



Analysis of the Zambia NGO Bill 2009

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Introduction

CIVICUS: World Alliance for Citizen Participation is an international alliance based in South Africa. CIVICUS works with our members and partners in over 100 countries to support and strengthen civil society and citizen action around the world. CIVICUS works with diverse stakeholders to assist them in ensuring legislation and administrative practices related to civil society in compliance with best practice around the world.

Civil society is now internationally recognised and respected as a sector with legitimate roles to play in society, just as the government and the private sector have their own distinct roles to play. One such role of government is to promote and protect human rights, which includes ensuring space for civil society to act without hindrance. CIVICUS recognises the constitutional commitment of the Republic of Zambia to safeguard fundamental rights and freedoms including the right to freedom of association under Article 11 (b). This right is also guaranteed to the Zambian people under Article 22 of the International Covenant on Civil and Political Rights and Article 10 of the African Charter on Human and People's Rights ratified by Zambia.

In this context CIVICUS provides the following submission to the Government of Zambia in respect to the Zambia Non-Governmental Organisations Bill, 2009 (hereinafter referred as the "Bill") slated to be introduced in Parliament in mid July 2009.

Concerns Regarding the Non-Governmental Organisations Bill, 2009

The Bill imperils the freedom of association by creating a highly restrictive regulatory regime for non-governmental organisations (NGOs) that serves to impede rather than enable freedom of association. Some of the concerns raised by civil society organisations in respect to the earlier version of the Bill drafted in 2007 have been addressed in the 2009 version.¹ Nevertheless, key provisions of the Bill restrict the independence of NGOs and subject them to excessive and unwarranted controls. Significantly, the Bill creates an NGO Registration Board with an

¹ These include placing the regulatory mechanism for NGOs under the jurisdiction of the Ministry for Community Development and Social Welfare; a broader definition for NGOs that includes advocacy and human rights promotion as elements of their work; creation of a separate office of Registrar of NGOs; inclusion of more representatives of NGOs in the NGO Registration Board; equal gender representation on the NGO Board; and enhancing the standard for denial of registration to "public interest" as opposed to "national interest."

overreaching mandate, which is under the firm control of the Government. In sum, the Bill will severely limit civil society space and impede the activities of NGOs, which not only play an important role in democratic development and nation building, but also render invaluable support and services to the people of Zambia. The following are the main areas of concern:

1. Problematic registration procedures

The process of registration for civil society organisations should be swift and time-bound with well defined grounds for refusal of registration. Moreover, registration should be voluntary.

(i) Mandatory Registration

Contrary to international best practice, which dictates that the decision to register or not should be the prerogative of an organisation and not imposed, the Bill seeks to bring all NGOs within the official regulatory framework by mandating compulsory registration.² This requirement can have serious negative consequences for community based organisations, which may not have the capacity to perform various obligations such as submission of annual reports and accounts as mandated under the Bill.³

(ii) Undefined grounds to refuse registration

Although the Bill allows an organisation to begin its activities upon submitting an application for registration, no time limit is prescribed for processing the application. This could keep an NGO in a prolonged state of uncertainty, thus affecting its mid and long term plans.⁴ Additionally, registration can be denied on the basis that an NGOs' work is not in the "public interest," which is not defined in the Bill, allowing scope for the process to be determined in a subjective manner.⁵ An application for registration can also be rejected if the NGO Registration Board is satisfied with the recommendation of the NGO Council (an elected body of NGO representatives created under the Bill) that the application should not be approved.⁶ No grounds are prescribed for rejection of the application, which could unfairly prejudice the application submitted by persons who do not find favour with the NGO Council.

(iii) Unwarranted stipulations in the registration application

NGOs are required to specify in the registration application the administrative districts, divisions and locations where they plan to carryout proposed activities as well as all proposed sources of funding.⁷ Inclusion of these stipulations at the time of registration could seriously hamper future expansion plans and become a self imposed constraint on their activities.

² Section 10 (1) and (2)

³ Section 4 of the Bill defines an NGO as a "private voluntary grouping of individuals or associations, whether corporate or unincorporated, not established or operated for profit, partisan politics or any commercial purposes, and who or which have organised themselves for the promotion of civic education, advocacy, human rights, social welfare, development, charity, research or other activity or program for the benefit of the interest of the public, through resources mobilised from sources within or outside Zambia". Section 2 (1) states that the Bill does not apply to churches, clubs, political parties, professional groups or organisations, trade unions and religious organisations.

⁴ Section 11(2)

⁵ Section 15 (1) (a)

⁶ Section 15 (1) (d)

⁷ Section 10 (5) (d) &(f)

(iv) Re-registration at periodic intervals

By requiring NGOs to renew their registration every three years, the Bill ignores the principle of perpetual succession in the constitution of legal entities.⁸ The requirement to re-register not only imposes additional periodic bureaucratic hurdles for NGOs but also subjects them to a state of uncertainty regarding renewal of their registration which could act as a deterrent against expressing independent views on contentious political issues and thereby contribute meaningfully to public debates.

(v) Requirement for existing NGOs to re-apply for registration

All NGOs registered under the Societies Act or any other law are required to re-apply for registration under the Bill, which is not automatically transferred to the newly constituted office of the Registrar of NGOs.⁹ This provision practically negates the existing legal status of registered NGOs and also subjects them to an additional round of bureaucratic hurdles.

2. Excessive governmental control

Independence is an essential characteristic of the civil society sector. Best practice dictates that the role of government officials or regulatory bodies exercising oversight of civil society organisations should be facilitative, thus allowing minimal scope to interfere or influence their lawful activities.

(i) Overreaching functions of the NGO Registration Board

The Bill vests the government dominated NGO Registration Board with excessive powers that can seriously impact the independence of the sector. Three functions of the NGO Board are particularly problematic: (i) the power to approve the area of work carried out by NGOs, which allows the government to determine their thematic and geographic areas of functioning and exercise control over their affairs;¹⁰ (ii) the power to provide policy guidelines to harmonise the activities of NGOs with the national development plan, which co-opts NGOs into assisting in the fulfilment of the political priorities of the government as reflected in the plan;¹¹ (iii) the power to advise on strategies for efficient planning and coordination of activities of NGOs, which treats NGOs as government subsidiaries as opposed to independent entities free to formulate and execute their action plans in line with identified priorities.¹²

Furthermore, the NGO Board is required to approve the code of conduct adopted by the Congress of NGOs (a collective body of all NGOs created under the Bill) as well as ensure its consistency with the national development plan, which means it can influence the code of conduct and force NGOs to pursue or refrain from a particular course of action.¹³

(ii) Power of the Registrar to demand information within an undetermined time frame

Official control over NGOs is further reinforced through the obligation to furnish to the Registrar important details about the organisation including constitution and rules of the NGO, sources of

⁸ Section 14

⁹ Section 35 (2)

¹⁰ Section 7 (b)

¹¹ Section 7 (i)

¹² Section 7 (j)

¹³ Section 32 (3) & (5)

funding, list of office bearers, annual reports, accounts and other returns within a time period determined at the discretion of the Registrar.¹⁴ Non-inclusion of a minimum time frame to afford NGOs, reasonable opportunity to produce these documents some of which may not be readily available or updated, makes their officer bearers particularly vulnerable as failure to fulfil the Registrar's request in time constitutes an offence.¹⁵ Moreover, this provision could become a tool to harass NGOs critical of official actions and policies.

(iii) Broad grounds to suspend or cancel a certificate of registration

The Board has sweeping powers to prevent an NGO from carrying out its activities by suspending or cancelling the certificate of registration if (i) the NGO fails to submit its annual reports or accounts within the time frame determined by the Registrar, (ii) if the NGO or any of its office bearers contravenes any provision of the Bill or the code of conduct adopted by the NGO Congress or, (iii) if the NGO Council (elected by the NGO Congress) makes a recommendation this effect. Even a minor infraction can invite the heavy handed action of suspension or cancellation of the registration when imposition of a penalty could help deter the violation. Moreover, no distinction is made between first time and repeat offenders. Additionally, no grounds are prescribed on the basis of which the NGO Council can make a recommendation to the Board, leaving scope for the exercise of executive discretion.

3. Curbs on independence through forced self regulation and monitoring

Although civil society organisations should aspire for greater transparency and higher standards of conduct in their internal and external affairs to enhance their legitimacy and credibility, in the interests of safeguarding the independence of the sector, self regulatory initiatives and creation of representative bodies should be voluntary and not imposed through law.

(i) Forced adoption of a code of conduct

In contrast to established norms where umbrella bodies of NGOs adopt codes of conduct and invite their members to voluntarily adopt them, the Bill uses the law to force NGOs to submit to a code of conduct. The Bill obligates all NGOs registered under it to form a collective forum called the Zambia Congress of NGOs which is obligated to adopt a code of conduct for the whole sector.¹⁶ This provision is particularly problematic and can have serious consequences on the autonomy of the NGO sector because individual NGOs may not subscribe to majoritarian positions adopted by the NGO Congress.

(ii) Cooption of the NGO Council to control and monitor the NGO sector

The Bill further restricts the independence of individual NGOs by vesting in the 12 member NGO Council (elected by the NGO Congress), a broad and overreaching mandate to influence the affairs of their peers through the legal obligation to "facilitate" self regulation on a number of issues including activities, funding, programmes, foreign affiliations, training, development of national human resources, institution building, scientific and technical development and other matters taking into account national security and public interest needs.¹⁷ Additionally, the Council is expected to play a monitoring role over the activities of other NGOs as its functions

¹⁴ Section 26 (1)

¹⁵ Section 26 (2)

¹⁶ Section 29 (1) & Section 32 (2)

¹⁷ Section 32 (1)

include administration of the code of conduct as well as facilitation and coordination of the work of NGOs operating in Zambia.¹⁸

Conclusion

CIVICUS calls upon the Government of the Republic of Zambia to address the above-mentioned aspects of the NGO Bill 2009. Independence is a key feature of the civil society sector. As such any regulatory framework for NGOs must guarantee their autonomy and ability to independently formulate positions on matters of public policy and determine their spheres of activity. The NGO Bill 2009 in its present form prevents them from doing this.

¹⁸ Section 31 (a) & (b)