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Defending Civil Society

*Report on Laws and Regulations
Governing Civil Society Organizations
in
Sierra Leone*

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Introduction

For the purposes of this Report,¹ the Constitution of Sierra Leone was reviewed, along with the final draft proposal for regulations for non-governmental organizations (NGOs). Also considered was the legal basis for taxation and waiver as well as other international treaties ratified by Sierra Leone.

I. PROVISIONS OF THE GENERAL LAW

General Framework

Sierra Leone operates under a common law system originating from its time as a British colony. Under Article 170(2) of the Constitution, the common law of Sierra Leone is deemed to be comprised of the rules of law generally known as the common law, the doctrine of equity, and the rules of customary law, including those determined by the Superior Court of Judicature.

Article 6 of the Constitution states that every statutory instrument should be published in the *Gazette* no later than 28 days after it is proposed, or, in the case of a statutory instrument that will not have the force of law unless it is approved by some person or authority other than the person or authority by which it is made, no later than twenty-eight days after it is approved. If it is not published, it is void from the date on which it was proposed. Given the high illiteracy rates in the country, however, many sectors of the indigenous population are unaware of the content of the law and are therefore not aware of the rights to which they are entitled, and the duties and obligations owed to them by the State.

General Constitutional Framework

The general constitutional framework of Sierra Leone is based on the 1991 Constitution. Article 5(1) of the Constitution states that Sierra Leone is to be a republic based on the principles of freedom, democracy and justice. Indeed, the constitutional framework of Sierra Leone has further enshrined recognition and protection of the fundamental human rights and freedoms of the individual under Chapter III, Article 15. In part, the Constitution provides for life, liberty, the security of the person; freedom of expression and association; and respect for family life. While the state recognizes these fundamental rights, which are also part of international law, the Constitution allows for a number of instances in which these freedoms can be limited by the state, ostensibly on the grounds of affording protection to the rights of society as a whole, but more frequently based on the protection and maintenance of the state and public order and interest. There are also provisions for a state of emergency to be issued during times of war or the occurrence or anticipation of societal breakdown, which allows the state to derogate from its obligations regarding the protection of fundamental freedoms for the purpose of securing peace, order, and good government.

¹ Please note that, as specified by the World Movement for Democracy and the International Center for Not-for-Profit Law, for the purposes of this report, civil society organizations or “CSOs” include not-for-profit, non-governmental organizations such as associations, foundations, non-profit companies, societies, public benefit companies, etc. – in other words, organizations that are private, non-profit distributing, self-governing and voluntary. Although this definition would on its face include trade unions, political parties, cooperatives and possibly religious organizations, this report will generally exclude such organizations, since they are frequently (though not always) regulated under separate laws.

A key aspect of a functioning and inclusive civil society structure is that citizens have an inherent right to associate with organizations without fear of reprisal. Article 26 of the Constitution provides for the freedom of association as follows:

26(1) Except with his own consent, no person shall be hindered in the enjoyment of his [...] Freedom of Association, that is to say, his right to [...] associate with other persons and in particular to form or belong to any political party, trade unions or other economic, social or professional associations, national or international, for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

a. which is reasonably required—

i. in the interests of defense, public safety, public order, public morality, public health, or provision for the maintenance of supplies and services essential to the life of the community; or

ii. for the purpose of protecting the rights and freedoms of other persons; or

b. which imposes restrictions upon public officers and upon members of a defense force; or

c. which imposes restrictions on the establishment of political parties, or regulates the organization, registration, and functioning of political parties and the conduct of its members;

and except in so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

The protection of fundamental freedoms of association has been accepted by the Sierra Leonean Government in its ratification and acceptance of various international treaties which expressly provide for the right to freedom of association. Of particular note is Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which states:²

There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

²*22(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 22(2). No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*

It is clear from the context of this treaty that the formal registration required by the Government of Sierra Leone in its draft NGO Policy is not required of an organization before its members can exercise their right to associate.

II. ESTABLISHMENT and REGISTRATION

Introduction

The final draft of Sierra Leone's NGO Policy was submitted in May 2008. Its self-stated purpose is to accomplish "the effective coordination and monitoring of the activities of both National and International NGOs in order to enhance their cooperation and collaboration with the Government of Sierra Leone (GOSL) and ensure maximum benefits to the people of Sierra Leone."³ The Policy defines NGOs as "independent, non-profit making non-political and charitable organization(s), with the primary objective of enhancing the social, cultural and economic well being of communities." However, "religious bodies" and "community-based organizations" defined as "group(s) of community members working together as... independent non-profit making charitable organization(s)," or those with a "political or ethnic bias" are specifically excluded from gaining NGO status.⁴ Additionally, the draft does not allow NGOs to work to develop political and human rights.

On review of the policy, the law seems to represent a carefully constructed mechanism controlling virtually every aspect of the creation, existence, operation and activities of NGOs and Civil Society Organizations (CSOs) in Sierra Leone, placing onerous burdens on the independent development of civil society structures in Sierra Leone.

A similar policy was put in place in 1994 under the military junta of the National Provisional Ruling Council, and over time many additions were made to it. The policy had the following consequences:

- Raised the financial requirement that must be met by existing and new NGOs applying for registration;
- Increased the documentation requirements to include an annual and audited report;
- Required a fully functioning office space and a staff of at least five before registration can be approved;
- Required all NGOs to join a supposed umbrella organizations for NGOs in the country, the Sierra Leone Association of Non-Governmental Organizations, and pay an expensive subscription fee;
- Required all NGOs to get "attestation" from various government ministries before registration can be approved;
- Required unannounced on-sight visits to offices and working areas of NGOs by the NGO Desk of the government Ministry of Development;
- Established an inter-governmental community that would approve project implementation and funding of NGOs;

³ Paragraph 1.1.7 NGO Policy Regulations, Policies and Guidelines for the Operations of Non-Governmental Organisations in Sierra Leone

⁴ A religious organization aiming to carry out any NGO-related activities must do so via a separate division established for such a purpose, Paragraph 2.1.3.

- Established another community that would determine the existence of NGOs based on some performance appraisal;
- Provided tax exemption and duty waiver for all fully registered NGOs.

Registration of Not-for-Profit Organizations

Chapter 245, the Registration of Business Act of the Laws of Sierra Leone 1960, provides for the registration of not-for-profit organizations. To complete this process, the entity must have a Memorandum of Association prepared by a legal representative. The registration is authorized by the Registry Office.

While Chapter 245 might be seen as an opportunity to avoid the provisions of the draft policy, it does not qualify an organization for tax exemption or duty waivers.

Purposes

Education, health and sanitation, agriculture, arts and culture, relief, skills promotion, consultancy, human rights, gender, small scale industries, social and community development, environment, and finance are the only self-classifying areas that an NGO can choose when completing the registration application. There is a space to indicate “other.”

Registration as Mandatory or Voluntary

The NGO Supervisory Committee determines the criteria necessary for an NGO to operate efficiently. All applicants for registration as NGOs must submit application forms together with the documents specified in those application forms. This includes copies of the organization’s constitution; memoranda and articles of association; the logo of the organization; a list of staff, including local and expatriate workers and details of the work and residential permits of those expatriate staff. In addition, an Agreement must be signed between the NGO and the Government of Sierra Leone before activities can commence. Groups failing to adhere to the criteria can carry out their activities, but will not have the protections of the Government promised to registered NGOs.⁵

Registration or Incorporation Requirements

Chief among the requirements stipulated by the NGO Supervisory Committee is a clear mission statement outlining the NGO’s purpose, objectives, target beneficiaries, and constitution. These must conform to the Government of Sierra Leone (GOSL) development policies to promote the well-being and welfare of Sierra Leoneans. Organizations are also required to possess an easily identifiable office space with a sign board visibly displayed, an accessible postal address, a bank account in the organization’s name with at least two signatories, and evidence or commitment to access funds to support its programs. Additionally, an organization must have a clearly delineated administrative structure, an auditable transparent accounting system from which annual accounts can be compiled, and at least five full-time staff and/or volunteers, excluding secretaries, messengers, and drivers. NGOs should also be transparent and accountable to donors, the Sierra Leonean government, and their beneficiaries in the

⁵ See attached Agreement to be signed between an NGO and the GOSL.

use of their resources, including a summary of overhead/direct support to beneficiaries, local/expatriate staff costs, and estimated quantifiable costs of GOSL/community contributions to programs. During the auditing process, there is a clear potential for governmental abuse through excessive or corrupt auditing procedures, particularly if the NGO is not operating in line with current governmental policy.

The NGO registration process is lengthy and involves a large amount of cooperation with the government through the submission of applications, verification, interviews and the payment of registration fees. This involves communications with various levels of government, including the relevant ministry for the specific operation of the NGO and approval from the committee and ministerial level. Given the history of West African democracies, these applications may likely be a time-consuming process requiring wide-scale interaction with corrupt government departments.

CSO Registry

The Ministry of Finance and Economic Development (MOFED) has responsibility for all NGO registrations, and monitors the relationships between government, donors, NGOs and beneficiary communities.⁶ MOFED's NGO Unit will maintain a register issued to several bodies,⁷ and made available to the general public for a fee. This additional bureaucracy may slow down the development of civil society operations in Sierra Leone.

Foreign Organizations

International NGOs must also show that they have legal status in their country of origin and proof of NGO activities there. Applicants are required to submit copies of their certificate of registration in their country of origin together with their Memoranda and Articles of Association or the constitution of the parent body of that particular organization.

III. Supervision and Enforcement

Regulatory Authorities

The NGO Unit is responsible for monitoring and evaluating all NGO programs in Sierra Leone.⁸ Additionally, the government seeks to enhance networking among organizations and create a unified NGO voice through the Sierra Leone Association of Non-Governmental Organizations (SLANGO), the compulsory inter-governmental group of NGOs.

The NGO Unit will be supervised by the NGO (Supervisory) Committee, which will advise the Government on policies governing NGOs. There is limited representation on the Committee by members of the NGO community, and fails to use the available expertise of the local NGO community and civil society sector. Many West African governments create and support similar committees in an

⁶ See Paragraphs 2.3.1 and 2.3.2.

⁷ Ministry of Finance and Economic Development, all NGOs, NGO Coordinators in Sector Ministries, Mayors or Chairmen, Local Councils, UN Agencies, National Commission for Social Action (NaCSA), National Revenue Authority, the Office of the President and Parliament, paragraph 3.1

⁸ The Policy does not explain how this NGO Unit will be made up.

effort to manipulate local NGO and CSO activities and decision making. In effect, excessive government regulation allows for complete control of the NGO community in Sierra Leone.

Internal Governance

Throughout the planning and implementation of projects, local NGOs must include MOFED and their relevant Ministry in the discussion, or the project cannot be implemented.⁹ Arduous project proposals must be completed, affecting the ability of small-scale NGOs to carry out their work. Additionally, NGOs must produce evidence indicating their contribution to employment and training in the country, even though reliance on donor funding could limit the organization's ability to create jobs or stimulate the economy.¹⁰ Regulations also stipulate that NGOs must attempt to employ nationals of Sierra Leone before employing non-nationals.¹¹ To accomplish this, the Government compiles a list of skills that are widely available locally, ensuring that NGOs do not look outside its jurisdiction to find them.¹² These policies reduce the options available for organizations to obtain outside expertise where local capacity is insufficient. It is recommended that tax incentives be made more readily available for NGOs to allow them to fulfill these obligations.

Reporting

Under the draft policy, it is mandatory for NGOs to provide all information requested by MOFED, including status, structure, and organization, allowing MOFED to develop a database of this information. Every registered NGO is responsible for renewing its registration with the NGO Unit at the appropriate time using the established procedures. Renewal of registration will commence in September and end in January of the next year, with renewal dependent upon the periodic submission of relevant documentation listed on the renewal application form. In addition, MOFED requires an independent assessment of the performance of NGOs regarding Sierra Leone operations to ensure transparency and accountability. To satisfy this provision, MOFED requires a number of documents, including summaries of final donor project narratives and financial reports, specific external project audits undertaken at donor request, and proof of paid membership in SLANGO.

State Enforcement and Sanctions

MOFED is responsible for enforcing policy, and is able to apply sanctions when necessary. NGO non-compliance can be reported directly to MOFED, and, in a number of instances, NGOs may face sanctions recommended by the NGO Supervisory Committee if their activities are considered to be in contravention to the stated objectives of the NGOs, or where the NGO persistently fails to abide by the provisions of these policy guidelines.

An organization can also face sanctions if the NGO shows by its nature, composition, and operations that it is not developing and/or promoting the capacity of Sierra Leoneans in the management of its operations. These sanctions range from the cancellation or suspension of certificates of registration by

⁹ This may be waived in an emergency by request to MoFED, paragraph 2.5.1.1

¹⁰ Paragraph 2.11.2

¹¹ Paragraph 2.110.3

¹² Paragraph 2.11.9

the Minister on the advice of the NGO Supervisory Committee to restrictions of duty-free concessions. More ambiguously, “other” sanctions may also be determined by the NGO Supervisory Committee.

IV. CSO Activities

General Powers

NGO activities in Sierra Leone are primarily geared towards improving the economic and socio-cultural welfare of target groups within the country. It is the intention of donors that a significant percentage of all contributions go directly to meet the needs of such beneficiaries; in other words, incurred project costs would be closely monitored by MOFED.¹³ The government expects NGOs to ensure that a large percentage of their resources go directly to supporting and targeting beneficiaries, and that the administrative costs involved are limited.

Registration with MOFED gives legal status to NGOs, allowing them to enter into contracts, and sue or be sued. NGOs can also lease offices and houses for their staff, as well as open operational bank accounts with existing banks in the country. However, NGOs are only permitted to have current accounts, and are forbidden to have “savings accounts” in order to maintain their “not-for profit” status and the tax exceptions from which they benefit.

Expressive / Advocacy / Public Policy Activities

While government rhetoric is supportive of the implementation of an effective civil society, there have been instances in which the GOSL has refused to cooperate with NGOs involved in advocacy critical of government policy. Indeed, making recommendations on the draft Policy is problematic in itself given objections to the government taking on this form of extensive civil society regulation.

Communication and Cooperation

MOFED encourages NGOs to utilize the services of other NGOs based in the same region in the implementation of programs.¹⁴ NGOs have no restrictions on the expression of their policies and programs or with whom an NGO may communicate and work. Organizations are able to partner with any ministry, local government official, international organization, local government organization, or any other group.

Seeking / Securing Funding

All NGOs are required to submit details of all funds donated for project implementation.¹⁵ Assets purchased with donor funds are the property of those they were bought to benefit. At the end of a program, a liquidation process is required, and the property of the organization must be sold under the supervision of government officials, with proceeds going to the community. Therefore, assets must be disposed of in collaboration with SLANGO and the Government. Even where funds are provided for

¹³ Paragraph 2.4.1

¹⁴ Paragraph 2.8.3

¹⁵ Paragraph 2.7.1

capacity building/logistics support, items so acquired remain the property of the NGO for as long as it stays in operation.¹⁶

V. TAX LAWS

Tax Treatment of CSO Income

The civil society sector in Sierra Leone is principally composed of charitable organizations. While there is an absence of specific laws governing charities, Articles 8 and 9 of the Income Tax Act of 2000 do describe instances where businesses and public international organizations are exempt from paying income tax, though the resident employees of a charity are not themselves exempt from paying income tax. Public international organizations are exempt under international law if they submit details to SLANGO and the Government of all funds committed by donors. This disclosure includes the amount donated, the sources of funding, details of donors, and descriptions of installment arrangements or other donor requirements.

Under the draft Policy, it would be a requirement that assets to build the capacity of local NGOs and CSOs be transferred through SLANGO and MOFED. In the process of closure, all assets must be disposed of in collaboration with the Government of Sierra Leone. Even non-governmental donors' funds provided for NGO capacity building must be transferred to SLANGO.

Customs Duties

NGOs can be given a waiver of import taxes on imported goods, which must be approved by the MOFED, thus providing an opportunity for corrupt behavior. In effect, permit clearance from NGOs will only be granted by MOFED after a recommendation from the Minister of Finance and Economic Development. Only properly registered NGOs can be given the duty waiver. Through every stage of the process, all documents must be forwarded and notifications given to relevant government bodies, placing a large burden on NGOs in situations where speed is a necessity, as in the event of an emergency or humanitarian disaster. In the case of one-off imports, distribution plans must be submitted for approval by the relevant NGO Unit. Capacity-building items, based on a checklist agreed upon by MOFED and the Commissioner General of National Revenue Authority (NRA) of basic needs for this purpose, are exempt from duty. Once the full complement has been allowed, no further allowance can be given except for replacement due to disposal, loss, or wear and tear.

All items eligible for duty waiver concessions must bear relevance to the approved project of the applying NGO. As a consequence, goods imported for monetization according to donor instructions, so that the proceeds would be utilized for program implementation, cannot be granted a duty waiver. The GOSL has added specific control provisions that exceed common norms, including a provision within the draft policy that an NGO must include a list of intended imports needed to carry out a program, together with detailed distribution plans and government approval of the shipping documentation. This documentation must be in place before the program begins. No additional allowance is permitted, except for replacements. Thus, an NGO is unable to address needs that may arise during the course of

¹⁶ Paragraph 2.8.4

its program, or adapt to changing conditions requiring additional or different materials to be imported.

Donor Incentives

Where an NGO is involved in income-generating activities, it must declare details of the operation to the income tax department for a certificate of exemption. Failure to secure such a certificate will adversely affect the re-registration possibilities of the NGO.

It must be noted that the draft Policy provides tax exemption for income-generating activities of NGOs, which is a particularly progressive approach. It is unclear what additional tax benefits are available to NGOs or philanthropic donors in Sierra Leone. International NGOs, UN agencies, and other institutions are encouraged to develop and strengthen the capacity of collaborating NGOs by assisting with their structures and organizations. To further this, the GOSL may provide relevant financial and institutional support to NGOs in the form of duty waivers, tax allowances, and other facilities to enable them to develop, reinforce and sustain their organizational capacity for more effective delivery of service.

The policy, however, makes no provisions for tax exemption for donors or businesses making donations to NGOs. This is a particular gap that needs to be filled to provide incentives for donors within and outside of the country.

VI. CONCLUSIONS

Priority Issues

The new draft policy governing the running of CSOs would have a particularly detrimental impact on local NGOs that are unable to cope with the excessive fees and regulations. This will directly impact the success of NGO outreach programs in Sierra Leone, and will contribute to a loss of expertise, jobs, and effective local knowledge. While Sierra Leone has adopted positive rhetoric in terms of its Constitution, the draft NGO Policy reflects a different approach to the right to freedom of association. Without registering and providing the required detailed information and accepting the strict government oversight outlined in the draft Policy, an organization would not be able to exist.

Government Rationale

The Government's stated rationale for the draft policy is, first, a desire for harmonization and coordination of NGO activities within Sierra Leone to allow for more effective development of the civil society sector. The purpose of this is to benefit Sierra Leoneans through ministerial leadership and the identification of stakeholders in the developmental process. Second, the Government has advocated greater transparency and accountability in the NGO community, resulting in stringent registration requirements and the development and coordination of NGO activities through SLANGO, with close cooperation and monitoring by the Sierra Leonean Government.

Strategic Responses

Currently, moves are being made to challenge the implementation of the draft NGO Policy. Criticism ranges from definitional concerns to the independence of CSOs and their ability to deliver quality services to improve the socioeconomic realities for Sierra Leonean citizens. It is recommended that the

Policy be made to agree with basic constitutional and international protections of the freedom of association, and that the regulation of the civil society be limited to allow for independent and responsive programs. There is a particular need to review the expense and speed of the registration procedure, the definition of well being, and the clarification of the position of SLANGO.¹⁷ The requirements in the draft Policy are both burdensome and expensive—for example, the need to re-register every two years. Also of concern is the contractual relationship that may exist between civil society service providers and the Government of Sierra Leone, particularly on occasions where CSOs do not want to implement government policy. There is an obvious ability for governmental interference in this area, and if the independence, inclusivity, transparency, and impartiality of the civil society sector in Sierra Leone is to be maintained, this draft policy requires urgent review and modification.

¹⁷ Paragraph 2.2.1 of the Draft NGO Policy