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Defending Civil Society

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

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Introduction

Though 15 years have passed since the end of the genocide, the people of Rwanda continue to struggle with its social consequences. In its aftermath, civil society organizations (CSOs) emerged to assist in rebuilding the state and to fill the gaps left from war, including the assistance to widows and orphans, child-headed households, and traumatized survivors. Today, CSOs continue to provide essential social assistance to the people.

In Rwanda, civil society organizations are primarily understood to be non-governmental organizations (NGOs). The legal provisions for the existence of CSOs are found in the Constitution, Law N° 20/2000 of 26/07/2000 Relating to Non-profit Making Organizations (O.G. n° 7 of 01/04/2001), and the newly promulgated Organic Law no. 55/2008 of 10/09/2008 Governing Non-Governmental Organizations (O.G. no. 23 of 01/12/2008). Operational laws stemming from the Organic Law have yet to be promulgated and thus the operational law is Law N° 20/2000 of 26/07/2000 relating to Nonprofit Organizations remains operational insofar as it does not conflict with the Organic Law. The latter documents methods for CSOs and the Government to enter into cooperation agreements to promote the social welfare of the population, allowing the Government to regard CSOs as potential partners.

Approximately 80 percent of CSOs in Rwanda carry out health and education-related activities, while 20 percent provide other social services. Local NGOs fall broadly under the jurisdiction of the Ministry of Local Government, while international NGOs are regulated by the Ministry of Internal Affairs, specifically the Immigration and Emigration Department. The organizations' operations are supervised by the Ministries responsible for the activities in which they are engaged. The Rwandan Government requires that CSOs incorporate formal governmental priorities into their missions, including the Vision 2020 and EDRS. CSOs must document the utilization of these roadmaps in their activities.

Currently, specific laws relating to local NGOs, international NGOs, and religious organizations are being deliberated in the Political Commission of the Chamber of Deputies, and may be subsequently passed into law by Parliament.

I. PROVISIONS OF THE LAW

General Framework

Rwanda is governed by a civil law system. Post-genocide, there have been progressive changes to the judicial system, and the accessibility of laws has increased with commendable success, including the introduction of a Web site, www.amategeko.net, on which all laws are posted for public consumption. Hard copies of laws are also accessible at the Prime Minister's office for any interested parties. These laws are available in the three official languages of Kinyarwanda, English, and French.

Constitutional Framework

The rights of civil society are vested in the Constitution of the Republic of Rwanda in the following articles:

1. *Article 33*- Freedom of thought, opinion, conscience, religion, worship and the public manifestation thereof is guaranteed by the State in accordance with conditions determined by law. Propagation of ethnic, regional, or racial discrimination, or any other form of division, is punishable by law.
2. *Article: 35*- Freedom of association is guaranteed and shall not require prior authorization. Such freedom shall be exercised under conditions determined by law.

Statutory Framework

Law Number 20/2000 of 26/07/2000 Relating to Nonprofit Organizations - In addition to these constitutional provisions, Law N° 20/2000 of 26/07/2000, Relating to Nonprofit Organizations (O.G. n° 7 of 01/04/2001), is the operational law for civil society organizations. According to this law, a nonprofit organization is defined as any grouping having a legal personality, governed by civil law, and constituted by physical or moral entities which accomplishes social works and that decides to use its knowledge or activities for a goal other than making a profit (Article 1).

Law Number 20/2000 of 26/07/2000 Relating to Nonprofit Organizations- It also states that a nonprofit organization's main objective is to exercise religious, philanthropic, scientific, cultural, or sporting activities, and may, at a subsidiary level, extend its field to other activities, as long as they are also carried out for no profit (Article 1, Paragraph 1).

Types of Organizations

The new Organic Law governing NGOs defines NGOs loosely as organizations that are not established by the Government, and work for the general interest. This broader definition takes precedence over the previous one stated in the operating law.

The Law Relating to Nonprofit Organizations remains in force, as long as it does not contradict the Organic Law until the latter's specific regulations are enacted.

II. ESTABLISHMENT AND REGISTRATION

Purposes

According to the Law Relating to Nonprofit Organizations, CSOs may be established for social works (religious, philanthropic, scientific, cultural and sporting activities), though it may extend its field to other activities at a subsidiary level. The Organic Law provides for three categories of NGOs: Local, International, and Religious Organizations. Specific laws, yet to be voted on, shall determine which organizations shall fall into each of these categories.

Registration as a Voluntary vs. Mandatory Requirement

Though the Constitution provides that freedom of association is guaranteed and shall not require prior authorization, it maintains that such freedom shall be determined by conditions provided by law. The Organic law does not clarify whether authorization for NGOs is mandatory or voluntary, but only states that those that are authorized must meet the following criteria: have legal personality, have a mission not contrary to Rwandan Laws, and not distort public order or commit affronts to public decency (Article 4).

The Organic Law also states that NGOs must be given legal personality by competent authorities provided for by specific laws (Article 5). Until these laws are promulgated, however, the Law Relating to Nonprofit Making Organizations (No. 20/2000 of 26/07/2000) will stand, including the article stating that every person is free to form an association with others, unless founded for an illicit objective, contrary to laws, public order, or morality. Nonprofit organizations are therefore only recognized by the Government if conforming to legal procedures.

Registration or Incorporation Requirements

- A nonprofit organization must consist of at least three members (Article 4).
- Presentation of aims and a plan of action must be given to local authorities at the place it intends to headquarter the organization in order to obtain provisional authorization (Article 8, Paragraph 1). This plan of action should detail the financial methods the organization it will use to meet its aims, as well as a nominal list of all members with their signatures. A decision to grant provisional permission is made within three months from that date of submission.
- An application requesting legal personality must be addressed to the Minister of Justice six months following the date of receipt of provisional permit. (Article 9).
- The following documents are mandatory for request of legal personality:
 - i) The provisional authorization or proof that the period prescribed therein has not expired;
 - ii) Statutes of the organization;
 - iii) List of duly registered members;
 - iv) Names of legal representatives of the organization;
 - v) Minutes of the meeting that put the organization in place with signatures of all the members; and
 - vi) A copy of the criminal records of the legal representatives, if any.
- Legal personality is granted on the signing date of the ministerial decree six months from the date the request was made to the Minister of Justice (Article 10).
- In case legal personality is not granted, reasons for its denial must be communicated to the association's representatives within six months of application (Article 11).

Foreign Organizations

- Every foreign nonprofit organization must be authorized to exercise activities in Rwanda (Article 32).
- It must submit its request to the authority of the area/activity in which it wishes to work, as well as inform the Minister of Cooperation and Justice.
- The application must contain: (Article 33)
 - i) Nature of activities anticipated;
 - ii) Implementation schedule and its various stages of planning;
 - iii) Targeted population and area where activities will take place;
 - iv) Detailed cost estimates with data;
 - v) Means available- material, human, and financial;

- vi) Means expected and their origin;
- vii) Results anticipated at the end of the activity;
- viii) Eventual contemplated beneficiaries for the launched activities or the executed work at the association's winding up;
- ix) One copy of the associations' statutes; and
- x) All information relating to its geographical establishment throughout the world.
- Granting of the authorization is subject to (Article 34):
 - i) Adequacy between planned activities and the means acquired or expected;
 - ii) The benefit of the activities, impact on the population;
 - iii) The commitment to achieve the proposed objectives.
- The decision regarding authorization is communicated within three months of receiving the request.
- Registration with the Ministry of Local Administration is acquired on presentation of the acquired working permit (Article 36).

III. SUPERVISION AND ENFORCEMENT

Regulatory Authority

The Ministry of Local Government (MINALOC) regulates all Local NGOs, while the Ministry of Internal Affairs regulates International NGOs. However, International NGOs must be recommended by the Ministries in charge of the activities of the International NGO.

Internal Governance

- Nonprofit making organizations must enact statutes including the following (Article 12):
 - i) Name of the organization;
 - ii) Headquarters and complete address;
 - iii) Objectives for which the organization was formed;
 - iv) Area of activity;
 - v) Assets;
 - vi) Asset disposal in the case of dissolution;
 - vii) Rules to be followed in modifying the statutes;
 - viii) Procedures for convening a General Assembly; and
 - ix) Modalities to gain or lose membership.
- No decision relating to statutory provisions mentioned above shall be effective unless approved by the Minister of Justice; this indicates some level of government influence. (Article 14)
- The organization must have a General Assembly made up of registered members (Article 15), which functions as the supreme organ of the association (Article 16).
- The organization must be administered by one or several legal representatives or substitutes (Article 17), who must be approved by the Minister of Justice (Article 20).

Reporting

The governmental authority responsible for the nonprofit organization may at any time request data and documents on its activities, which must be delivered within a month. Additionally, every nonprofit organization in Rwanda must submit a detailed report on its achievements, balance sheet, and documentation of its financial situation to the authority by April 30 of each year. These reports are forwarded to concerned Ministries by May 31 and to the Cabinet by June 30. The non-delivery of reports can result in the suspension of an organization's activities.

Dissolution, Winding up and Liquidation of Assets

Any organization may be dissolved on a decision taken by a two-thirds majority of the registered members or the Judiciary (Article 27). It can also be dissolved on grounds of unfulfilled commitments, allocation of assets or asset-generated income to an objective other than that for which it was created, or activities against the statutes, law, or public order. Dissolution can be initiated by an associate, interested third party, or the Public Prosecutor (Article 28). In the case of involuntary dissolution (legal dissolution), liquidators are appointed by the Tribunal which, after clearing debts and liabilities, will determine the distribution of remaining property according to what is provided for in the organization's statutes or as stated by the majority of registered members (Article 29).

In the case of voluntary dissolution, destination of assets will be determined only by statutes that cannot be altered by interested parties (Article 30). Associate members, creditors, and the Public Prosecutor may appeal to the Tribunal to reject the decision of liquidators (Article 29, Paragraph 3).

IV. CSO ACTIVITIES

General Powers

CSOs are entitled to function as any other legal entity, and may own property and enter into legal contracts.

Expressive / Advocacy / Public Policy Activities

There is no legal clause expressly prohibiting advocacy activities per the constitutional right to opinion and expression; in reality, however, CSOs rarely participate in these activities.

Communication and Cooperation

CSOs are free to communicate with whomever they wish with no intervention from the government.

Seeking / Securing Funding

CSOs are free to obtain foreign funding with no restrictions, and may engage in commercial and economic activities if proceeds are used for the purpose for which that organization was founded. Organizations are also permitted and encouraged to compete for government funds, as their grassroots credentials make them uniquely qualified to implement community activities.

V. TAX LAWS

Tax treatment of CSO Income

CSO income is not taxed in Rwanda, whether in the form of income from grants, donations, or investments.

Customs Duties

CSOs are able to import products free of duties and customs excises if the goods are shown to be donations for the sole purpose of aiding the work of the nonprofit organization.

Donor Incentives

There is no particular legislation concerning donor incentives apart from the tax-exempt nature of donations to CSOs.

Administrative Spending

Administrative expenses cannot exceed 30 percent of the total CSO budget.

VI. CONCLUSIONS

Priority Issues

Though new laws concerning CSOs are forthcoming, the currently-enforced Law Relating to Nonprofit Organizations is ambiguous since it does not provide clear definitions regarding different classifications of NGOs (i.e., different rules for local and international NGOs). As such, the rights and obligations of the various types of organizations are not well defined in the law.

The specific laws concerning international and local NGOs that are currently being debated in Parliament provide better guidance concerning formation procedures, as well as organizations' legal rights and obligations. The laws in question have reduced the duration of administrative procedures, and have outlined a system of pre-court arbitration to deal with potential conflicts. A system of joint collaboration between the Rwandan Government and NGOs has been advocated to facilitate their partnership.

Strategic Responses

Some steps that can be taken to improve the quality, administration, and enforcement of laws to strengthen and defend civil society are:

- Promotion of CSO advocacy;
- Stronger involvement of stakeholders;
- Stronger capacity of local NGOs;
- Increased funding base; and
- Reduction of bureaucratic and administrative procedures.