



## **PRESS STATEMENT ON THE GUIDELINES FOR COORDINATION OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs)**

### **1.0. Introduction**

Tanzania Human Rights Defenders Coalition, which comprises a total of 200 member organizations in Tanzania, would like, on behalf of its members, to commend the Ministry of Health Community Development, Gender, Children and the Elderly, for issuing a guideline of coordinating Non-Governmental Organization. The Guidelines were issued on 17<sup>th</sup> of April 2020 through the media by Minister Umyy Mwalimu. The Coalition commends the Ministry for taking numerous efforts to ensure the Civil Society Sector thrives and serves Tanzanians with pride. The coalition has conducted a preliminary analysis of these Guidelines and identified positive aspects for the civil society sector in the country but also noted some challenges that will impede the growth of the sector as well as hindering the freedom of the civil society sector.

The purpose of this statement is to highlight several issues arising from a brief preliminary analysis of the Guideline for Co-ordination of the Non-Governmental Organization of Tanzania (NGO). This Guideline was published on 18 June 2020. The analysis of the NGO Guidelines is aimed at identifying better aspects and start to mobilize members of the THRDC coalition and other stakeholders of the CSO sector to comply with, to identify and take into consideration the challenges and make some recommendations for improvements of these Guidelines even though it was issued to CSOs as a final document.

### **2.0. Purpose of the Guidelines**

As presented in the introductory part, "Introduction to the Guidelines", the named Guidelines have been prepared to establish strong basis for collaboration and identify specific roles of the Ministry responsible, non-governmental organizations (NGOs), Ministries, Regional Secretariats, Local Government Authorities, Private Sector and NGOs in managing and

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coordinating numerous works performed by NGOs in the country. These Guidelines are also aimed at establishing effective coordination of the civil society organizations by explaining the manner in which various ministries will cooperate with the department responsible for the Registration of NGO.

Another objective is to tackle various challenges such as eliminating conflict of interest in implementing and coordinating various duties, getting rid of donor dependency syndrome among Non-Governmental Organizations, many Non-Governmental Organizations being located in urban areas, the importance of the non-governmental organizations discharging their duties and responsibilities based on principles of transparency and accountability, lack of expertise in project implementation, to provide insight into the interpretation of a Non-governmental Organizations Act as amended by Act No. 3 of 2019.

### **3.0. Beneficiaries of the Guidelines**

These Guidelines are intended to be used by the Ministry responsible for the coordination of NGOs, Ministries, Regional Secretariats, Local Government Authorities, Private Sector and Non-Governmental Organizations.

The Guidelines explain and insist on numerous issues contained in the Law and various NGOs Regulations, of which some organisations have already started to implement while others have failed to implement because the 2019 amendments suggested many things therein which needed some improvements.

### **4.0 Summary of good things and challenges of the Guidelines**

In short, these Guidelines broadly focus on the improvement of issues around transparency and accountability, coordination of the duties of the NGOs, through better mechanisms, involving the stakeholders dealing with coordination issues, to interpret various contentious issues in the amended NGO Act of 2019, and Amendments of the NGOs Regulations of 2018.

The Guidelines put in place a good coordination mechanism which will effectively resolve conflict of interest between ministries, and local government authorities. The Guidelines also facilitate the availability of information for the implementation of projects and to ensure that earmarked funds are spent in accordance with the intended objectives. The Guidelines also

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call for the NGOs to create sustainable project and avoid donor-dependency. They seek to harmonize the process of NGOs registration through a cost-effective electronic registration system that allows fast implementation of various duties.

These Guidelines introduces a special dispensation to acknowledge the role of the NGOs in the society towards national development.

Regarding some challenges, the NGOs sector was not entirely involved in the preparation of the Guidelines. The Guidelines impose many conditions which can hardly be met by the NGOs. The freedom of NGOs sector to run its affairs is constrained, narrow interpretation of the NGO concept along with its duties in the broadest sense are some of the challenges. NGOs seeking permits from the registrar of NGOs prior to the implementation of projects, the right to privacy has to a large extent be compromised, contrary to Article 16 of the Constitution, the requirement to present various documents in two different ministries under the same government, the NGOs financial freedom has also been curtailed contrary to international conventions, the guideline grossly violate the right to freedom of association and implementation of the people's objectives in an association in accordance with their wishes. The Guidelines require NGOs to present fundig agreements to the Registrar in order to give his/her opinion and authorize them before signing. These Guidelines embodies a narrow interpretation of the NGOs and see them all from a single angle ie. service delivery to the society. Under this interpretation and understanding, all NGOs working on issues of accountability, civic education, human rights and policy advocacy will have to go through tough times if these Guidelines are effectively enforced

#### **4.0. Good things from the NGO Guidelines**

Apart from the challenges, which we will explain in the fifth part of this statement, THRDC has identified several good things contained in the Guidelines that are crucial for the wellbeing of the NGOs Sector. Many such issues are also contained in the NGO policy dully prepared by members of the THRDC in 2018.

- First, these Guidelines will further strengthen principles of transparency and accountability through various amendments of the NGO rules of 2018, as well as the amendments of the Act Number 3 of the Non Governmental Organisation of

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2019. Presently, the NGOs have been operating under the existing legal requirements by presenting their contractual donors agreements to the registrar of NGOs, which among others things spells out who the financier is, amount of money received/spent, beneficiaries and purposes of spending the money. This issue is already bearing fruits in instilling transparency and accountability.

- Secondly, these Guidelines allow project beneficiaries to access information on respective projects being implemented by the NGOs in their localities, something that shows implemented projects and its corresponding monetary value, thus simplifies implementation of the projects for the benefit of the general public rather than suiting only selfish interests of an individual. This information will also help in creating a sense of transparency and accountability;
- Thirdly, the Guidelines encourage NGOs to create sustainable income-generating projects to help them meet their operational costs. This is a good thing because it helps the NGOs to generate own internal revenues thus avoiding depending on donor funding.
- Fourth, if these Guidelines are properly enforced, they will simplify the registration process and allow access to information through the electronic registration system, that allow electronic transmission of information and contracts. This will also help to ensure the information reach the intended parties quickly and cheaply.
- Fifth, these Guidelines also impose sectorial responsibilities that will help to promote inter-governmental cooperation with stakeholders in the NGO sector, strengthen the principles of transparency and accountability and enhance access to NGO information to other stakeholders in this sector.
- Sixth, after relentless calls by the THRDC and other stakeholders about the importance of recognizing the role of CSO, the Guidelines make it clear that there will be a statement in different Government reports and plans recognizing the role of NGOs. This arrangement will create a mechanism for analyzing donor funding agreements and identifying funding through various charities and projects funded through such agreements to identify the role of such organizations and their contribution to the national income;
- Seventh, these Guidelines act as a model for appointing Government Officers (Assistant Registrars) who will be performing their duties under the NGO Act and build capacity along with NGOs to improve performance in accordance with the laws, Regulations, procedures and national values.
- Eight, these Guidelines will enhance the effectiveness and accountability of NGOs and ensure the project funds reach the target and fulfill the intended objectives.
- Nine, these Guidelines will strengthen the management and coordination of Non-Governmental Organizations thus increasing the revenue collections accrued from the various fees the organisations pay each year. In addition, increased revenue

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will widen the scope for employment and various social services such as education, and health. If implemented with good intention, these Guidelines will further improve the relations between the office of the Registrar and NGOs.

- Ten, the THRDC would like to commend efforts made by the government to come up with these Guidelines given the fact that, they clarify some of the issues that were causing conflict of interests with other Ministries such as PMO-RALG, and some Local Government Offices.
- Also, these Guidelines have, in one way or another, clarified three guiding Regulations enacted in 2019 by the Ministry about transparency and accountability issues for NGOs. This clarification has brought a common understanding, which will to a large extent help increasing the ministry' coordination efficiency and the efficiency of the NGOs sector.
- In addition, these Guidelines will help create a conducive environment for NGOs, strengthen the cooperation in the operation and coordination of NGOs between Ministries and Non-Governmental Organizations, Ministries, Regional Secretariats, Local Government Authorities, and Private Sector in performing development activities. This is a good move, and if it is implemented with good will, it will bring change to the NGO sector.
- The basis of these Guidelines is to facilitate the implementation of the National Non-Governmental Organisations Policy of 2001. The policy directs the establishment of effective coordination mechanisms for NGOs at all levels to enable them to effectively participate in the National development agenda. Moreover, the Guidelines will simplify the implementation of the Non-Governmental Organizations Act No.24 of 2002 as amended by Act. No 11 of 2005 and Act No. 3 of 2019 together with other Regulations governing the NGOs as amended in 2018.
- Lastly, these Guidelines will also help eliminate conflict of interest and strengthen joint co-ordination of NGOs activities to ensure that the NGO sector is well coordinated and improved as well as curbing all actions that go against the law, regulations, and national values.
- THRDC commends the steps spelled out in the guidelines, such as allowing NGOs to own land, but the coalition recommends the amendment of Section 34 of the Act which confines the registration of NGOs to 10 years, which is contrary to the Land Act of 1999, which grants Certificates of title to civil society organizations or individuals for 33,66 or 99 years. If the certificate of title is granted for 99 years and the certificate of registration lasts for 10 years it will virtually be impossible to enforce such law.If an organization is identified as a “body corporate” then it must have perpetual succession that is, continuity, granting certificates of registration for only ten years will be an hindrance to enforcement of many things for example land ownership as well as running

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proceedings in the courts of law, as the legal personality of the Organization expires after 10 years unless the organization renews its certificate of registration.

- The Coalition is pleased that the Guidelines recognize the role of private sector in social development but it does not end with the requirement to ask private sectors to contribute to NGOs in absence of enabling laws. For instance, taxation laws that offer tax relief to private sectors granting contributions to NGOs. The Guidelines are silent on the dispensation for tax relief to NGOs.

### **5.0.Challenges of the NGO Guidelines**

Despite good efforts made by the Ministry to come up with these guidelines, the Tanzania Human Rights Defenders Coalition (THRDC) has identified some challenges embedded in various provisions of the guidelines as stated below;

- It is worth noting that in 2019, Legal and Human Rights Centre filed a case at the High Court of Tanzania: Mbeya Registry to challenge 2018 NGO Regulations published in Government Notice No. 609 in 19<sup>th</sup> October 2018. The case is still in progress. Thus drafting new guidelines that empower the enforcement of the 2018 Regulations, which technically is going against the Constitution is a continuation of suppressing NGOs right to operate freely by using Regulations, Policies and various Guidelines.
- Regarding involvement of NGOs in the drafting of the guidelines. Although these guidelines were made for the NGOs, there's nowhere in the guideline stating these important stakeholders had been involved in the drafting of the guidelines. The fact that these guidelines had been prepared singlehandedly, but without involving key stakeholders from the civil society organisations, raises many questions than answers and removes any goodwill in the drafting of the guidelines in the first place. "Nothing about us without us."
- These guidelines were drafted without considering a wider concept of the Civil Society Organizations and their responsibilities to the society. The guidelines are focused on service delivery organizations, and has left behind a large group of NGOs working in advocacy, legal aid, monitoring and protection of human rights. The guidelines do not suit the broad functions of all organisations, since it is based on a narrow interpretation of NGOs and their responsibility in the society. The guidelines will consequently, pose a threat to organizations dealing with advocacy, legal aid and

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those defending human rights, especially when they will be seen to offer unintended services.

- The guidelines will undermine the objectives of NGOs and purposes of their existence in Tanzania by compelling them all to render social services to the community such as water, schools, health and others. This initiative is contrary to the NGOs Act since the interpretation of NGOs entail all NGOs with the various responsibilities as seen here under;
- According to Section 29 of the Written Law Miscellaneous Amendments Act No. 3 of 2019, *“Non-Governmental Organization” also known by its acronym “NGO” and which includes Community Based Organization (CBO) means 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, lobbying or advocating on such issues.”*
- In the introductory part of the Guideline, section 1.2 on page 2, the document attempts, albeit in a narrow sense, to interpret the meaning of NGO. However, the THRDC is of the views that such interpretation is narrow in range and is contrary to the interpretation adumbrated in the NGOs Act No 3 of 2019. The interpretation made in the guidelines does not contain words such as “lobbying” or advocating on such issues” therefore, under such interpretation, the term NGO loses its meaning. Because of this narrow interpretation of NGO as presented in the Guideline, non government organisations will be required to perform duties with tangible results or service delivery hence losing the actual interpretation of Non-Governmental organizations.
- These guidelines go against the constitution and other international conventions on the freedom to seek funding in line with the organisations’ strategic action plans and the objectives. Example, the guidelines have set out standard procedures for coordinating organisations receiving funding from donors and distribute them to other

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local organisations. This procedure obliges organizations to present the contracts to the registrar so he can give his/her views before they are permitted. This is a deliberate meddling of the freedom of NGOs to make their plans and curtailing their freedom to seek funding for their projects to meet the objectives of the organisations. The registrar does not have enough qualified staff to analyse the ability to have an office with people capable of understanding and analyzing thousands of unsigned donor contracts before granting permits. The implementation of these Guidelines shall turn the registrar into a virtual Program Officer of all registered organizations. These Guidelines violates African Declaration on the Right to Association and Assembly whereas Article 38 of the said Declaration prohibits the act of the Government interfering with NGO funding.

- *“Associations shall be able to seek and receive funds from local private sources, the national state, foreign states, international organizations, transnational donors and other external entities. States shall not require associations to obtain authorization prior to receipt of funding”*

- *“The act of requiring each Organization to first submit contracts to the Registrar before entering onto any agreement with NGOs is an act of increasing bureaucracies in implementation of NGO works. This procedure will cause many Organizations to fail to implement their projects on time and increase operational costs to the organization.*

- Submitting quarterly and financial reports to the registrar of NGOs and the sectoral implementation plans to the Ministry responsible for monitoring the implementation of the organization is a great challenge as it will force many organizations to lose focus on their core mandate and instead deal with preparing of reports regularly and end up failing to implement their programs. Note that NGOs are already preparing multiple internal quarterly reports and donor reports. Also making financial report before auditing is a contravention of financial ethics.
- According to Regulation 13 (b) of GN 609 of 2018, Organizations receiving donor funding are required to submit the contracts to the Registrar of NGOs and the Ministry of Finance and planning. As of now, many NGOs have already begun

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submitting their contracts to the ministry instead of submitting the same to the registrar alone. It is imperative that the issue of communications related to contracts and funds remain with the registrar and the NGOs themselves.

- The guidelines require every CSO to heed to the plans and priorities set by the Government before making their work plans. This instruction shall be fit for those implementing projects such as construction of schools, dispensaries and other related works. Obliging CSOs to implement government projects is contrary to Article 20, which provides the freedom of creating an association among those with the same goal. This guideline will force NGOs to work on what they do not believe to be a problem.
- The Coalition sees that these guidelines have failed to address regulations of the Non-Governmental Organization Code of Conduct of 2018. These regulations from section 27 of the NGOS are already guiding NGOs on how to conduct their activities. The Coalition is of the views that if these Regulations were closely examined and improved, there would not be the need to have other guidelines.
- The Coalition recommends that, since the guidelines directly translate the conflicted provisions in Swahili, it is good that those provisions are amended by the parliament. Example paragraph 5 of Article 2.3 (I) of the Guidelines clearly state that an International Organization must have two local founders but Section 6 of the Act Amending Section 12 of NGOs Act states; “ two whom shall be residents of Tanzania” a resident is not necessarily a citizen, one may be a foreigner with a resident permit.
- In some places of these guidelines, elaborations of various regulations have been given example in page 7 paragraph (i) the Guidelines insist that Organizations should get permits to use respective funds. This matter has not been easy to implement since the 2019 Regulations were issued. As described by the Registrar’s report, there are more than Ten thousand organizations and granting every organization a permit for every contract will hinder the implementation of CSOs work. The Coalition

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recommends that the act of requiring organizations to inform the registrar of the funds they receive is enough to ensure transparency and accountability.

- The Coalition recommends that if the government wants to analyze the contribution of NGOs in improving the economy and income of the nation as provided in paragraph 2.6 (iii) of page 7 organizations must be involved. For example it is the organizations that are aware of the number of people they have employed, the taxes they pay and contributions they give to the government. Therefore, the coalition finds that this is not a task to be done by the registrar himself. Many times CSOs have been craving for the government's cooperation in the setting procedures to recognize the contribution of the organizations but such cooperation has always been lacking.
- Paragraph 3.4 of page 13 has proposed that Bilateral Agreements should contain a paragraph mentioning respective organizations that are to benefit from agreements. This may prompt donors to refrain from offering grants in this country as most of the times donors' funding are granted in a competitive process. This issue will eliminate the freedom of NGOs, cause them to refrain from being civil societies, and instead become governmental organizations, as everything will be per approval of the government.
- The requirement set under Regulation 13(b) of the NGO Regulation GN No. 609 of 2019, that an organization receiving a project worth 20 Million Tanzanian Shillings must seek permission from the registrar is also a challenge. Setting such requirement is meddling of internal operations of the organization and it is contrary to Article 16 of the Constitution on the right to privacy. In addition, the Registrar is given a whim to judge how much money an organization is required to receive.
- Requiring CSOs to comply with national laws especially those regulating the implementation of projects such as providing education in schools and conducting researches in the country by obtaining permits from respective authorities such as the National Bureau of Statistics (NBS) and the Tanzania Commission for Science and Technology is also a challenge. This suppresses the freedom of Organization in conducting research and releasing statistics on the research conducted.

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- All organization receiving grants from donor contracts under 20 Million are required to submit reports on the implemented projects to the Registrar, Regional secretariat, Local government authorities, beneficiaries of the projects and the Ministerial sectors responsible for the implementation of projects. The implementation is rather bureaucratic and unrealistic and may lead to deregistration of many organizations due to non-compliance with the new procedures.
- Organizations implementing sectorial projects for example in health, education, land, agriculture, environment, mining, water and other sectors are to ensure that they obtain permits from responsible authorities prior implementing such projects. The greatest challenge is the availability of permits, an organization may fail to implement certain projects due to being denied a permit and sometimes the delay is intentional.

## **6.0 Our Call/Recommendations**

- The guidelines should be amended to eliminate the ambiguities in it example the proper interpretation as provided in the law should be used without any omission or legal misinterpretation.
- The guidelines should recognize the interpretation of NGOs in its broadest sense and should be improved so that it ensures protection to all NGOs.
- The government should refrain from drafting laws or Policies without involving important stakeholders. Stakeholders especially NGOs and private sectors should be involved in such preparation as the guidelines is intended for them as main stakeholders.
- Some provisions of the Act should be amended so that these guidelines are made logical and therefore capable of being implemented, for example the provision limiting registration of NGOs to 10 years should be amended to comply with the requirements set under the law and ensure ownership of land as provided in the list of challenges mentioned.
- Financial contracts should be sent to the Registrar alone. In case the Ministry of Finance is in need of the contracts then it should contact the Registrar of CSOs to

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obtain the necessary documents. In addition, the contracts should be sent as reports and not for the sake of obtaining permits/approval. Requiring organizations to send report for the sake of obtaining permits amounts to interfering with the freedom of NGOs.

- The Guidelines should include a provision on the position of National Council of Non- Governmental Organizations in the entire process and indicate the observance of the Non-Governmental organizations Code of Conduct.
- The coalition recommends that the parliament should make amendments to some sections of the guidelines, which interpreted some provisions mired in ambiguity. Example Part 2.3 (ii) of page 5 which clearly state that an International Organization must have two local founders but Section 6 of the Act amending Section 12 of NGOs Act states; “two whom shall be residents of Tanzania” a resident is not necessarily a citizen, one may be a foreigner with a resident permit.
- The Government should create collaborative electronic system, which shall assist with the recording of tasks and contributions made by NGOs to the society from all levels of the society. This system could be used by deputy registrars all over the nation as well as those ministerial sectors to send information to the registrar of NGOs for the preparation of the report on the contribution of Costs. THRDC would also like to cooperate with the office of the registrar in implementing this task.
- The Office of the registrar should be close to NGOs so that they may familiarize with various works done by CSOs.
- The society and registrars should be educated on the concept of NGOs to eliminate the negative perception of Civil Society Organizations especially those addressing civic education, human rights, advocacy and accountability.
- On the assigning of kinds of tasks to organization as well as areas of operation, this can only be done for service delivery organizations since no one can build a school in a place where there is already one. Those organizations addressing advocacy and defending civil rights should not be subjected to such requirement as they are based on building principals of justice and good governance. In addition, those operating in

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urban areas are simply working in their headquarters since they operate all over the country. Many organizations are national or regional and operate throughout the country.

- CSOs should be left to freely operate according to section 20 of the Constitution of the United Republic of Tanzania. When the NGO is legally registered, it gets legal autonomy that shall not be interfered with.
- The guideline should consider customizing international conventions to which Tanzania is a signatory.

**Issued by:**

**Tanzania Human Rights Defenders Coalition**

**Dar es Salaam, Tanzania**

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