



**NANGO Submission on the NGO Bill to the
Parliamentary Portfolio Committee on Public
Service, Labour and Social Welfare,
7 September 2004.**

The NGO Bill that is expected to be tabled in Parliament soon seriously concerns the National Association of Non-Governmental Organizations (NANGO), representing over 1000 NGOs in Zimbabwe from different sectors that include health, children, gender, relief, poverty alleviation, environment, human rights, disability, HIV and AIDS and many others.

The Bill should not be passed into law in its current state because of its severe implications on operations, registration and funding options as well as negative impact on development issues.

NANGO therefore wishes to make the following submissions for consideration by Parliament.

Registration of NGOs

The Bill, among other issues on registration says that no non-governmental organization shall, commence or continue to carry on its activities; or seek financial assistance from any source; unless it has been registered; no person shall in any manner take part in the management or control of a non-governmental organization, knowing that the organization is not registered; no foreign NGO [any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe who are domiciled in Zimbabwe] shall be registered if its sole or principal objects involve or include issues of governance [**“issues of governance”** includes the promotion and protection of human rights and political governance issues and that every non-governmental organization, which is registered in terms of this Act, shall pay an annual registration fee as may be prescribed; and receive an annual registration certificate.

[The clause again because of the broad nature of the definition of an NGO would require registration of local boy scouts and girl scouts. There is therefore a need for a monetary threshold to be placed on the organizations to be registered. A reasonable threshold would be to require the organizations with at least an annual budget of over 200 hundred million to register.

The government has signed a number of international treaties that seek to deal with the protection and protection of human rights such as the AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS and the latest being SADC ELECTORAL PRINCIPLES AND GUIDELINES. This clause will definitely undermine government's commitments under these and international instruments.

A better approach would be to punish those organizations that are breaching known criminal offences instead of punishing the mere existence of bodies, which has among its objectives the issue of human rights. If one reads this with the generous interpretation of what is a foreign organization the section becomes very restrictive indeed.

To illustrate what we mean this clause would affect organization that deal with children's rights and HIV related matters because these deal with the right to health which is enshrined in the various international instruments to which Zimbabwe is signatory to.]

Recommendation

1. Removal of sub section (4) on registration of foreign NGOs that deal with issues of human Rights.
2. NGO Bill should guarantee efficient registration of NGOs by ensuring that the process is decentralized, an appropriate institutional framework is set up and there should not be stringent requirements such as annual registrations.
3. The role of the registrar is appreciated and that the role of the registrar can legitimately be delegated to government is accepted but NANGO feels that the functions of the registrar should be decentralized so that the office is also accessible to community based NGOs to reduce the cost of registration both in terms of time and money

Self regulation

Principle of self-regulation is practical and will be based on common interest such need for good governance, enabling environment and reputation. The principle therefore should be embedded in the proposed law through an independent body and not through the proposed Council. Self-regulation is practiced in Kenya and Tanzania

Extracts of the Tanzanian Act (Section 25)

25. (1) *There shall be established an umbrella Organization for Non Governmental Organizations to be known as the National Council for Non Governmental Organizations.*

(2) *The Council shall be a collective forum of Non Governmental Organizations for the purposes of co-ordination and networking of all Non Governmental Organizations operating in Mainland Tanzania.*

(3) *The Council shall be composed of thirty members as may be appointed by Non Governmental Organizations to represent their respective interests.*

(4) *No person, body of persons or a Non Governmental Organization shall, after the establishment of the Council, perform or claim to perform anything, which the Council is empowered or required to do under Act.*

TRANSITIONAL MECHANISMS

Section 32 of the NGO Bill says that every non-governmental organization which, immediately before the date of commencement of this Act was lawfully registered as a private voluntary organization under the repealed Act shall be deemed to be registered as a non-governmental organization under this Act. Section 9 of the Bill says that no non-governmental organization shall, commence or continue to carry on its activities; or seek financial assistance from any source unless it has been registered.

Recommendation

All organizations should be given a minimum of one year to regularize their position before they are deemed as operating illegally and therefore committing a criminal offense.

Governance of NGOs: NGO Council

The Bill says that there shall be established a council to be known as the Non-governmental Organizations Council composed of five NGO representatives appointed by the Minister, 9 representatives of government-from different ministries and the Registrar of NGOs as the ex-officio. The main functions of the Council shall, among other functions be to: - consider applications for registration, conduct investigations into the administration and activities of NGOs, formulate rules for registration, formulate a code of conduct for NGOs and to advise the Minister on matters arising out of the operation of the Act.

Comment

The view of NANGO is that there should be an independent regulatory council, which includes the principle of

- *Self regulation*
- *Self discipline*
- *Sectoral representation*
- *Mutual cooperation with the government*

Government representation in the council is desirable it must not be such that it overwhelms NGO sectoral representation as the case in the present bill

It would appear that while the government has made sure that the ministries that deal with NGOs are represented sector by sector it has

given a thump suck figure for NGO representation and has not matched the ministry representation with NGO sectoral representation.

The bill does not provide official recognition to the umbrella body of NGO leaving the council as a replacement to the NGO umbrella body which will reduce the ability of NGOs to self regulate and develop as independent bodies.

The minister can appoint a person from an organization that he deems appropriate and can go on to appoint a person who has not been appointed regardless of the fact that such a person is suitable to represent NGOs or not. The provisions above go against the best practices in the region

FOREIGN FUNDING

Section 2 says “foreign funding or donation” means any funding provided or donation made by—

- (a) A person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) A company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) Any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe who are domiciled in Zimbabwe.

Effect/ comment

Part C of the above section of the Bill makes Zimbabwean citizens outside Zimbabwe foreigners.

The formulation is too broad and must be narrowed altogether because the foreign interest must be predominant before an organization can be considered to be foreign.

Regional trends

Best practice seems to be in Malawi where a foreign organization is defined as follows;

“International NGO” means an institution for public benefit purposes, established under the laws of a country other than Malawi, or established under a treaty or convention and conducting some of or all its activities in Malawi;

Recommendation

- Permanent residents and citizens of Zimbabwe who are domiciled outside the country should not be classified as foreigners.
- **Proposed formulation;**
“Foreign funding or donatin” means any funding or donation made by---
 - (a) a person who is not a permanent resident or citizen of Zimbabwe;
 - (b) A company, which is not incorporated in Zimbabwe.

HUMAN RIGHTS WORK AND GOVERNANCE WORK

The Bill defines issues of governance (Section 2) to include the promotion and protection of human rights and political governance issues;

Effect

As highlighted earlier the issue of governance has been ill defined and leaves a lot of uncertainty in the NGO sector. The move to ban the funding in these areas only is going to reduce the capacity of NGOs to deal with a whole range of rights, which cover political, economic and social rights. There is nothing that can be gained from such an indiscriminate ban. Secondly by virtue of being involved in advocacy NGOs are inclined to delve into issues of governance for instance how Aids Funds are being managed and utilized.

Global discourse on development has now espoused a rights based approach to development work. This is in terms of social, economic, cultural, civil and political rights. We believe that this provision is going to lead to a shut down of the NGO sector in Zimbabwe as there is no local funding; neither does the bill make any provision for the creation of a local fundraising base

Regional trends

The move is without precedent in the region and can only serve to gain the other countries as all the aid that has been coming to this country is diverted to the other countries. The move flies in the face of the government's commitments under the various charters that it has acceded to and serves only to isolate the country further.

Recommendation

- 1. The clause must be removed. There is no need to use the NGO Act to deal with subversive activities or such activities that threaten state security. That is dealt with under POSA.*

Conclusion

Having noted the above, as NANGO we believe that enactment of such a Bill will do Zimbabwe more harm than good. It is our conviction as NGOs that given the current socio-economic situation in the country where 70-80% of the population is surviving below the poverty datum line and unemployment is hovering between 60-80%; where over one million children are orphans and where 25% of the population is infected by HIV/AIDS; the NGO sector is a safety net and hope for the nation. Unfortunately the Bill criminalizes a sector that is providing social safety nets to a lot of communities throughout the country. The Bill is hitting on the ordinary men, women and children who are beneficiaries of the services of NGO interventions.