

Message from PMRC

PMRC's vision is "Unlocking Zambia's potential". We recognize that it is only discussion and debate on social and economic policy issues critical to poverty reduction that ultimately leads to policy reform to support a robust and thriving economy.

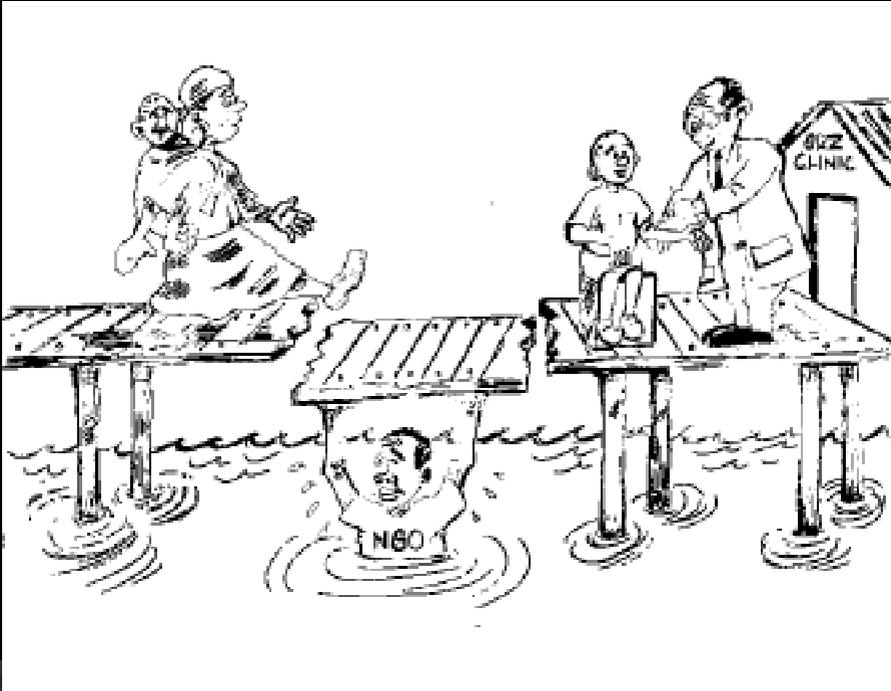
We achieve our Vision by:

- Producing high quality, relevant and timely policy analysis, policy monitoring, and reform proposals
- Promoting and encouraging an informed public debate on critical social and economic policy issues.

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PMRC POLICY ANALYSIS OF THE NON GOVERNMENTAL
ORGANISATIONS' ACT No. 16 of 2009



The Non-Governmental Organisations' (NGO) Act No. 16 of 2009 was enacted by the Zambia Parliament on the 26th of August, 2009. The major objectives of this Act are to:

- i. Provide for the coordination and regulation of NGO's.
- ii. To establish the Non-Governmental Organisations' Registration Board (the NGO Board) and the Zambia Congress of Non-Governmental Organisations (the Congress) and
- iii. To enhance transparency, accountability and performance of Non-Governmental Organisations

The Act is divided into six sections:

Part I: Interprets key concepts as used within the Act (e.g. NGO) and explains parties to whom the Act applies.

Part II: Establishes the NGO Registration Board and states its functions and powers. For example, registration of NGO's and approval of their area of work. Part II of the Act further provides for a documentation centre which will maintain documents on the activities of NGO's.

Part III: Provides for the registration of all NGO's and conditions under which registration may be denied, suspended or cancelled.

Part IV: States the duties of NGO's such as their duty to inform the Board of changes in name, objectives, office bearers and funding sources.

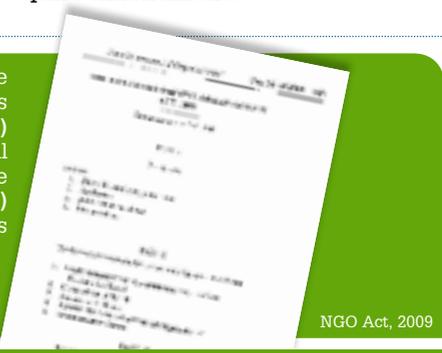
Part V: Provides for self-regulation of NGO's through the establishment of the Zambia Congress of Non-Governmental Organisations and the Council of Non-Governmental Organisations. Functions of the Council include development, adoption and administration of the Code of Conduct of NGO's and the coordination of NGO activities.

Part VI: Provides for a transitional period for NGO's to register under the new Act and lays down offences and penalties for infringing on requirements of the Act.

PMRC views this Act as an important piece of legislation with the potential to enhance the performance of NGO's and to promote transparency and accountability in NGO operations. It will play a key role in ensuring that NGO activities are well

coordinated and focused towards the promotion of Zambia's developmental needs. However, to enhance the effectiveness of the Act and curb possibilities of abuse, certain clauses within the legislation require amendment.

The major elements addressed in the Act include: (1) the definition of NGO's and the scope of application the Act (2) establishment of The Non-Governmental Organisation's Registration Board (The NGO Board) to regulate NGO activities (3) registration of NGO's (4) duties of NGO's and (5) self regulation by NGO's.



What are NGO's?

A sound analysis of the NGO Act must begin with a clear understanding of what NGO's are and their roles; which then allows for measurement of the extent to which the Act will either promote or suppress NGO functions.

Turner and Hulme (1997: 200) define NGO's as "associations formed from within civil society bringing together individuals who share some common purpose."

Vakil (1997: 2060) in Lewis (2009: 3) defines them as 'self-governing, private, not-for-profit organizations that are geared to improving the quality of life for disadvantaged people.'

Kameri-Mbote (2000: 3) defines them as "voluntary and autonomous organizations whose life exists between the citizens on the one hand and the state and market on the other."

In Ethiopia under their equivalent of Zambia's NGO Act, (The Proclamation for the Registration and Regulation of Charities and Societies, 2008), they both define and segment their societies and charities as local and foreign. Ethiopian Charities/Societies being those formed under the laws of Ethiopia and controlled by Ethiopians staff and do not use more than 10% of their funds from foreign sources. They define "Foreign Charities" as organisations which consist of and are controlled by foreign nationals and receive

funds from foreign country sources.

It is evident from these definitions that the term "Non-Governmental Organisation" encompasses a wide array of organisations and that definitions vary.

The common thread that runs through them is, however, that they are voluntary in nature, represent interests common to the group, are autonomous from Government and are non-profit.

What are the roles of NGO's?

NGO's gained prominence internationally in the 1980s when they came to be viewed as a solution to the failures of the centralised state in provision of public goods and services¹. They were perceived as being more cost-effective and better able to target the poor with appropriate goods and services than the state. Their major role has thus been public service delivery in various areas ranging from water and sanitation, education, health to agriculture etc².

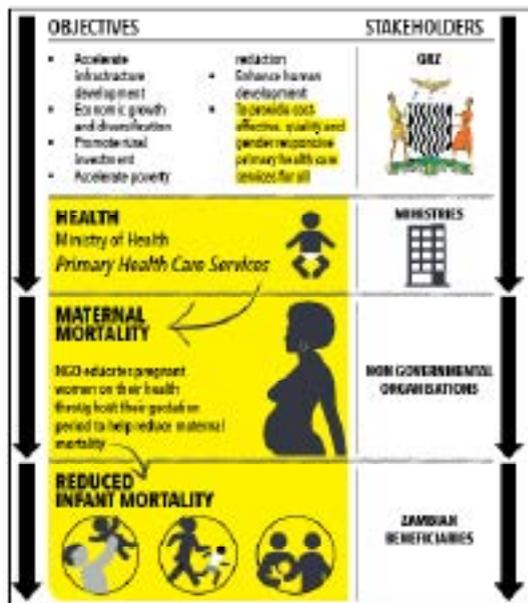
NGO's have also played a key role democratization processes³, advocacy, conflict resolution, capacity building, environmental activism, monitoring of government activities to create checks and balances, policy analysis and research to name a few⁴. Overall, NGO roles should compliment Government's efforts in effecting social, economic and political development.

1. Willis, K. (2011). Theories and Practices of Development (2nd Ed.)

2. Kajimbwa, M. (2006). NGO's and their role in the Global South. International Not-for-profit Journal, Vol. 9, No 1

3. Ebrahim, A. (2003) Accountability in Practice: Mechanisms for NGO's. World Development, Vol 31, No. 5, pp 813-829

4. Nelson, J. (2007). The operation of Non-Governmental Organisations in a world of corporate and other codes of conduct. Working Paper No.



research or other activity or program for the benefit or interest of the public, through resources mobilised from sources within or outside Zambia.”

The definition excludes churches, clubs, political parties, trade unions, religious and political associations.

This definition is aligned to the existing definitions of NGO's⁵. It leaves little scope for exclusion of certain groups unlike similar legislation in other countries such as the Ugandan “NGO Act” which has been criticized for a narrow definition that excludes

Definitional Aspects of The NGO Act, 2009

The definition of NGO's in the NGO Act, 2009 recognises the breadth of NGO activities and roles through its broad definition. Within the Act, an NGO is defined as a:

“Private voluntary grouping of individuals or associations, whether corporate or unincorporated, not established or operated for profit, partisan politics or any commercial purposes, and who or which have organized themselves for the promotion of civic education, advocacy, human rights, social welfare, development, charity,

areas such as governance, policy and human rights and shows a limited understanding of NGO activities and may preclude some NGO's from registering⁶. Similarly, the NGO Act of Sudan limits NGO operations mainly to humanitarian activities, reconstruction, relief services, repatriation and resettlement of refugees with no mention of advocacy, human rights or policy-making processes⁷.

However, such a broad definition raises challenges for effective administration and implementation of the Act by executing agencies. This is because it encompasses vast numbers of “voluntary groupings”

5. Turner and Hulme (1997 pp. 200) define NGO's as “associations formed from within civil society bringing together individuals who share some common purpose.”

6. The NGO Act, Regulations and Policy in Uganda: The History, contentions and suggestions. Briefing Paper (2009)

7. Laws of the New Sudan. (2003). The Non-Governmental Organisations Act (2003)

engaged in any of the broad areas stated within the Act. The Act also exposes groups, which should not ordinarily be included in the Act to its penalties. NGO's in Zambia⁸, for instance have collectively raised this concern through groups such as the Non Governmental Coordinating Council (NGOCC) which states that the definition could also extend to groups such as neighbours joining to support children with their homework or plant trees. This lack of defined parameters puts numerous groups at risk of violating the provisions of the Act through 'erroneous self-assessment'⁹. Interviews with the Patents and Companies Registration Agency revealed similar concerns. This definition must therefore be refined to include structural aspects of NGO's. It could for instance state that NGO's are 'formal', that is, institutionalized, with office bearers, regular meetings and organizational permanence – in addition to the existing definition¹⁰.

Another problematic aspect to this clause (Article 2) is that it on one hand excludes certain groups such as political parties and churches from the bracket of NGO's and yet at the same time allows the Minister to extend the application of the Act to the parties initially excluded. This clause is susceptible to abuse as it gives the Minister excessive powers, which may be used to unfairly punish

certain groups through applying the Act and its penalties to them.

A Brief Background to NGO Regulation

A central component of the NGO Act, 2009 relates to the establishment of the NGO Registration Board to regulate NGO's. The existence of regulatory agencies to monitor NGO's is a standard practice in many countries. NGO Registration Boards have for instance been established in Kenya and Uganda¹¹, while various agencies regulate NGO's in the United States and India.

The need for NGO regulation has been propelled by a number of factors in the recent past. Firstly, NGO's have risen in prominence and acquired increased influence over national policies in recent years. Many NGO's have created checks and balances to keep governments accountable¹². They have thus attracted criticism on their own levels of accountability and transparency. The proliferation of briefcase NGO's, which exist solely for personal gain and have no links to communities they claim to represent have, for example illustrated the need for NGO accountability. Furthermore, allegations abound of misappropriation of donor funds by NGO's¹³ and practices in which NGO's import luxurious commodities for resale and

8. Analysis of NGO Act by Women In Law Association reflects a collective stance by NGO's

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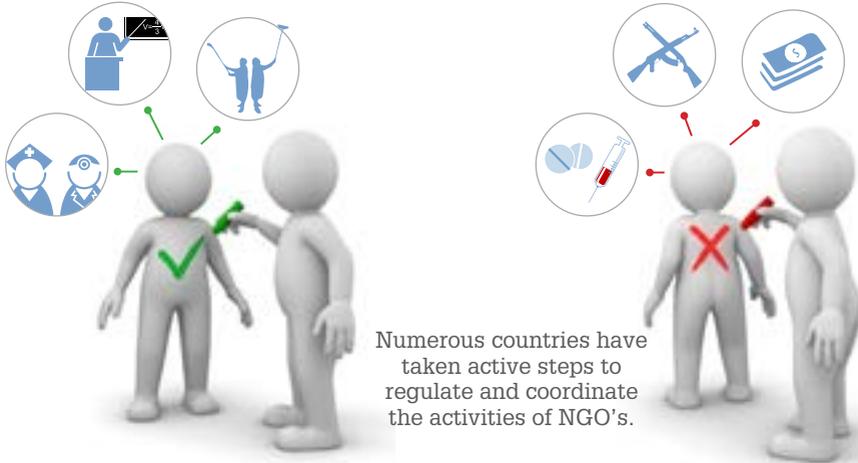
10. A structural definition is proposed by Salamon and Anheier (1992) cited in Lewis (2009) Non-Governmental Organisations: Definitions and History. London School of Economics

11. Kamera-Mbote (2000) The Operational Environment and Constraints for NGO's in Kenya: Strategies for Good Policy and Practice; United States Embassy: Cairo, Egypt

12. Lloyd, R. and Casas, L. (2005) One World.

13. In November 2012, for instance, World Vision finance manager was arrested for misappropriation of funds

Regulation of Non Governmental Organisations Activities



illicitly acquire firearms under the guise of being NGO's¹⁴.

NGO's have also become channels for increased donor funding. In 2008/9, for example, GBP337million of UK development aid went to UK NGO's out of a total budget of GBP 7.2 billion¹⁵.

Some governments have viewed this funding as a deliberate foreign strategy to undermine government sovereignty in developing countries by bypassing Governments, which are branded as corrupt in favour of NGO's¹⁶. Numerous countries have thus taken active steps to regulate and coordinate the activities of NGO's.

Conversely, arguments are raised that transparency, accountability and curbing of illegal activities are

not the primary reasons for the move to regulate NGO's. In Cambodia, for example, where the "NGO Act" was proposed by Government in 2008, similar arguments vis-à-vis transparency were made for the passing of the Act. However, statements made by Government officials intimated that other motives were at play in the passing of the Act. The then, president of the National Assembly in Cambodia, Heng Samrin for example said, "Today, so many NGO's are speaking too freely and do things without a framework. When we have a law, we will direct them"¹⁷. This statement seems to intimate a desire to control what NGO's can and cannot say. The Russian NGO Law has similarly been criticized for suppression of NGO freedoms.

14. Kamera-Mbote (2000) The Operational Environment and Constraints for NGO's in Kenya: Strategies for Good Policy and Practice

15. Willis, K. (2011). Theories and Practices of Development (2nd Ed.). Oxon: Routledge

16. Szazi, E. (2009) Political Activities of NGO's: International Law and Best Practices The International Journal of Not-for-Profit Law. Volume 12, Issue 1, November 2009

17. Cambodian League for the defense of Human Rights. (2009). LICADHO Briefing Paper

NGO Regulation via the NGO Act, 2009 in Zambia

In the case of Zambia, the reasons underlying the enactment of the NGO Act, 2009 and the establishment of the NGO Board are contested. Government, on one hand states the need for coordination, accountability and transparency in the NGO sector, however on the other hand Stakeholder interviews with NGO's such as Panos and Caritas reveal strong sentiments that the Act was a reaction to checks and balances imposed by NGO's on the previous administration, The Movement for Multi-Party Democracy (MMD).

GIZ (German Society for International Cooperation), a German Federal Government agency, also observes that NGO's were not consulted during the initial formulation of the Act, which has hampered consensus building, and thus the acceptance of the legislation. In consultation with Government, they point out that stakeholder consultations have been called for and a consultative process began so as to generate consensus on the Act and promote the effective regulation of NGO's.

The Ministry of Community Development Mother and Child Health, for instance point out that they called for a stakeholder meeting with broad involvement of NGO's who elected the NGO Council but then refused to elect representatives to the NGO Board. The Board does not therefore have the seven members from NGO's as indicated in the Act. Instead, only two NGO members appointed by the Minister are said to be currently sitting on the Board.

In consultation some NGO's, criticize The Patriotic Front (PF) Government for having opposed the Act before it formed government. The PF manifesto states that;

"In order to enhance the role of the civil society and its relationship with the State the PF government shall:

- Recognize the State and civil society as mutually interdependent and complementary partners in national development;
- Guarantee the active participation of civil society in matters of social justice and good governance;
- Promote constant dialogue between the State and the civil society;
- Review the Non-Governmental Organizations Act of 2009 so as to promote the above.

The PF manifesto also cites NGO participation in supporting capacity building, community development, social welfare services and women's participation in national development. It commits that its administration shall:

- Rehabilitate existing trades training institutes/centres and construct new ones in all Provinces in partnership with the private sector, NGO's and the Church;
- Enhance the participation of the church and non-governmental organizations in the provision of community development and social welfare services.
- Introduce programmes to enhance women's participation in national development in collaboration with relevant non-governmental organisations.

The NGO Board

According to the Act the mandate of the NGO Board, shall be to register, regulate and coordinate the activities of all NGO's in Zambia. The core functions of the Board can be classified as relating to two broad areas:

- i. Promotion of transparency and accountability and
- ii. Coordination and harmonization of NGO activities with the national development agenda.

NGO Transparency and Accountability

The main mechanism used by the Board to promote transparency and accountability in NGO's is the requirement of submission of annual reports, constitutions, disclosure of sources of funding etc. by NGO's at the point of registration, renewal or upon request by the Registrar (Articles 11 and 26).

Enhanced scrutiny of NGO activities



Disclosure of annual reports and

financial statements are among the most common accountability measures used internationally, and are often a legal requirement¹⁸. The NGO Act is thus in alignment with international best practice in this regard. In the United States for example, NGO's desiring tax exemption status are required to submit detailed information on finances, organizational structure, and programs through the annual returns form, which is part of Section 501 (c) (3) of the Internal Revenue Code¹⁹ (however, this requirement pertains to those requiring tax exemptions and not all NGO's as is the case in Zambia). This information is important to government in that it helps to ensure that the activities undertaken by the NGO are indeed in line with civic education, social welfare and development as opposed to furthering private profit interests or activities harmful to the public.

There are many other countries, which also use tax and administrative laws to restrict NGO activities to specific areas. Civil law countries such as Germany and France, are generally permissive on NGO activities but place indirect restrictions on their participation in political activities through tax laws which do not exempt NGO's whose major activity is political²⁰.

Disclosure of vital information is also important because it places government in a better position to support

18. Ebrahim, A. (2003) Accountability in Practice: Mechanisms for NGO's. World Development, Vol 31, No. 5, pp 813-829

19. Ebrahim, A. (2003) Accountability in Practice: Mechanisms for NGO's. World Development, Vol 31, No. 5, pp 813-829

20. Szazi, E. (2009) Political Activities of NGO's: International Law and Best Practices The International Journal of Not-for-Profit Law. Volume 12, Issue 1, November 2009

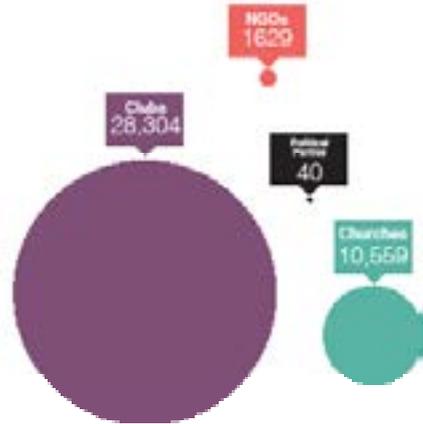
NGO activities. Increased transparency of NGO's in Zambia will also help remove suspicion and lessen tension that has tended to exist between NGO's and the state²¹. It will help to legitimize their role as shown in the case of Bangladesh and the Dominican Republic where regulation improved the effectiveness of development interventions by NGO's²².

Furthermore, adherence to these regulations would also be highly beneficial to NGO's themselves. This is because enhanced transparency and accountability build the credibility of NGO's and improve their chances of securing further funding from donors. Trivunovic (2011), in agreement, states that accountability and financial credibility are the first factors considered by donors in granting funding to NGO's. The release of annual reports would also facilitate the sharing of information on NGO activities and research findings among NGO's²³ and other stakeholders through the documentation centre proposed in the Act.

Interviews held with NGO's such as World Vision and SACCORD and Cooperating Partners such as the United Nations Development Programme(UNDP) and the German Society for International Cooperation (GIZ) showed support for greater transparency and accountability.

Nevertheless, Government must exercise caution to ensure that the legal requirement of financial reports does

CSOs Monitored by Registrar of Societies



not lead to disenfranchisement of smaller, less developed NGO's. These NGO's may lack the institutional capacity to prepare detailed reports and yet have great potential to benefit communities²⁴. Government must thus adopt flexible financial reporting requirements towards these small NGO's.

Penalties and Sanctions

The NGO Act, 2009 also incorporates clauses relating to penalties to be incurred for failure to supply annual and financial reports or disclose sources of funding. The NGO Board is for instance empowered to suspend or cancel the certificate of an NGO for failure to supply annual reports (Article 17). A justification raised for this strict penalty is that cases do

21. Business Anti-Corruption Portal, downloaded (24/7/2013)

22. Abbey, E. (2008). Constructive regulation of non-government organizations. *The Quarterly Review of Economics and Finance*, Vol. 48, Issue 2, pp. 370–376

23. The United Republic of Tanzania. *The National Policy on Non-Governmental Organisations (NGO's)*. November, 2001. Vice President's Office. Dar Es Salaam

24. Trivunovic (2011) *Countering NGO Corruption: Rethinking Conventional Approaches*. Chr. Michelson Institute (CMI) U4 Issue. March 2011, No. 3

arise in which, in spite of repeated reminders and monetary sanctions applied, Civil Society Organisations (CSO's) may still refuse to comply. There is however, a danger that such a measure may be unfairly used by Government to disenfranchise NGO's based on political motives. Further, the legislation does not indicate the number of warnings to be received by NGO's before de-registration is effected.

NGO's are given an opportunity to explain why they should not be deregistered but are not given an opportunity for appeal (Article, 17). While this is a protective measure against unlawful NGO activities, it may also lead to NGO deregistration after the first offence. Interviews with PACRA noted the need for at least a stipulated number of warnings before the final de-registration.

This sanction is also harsh when compared to countries such as the United States, which employ financial sanctions (e.g. withholding tax incentives). Similarly, the European Court in 2006, in a court case between the Salvation Army and the Russian Government held that an NGO could only be deregistered for unlawful practices and not for failure to follow a formal procedure²⁵.

Furthermore, the Act also makes failure to submit documents such as the NGO constitution, source of funding and a list of office bearers a criminal offence punishable by a fine or a prison sentence not exceeding three months (Article 19(44)). This

article has understandably caused an outcry from NGO's at the severity of the penalty. While these penalties are likely to enhance transparency and accountability, the concern is that they may discourage groups from joining the NGO community for fear of sanctions and will ultimately disadvantage the beneficiaries they service. They may also restrict NGO freedoms.

Furthermore, while the NGO Act advances upward accountability to Government in addition to the characteristic accountability to donors, downward accountability to beneficiaries is not sufficiently emphasized within the Act. Ultimately the beneficiaries of NGO projects are the Zambian citizens. These beneficiaries are the very basis for the existence of NGO's and yet accountability to them is often overlooked, while the focus of NGO's tends to be transfixed on donors and Government, who have power to sanction them.

There is an urgent need for communities to be actively involved in determining the projects that would be of most value to them and also in the process of monitoring and evaluating the progress of NGO's with a view to holding them accountable.

The Sudan NGO Act, 2003 for instance incorporates three-fold accountability to (1) donors, (2) the government and (3) to beneficiaries. The Act lays down the principle of capacity building of beneficiaries by NGO's with a view to long term self-sustainability by communities after the departure of NGO's. This is a pivotal principle

25. Rutzen, D. (2006). Rutzen, D. (2006). Salvation in Court: The Salvation Army v. Russia. The International Journal of Not-for-Profit Law Volume 9, Issue 1 December 2006

Regulation will provide accurate data on NGO areas of focus



along with the adoption of participatory approaches during the process of design, implementation and evaluation of projects²⁶.

Coordination and Harmonisation of NGO Agenda

The second major objective which the NGO Board seeks to address relates to coordination and harmonisation of NGO activities. The NGO Board is mandated to register NGO's, provide policy guidelines on how NGO activities could better support the nation's development agenda and approve areas of operation, all of which are aimed at enhancing NGO performance.

Through registration of NGO's, the NGO Board will be aware of the number of NGO's operating in Zambia and areas of operation which would allow for coordination of activities and alignment with national development areas.

Fragmentation of NGO activities and non-alignment with national objec-

tives tends to lead to wastage of resources through duplicated efforts and excessive focus on certain developmental areas while others of similar, if not greater urgency are left unattended. Edward and Hulme (1998: 5) for instance, point out that NGO's may "concentrate resources in regions and sectors that might not be the most important for national development" due to lack of central oversight. The failure to prioritize national development also stems from the heavy reliance by NGO's on donor funding. This usually causes them to respond more aptly to donor interests than to country needs. Through the operations of NGO Board, NGO activities would be harmonized and effectively targeted to the most urgent country needs.

By being aware of the activities of NGO's, Government would also be in a better position to partner with donors and NGO's and so consolidate development efforts. Personnel interviewed from NGO's such as Plan International and Panos expressed support for this

26. Laws of the New Sudan. (2003). The Non-Governmental Organisations Act (2003)

function in view of enhanced collaboration with Government for greater effectiveness. The sustainability of large-scale NGO's in service delivery, which has been questioned over the year²⁷ also necessitates partnership with Government.

Efforts to promote harmonization should not however lead to suppression of NGO freedoms. NGO's have for instance argued against the article for approval of areas of work by the Board. While government can provide guidance in such matters, NGO's are primarily voluntary organisations and the members have a right to represent interests they choose. To restrict their area of operation geographically or thematically would thus constitute an infringement of their fundamental freedoms of expression and association.

Rejection of application

The NGO Registration Board also has the authority to reject an application for registration or renewal on the basis of NGO objectives being contrary to other laws or "not in public interest" from operating. This clause has obvious benefits for public protection and safety and is a standard provision particularly as it relates to unlawful acts. However, it raises the question of who defines what is in 'public interest'. While NGO's may define certain activities such as suing the Government over violations of human rights, as being in public interest, this may be viewed otherwise by Government. A

focus group discussion with PACRA revealed similar concerns on the difficulty of operationalizing the term.

To its credit, the NGO Act allows for a fresh application for registration to be made by an NGO in the case of a previous application having been rejected. It also provides for an explanation for rejection of the application. This is unlike other countries such as Sudan where the NGO Board is not obliged to justify why an application has been rejected²⁸. However, the Act does not include any appeals to a higher independent body in such cases. This reduces the effectiveness of making a fresh application as it would be sent to the same Board which rejected it. This is especially so in cases where the point of conflict may have been the constitution of the NGO and the NGO does not find it necessary to have it changed.

Current NGO concerns surrounding the NGO Board

A source of concern regarding the NGO's Registration Board is its composition. The Board will consist of fifteen part-time members with seven members from NGO's and the rest from Government. This lack of balanced representation favours Government and also implies that a quorum of seven members, with a majority of Government can be formed and have decisions passed with little

27. Edwards and Hulme (1998). Too Close For Comfort? The Impact of Official Aid on Nongovernmental Organizations

28. Sudan NGO Act. (2003). Secretariat of Legal Affairs and Constitutional Development. Laws of the New Sudan.

or no NGO representation.

Unfortunately as a result of NGO's abstaining to vote in NGO members to represent them on the Board, they are placed in an even more disadvantaged position with no one to represent them. Interviews carried out with the responsible ministry for the NGO Act, Ministry of Community Development, Mother and Child Health, revealed that two representatives from NGO's had been elected by the Minister to sit on the Board. This was facilitated by Article 6 (2) (a), which allows the Minister to appoint two members "by virtue of the member's knowledge and experience in development and welfare management". This article does not restrict the Minister to appoint only Government officials hence the appointment of NGO members in this case. This shows that Board representation can in such cases favour NGO's. However, legislation is for posterity and this Article (Article 6 (2a)), places the discretion to appoint, in the hands of the Minister; hence successive Ministers (or indeed the same Minister) may choose to appoint Government officials only in future.

A fifty-fifty representation would thus be preferable. Interviews with stakeholders such as SACCORD revealed that regulation by a board is a notion that is supported by some NGO's but the major concern is that representation of the Board is inequitable. The inequitable representation on NGO Boards has led to protest even in other countries such as Uganda, where the

disproportionate representation is even more pronounced with only three representatives from "the public" and eleven Government officials. A legitimate concern raised is that "an NGO Board undemocratically constituted lacks deeper understanding of NGO work and is unlikely to serve the interests of the NGO Sector"²⁹. The article permitting the Minister to reject nominees from the NGO sector without justification is also problematic and subject to abuse hence requires review.

Duplication of legislation is another issue to be tackled. The Registrar of Societies through the Societies Act was initially mandated to register, de-register and monitor CSO's and has not been legally prohibited from doing so. This raises the question of duplicate legislation. Personnel from the Registrar of Societies for example note that it is already mandated to register CSO's including NGO's but has lacked adequate financial and human resource capacity to effectively carry out its roles. Government could have therefore built the capacity of this existing structure and enhanced its ability to perform as opposed to the creation of a new structure.

Nevertheless, in light of the fact that The Registrar of Societies is currently quite overwhelmed by the number of CSO's to be monitored, the creation of the NGO Registration board could be a positive step to reducing the current number of organisations to be monitored. It was for instance observed that out of the total of 40,532 CSO's

29. The NGO Act, Regulations and Policy in Uganda: The History, contentions and suggestions. Briefing Paper (2009)

The Non Governmental Organisations Board



The Board will consist of fifteen part-time members with seven members from NGO's and the rest from Government.

registered in Zambia as at June, 2013 (See Table 1) the Registrar of Societies had capacity to carry out only 5 random inspections on them annually with a team of only three inspectors and a driver. It was further pointed out that even the carrying out of these 5 inspections were dependent on availability of funding³⁰. Against such a large number of CSO's, the number of organisations inspected is miniscule. This then may justify having a body, which specifically deals with NGO needs. The need for building the capacity of the Registrar of Societies should not however be overlooked either. The actual number of NGO's and CSO's is not currently known as some organisations register under The Companies Act which does not require them to indicate whether or not they are NGO's.³¹

Furthermore, while the presence of

the NGO Registration Board has the earlier stated merits, measures should be taken to ensure that it does not lead to an overly centralized and bureaucratic system. Government needs to ensure that the registration process is decentralised allowing NGO's to register from points accessible and convenient to them.

Concerns about bureaucracy particularly relate to NGO's that desire to be registered as limited companies by guarantee. These NGO's will now be required to register under both PACRA and the NGO Board. This is because PACRA strictly deals with registration and does not regulate NGO activities while The NGO Board will be responsible for both registration and regulation. The Registrar of Societies' functions relating to NGO's have largely been taken over by the NGO Board although they have not

30. From interview with personnel from Registrar of Societies

31. Companies Form 3 states that A company limited by guarantee 'has the capacity to enter into any activity unless restricted by its articles' which is not exclusive to NGO's

been legally transferred.

A final source of concern is that while the NGO Act claims to seek to improve performance of NGO's, the Act places little emphasis on acknowledgment and promotion of NGO roles. This is unlike legislation in other countries like Belgium where there is an explicit right entitled "droit de critique" (right to criticize) which permits associations to use all legal means to defend interests and ideas or organizational objectives"³² (Szazi, 2009).

In view of the forgoing, PMRC recommends:

- i. Definition of NGO's:** Further refining the definition of NGO's.
- ii. Ministerial Authority:** Removing the authority of the Minister to extend the definition of NGO's.
- iii. Areas of NGO focus and to support maximising NGO contribution:** As opposed to an NGO being de-registered due to violating "public interest", broad areas of national strategic development and how NGO's can contribute should be widely circulated as part of the National Plan.
- iv. Severity of penalties:** Re-evaluate and align with other severity of penalties
- v. Appeals:** Introduce the option for an NGO to appeal to a higher body when their application is rejected.
- vi. NGO Board Representation:** Currently the Minister has the

ability to appoint members of the Board. Greater representation of the Board should be NGO's and they should be democratically elected by their peers and not appointed by the Minister.

- vii. Streamlining:** Reviewing the duplication of legislation that already exists in The Societies Act. There is a need to simply support the current structures with the capacity, both financial and human resource, to support the same mandate, as opposed to creating new structures.
- viii. NGO Audit:** Currently no accurate figures exist of the actual number of NGO's, as some register under the Companies Act (and are not compelled to declare themselves as an NGO) while others are under The Societies Act. There is an urgent need to audit all NGO's.
- ix. Concise Impact Monitoring and Evaluation:** This will drive impact accountability to the beneficiaries.

In conclusion, the NGO Act, 2009 is an important piece of legislation, which will help enhance transparency and accountability of NGO's. It will also help stream-line NGO activities with national development agenda and help NGO's work hand in hand with government for the development of the country. There is however, need to review the Act in order to amend earlier highlighted clauses which make it susceptible to abuse.

30. Szazi, E. (2009) Political Activities of NGO's: International Law and Best Practices The International Journal of Not-for-Profit Law. Volume 12, Issue 1, November 2009

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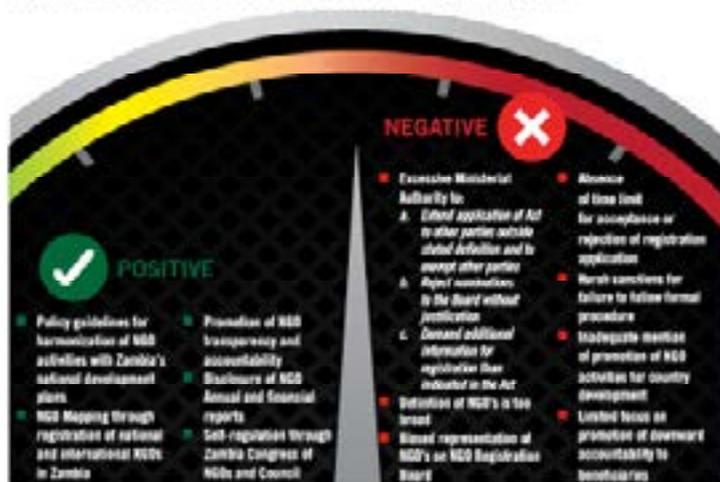
The Non-Governmental Organisations' Act No. 16 of 2009

Need to regulate but not curtail non-governmental organisations' unique role to supplement Government services

The Non-Governmental Organisations' Act No. 16 of 2009 was enacted by the Zambian Parliament on the 26th of August, 2009. The major objectives of this Act are to:



The Act has the potential to promote accountability and transparency among NGO's and to better align NGO and State activities for the accelerated development of Zambia. However, the Act also contains provisions that make it susceptible to abuse and constrain the freedom of NGO's. Key points requiring review in the legislation are; the definition of NGO's to make it more specific, excessive Ministerial authority, severity of penalties, imbalanced representation on the NGO Board and absence of an appeals process.



What does it mean for Zambia if implemented in its current form?

- Enhanced accountability
- The possibility of deregistered NGO's could reduce service delivery to existing beneficiaries
- Transparency of NGO's
- Suppression of NGO freedoms
- Harmonisation of NGO activities with national development plans
- Tension and mistrust between Government and NGO's
- Efficient and effective targeting of resources
- Criminal sanctions for NGO's that infringe on provisions

RECOMMENDATIONS

1



Refining the definition of NGO's

2



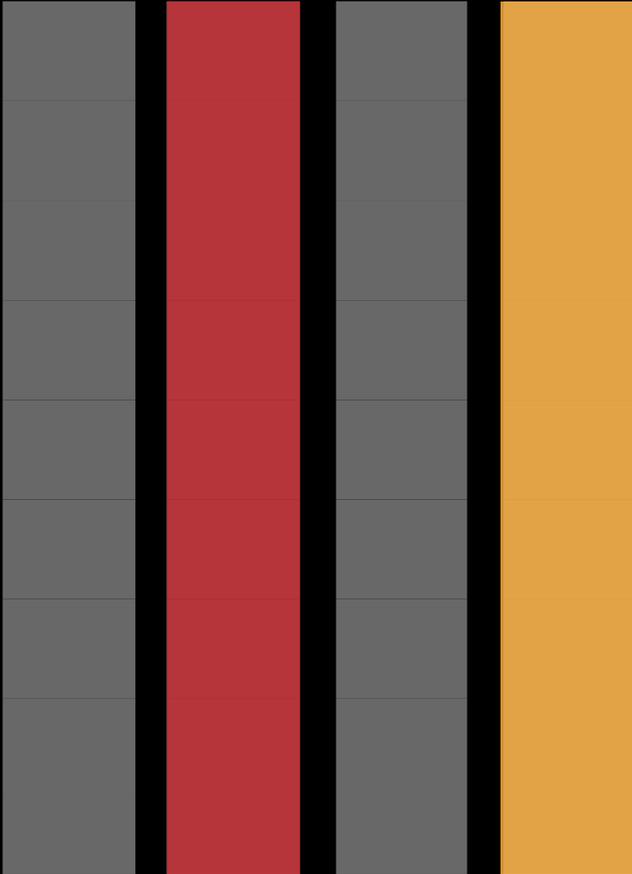
Removal of excessive Ministerial authority

3



Equitable Board representation of NGO's and Government

NEED TO REGULATE BUT NOT CURTAIL NON GOVERNMENTAL ORGANISATIONS' UNIQUE ROLE TO SUPPLEMENT GOVERNMENT SERVICES



Unlocking Zambia's Potential

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