

Assessment of Legal Foundations for the Establishment and Functioning of Civil Society Organisations in Tanzania

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Abstract

Civil Society Organisations (CSOs) seem to play an intelligible role in a sustainable world: From advocacy to empowerment, and service delivery to community building. However, there is an on-going debate on the establishment and functioning of CSOs in Tanzania especially when they show up for advocacy, which takes the form of counter-power actions and protests. Many nagging questions which dominate the debate include CSOs' establishment, functioning, and funding. This paper assesses legal foundations for the establishment and functioning of CSOs in Tanzania. The work focuses on a description of the laws which guide the existence and operations of CSOs in Tanzania. The study adopted a qualitative research design which employed qualitative approach in the identification of laws which support the establishment and shape the functioning of CSOs in Tanzania. The paper concludes that, despite observed political uncertainties, CSOs' establishment in Tanzania has legal foundations; and their functioning is legitimate regardless observed political discrepancies.

Keywords

CSOs, Advocacy, Legal Foundations, Political Discrepancies

1. Introduction

According to Seligman (1995), civil society is initially a realm where citizens associate according to their own interests and wishes. Civil society is seen in all associations between the family and the state; except political parties. Organizations and institutions which compose civil society sector include Non-Governmental

Organizations, community groups, research institutions, cooperative societies, think tanks, advocacy groups, academic institutions, parts of the media and faith based institutions.

Just like in all other countries, Tanzania has laws which govern the establishment and functioning of CSOs. While one can generally admit that CSOs have so far contributed to the efficiency in the provision of elementary services, the currently existing operational environment between the government and civil society has raised concern to all. With the growth of democracy, political theorists and/or analysts are starting to re-examine the relationship between CSOs and the State as a step to measuring the level of corruption in Tanzania (Rahman et al., 2019; ForDIA, 2011).

1.1. Problem Statement

Despite the positive impact of CSOs to the lives of people in Tanzania (Lange et al., 2000), the existence and operations of CSOs have created a threat to the functioning of the government of Tanzania (Constitution of the URT, Art. 30.1). CSOs advocate for agendas which oppose national or State's policies; or they simply support issues which the State does not share interest. The right for basic education to all children concept advocated by *HakiElimu* versus the fifth Tanzanian regime education policy can best illustrate this.

In turn, the State penalises CSOs for promoting policies which it does not share interest; this raises questions about legal foundations of the establishment and functioning of CSOs and the respect for fundamental human rights. According to Amnesty International (2017), Tanzanian government threatens right groups. Also, Africa Integrity Indicators score Tanzania a weak 37/100 under transparency and accountability in 2019; declining from 45 in 2017.

A study conducted by Haapanen concluded that legislation on the establishment and functioning of CSOs constitutes an urgent challenge ... (Haapanen, 2007). Despite the fact that the problem is more political than operational, in its effort to examine the existing reality, this study identifies laws which support the establishment and functioning of CSOs according to the constitution of the United Republic of Tanzania (URT constitution).

1.2. Objective of the Study

The objective of this study was to identify laws which support the establishment and shape the functioning of Civil Society Organisations according to the constitution of the United Republic of Tanzania.

2. Methodology

This study used literature survey method from professional journals for most recent studies from a wide-ranging array of scholars. Furthermore, the consultation of the constitution of the United Republic of Tanzania helped in the finding

of necessary data. The work involved qualitative research approach. Qualitative data analysis method includes factual and logical interpretation, comparison, and explanation of findings from data obtained. Thus, the researcher relied on descriptive, statistical, and logical inferences to explain patterns and preferences for easy interpretation of the findings for this study; figures and percentages were used to convey the findings of the analysis.

3. Results and Analysis

3.1. Results

This study found that the existence and functioning of CSOs is legitimate under the 1977 constitution of the United Republic of Tanzania. That articles 12 to 29 of the constitution support the establishment and functioning of CSOs in Tanzania. However, in some cases, according to the State, behind the motives of either service delivery, or advocacy which are the primary actions of CSOs (Salamon, 2010), there is a political tendency among CSOs to replace or negatively influence State's policies. This is where conflicts between CSOs and the State arise; and so many political quandaries dominate the scene. In this case, the constitution of the United Republic of Tanzania gives the State the right to protect individual and public interest (Constitution of the URT, Article 30.1). Thus, despite any observed irregularities in their functioning, CSOs function legally in Tanzania under the United Republic of Tanzania's Non-Governmental Act No. 24 of 2002.

3.2. Analysis

3.2.1. What a Civil Society Organisation (CSO) Is Not

A Civil Society Organisation should not be confused with neither:

- 1) The state (see political parties); nor
- 2) Private Sector.

It is therefore "a third sector" (Figure 1).

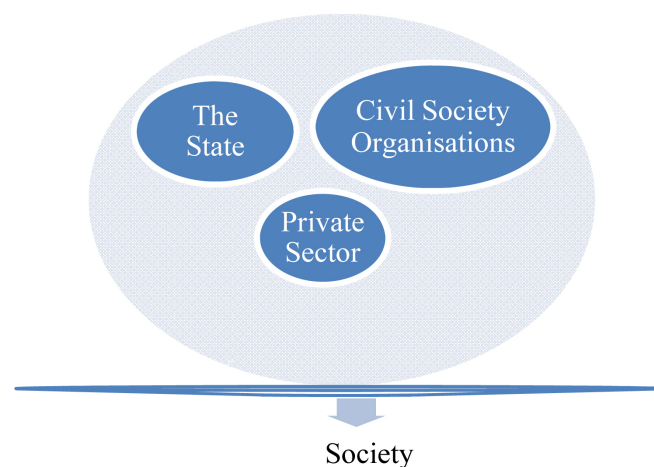


Figure 1. Functioning of all, the state, private sector, and CSOs. Source: Author's observation, 2022.

3.2.2. Legal Foundations of CSOs in Tanzania

According to the United Republic of Tanzania's Non-Governmental Act No. 24 of 2002, CSOs function legally in Tanzania after they have gained recognition by relevant authority through registration. Amongst other issues, CSOs deal with faith, capacity building, advocacy, and even trade.

The Constitution of the United Republic of Tanzania of 1977 (URT Constitution) contains a Bill of Rights and Duties (under Articles 12 to 29), which guarantee protection of a range of rights and responsibilities to everyone, including CSOs' actors and CSOs as legal entities. Some of the rights which are mostly relevant to the existence and operations of CSOs are freedom of association and assembly; and, right to information.

All human beings are born free, and are all equal. Every person is entitled to recognition and respect for his dignity (URT Constitution, Art. 12. 1 and 2). Whereas, 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 (URT Constitution, Art. 20.1).

3.2.3. NGOs and Their Affiliations

Lange et al. (2000) insightfully posit that in the last directory of Tanzanian NGOs published in 1995, the list shows 64 international and 749 local NGOs. The directory classifies the local NGOs according to their main activities:

- District Development Trusts-198
- Religious organizations-155 (...)
- Women groups-56 (...)

Registered faith based organisations for example, function under BAKWATA (Baraza Kuu la Waislam Tanzania/Muslims Council of Tanzania) for Muslims, or under TEC (Tanzania Episcopal Conference) for Christians-Roman Catholics, and CCT (Christian Council of Tanzania) for Christians-Protestants.

Despite the fact that their democratic quality usually creates conflicts between CSOs and the government, the legality of CSOs in Tanzania is protected under the law.

3.2.4. Political Quandaries between CSOs and Tanzanian Government Action

According to Haapanen (2007), foreign or international donors continue to have a substantial or even vital role in funding local CSOs in Tanzania. (...) about 90% are funded from foreign sources. This possibly influences the functioning of CSOs in Tanzania and the image they portray about the achievement of the government and the people of Tanzania. This is a potential threat to the freedom of an independent country like Tanzania:

The Government cannot legally support civil society organisations through subventions from the Treasury coffers. Consequently these organisations

are forced to rely on charitable donations, from external sources to fund their various social and development activities, thus making them dependant on donors, which threaten their own sustainability and freedom of action (EU Heads of Mission, 2017).

Misunderstanding crop up from matters which oppose the interests of the State especially the involvement of CSOs in political issues which the State does not share interests. Article 30.1 of the Constitution of the United Republic of Tanzania stipulates that the human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.

To some, such a law restricts and/or reduces the freedom of CSOs. Haapanen (2007) admits that legislation on the establishment and functioning of CSOs constitute an urgent challenge as there is a great need of a better and up-to-date legal framework that does not allow arbitrary control by the state (...). The most recent quandary between CSOs and the state is the *HakiElimu*'s opposing opinion on the fifth Tanzania administration's view to end normal school activities for pregnant school girls and the Alternative Pathway Theory.

While the government was determined to end school activities for good to all pregnant school girls in Tanzania and suggested access to vocational education for the victims as an alternative pathway, *HakiElimu*, a famous CSO stood to advocate for child's right to get proper education for all children in Tanzania, especially pregnant school girls. This caused an open discord between the government and *HakiElimu*. Mongula (2007) confesses, a research by *HakiElimu*, a renowned civil society organization engaged largely with education, exposed fundamental problems in the education sector ... much to the detest of the government.

4. Summary

Although in most aspects of life, CSOs should be understood as functioning independently of the State, the political aspect in growing nations requires that CSOs function as a State ally in preserving public interest (URT Constitution, Art. 30.2a-f). However, the funding of CSOs activities may create a challenge to this; as the government of Tanzania is generally unable to fund local CSOs. Obviously, foreign funding gives loopholes to external influence on the overall policies of local CSOs, which might threaten national integrity.

5. Conclusion

Despite observed quandaries in the functional relationship between Tanzania government and CSOs, the establishment and functioning of Civil Society in Tanzania are rooted in the constitution of the State. One open reality is that, CSOs have impacted lives of many in terms of service delivery, improvement of conditions of life, and the development of democracy in Tanzania (Lange et al.,

2000); but also, the government is trying to control external influence, as it struggles to preserve national interest (Constitution of the URT, Art. 30.1). In a liberal world, despite being determined to protect ethics and national interests, Tanzania government should ensure maximum protection of CSOs under the constitution and learn to coexist with views advocated for by CSOs for a sustainable nation.

The government should take its primary responsibility to maximally serve its population; this can reduce conditions which cause political interference by CSOs, hence giving no room to influencing donors' policies (Haapanen, 2007; EU Heads of Mission, 2017). Furthermore, there should not be any malicious attempts among CSOs actors and CSOs to change the functioning of CSOs into human rights activists movements; this calls for a thorough education to both, local and foreign stakeholders, and more specifically, local stakeholders which will enable them to understand donors' real intention as they try to decipher conditions and traps behind donors' policies. Finally, citizens should be provided with basic education on the functioning of CSOs and their operative limitations to avoid interference in public or national interests.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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