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**NGO CORPORATE GOVERNANCE CHARTER**

**JANUARY 2016**

## THE NGO CORPORATE GOVERNANCE CHARTER

### PREAMBLE

We, bona fide members of the Council for Non-Governmental Organisations of Malawi-

**Realising** the importance of good corporate governance in the management of our organisations for the full attainment of our objectives;

**Desirous** of utmost transparency, accountability and unquestionable probity in the discharge and execution of our social and economic development activities for which we exist; and

**Accepting** in the fullest the principles of organisational subsidiarity and fiduciarity;

Now unreservedly adopt this NGO Governance Charter as a guiding tool in the management of the affairs of our organisations thenceforth.

### PART I PRELIMINARY

#### PROVISIONS

1. (1) In this Charter, the following expressions shall, where the context so admits, be deemed to have the meanings and interpretation attached thereto hereunder. **Interpretation**

**“Board”** shall be read to mean the Board of Trustees or Board of Directors whichever shall be applicable to a particular organisation in question.

**“Executive Organ”** refers to the corporate organ of an organisation vested with the executive power and responsible for the day-to-day management of the organisation.

**“General Assembly”** refers to the corporate organ of an organisation responsible for the exercising of the overall control and ownership powers of the organisation.

**“Incorporative Instrument”** refers to a prescribed document by which an organisation is legally incorporated into a body corporate under the requisite incorporation law.

**“Stakeholder”** refers to any person, organisation, firm, corporation, donor and development partners who or which has an enforceable direct or indirect interest

in the organisation.

(2) The parts and article headings in this Governance Charter are for ease of reference only and shall not be taken into account in the construction or interpretation of any article or paragraph to which they refer.

(3) Words importing the singular meaning where the context so admits include the plural meaning and vice versa and words of the masculine gender include the feminine and neuter genders; and words denoting natural persons include corporations and firms and all such words shall be used interchangeably in that manner.

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| <p>2. (1) Members of the Council of Non-Governmental Organisations of Malawi (hereinafter called “CONGOMA members”) shall be legally incorporated organisations bearing distinctive names from any other organisation incorporated in Malawi and shall have traceable physical and postal addresses in accordance with the Laws of Malawi.</p> <p>(2) Any changes to the name and the addresses, whether physical or postal shall be notified to CONGOMA as well as any registration authority within 30 days from the date of any such change.</p>  | <p><b>Legal personality, name and address</b></p>   |
| <p>3. (1) All CONGOMA members shall ensure that their organisations are established for the attainment or promotion of some charitable philanthropic cause which may include but not limited to the promotion of human rights, good governance and rule of law, education, health, art, religion, science, sports, social cause or such other purpose as may be within the ambit of section 3 of the Trustees Incorporation Act or section 6(2) of the Companies Act if incorporated in Malawi or such laws as govern charitable associations in the country of incorporation, in the case of organisations incorporated in a foreign country.</p> <p>(2) Each CONGOMA member shall ensure that its incorporative instrument expressly sets out the objectives for which the organisation has been established and incorporated.</p> | <p><b>Objectives and goals</b></p>                  |
| <p>4. (1) Except where the law may otherwise permit, all CONGOMA members shall be managed or controlled by traceable committee members, board members or trustees who may either be natural persons or legal persons or a combination of natural and legal persons whose names shall be entered into a register kept by the organisation.</p> <p>(2) The incorporative instruments of CONGOMA members whose incorporative instruments allow for membership by natural or legal persons shall contain at the minimum the following provisions with respect to membership:</p> <p>(a) Criteria for eligibility to membership;</p> <p>(b) Method by which a person may become a member or may cease to be a member;</p>   | <p><b>Membership and qualification criteria</b></p> |

- (c) Category or classes of membership, where applicable;
- (d) Rights and obligations of members;
- (e) List of acts of misconduct and penalties thereof; and
- (f) Procedures for dealing with grievances and disciplinary proceedings.

5. (1) The incorporative instruments of CONGOMA members shall adopt current corporate governance practices by creating internal governance structures which expressly promote principles of separation of powers and rule of law. **Designation of Corporate Organs**

(2) Notwithstanding the generality of sub-article (1) herein above, CONGOMA members shall ensure that their organisations have such multi-tier corporate organs as would promote internal check-and-balance mechanisms, transparency and accountability.

(3) Except where the law otherwise provides, such internal governance structures may include the creation of a General Assembly, comprising of all members of the organisation; a Board of Trustees or Directors, comprising of such elected or appointed members; and a Secretariat or Executive Committee (as the case may be) comprising of all employed personnel.

6. (1) Where a CONGOMA member opts to create a multi-tier governance structure, the incorporative instrument shall allocate specific powers, functions and duties to each organ exercisable only by that organ in the discharge of the mandate of the organisation. **Separation of Powers**

(2) Notwithstanding the clear separation of powers aforesaid, each organ of the organisation shall execute its mandate as stipulated in incorporative instrument in a relay and complimentary manner in order to ensure the flawless and seamless operations of the organisation.

## PART II

### GENERAL ASSEMBLY

7. (1) Where an incorporative instrument of a CONGOMA member provides for the General Assembly, it shall ensure that among other things, the following powers, functions and duties shall be exercised and performed by the General Assembly, namely:
- Powers, functions and duties of General Assemblies**
- (a) To elect, appoint or approve the appointment or nomination of and removal of Board members;
  - (b) To receive deliberate upon and approve annual financial estimates or expenditures including external auditors' reports;
  - (c) To receive, deliberate upon and approve any proposed amendments to the organisation's incorporative instruments or other rules, regulations, code of conduct or by-laws made thereunder;
  - (d) To receive and deliberate upon all policy issues proposed by the Board affecting the general running and management of the organisation;
  - (e) To approve the dissolution of the organisation in accordance with the applicable laws;
  - (f) To ratify the appointment of the Auditor appointed by the Board of Trustees; and
  - (g) To monitor and appraise the performance of the Board and all other organs and make necessary recommendations.
8. (1) CONGOMA members whose incorporative instruments comply with article 7 above shall ensure that the General Assembly meets at least once every calendar year at an Annual General Meeting (hereinafter called "the **AGM**") whereat all ordinary business of the organisation shall be transacted.
- Annual General Meetings**
- (2) The incorporative instrument shall expressly provide that an Annual General Meeting shall be held within **Sixty** (60) days from the end of the organisation's financial year.
- (3) Where the organisation for good cause is unable to comply with sub-article (2) above, it shall ensure that any such AGM is held within a period of not more than **Fifteen** (15) months from the date of the last AGM.
9. Except where the incorporative instrument of a CONGOMA member otherwise provides, the business to be transacted at an Annual General Meeting shall include but not limited to:
- Business of the Annual General Meeting**
- (a) Receiving and approving Annual Expenditure estimates of the organisation;
  - (b) Receiving and approving Auditors Reports;
  - (c) Receiving Annual Performance Reports from the Board on the operations of the organisation for that year; and

- (d) Appointment or approval of new members of the Board or Auditors.
10. (1) For purposes of attending an AGM, the incorporative instrument of a CONGOMA member shall prescribe the requisite quorum before an AGM can be declared fully constituted and what would happen in the event that no such quorum has been achieved.
- (2) Notwithstanding the achievement of a quorum at the beginning of an AGM, an incorporative instrument may also prescribe the minimum number of members to be present at all material times for the AGM to retain its capacity to transact competent business.
11. (1) Prior to the AGM, CONGOMA members shall ensure that all people entitled to attend the AGM have been given adequate notice which unless the context otherwise requires, shall not be less than 21 days and any such notice shall state the agenda, the venue and time of the meeting.
- (2) An Annual General Meeting shall, notwithstanding that it is called by shorter notice than that specified in sub-article (1) above, be deemed to have been duly called if the same is expressly consented to by members of the General Assembly prior to the meeting.
- (3) Accidental omission to give notice of the meeting to or the non-receipt of a notice by any person entitled to receive such notice shall not invalidate the proceedings at the AGM except where there is proof that any such member[s] was deliberately not notified of the meeting.
12. (1) In order to ensure meaningful deliberations at the AGM, CONGOMA members shall ensure that all reports and written proposals due for deliberation at the AGM will be attached to the notice of the meeting, provided that where this is not possible, any such documents shall be made available to all members of the General Assembly entitled to attend the AGM at least **Twenty-Four (24)** hours prior to being tabled before the AGM.
- (2) An accidental omission to circulate any written proposal or document envisaged in sub-article (1) above or the non receipt of the same by any person entitled so to receive shall not invalidate the deliberations on that particular proposal or document by the AGM unless there proof that any such omission or non-receipt was deliberate.
13. (1) CONGOMA members shall take such measures to ensure that at any meeting of the General Assembly, a resolution put to the vote of the meeting shall be decided through such appropriate and democratic means including a secret ballot, roll call or such other acceptable means.
- (2) Incorporative instruments of all CONGOMA members shall ensure that
- Quorum at the AGM and capacity to transact**
- Notice of the AGM**
- Circulation of reports and other documents due for deliberation at the AGM**
- Voting procedures at all meetings**

every member of the General Assembly has one vote in accordance with democratic universal suffrage principles.

### **PART III**

#### **THE BOARD OF TRUSTEES**

- 14.** (1) All CONGOMA members shall ensure that they have an effective, competent and active Board in place at all material times comprising of such number of persons as their incorporative instruments may prescribe. **Appointment Boards**
- (2) Except where the law under which a CONGOMA member is incorporated otherwise provides, Board members shall be recruited in such a manner as is prescribed in the incorporative instrument of individual organisation.
- (3) Where the incorporative instrument is unclear or silent on the recruitment of members of the Board, the organisation shall take necessary steps to amend the incorporative instrument by providing therein the manner by which Board members shall be recruited.
- (4) In recruiting Board members, all CONGOMA members shall ensure that any such recruitment process:-
- (a) promotes and enhances democratic values;
  - (b) optimises talent, skill and experience in the Board;
  - (c) endows the Board with sufficient independence from any other organ of the organisation; and
  - (d) protects the organisation from cronyism and tokenism.
- 15.** (1) CONGOMA members expressly agree that Boards are critical to the effective and efficient governance of their organisations and as such there is need for the recruitment of qualified and proficient Boards to oversee the affairs of the organisations. **Qualifications for members of the Board**
- (2) Consequent upon the provisions of sub-article (1) above, CONGOMA members shall ensure that their organisations adopt measures and criteria for the recruitment of Board members which maximise integrity, knowledge, skills, technical competences, objectivity, experience and commitment as key qualifications for Board members.
- 16.** (1) In keeping with principles of leadership based on sustained trust, CONGOMA members shall ensure that members of their Boards hold their office for a specified term unless otherwise renewed through due democratic processes. **Tenure of office**

(2) Whereas it may not be desirable to prescribe uniform term limits for all Boards, CONGOMA members shall ensure that after serving a certain prescribed number of terms, new board members are recruited in order to provide diversity and variety of skills, experiences, competences and visions necessary for the continued and sustained growth of the organisations.

17. (1) In order to ensure internal leadership of the Boards and optimum allocation of responsibilities, CONGOMA members shall put in place mechanisms for the election of such office bearers within the Board as the organisation may designate from time to time.

**Office bearers of the Board**

(2) The Boards, with the approval of the General Assembly, may designate such functions and duties to each office bearer as may be commensurate with such office.

18. (1) CONGOMA members shall ensure that their incorporative instruments contain express provisions and procedures for the filling of casual vacancies in the Board.

**Filling of Casual Vacancies**

(2) In the event that the incorporative instrument of a CONGOMA member is silent or unclear on the filling of vacancies in the Board, the Board shall appoint another person to act in that position for a period not exceeding 6 months and before the expiry of the said 6 months, the Board shall ask the General Assembly or such other appointing authority (as the case may be) to ratify the appointment of or to appoint another person as a replacement thereof.

19. (1) Without any derogation to the powers, functions and duties which incorporative instruments of CONGOMA members may assign to their Boards, the Boards shall be responsible for the overall policy direction, control and management of the operations of the organisations.

**Overall Mandate of the Boards**

(2) Where the incorporative instrument of a CONGOMA member is silent on the express powers, functions or duties of the Board, then notwithstanding the generality of sub-article (1) herein above, the Board shall, exercise and perform the following powers, functions and duties-

- (a) Exercise leadership, enterprise, integrity and judgment in directing the organisation so as to achieve continuous attainment of the objectives and goals of the organisation in a manner based on transparency, accountability and responsibility;
- (b) Ensure that, through a managed and effective process, board appointments are made that provide a mix of proficient directors, each of whom is able to add value and to bring independent judgment to bear on the decision-making process;
- (c) Determine the organisation's purpose, values and appropriate strategies to achieve its objectives and goals;



- (d) Ensure that proper and effective administrative and financial procedures and practices are put in place that protect the organisation's human and material resources and social capital;
  - (e) Monitor and evaluate the implementation of strategies, policies, management performance criteria and strategic plans of the organisation;
  - (f) Ensure that the organisation complies with all relevant laws, regulations and codes of best practice;
  - (g) Ensure that the organisation maintains utmost frank and full disclosure of the organisation's affairs to the members and other stakeholders effectively;
  - (h) Serve and protect the legitimate interests of the members, stakeholders and beneficiaries and account to them fully;
  - (i) Identify the organisation's internal and external stakeholders and agree a policy, or policies, determining how the organisation should relate to them;
  - (j) Ensure that no one person or a block of persons have unfettered power and that there is an appropriate balance of power and authority within the organisation and its corporate organs by observing strict adherence to the separation of powers;
  - (k) Regularly review processes and procedures to ensure that the organisation's internal control systems remain effective and efficient so that its decision-making capability and the accuracy of its reports represent a fair and true state of the organisation;
  - (l) Continuously assess its own performance and effectiveness as a whole, and that of the individual directors, including that of the other organs of the organisation in order to ensure a flawless and seamless operational environment;
  - (m) Appoint all senior managers including the chief executive officer to ensure the motivation and protection of intellectual capital intrinsic to the organisation's wellbeing;
  - (n) Identify key risk areas and key performance indicators of the organisation and put in place such measures and mechanisms of risk management so as to minimise loss or damage of the organisation's property; and
  - (o) Appoint such committees subordinate to it to which various powers, functions and duties may be delegated from time to time.
20. (1) CONGOMA members shall ensure that their Boards meet regularly at such intervals as the incorporative instrument may prescribe to transact the business of the organisation: Provided that where any such incorporative instrument is silent or unclear, such board meetings take place at least once every **Three (3)** months in a year. **Board Meetings**
- (2) It shall be responsibility of the Board at all its meetings, to cause to be recorded and kept minutes of all deliberations and resolutions which must be subsequently circulated to all Board members at such agreed intervals as the incorporative instrument of the Board may prescribe.
- (3) CONGOMA members shall ensure that their incorporative instruments contain detailed provisions governing the quorum at all Board Meetings;

minimum capacity to transact competent business, service of notice, circulation of agenda and reports etc. to ensure effective deliberations.

21. (1) All CONGOMA members shall put in place such procedures for the regulation of Board meetings, deliberations and decision-making processes to be used by their Boards provided that any such procedure shall not in any way confer powers on the Board of greater than otherwise provided for by their incorporative instruments. **Procedure at Board Meetings**
- (2) Except where the incorporative instrument otherwise provides, decisions of the Board shall be arrived at by consensus or by a majority of the votes of the members present as the case may be and in the event of a tie, the Chairperson shall have a casting vote provided that where the decision in question may directly affect any one of them, any such decision be arrived at through a secret ballot.
22. (1) All CONGOMA members shall put in place a conflict of interest policy requiring Board members to declare any interest they may have in any business or transaction and shall, in such event, retire from that part of the meeting at which the matter is being discussed. **Declaration of conflict of interest**
- (2) For purposes of sub-article (1) above, CONGOMA members shall maintain a conflict of interest register in which all declarations of conflict shall be entered and any such register shall be open for inspection to members on request.
23. (1) In recognition of the voluntary nature of Board recruitment, CONGOMA members shall put in place such legal measures and mechanism for purposes of holding Board members free and harmless from any personal legal liability that may arise in the course of carrying out their duties in good faith. **Immunity from personal liability**
- (2) Notwithstanding the provisions of section 5 of the Trustees Incorporation Act, CONGOMA members which are registered under this Act shall ensure that Trustees or any one of them shall not be liable to the organisation or to any beneficiary for any loss which may occur as a result of any investment made in good faith by the Trustees or occasioned by any mistake or omission made in good faith by the Trustees or any of them or as a result of any negligence, dishonesty or fraud of any agent or employee of the organisation, unless such any loss arises from any neglect, dishonesty or fraud of the Trustees or any of them or by the operation of law.

## **PART IV**

### **THE EXECUTIVE ORGAN**

- 24.** (1) CONGOMA members shall ensure that executive powers of the organisation vest in a specialised organ which may be called any such name as may convey the nature of its powers, functions and duties. **Establishment of the Executive Organ**
- (2) Except where the incorporative instruments otherwise provides, the executive organ shall comprise of highly trained and skilled individuals who may be employed by the organisation and unless the context otherwise requires shall be headed by such Principal Officer, howsoever designated, as the Board may recruit from time to time.
- (3) In order to maximise productivity and efficiency, CONGOMA members may establish such internal administrative structures within the executive organ as would improve and reinforce effective and efficient execution of the activities of the organisation.
- 25.** (1) Except where the incorporative instrument provides to the contrary, an executive organ may have, exercise and perform the following powers, functions and duties: **Powers, functions and duties of the Secretariat**
- a) Carry out, enforce and execute all activities, policies and strategies of the organisation;
  - b) Plan, coordinate and implement different activities necessary for the organisation's attainment of its objectives, goals, vision and mission;
  - c) Identify ways and means of raising funds for the organisation from which the organisation can meet its operational financial needs;
  - d) Publish and enforce rules and regulations for the management of the organisation, its staff and its affairs;
  - e) Keep and cause to be kept books of accounts wherein all financial transactions shall be recorded in accordance with acceptable accounting standards and procedures;
  - f) Prepare and present to the Board for approval periodic expenditure estimates and expenditure reports; and
  - g) Provide technical expertise and skills necessary for the organisation's fulfilment its strategic objectives and mandate.
- 26.** (1) CONGOMA members shall ensure that the daily management of their organisations vests in the executive organ which shall be responsible for the planning, running and execution of all the activities of the organisation in such a professional manner and in accordance with the directions of the Board from time to time. **Daily management of the Association's activities**
- (2) The Board shall ensure that members of the executive organ shall discharge their specific duties in a manner consistent with their qualifications, acceptable professional standards and practices and in accordance with terms and

conditions of their employment ordinarily expected of a person of their rank and qualifications in employment circles.

## **PART V**

### **FINANCIAL GOVERNANCE**

27. (1) CONGOMA members expressly profess to uphold the values of utmost financial probity, transparency and accountability at all times in recognition of their unique nature as publicly funded voluntary organisations whose credibility solely depends on public confidence. **Commitment to utmost Financial Probity and Accountability**
- (2) In consequence of sub-article (1) above, all CONGOMA members shall ensure that their organisation shall establish and adopt such accounting principles and financial policies acceptable under the International Accounting Standards.
28. CONGOMA members undertake that they shall from time to time cause to be prepared and to be submitted to the General Assemblies and/or stakeholders such profit and loss accounts, balance sheets or such financial statements and reports as may give a fair and true reflection of the financial status of their organisations. **Preparation and presentation of Financial Statements**
29. (1) For purposes of managing their financial resources, CONGOMA members shall open and operate such bank accounts in their registered names with such authorised banking or financial institutions from time to time and shall ensure that all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the organisations, shall be deposited into the bank account[s] in such manner as is consistent with best financial management practices. **Opening of Bank Accounts**
- (2) The Boards of CONGOMA members shall establish financial guidelines detailing the manner in which the bank accounts may be operated and any such other matters connected therewith or incidental thereto including setting of limits of authority on expenditures.
30. CONGOMA members shall ensure that their accounting records shall be kept at the registered office or at such place or places as the Board may deem fit, provided that any such records shall be kept under secure and safe environment and shall remain accessible to members of the organisations or authorised auditors at all reasonable times. **Custody of Accounting Records**
31. (1) In order to maintain the highest financial accountability and transparency, CONGOMA members shall subject their financial records to the scrutiny and examination of External Auditors at least once every financial year. **External Audits**
- (2) For purposes of giving effect to the provisions of sub-article (1) above, all

CONGOMA members pledge and commit that at the end of each financial year and not later than **Four** (4) months from the end of each financial year they shall cause their books of accounts to be audited by an External Auditor of such repute and credible professional standing.

(3) In order to facilitate a smooth and efficient external audit exercise, all CONGOMA members expressly undertake to allow ready and unconditional access to its books of accounts and records on request from any authorised auditor or member of the organisation for the purposes of carrying out internal audit or other investigations or enquiries.

**PART VI**

**LEGAL COMPLIANCE AND REPORTING**

32. CONGOMA members hereby expressly undertake to comply with section 7(2) of the Trustees Incorporation Act (if registered as trusts) and section 181 of the Companies (if registered as companies) to submit such annual returns to the Office of the Registrar General or Registrar of Companies, whichever may be the case, in the manner prescribed by the respective Acts. **Submission Of Annual Returns**
33. CONGOMA members shall file with the Registrar of NGOs such reports required to be so filed by section 22 of the Non-Governmental Organisations Act in the prescribed manner or such manner as the Registrar may prescribe from time to time. **Filing of Reports with the Registrar of NGOs**
34. CONGOMA members realise that submission of annual reports is an integral part of membership in CONGOMA as it provides the basis of shared learning, networking and coordination and as such undertake to submit such reports as CONGOMA may require from time to time. **Submission of Annual Reports to CONGOMA**
35. (1) In the spirit of public accountability and transparency, CONGOMA members shall provide such periodic updates to the members of the general public disclosing their activities, financing arrangements, areas of operation etc. so as to keep members of the general public aware of the organisations' activities in Malawi. **Public Information and Rights of Stakeholders**
- (2) Notwithstanding the generality of sub-article (1) above, CONGOMA members shall grant their stakeholders the right to enquire into the activities and management of their organisations and to attend, on request and prior arrangement with the chairperson of the Board, any meeting of the Board or Annual General Meeting in which they have a special interest.

**PART VII:  
AMENDMENTS TO THE CHARTER**

- 36.** (1) Any member-organisation of CONGOMA which is entitled to attend, deliberate and vote at the Annual General Meeting shall be entitled to propose and lobby for any amendment of this Charter on its own or in association with other member-organisations. **The right to propose amendments to the Charter**
- (2) All proposed amendments shall be in writing addressed to the Executive Director of CONGOMA stating the actual provision to be amended and the rationale thereof.
- (3) Any proposed amendment shall not be attended to unless it is accompanied by a signed petition of at least **Twenty (20%)** of the member-organisations which are entitled to attend, deliberate and vote at the Annual General Meeting.
- (4) Upon receipt of proposed amendments, the Executive Director shall forward the same for consideration to the Board through the Chairperson who in turn shall table the proposal before a duly convened Board meeting for its resolution.
- (5) Where the Board resolves that the proposed amendments have duly complied with this article, it shall instruct the Executive Director send copies of the same all members of the General Assembly at least **Thirty (30)** days before the meeting at which any such amendments are to be deliberated.
- 37.** (1) All proposed amendments to this Charter affecting the change of names, mission, vision, values, objectives, affiliation, membership and organs of the member-organisations, this article and dissolution provisions of member-organisations shall be passed by a **Seventy-Five percent (75%)** majority of all member-organisation entitled to attend and take part in the deliberations and voting of the General Assembly. **Procedure for determining the amendments**
- (2) Any other proposed amendments shall be passed by a **Sixty percent (60%)** majority of the members of the General Assembly actually present and voting at the Annual General Meeting.
- (3) Once a proposed amendment has been carried, the Board of CONGOMA shall cause the amendment to be effected in this Charter by deleting, altering or adding the parts of the Charter affected by the amendment as the case may be. **Manner of effecting amendments**
- (4) Once a provision of the Charter has been duly amended the new provision shall take effect immediately and shall apply as if it were at all material times part and parcel of this Charter from the date of its inclusion in the Constitution.

**PART VIII:**

**BINDING EFFECT OF THE CHARTER**

- 38.** (1) CONGOMA members expressly and irrevocably commit and undertake to run and manage their organisations and carry out their activities in accordance with the provisions of this Charter. **Acts of Breach and Punishments**
- (2) Any member-organisation which shall, in any way and without acceptable justification, breach the provisions of this Charter shall be guilty of an offence.
- (3) Any member-organisation found guilty of breaching this Charter shall be liable to any of the of following punishments:
- (a) Written warning;
  - (b) Suspension from CONGOMA membership;
  - (c) Recommendation for de-registration in accordance with section 23(1) of the NGO Act.
- 39.** (1) No member of CONGOMA shall be punished for breach of this Charter unless any such member has been found guilty of the same by a properly constituted Disciplinary Committee in disciplinary proceedings conducted in accordance with this article. **Establishment of the Disciplinary Committee and Due Process**
- (2) For purposes of this Part and the need for amicable dispute resolution, the Board of CONGOMA, with approval from the General Assembly shall set up a Disciplinary Committee which shall be subordinate to the Board.
- (3) When constituting the Disciplinary Committee, the Board of Trustees shall ensure that all persons appointed to serve in that capacity meet the following qualifications:
- (a) Have experience in human resource management and/or dispute resolution;
  - (b) Are people of outstanding professional integrity, good manners and acceptable social standing;
  - (c) Are capable of exercising impartiality in determining disputes involving members without fear, favour or ill-will; and
  - (d) Have no direct interest in the outcome of the dispute.
- 40.** (1) Where an allegation of breach has been made against a member-organisation, the Disciplinary Committee shall give any such member a notice of disciplinary hearing, stating therein the nature and particulars of the breach, the venue and time where the hearing shall take place. **Conduct of Disciplinary Proceedings**



(2) Any notice of disciplinary hearing shall be in writing and served on the member-organisation at least **Seven (7)** clear days before the date of the actual hearing.

(3) Any person who is directly affected by the alleged breach of the member-organisation shall not be eligible to sit as a member of the Disciplinary Committee which is hearing the particular case and where any such person is ordinarily a member of the Committee, the Board shall replace that person for the hearing of the case in question only.

(4) During the disciplinary hearing, the Disciplinary Committee shall follow the following steps:

- (a) the chairperson shall inform the accused member-organisation of the nature of the breach alleged against it;
- (b) the chairperson shall, after explaining the charges, require any such member-organisation to confirm if it has understood the charges and indicate what position it takes with respect to the same;
- (c) upon getting the confirmation that the member-organisation denies the charges, the chairperson shall ask the person who lodged the complaint against the member-organisation to lay his case against the said member in detail replete with the attendant evidence thereof;
- (d) once the complainant finishes making the case against the accused member-organisation, the chairperson shall ask the latter to respond to the allegations by asking the complainant such questions as may be fit or by adducing evidence proving the contrary; and
- (e) in the course of the hearing, members of the Disciplinary Committee can ask such questions or seek such clarifications as they deem fit from the complainant or the accused member.

**41.** (1) At the conclusion of the hearing, the Chairperson shall excuse both the accused member-organisation and the complainant from the venue of the hearing and thereafter he shall ask members of the Disciplinary Committee to deliberate upon the case and make their judgment by consensus or if necessary through a secret ballot.

**Determination of the Complaint and Communication of Judgment**

(2) Once the Disciplinary Committee comes up with its decision, it shall communicate the same to the concerned member within **Seven (7)** days from the date of the hearing in writing and a copy of the decision shall be made to the Board of Trustees and the Secretariat for their reference and further action.

**42.** (1) Any member-organisation which is dissatisfied with the determination of the Disciplinary Committee has a right to appeal against any such decision to the Board of CONGOMA through the Secretary of the Board in writing.

**Right of appeal**

(2) Upon receipt of the letter of appeal, the Secretary shall inform the Chairperson of the Board of Trustees about the appeal and the Chairperson

shall set a date, time and venue on which the Board shall hear the appeal.

(3) Once the date of hearing has been set down, the Secretary shall inform both the accused member-organisation and the complainant of the same at least **Five** (5) days before the date of the hearing.

(4) The Board of Trustees shall follow the same procedure as in article 40 of this Charter and its decision shall be final. Any person dissatisfied by such decision shall be free to seek legal recourse elsewhere.