



WORLD MOVEMENT *for* DEMOCRACY

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Defending Civil Society

*Report on Laws and Regulations
Governing Civil Society Organizations
in
Liberia*

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I. PROVISIONS OF THE GENERAL LAWS

General Framework

The Legal System in Liberia is a dual one of statutory law based on Anglo-American common law for the modern sector, and customary law based on unwritten practices for the indigenous people.

The primary sources of law in Liberia are:

- The Constitution
- Legislation
- Statutes
- Customary Law
- Court Precedents

Liberia is a unitary state with three branches of government: the Executive branch headed by the President; the bicameral national Legislature consisting of the House of Senate headed by the President Pro-Tempore and the House of Representative headed by a Speaker; and the Judiciary, headed by the Chief Justice. The country is divided into 15 sub-political divisions called counties. The laws are applicable throughout the country.

There is a shortage of legal materials as a consequence of the civil conflict. In the late 1990s, attempts were made to reprint all the volumes contained in the Liberian Code of Laws. Copies were distributed to major institutions and other stakeholders, but there is still a shortage of these legal documents.

Legislation that was passed in recent years, particularly that dealing with gender issues, is being simplified and distributed by women's groups to ensure that it is accessible.

In relation to legislation dealing with civil society organizations (CSOs), most individuals and organizations rely on the services of lawyers to process articles of incorporation, etc. Copies of the National Policy on Non-Governmental Organizations (NGOs) have not been sufficiently distributed.

General Constitutional Framework

Article 15 of the Constitution provides for freedom of expression; the right to hold opinions without interference; freedom of speech and of the press; academic freedom to receive and impart knowledge; the right to non-interference with the use of the mail; telephone and telegraph; and the right of the public to be informed about the functions of government.

Article 17 of the Constitution guarantees the right to assemble and the right of association as follows: "All persons at all times, in an orderly and peaceable manner, shall have the right to assemble and consult upon the common good, to instruct their representatives, to petition the government or other functionaries for the redress of grievances, and to associate fully with others, or refuse to associate, in political parties, trade unions and other organizations."

These rights shall not be curtailed, restricted, or enjoined by the government save during an emergency declared in accordance with the Constitution.

These freedoms may be limited only by judicial action, either on grounds of defamation, invasion of the rights to privacy and publicity or the commercial use of expression for deception, false advertising, or copyright infringement.

Types of Organizations

The basic types of civil society organizations in Liberia are:

1. Not-for-profit organizations (NPOs) – formalized CSOs legally incorporated with the Ministry of Foreign Affairs under the Associations Law of Liberia. This category includes a wide range of organizations, including human rights and prodemocracy organizations, professional associations, youth and women’s groups, development NGOs, umbrella coalitions and networks, and other interest groups.
2. Unincorporated Associations –bodies of individuals acting together for the promotion of a common enterprise without a corporate charter. Instead, these common enterprises are expressed in bylaws regulating the conduct of the association, and express its purpose and the governing relations of members among themselves and to the association in the absence of a statute. This category covers many community based organizations (CBOs); grassroots organizations, particularly in rural communities; self help groups; and neighborhood welfare organizations.
3. Cooperative Societies – registered if their purpose is the promotion of the economic interests of their members in accordance with cooperative principles. The membership must be composed of at least 10 persons over 18 years of age or at least two registered societies. Cooperatives are registered with the Ministry of Agriculture.
4. Trade and labor unions are registered with the Ministry of Labor.

II. Establishment and Registration

Purposes

There are two main categories of CSOs in Liberia – mutual benefit organizations and public benefit organizations.

Mutual benefit organizations are organizations whose purpose is to help their members. The members of the organization are the beneficiaries, and the organization is accountable to them. Examples of such organizations are community based organizations, employment related associations, cooperatives, religious groups, and people’s organizations representing a variety of interests.

The purpose of public benefit organizations is to help specifically identified groups of people or the general population. The beneficiaries of these organizations are not directly the members of the organization itself. The organization is not necessarily accountable to those that it plans to help, but is accountable to itself.

The two key groupings under this category are civic organizations and development and welfare CSOs. Civic organizations are mainly watchdog organizations set up to monitor the status of democracy, to encourage greater use of democratic practices among citizens, and to advocate and lobby on specific issues connected to democracy, such as human rights. Such organizations are often very vocal, and because of the high profile of this kind of work are seen by the public and by government to represent the NGO sector, even if they are only working on one issue.

Development and welfare CSOs can work in a variety of roles, none of which are exclusive:

1. *Implementing*: the main work is carrying out grassroots activities. They are usually organized on a “project” basis, which means a limited time period with a prepared budget. This usually aligns with the administrative convenience of the donor;
2. *Advocacy*: the main work is trying to change public policy with regard to a given issue;
3. *Networking*: the primary role is coordinating work with others in a particular sector;
4. *Research CSO*: the primary activity is researching pertinent issues, which are often linked to an advocacy function;
5. *Umbrella CSO*: the purpose is to provide a coordinating and representative role;
6. *Federations*: the main work is bringing CSOs in one area or sector together for certain purposes they can best carry out in greater numbers. It could also be that CSOs interested in a particular issue federate together with certain specific joint objectives related to that issue.

Registration as Voluntary vs. Mandatory Requirement

In keeping with Part IV of the Associations Law of Liberia, under Chapter 41, unincorporated associations/organizations can be formed without having corporate documentation. An unincorporated association as defined in this Law is a body of individuals acting together for the prosecution of a common enterprise without a corporate charter, but expressed in its bylaws that regulate its conduct, expressing its purpose, and governing the relations of its members among themselves, in the absence of a statute.

After it is organized, every unincorporated association is required to produce a certificate signed and sworn by its president and treasurer stating the name of the unincorporated association, the date of its organization, the number of its members, and a description of the purpose of the organization.

The organization is also required to file the certificate in the office of the Registrar of Deeds in the county where the principal office of the association is located, and, after filing the certificate, should publish a copy or a notice containing the substance of the certificate in a newspaper of general circulation, or if no newspaper is available, a copy of certificate should be displayed prominently for three consecutive business days in front of the post office in the principal place where the unincorporated association is located. Upon completion of such publication, the organization is required to file an affidavit of compliance at the place where the certificate was filed, duly signed by the president and treasurer.

Registration or Incorporation Requirements

The general law providing for the establishment of a CSO as a legal entity is the Associations Law of Liberia. Part II, Chapter 20 of the Liberian Code of Laws, under general provisions of the Associations Law, gives the following general guidelines:

1. CSOs can be established through a charter, by a special act of the Legislature, or by filling articles of incorporation. CSOs may also be formed without obtaining a charter or an article of incorporation. Such organizations referred to as unincorporated associations must meet certain legal requirements as discussed in the section above.
2. A not-for-profit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to members thereof and for which individuals may lawfully associate. There are no restrictions on who can serve as founder.
3. At least three persons can establish a not-for-profit organization.
4. No amount of capital or assets is required at the time of establishment.

In order to secure articles of incorporation, a fee of US \$50 is required. The articles of incorporation are then submitted to the Ministry of Foreign Affairs with the following required provisions:

1. The name of the organization;
2. The duration of the organization, if not perpetual;
3. The purpose(s) for which the corporation is organized;
4. That the corporation is organized pursuant to the not-for profit corporation act;
5. The number of directors constituting the initial board of directors;
6. If an existing unincorporated association is being incorporated, the name of the existing unincorporated association; and
7. A designation from the Ministry of Foreign Affairs of the corporation, upon which those seeking to process against the corporation may be served in accordance with law.

To secure accreditation from the Ministry of Planning and Economic Affairs the following are required:

- Articles of incorporation from the Ministry of Foreign Affairs as an entity;
- A mission statement containing clearly defined objectives, target beneficiaries, sector(s) of operation, constitution, and by-laws;
- Office space with a visible signboard exhibited, and, where feasible, a postal address, email addresses and telephone numbers;
- A bank account in the organization's name with at least two signatories;
- No less than 3 full-time staff;

- A board of directors or an equivalent policy-making body whose composition is not dominated by a family group. Members of the board may be domiciled inside or outside of Liberia. The NGO should make the contact information of this body available upon request;
- A legal status in their own country of origin for international NGOs (INGOs). Such organizations, where applicable, must show proof of their activities in other countries; and
- A certificate of incorporation in the country of origin and other constitutive documents of the parent NGO for international organizations. (i.e. memorandum, articles of association and by-laws).

The Ministry of Foreign Affairs is responsible for granting requests for incorporation, while the Ministry of Planning and Economic Affairs (MPEA) is responsible for accrediting NGOs.

The Associations Law is mandated with the incorporation of all organizations except unincorporated organizations through the Ministry of Foreign Affairs, which makes the organizations legal entities. The NGO Policy is an attempt to regulate the activities of NGOs and is being administered by the Ministry of Planning and Economic Affairs. To be registered with the Planning Ministry, an organization must have an article of incorporation or must have registered the unincorporated association in keeping with the provisions of the Associations Law. Articles of incorporation can be processed at the Ministry of Foreign Affairs within five working days if the document contains all the required provisions and articles.

The accreditation process at the Ministry of Planning and Economic Affairs should not exceed 20 working days from the date of submission. Application for accreditation may be denied if any of the requirements for registration are not met, for instance, if the organization does not have a sign board, etc.

Reasons for denial are generally not given in writing. When the organization follows up with the Ministry, they are informed verbally of the reasons why accreditation was not granted and are advised to take corrective measures.

In the case of a denial of accreditation, the NGO concerned may appeal the decision of the MPEA before a Standing Independent Appeal Board as defined in Section 15 of the National Policy on NGOs. However, the Board is yet to be constituted.

Presently, there are no significant constraints on the registration/incorporation process.

CSO Registry

The Ministry of Planning and Economic Affairs maintains a registry of NGOs that have been accredited by the Ministry and those that have applied. Presently, the Ministry has a list of about 277 NGOs that have been accredited. This registry does not account for the over 500 CSOs operating in Liberia. The registry is not yet available via the Internet, but can be made available upon request to the Minister of Planning.

Foreign Organizations

To obtain articles of incorporation, INGOs should submit an Application for Authority to Operate in Liberia. They should have a legal status in their own country of origin. Such organizations, where applicable, must show proof of their activities in other countries. They also must present copies of their certificate of incorporation from the country of origin and other constitutive documents of the parent NGO (i.e. memorandum, articles of association and by-laws). The fee for incorporation of international NGOs is US\$500, compared to US\$50.00 for local NGOS.

III. SUPERVISION AND ENFORCEMENT

Regulatory Authorities

The Ministry of Planning and Economic Affairs (MPEA) is the Government of Liberia (GOL) agency mandated to monitor and evaluate the activities of NGOs and enhance the cooperation between GOL and NGOs. The ministries of Health and Agriculture also monitor CSOs engaged in activities under the purview of those ministries.

Internal Governance

Both the Associations Law and the NGO Policy provide for Board members of not-for profit organizations. The Associations Law does not require a general assembly. However, in developing their articles of incorporation, organizations can include in their articles the structural format of the organization, including the functions of the assembly if they have the role of the board and the function of the secretariat, depending on the structure of the organization.

Reporting

The only CSOs that are so far required to submit activity and financial reports to the government are NGOs accredited by the Ministry of Planning and Economic Affairs. Such reports are to be submitted within three months of the end of the financial or programmatic year of the respective organizations.

Activity reports should cover the following information:

- Period of activity;
- Objectives of the project and programs;
- Achievements measured against the objectives;
- Implementation arrangements;
- Partnerships;
- Implementation constraints;
- Lessons learned; and
- Conclusions and recommendations.

Financial reports should cover the following information:

- Funding sources;

- Duty waiver obtained (if any);
- Budget for the period;
- Expenditure breakdown against the budget; and
- Audit report for the period (if any).

State Enforcement and Sanctions

In keeping with the current NGO policy, NGOs are required to submit annual reports to the MPEA. The present accreditation for NGOs is three years. Accredited NGOs that fail to submit reports covering the three years may be denied re-accreditation. While sanctions exist for failing to meet tax obligations, these sanctions have not been imposed.

Dissolution, Winding Up, and Liquidation of Assets

In keeping with 24.6 (3) of the Associations Law, on dissolution or liquidation of the corporation, the assets of the corporation remaining after payment, or adequately providing for payment of its liabilities, should be distributed in accordance with the applicable provisions of the organization's articles of incorporation, or the by-laws, or, in the absence of any such provisions equally to all members. From this provision, it is understood that the members themselves can initiate voluntary dissolution, either through provisions contained in the articles of incorporation of the organization or its bylaws.

There are no legal provisions for involuntary dissolution.

Other Constraints

In the past, during the regime of Mr. Charles Taylor, some CSOs and human rights activists were harassed and intimidated. The current administration has provided a free space for CSOs to operate. There has not been an instance of harassment of CSOs, and the government has not established NGOs to threaten the independent space for CSOs.

IV. CSO ACTIVITIES

General Powers

Every not-for-profit organization can:

1. Sue and be sued;
2. Make contracts;
3. Receive property by devise or bequest, and otherwise acquire and hold property, real or personal, including shares of stock, bonds, and securities of other corporations;
4. Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expand funds and property subject to such trust;
5. Convey, exchange, lease, mortgage, encumber, transfer upon trust, or otherwise dispose of all property, real or personal;
6. Borrow money, contract debts, and issue bonds, notes, debentures, and secure the payment or performance of its obligations; and

7. Do all other acts necessary or expedient for the administration of the affairs and attainment of the purpose of the corporation.

Expressive/ Advocacy / Public Policy Activities

CSOs are free to criticize the government and advocate politically unpopular causes. CSOs can also engage in legislative activities, such as helping to draft laws or urging the government to adopt certain policies.

Communication and Cooperation

There are absolutely no restrictions regarding communication and cooperation in relation to the functioning of CSOs in Liberia. CSOs are permitted to contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country. CSOs are not required to give advance notice of international cooperation

Seeking / Securing Funding

1. Foreign Funds

There are no special rules for domestic CSOs to receive foreign funding. CSOs are not restricted to the amount of funding they can receive, nor are they required to deposit the funds in any government controlled bank.

2. Economic Activities

CSOs are generally not-for-profit organizations. If a registered charity or other CSO engages in business activities or other activities inconsistent with its charitable purpose, it is subject to tax with respect to those activities and, under regulations to be provided by the Minister, may lose its approved registered status.

However, in keeping with Chapter 23 of Part II of the Associations Law under Corporate Finance, not-for-profit corporation whose lawful activities involve, among other things, the charging of fees or prices for its services or products shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance and operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the corporation.

3. Government Funding

The government does not have funds set aside for CSOs.

4. Other Constraints

The laws or regulations do not impose any constraints on the ability of CSOs to seek and secure funding.

V. TAX LAWS

Tax Treatment of CSO Income

In keeping with Section 905 of the Revenue Laws of Liberia Act of 2000, all CSOs are to pay income on wages and salaries of staff. The schedule of income tax payment begins with 2 percent up to 35 percent, depending on the income earned by the employee.

The Revenue Laws also provide that renters or lessees of buildings pay an estate tax of 10 percent on behalf on the owner of the property. Contracts awarded by CSOs amounting to more than 100,000 Liberian Dollars should pay a withholding tax of 10 percent. There are no special taxes imposed on funding from abroad.

- Part 1, Section 9 of the Revenue Code of Liberia 2000 provides for persons exempt from tax as follows:

The Government of the Republic of Liberia, Government agencies, and charitable or not-for-profit private organizations that are approved by and registered with the Ministry of Finance are referred to as “Exempt persons” and are exempt from tax to the extent provided for by this Code.

Foreign governments, foreign diplomatic representatives, foreign consular officials, international organizations and officials of international organizations that are exempt from taxation under international agreements are exempt from tax to the extent required by those agreements and also enjoy those exemptions provided to them by this Code.

- Part II: Chapter 2, Section 200 (g)

Tax exempt persons. No tax shall be imposed under this part on the government, a government agency designated as an approved recipient of charitable donations, or a private, charitable or not-for-profit organization that qualifies as a registered charity. Foreign governments, foreign diplomatic representatives, foreign consular officials, international organizations and officials of international organizations that are exempt from taxation under international agreements are exempt from tax under this part to the extent provided in the applicable international agreement.

1. A private, charitable or not-for-profit organization will qualify for registration if:
 - A. It is a noncommercial organization that is established for the purposes of carrying out charitable or not-for-profit activity.

An organization does not qualify as a registered charity, or if registered is subject to loss of its approved and registered status, if it:

Pursues political goals or performs political activities, including direct or indirect participation in election campaign of any political party, public organization or movement, or person; or the revenues or property of the organization benefit or may benefit any person except as a result of the conduct of its charitable activity or as a reasonable payment for the property or services

If a registered charity engages in a business activity or other activity inconsistent with its charitable purpose, it is subject to tax with respect to those activities and, under regulations to be provided by the Minister, may lose its approved and registered status.

Section 205. Other deductions:

Charitable contribution deductions. A deduction is allowed to taxpayer filing a tax return under Section 900 or 901 for the amount of a contribution made to a qualifying organization. Qualifying organizations are the government, a government agency designated as an approved recipient of charitable donations, or a registered charity described in section 200(g).

The deduction for charitable contributions is limited to an amount not in excess of 15 percent of the taxpayer taxable income (computed before reduction for charitable contributions but after inclusion of any gain on the transfers as provided under section 207(b)).

Customs Duties

A CSO may import products free of duties and customs excises provided it is accredited by the Ministry of Finance as a private charitable or not-for-profit organization. An organization will qualify as private charitable or not-for-profit if it is a non-commercial organization that is established for the purpose of carrying out charitable or not-for-profit activity.

Donor Incentives

Deductions are allowed to a taxpayer filling a tax return under section 900 or 901 of the Revenue Code of Liberia, for the amount paid to a qualifying organization. Qualifying organizations are the government, a government agency designated as an approved recipient of charitable donations, or a registered charity.

In keeping with Part II, Chapter 2, section 200 (g), a registered charity is a special status available for other CSO forms. This status is given when an organization, duly incorporated and registered with the Ministry of Planning, is also registered with the Ministry of Finance.

Administrative Spending

There are no limits on administrative expenses or salaries which can be expended or paid.

VI. CONCLUSIONS

Priority Issues

There has been intense lobbying for a review of the current National Policy on NGOs. International NGOs are concerned about the issue of work permits for staff, and the government is concerned that programs of INGOs are not in line with the Government's Poverty Reduction Strategy, and would like to see more oversight and monitoring. Also, some government officials feel that the three year

accreditation period is too long and would like to see the accreditation period reduced. A consultative forum is being planned to discuss these concerns.

Financial Crisis

Many Civil society organizations depend on foreign grants and donations to implement projects. As a consequence of the global economic crisis, key funding organizations have either put a freeze on new applications or have reduced the amount of funding given out. Quite recently, a donor organization that had in principle committed to funding a three-year project, reduced its funding to one year, citing the global economic crisis as the reason for its decision.

Strategic Responses

Civil Society Organizations must be able to work together to tackle attempts by the government to limit their space. The international community, particularly international democracy organizations, or networks like the World Movement for Democracy, should continue support and efforts to strengthen CSOs. The *Defending Civil Society* report should be disseminated widely both to CSOs and governments to ensure that governments are aware that their actions are being monitored and analyzed.