

ACKNOWLEDGEMENTS

Many people and institutions contributed in one way or another in the preparation and publication of this report. I am grateful to my friends and colleagues at the Lawyers' Environmental Action Team (LEAT) who provided the inspiration and support for the research and writing of this report.

I am also grateful to the Institutions and Governance Program (IGP) at the World Resources Institute in Washington DC and, particularly, IGP's Regional Director for Africa, Peter Veit, for the grant of a Research Fellowship at WRI which enabled me to finish this work. Peter's legendary

patience was often tested to the limit but he endured many an unmet deadline with his trademark friendliness. IGP's Africa Program Coordinator Debbie Singiser ably prepared this work for publication, while George Faraday's editorial eye was invaluable in honing the arguments presented herein. To them all I am ever grateful.

The United States Agency for International Development (USAID) Tanzania Mission provided the financial support through WRI which enabled me to undertake a Research Fellowship at WRI as well as publication of this report.

I.

Introductory Note

This study analyses recent government initiatives for the regulation of the nongovernmental organisation (NGO) sector in Tanzania. First, “the National Policy on NGOs”, the fifth and apparently final draft of the NGO Policy that has been formulated since early 1996 under the coordination of the National Steering Committee for Formulation of National Policy on NGOs (NSC) (Millinga and Sangale 2000: 1). It was adopted at the Third National Consultative Workshop on National Policy on NGOs in early December 1999 (*ibid.*, 10).¹ Second, the proposed Non-Governmental Organisations Bill of 1998 whose drafting appears to have been proceeding in parallel with the drafting of the policy.

These initiatives offer an opportunity for serious reflection and debate on the status of the rights and freedoms called for by our country's Constitution. They are also of direct importance to social and environmental activists and NGOs, as they are likely to decide not only their freedom of operation but also whether their organisations have the right to exist at all. This report aims to highlight the issues at stake by examining these proposals in the light of the Tanzanian state's historical stance toward the rights of freedom of association, of assembly, and of free speech.

We show that the legacy of authoritarianism that has been the hallmark of Tanzania's constitutional and political history is all too apparent in both these proposals. However, whereas within the draft NGO Policy the authoritarian impulses of the state are to some degree tempered by liberalizing provisions, in the draft law, state control over the NGO sector remains absolute. This striking difference in emphasis can be explained only by taking into account the Tanzanian state's need to affirm its reformist credentials before the international donor community. Hence the relatively liberal provisions of the draft NGO Policy. In the law making process, however, where the state's authority is most directly on the line, it has not made even token concessions to civil society's demands for democratization.

Forewarned is forearmed. Once passed, laws gather their own momentum, creating vested interests along the way and thus becoming extremely difficult to undo. Although these drafts are still only “works in progress,” they provide an invaluable insight into the thinking of policy-makers. Awareness of their implications will help activists and NGOs to participate in, and influence, the debate *before* and not *after* they go into effect.

II.

HISTORICAL FOUNDATIONS OF NGO POLICY

2.1 Colonial Rule and the Societies Ordinance

The history of civil society associations in Tanzania goes back to the early years of the British colonial rule. In 1922, the Tanganyika Territory African Civil Servants Association was formed to provide for the welfare of the native civil servants. Seven years later another organisation – the Tanganyika African Association (TAA) – was formed, largely to promote sporting and cultural activities.

Although the first two decades of British rule were relatively quiet, the post-World War Two period saw an upsurge in political activism. The late 1940s and early 1950s were years of intense mass action by the incipient labour and nationalist movements (Shivji, 1986). In 1954, Mwalimu Nyerere, who had become leader of TAA the previous year, reorganized it as the Tanganyika African National Union (TANU) which led Tanganyika to independence seven years later.

Not surprisingly, the colonial administration responded to the rise of nationalism with a series of laws aimed at checking the growth of these mass movements or directing them into safer channels. To regulate the activities of workers' organisations the colonial state enacted the Trade Unions Ordinance Cap. 381 (Shivji, 1986). And to control voluntary associations which were increasingly engaging in political activity, it enacted the Societies Ordinance, Cap. 337 in 1954, the same year that TAA was transformed into TANU.

Both these laws attempted to monitor and restrict popular organisations by prohibiting them from engaging in oppositional political activity.² These laws set up registrar's offices with supervisory powers over each sector of voluntary association (that is for societies, trade unions and cooperatives, respectively). The occupants of these posts were colonial bureaucrats and they wielded wide

discretionary powers. Under the Societies Ordinance, for instance, the Registrar of Societies could require a society to furnish him with financial reports showing its source of funding.³ He could cancel or refuse registration on numerous grounds, including links with foreign political parties or organisations, and conduct considered prejudicial to peace, order and good government.⁴ In practice, these provisions were almost invariably invoked to deal with organisations engaged in social or political action considered inimical to the interests of the colonial state and economy.

The Societies Ordinance also conferred wide discretionary authority on both the colonial governor and the minister responsible for internal affairs. They were empowered to outlaw societies and prohibit their activities;⁵ the Governor could make laws (under Section 32); and was granted quasi-judicial appellate powers (under Section 13). The result was a high degree of fusion between the executive, legislative and judicial powers that the colonial administration wielded over societies, powers that the Presidency subsequently inherited after independence.

The Ordinance established severe criminal sanctions for non-compliance with its provisions. Upon conviction, a person holding office within, or managing, or assisting in the management of an unlawful society⁶ could be imprisoned for a period of up to seven years. A member or any person attending a meeting of an unlawful organisation or allowing one to be held on his premises could be imprisoned for a period of up to three years. Fines could also be levied on such offenders.⁷ Furthermore, the terms of the Ordinance denied defendants the benefits of the presumption of innocence, shifting the burden of proof on to them rather than the prosecution.⁸ The Ordinance created, in addition, wide powers to disrupt the activities of NGOs seen as a threat to the colonial order. In particular, it empowered colonial officials to enter

places believed to be used for subversive activities, and conduct searches, make arrests or carry out seizures.⁹

These provisions had devastating implications for the security of basic freedoms of association and expression and for the development of civil society during the colonial period. And, as we will consider in the following section, even after four decades of independence, they have continued to cast a long shadow over the basic rights and freedoms theoretically guaranteed by the Constitution of the United Republic of Tanzania, as well as on the development of NGOs and social movements within the country.

2.2 The Post-Colonial Period I: Single-Party Rule

Authoritarianism has been characterized as the defining characteristic of the neo-colonial state in Tanzania.¹⁰ In an authoritarian state, power is concentrated in the executive arm as personified by the President, with the power, authority and prestige of the representative organs of the people such as the legislature and the courts of law diminished accordingly. In his seminal work on African constitutionalism, Okoth-Ogendo has characterized this political and constitutional phenomenon as the "Imperial Presidency" (1991).

The authoritarian state is characterized by an oppressive legal system within which the law is used by the state to coerce its citizens rather than to confer rights upon them. Such a legal system, described by a leading constitutional scholar as "rightless law", confers wide discretionary powers on the president and his ministers and the central government bureaucrats under them (Shivji, 1990; 1996). The corollary to this concentration of power is the restriction or outright suppression of power centres outside state structures, such as social organisations and popular movements (Shivji, 1985).

In this respect, the independent Tanzanian state bears a strong resemblance to its colonial predecessor. Indeed, the post-colonial state inherited almost all the latter's laws and institutions. The Societies Ordinance which had been the lynchpin of colonial control over civil society, was also adopted

without any substantial amendments other than the removal of the more obviously colonial, and therefore embarrassing, references such as that to "the Governor". The underlying philosophy of authoritarianism that had informed colonial law and practice was, therefore, retained largely intact.

Now, however, state authoritarianism was justified not only by the need to preserve order but also by what has come to be known as the ideology of developmentalism. The state had to be strong, the argument went, in order to bring development to the people. Popular organisations such as trade unions, cooperatives, political parties and local governments were proscribed in the supposed interests of development. The refusal to introduce a bill of rights into the constitutional amendments of the early 1960s was also justified on these grounds, as were many other infringements of people's rights.

The state justified its *dirigiste*, welfarist economic and social policies through the ideology of developmentalism as well. In this period it was virtually impossible to organise independently outside state structures. To be sure, some non-state organisations existed. These were, however, mostly charitable, religious bodies involved in provision of social services such as education and health care. They were tolerated because they were almost invariably apolitical and therefore posed little threat to the existing power structure. But even these organisations were not immune from the Tanzanian state's authoritarian policies – as the banning of the East African Muslim Welfare Society and the Ruvuma Development Association in the late 1960s illustrates. Even though the formation of the latter, a peasant organisation, was inspired by the state ideology of *ujamaa*, as a non-governmental organisation it was nevertheless perceived as a threat to the state's hegemony.

2.3 Post-Colonial Period II: Reform and Reaction

This state of affairs persisted until the 1980s. This decade saw what many have characterized as the crisis of the African state (Beckman, 1993; Paliwala, Adelman et al., 1993). The continent found itself in the midst of the deepest economic crisis it had ever experienced as foreign debt, worsening terms of

trade and a consequent balance of payments crisis eroded the state's ability to provide services and welfare. Politically, the state could no longer legitimate its authoritarian, repressive practices. Monolithic single-party systems and military regimes were challenged, and throughout the continent, movements demanding the democratization of state and society began to emerge.

The rapid growth of the NGO sector since the 1980s¹¹ has been closely related to these developments. Frequently with the active support of the international donor community, NGOs have stepped in to provide welfare and development services that the downsizing state is now unwilling or unable to engage in. At the same time, however, elements of the NGO sector began to take on a more directly political role, challenging government policy failures and human rights abuses. It became increasingly apparent that the legal framework inherited from the colonial period was no longer adequate to regulate the relationship between the state and civil society.

In Tanzania, these trends can be traced to the early 1980s when as a result of the constitutional debate of 1983-84, the Bill of Rights was incorporated within the Constitution of the United Republic of Tanzania 1977. It was recognized at the outset that this reform would require extensive revisions of the existing laws.¹² However, the government reneged on its commitment to introduce these reforms within the three-year grace period provided for. Thus arose a paradoxical gulf between a liberal constitution on the one hand and an authoritarian legal and institutional order on the other (Okoth-Ogendo, 1991). The legal framework governing NGOs was no exception to this rule.

With the political reforms sweeping Africa in the late-1980s the government appointed a Presidential Commission to look, among other things, at the evident contradiction between the constitution and ordinary law. Commonly known as the Nyalali Commission, it submitted its report in 1991 (Tanzania, 1991). The Commission examined both the legal/constitutional and political history of Tanzania and recommended the substantial reforms necessary to democratize the country.

In its consideration of the status of NGOs, the Nyalali Commission critically reviewed the various provisions of the Societies Ordinance in the light of the basic rights and freedoms enshrined in the Constitution (Tanzania, 1991, Vol. III: 40-44). The Commission concluded unequivocally that: "The Ordinance is Unconstitutional (sic). It violates Article 20 of the Constitution which provides (that) '...every person is entitled to freedom of peaceful assembly, association and public expression, that is to say, the right to assemble freely and peaceably, to associate with other persons and, in particular to form or to belong to organisations or associations formed for the purposes of protecting or furthering his or any other interests.... [The Constitution also provides that] ... a person shall not be compelled to belong to any association'" (ibid.: 44).

The Nyalali Commission also condemned the Societies Ordinance for being "... one of the laws that hinders (sic) the enjoyment of freedom of association and freedom of assembly.... It makes it extremely difficult to form and run civil associations by the masses.... [It] gives the office of the Registrar of Societies wide powers to register or refuse to register any association. The Registrar of Societies has total discretion in this respect. In that way political pressure or influence is easily applied to him in reaching his decision to ... refuse or grant registration of any Society" (loc. cit.). The "political pressure or influence" referred to could only come from the President or the Minister for Home Affairs since, under the Ordinance, the Registrar is appointed by the former and subject to the direction of the latter.

The Commission also judged both the presidential and ministerial powers created by the Ordinance to be excessive. It pointed out that when the President exercises his power to declare a duly registered society unlawful, he “is not required to give any reasons for his decision” (loc. cit.). Regarding the ministerial power to require any organisation to register under the Ordinance, the Commission charged that this served the purposes of political control. Once registered, the Commission argued, the organisation concerned “... falls under the surveillance of the Minister who is empowered to monitor all the activities of the organisation” (loc. cit.) Finally, the Nyalali Commission rounded off its critique of the Societies Ordinance with the observation that the decisions of the President, the Minister and the Registrar of Societies in exercise of their powers under the Ordinance were immune from judicial challenges in the ordinary courts of law. The

Commission recommended, accordingly, that the Ordinance be amended to remove these provisions (loc. cit.).

Overall, the Nyalali Commission recommended the repeal or substantial amendment of more than 40 statutes. Not for the first time, the government refused to heed this summons. Although it adopted the Presidential Commission's recommendation that it allow multiparty politics, it explicitly refused to introduce legal reforms that might diminish its bureaucratic power, including the repeal or amendment of the Societies Ordinance. Only now, with the NGO policy proposals currently under consideration, has the government shown any willingness to replace the Ordinance. However, as we will consider below, its belated zeal for reform has turned out to be more illusory than real.

III.

THE FINAL DRAFT NGO POLICY: CONTINUITY AND CHANGE

The current policy process for the reform of NGO governance started in 1996, following initial surveys by the International Labour Organisation with the financial support of the U.N. Development Programme. It may be significant that this development came in the wake of the furore surrounding the de-registration of the Tanzania Women's Council (BAWATA) in response to its activist role in the multiparty elections of 1995.¹³

A consultative workshop attended by representatives of donor agencies, the national NGO umbrella organisations, TANGO (Tanzania Non-Governmental Organisation), ANGOZA (Association of Non-Governmental Organisations of Zanzibar), and TACOSODE (Tanzania Council for Social Development) and the government, was organized by the Vice-President's Office in May 1996. At this workshop a National Steering Committee for NGO Policy Formulation (NSC) was formed.¹⁴ Several national and regional/zonal workshops were held subsequently to discuss the various drafts of the policy document.¹⁵

The final draft of the National Policy on NGOs shows significant continuities with the authoritarian tendencies of the colonial and post-colonial state in Tanzania. This is particularly clear with regard to its position on the basic freedoms of association and expression guaranteed by the Bill of Rights. As we have seen, the Nyalali Commission had found that the Societies Ordinance infringed upon these rights and in consequence recommended its amendment. However, the final draft of the National Policy on NGOs fails to seriously address the issues the Commission's report raised.

Whereas the Presidential Commission had discussed the deficiencies of the Ordinance at considerable length and with commendable thoroughness, the final draft has devoted only two under the multiparty system" – they have proposed in their final draft that NGOs should not "seek

short paragraphs to the subject. And unlike the Commission, which treated the substantive provisions of the Ordinance and the decision-making processes it created as the central problem, the policy addresses itself only to the procedural obstacles to NGO registration created by the Ordinance.¹⁶ Conspicuously absent is any discussion of the nature of the decision-making powers under the Ordinance or of the impact that the exercise of these powers has on fundamental rights guaranteed by the Constitution.

The framers of the final draft of the National Policy on NGOs could not have been unaware of these broader problems. Indeed, in the fourth draft they had highlighted precisely these issues. In discussing the problem of the fragmented legal and institutional structures for the regulation of NGOs under the current system, the framers had singled out the Societies Ordinance as the most important of the colonial ordinances, observing that its provisions "have remained virtually unaltered since 1954".¹⁷ They had also noted that the Ordinance conferred substantial discretionary powers on the Registrar and the Minister over registration of NGOs. They had further recognized that once these officials declare a society unlawful, it is rather difficult to set this ruling aside because the Ordinance "considerably limits the aggrieved society's access to court."

This candid analysis has been expunged from the final draft. Strangely, however, the framers of the final draft have not shied away from critiquing the National Sports Act, 1967¹⁸, with a forthrightness reminiscent of the Nyalali Commission's analysis of the Societies Ordinance.¹⁹ One is forced to ask why – if the said framers are serious in their declaration that the prohibition of political affiliation by sports associations is "irrelevant under the current situation and especially

political power or campaign for any political party", and that they should be "non-political", etc.²⁰ Even

the authoritarian regimes of the periods of colonial and one-party rule did not prohibit political activity by NGOs in such a draconian fashion!²¹

The final draft presents the need for a new policy on NGOs as arising from the fragmented and uncoordinated legal and institutional nature of the regulatory system for NGOs, this being currently governed by five different statutes.²² It is hoped that a comprehensive policy will solve these problems as well as "... assist in the promotion and development of the NGO sector in Tanzania..." However, the final draft policy document, it is claimed, "reiterates and retains all the fundamental principles of NGOs, that is, they are formed, run, developed or terminated only through the free and voluntary acts of individuals and associations; are managed and controlled by members, trustees or directors independently of government *but within the framework of liberties and constraints provided for in the laws*" (emphasis supplied).²³ Given the absence of the kind of clear rejection of the Societies Ordinance provisions contained in the Nyalali Commission's report, the final draft's recommendation that "all existing laws dealing with NGO matters shall be harmonised and a new law ... enacted ... (which) shall be such that NGO registration is streamlined and current deficiencies in

the existing laws removed",²⁴ portends not just the maintenance of the repressive features of the former legal framework but their consolidation into a single statute.

Also reminiscent of colonial and post-colonial authoritarianism is the requirement that NGOs present annual reports of their activities and audited financial reports to the Registrar's Office.²⁵ In itself this provision could play a valuable role in ensuring the accountability of the NGOs to their members and to the public. Open and public scrutiny of the affairs of public institutions is, after all, a basic tenet of democratic theory and practice. What is questionable in this proposal is the real motive behind it. As we have seen, the requirements for financial and activity reporting have historically been used as instruments of control and surveillance by the state, rather than as a means of ensuring NGO accountability to the public. The influence of this legacy is seen in the final draft's provision that non-compliance with the reporting requirements for three consecutive years constitute grounds for de-registration.²⁶ Rather than curtailing NGOs' freedom to operate, less heavy-handed methods – such as the removal of tax-exempt status – could have been considered to ensure NGO openness in their activities and their financial dealings.

IV. SO WHAT IS *NEW* IN THE NEW POLICY?

4.1 The Definition of NGOs

Despite these evident continuities, the final draft of the proposed National Policy on NGOs departs from the system created by the Societies Ordinance in a number of significant respects. For one, the definition of societies under the Ordinance was sufficiently broad to include political parties and to permit political activities, however limited these rights were.²⁷ However, the final draft defines an NGO more narrowly as "... a voluntary grouping of individuals or organisations which is autonomous, *non-political* ... organized ... for the purpose of enhancing the legitimate economic, social and/or cultural development or lobbying or advocating on issues of public interest or interest of a group of individuals or organisations" (emphasis supplied).²⁸

The key feature of this definition is that, in the document's own words, it "excludes Trade Unions, political parties or religious/faith organisations".²⁹ This point is also emphasized by the consultants whose report appears to have been instrumental in drafting the proposed policy document (see Millinga and Sangale, 7). Only organisations that fit within this definition shall be eligible for registration, while those already registered shall be obliged to conform to this requirement before they are granted a certificate of compliance.³⁰

4.2 The Legal and Institutional Framework

Also different from the current system are the proposed legal and institutional structures for regulating NGOs. Although these structures were largely built around the provisions of the Societies Ordinance, other avenues existed which to an extent provided ways to avoid the restrictive and authoritarian system created by the Ordinance. NGOs could seek registration either as sports or cultural organisations under the scheme of the

National Sports Council Act, 1967; or as companies limited by guarantee under the Companies Ordinance, Cap. 212 of the Laws. Although these avenues were also restricted, as organisations registered using them could always be brought under the legal and administrative ambit of the Societies Ordinance,³¹ they provided an important alternative venue for the exercise of freedoms of expression and association.

The framers of the final draft were clearly unhappy with this state of affairs³² and, as a result, the proposed National Policy on NGOs seeks to concentrate powers under one legal and institutional roof. The document proposes that the Director of NGOs Coordination in the ministry responsible for NGO affairs shall be the sole "contact" between the government and NGOs,³³ while the role of other sector ministries shall be to "designate 'Contact' Officers to handle relations with NGOs operating within the ministries' field of responsibility."³⁴ Likewise, all existing laws governing NGOs shall be "harmonized" and consolidated and a new law enacted to cater for all NGOs.³⁵ The watchword under this proposal is, again, authoritarian concentration of powers in the state and its functionaries rather than democratic decentralization. Hence, the real danger of greater restrictions to civil and political liberties.

There are additional proposals for changes in the institutional structures. Whereas under the Societies Ordinance, the Registrar of Societies, the Minister and the President were the central figures in the decision-making processes, the draft policy seeks to retain the position of the Registrar while ending the role of the Minister and the President. The Registrar will, however, be under the supervision of the new Office of the Director for NGOs Coordination.³⁶

Further proposals include the creation of a National NGO Coordination Board, two-thirds of which will be made up of representatives from

NGOs with the remaining third being drawn from the government;³⁷ and two national apex bodies for NGOs for Tanzania Mainland and Zanzibar respectively.³⁸ Although participants in one zonal workshop had recommended that membership within these apex bodies should be compulsory for all NGOs,³⁹ the framers of the final draft appear to have left this matter open. In any case the legality of such a requirement is doubtful in view of the provisions of Article 20(2) of the Constitution of the United Republic of Tanzania, 1977 that prohibit compulsory membership of any association.

Whether the proposed institutional structures will lead to any meaningful changes is, of course, anybody's guess. However, the proposals create possibilities for institutional rivalries and conflicts over mandates that seem likely to lead to institutional paralysis and gridlock. Take the registration processes, for instance. The final draft proposes that the Registrar of NGOs is to be charged with the responsibility of "actual" registration of NGOs after the (National NGO Coordination) Board has approved the application for registration.⁴⁰ The Board is also granted "the sole authority to de-register an NGO".⁴¹ The record of the proceedings of the National Consultative Workshop is also unequivocal in this respect when it states that the NGO de-registration process "...gives the mandate to de-register an NGO to the National NGOs Board whose membership is ... The power to register an NGOs (Sic!) ... rests with the National NGOs Board" (Millinga and Sangale, *ibid.*, 7). This wording implies that, the application for registration will be submitted to the Board for determination. The decision of the Board shall then be transmitted to the Registrar who shall then "actually" register the applicant NGO (where the Board has approved the application), or inform the applicant NGO that the application for registration has been rejected by the Board. In this perspective, the proposed role of the Registrar of NGOs is seen as being largely clerical, that is to convey the decisions of the Board on applications for registration to the applicants.

The proposed policy's provisions can be interpreted from a different perspective however, from which the role of the Registrar of NGOs

Time limitations are also imposed on the de-registration process. The final draft proposes that an NGO be afforded the right to be heard before it is de-registered by way of a written notice. The NGO will then be required to respond within three months.

appears more substantive.⁴² One of the functions of the National NGO Coordination Board is stated as being "[t]o review complaints on registration and de-registration" of NGOs.⁴³ This implies that the Board shall review complaints against decisions of some other institution, since to suggest that the Board shall review complaints against its own decisions would fly in the face of all notions of fairness and justice. There is, in addition, an implication in the final draft that the registration process may also start with submission of an application for that purpose with the Registrar.⁴⁴ Furthermore, the Registrar is empowered to request the annual activity and financial reports discussed above.⁴⁵ These provisions suggest that the Registrar of NGOs will wield substantive powers over the registration of NGOs. Any other interpretation would tend to make the position of the Registrar redundant. This lack of clarity shows the potential for conflicts over the mandates of the two institutions which might be realized should these proposals be implemented.⁴⁶

4.3 Registration and De-Registration of NGOs

One respect in which the final draft policy appears to be a clear improvement on the old regime is its provisions for expediting the registration process. First, the policy proposes a time limit of three months for the completion of the registration process. The Registrar is required to inform the applicant whether the application for registration has been approved or rejected within one month of the submission of the application. In the event of rejection, the final draft proposes a right of appeal to the Minister responsible for NGOs who will be obliged to determine the appeal within two months. Thereafter, the applicant has option of appeal to the ordinary courts of law.⁴⁷ (The final draft does not specify which court shall have jurisdiction to determine these appeals.)

It is implied that during this period the NGO will be suspended but this suspension will last for a maximum of six months after which the suspension will presumably be lifted.⁴⁸ Should the NGO concerned be dissatisfied by the decision of the

Board, it shall have the right to appeal to the Minister who is required to determine the appeal within 30 days of its submission. Thereafter, there is a further right of recourse to the ordinary courts of law and while the appeals are pending in the courts, the NGO shall be allowed to continue with its operations.⁴⁹

The effect of these provisions is to end the extensive ouster and finality clauses within the Ordinance which shielded officials from judicial scrutiny of their decisions. Welcome as they are, they represent less of a concession to the rule of law than might at first sight appear, as the Tanzanian courts have already developed jurisprudence that challenges the constitutionality of these clauses (Lissu 2000).

More significant perhaps, is the proposed decentralization of the registration process from the central government institutions to the regional and district authorities. It is, for instance, proposed that NGOs which intend to operate locally shall be required to be registered in the district or region where they will operate, while only those with a more national character shall be registered at the central level.⁵⁰ This will make the registration speedier and cheaper, reducing the logistical burden that central registration in Dar es Salaam presents for many NGOs under the present system.

4.4 The Policy-Making Process

At first sight, the process by which the National Policy on NGOs was formulated appears to mark a welcome departure from the government's typical practice. As previously discussed, non-governmental stakeholders were present at the consultative workshops, while the process was well-enough paced to allow ample time for discussion.

However, closer examination of the record of these discussions reveals a disturbing absence of authentic debate. Participants' comments appear to be essentially political activities in that they aim at redistributing the authority of the state. One would have expected that this vagueness would have elicited debate or inquiries, particularly from the NGO representatives, as would have the prohibition of NGO support for political parties whose policies and programs might resonate with their objectives.

have been limited to the consultants' presentations which, as we have seen, largely avoided fundamental questions of freedom of association and expression. Indeed, despite the fact that the document being considered claimed its overall objective to be the creation of an enabling environment for NGOs to operate effectively and efficiently in the "social, political and economic transformation of the country...", debate on the NGO sector's role in the political process was expressly discouraged. Lawrence Gama, the guest of honour⁵¹ at the third National Consultative Workshop, set the tone in his opening speech when he told the delegates: "As I have stated, Non-Governmental Organisations have a duty to collaborate with the Government in various spheres. However, we must not allow these organisations to be turned into a channel to further the political interests of their leaders and even members. We have, in our country, put in place procedures for individuals to participate in politics through (political) parties. Since the beginning we realized the importance of separating the activities of political parties and those of Non-Governmental Organisations. Mixing the activities of these organisations with politics could be the source of disruption of the peace and hence a hindrance to development. The policy for these organisations clearly sets out their characteristics and how they are supposed to operate. It is my expectation that the delegates to this conference will see this rationale" (author's translation from Swahili).⁵²

The participants appear not to have let their guest of honour down. There is nothing in the record of the proceedings of that Workshop to suggest that the prohibition on political participation was debated or even questioned for purposes of clarification. And this despite the fact that, because the final draft offers no definition of what constitutes "politics" or "political activity", it is not clear whether this prohibition covers participation in such activities as advocacy campaigns regarding legal/constitutional reforms, which may be regarded

Yet, there is nothing in the record of the proceedings to suggest that the participants in the policy-making processes drew attention to these issues.

The shallowness of the dialogue evident in the record of the proceedings of the Workshop may well be explained by the fact that NGO representation

and participation was limited to the umbrella organisations TANGO, TACOSODE and ANGOZA. The more independent-minded and critical NGOs, such as those which have spearheaded the debate and action on land-tenure reform and environmental protection, were not invited. Leading legal, constitutional and political scholars and commentators were also not invited to make submissions and, as a result, legal/constitutional and political analyses in the final draft leave much to be desired. It is clear, therefore,

that even though certain types of stakeholder were represented in the policy process, the decks were so heavily stacked against meaningful participation as to give an impression that the outcome was preordained, with the delegates being required to do no more than rubber-stamp already finalized decisions. However, as we will now consider, even this vestigial level of participation was unacceptable to the government when it came to the formulation of the NGO Bill currently being drafted under the auspices of the Vice-President's Office.

V.

THE DRAFT NGO BILL

As a rule, one would expect the formulation of government policy documents to precede the drafting of the legislation intended to give them effect. After all, in recent practice, such documents have been used ostensibly to provide the “terms of reference” to the drafters of legislation. The NGO Policy process does not appear to have served this purpose, however. Rather, the drafting of the legislation intended to implement the policy was begun in 1998, well before the policy process was itself completed. It is tempting to explain this strange timing and evident haste as a government manoeuvre to neutralize the challenge to its authority over NGOs presented by the petition filed by the NGO, BAWATA, challenging the constitutionality of its de-registration under the Societies Ordinance. This stratagem has two advantages from the government’s point of view: the proposed repeal of the Ordinance renders BAWATA’s petition challenging its constitutionality rather academic, while its re-enactment under a new guise promises to restore a *status quo* favourable to government interests. The suspicion that this bill is part of a programme to repackage authoritarianism raised by this timing is amply confirmed by an examination of the bill’s substantive provisions.

5.1 On the Registrar of NGOs

The preamble to the proposed law admits that the intention of the legislation is to “provide for the registration and regulation” of NGOs. As we seen, this was also the pre-eminent function of the Societies Ordinance Cap. 337. The draft bill proposes the establishment of an Office of the Registrar of Organisations within the Vice-President’s Office which shall be responsible for registration of NGOs.⁵³ In contrast with the final draft of the NGO Policy, which proposes a significant shift in the institutional power structures away from the Registrar and into the hands of a more representative National NGO Coordination

Board, the latter body is completely and conspicuously absent in the draft bill.

The draft proposes that the Registrar of Organisations should be assigned the functions of considering and processing applications for registration of NGOs; registering those NGOs which have satisfied the necessary conditions; keeping records and information on NGOs; ensuring that NGOs confine their activities to those permitted by their respective constitutions; considering applications submitted by NGOs seeking assistance from foreign NGOs and institutions; receiving, scrutinizing and approving applications by NGOs for tax relief; and liaising with the minister responsible for NGO affairs on all matters related to registration, functions, operations and deregistration of NGOs.⁵⁴

Many of these responsibilities are currently assigned to the Registrar of Societies in Tanzania Mainland under the Societies Ordinance and in the Isles under the Societies Act No. 16 of 1995. The proposals, however, further strengthen the Registrar’s role. As I have argued above, the requirements for the submission of audited financial reports was one of the instruments of control established by the Societies Ordinance. Clause 18(2) of the proposed legislation tightens the government’s financial control over NGOs in two crucial respects: firstly, by requiring NGOs to seek the Registrar’s approval in applying for funding from international organisations; and secondly, by assigning the Registrar powers to receive, scrutinize and approve applications for tax reliefs for NGOs. These provisions give the Registrar powerful weapons to punish NGOs critical of government policies and reward pliant ones; they could well spell the end of the many NGOs that cannot survive without foreign financial support and/or tax exemption. It is not difficult to imagine the potential for patronage, favouritism and corruption inherent in the exercise of this power.

Clearly there is a real need for NGOs to disclose internal financial information, as it is in the interests of the public to know the sources of funds of their organisations and how they are utilised. He who pays the piper calls the tune, as a saying goes, and therefore financial reports of these organisations should be made public so that all can see who is financing which organisations and on what basis. The people have a right to know the strings, if any, attached to the financing of NGOs both locally and internationally. However, there is no reason why the government should demand preferential treatment on this question, or be able to use its powers of financial supervision to control NGOs' activities.

To carry out these functions, the proposed law gives the Registrar of Organisations powers to grant or refuse applications for registration; to demand submission of records and information on their operations; and to require NGOs seeking registration to amend, vary or replace any article or any part in their respective constitutions which appears to the Registrar to be violative of any written law or inconsistent with the NGO Policy.⁵⁵ The Registrar is, furthermore, proposed to have "all powers which are necessary for the carrying into effect of the purposes of this Act."⁵⁶ This open-ended provision is likely to give the Registrar a *carte blanche* to deal with NGOs deemed to be a threat to the *status quo*. Again, the potential for abuse of these powers is considerable, negating the aspects of the final draft policy which seek to curb the powers of the executive.

In one respect only are the proposed law's provisions for the powers and responsibilities of the Registrar an improvement on the present regime: in its provisions for the expediting of the registration process. Part III of the bill, obliges the Registrar to respond within thirty days from the date an application for registration is submitted to him.⁵⁷ Failure to do so within the prescribed time would entitle the founder members of the particular NGO to conduct activities as if the application for registration had been granted.⁵⁸ Furthermore, an application by registered mail shall be conclusive evidence that the application was sent to the Registrar on the date embossed on it.⁵⁹ These are welcome provisions, as they are obviously intended to cut down on the notorious red tape and bureaucratic foot-dragging that has historically characterized the procedures for registration of NGOs under the current dispensation. The

streamlining of the registration process is, as we have seen, also a feature of the proposed policy.

5.2 On Access to Justice

Of particular importance for our purposes are the powers the proposed legislation gives to the Registrar to reject an application for registration. Under Clause 15, the Registrar may refuse to register an organisation on a number of vaguely defined grounds, in particular if its proposed name is considered "undesirable" or if its constitution violates the national constitution or "any other written law".⁶⁰ The latter provision is especially pregnant with dangers for, as is now well documented, many written laws in this country themselves violate the country's Constitution. The Government has, nevertheless, resisted calls to put its legislative house in order through repeal or amendment of these laws. Forcing the constitutions of NGOs to conform to these unconstitutional laws will lead to the reproduction of Tanzania's authoritarian political traditions.

Now what happens to an applicant for registration who feels dissatisfied by the decision of the Registrar of Organisations? As we have already considered, the proposed NGO Policy recommended that the decision of the Registrar should be appealable in the ordinary courts of law including, presumably, the High Court and the Court of Appeal.

It should come as a surprise, therefore, to realize that the proposed legislation has recommended exactly the opposite. Under Clause 16(1), "a[ny] person who is aggrieved by the decision of the Registrar to grant registration of an Organisation may appeal to the Minister". This is precisely the provision under the Societies Ordinance which was denounced in the fourth draft of the proposed policy as "considerably limiting access to court" and characterized as unconstitutional by the Presidential Commission on Party Systems.

5.3 On the Management of NGOs

There are other provisions in the proposed law which are equally disturbing. Take the management of NGOs, for instance. It is proposed under Clauses 23 and 24 that the management of NGOs be entrusted to boards of directors of not less than three members which shall have similar powers to the assigned boards of trustees under the Societies Ordinance and to the boards of directors of limited liability companies as established by the Companies Ordinance.⁶¹ Under the proposed law, however, the boards of directors of NGOs are assigned the additional function of receiving and implementing directives issued by the government through a competent body charged with the coordination of NGO activities.⁶² This will give the government the legal grounding to intervene in and control the activities of NGOs.

That is not all, however. The proposed law also seeks to wrest ultimate control of the fundamental aspects of the NGOs from the latter's rank-and-file members and vest it in these boards of directors. For instance, under Clause 26 an NGO may be dissolved by the decision of its board. All that needs to be done is for the board to notify the Registrar of NGOs within two weeks of its decision.⁶³ The consent of the Registrar is also required for the board to form a committee to supervise the dissolution and to determine the procedures to be followed.⁶⁴ There is neither a requirement for consultation with, or securing the consent of, the members of the organisation concerned. And where a conflict arises in this respect it "shall be referred to and (be) resolved by the High Court".⁶⁵ Again, the role of the rank-and-file members is conspicuous by its absence. So much then for the claims of the final draft of the proposed policy that NGOs are "formed, run, developed or terminated only through the voluntary acts of individuals and associations; are managed and controlled by members, trustees or directors independently of government...."!

5.4 A Prickly "Union Matter"?

The proposed law also introduces provisions which are likely to breed conflict between the Zanzibari and Union Governments regarding the Union's authority.⁶⁶ Under the proposed law, registration and

regulation of NGOs become a Union matter.⁶⁷ This would entail the scrapping of the separate legal and institutional structures for registration and regulation of NGOs in Zanzibar created by the latter's Societies Act, 1995.⁶⁸ Whether this move, whose effect is further erosion of Zanzibari autonomy, is likely to be welcomed there is, of course, a different matter. This provision appears completely contradictory to the various proposals in the final draft policy which provide for dual and parallel institutional structures for both Tanzania Mainland and Zanzibar.⁶⁹

5.5 NGOs Not Welcome?

Finally, a comment on the process of drafting the proposed bill is apposite here. We have seen that the process by which the final draft NGO Policy was formulated was participatory, if to an inadequate degree. The same cannot, however, be said of the drafting of the proposed bill. Here representation of stakeholders outside the state structures does not appear to have been considered necessary. The various NGOs which had participated in the policy processes as well as their representatives in the National Steering Committee for NGO Policy did not participate in, nor do they seem to have been aware of, the drafting of the NGO bill which has been going on at least since 1998. Nothing in the documents considered in this report indicates that the NGOs that participated in the policy processes were informed of this important fact, even though government departments that are involved in the drafting of the NGO bill such as the Registrar of Societies, the Vice-President's Office and the Attorney General's Chambers have also been participants in the policy-making processes.

The reasons for this discrepancy can only be conjectured. However, given the gulf between the provisions of final draft of the NGO Policy and those of the draft law, it is reasonable to suggest that certain sections of the government are not prepared to let go of the panoply of controls that the state has wielded over NGOs since colonial times. The thinking appears to be that to let the NGOs in on the drafting of the bill would wreck the secret legislative plans, as the NGOs are likely to demand at the very least that the draft bill be consistent with the final draft of the proposed NGO Policy.

VI. WHAT IS TO BE DONE?

On the basis of this discussion, it is clear that both the proposed policy and the draft legislation have major shortcomings and will do nothing to further the democratization of the state and civil society in Tanzania. Indeed, they do not offer anything substantially different from what is in place at the moment. On the contrary, the authoritarian state control which has been the hallmark of Tanzanian legal, constitutional and political history since colonial times is retained if not further strengthened. In this back-sliding we see further evidence of the government's cynical repackaging of long-standing authoritarian practices in order to curry favour with donor agencies and governments while maintaining its monopoly over the real sources of power. It is a political swindle and should be seen and exposed as such! NGOs must resist this latest assault on their rights and freedoms. They can ignore this call only at their own peril.

Genuine efforts to reform the present legal and institutional system for governing NGOs in Tanzania must take our legal, constitutional and political history as a point of departure. That history, as we have seen, is not a glorious one as it bears the scars of both colonial despotism and post-colonial authoritarianism. An NGO policy which truly seeks to ensure the more efficient, transparent and democratic operation of NGOs must address the crucial question of the concentration of powers in the bureaucratic arms of the state. The starting point should, therefore, be to divest the state of the power to determine the life or death of the NGOs and to vest this power in members of the NGOs themselves. In this respect, the recommendation of the Nyalali Commission that the Societies Ordinance be amended or repealed and replaced by a more democratic legislation should be effected. Such a step is long overdue.

The government must create a conducive enabling environment for NGOs by "downsizing" its role from one of control the more mundane function of registering the NGOs for information purposes only. Disputes between the state and NGOs may be resolved within the ordinary courts of law, which have the advantage of being open to the public and relatively independent of government influence. The overriding principle in NGO policy should be respect for the rights of association, assembly and expression enshrined in the Constitution.

Similarly, the prohibition against NGO participation in politics should be lifted, therefore. As representatives of special interests and different groupings in society, NGOs have an important political role in safeguarding or fighting for the rights and aims of their constituencies and this role should be acknowledged and protected by law. NGOs will never be able to participate in social, economic and political transformation – which, ostensibly, is the main objective of the proposed policy – if their role in politics continues to be denied. (This would, of course, not cover foreign NGOs, which should not be allowed to enter the national political fray.)

Democracy should be the goal for *all* processes of policy-making and legislative drafting. By contrast, the government provided only a semblance of NGO input into the drafting of the NGO Policy, while not bothering even to go through the motions of participation in formulating the draft NGO Bill. To remedy this situation, NGOs should demand genuine representation in the drafting of the NGO Bill in order to ensure that it respects constitutional guarantees of basic freedoms and rights of association, assembly and expression.

ABOUT THE AUTHOR

Tundu Antiphas Lissu graduated with an honours degree in law from the Faculty of Law of the University of Dar es Salaam in 1994. He also holds a degree of Master of Laws with distinction from the School of Law of the University of Warwick in the United Kingdom. As an activist and researcher, Mr. Lissu's work has dealt with issues of environment and natural resource policy and practice and its implications on the rights and livelihoods of rural

communities in Africa. He has written on the legal, socio-economic and environmental aspects of the mining industry in Tanzania and the political economy of wildlife and nature conservation in the African rangelands. He was recently nominated as Commissioner of the Africa Jubilee 2000 Movement – a global coalition of activists and NGOs who seek the cancellation of Africa's crippling foreign debt.

REFERENCES

- Adelman, S. and Paliwala, A. (eds.) (1993) *Law and Crisis in the Third World*, London, Hans Zell.
- Beckman, B.(n.d.)“Empowerment or Repression?: The World Bank and the Politics of African Adjustment (mimeo).
- George, S. and Sabelli, F. (1994) *Faith and Credit: The World Bank’s Secular Empire*, London/New York, Penguin Books.
- Ghai, Y.P. (1993) “Constitutions and Governance in Africa: A Prolegomenon”, in S. Adelman and A. Paliwala, op. cit.
- Hancock, G. (1991) *The Lords of Poverty*, London, Mandarin.
- Kapinga, W.B.L. (1985) “State Control of Working Class Organisation Through Law” in I.G. Shivji, op. cit.
- LEAT (1999) *Report on Institutional Mandates and Legal Framework for Environmental Management in Tanzania Prepared for the Institutional and Legal Framework for Environmental Management Project (ILFEMP)*, Dar es Salaam, Vice President’s Office (mimeo).
- Lissu, T.A.M. (2000) “Implementing Rio’s Article 10 Through EIA: A Review of Mechanisms for Access to Environmental Information, Public Participation and Environmental Justice in Tanzania”, *Paper Presented at the Regional Biodiversity Forum*, Intercontinental Hotel, Mombasa, Kenya, February 24, 2000, World Resources Institute (mimeo).
- Millinga, A. and Sangale, L. (2000) *The Third National Workshop on National Policy on NGOs, November 29th to December 1st, 1999, Morogoro TANESCO Training Centre: Workshop Report*, Dar es Salaam, National Steering Committee for Formulation of National Policy on NGOs (mimeo).
- Mwaikusa, J.T. (1990) “Government Powers and Human Rights in Africa: Some Observations From the Tanzanian Experience”, *Lesotho Law Journal*, 6, 1.
- Mwakyembe, H.G. (1985) “The Party and the Electoral Process”, in I.G. Shivji, op. cit.
- Naali, S. (1985) “State Control over cooperative Societies and Agricultural Marketing Boards”, in I.G. Shivji (ed.) *The State and the Working People in Tanzania*, op.cit.
- Norrie, A. (1993) “Criminal Justice, the Rule of Law and Human Emancipation: A Historical and Comparative Survey”, in S. Adelman and A. Paliwala, op.cit.
- NSC (1998) *National Non-Governmental Organisations (NGOs) Policy in Tanzania, Second Draft*, Dar es Salaam, National Steering Committee for NGO Policy Formulation.
- . (2000) *The National Policy on Non-Governmental Organisations (NGOs) in Tanzania*, Dar es Salaam, National Steering Committee for Formulation of National NGO Policy (mimeo).
- Okoth-Ogendo, H.W.O. (1991) “Constitutions Without Constitutionalism: An Examination of an African Paradox”, in I.G. Shivji, *State and Constitutionalism: An African Debate on Democracy*, Harare, Sapes Trust.
- Petras, J. (1990) “The Metamorphosis of Latin America’s Intellectuals”, *Latin American Perspectives*, 65, 2.
- Rojas, F. (1988) “A Comparison of Change-Oriented Legal Services in Latin America with Legal Services in North America and Europe”, *International Journal of the Sociology of Law*, 16.

- Shivji, I.G. (ed.) (1985) *The State and the Working People in Tanzania*, Dakar, CODESRIA.
- . (1986) *Law, State and the Working Class in Tanzania*, London, James Currie, Dar es Salaam, TPH.
- . (1989) "Equality, Rights and Authoritarianism in Africa" in N. MacCormick and Z. Bankowski (eds.), *Enlightenment, Rights and Revolution: Essays in Legal and Social Philosophy*, Aberdeen, Aberdeen University Press.
- . (1990) *State Coercion and Freedom in Tanzania*, Lesotho, Institute of Southern African Studies.
- . (1990b) *Tanzania: The Legal Foundations of the Union*, Dar es Salaam, Dar es Salaam University Press.
- . (1991) *Fight, My Beloved Continent: New Democracy in Africa*, Harare, Sapes Trust.
- . (1992) "The Politics of Liberalization in Tanzania: Notes on the Crisis of Ideological Hegemony", in H. Campbell and H. Stein (eds.) *Tanzania and the IMF: The Dynamics of Liberalization*, Boulder, Westview.
- . (1996) "The Rule of Law and Ujamaa in the Ideological Formation of Tanzania", *Social and Legal Studies* 3, 2.
- Tanzania, U.R. (1991) *Presidential Commission on Single Party or Multiparty System for Tanzania, Vol. III: Some of the Laws Requiring Repeal or Amendment*, Dar es Salaam, Government Printer.
- VPO (1998) *National Non-Governmental Organisations (NGOs) Policy in Tanzania, 4th Draft*, Dar es Salaam, National Steering Committee for NGO Policy Formulation.
- Wamba dia Wamba, E. (1992) 'Beyond Elite Politics of Democracy in Africa', *Quest*, 4, 1.

Notes

¹ Although a workshop report prepared by consultants for the NSC refers to the document the "final policy", this appears to be inconsistent with the policy-making practice in Tanzania which has historically treated the cabinet as the *final* policy-making organ. With this in mind, I have resisted treating this document as *the* policy on NGOs in Tanzania and, instead, I refer to it as the final draft of the NGO Policy, or for convenience the Policy.

I have also examined the Policy's second and fourth drafts, but the former was too incomplete to make any meaningful analysis possible. I have, therefore, had to rely on the final draft in this work whereas references to the fourth draft are made where comparisons between the two documents is relevant.

² On the state's control of popular organisations see articles by W.B.L. Kapinga, H.G. Mwakyembe, C. Peter, S.E.A. Mvungi and S. Naali in Shivji (1985).

³ Societies Ordinance, 1954, Cap. 337, ss. 15, 16.

⁴ *Ibid.*, s. 9.

⁵ *Ibid.*, ss. 6, 12A.

⁶ An unlawful society was defined under the Ordinance as "... any society declared or deemed to have been declared to be unlawful by the President..." or any society whose application for registration "remains undetermined"; or whose appeal to the President (in respect of the Registrar's refusal to register or order for cancellation of its registration) "... remains undetermined" (*ibid.*, s. 2). As the Societies Ordinance did not give a time limit within which the Registrar or the President were obliged to determine applications for registration or appeals against refusal of registration, a society could remain paralyzed for being "unlawful" as long as the Registrar or the President chose to sit on an application for registration or on an appeal against refusal of registration.

⁷ *Ibid.*, ss. 19, 20 and 21.

⁸ *Ibid.*, ss. 22 and 23.

⁹ *Ibid.*, ss. 25 and 26.

¹⁰ See Shivji, ed. (1985) for a thoroughgoing examination of state authoritarianism in Tanzania.

¹¹ The number of NGOs in Tanzania is currently estimated

at 2000, covering a wide range of issues and sectors such as human rights, environment, gender and rural development (NSC, 2000: 3, para. 2.1.1).

¹² The operation of the Bill of Rights was suspended for three years, ostensibly to give the government sufficient time to repeal or amend legislation offensive to the letter and/or the spirit of the Bill of Rights.

¹³ For more information about the BAWATA case, see *The Freedom of Association in Tanzania: Implications for Civil Society and Sustainable Development*, Policy Brief No. 1 by Rugemeleza, Nshala of the Lawyers' Environmental Action Team, November 1997.

¹⁴ NSC, 2000: 30-32.

¹⁵ There were three national consultative workshops and zonal workshops were held in seven centres across the country. Apart from the Government and local NGOs, donor agencies and foreign, mostly western, diplomatic missions also participated in various ways including financially (See NSC, 2000, 2-3, 21-22; Millinga and Sangale, Annexes 1 and 2).

¹⁶ NSC 2000, 4, para. 2.2.1.

¹⁷ VPO, 24.

¹⁸ Act No. 12 of 1967.

¹⁹ This is what framers of the final draft had to say as regards the 1967 Act: "The discretionary powers of the Registrar (of sports' organisations) to refuse registration are so wide that they can amount to abuse of power. For example, ... the Registrar has powers to cancel registration if he/she is of the opinion that it is undesirable to register any association. Along the same lines, the Minister has powers to direct the Registrar to refuse registration of an association if it is in the public interest to do so. Unfortunately there is no given definition of what constitutes public interest. If such powers remain unchecked, there is the possibility of refusing registration of an NGO for political or for any other reasons.

"Under the Act, the Registrar has powers to refuse and/or cancel registration of an association for reasons ... that the sports association has affiliation or connection with Afro-Shiraz Party which was a ruling party in Zanzibar prior to the formation of Chama Cha Mapinduzi in 1977. *This provision is irrelevant under the current situation and especially under the multiparty system.*

"Lastly there is a provision for the finality clause, that the decision of the Registrar and the Minister cannot be

- questioned by any court of law” (NSC, 2000, 4-5, para. 2.2.2).
- ²⁰ Ibid., 8-9, para. 5.0: v, viii; see also VPO, *ibid.*, 26, para., 9.1. This is not an accidental aberration as the second draft of this document had ominously stated that NGOs' activities must conform to same standards that apply to other organisations in the country and that although the Constitution of the United Republic of Tanzania provides for the right of freedom of speech and association, NGOs as legal entities are restricted from engaging in any activity that is likely to be construed as political (NSC, 1998: 3).
- ²¹ Section 6C of the Societies Ordinance empowered the Minister to require a company or cooperative society “formed or maintained solely for purposes of carrying on a club or other association of persons for social, recreational, cultural, *political*, educational or philanthropic purposes, to register as a society.” Although this was intended and had the effect of putting the organisations thus registered under the surveillance of the Minister, it did not, nevertheless, prohibit political activities by the NGOs concerned as such.
- ²² NSC, 2000, 4-5, paras. 2.2.1-4; VPO, 24.
- ²³ NSC, 2000, 6, para. 2.2.4; VPO, 19.
- ²⁴ NSC, 2000, 12, paras. 7.0 and 7.2.
- ²⁵ Ibid., 16, para. 8.4.
- ²⁶ Ibid., 14, para. 7.6.1(c) and (d).
- ²⁷ Precluded from the term “society” under section 2(1) of the Ordinance were for-profit companies, trade unions, cooperative societies or any society declared by the President not to be a society. Otherwise, any club, company, partnership or association of ten or more persons *whatever its nature or objects* qualified to be a society. Indeed even the political party TANU which led Tanganyika to independence and other political parties of that period were registered as “societies”.
- ²⁸ Ibid., 9, para. 5.0(viii).
- ²⁹ Loc., cit.
- ³⁰ It is perhaps symptomatic of Tanzania's present political regime that this definition was justified through reference to the usage of the World Bank, an institution not known for its practical or theoretical grasp of the workings of democracy. The record of the proceedings of the Third National Consultative Workshop on National Policy on NGOs shows that one participant questioned the exclusion of faith groups from the definition of NGOs. The reply to this was that “... during previous national and zonal workshops it was agreed that NGOs definition should exclude trade unions, political parties and ... faith groups. The Chairperson further explained that the same approach is uses (sic!) by the World Bank” (Millinga and Sangale, *ibid.*, 8).
- ³¹ Ibid., 12-13, para. 7.4. See also ss. 6A and 6C. Also the critique of the National Sports Council Act, 1967 (*supra*).
- ³² See NSC 2000, 12, para. 7.) and VPO (*ibid.*, 24).
- ³³ NSC, 2000, 9, para. 6.1.
- ³⁴ Ibid., 10, para. 6.1.2.
- ³⁵ Ibid., 12, para. 7.2; VPO, 35-6.
- ³⁶ NSC, 2000, 9, 11, paras. 6.1 and 6.2.3.
- ³⁷ Ibid., 10, paras. 6.2 and 6.2.1.
- ³⁸ NSC, *ibid.*, 11, paras. 6.3 and 6.3.1.
- ³⁹ See *Ibid.*, 23.
- ⁴⁰ Ibid., 10, para. 6.1.
- ⁴¹ Ibid., 11, para. 6.2.2(e).
- ⁴² Our analysis focusses on the powers of the Registrar rather than the Director, as it is clear from the Policy document that the latter's powers will be advisory and coordinative rather than executive or quasi-judicial.
- ⁴³ Ibid., 11, para. 6.2.2(d).
- ⁴⁴ Ibid., 13, para. 7.5.
- ⁴⁵ Ibid., 14, para. 7.6.1.
- ⁴⁶ Institutional conflicts and rivalries resulting from overlapping or conflicting mandates have, for instance, been a constant feature of the relationship between the National Environment Management Council (NEMC) and the Division of Environment (DoE) and the adoption of the National Environmental Policy in December 1997 added a new twist into that state of affairs. (See LEAT, 1999 for a critical analysis of those conflicts).

⁴⁷ Ibid., 13, para. 7.5(i).

⁴⁸ Ibid., 14, para. 7.6.

⁴⁹ Ibid., 15, para. 7.6.2.

⁵⁰ Ibid., 14, para. 7.5(iii).

⁵¹ Hon. Dr. Lawrence Gama, Member of Parliament, Regional Commissioner for Morogoro Regional and member of the Central Committee of the National Executive Committee of ruling party, CCM, as well as that party's former Secretary General.

⁵² "Kama nilivyosema Mashirika yasiyo ya Kiserikali yana jukumu la kushirikiana na Serikali katika nyanja mbali mbali. Hata hivyo tusiruhusu mashirika haya kugeuka kuwa mkondo wa kuendeleza matakwa ya kisiasa ya viongozi au hata wanachama wa mashirika yenyewe. Katika nchi yetu tumejiwekea utaratibu wa kila mtu kushiriki katika siasa kwa kupitia vyama. Tangu awali tulitambua umuhimu wa kutenganisha shughuli za vyama vya siasa na zile za Mashirika yasiyokuwa ya Kiserikali. Kuchanganya shughuli za mashirika haya katika siasa yanaweza kuwa chanzo cha kuvurugika amani na hivyo kuwa kikwazo cha maendeleo. Sera ya mashirika haya inaweka bayana sifa za mashirika yenyewe na namna yanavyostahili kufanya kazi. Ni mategemeo yangu kuwa wajumbe wa mkutano huu nao wataona mantiki hii" (Millinga and Sangale, Annex 3: iv).

⁵³ Draft NGO Bill 1998, cl. 3(1)(2).

⁵⁴ Ibid., cl. 6. This provision has to be read together with clause 18 of the proposed legislation which imposes various duties on NGOs including financial reporting.

⁵⁵ Ibid., cl. 7(1). This provision is particularly ironic, given the fact that as we have considered above, granting the Registrar such powers is *itself* a direct violation of the proposed NGO Policy.

⁵⁶ Ibid., cl. 7(2).

⁵⁷ Ibid., cl. 13(1).

⁵⁸ Ibid., cl. 13(2).

⁵⁹ Ibid., cl. 13(3).

⁶⁰ Ibid., cl. 15(1). These conditions are substantially similar to the provisions of section 9 of the Societies Ordinance.

⁶¹ Cap. 212 of the Laws.

⁶² Ibid., cl. 24(f).

⁶³ Ibid., cl. 26(1)(a).

⁶⁴ Ibid., cl. 26(1)(b).

⁶⁵ Ibid., cl. 26(1)(d).

⁶⁶ The union between Tanganyika and Zanzibar has increasingly been strained since the early 1980s. For the legal and constitutional foundations and its inherent problems see Shivji (1990b).

⁶⁷ Draft NGO Bill, cl. 1(3).

⁶⁸ Act No. 16 of 1995.

⁶⁹ See, for instance, the provisions for proposed National NGO Coordination Boards (NSC, *ibid.*, 10, para. 6.2); Office of the Registrar (*ibid.*, 11, para. 6.2.3); NGO Networks and Fora (*ibid.*, 11, para. 6.3); and key players for implementation of the policy (*ibid.*, 18, para. 11.1).

This document was created with Win2PDF available at <http://www.daneprairie.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.