

THE FREEDOM OF ASSOCIATION IN TANZANIA

Implications for Civil Society and Sustainable Development

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ABOUT THE AUTHOR

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LAWYERS' ENVIRONMENTAL ACTION TEAM

The Lawyers' Environmental Action Team is the first public interest environmental law organization in Tanzania. It was established in 1994 and formally registered in 1995 under the Societies Ordinance. Its mission is to ensure sound natural resource management and environmental protection in Tanzania. It is also involved in issues related to the establishment of an enabling policy environment for civil society, including civil liberties and human rights. LEAT carries out policy research, advocacy, and selected public interest litigation. Its membership largely includes lawyers concerned with environmental management and democratic governance in Tanzania.

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BACKGROUND

A cornerstone of democratic governance and constitutional liberalism is the freedom of association. This freedom enables people who share similar interests to come together and form organizations that represent their interests and views. For example, the freedom of association allows for the formation of political parties, trade unions, cooperatives, and other non-governmental organizations (NGOs) and civil society organizations (CSOs). The freedom of association helps citizens to monitor the state, to ensure appropriate discharging of public functions, and to demand government compliance as articulated in legislation. In so doing, it helps ensure transparency and accountability. In addition, the freedom of association enables individuals and organizations with different views on public policy to come together and develop a strategy to voice their positions to government as well as to the public. In short, freedom of association enables the populace to be a participant in the day to day management of the country.

The implications for civil society and NGOs as well as their efforts to promote development, social equity, and environmental management are clear. On the one hand, effective advocacy is dependent on an enabling environment that provides important rights, including the freedoms of association, expression, and information. Without them, civil society has little political space and few opportunities to hold government accountable. On the other hand, sound environmental management is both a public interest-national and global-and, in Africa where most household economies are resource-dependent, also a private interest. Natural resources are valuable and a significant source of wealth. Shifts in ownership, use, and benefit-sharing have proven to be politically contentious and often conflictual. Indeed, addressing sound resource management is a good wedge issue to promote democratic governance and pluralism.

In Tanzania, the freedom of association is deemed by the government to be a privilege, not a right. Soon after Independence, a government campaign eradicated most formal civil organizations, especially those with dissenting views and opposing positions. In 1964, for example, the government banned independent trade unions and formed the National Union of Tanzanian Workers Association (NUTA), a state controlled trade union. In so doing, it essentially outlawed strikes and the right to advocate for fair wages. In 1968, it passed a law curtailing the activities of Cooperative Unions. In 1976, it dealt a devastating blow to the cooperative unions by outlawing them. In the absence of civil society organizations, the government enacted and pursued policies-often through a Presidential Decree or administrative fiat-some of which had profound and negative impacts on the well-being of most Tanzanians. For example, in 1973-75 the state resettled about 80 percent of the population in Ujamaa villages which resulted in famine and drastic reduction of crop production. To date, Tanzania has not recovered from the aftermath of this policy.

These and other restrictions forced most Tanzanians to be passive watchers of state-sponsored initiatives, many of which had negative consequences on their lives. Citizens were denied the right to be shapers and masters of their own destiny. The situation was complicated by the absence of a Bill of Rights in the country's Constitution. The government had consistently argued that a Bill of Rights was a political luxury that a poor country like Tanzania could not afford. It saw a Bill of Rights as an impediment to rapid social and economic development.

But after more than 20 years of independence, it became clear that the centralized government had failed to deliver promised economic prosperity to Tanzania. This led, among other efforts, to a backlash and intensified public demand for a Bill of Rights. Eventually and with a surprisingly restricted constitutional debate, a Bill of Rights was enshrined in the Constitution, vide Act No.16 of 1984. Tanzania's Bill of Rights, however, includes many exception clauses which subjects the rights enshrined in the Constitution to various pieces of legislation. By enacting a Bill of Rights with exception clauses the state hoped to curtail the powers of the judiciary to uphold and protect peoples' rights.

The freedom of association is provided by Article 20 of the Tanzanian Constitution subject to the "procedure provided by law." Thus, a citizen has to exercise this freedom in accordance with Parliament-enacted legislation. For example, political parties are regulated by the Political Parties Act of 1992; Trade Unions are governed by the Organization of Tanzania Trade Unions Act of 1991. Cooperative Unions are governed by yet another piece of legislation. NGOs and most civil society organization are governed by a very restrictive piece of legislation-the Societies Ordinance of 1954. This Ordinance was passed by the British colonial government in order to curtail the demand of independence by Africans. The independent government left this piece of legislation unamended when it assumed power. The Societies Ordinance restricts the activities of NGOs by demanding that they register to become legal organizations to operate in the country. It requires that any branch of an organization exceeding 10 members be registered as an independent society. And it requires NGOs to furnish the Registrar with audited financial statements of their financial dealings. Above all, the Registrar is given power to deregister any NGO whenever he or she deems fit. The requirements and the powers of the Registrar effectively restrict NGO activities, especially advocacy and independent monitoring of the state.

A NEW THREAT

The powers vested in the government to regulate NGOs have inhibited their meaningful contribution to the evolution and development of a transparent, accountable, and responsible governance system in Tanzania. NGO initiatives which generate citizen demand for important rights and greater roles in the governance of the country are deemed to be a threat to the government. Responsible NGOs are threatened and reminded by the government that it has the power to determine their institutional existence. For example, in mid-1996 the government decided to stop the registration of new NGOs saying it needed more time to review the activities of existing NGOs.

The current case of Baraza la Wanawake Tanzania/BAWATA (National Women Council), however, has put to the fore the danger that all NGOs in Tanzania face. BAWATA was formed in 1994 to unite women of all economic, social, and political backgrounds and to ensure gender equity in a multiparty, democratic Tanzania. In particular, with the advent of political pluralism, it was felt that women might lose rights without an organ to voice their common concerns and problems. BAWATA was registered in 1995 after an uphill battle of convincing the Registrar of Societies. Its early work-as articulated in its constitution-focused on issues, such as inheritance rights, the right to own land, and political representation of women in Parliament. Nevertheless, the government soon accused BAWATA of being a political party.

In September 1996, the government, without affording BAWATA a chance to be heard, decided to deregister the NGO. When the issue of failure of natural justice was raised, the government reversed itself and demanded that BAWATA amend its constitution and become a research institution. In March 1997, at a BAWATA General Meeting, BAWATA yielded and the organization's constitution was amended in accordance with government demands. Even so, the government went ahead to deregister BAWATA. In response, BAWATA went to the High Court to challenge the government's action and the constitutionality of the Societies Ordinance. The court issued an injunction against the state prohibiting the government from deregistering BAWATA until the government motion of lifting the injunction is heard in late November 1997.

BAWATA is represented by a leading constitutional lawyer in Tanzania, Issa G. Shivji, Professor of Law at the University of Dar es Salaam. Prof. Shivji, is widely known for chairing the Presidential Commission on Inquiry on Land Matters, which proposed major land tenure reforms to enhance citizens' rights and security over land. In a lengthy pleadings filed by Prof. Shivji, on behalf of BAWATA, it is argued that the government action of deregistering BAWATA is unconstitutional by violating Articles 13(6)(a), 18, and 20 providing for the right of fair hearing, expression, and association and assembly, respectively. The petition also alleges that the government of Tanzania is in violation of international human rights instruments, including the International Convention on Civil and Political Rights (ICCPR), the African Charter on Human Rights, and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). This case has important constitutional implications for the NGO community, including NGOs concerned with environmental management and sustainable development. In essence it will determine whether NGOs have a right to conduct their activities without undo government interferences.

Whatever the outcome of this case, the freedom of association in Tanzania has been seriously impaired by the government's actions against BAWATA. By intimidating BAWATA, a well-known and active NGO, the government is sending a message to all NGOs that they potentially can be deregistered at any time if they do not support government positions. This matter is further exemplified by the government's recent decision to establish a new department within the Vice-President's office to monitor and regulate the financial dealings of all NGOs. The government wants all NGOs to receive their funds from the donor community through this new department. Such procedures would further enable the government to control NGOs. Many NGOs have argued against such procedures but they were unable to stop the government from forming this department.

Regardless of whether or not the government wins or loses the BAWATA case, many Tanzanians expect the government to try to reform existing laws or pass new legislation giving it power to regulate the financial dealings of all NGOs, as well as the constitutional setup and objectives of every NGO. All NGOs would lose their independence, essentially putting an end to many activities such as advocacy and independent monitoring. It is expected that many NGOs would halt operations and simply cease to exist. All government actions would be difficult to resist or challenge because the populace would not be able to unite under the banner of civil society. The resultant effect would be that the

government will again have *carte blanche* to promulgate policies without public debate or scrutiny by the citizenry.

WHAT SHOULD BE DONE

To help ensure effective natural resources management, sustainable development, and good governance in Tanzania, there is a need to take proactive actions to protect the freedom of association and expression of civil societies. After the BAWATA decision (many professionals believe the court will rule in favor of BAWATA), it is expected that the government will introduce amendments that further restrict the freedoms and rights of NGOs and civil society to advocate and to monitor state activities. This concern is based on past experiences. Previously, after losing in court (or narrowly winning), the government amended the concerned law and, in some cases, even the Constitution to restrict citizen rights and ensure future victories. Thus, whichever way the court rules, the implications for the NGO community are significant and potentially severe. As such, the following five actions are recommended to protect the freedom of association in Tanzania.

NGOs, including human rights and public interest law groups, such as LEAT, should come together, perhaps by way of a workshop, to review existing aspects and interpretations of the freedom of association in Tanzania as well as current threats. Such a workshop will enable all NGOs to share their views and to develop strategies and actions to protect these and other important freedoms (i.e., expression, information, etc.). A consortium of individuals and organizations can be formed to lead a joint initiative, for example, to advocate amending (or repealing) the Societies Ordinance. Such a Consortium on Civil Liberties will be able to pinpoint the drawbacks in existing legislation and recommend amendments to ensure and enhance the role of NGOs in the governance and management of their country.

NGOs and the Consortium should also monitor the BAWATA case and prepare for follow-on activities. By monitoring the case, NGOs and the Consortium will be better able to interpret the court decision and identify any weaknesses in the judgment that infringe upon the freedom of association. Furthermore, the Consortium will be better positioned to confront any government effort to amend the law in manners that restrict the freedom of association contrary to the court's decision. In preparation, the Consortium can develop an NGO interpretation of the court decision as well as an interpretation of any draft bill the government introduces in Parliament to amend the Societies Ordinance. The Consortium could also prepare a brief detailing an ideal enabling environment for an active NGO community.

NGOs and the Consortium should consider addressing the larger issue of helping draft a new law that governs NGOs. This is important because the freedom of association is subject to the "procedure provided by law." One or more NGOs, such as LEAT, could take the lead to solicit public views and NGO positions, and to prepare language for such a law-or even draft the law-regarding important freedoms, rights, and responsibilities. The final draft could be presented to sympathetic Members of Parliament and/or tabled in Parliament as a private bill. This would be a milestone in the legislative history of Tanzania; for the first time, interest groups would be recognized by government for their capacity to draft legislation. Submitting a private bill might also encourage Members of Parliament to seek NGO views on other draft bills.

Related, NGOs, such as LEAT, should consider drafting a law providing for the freedom of public information. The absence of such a law has allowed government officials to disregard public demand for government-held information on state actions and decisions. Indeed, at present, government documents are protected by the National Security Act of 1970 which makes it an offence for any person to be found in possession of such documents. The freedom of information will help ensure transparency and accountability, and will improve governance by enabling the gathering of information and evidence on government performance, including costly corruption.

Finally, there is an urgent need for the development assistance community to voice its concern about the status and rights of NGOs in Tanzania, such as the newly established NGO department in the Office of the Vice-President and the attempt to deregister BAWATA. The donor community can do so in private and public meetings with the government as well as in its actions. For example, the donors could make such freedoms conditions on loans and other bi/multi-lateral foreign assistance. At the very least, donors should demand that all information related to programs and initiatives they fund be made available to the public. Similarly, the donor community should demand that NGOs not be harassed or intimidated by the government when they issue statements regarding the donor-funded programs.

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