operating
 - an NGO without obtaining registration under this Act.
 - violates the code of conduct or contravene any regulation or rules made under the NGO Act.
- The punishment for these offences is either a fine not exceeding Tanzanian shillings 500,000/= or to imprisonment to a term not exceeding one year or to both such fine and imprisonment.
- Any person convicted for an offence committed under this Act shall be disqualified from holding office in any NGO operation in Mainland Tanzania for a period not exceeding five years.
- Where an offence is committed by an NGO, the office bearer shall be prosecuted and punished unless he satisfies the court that he had no knowledge and could not by the exer-

cise of reasonable efforts to have knowledge of the commission of such offence.

- The court may if an offence is committed by the office bearer or the NGO, order the NGO or any of its office bearer to pay a fine of Tanzania shillings not exceeding 50,000/= for everyday which the commission of the offence continues.

Certificate of compliance

- An NGO registered or established under The Companies Act, Societies Act and Trust Incorporation Act shall apply to the Registrar of NGOs for a certificate of compliance.
- A certificate of compliance which has a similar effect as a certificate of registration under the NGO Act, shall be issued after fulfilling the following:
 - Minutes of the Board with signatures of the founder members.
 - CVs of 3 founder members.
 - 2 photographs of the leaders of the NGO.
 - Copy of the registration certificate.
 - 2 copies of the constitution.
- No fee is charged for an application for a certificate of compliance.

The NGOs' Code of Conduct

Background

The NGOs Act of 2002 provides for the establishment of an umbrella organization for Non Governmental Organizations known as National Council of NGOs (NACONGO). The Act provides that the purpose of NACONGO is to coordinate and network all NGOs in Tanzania Mainland.

NACONGO is further given responsibility under the Act to develop and cause to be adopted a code of conduct and other regulations which shall facilitate self regulation of NGOs. To attain this NACONGO in collaboration with NGOs embarked on the process of collecting views and analyzing them in view of coming up with this Code. The final document was ready by March 2008 and has already been submitted to the responsible Minister. It shall be effective after being gazetted by the Minister.

Purpose of the Code of Conduct

- To establish core values and principles to guide the conduct and operations of NGOs.
- To provide guidance to NGOs towards meeting the challenges of sustaining democratic and participatory institutions and strengthening an enabling environment in which people shall determine collectively or individually their destiny.

Intentions of the Code of Conduct

- To promote open, transparent and enabling environment of work for all NGOs.
- To promote and encourage transparency and accountability within the operations of NGOs.
- To contribute and promote principles and ways of working that ensures effective collaboration and coordination among NGOs and other stakeholders.
- To establish mechanisms for code observance.

NGOs' core values

Believe, value and respect to

- Self-determination, ownership, autonomy and empowerment of NGOs.
- Human rights and promotion of people's voices.
- Equality, equity and equal opportunities.
- Sovereignty of the nation and autonomy of institutions.
- Diversity of opinion, freedom of expression and open debates and promotion these values at all levels.
- Promotion of transparency and accountability in organizations partnerships and the society.
- Quality, excellence, creativity self – learning and reflection.
- Principled advocacy for public interest.
- Mutual partnership and relationships.

Areas of focus of the Code

Governance

The NGOs commit themselves to

- Answerability to their constituencies.
- Having governing bodies with clear structures, roles and responsibilities.
- Having clear written procedures for the operations of the NGO.
- Being responsible and accountable to the people without compromising core values, visions, missions and objectives.
- Putting in place democratic systems of leadership and policies to deal with conflict of interest.

Accountability

The Code recognizes the following multiple levels of accountability:

- *Downward and upward* accountability. (to and from the people served)
- *Internal accountability* (to the internal structures consistent the policies)
- *External accountability* (to the laws, regulations and other stakeholders)
- *Horizontal accountability* (to the partner organizations/institutions who work together)

These levels of accountability cover all operations and interaction of NGOs with diverse stakeholders and all dimensions shall be given equal weight and no commitment should be made to one dimension that may compromise accountability to another dimension.

Financial transparency and accountability

This component entails

- Developing and adherence to clear, well defined and written financial regulations that are consistent with sound financial management principles and practice.
- Cost effective and economical use of resources.
- Procurement of goods that are of quality at least cost, avoids favoritism and corruption and which conforms to sound procurement principles.

- To exercise zero tolerance on corruption and other forms of substantive misuse of funds and take effective actions to hold persons or institutions responsible accountable.

Human resources

The Code recognizes and respects the fact that organizations are made up of people and all are resourceful to the attainment of their organizational goals. In attaining this wish it is necessary that

- Clear, well defined, written human resources and administrative policies and procedures that are consistent to the laws of Tanzania are developed and adhered to.
- Clear policies to avoid conflict of interest, nepotism favouritism corruption and that ensure an environment where mutual respect and human dignity is fostered are promoted and enforced.
- Employment policies and procedures should foster the utilization of local capacity without compromising the quality of services and interventions.
- Clear disciplinary and grievance procedures are established.
- Capacity development programmes are fully developed and utilized.

Communication and information sharing.

The Code recognize that information is power therefore the NGO sector should commit itself to ensure that this powerful instrument shall be optimally and timely distributed and shared among all stakeholders. To ensure this it is important;

- To ensure existence of effective management and information system which provides frameworks and guidelines of how stakeholders shall be informed of the organizational functions and outcomes and vice versa.
- To nurture the culture of sharing information in order to facilitate learning of lessons, reduction of duplication of activities and increase efficient use of resources.
- Establishment of a data base with basic information on all NGOs operating in Tanzania.

Relationships and networking

- NACONGO shall promote and ensure good working relationship with the government and other stakeholders at all levels.
- NGOs representatives who will represent the NGO sector in any forum within or outside Tanzania shall be required to get blessings form NACONGO and thereafter provide a feedback.

Observance of the Code of Conduct

- The Code shall be managed at three levels namely district, regional and national and all these levels shall have Ethics Committee.
- Any conflict regarding observance of this Code shall be forwarded to the district committee and in case of dissatisfaction to the regional and national which is the last reference point regarding the observance of this Code.
- In case where defaulters individuals or institutions to the Code have committed serious offences to jeopardize the life of people and properties of the organization or the public such as fights, corruption, theft or embezzlement of resources, immediate legal procedures and actions shall be invoked.
- NACONGO Ethics Committee shall formulate rules or regulations that shall enable operationalization and observance of this Code.
- This Code may be amended from time to time based on recommendations from NGOs and the resolution of NACONGO.

5. Structure of an NGO

Under the Societies Act and Companies Act

Highest organ

General Assembly is the supreme decision making body on all matters regarding the discharge of rights and duties of the members and organs of the association. It is comprised of all members and meets ordinarily once every year. It has the following key powers:

- To admit new members or expel any member for reasons.
- To approve strategic plans, annual plans and budgets.
- To approve any amendments of the constitution or policy of the NGO.
- To elect board members.
- To deliberate and decide on mission and vision.
- To receive and adopt the audited report and appoint the auditor for the following year.

Governance organ

The Board/Governing Council is the overseer of the organization and its key mandates are:

- *To determine the organization's mission and purpose.* Boards have a responsibility of conceptualizing and creating a mission statement of the organization and review it periodically for validity and accuracy. Although in many NGOs final decision is made by the members General Assembly, the proper organ for conceptualization and creation a mission statement is the board.
- *To ensure effective organizational planning.* The board must actively participate in the planning process of the organization and guide the implementation of the plans.
- *To ensure the organization has adequate resources.* The key responsibility of the board is to fundraise for the organization in order that it can fulfill its mission
- *Acquiring the resources and manage them effectively.* The board must ensure proper policies and systems of financial control are in place and are functioning.

- *To select the chief executive officer (this includes firing).* The board is responsible in designing, chief executive officer's job description, performance appraisal framework and the task of looking for a competent and qualified person for the post.
- *To support the chief executive officer and review his/her performance.* The board should render moral and professional support to the Chief Executive Officer so that she/he can confidently perform the duties.
- *To enhance the organization's public standing.* The board is a link to the outside world therefore it should be able to articulate the mission, goal and achievements of the organization in order to garner the support of the public.
- *To determine, monitor and strengthen the organization's programs and services that it provides.* The board should constantly ensure that it determines programmes that are consistent to the mission statement of the organization and monitor their effectiveness.
- *To ensure legal and ethical integrity and maintain accountability.* The board must put in place important policies and ensure that policies and constitution of the organization are respected.
- Ensure that assets of the Organization are kept in good order, are within the control of the Organization, and are being used in a way that furthers the objectives of the Organization.

Good composition of an efficient and effective board

The selection criteria of board members should take into account that:

- The board membership should be representative in order that interests and inputs of key stakeholders can be taken on board.
- Board members should be skilled in areas that are relevant to the work of the organization.
- Board members should be independent. They should not be staff members, close personal friends of staff members, donors of the organization or government officials.
- Gender consideration be taken into account and representation of other marginalized groups

- Board members should be reputable in the society. They should be well known, credible, honest and dedicated to the cause of the organization.
- Board members should have time commitment to the organization. People who are too busy may be reputable and skilled but they may not have time to serve the organization.

Powers and responsibilities of boards in registration requirements

During registration the registering authorities check the element of powers and duties of the board and power relations with other organs of the organization. The essence is to ensure that each organ's powers and mandate are distinct and no overlap of mandate, which is normally a cause of conflicts in many organizations. However the registering authorities do not go into the details of what type of board an organization should adopt. The type of board manifests itself through its name, powers, mandate, composition, recruitment procedure and resignation/retirement procedure of its members.

This governance organ in different organizations is given different names like board of directors, governing board, executive board, executive committee, advisory board etc.

What makes one board to differ with another in terms of its functioning is its powers and mandate such board is given and stipulated in the organization's constitutions. In some organizations especially the chapters of foreign organizations, their boards do not have a final say on every thing. Their international boards or sometimes the headquarters makes final decisions on some key policy issues and systems. Their local advisory boards advise on the implementation of programmes and suggest what can be done to improve the programmes. An organization's constitution must stipulate how its board members are recruited, their responsibilities, tenure of office and exit procedure whether it is by resignation, expulsion or end of tenure.

The exception to this rule is in registering a trust whereby the founder of the trust who in the trust deed is called a settler may be a trustee for life. This has been the case for trusts that are established by individuals to champion their cause or to manage properties or his/her estate. Such a person may choose to be a life trustee. For sus-

tainability's sake of an NGO this type of provision is important but is missing in the NGO Act No. 24 of 2002.

Implementation organ

The Secretariat/Executive office which is mostly composed of employees and volunteers, is charged with the task of implementing day to day activities of the organization as directed by the board and under the supervision of the Chief Executive Officer. Depending on the size it can form various departments and committees.

As for trusts/foundations there are only two organs namely the board of trustees and the secretariats. The board assumes the powers of members and the board as indicated above. Experience has shown that accountability to the beneficiaries is more often weak.

6. NGOs' constitution requirements

The following basics should be in an NGO's constitution:

- Definition of terms
- Basic particulars of the organization
- Objectives of the organization
- Core values of the organization
- Membership
 - Eligibility for membership
 - Procedure for application of membership:
 - Conduct of members
 - Rights of members
 - Obligations of members
 - Cessation of membership
- Structure of the organisation
 - Powers and mandate of the General Assembly
 - Criteria for board membership
 - Powers and functions of the board
 - Quorum of the board
 - Secretariat/Executive office
 - Chairperson of the organisation
 - Qualification for the position
 - Powers and mandate of the chairperson
 - Executive Director of the organization
 - Qualification for the position
 - Powers and mandate of the Chief Executive Officer
 - Tenure of office of the Chief Executive Officer
 - Meetings (calling of meetings, notice of meetings)
- Funds and financial resources of the organization (Approval of Audit reports, financial year, bank accounts, selection of signatories, financial regulation, accountability, transparency)
- Amendment of the constitution
- Dissolution of the organization and the fate of the properties
- The Common seal

Information on registration and coordination of NGOs under NGOs Act:
The Registrar of NGOs
Ministry of Community Development, Gender and Children Affairs
Sokoine Drive
P.O Box
DAR ES SALAAM
www.mcdgc.go.tz

7. Tax treatment of NGOs

The tax treatment of NGOs is not governed by the laws that establish those NGOs but rather the tax laws under the Ministry of Finance and Planning. The Minister of Finance and planning has powers to exempt tax to an NGO if satisfied that it is in public interest to do so. The exemptions have normally been on specific items and restrictive in their grant. Tax exemption to NGOs applies to the taxation of the NGO itself and the contributions made to the NGO by individuals or corporate entities.

The government in 1973 through the Government Notice No. 176 called *The Customs Tariff Order (Remission of Custom Duties) (Bona Fide Gifts)* empowered the Minister of Finance to grant exemption to certain taxes on organizations that falls on the category of religious and charitable organizations. The exemption under these powers are to fiscal entries and import duties payable in respect of goods imported or acquired before being cleared through customs by or behalf of the recipient organization. Goods that are covered under these exemptions are to be used by the organizations and their programmes /projects and for free distribution.

Under the Income Tax Act of 2004 any income that is accrued in, derived from or received in the United Republic of Tanzania is exempted from tax if it is an income of any institution, body of person or irrevocable trust of a public character established for the sole purpose of the relief of poverty or distress of the public, or for the advancement of religion or education.

Under the Value Added tax provides for an exemption to items that are relevant to the activities of NGOs. Such exemption is granted to:

- The importation or supply to a registered religious organization of goods or services to be used solely for:
 - Relieving persons from the effects of natural calamities, hazards or disasters
 - The development of the projects related to health, education water supply and infrastructure
 - Advancement of religion
- The importation by or supply to any non profit driven community based. Charitable,

educational or other organization or institution or goods or services in respect of which the Permanent Secretary to the Treasury certifies that they are to be used solely for the purpose of the advancement of the community, educational or similar project related to that organization or institution.

- The importation or supply to a charitable organization holding special Agreement with the Government of the United Republic of Tanzania of goods or services specified in that Agreement providing for relief from taxation.

Requirements for Value Added Tax relief for NGOs and religious organization

The Applicant must submit the following to the offices of the Regional Revenue Officer of the tax region which the organization is based.

- An introduction letter with photographs of the key leaders.
- A letter from the District Commissioner of the district which the organization has its registered offices introducing the organization.
- Registration certificate of the organization.
- Constitution of the organization.
- Tax Identification Number of the organization.
- A complete filled form of VAT 223.
- Lease agreement of the office premises in case the organization is renting.
- Proforma invoice for local purchase, commercial invoice or proforma invoice for imports.
- Bill of lading, airway bill or road consignments note.
- Single bill of entry.
- TISCAN valuation report (TISCAN is an international company engaged by the government to conduct cargo inspection for the imported goods among other things).
- The packing list of the goods. If the organization is seeking tax relief for building materials, the following are needed on top of those listed above:
 - Building permit.
 - Construction contract agreement.
 - Bills of quantity of the materials.
 - Title of the right of occupancy of the land.

For information about tax treatment on NGOs:
The Commissioner General
Tanzania Revenue Authority
Sokoine Drive
P.O Box 11491
DAR ES SALAAM
www.tra.og.tz
OR
Permanent Secretary
Ministry of Finance and Economic Affairs
P.O Box
DAR ES SALAAM
www.mof.go.tz

8. NGOs' financial management

Financial accountability in NGOs

Like all entities that are handling money and transact, NGOs are equally bound by financial rules and regulations in order to ensure financial accountability. These rules and regulations are applied at different levels.

- NGO level each NGOs constitution must provide for
 - The beginning and the end of financial year
 - The organ that shall develop and supervise adherence of the financial regulations
 - How the budget process is undertaken, discussions and approval of the same
 - How bank signatories are selected and the ceilings of withdrawals
 - The organ with powers to appoint an auditor every year
 - The need for audited report to be discussed by members in their annual general meetings
 - Adherence to procurement procedures and tendering if the services or items to be procured qualify for that
 - Sources of funds, procedures for opening bank accounts and their management
 - The Chief Executive Officer's central role of being a custodian of all funds
- At the national level NGOs are bound to observe:
 - The requirements of the National Board of Accountants and Auditors which provides for professional standards of the accountants and auditors and financial reporting standards by different entities.

- At the international level NGOs are bound by:
 - The International Financial Reporting Standards (IFRS) which provides how financial report of each entity should be. The National Board of Accountants and Auditors adopted these standards in 2004.

The need to audit accounts

In order to enhance its credibility and enjoy the confidence of trust and good image to different stakeholders especially donors, many NGOs prefer auditing their accounts. No lower ceiling is given for an NGO to be audited but costs of auditing may dictate this to NGOs with small funds. Depending on the size of funds an NGO may opt for hiring a book-keeper, a local audit firm or international audit firm. Under the law the auditor firm engaged for auditing must meet the following requirements:

- At least one partner must possess a Certified Public Accountant qualification provided by the National Board of Accountants and Auditors (NBAA) or Association of Certified Chartered Accountants (ACCA) qualification of England.
- The accountants in that firm must be members of the National Board of Accountants and Auditors.
- The firm must have a valid auditing certificate from the National Board of Accountants and Auditors
- It must be registered with the Tanzania Revenue Authority and issued with a Taxpayer's Identification Number

Information on financial management:
National Board of Accountants and Auditors
 NBAA
 Mhasibu house
 Bibi Titi Mohamed Street
 P.O. Box 5128
 DAR ES SALAAM
 Tel: 255-022-2151642/2151745/2150648
 Fax: 255-022-2151746
 E-mail: info@nbaa-tz.org
www.nbaa-tz.org

9. Banking system with regard to NGOs

The banks in Tanzania have 2 types of accounts that are commonly relevant to the operations of NGOs. These are:

- Current account which the deposited sum does not get any interest.
- Savings account which attracts interests to the amount deposited.

In order to open a bank account an NGO is required to fulfill the following:

- Certificate of registration.
- Copy of the constitution.
- List of members of the Board/Executive Committee.
- A Board resolution to open a bank account.
- List of signatories and mandate to operate the account.
- Two passport size photographs of each signatory.
- Photocopies of the identity card or passport of each signatory.

Procedure for an NGO to acquire a bank loan

NGOs like individuals or corporate entities are eligible for bank loans and should follow the procedures laid down by the intended bank.

The types of loans that are commonly available are overdraft facility which is more commercial oriented and of a short term, and the second is a term loan whose duration can be negotiated.

An application is sent to the respective bank and the following minimum conditions must be met namely:

- Audited financial statements of the NGO for the past 3 years or more
- Managements accounts statement of the NGO for the previous quarters
- CVs of the key personnel of the NGO
- If the NGO is registered under the Companies Act or Trustees Incorporation Ordinance, recent annual returns filed with the Registrar of Companies or Administrator General respectively.

- Cash flow statements of the whole period of credit.
- Budgeted financial statements for whole period of credit.
- Land rent receipts for landed properties proposed as a security
- Building permit and bills of quantity
- Valuation report of the proposed security properties
- Any insurance cover or policy
- Non refundable application fee
- Certificate of registration of the NGO.

The interest rates charged do vary from bank to bank but these are influenced by the performance of the economy in general.

Sources of currency rates information are the Central Bank of Tanzania which is the principal source, commercial banks and the media both print and electronic.

Management of currency fluctuation in project management can be handled by adopting all or any of the following:

- Budget and maintain accounts of the projects in foreign currency preferably United States dollars, Euro or British pounds.
- Include in the budget a percent to offset inflation which causes currency fluctuation.
- Since profit making is allowed an NGO can engage in providing professional services it is competent to at a fee to outsiders and amount realized can top up the shocks of currency fluctuation.

In bank transfers locally some commercial banks have transfer charges and some do not have. Such charges are imposed and the rates charged depend on the forces of the market. As for international transfers, charges are imposed by the foreign bank which the money is sent and upon receipt of the money no charges are charged.

For further information on banks
 Governor,
 Bank of Tanzania
 3.Mirambo Street
 P.O Box 2939
 DAR ES SALAAM
 Tel +255-22-2110945/7, 2110950/52
 Fax +255-22-2234075, +255-22-234217
 Website: www.bot-tz.org

10. Employment procedures and labour relations

The Laws that provides for employment matters are Employment and Labour Relations Act and Labour Institutions Act.

Labour Institution Act 2004

This Act was enacted to provide for the establishment of labour institutions, their functions, powers and duties. The Act provide for the institutional framework and machinery for the effective labour market regulation. This law provides for the following organs;

Council for Labour, Economic and Social matters

This Council has the following functions;

- To advise the government through the Ministry of Labour on any of the following.
 - measures to promote economic growth and social equity
 - economic and social policies
 - the promotion of a coordinated policy on labour, economic and social matters
- To advise the Minister of Labour on
 - national labour market policy
 - any proposed law before it is submitted to the cabinet
 - prevention and reduction of unemployment
 - any issue arising from the International Labour Organization or any other international or regional body which Tanzania is a member
 - code of good practice
- To survey and analyze social and economic affairs.
- To keep abreast of international developments in social and economic policy.

Commission for Mediation and Arbitration

This Commission is an independent department of the government which in the performance of its functions it is not subjected to any direction or control by any person or body. Its key functions are:

- To mediate any labour dispute referred to it.
- To determine any dispute referred to by arbitration.
- To facilitate establishment of forum for workers participation.

Essential Services Committee

This committee is charged with the functions of

- Designating essential services.
- To determine whether an employee or employer is engaged in a designated essential service.

Wage boards

These boards are established on ad hoc basis. Their key functions are to advise the Minister of Labour on minimum wages and terms and conditions of employment on sectoral basis and to promote collective bargaining between registered trade unions, employer's associations and employees.

Labour administration and inspection

Under this section a Labour Commissioner and Deputy Labour Commissioner who are appointed by the President are charged with powers to administer labour laws and regulate trade unions and employers associations.

Labour Court

A Labour Court is a Labour Division of the High Court of Tanzania with all powers of the High Court to handle labour disputes.

This court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws.

Presumption as to whose is an employee

Under this law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of contract, if any one or more of the following factors is present:

- the manner in which the person works is subject to the control or direction of another person
- the person's hours of work are subject to the control or direction of another person
- in case of a person who works for an organization, the person is a part of that organization
- the person has worked for that other person for an average of at least 45 hours per month over the last three months
- the person is economically dependent on the other person for whom that person works or renders services
- the person is provided with tools of trade or work equipment by the other person
- the person only works for or render services to one person

Employment and Labour Relations Act 2004

This law provides for the following important aspects:

Fundamental Rights and Protections

- *Child Labour:* No person shall employ a child under the age of 14 years. A child of 14 years of age may only be employed to do light work which is not likely to be harmful to the child's health, does not prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority. A child under 18 years of age shall not be employed in a mine, factory, or as a crew on a ship or in any other worksite including non formal settings and agriculture where work conditions may be considered hazardous by the Minister.
- *Forced Labour:* This includes bonded labour or any work extracted from a person under

the threat of a penalty and to which that person has not consented.

- *Discrimination*: No employer shall discriminate directly or indirectly against an employee in any employment policy or practice or any other ground.
- *Freedom of Association*: Every employee shall have a right to form and join in a trade union and to participate in the lawful activities of the trade union.

Any person convicted for committing offences of child labour and forced labour may be sentenced to

- a fine not exceeding five million Tanzanian shilling
- imprisonment for a term of one year
- both fine and imprisonment

Any employer convicted for committing offences of discriminating an employee or denying an employee the right to form and join a trade union or participating in its lawful activities may be sentenced to a fine not exceeding five million Tanzanian shillings.

Employment standards

Recruitment

The employer shall supply an employee when commences employment with particulars such as

- Job Description
- Date of Commencement
- Forms and duration of the contract
- Hours of work
- Remuneration and other benefits
- Entitled vacation/leave/off days
- Policies or rules (by-laws) of that organization/company

Content of the contract:

- Specified time of that contract e.g. 1st July 2008 – 30th June 2009
- Job Title
- Salary and other benefits
- Probation Period
- Terms of terminating the contract

Employment contracts

A contract for employment between the employer and employee shall be of the following types:

- Contract for an unspecified period of time
- Contract for a specified period of time for professionals and managerial cadre
- Contract for a specific task

Hours of work

- Six days a week, 45 hrs a week & 9 hrs a day, except in accordance with the agreement
- If exceed 45 hrs, it is considered an overtime

Remuneration

- It is being determined by hourly, daily, weekly or monthly rate of pay
- Monetary remuneration is paid (a) during working hours at the place of work on the agreed pay day (b) in cash, either by cheque or direct deposit into an account designated by employee in writing

Leaves – Maternity/Paternity/Sick/Annual/Compassionate

- *Maternity*. 84 days maternity leave but if its more than one child, one gets 100 days maternity leave. An employee can start maternity leave a month before the expectation date or any date if the doctor approved so.
- *Paternity*. 4 days as long as it is taken within 7 days since the birth of a child and the employee must be the father of the child.
- *Sick leave*. 126 days, 63 fully paid and 63 half paid and this has to be prescribed by the certified medical practitioner
- *Annual Leave*. 28 days per annum including weekends and holidays
- *Compassionate*. 4 days upon death/illness of employee's spouse, father, mother, grandparents, grandchild or siblings

Termination of employment

This includes:

- a lawful termination of employment under the common law

- a termination by employee because the employer made continued employment intolerable for the employee
- failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal
- failure to allow the employee to resume work after taking maternity leave
- failure to re-employ an employee if the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them
- That person is engaged in a minimum services
 - Minimum services are those services offered by the employees to prevent damage to property, machinery or plant during a strike or a lawful strike.
- That person is bound by an agreement that the issue in dispute to be referred to arbitration.
- That person is bound by a collective agreement or arbitration award that regulates the issue in dispute
- That person is bound by wage determination that regulates the issue in dispute during the first year of that determination.
- That person is a magistrate, a prosecutor or other court personnel.
- The issue in dispute is a complaint.

Termination/Dismissal

- Must be given notice of termination stipulating clearly the grounds for termination/dismissal. Where necessary, the employer has to exhibit the previous disciplinary e.g. warning letters pertaining to such act.

Unfair termination

- It will be regarded as unfair termination if the employer fails to prove (a) reasons for termination are valid (b) the reason is a fair reason (c) reasons are related to employee's conduct, capacity or compatibility (d) based on the operational requirements of the employer (e) the employment was terminated in accordance with a fair procedure
- If proved by the designated authority, the employee will be compensated by (a) severance pay (b) re-instatement (c) other benefits

Strikes and lock outs

Every employee has the right to strike in respect of a dispute of interest. Every employer has the right to lock out in respect of dispute of interest. However no person shall take part in a strike or a lock out if:

- That person is engaged in an essential service
 - Essential services are those which involve water and sanitation, electricity, health and laboratory services, fire fighting, air traffic control and civil aviation.

A person engaged in essential services may strike or lock out if

- There is a collective agreement providing for minimum services during a strike or lockout
- The agreement has been approved by the Essential Services Committee.

Retirement procedures

The new labour laws do not provide elaborate procedure for retirement which can cover employees in the NGO sector. Such procedures are provided to the employees employed in the civil and public services under specific laws covering that. Possible exit of an employee from employment which will include retirement is through invoking the procedure stated in paragraph 10.2.3 above.

Disputes resolution of labour disputes

- *Mediation.* In any mediation a party to dispute may be represented by a member or an official of that party's trade union or employer's association or an advocate. The Mediator shall resolve the dispute within 30 days of referral or longer if the parties agrees in writing. If mediation fails the matter is referred to arbitration.
- *Arbitration.* If the parties fail to resolve a dispute referred to mediation, the commission shall appoint the arbitrator to decide

the dispute. The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly. The arbitrator shall deal with substantial merits of dispute with the minimum of legal formalities and at the end give an award.

- *Adjudication.* Labour court shall have exclusive jurisdiction to decide upon:
 - appeals
 - review and revisions

Labour court may refuse to hear complaint if:

- the complaints has not been referred to mediation
- the application is not urgent

Remuneration and calculation of wage rates

As provided by the Wage Order which was passed in November 2007 and came into force on 1st January 2008.

Taxes imposed on employees and incomes

Monthly Income	Tax Rate Payable
Where monthly income does not exceed Tshs. 100,000/=	NIL
Where monthly income exceeds Tshs. 100,000/= but does not exceed 360,000/=	15% of the amount in excess of shs. 100,000/=
Where monthly income exceeds 360,000/= but not more than 540,000/=	Shs. 39,000/= plus 20% of the amount in excess of shs. 360,000/=
Where monthly income exceeds shs. 540,000/= but does not exceed 720,000/=	Shs. 75,000/= plus 20% of the amount in excess of shs. 540,000/=
Where monthly income exceeds shs. 720,000/=	Shs. 120,000/= plus 30% of the amount in excess of shs. 720,000/=

Source: Tax table for Pay As You Earn (PAYE) tax

Information about tax to employees:

*The Commissioner General
Tanzania Revenue Authority
Sokoine Drive
P.O Box 11491
DAR ES SALAAM*

Compulsory contribution in social security funds

- 10% of the Gross Monthly Salary to Parastatal Pension Fund (PPF) or National Social Security Fund (NSSF).
- 10% employer's contribution to Parastatal Pension Fund (PPF) and or National Social Security Fund (NSSF).
- 20% contribution by both employer and employee

Note: This appears different in the case of Local Authority Pension Fund (LAPF)

The principles on per diems, traveling and night allowances etc. in the government, private sector and NGO sector

Most employers in a private sector and or NGO sector are using the rates of government pay on per diems, traveling allowances, night allowances as a benchmark. The rates are not limited, varies from the nature of work, position of the employee and wealth/budget of the company/organization. The non-profit companies/organizations have always use low rates as compared to the profit companies/organizations. In principle, there is no fixed/agreed uniform rate of pay in private sector or NGO sector.

Otherwise, the private sector or NGO sector determine the pay of per diems, traveling allowances and night allowances in relation to the place where an employee is destined to go, possible personal expenditures and status/position level in the company/organization. These are based on the agreed principles that are set in each individual organization/company. The night allowances are paid according to the law i.e. 5% of the total salary times the hours worked (*normally from 20:00 hour's p.m to 05:00 hour's a.m.*)

The government pays employees in accordance with the Government Minimum Wage Or-

der which has a schedule of payments for different employees of different salary levels, position, etc. This is found in the Government Notice 227 of January 2008. The amount of minimum wage is reviewed from time to time depending on the costs of living and economic performance.

Employer's duty in case of employee's death

If an employee or his/her dependant dies the law requires the employer to facilitate a decent burial to the deceased. No specific role or amount of money is specified by the law to be contributed by the employer. This leaves the employer to participate according to its financial ability, position held by the deceased in the employment or the time one has served the employer.

11. Public holidays

These have been fixed by the law and their dates are clearly known except the Moslems' *Eid el Fitr* and *Eid el Haj* whose dates are determined by the sighting of the moon. The President has powers to declare a day to be a public holiday when there is an incidence that warrants that.

Public holidays in 2008

1 st January	New Year
12 th January	Revolutionary Day Zanzibar
31 st March	Maulid Day
3 rd April	Karume Day
4 th April	Good Friday
7 th April	Easter
26 th April	Union Day
1 st May	May Day
7 th July	Farmers Day
1 st October	Eid El Fitri *
2 nd October	2 nd Eid El Ftri
14 th October	Nyerere Day
9 th December	Independence Day
20 th December	Eid El Haj *
25 th December	Christmas Day
26 th December	Boxing Day
* These days are determined by the sighting of the moon.	

For information about labour matters and public holidays
 The Association of Tanzania Employers
 IPS Building, 7th Floor
 Samora Avenue/Azikiwe Street
 P.O Box 2971
 DAR ES SALAAM
 Tel +255-22-2110940
 Fax +255-22-2119434
<http://www.ate.or.tz/>

12. Business and informal sector

Income generating activities of NGO's

- The amendments made in the NGO Act allowed NGOs to make profit but the profits should not be shared among the members or directors of the NGO. These profits should be ploughed back to the NGO.
- NGOs are encouraged to generate incomes in order to sustain themselves and avoid donor dependency. However the type of income generating activities should be in line with the mission and objectives of the NGO. They should be undertaken to promote the mission and the objectives of the organization.
- If an NGO engages in income generating activities, if the income reaches the levels set for licencing and tax payment the same shall be eligible.
- Unlike the private sector whose main mission and focus is profit making and if possible in a lucrative business, NGOs are supposed to be guided by its mission and objectives. These two emanates from the spirit of an NGO formation which is progressive transformation of the lives of the beneficiaries in a number of ways. The focus is not strictly for making money since the law does not allow profit sharing. In the private sector the primary focus is profit making and sharing.

Promoting entrepreneurship

- Promoting people to acquire entrepreneurship demands several interventions by state and non state institutions and individuals but the common approach that has been employed is
 - To establish those who are eager and willing to be entrepreneurs
 - To establish their areas of competency which if developed can yield good results.

- To explore and establish economic opportunities that economic opportunities that surrounds the target group or can be easily accessed if not available within the area
- To find out factors that can inhibit the successes of the initiative and design solutions
- Impact entrepreneurial knowledge and skills to the carefully selected groups
- Grade the trainees according to the volume/size of the activities they will undertake, nature and geographical location of the activities
- Design and implement an effective monitoring and evaluation system
- Conduct periodic assessments of activities

13. School ownership by NGO

Procedures to be followed for an NGO to build and operate a school

The application procedure is in three phases. In phase one the applicant shall send an application letter to the Chief Education Officer of the Ministry of Education and Vocational Training. Such application should pass through the Executive Director of the City/Municipal/Town/District council which the school shall be built and the Regional Administrative Secretary of that region and the same shall be accompanied with the following:

- Title deed or Offer of the right of occupancy of the land which the school shall built on. The land should not be less than 3 hectares. (Another type of school can be built on the same land under different application if the authorities will be satisfied with size of the remaining land)
- Building drawings
- School map showing arrangement of buildings and play grounds.
- For an NGO, copy of its constitution and the constitution should show that one of the objectives of that NGO is to establish and operate schools.

Upon being satisfied the Chief Education Officer shall give a permit for construction to start.

The second phase is the process after completion of phase one and in this phase, an application to be confirmed the owner and the manager of the school is forwarded to the Ministry. This application will be accompanied with following;

- District/Town/Municipal Health officer's report.
- District/Town/Municipal Engineer's report.
- District/Town/Municipal School Inspector's report.

These reports should indicate that the school has been inspected, and approved by the district education committee and the Regional Administra-

tive Secretary. If satisfied the Ministry shall confirm the applicant to be the owner and the school manager.

After completion of the second phase, the applicant shall apply for the registration of the school. This phase demands successful completion of the two phases. The application should be accompanied with all information in the two phases and shall be forwarded to the Zonal Education Inspector who shall physically inspect the school. The certificate of registration is issued with a school number after the successful completion of this phase.

Procedure to register an international school

- The school should be registered as an ordinary school.
- The school owner shall apply in writing to the Ministry of Education and Vocational Training conversion of the school to an international school.
- If the Ministry will approve the application, it will issue the permit to the owner to proceed with the process of registration in the respective institutions. Such institutions are the European Council for International Schools and (ECIS) and Association of International Schools in Africa (AISA).

For information about school registration and management:
Ministry of Education and Vocational Training
School Registration Unit
P.O Box 9121
Tel +255-22-2110146/9, 211050/5
Fax 255-22-2113271
Telex 255-22-242741 Elimu Tz
E-mail aek@moec.go.tz
Website. www. moec.go.tz

14. Land use and ownership

National Land Policy

The current Land laws were preceded by a National Land Policy. Following many different views from citizens on occupancy of land the government issued a National Land Policy in 1995 in which it gave a guideline on the way land is to be owned, used and even conserved. The principles of the National Land Policy guided the preparation of the Land Act and the Village Land Act.

Fundamental principles of the Land Policy

The fundamental principles of the national land policy are the objectives of both laws. It is important to use the said principles while using or interpreting the law. Some of the principles are:

- To ensure the establishment of an independent system that may operate expeditiously and judiciously in the determination of land disputes without delay.
- To know that all land in Tanzania is public land vested in the President in trust for the people of Tanzania.
- To facilitate just division and availability of land for all citizens.
- To appreciate that interest in land must be considered in the activities on land as is the case in every country.
- To pay immediate full and just compensation to any person whose right of occupancy or its customary use has been revoked or interfered by the government in terms of this Act or Land Acquisition Act of 1967.
- To enable all citizens to participate in decision making on matters pertaining to occupancy or use of their land.
- To provide regulations for appropriation of land in a clear and easy way for all the citizens.
- The right of every woman to own, use and do any activity on land shall be the same and extent as accorded to men.

Both laws have conferred the President with powers to convert communal or reserved kind into village land, similarly to convert Village land to communal or reserved land. The law has also provided for the procedure to be adopted in conversion of land of one type to another type.

Land as a public property

The Land Act has defined that all land in Tanzania shall continue to be public land and remains under the supervision of the President on behalf of all Tanzanian citizens. The President is therefore the trustee of the land on behalf of the people.

The law has also provided that the President or any person empowered by the President under it law shall carry out his duties as a trustee of all Tanzanian land by developing the economy and interests of the citizens.

Leasing (hiring) of land

An owner of land is allowed by law to lend the land or buildings, and lease it for a specified duration. If the renter of the land or building fails to comply with the lease condition, the owner of the land may take steps for the recovery of the land and termination of the agreement. The lessor may pray that the court terminate the contract. In the determination of the application the court shall have regard to the age, income, health and the number of dependants of the lessee (tenant).

If the termination of the contract shall leave the tenant without a place to live or will not have an alternative means of earning for himself and his/her dependants or the wife or husband of the tenant shall be inconvenienced, then the court may order for the termination of the agreement.

Who is eligible to own land?

- Any woman or a man or a group of more than two people, Tanzanian nationalities who are not under the 18 years of age.
- Any woman/man or group of people who are not Tanzanians can only obtain ownership rights (derivative rights) for the purpose of investing or developing the land areas under the Investment Act of 1997.

- Or a citizen may do a partial transfer of ownership to a person/company/group of people interested in developing/investing on that given land under the Tanzania Investment Act, 1997; which will be termed as a joint venture to facilitate compliance with development conditions.
- A registered NGO can apply and acquire land as it falls under a group of people.

Procedures to apply and acquire land (*citizen and non-citizen*)

In the event one has spotted a land area, he/she approaches the immediate district land office for those living in town and the land is in town and for those who are living in the village they apply to the village government, who will rule out whether there is land and if it is free for residential purposes or a reserved area, surveyed or unsurveyed areas or for farming etc.

- Once this is described by the land officials, the applicant is given an updated city map/town plan to locate the codes or the number of the respective land of interest.
- Filling a prescribed form; attaching a photograph of the applicant and a prescribed fee
 - Declaration in the prescribed form of all rights and interests in land in Tanzania which the applicant has at the application
 - Signed by the applicant or duly authorized representative or agent of the applicant
 - If made by the foreign company or a non-citizen, the application should be accompanied by the Certificate of Approval from the Tanzania Investment Centre under the Tanzania Investment Act of 1997.
- Application is then sent to the Commissioner for Lands, who after scrutiny will grant an Offer of the Letter of the right of occupancy as a provisional approval to occupy the land; and later (in unspecified time, after completion of all necessary government procedures) the applicant will obtain a Title Deed after paying the prescribed fees.
- *NB.* The Letter of Offer of the right of occupancy can not prevent one to continue developing the land area but may or may not act as a complete entity e.g. when someone intends to use it to solicit a bank loan.

Procedures for undertaking construction of premises on the land

- A land occupier must develop a building plan which tallies with the requirement of that given city/municipal plan, local government's building plan or district council plan
- Building plans to be submitted to the District Land Officials six months from the commencement of the construction
- After scrutiny, the designated municipal council/district land office/City council/district council will grant the Building Permit to the land occupier
- Construction must begin within six months after the approval of the plans; and to be completed within thirty-six months.
- Construction will start after the land occupier pays the required government fees

What may cause an acquired land to be re-possessed by the government?

- Upon any breach arising from any condition subject to which any right of occupancy has been granted, the right of occupancy shall become liable to be revoked by the president (who, by the laws, owns the land. It should be noted that the president shall not revoke any right of occupancy save for a good cause.
- Good cause shall include;
 - Attempted disposition of a right of occupancy to a non-citizen contrary to the laws governing the land and right of occupancy to a non-citizen
 - The land has been abandoned for more than two years
 - Breach of conditions contained in the certificate of occupancy
 - Breach of any irregularity of the Land Act of 1999 or any other governing Laws
 - When there is a justifiable incidence of a double allocation.

Land ownership can be transferred from one individual to another individual/NGO and vice versa. For a Trust it is not allowed to own land or interest on land without the written consent of the Administrator General. The procedure is more or less similar to the one for applying for acquisition of land.

If the owner of the land dies, the legally appointed administrator of the estate is required to process the transfer of that land to the lawful heirs of the deceased.

If the period of ownership of land indicated on the title deed ends, the owner applies for the renewal of ownership of the land.

Mortgaging land to secure bank loans

- This is cited from the Land (Amendment) Act, 2004.
- The Land Occupier may mortgage his interest in the land or a part thereof to secure the bank loan worth of such land or part of the land.
- The mortgaged land has to be registered in a prescribed register; otherwise the mortgagee shall not be entitled to exercise any of his remedies under that mortgage if not registered.
- A mortgagee will be required to deposit a certificate of a granted right of occupancy or a certificate of a customary right of occupancy
- A document of a lease
- Any other documents which may be agreed upon (mortgagee and mortgagor) evidencing a right to an interest in land in order to secure a bank loan
- He/She may be given a contract stipulating the agreed terms of a bank loan e.g. specified amount of the loan/interests etc.

For information about land matters and mortgages:

The Commissioner of Lands
Ministry of Lands and Human Settlements Development
Ardhi House
P.O Box 9230
Tel +255-22-2121241-9
DAR ES SALAAM
www.ardhi.go.tz

15. Corruption and its implications

Tanzania like other African countries is faced with corruption in its public and private sectors and the same has assumed high proportions. To deal with the problem the government adopted various interventions to deal with the problem. A number of inquiries and studies were conducted to assess the magnitude and severity of the problem. Further to this it enacted a specific law to deal with the problem and this law has been undergoing amendments periodically to suit the needs and circumstances of the time.

The Warioba Commission

In 1995 the government formed a Presidential Commission of Inquiry against Corruption chaired by the former Vice President Justice Joseph Sinde Warioba. The Commission carried out a deep study of why corruption has become such a big problem in the society. The Commission found that there are people who receive bribes as a means of supplementing their little income and there are those who involve themselves in corrupt practices due to excessive greed to accumulate wealth. The Commission pointed out the following as main sources of corruption.

- Poor commitment and interest on the part of leaders to fight corruption.
- Absence of clear guidelines on the accountability of leaders.
- General erosion of integrity of leaders.
- Emergency of luxurious consumption especially by the public offices holders.
- Changes in the liberalized economic environment that gives perception that one can do anything and get away with it.

The National Anti-Corruption Strategy and Action Plan

The government in its National Anti – Corruption Strategy and Action Plan of 1999 outlined short and long term objectives to address prevention, enforcement public awareness and institution building. In this strategy action plans both long

and short term are designed and implemented. Different stakeholders are involved in its implementation and timeframe and benchmarks are set to each. The strategy has two approaches in its implementation, namely analytical and proactive. The analytical approach emphasizes on institutional reforms while the proactive approach focuses on raising awareness. Both approaches are deployed in four major principles:

Prevention

- Simplify and depersonalization of government programmes and procedures in order to reduce opportunities of corruption.
- Minimization and or control areas of discretion and where they are retained, clear written guidelines for exercising such discretion must be in place and public.
- The public should be made aware of the available mechanisms that offer speedy and effective reviews of contentions decisions within the administrative machinery and the judiciary.
- Civil service workers should be paid a living wage in line with reasonable needs and expectations.
- The public should be polled periodically to assess its perception on what has changed.
- Income, assets and liabilities of officials with decision making powers should be monitored, effectively to ensure consistency with their known earnings and reasonable expectations.
- Creation of an open, genuinely competitive and transparent public procurement system.

Enforcement

- Independent enforcement mechanisms should be implemented and strengthened to increase the likelihood of corruption being detected and punished.
- Existence of effective channels for complaints within the government and members of public so that they do not feel unnecessarily exposed to reprisals when corruption is reported.
- Legal measures should be taken to enable the assets of the corrupt to be seized and forfeited wherever they are.

Public awareness

- Public awareness on the negative effects of corruption should be enhanced.
- People should be educated about their rights to service at a given price or no cost at all.

Institutional building

- All relevant law enforcement institutions that are at the centre of the fight against corruption must have adequate and competent staff and other resources.
- Internal financial management system should be reviewed periodically to ensure their adequacy and effectiveness.

The Prevention and Combating Corruption Act of 2007

In 2007 the government repealed the law that was in existence and enacted a new one namely The Prevention and Combating Corruption Act. The law covered many areas and added powers to the organ that was given powers to deal with the problem namely Prevention and Combating Corruption Bureau.

The primary objective of the Act is to provide for promotion and enhancement of good governance and eradication of corruption.

The Prevention and Combating Corruption Bureau created under this Act its main function is to take necessary measures for the prevention and combating of corruption in the public, parastatal and private sectors.

Incidences that may subject an NGO to corruption

An NGO may be caught up in corrupt transactions not because its policies or constitution provides so but rather it is on rare cases where the Chief Executive Officer operating under a weak, irresponsible board and weak systems in place may for his personal reasons engage in corruption in order to cover up some misdeeds. It can happen under the following circumstances:

- Underpay or avoid payment of statutory taxes for the employees by colluding with dishonest tax officers.

- Underpay or avoid payment of statutory contributions for the employees to the social security funds through collusion with dishonest inspectors and collectors of the contributions.
- Collude with dishonest auditors to get a clean audited report to justify some unbudgeted expenditures or misuse of the budgeted money.
- Giving dishonest media personnel, some few beneficiaries and the leadership of the project area undue treatment so that they can paint a good image of the project to the outside world contrary to the realities on the ground.
- Giving the board of the NGO undue treatment in order to disable its members from questioning the management on finance and administrative matters that are not in order.

Other cases which may invite corrupt dealings are on case to case issues which are personal like traffic cases by the NGO drivers and personnel which a greedy traffic police may encourage corrupt handling of the case.

For information about corruption in Tanzania
Director General
Prevention and Combating of Corruption Bureau
P.O Box 4865
Dar Es Salaam
Website www.pccb.go.tz





NGO Work in Tanzania

Highlights of relevant facts, policies and laws

The work of NGOs in Tanzania is guided by a number of policies and laws. For any Finnish, or other foreign NGO having partners in Tanzania, the knowledge about the relevant regulations is essential. Information about the registration of NGOs and the governance system within organisations enables the partnership building between Northern and Southern organisations. The practice of project work often requires knowledge about banking system, employment procedures and land ownership.

This working paper puts together some relevant facts considering NGO work in Tanzania. It aims to be a handbook that facilitates obtaining further knowledge and provides contact information. The policy and legal environment is continuously changing. This working paper describes the situation in 2008. The electronic version will be updated annually.

KEPA's Working Papers

KEPA's Working Papers series offers information on development issues. Studies, seminar memos, and articles produced or commissioned by KEPA will be published in the series. The papers will cover e.g. topics of Southern civil societies, development work and political advocacy work of civil society organisations, development cooperation, impact assessment and international trade issues. The papers will be published in several languages.

The papers are available at KEPA's web site:
<http://www.kepa.fi/taustaselvitykset>