



**Caritas**  
Zambia

# Analysis of the Non-Governmental (NGO)-Bill 2007





# **ANALYSIS OF THE NON - GOVERNMENTAL ORGANIZATIONS (NGO) BILL**

This paper is drafted with the purpose of analysing the substantive provisions of the draft Bill and their implications on Non-Governmental Organisations (NGOs) in Zambia.

From the on-set, it must be stated that the draft Bill does not reflect any objectivity and is a pro Government document which fails to reflect broad consensus on issues of a common concern among all stakeholders, the Government and Civil Society. The draft Bill provides useful insights on how little the Zambian Government has learnt from the lessons of Governments around the world that have attempted to legislate and regulate Non-Government Organisations.

The purpose of enacting this law according to Government is to:

- Provide for the registration and coordination of NGOs
- Establish the NGO Board and the Zambia Congress of Non Governmental Organisations
- Constitute the Council for NGOs and
- Enhance the transparency, accountability and performance of NGOs

From the above objects, it is clear that the reasoning behind the passing of the Bill by Government is for it to take a lead in the operations of NGOs so much that NGOs become in essence an extended wing of Government. The objects of registration and co-ordination of NGOs, the constitution of the Council and Congress of NGOs which are subject to the Minister controlled NGO Board far outweigh the Government public argument that the Bill's object is to enhance transparency, accountability and performance of NGOs. It is basic logic that the performance of anything [person] can never be enhanced by an Act [law] that threatens its very existence. Thus, the objects as set-forth in the Bill do not add anything of value to NGOs.

## **SECTION 2**

Section 2[1] provides for a list of organisations and/or institutions that are not affected by the act. These include churches, clubs political parties, professional groups or organisations, unions, religious organisations and such other organisations as the Minister may exclude by a statutory instrument.

### NOTE

**There is a problem in the narrowness of the exception for religious bodies to the extent they engage in activities that are not “confined to religious work.” The efforts of religious bodies to help the poor and those who are otherwise disadvantaged are generally regarded as charitable rather than religious activities. This definition will mean that most religious bodies will be required to register under the Draft Bill, which would violate the normal separation of church and state**

Section 2[2] of the Bill provides that the Minister may by statutory instrument extend the application of the Act to such other organisations as s/he may determine.

### NOTE

**Although this provision may be said to be good due to the flexibility of the law, it does not state the parameters within which the Minister needs to use in that respect. Can the Minister be faulted if he allows a pressure group of a political party to be registered under the Act?**

### SECTION 3

In section 3, there is a definition of an NGO. The definition alludes to NGOs as groupings that have organized themselves for the promotion of civic education, social welfare, development, charity or research.

### NOTE

**While the definition seems unambiguous and good at first sight, it is clear that there is a deliberate omission of the terms Human Rights and advocacy all in the hope of narrowing the establishment/operations of NGOs through the definition. The listed categories are by no means exhaustive and, in the absence of further purposes being prescribed, would not cover significant areas of not-for-profit activity, such as Human Rights and advocacy, science, art, culture, historic preservation etc.**

Further section 3 provides that the Registrar of NGOs and Societies will be the same person and appointed according to the Societies Act.

**NOTE**

**Whether this is a cost effective measure by the Government or not, it is critical to separate the two so that the Registrar under the NGO Act is established with the necessary institutional framework in order to bring about a degree of professionalism in his dealings with NGOs.**

**In addition to the above, there is a general feeling from reading Section 3 that the Societies Act is more of a *parent* law to the NGO Act. Therefore, the provisions of the Societies Act would always run paramount to those of the NGO Act insofar as the appointment of the Registrar as well as the discharge of his duties is concerned. Thus, the Registrar would perform his duties more in line with the *parent* Act, the Societies Act and not the NGO Act when it comes to issues concerning the work of NGOs.**

**According to Section 3 [2] of the Societies Act *“the Minister may from time to time give general or special directions to the Registrar as to the performance of his duties, and the Registrar shall comply with any such direction”*. Clearly, the essence of this provision is to allow for Government control in the operations and management of NGOs by providing for an office of a Registrar who operates on Ministerial directives.**

**SECTION 4**

Section 4[4] places the responsibility of providing secretarial and accounting services to the NGOs Board under the Ministry of Home Affairs. Thus, according to the Bill, the supervisor or overseer Government body of the NGO Act will be the Ministry of Home Affairs.

**NOTE**

**It is not in dispute that NGOs have taken a notable lead in the social development of this country through engagements in *“advocacy”, “social welfare”, “poverty eradication” “human rights”* and *“social justice”* among many others and any NGO law must take positive cognisance of this fact.**

**Thus, in order to best facilitate the work of NGOs, it is best that the NGOs be allowed to regulate themselves in the same manner as other professional bodies regulate themselves. There is no need for regulation to be by a government organ, which understands very little about the operations of the NGOs. NGOs have been incorporated with the aim of supplementing or**

**intervening in the areas where Government has failed to perform its role and government cannot thus be expected to be the regulator.**

**Therefore it must be emphasized that while regulation is important and that NGOs need some sort of regulation, there is strong exception for government regulation. Accordingly, self regulation by the NGOs must be promoted.**

## **SECTION 5**

Section 5 provides for the composition of the 10 person Non-Governmental Organisation Board. According to Section 5, there shall be six members from various ministries, the Registrar of Societies, two other members appointed by the minister at his discretion and two other members from the NGOs appointed by the Minister on recommendation of the Council. It even goes to give the minister powers to accept or reject any member of this board.

## **NOTE**

**We are of the view that what is needed is a body or board from amongst the NGOs to regulate their own conduct and not outsiders to regulate on matters that they know little about.**

**The section's spirit and language is fundamentally wrong and un-acceptable as all the 10 members of the Board will be Ministerial appointees. The danger is that such persons will never exercise independent judgment in their work and since the Minister is not bound to follow the advice of the Board, the issue of professionalism in the work of NGOs will be an illusion and narrow partisan stances will dominate the operations of the Board's work since the final say will lie with a partisan appointee, the Minister. This will be self defeating of the Act in many respects, but largely because the Act on one hand requires NGOs to be non-partisan but while on the other hand allows NGOs to be controlled by a highly partisan person, the Minister. If one relates this to section 6 [b] that proscribes that the Board shall regulate the work and area of work of NGOs and that the Board will be subject to the Minister's directives, then it easy to see the danger of the provision.**

## **SECTION 6**

Section 6[a] provides that the Board shall among its many functions, register NGOs in Zambia.

**NOTE**

**It is our considered view that this is basically aimed at allowing the Minister-controlled Board to be the final decider on the registration and de-registration of NGOs in Zambia. This provision has no place in a democratic state that we are striving to be.**

Section 6 [d] provides that the Board shall prescribe the rules and procedures for audit of the accounting of NGOs.

**NOTE**

**There is a failure by the Bill to provide for a qualified auditor or accountant to be part of the Board and thus, the authoritativeness of the Board in discharging this function will always be problematic.**

Further, section 6 [j] provides that the Board shall approve the Code of Conduct prepared by Council of NGOs.

**NOTE**

**What moral ground does the Bill foot its basis on when it provides or rather attempts to provide, under Part V that NGOs will be self regulating? Does self-regulation mean being subject to another authority or that Part V is an appeasement provision that does not add any meaningful value to NGOs?**

One of the functions that the Board would perform is that of providing policy guidelines to Non-Governmental Organisations for harmonizing their activities to the national development plan [See Section 6 (h)]. Further, Section 6 [i] provides that the Board would approve the reports of the NGO Council and advise on strategies for efficient planning and co-ordination of NGO's activities.

**NOTE**

**These functions to be performed by the Board are just a controlling mechanism that is aimed at curtailing the work of NGOs thereby hindering their vibrancy to the greater harm of the Zambian populace. It must be stated that NGOs know the so called national development plan and are not intellectually handicapped to fail to efficiently plan and coordinate their activities accordingly.**

### SECTION 8

Section 8 [2] provides that International NGOs shall not operate in Zambia unless registered under the Act. Accordingly, the same conditions in which local NGOs are supposed to be established and operate apply to international organisations. Thus, International NGOs will be affected by the narrow definition in section 2 and their establishment like local NGOs will ultimately lie with the Minister.

Under the Draft Bill in Sections 8[3], 23[2], 24[2] and 34[1] individuals could be imprisoned for such offenses as misrepresenting that he is associated with an NGO or raising funds for an unregistered NGO.

### NOTE

**Imprisonment is an inappropriate penalty to impose for violations of a civil law such as this. Fines are appropriate; to deal with such offences as it is not necessary to impose criminal penalties in an entirely civil law whose intention is to regulate operations.**

### SECTION 9

Section 9[c] provides that an application for registration must also specify the sections of proposed operations while Section 9 [d] provides that a prospective NGO must specify the area/s of operations of its activities.

### NOTE

**In essence, these provisions seek to restrict the work of NGOs by requiring them to first state at registration where they will operate from, so that the same can be a ground for refusing to register an NGO or de-registering it. And this is particularly important when one considers that certain NGOs especially those working in the area of civic education, human rights or advocacy always pose a challenge to the ruling class and as such would want to keep NGOs away from areas where they feel they have some popularity. Further, due to the kind of work that NGOs are involved in, this section is not practical as NGO work is ongoing and different funding agencies for instance come and go depending on the intervention that that an NGO intends to make at that time. Activities too will differ depending on matters of interventions and the needs that arise e.g. natural disasters like floods famine etc.**

Section 9 [g] provides that in the application for registration, the NGO shall specify the sources of funding for the organisation to the Registrar. This therefore is a prerequisite for registering an NGO.

**NOTE**

**According to the Act, the Registrar has been given wide powers. Thus if the Registrar or Minister does not like a particular funding agency, then he has the authority under the Act to refuse the registration of that particular NGO or to deregister the NGO.**

**SECTION 11**

Section 11[2] seems to be an extension of the provisions of Section 9 in that it also provides for the registration and issuance of a certificate of registration. It further provides that such certificate will show proof of authority for an NGO to operate either throughout the country or in a particular location.

Section 11[3] provides that an NGO shall, by virtue of registration be body corporate with perpetual succession capable in its name of suing and being sued, taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property, entering into contracts and doing or performing all such other things or acts necessary for the proper performance of its functions under the Act.

**NOTE**

**This provision is very progressive as it allows the NGOs to operate independently without any restrictions.**

**SECTION 12**

Section 12 of the Bill provides that a Certificate of Registration shall unless cancelled, be issued to any registered NGO and would be valid for a period of three years from the date of issue.

**NOTE**

**This provision is difficult to reconcile with section 11 [3], which provides that an NGO established under the Act would have perpetual succession. The term perpetual succession means that it is not defined by various intervals such as a period of three years as is being suggested in section 12 of the Bill. There is therefore a conflict in the provisions of Sections 11[3] and 12.**

**In addition, how has government arrived at the three years that has been proposed in the Draft Bill? How can an NGO be assured of continued funding if it has such a short and specific life span? In addition what happens to NGOs with multiple funding agencies that fund different projects at different times? This clause is not practical at all.**

### **SECTION 13**

Section 13 [1] [a] gives power to the Board to reject an application for registration of an NGO if its proposed activities are not in the national interest.

#### **NOTE**

**There is however, no definition of the term “national interest” and thus, this leaves a lot of room for arbitrary exercise of power by the Board.**

### **SECTION 16**

Section 16 2[b] provides that the Board can reject an application by an NGO for a duplicate Certificate of Registration where such was lost.

#### **NOTE**

**Why should the issuance of duplicate Certificates be an issue when it is proven and sworn that the original certificate is lost and diligent searches have been done to locate it. This provision has the unfortunate factor of trying to give the Government the slightest of reasons to de-register an NGO on grounds that it does not have a certificate of Registration.**

### **SECTION 24**

Section 24 [1] provides that the Registrar may request any NGO to furnish him details concerning the NGO within such period as the Registrar may determine.

#### **NOTE**

**Accordingly, it is within the Registrar’s discretion to give an NGO a day to publish such details, which may include its quarterly and annual reports or such accounts, returns and other information as the Minister may by statutory instrument prescribe.**

Section 24 [2] provides that personnel in the NGO shall be criminally liable for failure to provide the Registrar with information he/she may request pursuant to Section 24[1].

**NOTE**

**This provision is very draconian and is against the spirit in modern administrative law where the trend is to minimize the latitude of discretionary powers among public officers.**

**It is also noteworthy that there is a deliberate failure to prescribe for criminal liability on the part of public officers [See the schedule in Section 8 which gives immunity to public officers and provides for the opposite for NGO personal in section 7] whose actions or omissions may run counter to the provisions of the NGO Act. The Act ought to repose a high sense of professionalism of equal measure in both public officers as well as NGO personal. [See Sections 34 (1)].**

**SECTION 27**

Part V of the Bill provides for the self-regulation of NGOs. Section 27 provides for the creation of the Zambia Congress of Non-Governmental Organisations, which according to draft Bill shall be a collective forum of all organisations registered under the NGO Act.

**SECTION 28 AND 29**

Section 28 of the Bill proceeds to establish the Council of NGOs which shall be responsible for the management and control of the affairs of the Congress. The functions of the Council are provided for in Section 29 and they include developing, adopting and administering the code of conduct of the NGOs, facilitating and coordinating the work of NGOs.

**NOTE**

**The provision in Section 29 is very problematic as it is in direct conflict with the provisions of Section 11 [3] [a] wherein an NGO is defined as an independent and separate entity capable of suing or be sued. It is difficult to comprehend why the Council must be tasked with the duty of controlling the activities of independent entities?**

**SECTION 30**

Section 30 provides for the code of conduct of NGOs. It provides in Section 30[1] that the Council shall facilitate the self-regulation by the NGOs on matters of activities, funding programmes, foreign affiliations etc taking into account the national security and national interest.

### NOTE

**It is difficult to envisage what possible national security concerns the work of NGOs would pose to Zambia and the Bill fails to give guidelines as to what those national security concerns. In the same vein, the Bill fails to define what national interest is. The whole concept of national interest is subjective.**

Section 30[2] provides for the adoption of the code of conduct at a meeting of the congress attended by not less than two thirds of the registered organisations. However this process is watered down by Section 30[3], which requires the Code of Conduct to be approved by the Board.

### NOTE

**It is important to state that the substantive power of NGOs existence in Zambia according to this Bill rests with the Minister through the Board. Thus, the self-regulation under this Part is just an appeasement provision. A careful study of this part reveals that the NGO Congress and Council that have been proposed would only play a perfunctory advisory role to the Board [See Sections 6 (g) (h) (i) (j) and Sections 30 (3) (4)] and which Board also plays a similar role to the Minister. Thus, the self-regulation being talked about here is totally absent. See sections 30[3] and [4]. This assertion is more apparent when one compares the above section with Section 35, which allows the Minister by way of a statutory instrument to make regulations for “better carrying out of the provisions of the Act”.**

### SECTION 33

Sections 33 [1] and [2] provides that all NGOs that are currently registered under the Societies Act must apply for registration under the NGO Act and are given three months to do so.

### NOTE

**This to all intents and purposes is a provision that is aimed at “punishing” those NGOs that are labelled as “noisy” by the Government. And this fact is very true if one considers the fact that registration is not an automatic thing.**

### SECTION 35

Section 35[1] gives power to the Minister by Statutory Instrument to make regulations that are deemed to be for “better carrying out of the provisions of

the Act. The areas where these regulations may be made are covered in Section 35 [2], which provides under subsection [a] that the Minister may determine the proportion of funds of an NGO to be used in its administration.

**NOTE**

**This provision grants the Minister the power to intervene directly into the administration of NGOs and thus compromising on their independence and further gives the Minister enough room to chart the operational areas of NGOs. It is incomprehensible that a Minister, who has not funded the operations of the NGOs either by himself or through his government, should be expected to control how these funds should be used. This provision is not meant to enhance any transparency or accountability but rather is an attempt to curtail the operations of NGOs by the Government. Where is the self-regulation that the Bill hopes to achieve in its Part V?**

Further in subsection [b], the Minister is empowered to set the terms and conditions for the importation and use of any equipment required by an NGO for its activities.

**NOTE**

**According to subsection [b], if an NGO wants to import a vehicle or computer, the Minister ought to set the terms and conditions on its importation and use. If NGOs are legal persons as provided for in section 11, don't they have the same rights to own property or chattels like all other legal persons such as natural and corporate persons do? This provision has been made in very bad spirit and is just an attempt to curtail the operations of NGOs. Why should property that NGOs acquire be subject to Ministerial prescriptions on its use?**

Section 35 [2] [d] and [f] provides that the Minister may make provisions for the format of reports of activities to be submitted by NGOs and for the submissions relating to the assets and liabilities as well as the income and expenditure of NGOs respectively. Section 35[2][g] provides for the regulations relating to submission of annual and other periodical returns relating to the constitution, objects, membership and management on registered NGOs while 35[2][h] provides for the terms and procedure for the NGOs.

### **CONCLUSION**

A combined reading of sections: 2[2], 35 [a] [b] [d] [f] [g] [j] and [j] clearly shows that the sole power of establishing and running the administrative aspects of NGOs is vested in the Minister who in his wisdom and discretion may make such changes as he may deem fit. This prescription in any law and in particular in the NGO Act is again against the spirit and trend of modern Constitutional and administrative law, which is to minimize the latitude of discretionary powers among public office bearers. Additionally, these provisions grant the Minister with enough room to apply the law selectively so that NGOs that are pro-government have it easy. The wording of the Bill does not reflect any desire on the part of the drafters to have an NGO Bill that gives power for self-regulation and neither does it give any autonomy to the NGOs.

The provisions highlighted above are essentially aimed at bringing a sense of fear into NGOs and not so much to curb and regulate financial irregularities. The Bill attempts to interfere with the internal administrative affairs of the NGOs. The Bill does not in anyway bring about any sense of transparency or accountability in the running of NGOs but rather brings a sense of control and interference.

In a nutshell, the Bill is an attempt to create a Board whose primary duty is to police NGOs through close monitoring of their activities and not to play a facilitative role in the operations of NGOs.



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