

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a new policy on NGOs, which has recently entered into force, and which may have a detrimental impact on civil society organizations in Sierra Leone.

The current NGO regulation in force is the 2009 NGO Policy Regulations. Since 2015, the NGO Policy has been under review, leading to a new draft which has been the subject of much criticism from the international community for being detrimental to association rights. As a response, the same year, consultations were conducted by the Ministry of Finance and Economic Development, involving a wide range of stakeholders, including several civil society organizations (CSOs) with a view to provide an in-country technical support to improve the proposed policy. A new version of the regulations was adopted in December 2017 and its provisions take effect as of 2 January 2018.

We are seriously concerned that the new version of the policy, as discussed in 2016, would similarly impose severe restrictions to CSOs and impinge on the exercise of the rights to freedom of expression and freedom of association which are guaranteed under international human rights law, in particular under article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

We are additionally concerned by the fact that the adoption of the new policy was adopted shortly before the upcoming general elections that will take place on 7 March 2018. We would like to stress that "the rights to freedom of peaceful assembly and of association are a critical means for individuals and groups of individuals to participate in public affairs. The exercise of such rights provides avenues through which people can aggregate and voice their concerns and interests and endeavour to fashion governance that responds to their issues. For example, such rights are essential in order to campaign and participate in public rallies, form political parties, participate in voter education activities, cast votes, observe and monitor elections and hold candidates and elected officials accountable" (A/68/299, para. 6).

In this regard, we wish to submit the following comments on some of the aspects of the 2017 policy and how, in our views, these are not in conformity with international

human rights standards. We hope these comments will serve as a basis for further discussions. We stand ready to provide any technical assistance to the competent authorities, should it be needed.

1. The scope of activities for NGOs

- **Alignment of the NGO's mission with the Government's development policies**

According to article 2.2.1 i):

Organisations wishing to operate as NGOs in Sierra Leone must meet the following criteria:

- i) *Possess a clear mission statement outlining its purpose, objectives, target beneficiaries, and must have a constitution, in promoting the well-being and welfare of Sierra Leoneans; encouraged to align their mission statements with GoSL development policies;*

We are concerned aligning NGO activities with the Government of Sierra Leone's development policies greatly restricts the scope of their permissible activities and could place their independence in jeopardy. It would therefore be extremely difficult for CSOs to operate as critiques of the government and be counterweights to its actions and policies.

- **Project formulation**

Article 2.4.1 foresees that it is "mandatory for a minimum of 70 percent of all donor funds to any NGO to be directed to the target beneficiaries and the remaining 30 percent of the fund should be for administrative costs including consultancies".

We are concerned this provision could limit the organizational structure of the organization and therefore impede the existence of a variety of objectives and activities of CSOs.

The Special Rapporteur on the rights to freedom of peaceful assembly and association has stressed in his first thematic report that members of associations should be free to determine their statutes, structure and activities and make decisions without State interference. Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. They should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights (A/HRC/20/27, para 64.).

- **Community-based organizations**

According to article 3.1 of the policy:

“A Community-Based Organisation (CBO) is a group of community members working together as an independent non-profit making charitable organisation within the territory of Sierra Leone in line with existing policies and legal framework. A CBO shall not simultaneously register as an NGO and shall only operate within an annual financial ceiling of five hundred million Leones. A Community-Based Organisation shall be an organisation that is exclusively engaged in activities at sub-district level, as listed in the Application Form, and their guidelines are defined in the following paragraphs.”

We are concerned this provision would arbitrarily withhold the possibility for a wide range of organizations to register as an NGO and therefore could not benefit from the rights stemming from the NGO status granted to other organizations by the present regulations. This would have the consequence of creating a second-level class of organizations that would be extremely limited in carrying out their activities and would not be able to freely enjoy their inalienable right of freedom of association as set forth in international standards, in particular in article 19 and 22 of the ICCPR as mentioned above.

2. Burdensome requirements policies

- **Eligibility criteria**

Article 2.2.1 establishes a long list of criteria determining whether organizations have a right to operate, including: accessing to a “Bank Account in Sierra Leone in the organization’s name with at least two signatories and evidence of and commitment to accessing funds to support its programs”; having at least five full/part time staff excluding messengers and drivers; undertaking relevant activity-related reports, work plan and budget with GOSL; undertaking relevant activity-related reports with other NGOs, beneficiaries and other interested parties if necessary; having a Board of Trustees or its equivalent policy making support body whose constitution is not monopolized by one family group; providing a summary of overheads/direct support to beneficiaries, local/expatriate staff costs and estimated quantifiable costs of GOSL/community contributions to programs, etc.

Article 2.2.4 further provides that *“all NGOs must sign Service Level Agreement (SLA) with the Sector Ministry before they can commence operations”*.

- **Registration guidelines**

Article 2.3.2 establishes a long list of requirements as NGOs must comply with the following procedure:

- i) *Buy a copy of the NGO Regulations and be familiarised with its content*
- ii) *Submit completed application form with relevant attachments to the NGO Supervisory Committee for approval; incomplete applications will be rejected;*
- iii) *Submission of attestation from the relevant sector ministries showing that the NGO has consulted with the sector Ministry to align its activities for effective coordination;*
- iv) *Proof of paid up membership with the Sierra Leone Association of Non-Governmental Organisations (SLANGO),*
- v) *The NGO Unit in the Ministry of Finance and Economic Development along with the sector ministry shall jointly conduct field or office verification of applicant;*
- vi) *The NGO shall attend a joint interview with the NGO Unit in the Ministry of Finance and Economic Development and the sector ministry;*
- vii) *Pay registration fees of \$2,000 for INGOs and Le2, 000,000 for NNGOs. However, these fees are subject to review on the recommendation of Revenue and Tax Policy Unit (RTPU) and the NGO National Supervisory Committee (NSC);*
- viii) *International NGOs shall produce evidence of their legal status and a letter of recommendation from parent funding entity;*
- ix) *The registration process for any new NGO or re-registration will not exceed a period of 30 days. Only organisations registered as NGOs will benefit from facilities accorded NGOs by the Government of Sierra Leone; however, in extreme cases, the Minister of Finance and Economic Development, on the advice of the sector Ministry, can make concessions under national emergency conditions only.*

Where the NGO National Supervisory Committee rejects an application for registration, the applicant must be informed of the reasons for rejection and be given a maximum period of 30 days to correct the anomalies and re-present the application. Though no refund will be made on rejection, the resubmission will be covered by the fees already paid. A second rejection will not be subject to any further appeal.”

- **Renewal of registration**

Article 2.3.3 provides that “Every registered NGO is responsible for renewing its registration with the NGO Unit, MOFED through established procedures. Renewal of registration shall commence from date of formal submission of application for re-registration”. The article also imposes a long list of requirements for the renewal of their status, such as: a summary of final donor project implementation and financial reports external project audits undertaken at

donor request, a copy of the most recent audit carried out by either Audit Service Sierra Leone or a reputable auditing firm contracted by the NGO; a submission of attestation from the relevant sector ministries demonstrating that the NGO's activities are aligned with the sector programme(s) and are in compliance with any sector specific requirement that is enforced during the preceding year as long as such requirements are not contradictory to this NGO policy; a proof of paid up membership and the submission of a list of assets acquired in the past two years and evidence of having surrendered assets for projects completed to the GOSL, local partners or as determined by the Minister of Finance and Economic Development.

- **Project registration**

According to section 2.5, NGOs must also discuss all projects with the competent ministry and the project must be registered in order to be operational.

- **Funding**

According to article 2.7.1:

“All NGOs shall be required to submit details of all funds committed by donors for project implementation to sector ministries and MoFED. The disclosure should include amount committed, sources of funding, details of donors and any details of installment arrangements or other donor requirements. Donor support in kind shall be monetised and disclosed”

- **Taxation and fees**

Section 2.9 provides for waivers of taxes that are available to CSOs under specific requirements. Some of these requirements include the need for CSOs to be “properly registered” and to have submitted and registered programmes of activity with the NGO Unit of MoFED”. The section further complements that the competent ministry will later analyze the written justification submitted to process the tax waiver. Finally, all requests should “conform to the contents of the project registration list”.

Section 2.10 sets forth renewal and administrative fees:

“All new INGOs and NNGOs planning to operate in Sierra Leone shall register for an initial period of one (1) year. Time line of all renewal of registration shall be after every two years of operations. The fees for both new and renewal of registrations of all NGOs are as follows:

- a. Fee for registration of a new INGO shall be US\$ 2,000 and that of renewal of registration shall be US\$ 2,000 or equivalent.*

b. Fee for registration of a new NNGO shall be Le 2, 000,000 and that of renewal of registration shall be Le 2, 000,000.”

- **Staffing and human resources**

Section 2.11 provides for a long list of obligations for NGOs and INGOs (international non-governmental organizations) including: the necessity to organize trainings and report to the authorities the planned trainings for the purpose of registration renewals (2.11.2); exhaust the possibility of employing nationals from Sierra Leone (2.11.3) for INGOs; have an “adequate” number of national management staff (2.11.4); that “only Sierra Leoneans and other ECOWAS citizens should be employed in middle and junior staff positions by INGOs” (2.11.5); NGOs should limit the use of international consultants only to disciplines for which local expertise is not available (2.11.6); a proof of current work permit for expatriate personnel shall accompany all registration applications and renewal requests (2.11.8); any expatriate whose contract has expired with one NGO shall not be employed by another NGO under the same work permit (2.11.9).

We are concerned that these requirements, including registration (article 2.3.2), re-registration (article 2.3.3), project registration (section 2.5), funding (article 2.7.1), taxation and financial obligations (sections 2.9 and 2.10), and staffing and human resources (section 2.11), are highly burdensome for CSOs, especially for small organizations which don't have the same financial capacities and resources. Indeed, the need to dedicate more time and resources to administrative requirements could be highly detrimental to the activities of organizations, as they are particularly time-consuming, and similarly have a negative impact on their budget. Furthermore, the financial obligations imposed on NGOs to register and re-register, constitute an additional strain on the NGOs' budget and further deter smaller organizations to operate.

We are particularly concerned about Article 2.2.4 as it requires NGOs to sign an agreement with the Government in order to operate and raises concerns about the very content of these agreements. There is a risk they could contain guideline restricting even further the scope of activities for NGOs for instance.

We highlight that right to freedom of association, as set forth in article 22 of the ICCPR implies a wide range of positive and negative obligations for the State to ensure its enjoyment as it foresees that:

“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”.

We recall that Human Rights Council Resolution 22/6 provides that States need to ensure that the reporting requirements “do not inhibit functional autonomy” of associations. The former Special Rapporteur on the rights to freedom of association and peaceful assembly considers that the use of “onerous and bureaucratic reporting requirements” can eventually “obstruct the legitimate work carried out by association” (A/HRC/23/39, para 38).

The Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights (African Commission) provide that registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification. Registration procedures shall be simple, clear, non-discriminatory and non-burdensome, without discretionary components. Should the law authorize the registration authorities to reject applications, it must do so on the basis of a limited number of clear legal grounds, in compliance with regional and international human rights law.

With respect to the requirement for already registered associations to re-register, we would like to underline that the right to freedom of association equally protects associations that are not registered. Individuals involved in unregistered associations should 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. This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs.

Regarding Article 2.3.2 iv) requiring NGOs to be members of SLANGO, is in contravention with the right to freedom of association as it considered as best practice that no one may be compelled to belong to an association (A/HRC/20/27, para 55.).

Regarding section 2.11, we consider that, beyond representing additional burdensome requirements for the organizations, the long list of obligations provided regarding human resources are severely impinging on the right to freedom of association. If the need to hire local staff is laudable, especially in context of developing countries, it constitutes undue interferences in the internal affairs of associations. We wish to stress that the Key Guiding Principles of Freedom of Association provide that associations should be free to choose their members and whether to be open to any membership (para 28).

3. Sanctions

Section 2.14 provides for the sanctions to be applied to NGOs for failing to comply with the provisions of this policy. Beyond suspension and dissolution, organizations are susceptible to be criminally prosecuted.

We are particularly worried about the mention of article 2.14.7 providing that:

“Any criminal or illegal act committed by an NGO employee(s) shall be subject to investigation in accordance with the laws of Sierra Leone”.

We are concerned this vague provision grants excessive discretion to the NGO Supervisory Committee to restrict NGO’s operations.

We wish to highlight that members of associations should not be subject to criminal sanctions (A/HRC/20/27, para 56). We also recall that the suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient. Moreover, such measures should only be taken by independent courts (A/HRC/20/27, para 75). Finally, we recall that, as indicated above, any restriction to the right to freedom of association should be provided by law so that members of organizations can understand what behaviour is permissible.

We moreover refer to resolution 2005/38 of the Commission on Human Rights, highlighting that the right to peaceful assembly and association and the right to take part in the conduct of public affairs, are intrinsically linked to freedom of opinion and expression. In this context, states are to take all necessary measures to create conditions for the promotion of these rights. The promotion of civil society is fundamental to ensure stability and economic growth, and states should take all measures to promote civil society, including through legislation that is in compliance with international human rights law.

Finally, we would like to inform your Excellency’s Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

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

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