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HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association
and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 24/5 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the recent decision to fully operationalize by 11 November 2013 the Non-Governmental Organization Bill, passed by the Parliament on 16 June 2009 and ratified by the President on 28 August 2009.**

Introduction of new regulatory bodies

In Part II, the NGO Bill considers the establishment of a NGO Board of fifteen members subject to the approval of the Minister: two directly appointed by the Minister; five members of Ministries; one representative of the Attorney-General and; seven members elected by the Congress. There will also be an ex-officio member known as "the Registrar", who will be a public officer appointed by the Public Service Commission. The functions of the Board will include, amongst others, to register NGOs, to approve their area of work, to receive and discuss NGO annual reports, and to provide policy guidelines to NGOs.

Additionally, in Part V, the NGO Bill introduces, on one hand, a NGO Congress formed by all the NGOs registered under the Act, and on the other hand, a NGO Council formed by twelve representatives of registered NGOs, elected by the Congress and "subject to its direction". The initial twelve representatives should develop the NGO Code of Conduct.

General Provisions in Part V of the NGO Bill provide for the Minister, on the recommendation of the NGO Board, to make regulations by statutory instrument

“for the better carrying out of the provisions of this Act”. The Minister can decide on the procedures, the forms and the fees for registration, the information to be supplied in every NGO application for registration, and the format of the periodic reports, amongst others.

Registration requirement and the role of the “Registrar”

In Part III, the NGO Bill determines that a NGO which is not registered under the Act should not operate and that individuals operating unregistered NGOs are subject to fines of up to 300.000 penalty units and/or to imprisonment of up to 3 years. In addition, they are disqualified from holding office in a NGO for 10 years.

Moreover, in Part III, the NGO Bill introduces a 30-days maximum period to apply to the Registrar for registration, upon payment of a prescribed fee. The Registrar issues the certificate of registration that, unless cancelled, is valid for 3 years. To renew their registration, NGOs are then requested to re-apply 3 months before the end of the 3-year cycle. Under the General Provisions in Part V, the NGO Bill further emphasizes the requirement of pre-existing NGOs from the Act to re-register in a maximum period of 90 days or cease their operations.

Rejection to register and withdrawal of registration certificate

In addition, the NGO Bill allows the NGO Board to reject NGO registration in certain cases, such as: the NGO activity is not “in the public interest”; the registration certificate has been revoked; the NGO Council recommends it and; the NGO name is “undesirable”.

Furthermore, the NGO Board under the NGO Bill may revoke a certificate with a 14-day notice if, for instance the NGO fails to submit annual reports, accounts and returns and if the NGO Council recommends it. When notified, NGOs have “an opportunity to submit reasons why the certificate should not be suspended or cancelled”.

The General Provisions in Part V of the NGO Bill sustain that a person commits an offense if it fails to produce to the Registrar any relevant document or information. This person is subjected to a fine up to 100.000 penalty units and/or to imprisonment up to 6 months. Additionally, he or she is banned from holding office in any NGO for 3 years.

Moreover, according to the NGO Bill, if the NGO Board believes that a NGO has ceased to exist, it will issue a notice in the Gazette and the NGO will have 30 days to prove its continued existence, which includes owning an authenticated recommendation by the NGO Council.

We are concerned that the NGO Bill represents an undue interference with the substantive work and organizational structure of civil society organizations. Further concern is expressed that the new procedures, including the authorization procedure, are burdensome and subject to administrative discretion.

In addition, we are concerned by the unclear provisions and severe criminal sanctions introduced by the NGO Bill against individuals operating NGOs that contravene the Act, which could deter people from exercising their fundamental right to freedom of association.

We are also concerned that the NGO Bill is requesting the previously registered associations to re-register, and all NGOs to re-apply for registration every 3 years, which could lead to arbitrary rejection or time gaps in the conduct of their activities. Similarly, we are concerned that the NGO Bill authorizes the NGO Board and the NGO Council to reject NGOs registration and to revoke NGOs registration certificate.

While we do not wish to prejudge the accuracy of these allegations, we would like to call on your Excellency's Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in article 20 of the Universal Declaration of Human Rights (UDHR) which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

We would further like to refer to article 22 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "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".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would also like to draw your Excellency's Government attention to Human Rights Council Resolution 20/27: The right to freedom of association equally protects associations that are not registered. "Individuals involved in unregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions".

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. How do the NGO Bill provisions comply with international human rights norms and standards as mentioned above?
2. What are the measures adopted to ensure full and effective enjoyment of the right to freedom of association?
3. What guarantees exist for NGOs to not see their activities criminalized?
4. What guarantees exist for previously registered NGOs to not be subject to arbitrary rejection?
5. Were civil society organizations in Zambia, included NGOs, consulted in the drawing up of and current implementation of the NGO Bill?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders