



African Philanthropy Network
THE VOICE AND ACTION FOR AFRICAN PHILANTHROPY



**Synthesis of the Existing
Assessments of the Legal
Environment for Civil Society
Organizations including
Philanthropic Support
Organizations in Tanzania.**

APN 2022.

ABOUT US

Africa Philanthropy Network (APN) is the continent-wide network of African owned and African-led organizations which promote the voice and action for African philanthropy. APN envision a relevant, effective and responsive philanthropy for building equitable and just societies in Africa. Our mission is to reclaim and elevate the power of African philanthropic giving practices that are inclusive and beneficial to the communities across the continent.

APN believes in African agency -Africans should be at the center of the response to their challenges, have control over their actions and be more responsible for the consequences on their own lives and communities. As such, we will aspire to live the values of 'UBUNTU' grounded in the spirit of Solidarity, Inclusiveness, Innovation and Accountability.

The Synthesis of the Existing Assessments of the Legal Environment for Civil Society Organizations (2021) presents an opportunity for CSAs to influence the in-country national state and societal actors including government, emerging philanthropists, and individual funders to strengthen community ownership is development processes and ability to demand accountability from the power holders. APN will collaborate with its members to achieve two interwoven objectives:

- a. increase the awareness of governments in eight countries on the importance of facilitating donations to CSAs and to adopt laws and regulations that enable domestic philanthropic giving; and,
- b. increase awareness of individual and institutional donors on the potential of giving as a driver for social and systems change and increase donations to CSAs that drive community-led development and promote respect for human rights.

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It is my hope that the synthesis provides a useful baseline for influencing in-country national state and societal actors to support the development of community philanthropy and alternative resource mobilization as key strategy towards sustainability of CSOs. Thus, sustainable national development.

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In Solidarity

Dr. Stigmata Tenga, Executive Director

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
APN	Africa Philanthropy Network
BAWATA	Baraza la Wanawake Tanzania
CDC	Centre for Disease Control and Prevention
CSAs	Civil Society Actors
CSOs	Civil Society Organizations
GN	Government Notice
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social, and Cultural Rights
ICNL	International Center for Not-for-Profit Law
INGO	International Non-Governmental Organization
LEAT	Lawyers' Environmental Action Team
LHRC	Legal and Human Rights Centre
MEMARTS	Memorandum and Articles of Association
NOLA	National Organization for Legal Assistance
NGOs	Non-Governmental Organizations
PAYE	Pay As You Earn
PEPFAR	President's Emergency Plan for Aids Relief
PSOs	Philanthropic Support Organizations
RITA	Registration Insolvency Trustees Agency
SDL	Skills Development Levy
TLS	Tanganyika Law Society
TRA	Tanzania Revenue Authority
TOR	Terms of Reference
TPO	Tanzania Philanthropy Organization
VICOBA	Village Community Banking
UDHR	Universal Declaration of Human Rights
USA	United States of America
URT	United Republic of Tanzania

EXECUTIVE SUMMARY

Human beings are social and their sociality has caused them to come together in different forms: families, clans, hamlets, villages, wards, divisions, districts, regions/provinces, countries, federations, confederations on one hand and to also form associations of persons and organizations on the other. Due to this unique and defining characteristic of humans the freedom of association and assembly were seen as indispensable and have to be protected. The emergence of modern states led to the promulgation and entrenchment of Bill of Rights in most nations' constitutions.

The aftermath of two world wars left in the minds of many people in the world that human rights are inalienable and have to be protected. It was no wonder that in 1948 the Universal Declaration of Human Rights (UDHR) was passed by the United Nations General Assembly. It was followed by the passage of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESR) which crystallized human rights in the global arena. In 1981 the African nations, under the auspices of Organization of African Unity (OAU), promulgated the African Charter on Human and Peoples Rights (ACHPR).

Civil Society Organizations (CSOs) in Tanzania have been in operation since the colonial period and they are characterized by religious groups, charity organizations and relief organizations, cooperatives societies, non-governmental organizations, sports clubs, trade unions and law societies to mention but a few. According to the Tanzania Human Rights Defenders (THRDC) there about 10 laws that govern and regulate CSOs in Tanzania and these include: Non-Governmental Organizations Act of 2002, (NGOs Act); the Trustees Incorporation Act, Cap. 318; the Societies Act, Cap. 337; the Companies Act, Cap. 212; the Legal Aid Act of 2017; the National Sports Council Act, Cap. 49; the Tanganyika Law Society Act, Cap. 307 (TLS Act); and, the Co-operative Societies Act, Cap. 211.¹ These laws provide different mechanisms of registering these organizations and the attendant compliance matters. In addition, CSOs are required to adhere to a whole host of laws pertaining to taxation, social security, skills enhancement, and corporate tax.

In 2019, the above legal framework underwent major changes in 2019 as through the Written Laws Miscellaneous Amendment Act (No 3) of 2019; the Non-Governmental Act, the Societies Act, Trusteeship Incorporation Act Cap 318 they were amended. The hitherto expansive definition of Non-Governmental Organizations (NGOs) was narrowed to exclude companies registered under the Companies Act, a trust formed under the Trustees Incorporation Act, a trade union, a religious or faith propagating foundation, a cooperative society, an agricultural organization, a society formed under the Societies Act, a political party, a community microfinance group (VICOBA), a sports association. The narrowing of the definition of NGOs does not mean that other organizations that do not fall within its definition are not CSOs. They are still CSOs.

On another front most CSOs in Tanzania, that are not religious, raise and obtain their funds from outside Tanzania. This is largely due to the fact that the legal regime in Tanzania only allows deduction of contributions of an income derived from a business to a charitable organization, with a charitable status certificate. Moreover, deductions are allowed from a business income as gift to the Education Fund Act.²

¹ Tanzanian Human Rights Defenders (2018). Legal and Policy Issues Affecting Civil Society Organizations in Tanzania, at p. 9.

² See section 16(1) of the Income Tax Act Cap 332 R.E. 2019.

For NGOs the government has placed a lot of controls as once they obtain funds over 20 million shillings, they are supposed to submit the grant agreements to the Registrar of NGOs for approval which takes long time to obtain. This requirement is as per the Non-Governmental Organizations (Amendments) Regulations No 609 of 2018 under the guise of engendering financial transparency and accountability. A legal challenge by the Legal and Human Rights Centre (LHRC) against this requirement, for being ultra vires, has so far not yielded success as its application was dismissed at preliminary stage.

The legal status of societies in the country is even more complicated in that they are not allowed to have any linkage with trusts as their respective laws prohibit their linkage through trusts or societies.

As things stands CSOs operate under a very restrictive legal environment. There is a need of mounting an aggressive campaign for amendments of their respective laws. CSOs by virtue of their registration must acquire a charitable status and be exempt from taxation. Moreover, donation to CSOs by individuals and business entities must be encouraged through tax exemption or deductions.

1. BACKGROUND AND INTRODUCTION

In May 2021 the Africa Philanthropy Network (APN) issued the Terms of Reference (TOR) to consultants for engaging a consultant to Synthesize the existing Assessments of the Legal Environment for Civil Society Organizations (CSOs) and Philanthropic Support Organizations (PSO) in Tanzania.³ The TOR noted that Freedom of association, as recognized in the international and regional treaties, provide a legal basis for the protection of CSOs. However, there are countless ways in which legal frameworks at the national level fail to protect this right and or do not provide an enabling environment for CSOs”. APN noted that they ascribe to the above state of affairs due to a number of factors which include the lack of favorable infrastructure and an enabling environment for CSOs including PSOs. These obstacles compound the situation further as despite the fact that there are people, within African countries, that are interested to donate for good causes carried out by CSOs but they are deterred by legal requirements that prevent, or discourage, or do not incentivize donation to CSOs within the continent.

APN have a bold vision of transforming how “development is done” through appreciation and relevance of domestic resources in expanding local ownership, unlocking agency and underpinning communities’ capacity to assert accountability from different public duty bearers. The research is geared at finding and established baseline data for the program that focuses in influencing in-country national state and societal actors (government, emerging philanthropists, and individual donors) “to support the development of community philanthropy by creating favorable conditions to promote power of domestic philanthropic giving as a form and driver of social and systems change.”⁴

To APN these legal obstacles calls upon for the need to invest in a clear legal framework for local resources mobilization and raising awareness on relevant legislation among local organizations. They state that:

If civil society have a better understanding of the legal framework, they can more effectively hold governments to account for their social responsibilities. And they can engage the authorities by demonstrating how investing in public goods can also bring benefits to the government. “This is a case where more knowledge really is more power.”⁵

1.1 Scope of the study

This consultancy has been commissioned by the APN in collaboration with TPO that focus “specifically on the recognition and importance of domestic resources in increasing local ownership, unlocking agency and strengthening communities’ ability to claim entitlements from different actors, especially government.” The main objective of this consultancy is to synthesize the existing assessments of the legal environment for CSOs including PSOs; and analyze options for how to engage in Tanzania. The execution of this work requires the adoption of the [WINGS/ICNL tool](#). This tool is designed to help philanthropy organizations decide where it may be most effective to engage in efforts to improve the legal environment at the national and/or regional levels. It further seeks to assist CSOs to consider critically different appropriate factors and gauge alternative matters in the process of engaging in specific strategies. It sets out the most important considerations and guide CSOs to examine them both separately and in relation to each other.

The synthesis will look at the legal requirements for registration or incorporation that CSOs have to fulfill in Tanzania and the membership number that is required. Whether upon registration the CSO becomes legal entity able to enter into contracts in its own name or through another entity? It will look the Government

³ Africa Philanthropy Network (APN in collaboration with Tanzania Philanthropy Organization (TOP): Terms of Reference (TOR) to consultants for engaging a consultant to Synthesize the existing Assessments of the Legal Environment for Civil Society Organizations (CSOs) and Philanthropic Support Organizations (PSO) in Tanzania, May 2021

⁴ Id.

⁵ Id.

oversight that are in place and if they are geared at impeding, delaying, or limiting the creation and functioning of CSOs. To this end, the 2019 amendments to the NGO Act together with the 2018 and 2019 NGOs Regulations will be examined critically. The latitude that is given by the laws to raise funds within and outside the country together with the reporting requirements will be analyzed. The ability of CSOs to interact and form alliances with international organizations is another angle of this analysis. This is coupled with the ability of CSOs to open bank accounts and operate them without much interference. The analysis will look at the requirements set by the Bank of Tanzania and commercial banks for CSOs to open and operate bank accounts. Constant requirements for verification of all details pertaining to payment via bank from signatories make many NGOs to not open or close banks with banks that demand so.

The tax benefits, if any, provided to CSOs by the tax laws of Tanzania will be examined. Tax benefits are supposed to spur CSOs activities as they provide services to the general public. The synthesis will look at the process of obtaining charitable status certificate among others. Equally important is the freedom to engage in policy matters including electoral and broader policy reforms. The synthesis will also conduct a detailed review of the [ECNL fundraising principles report](#).

1.2 Process and methodology

The main methodology of this Consultancy is desk review where the Consultant reviews in detail the working tools, relevant laws, and other literature. The laws that were reviewed include the: The Constitution of the United Republic of Tanzania, the Non-Governmental Organizations Act of 2002 (NGOs Act) as amended; the Trustees Incorporation Act, Cap. 318 as amended; the Societies Act, Cap. 337 as amended; the Companies Act, Cap. 212 as amended; and the Tanganyika Law Society Act, Cap. 307 (TLS Act) as amended. The Consultant will also review relevant provisions of the Income Tax Act, and the Vocational Education Training Act. It focused on relevant articles and principles enshrined in international legal instrument i.e., the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESR) and the African Charter on Human and Peoples Rights (ACHPR). Moreover, the review looked at the Treaty for the Establishment of the East African Treaty.

The desk assisted the Consultant to show the extent unto which freedom of association which is espoused by international legal treaties and conventions for Tanzania is a party on one hand and also entrenched in the Tanzania Constitution on the other is translated into action by regulating laws. Also, the Consultant conducted interviews to collect CSO experiences in adhering to the relevant laws together with the challenges they are facing in enjoying the right to freedom of association in Tanzania. Then, information was discussed in a stakeholder's validation workshop.

1.3 Structure and contents of the report

This Report contains: the list of acronyms, an executive summary, background, scope of work, the process and methodology used by the consultant, detailed finding and analysis which include: the overview and the legal environment, analysis of the legal framework governing CSOs including philanthropy in Tanzania, registration of CSOs and philanthropy support organizations in Tanzania; taxation on not for profit income/incentives/donations/ foreign donation and tax incentives on individual philanthropists; fundraising or resources mobilization/ state oversight on CSOs and PSOs; engagement in policy and advocacy of CSOs and PSOs. It finally contains the conclusion and recommendations. It contains annexes and appendices, together with the list of people that were interviewed.

2. DETAILED FINDINGS AND ANALYSIS

When Tanzania (at the time Tanganyika) got its independence, it had not included the Bill of Rights in its Constitution. The independent Tanzanian (Tanganyika at the time) leadership resisted the entrenchment of the Bill of Rights in the country's Constitution as it saw it as an impediment to the country's quest to fight its three enemies i.e., poverty, ignorance, and diseases. Despite the absence of the Bill of Rights, freedom of association was practiced through trade unions, single political party, cooperatives, charitable organizations, trusts, and religious institutions to mention but a few. In 1984 the Bill of Rights was finally entrenched in the Constitution.

Article 20(1) of the Constitution of the United Republic of Tanzania guarantee freedom of association and assembly to all people in the country when it states;

- (1) Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.

2.1 Overview and background of the legal environment

A closer look at this constitutional provision show that it is an expansive one as it embodies the right to assemble, to express views, to associate and to form or join associations and organizations for purposes of enabling an individual to further his or her beliefs or interests. Moreover, international and legal instruments for which the United Republic of Tanzania is a party recognize this important right these include Article 20 (1) of the Universal Declaration of Human Rights (UDHR); Article 22(1) of the International Convention on Civil and Political Rights (ICCPR) and Article 10(1) of the African Charter on Human and Peoples Rights (ACHPR).

Despite the presence of the guarantee of the freedom of association CSOs grew rapidly in beginning the 1990s following the demise of the communist system and the embrace of the free market economy by the Tanzanian government. The growth of the CSOs found the Tanzanian government somewhat unprepared and it immediately started to clamp them down. The saga of Baraza la Wanawake Tanzania (BAWATA) is used here for illustrative purposes.

On the 16th of May 1995, the Baraza la Wanawake wa Tanzania (BAWATA) was registered as society under the Societies Ordinance Cap 337 formed for the purpose of bringing together women in Tanzania to fight for their rights. It did not take long before it attracted the ire of the Tanzanian government which deemed it to be a politically bent organization. On the 17th day September 1996, the Registrar of Societies suspended BAWATA from operation and on the 30th day of June 1997 he went ahead to issue a notice to deregistered it. BAWATA was aggrieved with the decision it filed a constitutional petition at the High Court to challenge the deregistration notice i.e., Baraza la Wanawake Tanzania (BAWATA) & 5 Others v. Registrar of Societies & 2 Others⁶ this was also followed with an injunction application. On the 17th day of July 1997, the High Court issued an interim order stopping the Registrar from deregistering BAWATA and on the 4th day of March 1998 it issued an injunction against the deregistration. In the Constitutional petition BAWATA contended that the intention to deregister it and the notice to cancel it were in breach of the right to be heard enshrined in Article 13(6)(a) of the Constitution and that section 2(2), 14(a); 14(d)(iii), 17 and 19 of the Societies Act and its basic scheme was invalid among others. The High Court ruled that the cancellation was unconstitutional as it violated Article 20(1) of the Constitution. It further ruled that section 2(2) of the Societies Act that required that every branch of the society within ten or more people to be deemed a society. The Court stated:

⁶ Misc. Civil Cause No 27 of 1997 High Court of Tanzania at Dar es Salaam (Unreported).

We are persuaded that this provision is intended to obstruct (sic) the formation of nation-wide organizations let alone their effectiveness. It is no wonder that the Respondents took up issues with the formation of grass root branches at Village, District, Regional levels and at workplaces branding them politically tainted. The correspondences did not explicitly lean on s.2(2), but for sure, the condemnations launched were close to that. We cannot envisage a nation-wide organization intended for all women, to be without branches. How will it effectively carry out its objects? We cannot see the necessity of registering a national society and at the same time register its branches as societies. We are saying to because a nation-wide organization will naturally function through its branches, if the organization it to have any meaning at all. We hold that both its purpose and effect, the provisions of s.2(2) violate the right of association and assembly enshrined in Article 20 of the Constitution.

The Court also ruled that sections 8, 14, 17 and 19(2) of the Societies Act as unconstitutional but it did not strike them out of the statute books but ordered the Attorney General within one year to affect the amendment of the Societies Act by submitting a Bill in the Parliament to that effect.

The BAWATA case brought to the fore the need of crafting a new law that will regulate the functions of Non-Governmental Organizations. In 2002 the Non-Governmental Act No 24 of 2002 was passed by the Tanzanian Parliament. Section 11(2) of the Act allowed non-governmental organization to be registered under other laws. An NGO registered under other laws was however required to seek a certificate of compliance from the Registrar of NGOs (section 11(3)). This legal regime continued until June 2019 when the Tanzanian Parliament passed the Written Laws (Miscellaneous Amendments) (No 3) Act, 2019 which forced all NGOs to be registered under the Non-Governmental Organization Act. It also narrowed the definition of hitherto expansive definition of an NGO provided in the 2002 Act.

At the moment the constitutional and international legal underpinnings of the freedom of association and assembly in Tanzania is regulated by a whole host of pieces of legislation including: the Political Parties Act Cap 258 R.E. 2019; Non-Governmental Organizations Act of 2002 (NGOs Act); the Trustees Incorporation Act, Cap. 318; the Societies Act, Cap. 337; the Companies Act, Cap. 212; the Legal Aid Act of 2017; the National Sports Council Act, Cap. 49; the Tanganyika Law Society Act, Cap. 307 (TLS Act); and, the Co-operative Societies Act, Cap. 211; and the Political Parties Act, Trade Unions Act Cap 224 R.E. 2019; to mention but a few.⁷ This Study focuses on the freedoms of associations relating to Civil Society Organizations (CSOs) and does not deal with political parties or trade unions.

2.2 Analysis of the legal regulatory frameworks governing CSOs including PSOs

The legal and regulatory framework governing CSOs including PSOs in Tanzania is regulated by different laws and institutions. The analysis of the regulatory framework is informed by major amendments that were made to it by the Written Laws (Miscellaneous Amendments) (No 3) Act, 2019. The amendments made were profound in that they forced many NGOs that were registered under different laws to shift their registration from the laws that they were registered under to the Non-Governmental Organizations Act. Similarly, CSOs that had the characteristics of societies or trusts were forced to register under the Societies Act and the Trustees Incorporation Act, respectively.

Section 2 of the Non-Governmental Act defines an NGO as:

a voluntary grouping of individuals or organizations which is non-partisan or non-profit sharing established and operates for the benefit or welfare of the community or public, organized at the local, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment, good governance, law and order, human rights and lobbying or advocating on such issues; but does not include:

- (a) a company formed and registered under the Companies Act;

⁷ Tanzanian Human Rights Defenders (2018). Legal and Policy Issues Affecting Civil Society Organizations in Tanzania, at p. 9.

- (b) a trust formed and registered under the Trustees' Incorporation Act;
- (c) a trade union formed and registered under the Employment and Labour Relations Act;
- (d) a religious or faith propagating organisation;
- (e) a cooperative society formed and registered under the Cooperative Societies Act;
- (f) an agricultural association formed and registered under any written law other than this Act;
- (g) a society formed and registered under the Societies Act;
- (h) a political party formed and registered under the Political Parties Act;
- (i) a community microfinance group (SACCOS) registered under the Microfinance Act;
- (j) a sports association formed and registered under the National Sports Council of Tanzania Act;
- (k) any organisation which the Minister may, by order published in the Gazette, declare not to be a non-governmental organisation for the purpose of this Act.

Similarly, section 2 of the Societies Act defines a society to mean:

a non-partisan and non-political association of ten or more persons established for professional, social, cultural, religion or economic benefits or welfare of its members, formed and registered as such under this Act, but does not include:

- (a) a company formed and registered under the Companies Act;
- (b) a trust formed and registered under the Trustees' Incorporation Act;
- (c) a trade union formed and registered under the Employment and Labour Relations Act;
- (d) a cooperative society formed and registered under the Cooperative Societies Act;
- (e) an agricultural association formed and registered under any written law other than this Act;
- (f) a political party formed and registered under the Political Parties Act;
- (g) NGOs formed and registered under the Non-Governmental Organisations Act;
- (h) a community microfinance group (SACCOS) registered under the Microfinance Act;
- (i) a sports association formed and registered under the National Sports Council of Tanzania Act;
- (j) any society which the Minister may, by order published in the Gazette, declare not to be a society for the purpose of this Act;

Likewise, section 1A of the Trustees Incorporation Act defines a trust as:

a legal relationship created by personal acts, by an order of the court or operation of the law, when specified property or interests are placed under the control and management of a trustee or trustees for the benefit of another party or parties, called a beneficiary or beneficiaries, or for purposes specified under section 2(1), and excludes:

- (a) a non-governmental organization registered under the Non-Governmental Organizations Act;
- (b) a company registered under the Companies Act;
- (c) a society registered under the Societies Act;
- (d) a trade union formed and registered under the Employment and Labour Relation Act;
- (e) an agricultural association formed and registered under any written law other than this Act;
- (f) political party registered under the Political Parties Act;
- (g) a sports association or club registered under the National Sports Council of Tanzania Act;
- (h) a community microfinance group (SACCOS) registered under the Microfinance Act; and
- (i) any trust which the Minister may, by order published in the Gazette, declare not to be a trust for the purpose of this Act.

It needs to be underscored that the above changes transformed the CSOs legal landscape dramatically. Before the amendment the definition of an NGO was quite broad and basically included all non-profit organizations unless specifically excepted. It provided:

Non-Governmental Organization also known by acronym as "NGO" means a voluntary grouping of individuals or organization which is autonomous, non-partisan, non-profit sharing-

- (a) organized at local, national or international level for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment, lobbying or advocating on such issues; or

- (b) established under the auspices of any religious organization or faith Propagating organization' trade union, sports club, Political party, or community-based Organization; but does not include a trade, union, a social club or a sports club, a religious or faith propagating organization or a community-based organization.⁸

At the moment, an NGO is completely different from a society, a trust, a company limited by guarantee, and vice versa. But all of them are CSOs. They are further regulated by different officials/institutions under different laws. NGO are regulated by Registrar of NGOs who is appointed by the President under section 3(1) of the Act. Trusts are regulated by the Registrar-General while the Registrar of Societies regulates societies. Companies limited by guarantees are regulated by the Registrar of Companies.

2.2.1 Registration of CSOs and philanthropy support organizations (foundations) in Tanzania

2.2.1.1 Non-Governmental Organizations

Section 12(1) of the Non-Governmental Act requires a group of persons who wish to apply for registration of a non-governmental organization (NGO) to make an application to that respect using a prescribed form to the Registrar. An application for registration is to be submitted by one or more persons, who are founder members and the application is to be accompanied by: a copy of the constitution of that NGO; minutes containing the full names and signatures of the founder members, personal particulars of the office bearers; the address and physical location of the head office of the NGO; an application fee and such other particulars as may be required by the Registrar (section 12(3)(a)-(f)). It is important to note that regulation 22 of the Non-Governmental Organizations (Amendments) Regulations, G.N. No 685 of 2019 provides for the manner in which the Constitution of an NGO is required to be when it states:

22. Subject to section 12(2)(a) and 4(b) of the Act, the Constitution of an Organization shall be substantially in the manner prescribed in NGOA-Form 17 or NGOA-Form 18 as set out in the First Schedule to these Regulations.

The above regulation, it is submitted, is not in keeping with what is required by sections 12(2)(a) and section 4(b) of the Act. Section 4(b) simply describes one of the nine functions of the Director (Registrar) of NGOs under the Act. The said function is to “ensure proper implementation of this Act” while section 12(2)(a) simply states that an application for registration of an NGO shall be submitted by one or more persons, who are founder members, and shall be accompanied by “a copy of the Constitution of the Non-Governmental Organization.” This requirement is therefore, ultra vires the Non-Governmental Organizations Act and is susceptible to a legal challenge by any Non-Governmental Organization that is not happy with it.

For International Non-Governmental Organization (INGO) the application for registration is to be submitted by three or more persons who are founder members “two of whom shall be residents of Tanzania” (section 12(3)). The application is to be accompanied by a certificate of incorporation of that organization, its constitution, minutes containing the full names and particulars of founder members; personal particulars of office bearers; an application fee; the address and physical location of the head office; and any other particulars or information required by the Registrar.⁹

Section 22 (1) (a) of the Act empowers the Registrar to appoint a public officer in each district and region to be register of NGOs in that district or region. Thus, in case an NGO seeks to operate in a particular district it is required to submit its application to the appointed public officer of that district (section 22(1)). Similarly, if an NGO seeks to operate in a certain region then its application is to be submitted to the appointed public officer of that region (section 22(2)). But in case an NGO seeks to operate in more than one region and an INGO then it is supposed to be registered nationally by the Registrar (section 23(3)).

⁸ As amended by section 5(b) of the Written Laws (Miscellaneous Amendment) (No 2) Act No 11 of 2005.

⁹ See section 12(4)(a)-(g).

Upon submitting an application for registration, the Registrar of NGOs is given one month to refer the application together with his or her recommendation to the Board for consideration.¹⁰Section 13(2)(a)-(b) requires the Board to make a determination of the application within two months by approving and directing the Registrar to register the NGO or refuse to approve the application and direct the Registrar to inform the applicant or applicants accordingly. There are three grounds that may cause the Board to refuse to approve the application and these are:

- (a) the activities of a Non-Governmental Organization are not for public interest or are contrary to any written law; or
- (b) the application has given false or misleading information in any material particular; or
- (c) on the recommendation of the Council; the Non-Government Organization should not be registered.¹¹

Where the Board refuses to approve the application for registration it must inform the applicant within twenty-one days of its decision together with the reasons (section 14(2)). The Applicant who is not satisfied with the decision is given two options: to apply to the Board to review its decision or appeal to the Minister. In case the Applicant decides not to ask the Board to review its earlier decision he may appeal to the Minister. The Minister is given two months to consider and make a decision on the appeal (section 16(3)). Section 16(4) gives the Minister options for his decisions which may include: to uphold, quash or vary the decision of the Board; require the Board to revise or review its decision; require the Board to inquire into the specific information from the appellant and make further consideration of the application.

Where the Board directs the Registrar to register the NGO then he or she is supposed to issue that NGO a certificate of registration (section 17(1)). The Certificate of registration is supposed to contain the name and address of the NGO, its area of operation and such terms and conditions in respect of which the certificate was issued. Section 18(1) provides that the certificate of registration is “conclusive evidence of the authority to operate as specified in the constitution or in the certificate of registration.” The NGO once registered becomes a corporate body which in its name is capable of suing or to be sued; acquire, purchase or dispose any property both movable and non-immovable; enter into contract; and do all such things that a body corporate is capable of doing and which are necessary for the proper performance of its duties and functions.¹²

The registration of an NGO lasts for 10 years this is by virtue of section 17(3) which states that: “A certificate of registration issued under this section shall be subject to renewal after a period of ten years.” The NGO is required to apply for the renewal of its registration six months before the expiry date of its registration (section 17(4)). The Board is required to renew the certificate of registration upon being satisfied that the organization has complied with the requirements of registration under this Act and any other written laws.” Section 17(6) require the Board while making a decision to either renew or refuse to renew the certificate to adhere to the conditions provided by section 14 of the Act pertaining to the reasons of non-renewal. It is not stated, however, that in case the Board is minded not to renew certificate if it is duty bound to invite the NGO to give an explanation as to why its application should not be denied. This is contrary to the principle of the right to be heard enshrined in Article 13(6)(a) of the Constitution of the United Republic of Tanzania.

As if it not enough the Minister is given powers to make regulations on how this provision pertaining to certificate of registration and renewal or non-renewal of the certificate is going to be carried out better(s. 17(7)). On the 20th of September 2019 the Minister for Health Community Development, Gender, Elderly and Children promulgated the Non-Governmental Organizations (Renewal and Incentives) Regulations GN No 686 of 2019. The regulations provide for the forms to be used by an NGO seeking renewal of its certificate, NGOA-Form No. 3B embodying the format of the certificate, the notification of refusal to renew the certificate

¹⁰ Section 13(1) of the Non-Governmental Organizations Act.

¹¹ It is not stated the circumstances under which the National Council for Non Governmental Organization (Council) which is established by section 25(1) of the Act., a forum for NGOs coordination and networking in Tanzania Mainland, is able to get to know that there is a pending application for registration of an NGO and if it has the right to make an objection against the registration.¹¹

¹² See section 18(2).

(NGOB Form No 2). The Registrar is required by regulation 2(4) to notify the NGO within 14 days from the date of the application of his or her decision refusing to renew the certificate of the NGO. The aggrieved NGO has the right to appeal to the Minister within 30 days from the date of the decision (regulation 2(5)). It is not stated how many days the Minister is supposed to take to decide an NGO's appeal one may say that the Minister has two months as that is the time is given by the main Act to hear appeal against the decision of the Board. But if the Minister disallows the appeal The NGO is allowed to appeal to the High Court whose decision is final (regulation 2(6)). We do contend that though a good opportunity the Regulations have exceeded their remit as the main law does not mention that there is a right of appeal to the High Court.

Moreover, the Regulations do not provide for the right to be heard when the Board decides to refuse the renewal of the certificate which as argued above is contrary to Article 13(6)(a) which requires that where ones fate is being determined he or she must be given an opportunity to be heard.

2.2.1.2 Companies Act

The Companies Act Cap. 212 R.E. 2019 is the main law for the registration of companies in Tanzania. Before June 2019 it regulated the formation of all CSOs that were registered as companies limited by guarantee. Section 3(1) of the Act allows two or more persons associated with a lawful purpose to form an incorporated company with or without limited liability by subscribing their names to a memorandum of association and comply with of the Companies Act. According to section 3(3) a company limited by shares or limited by guarantee and having a share capital¹³ is a public company. If a company is limited by guarantee the law requires that the memorandum of association to clearly state that the liability of its members is limited. Section 9(1) of the Act requires that the articles of association signed by the subscribers(members) be registered together with the memorandum of association. The articles of association for a company limited by guarantee must state the number of members for which it is proposes to be registered.¹⁴

The memorandum and articles of association (memarts) are supposed to be submitted to the Registrar of Companies for registration (section 14(1)). The memarts are to be accompanied with the statement in a prescribed form stating the names and address of the persons who are proposed to be the first directors of the company, the person or persons who are going to be the first secretaries or joint secretaries of the company as well the particulars of any other directorships that the director(s) held in the past five years. Moreover, the Statement must disclose the address of the company registered office of incorporation (section 14(2(a)-(b))). Section 14(4) prevents the Registrar from registering the company until all the requirements of the Act have been complied with.

When a company is registered it becomes a body corporate by the name contained in the memorandum "capable of exercising all the functions of an incorporated company, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up"(section 15(2)).

This legal regime underwent dramatic changes in June 2019 when the Companies Act was amended by the Written Laws (Miscellaneous Amendments) (No 3) of 2019 hereinafter (the Written Laws). Section 4 of this Act amended section 2 of the Companies Act including amending the hitherto definition of a "company" that had defined it to mean "a company formed and registered under this Act or an existing company". The term "company" now means:

A company formed and registered under this Act or an existing company established for investment, trade or commercial activities and any other activity as the Minister may, by notice published in the Gazette, prescribe.

¹³ See section 4(2) of the Companies Act.

¹⁴ Id. See section 10(2).

The said section also went on to also define what is meant by commercial activities, investment activities and trade. Section 5 of the Written Laws which amended section 3 of the Companies Act restricts the formation of companies limited by guarantee unless they are solely geared at promoting commerce, investment, trade of such other activities prescribed by the Minister when it states:

- (1) A company which is limited by guarantee which intends to promote commerce, investment, trade, or any other activity as the Minister may, by notice published in the Gazette, prescribe, shall be incorporated or registered under this Act.

It went further and required that all companies by guarantee that were formed before the amendment were given two months to comply with the Act by changing their objectives to only be geared at promoting commerce, investment, and trade (section 6).¹⁵ And for those companies limited by guarantee that also sought and obtained the certificate of compliance from the Registrar of NGOs as then required by section 11(3) of the Non-Governmental Organizations Act were within two months to be deemed to have been registered under that law and not by the Companies Act and were to be struck off from the Register of Companies.¹⁶

2.2.1.3 Societies Act Cap 337 R.E. 2019

The Act was amended by Written Laws (Miscellaneous Amendments) Act (No.3) of 2019, whereby section 39 of the Act amended The Societies Act under section 2 where, a society has been redefined to mean a non-partisan and non-political association of ten or more persons established for professional, social, cultural, religion or economic benefits or welfare of its members. From the amendment, it is crystal clear that the state wanted to narrow the essential features of a society and the scope of operation. Registration of any association in Tanzania is mandatory before commencing operations. The registration requirements are:

- i) The founder members should not be less than ten, meaning for persons intending to incorporate an association, there must be minimum number of ten (10), short of that, the association shall not be considered for registration. See section 2 of the Societies Act as amended by section 39(b) of Act No.3 of 2019. The law therefore, has set higher number for the incorporation of association compared to requirements;
- ii) Persons intending to register association must convene the initial meeting (which must be attended by the ten members);
- iii) The founding members must write and address application letter to the Registrar of societies of their intention to register association;
- iv) Founding members are obliged to prepare and present three copies of the association's Constitution;
- v) The Constitution must be accompanied by the by-laws of the association which outlines rules and principles of operation. Constitution need to be specific on the objectives of the association and scope of operation must narrow to accommodate the specific objectives;
- vi) Applicants must also fill SA Form No. 1 and 2 both in duplicates;
- vii) Applicants must also submit to the Registrar minutes of authorization to establish the intended association. The minutes must contain the list with full names and signatures of founding members (whose number as mentioned before must not be less than Ten (10));
- viii) Applicants are also required to submit Personal particulars of office bearers that is to mean their CVs;
- ix) Recent passport size photos of office bearers should be annex with the application;
- x) Applicant is also required to submit introduction letters from Local Government Authority which should be submitted to District Commissioner and Regional Commissioner's offices for approvals or Parent Ministry or Institution. It is worth noting that the introduction process commences with the introduction from the ten-cell leader from the location in which the registered office is to be located;

¹⁵ This requirement is section 3A(1) of the Companies Act.

¹⁶ Id. See section 3A(2).

- xi) Registrar also will require that the applicants submit full address and physical location of the head office of the organization to be registered. The physical address must match the information the introduction letter from the local government Authority;
- xii) Application documents are accompanied by the application fee for registering an Association which is Tanzania Shillings Ten Thousand (10,000/=) only and registration fee is 100,000;
- xiii) When it comes to registration, the law vests the Registrar with power to inquire for any other documents as it deems fit for the purpose of registration. The Registrar with this power can intentionally demand for document which the association might be in a position of not obtaining hence hinder registration process. This lack of clear requirement possesses great challenge.

It is very clear that the Societies Act is silent and does not provide for the period in which the association registration applications should be considered and completed, applications depend with the Registrar and the staff involved which in reality is a great challenge to applicants. Review and approval period of the constitution and any document submitted is not provided for under the Act hence solely within the discretion of the Registrar.

Section 19 (1) of The Societies Act, allows the society whose application is refused by the Registrar to challenge the refusal within twenty-one days (21) from the date of decision to the Minister under whose portfolio the association lies; or within time extended by the Minister upon request. The decision of the Minister, on appeal, is final and cannot be challenged unless by way of judicial review (section 19(2)).

It needs to be stated here that the registration process is long and prolonged coupled with the fact that the application involves presentation of hard copies for inspection, review and approval which calls for the need to have enough funds to bank roll the entire process. There is no call-in offices; all applications must be submitted in Dodoma for registration which poses challenge to the societies that are farer from the capital city.

Moreover, it should always be in the minds of founder members that where the Constitution and the objectives of the association are felt to tread on the matters that are sensitive to the Government, especially human rights and civic education, the registration of the society might be delayed on purpose and ultimately refused.

Section 14 of the Societies Act gives the Registrar powers to refuse to register a society. By such powers, the Registrar can refuse any registration regardless of the correctness of the application.

While registration of a society gives it the right to operate legally, it does not confer it with the legal personality that empowers it to enter into contracts in its own name or to sue and be sued. In the past, this legal incapacity used to be cured by registering a trust and the Registered Trustees where the ones who conferred the society a legal personality. But the 2019 Amendments created a complete separation of societies and trusts. The law requires a society to not be registered as a trust and the trust cannot be registered as society. As it is a society that goes forth and forms a trust or appoints trustees will be running afoul of the Amendment. This makes the registration of societies to an unattractive option.

2.2.1.4 Trustees Incorporation Act CAP. 318

“Trust” as per section 1A of the Trustees Incorporation Act is defined to mean: a legal relationship created by personal acts, by an order of the court or operation of the law, when specified property or interests are placed under the control and management of a trustee or trustees for the benefit of another party or parties, called a beneficiary or beneficiaries,

Trustees are persons who holds, controls and manages property or any other interests for the benefit of a beneficiary or beneficiaries, or for purposes specified in section 2(1) of the Act. A trustee or trustees being appointed by a body or association of persons bound together by custom, religion, kinship or nationality, or

established for any religious, educational, literary, scientific, social or charitable purpose, may apply to the Administrator-General for incorporation as a body corporate.

It is worth noting that, a trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; the person who reposes or declares the confidence is called the author of the trust; the person who accepts the confidence is called the trustee; the person for whose benefit from the confidence is called the beneficiary; the subject matter of the trust is called trust property or trust money and the instrument through which the trust is declared is called the instrument of trust or trust deed.

Registration of a trust is regulated by the Trustees' Incorporation Act CAP 318 and its rules and it is placed under powers of Administrator-General in the office of Registration Insolvency Trustees Agency (RITA). Registration is mandatory as per the provisions of Section 3 of CAP.318. The procedure is basically provided under section 2 (2) (3) of Trustees' Incorporation Act CAP 318. Procedure involves:-

- (i) Preparation of Trust deed make a formal application to the Administrator-General for incorporation as a body corporate by way of Form T.I. 1 and along the application form you will also annex the following documents:
 - a. Copy of the constitution and rules of the body or association intending to form Trust.
 - b. Trustee particulars i.e., the CVs and passport size and IDs for each trustee.
 - c. Recommendations from the Ward Executive Officer, District Commissioner and the office of The Local Government Authority; and
 - d. Minutes of the meeting that passed the constitution and appoint the trustee.
- (ii) Upon application the Administrator-General may require the applicant to furnish oath or otherwise or other evidence in verification of the statements and particulars in application and any other evidence as the administrator-general may think fit;
- (iii) Applicant will pay relevant registration fees;
- (iv) If the Administrator-General is satisfied by the application, then he will register the Trustee and issue certificate of registration;¹⁷
- (v) The law does not provide the time limit for registration Administrator-General is at liberty to consider such incorporation expedient
- (vi) After successfully registration, the trustee is then funded by transferring the trust property to the trustee and then the trustee will start to manage the trust fund;
- (vii) In addition, any person aggrieved by the refusal of the Administrator-General to grant a certificate of incorporation or to approve a change of name, or by any conditions or directions inserted in any certificate of incorporation, or by the revocation of the incorporation of anybody corporate may within twenty-one days after the notification of such refusal, conditions or directions or revocation, as the case may be, appeal to the Minister responsible for legal affairs and the Minister may make such order as the circumstances may require and except as aforesaid no appeal shall lie against any such refusal, conditions or directions or revocation.

This signifies that, the only situation where Administrator General decision can be challenged is upon refusal; to incorporate, where he has imposed tougher conditions on the certificate; such appeals are directed to the Minister whose decision no matter how absurd it might be is not challengeable unless under judicial review in Court.

I. Membership Number: The law does not impose the minimum number of persons who can form trust. However, under section 14 of the Trustees Incorporation Act, where body corporate consists of a single trustee, such trustee shall be resident of Tanzania. In case body incorporated consists of two or more trustees, not less than two of such trustees shall be persons ordinarily resident in Tanzania.

¹⁷ Section 5 (1) of the Trustees Incorporation Act Cap 318 R.E. 2019.

II. Status upon Registration: Upon registration and issuance of certificate the a trust becomes a body corporate by the name described in the certificate, and have; (a) perpetual succession and a common seal; (b) power to sue and be sued in such corporate name; (c) subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire, transfer, convey therein, assign or demise any land or any interest(section 8).

The body corporate has the right and capacity to open and operate bank account. The requirements for opening and operating bank accounts are similar to the ones needed under the associations formed under the Societies Act as afore discussed.

2.2.1.5 The National Sports Council, CAP.49

Any society which provides facilities for amateur sports of physical recreation is all known as the Sports Association.¹⁸Society as defined under section 2 of the Societies Act means non-partisan and non-political association of ten or more persons established for professional, social, cultural, religion or economic benefits or welfare of its members. Sports association under the National Sports Council Act and the associations under the Societies Act are more or less same entities and there is a very thin line separating the two as they are firmly attached to the community. Difference is drawn on the objectives and modus operandi as one is profit based while the other is non-profit in nature are more or less the same.

Section 11(1) of the Act requires mandatory registration of sports associations Registration procedure is overseen by the Registrar of Sports Associations assisted by other appointed by Assistant Registrars who are Minister Appointees. The Registration is done by the Registrar and under some circumstances, some sports association may be exempted from registration.

Registration is solely within the discretion of Registrar who may register or refuse to register such sports association under section 12 of the Act. Likewise, cancellation or deregistration is at the discretion of the Registrar who may do so at his will whenever he feels that the provisions of the Act is violated or any affiliate association has contravened the law.

A part from the associations within the provisions of National Sports Act, there are affiliate bodies which foresee registration and licensing of specific football clubs, recreational clubs like the martial arts clubs and any recreational clubs. The affiliate bodies are Baraza la Michezo Tanzania (BMT) and the Tanzania Football Federation.

Registration procedure, account opening and operations compliance and tax duties, relations with other international organization are all restricted as under the Societies Act and Trustees Incorporation Act are all the same in the associations unless such association is profit based depending on the objectives.

2.2.1.6 The Tanganyika Law Society Act Cap 307 R.E. 2019

In terms of Sections 3, 4 and 5 of the law, the TLS (Society) is established under the Tanganyika Law Society Act to maintain and improve the standards of conduct and learning of the legal profession in Tanzania; to facilitate the acquisition of legal knowledge by members of the legal profession; to assist the Government and courts in all matters affecting legislation, administration and practice of law; to represent, protect and assist members of the legal profession in Tanzania as regards conditions of practice and otherwise; to acquire or dispose of properties of all kinds and to derive capital or income from them; to raise or borrow money for all or any of its objects in a manner and security as may be determined by the Society from time to time; and to invest and deal with moneys of the society as may be determined by the Society; and to do all things incidental

¹⁸ See section 2 of the National Sports Council Act.

to the objects of the Society. All property of the Society are vested in the Society. The Society has, through exercising its mandate, participated in matters concerning promotion and protection of human rights of people, rule of law and independence of the judiciary in a number of ways, including seminars, strategic public interest litigation or provision of knowledge and dissemination of information.

Sections 6 to 14 of TLS Act provide for matters concerning membership to the Society. All advocates with qualifications and practicing certificates to practice law as advocates are members. Persons admitted to membership of the Society are members. Honorary members are also given right to be members of the Society. Sections 7 and 8 of the Act provide how to become members of the Society.

Governance of the Society is through Council, Secretariat, and Committees. The administration of the Society is also divided into Chapters and Chapter Zones established by Section 17A of the TLS Act. The Secretariat led by the Executive Director as established under Section 19 of the TLS Act, is employed and paid by the Council for a term of 5 years, renewable. It is the Secretariat which raises funds of the Society.

The Council makes regulations binding on all members of the Society concerning annual subscriptions, manner of application for membership, manner of convening meetings, and for proper conduct and regulation of the affairs of the Society. The regulations made by Council are submitted to the first meeting of the Society but such regulations do not have effect until they are approved by a special resolution of the Society at that meeting (Section 31 of the TLS Act). There is Tanganyika Law Society (Chapter) Regulations, 2017 which provide for Chapter Executive Committee, Chapter Treasurer, Chapter Committees, and Chapter Coordinator (per Regulations 6-11). The Chapters are a form of devolution of power and management by the Council. Any region of Tanzania qualifies to be a Chapter in terms of Regulation 3 if it meets set conditions of having 35 registered advocates and has a High Court registry in that region. Chapters serve as branches of the Society in the regions. Chapters are subject of control by the Council.

2.2.1.7 Cooperative Societies Act, 2013

The Cooperative Societies Regulations, 2015 in Regulations 11 to 14 provide for matters and conditions of registration of cooperative societies and pre-cooperative societies. Prior to formation of cooperation, an initial meeting under Regulation 4 and Section 20 of the Cooperative Societies Act 2013 is mandatory. It must be followed by a formation meeting as per Regulation 7. Types of societies are stipulated under the Cooperative Societies Act 2013(Sections19, 20 and 27).

Every society which intends to be registered as a cooperative society must apply to the Registrar for registration (Sections 29 and 30 of the Act). Registrar may register such society on terms and conditions as he may determine as per Section 31 and Regulation 11 of the Cooperative Societies Regulation 2015. Registrar shall process and determine the application for registration within 60 days from the date of receipt of an application for registration (Regulation 11(3)). An applicant for registration must fill in Form No.2 in the First Schedule to the Act. An application is signed by a person duly authorized by the formation meeting and attach copies of certificate of resolutions passed at initial and formation meetings, report of formation committee, members declaration form as Form No.4, four original copies of the by-laws adopted at the formation meeting and other information as Registrar may require. In making a decision whether to register or not, the Registrar takes into account economic viability of the society and that society has fulfilled the conditions of registration and that the society has complied with provisions of the law and that the proposed by-laws are sufficient to provide for administrative and management (Regulation 13 and 14). If the Registrar determines that the society meets the conditions set by law, he shall issue a certificate of registration in Form No.2 per Section 33 of the Act.

Registrar may refuse under Section 32 of the Act to register a society and its by-laws if conditions set under Regulation 15 apply, namely, that an application does not comply with Regulation 14, society is established not for interest of its members, the by-laws are contrary to law or that there is not sufficient capital and no available officers to direct and manage affairs of the society. But where the Registrar refuses to register a

society, he shall issue a written notice to the society state reasons (Regulation 15(2)). A society may submit a fresh application again to the Registrar (Regulation 15(3)). However, there is a right of appeal against refusal by Registrar to register a society (Regulation 17). A society aggrieved by the decision of the Registrar may appeal within 60 days after receiving the decision of the Registrar, to the Minister. And, the Minister shall within 30 days from the date of receiving the appeal make a decision. However, it appears there is no time limit within which the Registrar must make his decision whether to register or not to register a society. This leaves wide discretion to the Registrar.

In terms of Regulation 21(1) Registrar may defer registration by a written notice to the society pending compliance by the society of the conditions. That society then is considered a probationary society during that period and if it fulfils the conditions then it will be registered.

2.2.2 Taxation (not-for-profit income/ incentives/ donations/tax incentives on individual philanthropists)

The main law that deals with taxation of incomes in Tanzania is the Income Tax Act Cap 332 R.E. 2019. Income is generally derived from three sources employment, business and investment (section 5(1)). The Act provides for two mechanisms of taxing CSOs i.e. as a trust or a charitable organization.

2.2.2.1 Trust

A trust or unit trust is liable to pay tax separately from its beneficiaries.¹⁹ A trust or unit trust shall be liable to tax separately from its beneficiaries and separate calculations of total income shall be made for separate trusts regardless of whether they have the same trustees. Amounts derived and expenditure incurred by a trustee in his or her capacity as a trustee are to be deemed as derived and incurred by the trust and not any person (section 52(3)). And all assets owned by a trust and liabilities owed by a trust or trustees in her capacity as a trustee belong to the trust (section 52(4)).

2.2.2.2 Charitable organizations

A charitable organization as defined by the Income Tax Act is a public entity that satisfy the following conditions:

- (a) the entity was established and functions solely as an organisation for:
 - (i) the relief of poverty or distress of the public;
 - (ii) the advancement of education; or
 - (iii) the provision of general public health, education, water or road construction or maintenance; and
- (b) the entity has been issued with a ruling by the Commissioner under section 11 of the Tax Administration Act currently in force stating that it is a charitable organisation or religious organisation.²⁰

Charitable organizations or religious organizations that meet the above criteria are deemed to conduct charitable business. Section 64(2)(a)-(b) requires that the income of a charitable organization from its charitable business to include gifts, donations received by the organization and the deduction of all income spent in furthering the functions of the organization through providing reasonable benefits to resident persons, or where the expenditure on the benefits has a source in the Tanzania, persons resident anywhere; and twenty five percent of its income from charitable business calculated without deduction of its reasonable benefits it provided to resident persons in the year of income.

In case the organization conducts other business other than its charitable business then it is liable to pay tax on the income derived from that other business (section 64(4)(a)-(b)). Moreover, a charitable organization is not supposed to offset the loss from its charitable business with the income from the business it carries out

¹⁹ See section 52(1) of the Income Tax Act Cap 332 R.E. 2019.

²⁰ See section 64(8).

outside its charitable pursuits (section 64(5)(a). Section 64(7) allows charitable and religious organizations that seeks to save funds for a detailed project that relates to the purposes of the organization to apply for the approval of the Commissioner General of Tanzania Revenue Authority to do so. The approval will make that saving as amount deductible for the pursuit of the organization's functions.

The taxation of CSOs received the attention of the Court of Appeal of Tanzania in the case of The School of St. Jude Limited v. The Commissioner General Tanzania Revenue Authority Civil Appeal No 21 of 2018 (Unreported). In this case, the Commissioner General of TRA issued The School of St. Jude Limited with two income tax assessments TZS 1,991,672, 238.90 and TZS. 2,251,655,919.90 derived from its surplus on the expenditure for the years 2009 and 2010, respectively. The School of St. Jude objected arguing that it was not doing business or conducting either investment or employment and did not therefore, have any income chargeable to tax. TRA responded to St. Jude's claim stating that from its review of its memorandum and articles of association it was doing a business and thus liable to pay tax. At the same time The School of St. Jude decided to seek a ruling under section 131 of the Income Tax Act that it was a charitable organization.

The Commissioner General refused to issue that ruling as it did not meet the requirements of section 64(8) of the Income Tax Act that it was a charitable organization. St. Jude was aggrieved by that decision and filed an appeal at the Tax Revenue Appeals Board challenging the assessments and the refusal to declare it a charitable organization. It argued that the Commissioner General was wrong to levy tax against it as a corporation on grants, donation and sponsorship income which was neither business, investment nor employment income. The main contention of The School of St. Jude was that the donations and grants received were used to provide free education to students from poor families. Moreover, since it was an organization, whose business was to provide education to children from poor families and a company limited by guarantee with no profit motive the donations received by it could not be categorized as income as they were not gifts to a business which is taxable under section 8 (f) of the Income Tax Act. TRA differed sharply with St. Jude's contention and it argued that St. Jude did not have a ruling from the Commissioner General under section 131 of the Income tax Act and did not fulfil the criteria of a charitable organization as stipulated by section 64(8) of the Act. Moreover, the 2009 and 2010 financial statements show that the appellant had taxable income arising from bank interest, school fees and surpluses derived from donations and sponsorships.

The Commissioner General of TRA position was accepted by the Tax Revenue Appeals Board that ruled that St. Jude was not a charitable organization because it did not satisfy the conditions stated under S. 64 (8) of the Act. Secondly, after having considered the provisions of S. 8(l) and (2) of the Act, it held that since the appellant earned school fees and because it also generated surplus, it is not a nonprofit making organization and is thus liable to pay the assessed tax. Undeterred St. Jude appealed to the Tax Revenue Appeals Tribunal which also dismissed the appeal. This let the matter to end up in the Court of Appeal of Tanzania. The Court of Appeal dismissed the appeal and stated that the nature of the business carried out by St. Jude was to generate profit and that the amount it received were income. Let the judgment of the Court speak:

In that context, we agree with the Tribunal that free education provided by the appellant is paid by third parties and so the surplus shown in the appellant's bank statement is a profit derived from business. The same is therefore chargeable to tax. (Emphasis added)

We need to state that the Court of Appeal ignored completely the nature of the business of St. Jude was education offering to the poor children. Moreover, it was not profit motivated that is why it is was registered as a company limited by guarantee. Moreover, the definition of a business under section 2 of the Income Tax Act exempted the categorization of amount received or generated by entities that were not profit driven as income. The said section provided:

business includes:

- (a) a trade, concern in the nature of trade, manufacture, profession, vocation or isolated arrangement with a business character; and

- (b) a past, present or prospective business, but excludes employment and any activity that, having regard to its nature and the principal occupation of its owners or underlying owners, is not carried on with a view to deriving profits (Emphasis added)

This exception was removed in 2017 and now the term “business” under the Income Tax Act RE 2019 means:

- (a) a trade, concern in the nature of trade, manufacture, profession, vocation or isolated arrangement with a business character; and
- (b) a past, present or prospective business, but excludes employment.

Two other cases that reecho the need for CSOs to obtain a charitable status certificate are Vodacom Foundation Ltd v. Commissioner General Tanzania Revenue Authority²¹ and BRAC Tanzania Limited v. Commissioner General, TRA²². In the former case, Vodacom Foundation challenged the decision of the Commissioner General of TRA of refusing to issue a ruling on its application for charitable status certificate. The Commissioner General ruled that some of the objects of the Foundation were not of charitable nature and that the main aim of Vodacom Foundation is to “increase the profile of Vodacom Tanzania Limited in local communities and create an environment that promotes brand loyalty.” The Tax Appeal Tribunal observed that this objective or activity is not a charitable one. It moreover, stated that:

A close examination of the Memorandum of Association of Vodacom Foundation Limited shows that each of the twenty objects is independent. Since some of those objects are not charitable in nature then one cannot say that the appellant company was established and functions solely as a charitable organization. To hold otherwise is to go against the clear provisions of section 64(8) of the Income Tax Act, 2004.

In the case of BRAC Tanzania Limited v. Commissioner General, TRA (supra), BRAC challenged the decision of the Commissioner General to not issue it with a charitable status certificate as TRA contended that the business carried out by BRAC was not of a charitable nature as it was doing micro finance business. The Tax Appeals Tribunal upheld the decision of the Tax Appeals Board that: “during the relevant years of income, the appellant was not a charitable organization and that therefore it was not exempt from taxation.”²³

It thus clear that only CSOs are not exempt from taxation unless they have a charitable status certificate. Moreover, religious institutions whose employees are solely tasked to administer places of worship, or give religious instructions or generally to administer religion; charitable organizations; registered educational institutions including nursery, primary and secondary schools and universities and higher learning institutions are exempted from paying Skills Development Levy (SDL).²⁴ Moreover, CSOs that are funded through grants from foreign governments or institutions that have signed an agreement with the Tanzanian government to that effect are exempt from taxation.

The Tax Revenue Appeals Board ruled to that effect in the case of MSPH Tanzania LLC v. the Commissioner General (TRA).²⁵ In this case The Commissioner General conducted an audit of MSPH’s years of income January 2013 to December 2018 on SDLs and PAYE. MSPH which is an NGO operating in Tanzania since 2004 with funding mainly from the USA Government under the auspices of President’s Emergency Plan for Aids Relief (PEPFAR) through the US’s Centre for Disease Control and Prevention (CDC) implementing community-based strategies to identify and link HIV positive individuals within targeted key and vulnerable populations. After the audit TRA issued tax assessment for each year of income.

²¹ Tax Appeal No 11 of 2015 as reported in Dr. Fauz Twaib A Casebook of Tax Law of Tanzania (Vol.Two), lawAfrica (2018) at page 184.

²² Tax Appeal No 14 of 2009 as reported in Dr. Fauz Twaib A Casebook of Tax Law of Tanzania (Vol. Two), lawAfrica (2018) at page 190.

²³ Id. At page 195.

²⁴ See section 19(1)(e)(i)-(ii)-(f) &(g)(i)-(iii) of the Vocational Educational and Training Act Cap 82 R.E. 2019.

²⁵ Consolidated Tax Appeals No 327, 328, 329, 330, 335 &336 of 2019 (Unreported).

MSPH appealed to the Tax Appeals Board arguing that the grant it received were exempt from taxation as it was covered by the Bilateral agreement between the United States of America and the United Republic of Tanzania as well as the Memorandum of Understanding between it and the Government of the United Republic of Tanzania (Ministry of Health). The Commissioner General also argued that MSPH had no ruling from him on the charitable status and for lack of it, it was not tax exempt. The Tax Revenue Appeals Board ruled to this effect:

We find this argument to be uncalled for, though it is true that tax exemption is not automatic, but exemption was to be affected by the Ministry of Health and Social Welfare through the Ministry of Finance (to which the respondent reports) on behalf of the Government of the United Republic of Tanzania. Demanding taxes from the Appellant is like giving it on one hand and taking it away through another hand. The case of Vodacom Foundation Ltd (supra) cited by the Respondent counsel is distinguishable because in the case at hand there is an existing Bilateral Agreement (Lexis Treaty) between the United States of America and the United Republic of Tanzania on Economic and Technical Cooperation (LEXSEE 19 UST 4614).

There is no doubt that the Appellant is non-profitable organisation which is exempted from PAYE and SDL as explained by the Appellant.²⁶

According to Redempta Maira, generally, if an NGO spends all its income in a given year to fund its activities then there will be no income that will attract tax. She states:

So far as income tax is concerned, in many cases the law will at a practical level normally result in an NGO not having an income tax liability. Firstly, in terms of common law for a person to be seen as carrying on a business, it is generally understood that there must be a profit motive - and indeed, this approach was also previously reflected in the income tax legislation, which prior to July 2017 explicitly defined the term "business" to exclude activities that are conducted without a profit motive. This exclusion was removed in the Finance Act 2007 (sic) - and whilst arguably, one could still seek to rely on common law principles to insist on the need for a profit motive, it appears that this change was seeking to make such a motive unnecessary.²⁷

ICSOs are, therefore, taxable unless they have a charitable status certificate from the Commissioner General of TRA, or they receive grants covered under the agreement between the Tanzanian Government and the donating or supporting country/organization. Moreover, interviews conducted as part of this consultancy show that application for certificate of charitable status are rarely attended. The applications by both LEAT and LHRC submitted in 2010 are yet to be granted despite many reminders.

2.2.2.3 Cooperative Societies

Under Section 67(1) of the Cooperative Societies Act, 2013 the cooperative societies are exempt from tax or duty. The Minister for Finance may remit or reduce tax, duty or VAT for the accumulated fund. Only stamp duty is chargeable on instruments executed by the society. Minister retains wider powers to exempt the societies from tax under Section 67(2) of the Act.

2.2.2.4 Business and Individual donation

The Income Tax allows for the deduction of donations made by a business to a charitable organization that has a certificate of charitable status issued by the Commissioner General or for a social development project and a donation made under section 12 of the Education Fund and amount paid to local government authority which are statutory obligations for the support of community development projects (s.16(1)(a)-(c)). The deduction of those donation to a charitable organization cannot exceed two percent of the person's income (s.16(2)). Moreover, an individual employee who out of his or her philanthropic endeavors decides to make

²⁶ Id. At page 14.

²⁷ Redempta Maira, Taxation of NGOs-why the fuss? <https://www.pwc.co.tz/press-room/taxation-of-ngos.html> last visited August 11 2021.

a donation is allowed but he can only claim a deduction for the donations only made under section 12 of the Education Fund Act. Section 12 of the said Act provides:

12.-(1) Any person who-

- a. donates money or equipment to a Fund's Assisted Educational Project or Programme;
- b. avails Sponsorship or a grant to any student for the Purpose of enabling such student to pursue secondary level education or attend tertiary level training, shall be awarded by the Authority a certificate to be known as a Certificate of Educational Appreciation.

(2) The Certificate of Educational Appreciation shall-

- a. give full particulars of the awardee, the amount of money to which he is eligible for tax relief, the taxes and the mode to which relief may be elected; and
- b. be signed by both the Director General, and the Commissioner General of the, Tanzania Revenue Authority and shall bear the respective seals of the signatories' organizations.

(3) Every awardee of a Certificate of Educational Appreciation shall be entitled at his option, to either-

- a. apply the amount stated in the Certificate of Educational Appreciation as an allowable deduction under section 16(2) of the income Tax Act, 1973;
- b. apply the amount stated in the Certificate of Educational Appreciation as a deduction against the vatable turnover under the Provisions of the Value Added Tax Act. 1997; or
- c. apply the amount stated in the Certificate of Educational Appreciation as a relief for the, purposes of customs or import duties, by way of a deduction against the dutiable value

It is clear therefore that donations to a charitable organization, with a charitable status certificate, by a business not exceeding 2 percent of the business's income are allowed and can be directly deducted by the business. But individual employees' donations that can be deducted are those made under section 12 of the Education Fund Act. Thus, the law does not encourage donations to CSOs from individual employees as such donations are not tax exempt.

2.2.3 Fundraising or Resource Mobilization

Article 24(1) of the Constitution of the United Republic of Tanzania guarantee the right to own property and its protection. Fundraising is one of the means to acquire property and resources necessary to implement one's activities. Moreover, the right to work guaranteed by article 22 of the Constitution enables CSOs to execute their activities and acquire property. It is not surprising that all the laws that govern and regulate CSOs in Tanzania do not prevent CSOs from fundraising for their activities but some place some obligation to spend the money wisely or in furtherance of the objects of the CSO. Of late however, NGOs are the ones that are facing severe hurdles in raising funds as the government has placed many requirements that the NGOs need to fulfil when they raise funds and enter into grant agreements.

2.2.3.1 NGOs

Section 32 of the Non-Governmental Act states that NGO "registered under this Act shall be entitled to engage in legally acceptable fund-raising activities." A caveat needs to be advanced at the outset that in 2018 the Minister of Health, Community Development, Gender, Elderly and Children made the Non-Governmental Organizations (Amendments) Regulations No 609 of 2018 under the guise of engendering financial transparency and accountability. Regulation 12 of the require NGOs to disclose to the public, the Council, the Board and other stakeholders within fourteen days from the date of the completion of the fundraising activities (a) the source of fund or resources obtained; (b) expenditure of fund or resources obtained; (c) purposes of fund or resources obtained; and (d) activities to be carried out from the funds or resources obtained. For NGOs that receive fund that exceed twenty million shillings they are obliged to:

- (a) publish bi-annually the fund received and its expenditure in a widely circulated newspaper and other media channels which are easily accessible by the targeted beneficiaries;

- (b) cause the contracts or agreements entered with donor or person who grant the said fund to be submitted to treasury and the Registrar not later than ten days from the date of entering the said contract or agreement for approval;
- (c) declare to the Registrar of Non-Governmental Organizations any other resource received either in cash or in kind before its expenditure.²⁸

Regulation 14 imposes financial transparency and accountability principles by requiring NGOs to:

- (a) develop and adhere to clear, well defined and written financial regulations that are consistent with sound financial management principles and practice;
- (b) seek to limit resources used towards fundraising and running costs to a reasonable level or standard;
- (c) develop programs that take into account institutional strengthening and sustainability;
- (d) for the purpose of sustainability, undertake financial resources sustainability activities;
- (e) manage resources in a manner that is prudent and provides value for money, including employing or involving competent personnel;
- (f) ensure all financial transactions are transparently and fully documented, and that these documents are preserved for a defined number of years;
- (g) ensure all substantive expenditures are authorized in a process that involves scrutiny by more than one officer, and where the Chief Executive or any other officer does not have unlimited authority;
- (h) ensure procurement is undertaken in a manner that provides quality at least cost, avoids favoritism and corruption, is transparent, documented and otherwise conforms to sound procurement principles;
- (i) maintain a regularly updated assets register in accordance with sound accounting practice;
- (j) maintain and manage bank account;
- (k) develop and adhere to clear policies regarding payments to staff, volunteers to avoid conflict of interest and incentives to distort organizational priorities;
- (l) prepare comprehensive and accurate financial statements in accordance with sound accounting practice;
- (m) ensure that its financial statements are independently audited by registered and competent auditors; and
- (n) exercise zero tolerance on corruption, money laundering and other form of substantive misuse of funds, and take effective actions to hold persons or institutions responsible accountable.

A closer look at the Regulation show that this regulation is not within the bounds of what section 32 of the Non-Governmental Act provides. Section 32 of the Act allows without any restriction and conditions the raising of funds from any source. It does not impose any requirements to the funds raised. But Regulation 13(b) imposes a requirement of seeking and obtaining the approval of the Registrar of NGO for of contracts and agreements not later than ten days from the date of signing the agreement. This means even though the NGO has already entered into a contract with the donor, the said grant contract cannot be executed until the NGO receives the approval of the Registrar of NGO.

These Regulations are still a subject of legal challenge at the Court of Appeal of Tanzania²⁹ as immediately after their passage, the Legal and Human Rights Centre (LHRC) filed a case against the Minister of Health, Community Development, Gender Elderly and Children, the Registrar of NGOs and the Attorney General.³⁰ The LHRC contended that the Regulations were made by the Minister in excess of her powers, and that they were unreasonable and ambiguous. The Attorney General objected to the application and lodged objections to it which though initially were rejected by the High Court, were somewhat agreed in the Ruling of the High Court that found the affidavit supporting the application as not properly verified and it struck out the application. LHRC was incensed by the decision and it has filed an appeal at the Court of Appeal of Tanzania.

²⁸ Regulation 13(a)-(c) of the Non-Governmental Organizations (Amendments) Regulations No 609 of 2018.

²⁹ Legal and Human Rights Centre v. Minister of Health, Community Development, Gender Elderly and Children, the Registrar of NGOs and the Attorney General, Civil Appeal No 1 of 2021, Court of Appeal of Tanzania at Mbeya.

³⁰ Misc. Civil Cause No 01 of 2019 High Court of Tanzania at Mbeya.

Not only that the Ministry of Health in April 2020 published *Mwongozo wa Uratibu wa Mashirika Yasiyo ya Kiserikali Tanzania Bara* (The Guideline on the Coordination of Non-Governmental Organization in Tanzania Mainland).³¹ The Guideline claims that it is geared towards creating an enabling environment to NGOs, to strengthen transparency and accountability and cooperation in the implementation and coordination of NGOs between the Ministry responsible with NGOs, ministries, regional secretariats, Local Government Authorities, private sector and NGOs themselves in executing developmental activities. The Ministry of Health, Community Development, Gender, Elderly and Children is charged, among other things, with supervising the implementation of the National NGO Policy of 2001, the Non-Governmental Organizations Act No 24 of 2002, to supervise the coordination of NGOs activities in the country, to coordinate NGOs performance of NGOs activities and ensure that it becomes beneficial to the country and the society by adhering to national development priorities, to register and maintain a register of NGOs, to maintain the record and reports of NGOs; to review quarterly implementation reports of NGOs as well as annual audited reports of NGOs and to ensure that the grant contracts are submitted so as to engender the principle of transparency and accountability, among many others.³²

The Office of the President-Regional Administration and Local Government PO-RALG is charged with supervising NGOs performance at the level of regional secretariat and Local Government, to enable NGOs to discover development opportunities and priorities in the respective authorities so as to avoid the duplication of projects implementation in one area by the NGOs, and to submit the quarterly reports of NGOs performance to the Registrar of NGOs to mention but a few.³³

The Ministry of Finance is tasked with ensuring that funds received by NGOs for development projects implementation via grants agreements abide with GN No 609 of 2018 on financial transparency and accountability, to insert a special provision in all Bilateral Agreements (BAs) benefitting NGOs to mention the NGOs that are going to benefit under those agreements; to disclose the list of NGOs that are to benefit under the BAs at the time to signing them or after the completion of the competitive process of getting such NGOs and to submit the agreements to the Registrar of NGOs, to coordinate grant agreements that are beneficial to NGOs by keeping their records and seek the views of the Register before they are signed; and to put in place a system of coordinating philanthropy organizations that are obtaining funds for granting to other organizations.³⁴

Sector ministries on their part are required to ensure: that before they start working or partnering with an NGO, that NGO is registered and has a certificate of registration that is current; NGOs funds are spent on intended projects or interventions with positive impacts as per its objects; that the NGO implementation of its activities is in line with laws of the land; that before they sign an MOU with an NGO on the implementation of that NGO's activities they liaise with the Register of NGOs to obtain correct information about that NGO; to enable an NGO to obtain an introduction letter from the sector ministry; and to give reports to security and defense organs and the Registrar of NGOs whenever they discover activities or indications of the presence of activities by NGOs that are contrary to the law or those that might endanger national defense, prosperity and security.³⁵

2.2.3.2 Trusts

Section 10 of the Trustees Incorporation Act allows the trust to receive donation, gift or disposition of land in favor of the trust or through a trustee or trustees. Moreover, the trust is allowed to own movable and immovable property, stocks, funds and securities and in case those stocks, funds, and securities were held by a trustee or trustees before the trust was incorporated then they are obliged to transfer the same to the trust (section 9).

³¹ *Wizara ya Afya, Maendeleo ya Jamii Jinsia Wazee na Watoto* (April 2020).

³² *Id.* At pages 11-12.

³³ *Id.* At page 13.

³⁴ *Id.* At pages 13-14

³⁵ At pages 16-17.

Trusts upon their registration have the legal capacity to open and operate bank accounts through the signatories based on the type of association. However, bank opening and operation requirements are too demanding as bank will need (i) certificate of incorporation, (ii) license authorizing operation if any, (iii) Resolution of the Board or Trustees/Board Members authorizing such action (vi) Introduction letter from the Local Government Authority for confirmation of office location (v) Passport size photo for the signatories.

Operations of Bank account is subject to compliance principles devised by Bank of Tanzania which include monitoring the operations of such accounts. of which the CSOs are not free to operate under.

Sources of funds for the associations differs depending on the type of the association, during registration, the sources of income must be well stipulated in the constitution, however, major sources of fund for majority of associations are contribution from members, tithing for faith-based organization like churches, pledges, sponsorships, grants, aid, and capital campaigns.

2.2.3.3 The Companies Limited by Guarantee

The company by virtue of its incorporation and becoming a corporate body is free to raise funds and undertake its activities. The Companies Act requires all companies including companies limited by guarantee to keep books of accounts “which are sufficient to show and explain the company’s transactions and as such to: Disclose with reasonable accuracy at any time, the financial position of the company, at that time; and enable the directors to ensure that any balance sheet, profit and loss account and cash flow statement prepared under this Chapter complies with the requirements of this Act.”³⁶ The books of accounts are supposed to contain daily entries of all sums of money received and spent; sales and purchase of goods by the company; the assets and liabilities of the company.³⁷ The books of accounts are to be kept for six years from the date they were made.³⁸

2.2.3.4 Societies

Rule 3(1) of The Societies Rules require that every society that receives money from any source, whether by way of subscription, donation or otherwise, shall keep one or more books of accounts in which shall be entered details of all moneys received and payments made by it.

2.2.3.5 Tanganyika Law Society

According to Section 29 of the TLS Act, the Council (which is composed of President, Vice-President, a treasurer and eight other members elected in a general meeting) is charged with the obligations under Section 16 of the Act to cause proper accounts of all funds, property and assets of the Society to be kept, and to be audited, by an auditor approved by the Annual General Meeting from among auditors approved by the Minister for Finance. Reports of audited accounts are submitted to the Annual General Meeting and a copy of the report is submitted to the Minister for Justice and Minister for Finance within six weeks after the report is presented to the Annual General Meeting. In terms of Section 30 of the TLS Act, the Council, in the Annual General Meeting, presents to the Society an annual report of activities of the Society and it delivers a copy of the report to the Minister within six weeks after presenting it to the Annual General Meeting.

In Chapters in regions, financial affairs are controlled by the Audit Committee of the Council. A Chapter is subject to the financial control of the Council in accordance with the Financial Policy Manual of the Society. But Chapters maintain Chapter Accounts (Regulation 14). Chapter office bearers have a Code of Conduct supervised by the Council.

There is Tanganyika Law Society (Annual Subscription) Regulations made by Council pursuant to Section 31(2) of the TLS Act. The Regulations provide for annual subscription fee payable by each member of the

³⁶ See section 151 (1)(a)

³⁷ Id. Section 151 (2).

³⁸ Id. Section 151(4).

Society. The Society generates income mainly from fundraising by way of subscriptions by members, donations, financial aid from domestic and sometimes foreign donors or sponsors and organisations. Donations may attract tax as taxable income per Section 6 of the Income Tax Act. No subsidy is received from the Government, but the Government controls the activities of the Society. Recently, there have been excessive restrictions over financial assistance to the country and in this respect the Society has also been partly affected as it could not receive foreign aid or donations. However, according to the Audited Accounts Report, 2019, TLS also donated charitable donation to TAWLA a sum of 3,000,000/=; while in 2017 the Society donated 460,000/=.

2.2.3.6 Cooperative Societies

Funds of the cooperative society shall be as provided for by the Act and by-laws of the particular society. Every society must collect such funds and protect such funds. Funds of the society shall be used for the stated objects of the society (Regulation 61). By-laws state ways under which societies will raise funds through issuance of shares, levy, or by other means. Every cooperative society shall submit to the Registrar for his approval, income and expenditure. Society may receive loans (Regulations 62 and 64).

At least 20% or 1/5 of the gain or surplus from operations of the society in any financial year of the society is to be set aside in cash and carried to the Statutory Reserve Fund (Regulation 68). Revenue and funds of registered societies include monies derived from fees, or charges specified by the by-laws; monies derived from payment of membership subscription; monies derived from issuance of shares; revenues accruing to the registered society from deposits and loans from persons who are not members as per the by-laws; revenues accruing to registered society from savings and deposits by members; monies from sale of produce of society; money borrowed from lending institutions.

All revenues are paid into the general fund of the society (per Section 70 of the Act). Management of funds is under the authority of the Registrar and a society must maintain reserve fund. Registered society are not allowed to issue loans to a person other than a member, unless with approval of the Registrar. Section 74 of the Act allows the society to invest funds in interest deposit in a financial institution, in shares, in government bonds. Per section 76 of the Act, the by-laws must state the procedure of raising funds to finance activities of the registered society. Societies hold dividends and bonus but are largely exempt from tax. Registered societies may distribute funds as charitable funds, educational or medical fund under section 80 of the Act.

2.2.4 State/Government Oversight on CSOs and PSOs

CSOs are under considerable supervision of the Government. The oversight powers range from daily management, approval of grants agreements by the Registrar of NGOs, requiring the submissions of annual performance reports, audited reports, power to suspend or deregister an NGO to mention but a few.

2.2.4.1 Oversight on NGO

The NGO Act, for example, entrusts the Non-Governmental Organizations Coordination Board with the duty to facilitate the implementation of NGOs activities, to examine annual reports of NGOs, to provide guidelines for NGOs activities, to investigate if NGOs are adhering to their constitutions s7(1)(c),(g) and (l)). NGOs are supposed to submit their annual audited reports to the Council and the NGO Board. Moreover, as above. argued NGOs are supposed to submit their grants agreements for approval to the Registrar of NGOs and in case the NGO works in an area covered by a sector ministry, then it must obtain the letter of introduction from that sector ministry.

2.2.4.2 Oversight on Societies

The Societies Act empowers the Registrar of Societies to call for the performance of financial audit by an auditor approved by him.³⁹ He has power to demand from the Society information: "(a) a true and complete copy of the constitution and rules of such society in force at the date of such order; (b) a true and complete

³⁹ Section 22(1)-(2) of the Societies Act.

list of office-bearers and members of such society residing in Tanzania or present therein at the date of such order; (c) a true and complete return of the number of meetings held by such society in Tanzania within the period of six months immediately preceding such order, stating the place or places at which such meetings were held; (d) such accounts, returns and other information as may be prescribed.”⁴⁰ An order to that effect by the Registrar is binding upon official bearers of the society and failure to abide with it is a criminal offence (section 23 (1)&(2)).

Section 8 of the Societies Act empowers the President, in his absolute discretion to declare a society unlawful. Yet this is contrary to what the High Court of Tanzania decision in BAWATA’s case where it held:

Now looking at section 8, clearly the “absolute discretion” conferred on the President to declare “unlawful any society” is too wide and sweeping. There is no guideline but simply his opinion if he considers that the order should issue because it is “essential for public interest”. What should have been a guide is couched in wide terms pregnant with a possibility of abuse—if he thinks the society is being used for any purpose “prejudicial to”, or “incompatible with,” “the maintenance of peace, order and good government” (s.8(a)). His mind is the sole prosecutor and judge. The words “absolute discretion” includes situations where for personal interests or those of a particular group and necessarily of the general public, the President decides to exercise the powers. That aside, while not required to give reasons for action taken, the provision provides no avenue for questioning the Presidents’ acts whatsoever. It provides not even the faintest chance to be heard. This does not require any further exposition showing how the provision may be subject to abuse and clearly unconstitutional. (Emphasis in the original).

Moreover, the Registrar is given powers to deregister a society (s.17) but before he deregisters it he is required to give that society “an opportunity to submit reasons why the registration should not be cancelled.” The Registrar is also given powers to publish the information about the society for the benefits of its members or that he received when he requested the same (section 24). Similarly, the Registrar is given power to seek the permission of the Court to enter the meeting and business place of a society when he has reasonable suspicion that the society is being used “for purposes prejudicial to or incompatible with the maintenance of peace, order and good government or that any registered society or exempted society is being used or has been used or is about to be used for purposes at variance with its declared objects...”(section 31(1)).

Similarly, the meeting or the business place of the society may be entered and searched:

Where it is represented on oath or affidavit to a judge or magistrate that in fact or according to reasonable suspicion any place is or is about to be used as a place of meeting of an unlawful society or of persons who are members of an unlawful society or for the concealment, custody or deposit of any books, accounts, writings, lists of members, banners, seals, insignia, arms or other articles belonging to an unlawful society, such Judge or Magistrate may by warrant (called a search warrant) authorize the Registrar, an administrative officer or any police officer, not below the rank of Sub-Inspector, to enter with or without assistance and using force for that purpose if necessary, into and search such place and seize or cause to be seized all books, accounts, writings, lists of members, banners, seals, insignia, arms or other articles which he has reasonable cause to believe belong to any unlawful society or to be in any way connected therewith and to arrest or cause to be arrested any person found in such place or escaping therefrom. ⁴¹

Section 33 (1) of the Societies Act gives the Registrar power to summon witnesses when he is investigating an unlawful society, suspected unlawful society or as to the operations of any registered society or exempted society.

⁴⁰ Id. Section 21.

⁴¹ Section 32 (1) of the Societies Act.

2.2.4.3 Oversight on Trusts/Trustees

Section 14(1) empowers the Registrar General to investigate the activities of a trust if he is of the opinion that the property vested in the trustee are being misused. And in case the investigation so establishes section 14(2) provides:

(2) If as the result of investigation carried out in pursuance of subsection (1), the Registrar-General is of the opinion that the trust property has been used, or misused in circumstances which are prejudicial to the interests of members of the body corporate or organisation in respect of which the trustee has been incorporated, he may—

suspend or remove the trustee and any person found in use or misuse of such property;

- a) appoint a receiver and manager or the Public Trustee to take care of such property and run the day-to-day affairs of the body corporate or organisation for a period pending appointment of the new trustee or trustees;
- b) freeze the bank account of that body corporate or organisation;
- c) stop further action by the trustee or trustees in dealing with the property of the body corporate or organisation;
- d) refer the matter to a police officer of the rank of Inspector or above for further investigations with a view to taking further legal action in a court of law;
- e) pursue trustee or trustees who have committed breach of trust and to recover trust property or seek damages.

The Administrator General is given powers to monitor the meetings of the trust as well he is not to allow the change of names of the trustees unless he is satisfied that a lawful meeting that authorized the changes was held and that the meeting to elect new leaders of the trust or any person to fill the vacant position was monitored by government authorities (section 17(1)(a)-(b)).

Section 17(2) provides a mechanism of monitoring religious institutions and the same are supposed to be monitored by their respective supreme authority in accordance with their statutes, charter or instrument of that body corporate or organization. In case a trust changes its constitution or its rules and if those changes affect the powers of the trustees or their appointment, tenure of office or the trusts to which they are subject then a resolution to that effect must be communicated to the Registrar-General within one month. Section 20 (1) empowers the Registrar to call for duly audited reports of any trustee or trustees incorporated under the Act. Unlike the Societies Act duly audited accounts which have to be audited auditor authorized by the Registrar of Societies, here the duly audited accounts mean those audited by an approved or authorized auditor.⁴² A trustee or trustees upon being served a notice of giving information to the Registrar-General or a person appointed by him are duty bound to supply that information.⁴³

Section 23(a)-(e) gives the Administrator-General powers to deregister a trust if the trust has obtained its certificate of incorporation by fraud, or if within one month there no trustees making it a body corporate, or if he satisfied that trust has ceased to hold any trust property and it is highly unlikely that it will do so in the future; or it fails to fulfil any of the conditions prescribed in its certificate of incorporation or if the trusts is materially changed that it does not reflect the features of a trust. After the expiration of the period provided by him in the notice the Administrator-General may revoke the incorporation.⁴⁴ In addition, the Registrar-General is given powers to suspend or revoke the incorporation of any trust if that trust:

- a) is being used for unlawful purposes or for any purpose prejudicial to or incompatible with the maintenance of peace, order and good governance;
- b) (b) has altered its objects or pursues objects other than its declared objects; or

⁴² Section 20(2) of the Trustees Incorporation Act.

⁴³ Id. Section 20(4) and section 21(1).

⁴⁴ Id. Section 23(2).

- c) (c) has failed to comply with an order issued by the Registrar-General in pursuance of section 20 or 21 within the time stated in the order; or
- d) has breached in any way the trust.⁴⁵

The Registrar-General, however, is required to give the trustee or trustees a one-month opportunity for them to furnish him with “reasons why the revocation or suspension should not be affected.”⁴⁶

Section 25 requires the Administrator-General to keep records of applications for and certificates of incorporation, and preserve all documents sent to him under the provisions of this Act. And he is duty bound to avail to any person a copy or extract of any such document to be certified under his hand or of such other person appointed for that purpose.

Section 27 provides room for appeal against the refusal of the Administrator General to grant certificate of incorporation or to approve change of name, or any insertion in the certificate of incorporation or the revocation of the trust to the Minister responsible with legal affairs within twenty-one days.

2.2.4.4 Oversight on sports association and clubs

The Registrar has the mandate under section 19 and 20 of the Act to call for the details on audited accounts and returns of any sports association; undertake the inspection at any time. Violation of these demands may lead to cancellation of the sports association.

Cancellation or deregistration is at the discretion of the Registrar who may do so at his will whenever he feels that the provisions of the Act is violated or any affiliate association has contravened the law (section 16).

In short, most of the oversight that sports club undergo are like those for societies under the Societies Act as the provisions of the two Acts are somewhat similar.

2.2.4.5 Oversight on Tanganyika Law Society

Government control over activities of the Society is mainly through auditing of accounts by a government approved auditor, delivering of audited accounts to the Minister for Finance, and membership to the Council is subject to vetting by the Attorney General who doubles as member and oversight officer. Further, practising certificates and Identity Cards for all advocates are issued by the Judiciary. In fact, the identity cards of all advocates bear the government emblem and TLS logo. In the circumstances, both the Society and its members are not free from interference by the Government. There have occurred incidents where Government has attempted to get its most favorable members/candidates elected to be Presidents of the Society. This situation has caused unnecessary tensions between the Society and the Government. Government views membership to the Society as a trade union or somewhat a legal threat.

Numerous times, members of the Society have been subject of physical attacks by agents believed to be of the Government. Former President of the Society was attacked on 7 September 2017 in the day light at his residence and his successor had her licence suspended on unclear grounds (but her case is still pending in court and the Advocates Committee) and her law office was also petrol-bombed. Increasingly, members of the Society have been arrested, threatened and or enforcedly disappeared at the hands of state agents. Advocates face tough control mechanisms, including obligations to report to the FIU transactions considered or suspected to be money laundering, and to report to FIU all transactions involving USD 1000 amount. In this way, such legal compliance obligations work in conflict with advocates-clients privilege because it is unreasonable to make an advocate become an informant against his own clients. This would diminish the advocates’ capacity to deal with clients as some may avoid advocates in case their private and confidential matters or transactions are reported against their express consent.

⁴⁵ Id. Section 24(a)-(d).

⁴⁶ Id. Section 24(2).

Another way of exercising control over members of the Society is through unchecked powers of the judges and membership of the DPP, Attorney General and Principal Judge to the Advocates Committee which is tasked with disciplinary matters and through this way, advocates may be suspended or expelled from membership to the Society. However, internally, the members' disciplinary and ethical conduct is controlled by the Ethics Committee which is composed of members of the Society.

2.2.4.6 Oversight on Cooperative Societies

The Registrar may cancel registration under Regulation 26 if a society has failed to comply with terms and conditions of registration or has violated the laws and by-laws. However, if he intends to do so, he shall first give notice to the society of 90 days in the Gazette requiring that society to show cause why its registration should not be cancelled. After that, he shall cancel registration. Notice by Registrar shall state reasons for proposed cancellation, date of intended cancellation. Right of appeal against cancellation exists under Regulation 27 but it is only presumed that appeal lies with Minister responsible and it is clear decision of the Minister is not appealable as per Regulation 83(9). It must be noted that this provision does not prohibit the affected society from taking judicial review as a remedy in the High Court of Tanzania.

Regulation 23 provides for obligations to keep record of financial accounts, minutes of meetings, membership register, board members register, by laws, agreements and other records useful as may be directed by Registrar. Membership of a cooperative society is open to all persons with qualifications prescribed by the Act and the Bylaws and regulations (Regulation 28). Conditions as to restriction of double membership to societies is explained in Regulation 29. Matters of meetings are under Regulations 40-51. Annual financial statements are to be prepared pursuant to Regulation 52 including statement of comprehensive income, statement of financial position, cash flows, accounting policies and changes in equity. Accounts of every registered society are audited once every year.

Cooperative inspectors shall inspect cooperative societies under Regulation 73 and Section 92 of the Act. They inspect books of accounts, and do other things as provided by law. Registrar retains control over cooperative societies and he can issue orders to the Board of directors to remedy the shortcomings if the society is not performing well. Registrar may make period supervisory contacts with the societies (Regulation 75). Registrar may attend meetings of the Board of cooperative societies and make directives and may issue circulars in governance and management of societies. Under Regulation 82 Registrar may seize bank accounts of societies being misused. Per Regulation 89 breaches of code of conduct by leaders of cooperatives are handled by the Commission.

The Tanzania Cooperatives Development Commission is established by the Cooperative Societies Act 2013 under section 6 with functions stipulated in Section 8 of the Act as to register and deregister and inspect cooperative societies and to supervise performance of societies. Commission is led by Registrar who is Chief Executive Officer of the Commission responsible for operations of the Commission. Management of a registered society is vested in the Board of Directors as per Section 68 of the Act.

2.2.5 Engagement in Policy and Advocacy of CSOs and PSOs

CSOs like an individual person have the right to engage in policy and advocacy matters. Article 20(1) of the Tanzania states:

- (1) Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests. (Emphasis added)

So, by their very nature they are a result of individuals exercise the right peaceably assemble, associate and cooperate with other persons. Once formed then that association has a rightly to publicly their views for purposes of furthering the beliefs or interests of its members. CSOs are also entitled to freedom of expression

guaranteed by Article 18 of the Constitution. They are further empowered to take part in the decision-making processes affecting its members, their lives and the nation (Article 21(2)).

Moreover, CSOs like individual persons have the right to ensure that the Constitution of the United Republic of Tanzania and the laws of the country are respected by all. The High Court of Tanzania held so in the case of Legal and Human Rights Centre, Lawyers' Environmental Action Team and National Organization for Legal Assistance v. The Attorney General Misc. Civil Cause No 77 of 2005⁴⁷ where it overruled the objection by the Attorney General that the three CSOs were not persons within the meaning of Article 30(3) and as such they could not file the petition to challenge the constitutionality of the provision of the law that allowed takrima by politicians. It held:

There is nothing in Article 30 which confines the definition of a person to natural persons. As correctly submitted by the learned Advocates for the petitioners the definition of the term person in the Interpretation of Laws Act [Cap I R.E. 2002] includes corporate bodies like the petitioners.

In the case of Rev. Christopher Mtikila V Attorney General [1995] TLR 31 the Hon. Justice Lugakingira (as he then was) discussed at length the principle of locus standi and how locus standi is vested under our Constitution. It is vested in every person in the capacity of an individual by virtue of Articles 12 to 24 of the Constitution and in the capacity of a member of the Community by virtue of Article 25 to 28 of the Constitution. The petitioners are members of the Community who have constituted themselves to corporate bodies for purposes of carrying out human rights activities for the benefit of the community. It is the community which is the beneficiary of those activities. The nature of the activities for which the petitioners have constituted themselves is a determinant factor of their locus standi in the petition which they have filed. It is a public interest petition. We are therefore in all fours with Hon. Lugakingira J (as he then was) who observed in Rev. Christopher Mtikila Vs Attorney General 1995 (supra) that if a public spirited individual (and we add a corporation like the petitioners) springs up in search of the court's intervention against legislation or actions that pervert the Constitution, the court as guardian and trustee of the Constitution, must grant him (her/it) a standing. (Emphasized added)

Thus, by their very nature CSOs have the right to espouse their views and partake in policy making and advocacy. They are also having the right to take part in the governance of the country.

3. CONCLUSION

The right to associate, assemble and organize are guaranteed by the Tanzanian Constitution. CSOs have the right to take part in policy and advocacy activities and this is also constitutionally guaranteed. The regulatory regime however vests different government agencies or offices with power to regulate the affairs of CSOs. The 2019 Amendments of the Societies Act, Companies Act, the Trustees Incorporation Act, and the Non-Governmental Act severely restricted the freedom of CSOs to operate in the country. The hitherto definition of companies has been severely reduced as the Government forced many CSOs that were registered as companies limited by guarantee to cease being so and become NGOs. Yet, the NGOs face intrusive and micro management oversight from the Registrar of NGOs. The requirement that NGOs must submit their grant agreements to the Registrar of NGOs for approval is an unnecessary requirement that is geared at undermining NGOs from not carrying out their activities that sometimes might be for campaigns that are not liked by the Government.

CSOs are subject to taxation for income received as grants and donations unless they have charitable status certificates from the Commissioner General. The experience has shown that the application for charitable

⁴⁷ High Court of Tanzania at Dar es Salaam (Unreported).

status certificate are rarely attended to and granted. Thus, most CSOs in Tanzania operate without such certificates and in the eyes of the law they are not charitable organization.

The arena of operation for philanthropic organizations is a narrow one. The law does not encourage individual employees to donate to CSOs as it does not grant them with deductions. Moreover, philanthropic organizations are not guaranteed tax exemption for grants they make to CSOs.

4. RECOMMENDATIONS

- (a) The legal regime governing CSOs and PSOs in Tanzania is not friendly and needs to undergo major overhaul to enable the two to operate with more latitude without intrusive oversight by government;
- (b) A campaign to remind the Parliament about the decision of the High Court in Bawata case must be waged so that the provisions of the Societies Act that were declared unconstitutional are removed from it;
- (c) CSOs should be conferred with legal status upon their registration and should not be forced to apply for that status from the Commissioner General of TRA;
- (d) Donations and grants to CSOs should not be treated as income for taxation purposes and as they are not geared for profit but advancement of public interest;
- (e) The Income Tax Act should be amended and remove the requirement of CSOs to apply for charitable status from the Commissioner General of TRA;
- (f) Individual and business donations to CSOs should be tax exempt;
- (g) NGOs should not be required to submit their grant agreements to the Registrar of NGOs for approval nor should they be required to obtain the permission of district and regional authorities for project implementation rather they should be required to introduce their projects to those authorities for coordination and cooperation;
- (h) Powers of government bodies to suspend and deregister CSOs should be curtailed and vest those powers to the Court of law upon which respective government officials who have anything against the existence of a CSO must file an application against it before the High Court;
- (i) The amendment made to the Societies Act, Companies Act, the Non-Governmental Organizations Act, the Trustees Incorporation Act in 2019 should be reversed so as to allow CSOs to register and operate freely;

5. ANNEXES/APPENDICES

Annex-1: List of references Consulted

Articles and Books

- I. Dr. Fauz Twaib (2018). A Casebook of Tax Law of Tanzania (Vol.Two), lawAfrica (2018).
- II. Redempta Maira, Taxation of NGOs-why the fuss? <https://www.pwc.co.tz/press-room/taxation-of-ngos.html> last visited August 11 2021.
- III. Tanzanian Human Rights Defenders (2018). Legal and Policy Issues Affecting Civil Society Organizations in Tanzania Dar es Salaam.
- IV. Wizara ya Afya, Maendeleo ya Jamii Jinsia Wazee na Watoto (April 2020). Mwongozo wa Uratibu wa Mashirika Yasiyo ya Kiserikali Tanzania Bara.

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- I. Baraza la Wanawake Tanzania (BAWATA)& 5 Others v. Registrar of Societies & 2 Others Misc. Civil Cause No 27 of 1997 High Court of Tanzania at Dar es Salaam (Unreported).
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- III. MSPH Tanzania LLC v. the Commissioner General (TRA) Consolidated Tax Appeals No 327, 328, 329, 330, 335 &336 of 2019 Tax Revenue Appeals Board (Unreported).
- IV. Legal and Human Rights Centre, Lawyers' Environmental Action Team and National Organization for Legal Assistance V. The Attorney General Misc. Civil Cause No 77 of 2005 High Court of Tanzania at Dar es Salaam (Unreported)
- V. Legal and Human Rights Centre v. Minister of Health, Community Development, Gender Elderly and Children, the Registrar of NGOs and the Attorney General, Misc. Civil Cause No 01 of 2019 High Court of Tanzania at Mbeya (Unreported)
- VI. Legal and Human Rights Centre v. Minister of Health, Community Development, Gender Elderly and Children, the Registrar (Unreported)
- VII. Vodacom Foundation Ltd v. Commissioner General Tanzania Revenue Authority Tax Appeal No 11 of 2015 Tax Revenue Appeals Tribunal at Dar es Salaam.

Statutes and Regulations

- I. The Companies Act Cap 212 R.E. 2019
- II. Cooperative Societies Act
- III. The Income Tax Act Cap 332 R.E. 2019.
- IV. National Sports Council Act
- V. Non-Governmental Organizations Act No 24 of 2019
- VI. Tanganyika Law Societies Act Cap 307 R.E. 2019
- VII. Trustees Incorporation Act Cap 318 R.E. 2019.
- VIII. Written Laws (Miscellaneous Amendment) (No 2) Act No 11 of 2005.
- IX. The Non-Governmental Organizations (Amendments) Regulations No 609 of 2018.

X. The Vocational Educational and Training Act Cap 82 R.E. 2019.

Annex-2: List of persons Consulted

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|------------------------------|--------------------------------------|
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| 5. Daniel Welwel | Advocate/Partner Asyla Advocates |
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| 7. Jeremia Mtobesya | Partner/LawAge |
| 8. Mpale Mpoki | Partner Mpoki & Associates Advocates |
| 9. Fulgence Massawe | Advocate and Advocacy Manager LHRC |
| 10. Dr. Murungu Bhoke Chacha | Partner Mulungu Law Chambers |
| 11. Felix Ochieng Okombo | Advocate |
| 12. Dr. Stigmata Tenga | African Philanthropy Network (APN) |