



Know your Rights and Duties as a  
**Civil Society Organisation**  
**HANDBOOK**

**ISBN:9966-941-99-1**

Published by:

KENYA HUMAN RIGHTS COMMISSION

Opposite Valley Arcade, Gitanga Road,  
P.O Box 41079, 00100 GPO, Nairobi Kenya.

Tel: 020-2044545/2106763

Office Cell: 0733 629034, 0722 264497

Email: [admin@khrc.or.ke](mailto:admin@khrc.or.ke)

Website: [www.khrc.or.ke](http://www.khrc.or.ke)

# Table of Contents

## FOREWARD

What is a Civil Society Organisation?	4
What are the different types of CSOs?	5
Do all CSOs have to be formally registered?	5
What are the benefits in choosing a legal structure for a CSO?	5
If I choose to register, what do I need to know?	6
What are the legal structures that civil society organisations can choose from?	6
What Rights do CSOs have?	7

## 1) THE RIGHT TO FREEDOM OF ASSOCIATION

What are the Key Elements of the Right to Freedom of Association?	7
Does it make a difference if the resources are from foreign or international sources?	8
Why is the Right to Freedom of Association so important?	8
Do I have to register to enjoy the right to freedom of association?	8
Can registration be required if I wish to form a legal entity?	8
Can authorities delay my application indefinitely or reject it without telling me?	8
Does the right of Freedom of association apply to CSOs?	8
What can the government reasonably require a CSO to do in order to ensure accountability?	10
What actions by state authorities would amount to an abuse of their role in facilitating accountability of CSOs?	10
Can a CSO be suspended or closed down for failure to comply with its reporting obligations or for a minor violation of the law?	10
If my organisation fails to comply with its reporting obligations, can I be arrested?	10
Is combating crime, in and of itself, a legitimate reason to limit association rights?	11

## 2) THE RIGHT TO FREE EXPRESSION

Why is the Freedom of Expression important for CSOs?	11
What limits can the State place on the Freedom of Expression?	11

## 3) FREEDOM OF PEACEFUL ASSEMBLY

Can authorities place special limits on association rights during election periods?	11
Do I need permission from State authorities to hold a peaceful assembly?	12
Can I be arrested or charged for holding a peaceful assembly and failing to notify the State?	12
Can the State place limits on the Right of Freedom to Peaceful Assembly?	12

<b>4) RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS.</b>	<b>12</b>
What Type of Assemblies are protected under the Freedom of Peaceful Assembly?	12
<b>5) THE RIGHT TO NON-DISCRIMINATION.</b>	<b>13</b>
<b>6) RIGHT TO PRIVACY</b>	<b>13</b>
Am I entitled to the right of privacy and what is the extent of this right?	13
<b>7) REASONS FOR LIMITING THE FREEDOMS OF CSOS</b>	<b>13</b>
What types of actions fall outside the limits allowed by the law for restricting the Freedoms of CSOs?	13
Does the Right to Privacy mean that CSOs have no obligations to be transparent and accountable?	13
Does the State have any obligation to promote these rights?	14
Do I have any obligations as a Civil Society Organisation?	15
Am I entitled to an effective remedy if my rights are violated?	15
What Should I Do if a State Authority Requests Me to Produce an NGO Certificate of Registration?	16
<b>THE RIGHTS OF AN ACCUSED PERSON</b>	<b>17</b>
<b>REFERENCES</b>	<b>18</b>

Compiled by Faith Kisinga Gitonga

# FOREWORD

Across the globe, societies are embracing new development and governance paradigms that recognize the inevitable reality that unless the people are at the center of the management of public affairs, there can be no meaningful development and respect for human rights.

Experience confirms that participatory and democratic governance processes deliver more empowering, impactful and lasting change in the lives of communities that engage effectively in the formulation and implementation of policy decision that affect their lives. Yet for the better part of more than fifty years of the post-colonial period, successive governments in Kenya have perpetuated lopsided approaches most of which invariably viewed the people as mere consumers rather than as partners in governance and development processes, trampling on the rights and freedoms of citizens at every stage of the way.

It is this contradiction that has seen the Kenyan people successfully wage and irreversibly win the war with respect to the locus of the sovereign power of the Republic, reasserting as they have done in Article 3 of the Constitution that it is they, and not the elected and appointed leaders to whom they periodically delegate their power, that are the holders of the sovereign power of the Republic.

The role and leadership of civil society organisations as the interlocutor between the state and people is critical in their process. It is against this context that the Civil Society Reference Group (CSRG) in partnership with the Kenya Human Rights Commission (KHRC), the National Coalition of Human Rights Defenders, Kenya (NCHRD-K) and the International Center for Non-Profit Law (ICNL) have developed “*Know Your Rights and Duties as a Civil Society Organisation handbook*.” The handbook is both a capacity building and an advocacy tool for CSOs in respect of their rights, registration options, statuses and freedom entitled to them in their interventions.

As the premier organization championing for the establishment and realization of an enabling legal, regulatory and institutional framework for Public Benefit Organizations (PBOs) and other CSOs in Kenya and the region, it is the desire and hope of the CSRG and its collaborating partners that actors in non-governmental and civil society organizations of all formations will find this handbook useful and handy in the protection of civic space as they go about discharging their indispensable roles of protecting, promoting and enabling vulnerable segments of the population to fulfil their rights, with particular focus on the right to freedoms of association, peaceful assembly, and expression without unnecessary and arbitrary State interference.

**Suba Churchill**

**Presiding Convener; Civil Society Reference Group (CSRG)**

# Know Your Rights

## AND DUTIES AS A CIVIL SOCIETY ORGANISATION

### What is a Civil Society Organisation?

A Civil Society Organisation (CSO) is an organised, independent group of individuals and, or institutions that controls its own activities and procedures. It serves as a vehicle that brings together persons with a common interest, activity or purpose, on a voluntary basis. Civil society organisations are separate from the government i.e. they are private.

#### **What are the different types of CSOs?**

There are many different types of CSOs: Some are set up to advance the common interests of their members. They include self-help groups, youth and women's

groups, community based organizations, professional associations, faith-based organisations, private sector associations, trade unions, clubs, cooperatives, foundations or on-line associations. Others are set up to provide some form of service or benefit to sections of the public or the public generally. These are called Public Benefit Organisations (PBOs) (also known as Non-Governmental Organisations (NGOs)) and include human rights, advocacy and governance organisations, peace-building, minority empowerment, think-tanks, development and service delivery organisations amongst others.

### **Do all CSOs have to be formally registered?**

**NO.** CSOs can exist without formally registering with a government agency. However, they need to be organised to some extent (hence the title civil society organisation). Depending on what activities they carry out, some CSOs may choose to be registered. When a CSO chooses to be registered, it attains a legal structure or legal personality (i.e. a legal identity that is separate from the founders or members).

### **What are the benefits in choosing a legal structure for a CSO?**

1. When a CSO is registered and working within a legal framework, its officials and stakeholders are clear about how it is expected to operate.
2. Stakeholders may trust the organisation more and be more willing to work with and support it, since information regarding the organisation is publicly available.
3. The organisation acquires an independent legal identity which is separate from the identity of its members' or founders'. This usually means that:
  - a. The organisation, as a legal person (not its members or office-bearers as individuals), is responsible for debts, contracts and obligations. However, in certain circumstances such as when there is fraud or gross negligence, the individual is personally held responsible.
  - b. The assets of the organisation belong to and are registered in the name of the organisation, not its members and office-bearers.
  - c. The legal identity makes it possible to open bank accounts in the name of the organization, for purposes of receiving and disbursing funds.
  - d. The organisation continues to exist even if its members and office-bearers change.
  - e. The organisation can sue, be sued and enter into contracts in its own name.

### **If I choose to register, what do I need to know?**

You will need to follow the requirements for registration and then register your founding documents with a government agency. The registering agency will make information regarding your organisation available to the public, in a public registry. You will need to fulfill the legal requirements concerning your registered entity, such as filing annual reports. It is important to familiarise yourself with these requirements.

## What are the legal structures that civil society organisations can choose from?

The most common legal structures that CSOs can choose from are:

- Non-Governmental Organisations (NGOs),
- Trusts,
- Companies limited by Guarantee, and
- Societies.

	<b>NGOs</b>	<b>PBOs</b>	<b>Trusts</b>	<b>Co. Ltd. by Guarantee</b>	<b>Societies</b>
Governing Laws	Non Governmental Organizations Coordination Act (no. 19 of 1990, Laws of Kenya) and its Regulations of 1992.	The Public Benefit Organisations Act, of 2013. Once it becomes operational, this Act will abolish the NGOs Coordination Act.	1. Registration of Documents Act (CAP 285).  2.Trustees (Perpetual Succession) Act, CAP 164);	Companies Act, (CAP486, Laws of Kenya)	Societies Act, (CAP 108, Laws of Kenya)
Objectives	NGOs exist for the benefit of the public at large and for the promotion of social welfare, development, charity or research.	PBOs can engage in economic, environmental, social or cultural development, lobbying or advocacy.	Exist to promote religious, educational, literary, scientific, social, athletic or charitable purposes.	Can exist to promote any legal purpose, including public benefit.	Mainly established to advance their members' interests. Can also advance public benefit.





## What are the Key Elements of the Right to Freedom of Association?

### The Freedom of Association includes the right to:

- a. **Form, join, take part in** - or choose not to take part in, depart from, and voluntarily bring to a close civil society organizations such as clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations or on-line associations.
- b. **Operate free from unnecessary State interference:** Once established, CSOs have the right to agree on and manage their internal affairs freely and to operate free from unnecessary state interference in their affairs.<sup>3</sup> The right to manage their internal affairs includes the right to develop their bylaws and decide on diverse issues including their governance and management structures, decision-making process, membership requirements, frequency of meetings, fundraising and other activities without State interference.
- c. **Seek, receive and use resources (human, material and financial) from domestic, foreign, and international sources<sup>4</sup>.**

Registered and unregistered CSOs have the right to seek, secure and use funding and resources (whether financial, material, human etc.) from a varied range of legal sources, including individuals, businesses, civil society, international organizations, and inter-governmental organizations, as well as local, national, and foreign governments<sup>5</sup>.

### Does it make a difference if the resources are from domestic or foreign sources?

**NO.** International law does not differentiate between the sources of funding for CSOs, whether domestic, foreign or international.<sup>6</sup> CSOs have a right to seek domestic and foreign funding and resources. They do not require prior permission from the State to access funding and resources. The only valid requirements that the State can reasonably

impose on CSOs regarding resources are in the interest of ensuring transparency and accountability.<sup>7</sup> It is reasonable for state authorities to ask CSOs to declare their foreign funding but they should not forbid them from receiving foreign funding.

### **Why is the Right to Freedom of Association so important?**

The right to freedom of association is designed to protect peoples' ability to come together and work for the common good. It is a vehicle for the exercise of many other civil, cultural, economic, political and social rights.<sup>8</sup>



#### **Does the right of Freedom of association apply to CSOs?**

**YES.** Article 22 of the International Covenant on Civil and Political Rights (ICCPR) recognizes that the right to freedom of association should be enjoyed by everyone. The right can be enjoyed individually or by legal entities in the performance of activities and in the pursuit of the common interests of their founder members.

### **Do I have to register to enjoy the right to freedom of association?**

**NO.** The right to freedom of association equally protects CSOs that are registered (formal) and unregistered (informal).<sup>9</sup> Individuals involved in unregistered CSOs should be free to carry out any lawful activities, including the right to hold and participate in peaceful assemblies, and should not be<sup>10</sup> punished for doing so. Informal or unregistered organizations are lawful means of pursuing common interests.

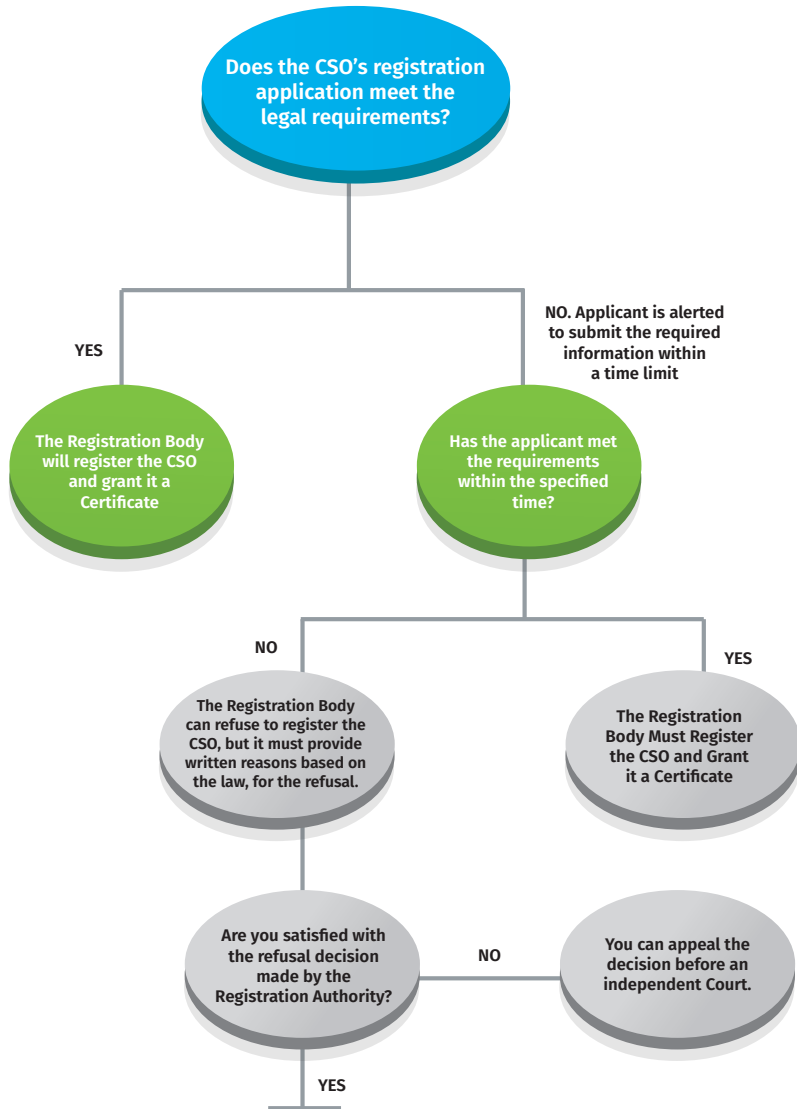
### **Can registration be required if I wish to form a legal entity?**

**YES.** It is acceptable for some sort of registration to be required in order to create a CSO that has its own legal identity. However, it is vital that Government officials act in good faith and in a prompt and fair manner when handling applications for registration.

### **Can authorities delay my application indefinitely or reject it without telling me?**

**NO.** Registration authorities are bound to consider an application and register the CSO, if the application meets the legal requirements<sup>11</sup> within clearly provided time limits.

# THE REGISTRATION PROCESS UNDER THE PBO ACT, SECTION 9



# What can the government reasonably require a CSO to do in order to ensure accountability?

The government has a duty to encourage and facilitate CSOs to be accountable and transparent. Independent regulatory bodies that are set up to oversee CSOs have a right to examine the CSOs records as a means to ensure transparency and accountability. However, such a procedure should follow the law. It should not be haphazard or interfere unnecessarily with the affairs of the CSO.

## What actions by state authorities would amount to an abuse of their role in facilitating accountability of CSOs?

CSOs should not be put under pressure to co-ordinate their objectives and activities with government policies and programs, or forced to make certain decisions or undertake certain activities. State authorities should not request CSOs to submit reports in advance of the legally stipulated time or to submit their work plans for approval.

Investigations by the Regulator<sup>12</sup> should not take place unless there is suspicion of a serious infringement of the law, and should only serve the purpose of confirming or discarding the suspicion. Such investigations must ensure respect for the right to privacy of the CSO. Where the CSO is required to provide documents prior to or during an investigation, it should be given sufficient time to prepare and submit them.

## Can a CSO be suspended or closed down for failure to comply with its reporting obligations or for a minor violation of the law?

**NO.** Sanctions amounting to effectively delaying or stopping a CSO from operating are of an extreme nature and should only be employed as measures of last resort where:

- The CSO has committed serious violations of the law or;
- The violation of the law gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles.

When deciding whether to apply penalties, authorities must take care to apply the measure that:

- Is the least disruptive to the right to freedom of association and,
- Will enable them to achieve their lawful objective, such as promoting accountability.

These penalties should never be used as a tool to warn CSOs or suppress their ability to set up or carry on their activities. It is essential that any decision leading to the suspension, prohibition or closure of a CSO, should be communicated as soon as possible and be open to review by an independent and impartial tribunal.<sup>13</sup>

## If my organisation fails to comply with its reporting obligations, can I be arrested?

**No.** Where you have failed to put in your Annual Returns, the Regulator should request you to promptly rectify the situation and give you ample time to do so. If you fail to correct the situation, the Regulator may choose a softer measure, available under the law, to enforce compliance, such as, imposing a fine.

## Is combating crime, in and of itself, a legitimate reason to limit association rights?

**NO.** Combating fraud, embezzlement, money-laundering and other crime is a genuine State interest. However, any limitations to the freedom of association should be EXPRESSLY provided for by law AND should be necessary in a democratic society.<sup>14</sup> Further, the limitations must be the least disruptive way to achieve the desired objective. As such, law enforcement authorities should not apply blanket penalties on the CSO sector in a bid to deal with alleged crimes.

## 2) THE RIGHT TO FREE EXPRESSION



Civil society representatives, individually and through their organizations, enjoy the right to freedom of expression. The right to freedom of expression includes the right:

- To seek, receive and pass on information and ideas of all kinds through any media and regardless of borders.<sup>15</sup>
- To hold opinions without interference.

### Why is the Freedom of Expression important for CSOs?

CSOs have a key role to play in actively informing public opinion and speaking out on issues of public interest.<sup>16</sup> They should be free to express opinion, disseminate information, engage with the public and advocate before governments and international bodies.<sup>17</sup>

Freedom of expression protects not only ideas regarded as inoffensive but also those that offend, shock or disturb. CSOs are therefore protected in their ability to speak critically about government law or policy, and to speak favourably about human rights and fundamental freedoms.<sup>18</sup>

### What limits can the State place on the Freedom of Expression?

The State has the duty to ensure that CSOs can peacefully express their views without any fear. Interference with freedom of expression can only be justified where it is provided by law and necessary for respect of the rights or reputations of others; or for the protection of national security or of public order, or of public health or morals.

### Can authorities place special limits on association rights during election periods?

**NO.** CSOs should have the freedom to engage in activities related to the electoral process, whether they are supportive of the sitting Government or not. (UN Doc A/68/299, p 17, Para 46 Genuine elections cannot be achieved if the right to freedom of association is curtailed. (UN Doc A/68/299, p 17, para 46)



### 3) FREEDOM OF PEACEFUL ASSEMBLY <sup>19</sup>

Civil society representatives, individually and through their organizations, enjoy the right to freedom of peaceful assembly.<sup>20</sup> The word assembly here will be used to refer to the temporary presence of a number of individuals in a public place to collectively express opinions held in common.<sup>21</sup> The right to freedom of peaceful assembly includes the right to plan, organise, promote and advertise an assembly in any lawful manner.

#### **Do I need permission from State authorities to hold a peaceful assembly?**

Organizers of demonstrations, processions and rallies do not need to obtain prior permission from the law enforcement authorities to hold an assembly. All they need to do is to notify<sup>22</sup> the relevant authorities by providing sufficient information on the date, time and location of the assembly and, when relevant, contact details of the organiser.

The notice allows State authorities an opportunity to assist the exercise of the right of freedom of peaceful assembly,<sup>23</sup> by protecting those exercising their rights from

violence or interference, protecting public safety and/or public order, and protecting the rights and freedoms of others.

In case an assembly is not allowed or restricted, a written explanation should be provided by the authorities in good time. The refusal can be appealed before an impartial and independent court.

#### **What Type of Assemblies are protected under the Freedom of Peaceful Assembly?**

A protest or assembly should be peaceful. The Constitution does not grant people the right to riot, destroy property, harm others, or use violence while protesting.

#### **Can I be arrested or charged for holding a peaceful assembly and failing to notify the State?**

Failure to notify law enforcement authorities of an assembly does not render an assembly unlawful, and thus should not be used as a basis for dispersing the assembly. Organisers, community or political leaders should not be subjected to criminal or administrative sanctions resulting in fines or imprisonment,<sup>24</sup> merely for organising or participating in a peaceful protest and failing to properly notify authorities.

### **Can the State place limits on the Right of Freedom to Peaceful Assembly?**

**YES.** The right to freedom of assembly can only be limited where the state authority can show that its restrictions are lawful, proportionate (i.e. the action they take is suitable and no more than what is necessary to tackle the issue) and necessary, in order to:

- protect national security or public safety,
- prevent disorder or crime,
- protect health or morals, or
- protect the rights and freedoms of other people.

## **4) RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS.**

CSOs have a right to take part in making and implementing policy at local, regional, national and international levels. Participation may be through direct actions aimed at developing, approving or changing laws, deciding public issues through a referendum, or taking part in forums with decision-making powers on local issues.

The State has a duty to actively encourage the participation of CSOs in decision-making processes through a variety of means including cooperative programs and action plans, roundtables, joint committees, and provision of resources.<sup>25</sup>

## **5) THE RIGHT TO NON-DISCRIMINATION.**


All of the above rights are guaranteed to all individuals, as well as CSOs, including unregistered groups.

## **6) RIGHT TO PRIVACY**

### **Am I entitled to the right of privacy and what is the extent of this right?**

**YES.** CSO representatives, individually and through their organisations have the right to privacy.<sup>26</sup> They should not be subjected to random or unlawful interference with their privacy, family, home or correspondence, or to unlawful attacks on their honour and reputation.

This means that the law enforcement authorities should not conduct any form of surveillance, recording, search and seizure in association with your legitimate activity or work as a civil society actor. Similarly, the authorities are not entitled to seize your possessions, force you to produce private documents, access your records, grounds, or property without following valid legal processes.



**Does the Right to Privacy mean that CSOs have no obligations to be transparent and accountable?**

**NO.** CSOs have the right to keep their activities private while adhering to the principles and requirements of accountability and transparency under the law.



# 7) REASONS FOR LIMITING THE FREEDOMS OF CSOS

## **Interference with the rights and freedoms of CSOs can only be justified where it is:**

- I. Provided by law AND;
- II. Strictly necessary in a democratic society in the interests of: a) national security or public safety, b) public order, c) protection of public health or morals, or, d) protection of the rights and freedoms of others.

However, these grounds should never be used as an excuse for clamping down on civic actors.<sup>27</sup>

## **What types of actions fall outside the limits allowed by the law for restricting the Freedoms of CSOs?**

- Harassment, intimidation, punishment or retaliation for taking a position that is contrary to or critical of or opposed to government positions, policies or actions,
- Biased inspection or other interference of an organisation's management and internal governance,
- Threats of de-registration,
- Forced office closures,
- Search and seizures of property, in a manner that is not legally approved,
- Arbitrary arrests and detentions,
- Unreasonable denial of work permits,
- Arbitrary limitations, cancellations or dispersal of protests or gatherings,
- Threatening phone messages,
- Surveillance,
- Physical or sexual assaults,
- Deprivation of employment or loss of income,
- Smear campaigns labeling the actor as 'an enemy of the state', 'traitors', or as working for 'foreign interests',
- Enforced disappearances,
- Torture, and
- Killings.<sup>28</sup>

## **Does the State have any obligation to promote these rights?**

**YES.** The State has a duty to establish and maintain a safe and enabling environment for the operation of CSOs. The State therefore has a duty to:

1. Avoid interfering with or hindering CSOs from:
  - Expressing themselves freely through advocacy, education and publication.<sup>29</sup>
  - Forming, joining and participating in CSOs and CSO forums.<sup>30</sup>
  - Peacefully assembling, demonstrating, picketing and presenting petitions to public authorities.<sup>31</sup>
2. Prevent and ensure the prevention of, and protection of CSOs against threats, violence or revenge by any public or private actor.<sup>32</sup>
3. Ensure that law enforcement authorities which violate the rights are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law.<sup>33</sup>

4. Ensure that victims of violations of the fundamental rights and freedoms have the right to an effective remedy and obtain redress;<sup>34</sup>
5. Ensure that the legal framework relating to fundamental freedoms and civil society is suitably favourable, and that the necessary institutional mechanisms are in place to ensure the recognized rights of all individuals.
6. Come up with laws, administrative rules and practice that are in line with international standards and safeguard civil society activities.

**Am I entitled to an effective remedy if my rights are violated?**

**YES.** Where the rights and freedoms are restricted unjustly, the victim(s) has the right, under the Constitution, to obtain redress from the courts and fair and adequate compensation. State officials should be held accountable for not protecting, or for violating the fundamental rights and freedoms enjoyed by CSOs.

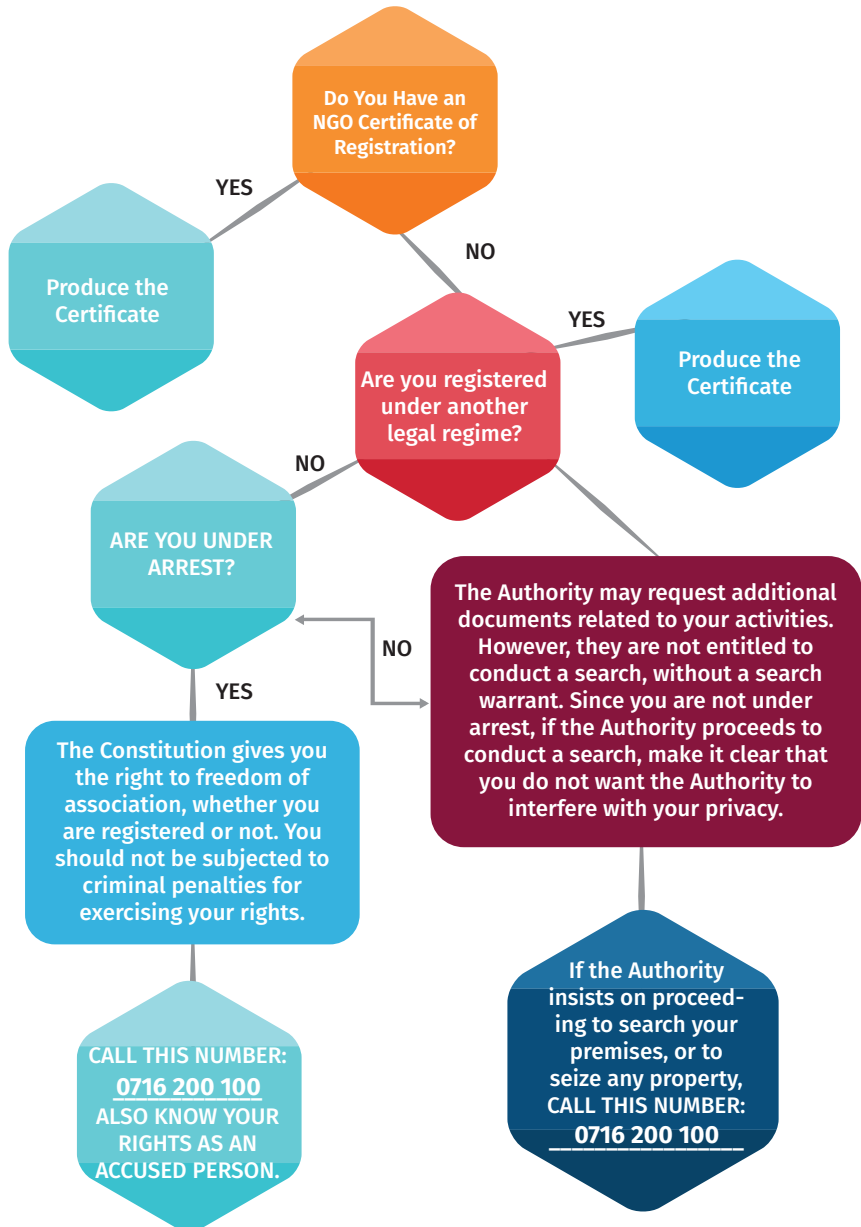
**Do I have any obligations as a Civil Society Organisation?**

**YES.** CSOs must abide by the requirements generally placed on them by the laws of Kenya. The Constitution and the PBO Act, 2013 demand good leadership from CSOs. The PBO Act specifically outlines a list of principles that PBOs must observe. For example, PBOs must practice transparency and accountability, follow conflict of interest principles and keep high standards of professionalism. They should also promote democracy, human rights, and the rule of law, good governance and justice for Kenyans and be committed to peaceful and non-violent ways in all their activities.<sup>35</sup>

CSOs also have a duty to obey the regulations governing their registered entities. For example, they should:<sup>36</sup>

- a. Ensure that they use financial and other resources for the purposes which they were requested;
- b. Keep proper accounting records and other reports and records relating to their activities and operations;
- c. Prepare and submit reports to their respective regulatory authorities as required under the registration laws; and
- d. Ensure that their activities support the purposes that are stated in their founding documents.

# What Should I do if a State Authority requests me to produce an NGO Certificate of Registration?



# THE RIGHTS OF AN ACCUSED PERSON

## ARTICLE 49, CONSTITUTION OF KENYA

### (1) An arrested person has the right-

- (a) to be informed promptly, in language that the person understands, of-
  - (i) the reason for the arrest;
  - (ii) the right to remain silent; and
  - (iii) the consequences of not remaining silent;
- (b) to remain silent;
- (c) to communicate with an advocate, and other persons whose assistance is necessary;
- (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
- (e) to be held separately from persons who are serving a sentence;
- (f) to be brought before a court as soon as reasonably possible, but not later than
  - (i) twenty-four hours after being arrested; or
  - (ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
- (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

### (2) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

# REFERENCES

**Constitution of Kenya, 2010** <http://kenyalaw.org/lex//actview.xql?actid=Const2010>

**Public Benefit Organisations Act, 2013** <http://kenyalaw.org/lex//actview.xql?actid=No.%2018%20of%202013>

**International Covenant on Civil and Political Rights (ICCPR)** <https://treaties.un.org/doc/publication/unts/.../volume-999-i-14668-english.pdf>

**Freedom of Association Fact Sheet**, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (published Nov. 2014) <http://freemassembly.net/factsheets/association/>

**Factsheet:** Civil society's ability to access resources, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (published May 2015) <http://freemassembly.net/factsheets/funding-report/>

Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. UN Doc A/HRC/31/66 (4 Feb 2016) [http://freemassembly.net/wp-content/uploads/2016/02/A.HRC...31.66\\_E\\_with\\_addendum.pdf](http://freemassembly.net/wp-content/uploads/2016/02/A.HRC...31.66_E_with_addendum.pdf)

Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc A/HRC/20/27 (21 May 2012) <http://freemassembly.net/factsheets/association/>

**Human Rights Committee, General Comment No. 34, article 19:** Freedoms of opinion and expression, CCPR/C/GC/34; and General Comment No. 25, article 25: The right to participate in public affairs, CCPR/C/21/Rev1/Add.7. <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev1%2FAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev1%2FAdd.7&Lang=en)

**Reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/23/39.** [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKFwjPvPmqzPbSAhXEDsAKHaz6D6EQFggMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FHRBodies%2FHRCouncil%2FRegularSession%2FSession23%2FA.HRC.23.39\\_EN.pdf&usq=AFOjCNGjBWqaanRlW0YH2avfirFyqPM7gg&sig=ht0WS8cEOjusIYY9H-IN8w](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKFwjPvPmqzPbSAhXEDsAKHaz6D6EQFggMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FHRBodies%2FHRCouncil%2FRegularSession%2FSession23%2FA.HRC.23.39_EN.pdf&usq=AFOjCNGjBWqaanRlW0YH2avfirFyqPM7gg&sig=ht0WS8cEOjusIYY9H-IN8w)

**Report of UN Special Rapporteur on rights to freedom of peaceful assembly and of association on exercise of peaceful assembly and association in the context multilateral institutions, A/69/365.** <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/523/22/PDF/N1452322.pdf?OpenElement>

Guidelines on freedom of association published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), (Warsaw: ODIHR, 2010)

Guidelines on freedom of assembly published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), (Warsaw: ODIHR, 2015)

# END NOTES

<sup>1</sup> The ICCPR Human Rights Committee has recognized that certain rights “may be enjoyed in community with others.” ICCPR Human Rights Committee, General Comment No. 31(9), Nature of the General Legal Obligation Imposed on State Parties to the Covenant, 26 May 2004.

<sup>2</sup> See Section 20 PBO Act, Constitution of Kenya, Article 36

<sup>3</sup> UN Doc A/HRC/20/27, p 16, par. 65

<sup>4</sup> UN Doc A/HRC/23/39, par. 8

<sup>5</sup> UN Doc, A/ HRC/20/27, p 17, par. 68

<sup>6</sup> UN Doc A/HRC/23/39, par. 17

<sup>7</sup> United Nations General Assembly, Human Rights Defenders, Note by the Secretary General, October 1, 2004 (A/59/401) at 82 (l) and (t)

<sup>8</sup> UN Doc A/HRC/20/27, p 5, par. 12

<sup>9</sup> UN Doc A/HRC/20/27 p 14, par. 56

<sup>10</sup> United Nations General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, May 21, 2012 (A/HRC/20/27) p 14, par 56

<sup>11</sup> See for example, Section 9(1), PBO Act

<sup>12</sup> See for example, inquiries under the PBO Act, 2013 (sec. 63 (1)

<sup>13</sup> See procedure for review PBO Act, Section 18 (4), (5)

<sup>14</sup> UN Doc A/HRC/23/39, p 8, par. 23; ICCPR, Art. 12

<sup>15</sup> Article 19, ICCPR and Article 19, UDHR

<sup>16</sup> Art 33(1), Constitution of Kenya, Section 66 and 67, PBO Act

<sup>17</sup> UN Doc A/HRC/20/27, p 16, par. 64

<sup>18</sup> Defending Civil Society: Report of the World Movement for Democracy, p.5 (WMD/ICNL, Washington, DC: 2008) See also International Principles Protecting Civil Society at <http://www.defendingcivilsociety.org/en/index.php/principles>

<sup>19</sup> A peaceful assembly is a temporary, non-violent gathering in a private or public space for a specific purpose. This includes demonstrations, strikes, processions, rallies or sit-ins.

<sup>20</sup> Constitution of Kenya, Article 37.

<sup>21</sup> Nonetheless all types of peaceful assembly – both stationary and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection.

<sup>22</sup> Sections 5(1),(2) of the Public Order Act, Chapter 56, Laws of Kenya.

<sup>23</sup> Guidelines on Freedom of Peaceful Assembly, p. 15 (Warsaw: ODIHR, 2010)

<sup>24</sup> See UN Doc A/HRC/20/27, para. 29

<sup>25</sup> Section 67 and Section 66(4) and Section 3 (a) (v) PBO Act; See also Functions and powers of the county: Constitution of Kenya, Fourth Schedule, Clause 14. “Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.”

<sup>26</sup> Constitution Art 31, Article 17 ICCPR

<sup>27</sup> Article 22 (2) ICCPR

<sup>28</sup> UN Doc. (A/69/365) par 16.

<sup>29</sup> See for example, section 66(1) (2), PBO Act and Article 33, Constitution of Kenya

<sup>30</sup> See Section 20, PBO Act and Article 36, Constitution of Kenya

<sup>31</sup> Article 37, Constitution of Kenya and Section 66, PBO Act

<sup>32</sup> Article 12(2) of the UN Declaration on Human Rights Defenders, A/RES/53/144, 8 March 1999

<sup>33</sup> UN Doc A/HRC/20/27

<sup>34</sup> PBO Act, 2013, section 3(a)(i), (ii); UN Doc A/HRC/20/27

<sup>35</sup> Section 25(2),(3), 27(1)(a)(b)(j) PBO Act, 2013)

<sup>36</sup> See for example, sections 8(7), 27, 30(1), 30(2), 31(a)(b)(c), PBO Act, 2013.



