



**ZIMBABWE ELECTION SUPPORT NETWORK  
(ZESN)**

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***SUBMISSION TO THE PUBLIC HEARING OF PORTFOLIO  
COMMITTEE ON PUBLIC SERVICE, LABOUR AND  
SOCIAL WELFARE ON THE NGO BILL.***

**PLACE: HARARE INTERNATIONAL CONFERENCE CENTRE**

***DATE: 7 SEPTEMBER 2004***

## **1. HISTORICAL BACKGROUND**

Civic society has always been involved in governance issues. Indeed, in 1995, owing to pressure from civic society, the Government amended Electoral Regulations [Electoral (Amendment) Regulations 1/95, Statutory Instrument 70/95] and included civic society as election monitors. Thereafter in 2000, the Government promulgated the Electoral (Amendment) Regulations 7/2000 Statutory Instrument 161A/2000, which set out the qualifications for monitors and drew a distinction between “monitor” and “observer”. The promulgation of the various instruments thus permitted civic society to fully participate in governance issues. Statutory Instrument 41B/2002 puts provisions for the Electoral Supervisory Commission to accredit observers from civic society organisations through the Accreditation Committee.

## **2. ZESN’s WORK**

The major contributions that ZESN has made to Zimbabwe, include:

### **2.1 Election Monitoring and Observation**

ZESN has monitored and observed all elections since its inception. On each of the occasions the government accredited us. (See attached invitation letter from Ministry of Justice, Legal and Parliamentary Affairs). This includes the 2000 General elections, 2002 presidential election, 14 parliamentary by-elections and numerous local authority elections and by-elections. Election observation promotes confidence, transparency, credibility and legitimacy in the election by the electorate and to an extent national stability.

### **2.2 Civic and Voter Education**

ZESN has also conducted civic and voter education countrywide thereby promoting the concept of citizen empowerment, high voter turn out and the citizens’ participation in governance, socio-economic and political issues. Most recently, many stakeholders used our voter education material as a reference.

### **2.3 Media and Communications**

ZESN has provided voter information through the media and worked with media practitioners focussing on capacity building in order to ensure professional and ethical election reporting.

## **2.4 Electoral Reform**

In August 2004, ZESN, together with EISA, successfully hosted a regional meeting on electoral reforms that was attended by representatives of electoral commissions, civil society and political parties from all SADC countries.

ZESN, through its Research and Advocacy Programme has greatly contributed towards electoral reform. It lobbied towards the adoption of the SADC Principles and Guidelines, which have now become a reality. ZESN has provided a platform for discussing electoral related issues as a way of nurturing our growing democracy.

As a measure of credibility and professionalism of ZESN members and its staff, the network has been invited to observe elections in the region and beyond e.g. Nigeria, South Africa, Guyana, Indonesia, Croatia, Malawi and Lesotho etc. We have also been invited to present papers at numerous international fora.

## **3.THE IMPORTANCE OF ELECTION, DEMOCRACY AND GOOD GOVERNANCE**

The observation of human rights and the rule of law, democracy and good governance are basic fundamental values that are enshrined within the Universal Declaration of Human Rights, The African Union Treaty, SADC Treaty and our own Constitution. These are enunciated below:

### **3.1 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Zimbabwe acceded to ICCPR on 13 May 1991. Article 25 states that every citizen shall have the right and opportunity without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representation and to have access, on general terms of equality, to public service in his country.

In essence the instrument recognises the importance of citizens participating fully in the conduct of public affairs of their country. It is also important that restrictions should be reasonable .The NGO Bill would cause unnecessary restrictions in that people would have limited representatives whom they can participate through. Participation in elections must be free and to achieve that end there is need for impartial organisations to observe and disseminate information on elections. There is also a need for society to have platforms where if there is an abrogation of human rights, the necessary reports are made. There is therefore a need for the state to show genuine need for the promotion of human rights.

### **3.2 AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS (ACHPR)**

The African Charter was signed by Zimbabwe on 26 February 1986 and ratified on 30 May 1986. Article 1 requires member states to the African Charter recognise and give effect to human rights duties and freedoms in the Charter. The NGO Bill does not give effect to human rights, especially since NGOs that deal with governance issues are restricted. It is a reality that there is no way the government can realize enough funds to fully cater for governance and human rights issues. Government should therefore allow other stakeholders to come in and assist for the promotion of human rights.

Article 13 (1) provides that:

“ Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law”.

Therefore the Charter allows people to participate in governance issues through “freely chosen representatives”. Therefore, by restricting NGOs that deal with governance issues, the Bill seeks to contravene an instrument, which it is a signatory to.

Article 14 guarantees the right to property, which may only be breached in the interest of public need or in the interest of the community. In this regard, should government take over assets that belong to NGOs, then it would be going against what it set out to do.

In addition the recently passed OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (Durban 2002) emphasises the role of civil society in electoral process.

### **3.3 SADC PRINCIPLES AND GUIDELINES GOVERNING DEMOCRATIC ELECTIONS**

Zimbabwe recently signed SADC Guidelines and Principles Governing Democratic Elections which requires that SADC Member States shall adhere to the following principles amongst others in the conduct of democratic elections:

- Full participation of the citizens in the political process
- Freedom of association
- Political tolerance

- Regular intervals for election as provided for by the respective National Constitutions
- Equal opportunity to exercise the right to vote and to be voted for
- Voter Education

According to Section 7.13 of the SADC Principles and Guidelines governing democratic elections, SADC Member States are required to “Allow members of the SADC Electoral Observation Mission (SEOM) to communicate freely with all competing political parties, candidates, other political organizations and organizations and civil society organizations.”

The proposed legislation will effectively weaken and interfere NGOs that deal with elections and other governance issues, and this will be a direct violation of the principles and guidelines of SADC.

Section 7 of the SADC document demands that member states should “Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression and campaigning....” ZESN therefore feels that it is part of its mandate to follow this up to ensure that implementation of such requirements are complied with effectively.

The Zimbabwean head of state put his signature to the whole process in Mauritius, and it is the role of civil society organizations to monitor that the state implements these rules.

The NGO Bill is in contradiction with the above principles and the spirit espoused by the document and existing regional and international conventions signed by Zimbabwe especially since the NGO Bill was gazetted soon after the signing of the SADC Principles and Guidelines.

### **3.4 CONSTITUTION OF ZIMBABWE**

Section 21 guarantees the protection of freedom of assembly and association. It reads as follows:

*‘ Except with his own consent or by way of parental discipline, no person shall be hindered in his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations for the protection of his interest’.*

The NGO Bill contravenes the section because it interferes with the operation of non-governmental organisations, which facilitate platform for discourse on various issues of public interest and democracy.

The NGO Bill in its very nature violates Section 21 of the Constitution which guarantees the protection of freedom of assembly and association because it interferes with the operation of non-governmental organisations that provide a platform for discourse on various issues of public interest and democracy.

Whilst the Bill seeks to regulate the work of the NGOs, which is the function of the government, NGOs contribute to the country's development. However, some sections in the Bill as outlined below affect the autonomy of NGOs.

**The Bill will therefore make it difficult to comply with Universal Declaration of Human Rights, the United Nations Charter, the International Covenant on Civil and Political Rights, the African Treaty, and other regional and international instruments in terms of full citizen participation in governance issues.**

#### **4.COMMENTS ON SPECIFIC SECTIONS OF THE NGO BILL**

##### **4.1 The NGO Council**

###### **Section 3**

Establishes the NGO Council, which is essentially the regulatory body for NGOs. Subsection 2(a) stipulates just five representatives from NGOs “ which the Minister considers are representatives of non-governmental organizations.”

Subsection 2(b) and (c) stipulate that the bulk of the members of the proposed Council “ ... shall consist of one representative who shall not be under the level of Under Secretary from each of the following Ministries –

1. The Ministry for which the Minister is responsible
2. The Ministry of Health
3. The Ministry of Justice, Legal and Parliamentary Affairs
4. Finance ministry
5. The Ministry of Youth Development, Gender and Employment Creation
6. Foreign Affairs Ministry
7. Local Government Ministry
8. The Ministry responsible for Information and Publicity
9. A representative from the President's Office and Cabinet and

## 10. The Registrar, who is *ex officio*

The following are glaring anomalies that we feel need to be looked into by Parliament and stakeholders, which at best need to be struck off the proposed legislation.

- There are 10 government representatives against 5 NGO representatives in the proposed Council, which essentially has to protect the rights and functions of NGOs. This constitutes an unfair representation of NGOs.
- According to subsection 2(a) that we have alluded to, it is the Minister's sole responsibility to decide which five NGO representatives to take on board the proposed Council. Subsection 4 also says the responsible Minister may specify to the NGOs, who in his or her (that is the Minister) opinion, are suitable for appointment to the proposed Council.

### **PROPOSAL 1**

**The proposed NGO Council should have at the very least an equal number of representatives from NGO and the Government sectors. Our preference is for self-regulation. In addition, it is our considered opinion that there should be a democratic process in the selection of The NGO representatives on the Council.**

## **4.2 Registration of Non-Governmental Organisations**

### **SECTION 9**

Requires that all NGOs be registered in terms of the said Bill and makes it unlawful for any NGO to carry on its business without registration.

Section 9 (1) states that:

*'Non-governmental organisations to be registered*

*(1) No non-governmental organisation shall-*

*(a) commence or continue to carry on its activities: or*

*(b) seek financial assistance from any source:*

*Unless it has been registered in respect of the particular object or objects in furtherance of which it is constituted.*

This means that those that are lawful and currently registered as Trusts will cease being lawful and have to stop functioning in accordance with the law as they try to register. This disrupts the smooth operation of NGOs.

With regards to ZESN in particular, this Bill is actually an obstacle to full political participation of the electorate in that activities that benefit the electorate would have to be stopped whilst the organisation is seeking registration and in the meantime Zimbabwe is geared for elections early next year in March. It is not even clear how long the registration process takes.

It might take years since all currently functioning NGOs and new ones will all be competing for registration. ZESN has been in the process of registration under the PVO Act for the past two years and up to now; it has not yet been finalized. Moreover if the idea is to register NGOs, then why de-registration in the process.

### **PROPOSAL 1: SELF REGULATION**

**Whilst it would be understandable that NGOs are regulated in such a way as to avoid questionable NGOs that may deceive the general populace, we would however prefer the system of self-regulation for example the Law Society of Zimbabwe. However this could be combined with a code of ethics.**

### **PROPOSAL 2**

**It is our strong view that organisations operating currently as non-governmental organisations effectively as Trusts (both under Deeds Registries Act and with the High Court) be automatically deemed registered under the new PVO Act.**

### **PROPOSAL 3**

**NGOs not currently registered under PVO Act should be allowed at least one year transitional grace period, as they await registration. This will ensure that NGOs fully acquaint themselves with the new system and comply fully with the requirements.**

## **4.3 FOREIGN FUNDING**

SECTION 17 reads:



“No local NGO shall receive any foreign funding or donation to carry out activities involving or including issues of governance”

Worldwide democracy and governance issues are seen as critical in ensuring democracy and free and fair elections yet the Bill seeks to curb efforts that are made by civic society. Furthermore, electoral processes are by their nature quite expensive, more so given that in Zimbabwe, Parliamentary and presidential and local authority elections are held separately. A total of 15 by-elections have been held throughout the country since 2000, and ZESN and other civic bodies have been instrumental in observing them.

### **Civic Society Contributions**

1. The training of observers, regardless of political creed is a necessary expense that cannot be discarded. For elections to be credible locally independent and professional and unbiased monitors and observers are required. Lack of funds will threaten the quality and calibre of observers.
2. ZESN started its Electoral Reform Project in which with the Electoral Supervisory Commission were observers (who were represented in the Advisory Committee of the Project) in 2003. It is through this project, national and international lobbying and dialogue with the government that we have managed to set the debate of electoral reform alive. Wide consultations have been made at local level as well as organizing and hosting meetings and conferences. The process has been quite expensive.
3. At the moment, there is no realistic alternative funding from the government, and there is no legislation that makes it a prerequisite for government to provide NGOs with the necessary funding. For example at the moment there is no provision for funding for democracy and human rights activities e.g. the Electoral Supervisory Commission and the Ombudsman are currently underfunded.
4. The government itself, through its various institutions and departments, has benefited, and continues to benefit from foreign funding through taxes, creation of jobs, revenue creation through advertising in public media. This goes to show that foreign funding is quite integral for the development of our country.

5. Civic organisations that deal with elections have always sought to complement government efforts in managing elections. Civic society used to be monitors since 1995 under the Electoral Supervisory Commission. Without the support from organizations like churches and other groups like ZESN no doubt, the authorities would have found it very difficult to make adequate preparations in terms of observers as well as deploying them to various polling centers. Civic education also being done by NGOs supplementing the work done by the Electoral Supervisory Commission. On record ZESN contributed its bibs and T-shirts used as identification purposes to the Electoral Supervisory Commission in 2000 and 2002 and paid for some observers allowances.
6. Since 2000, the country's economic plight has been on the downside, and on several occasions, NGOs have supplemented government's efforts in service delivery.
7. It would be grossly unfair to stakeholders, including our members to abandon ship at a time when our Electoral Reform Project, which is of national concern is yet to be completed. Governments also announced need for electoral reforms and signed the SADC Principles and Guidelines Governing Democratic Elections. ZESN's work has been in line with current developments. The timing of the NGO Bill defeats the good intentions and developments set out by the SADC Principles and Guidelines Governing Democratic Elections.

We therefore ask the government and Parliament to take these issues into consideration before coming up with the final legislation.

## **PROPOSAL 1**

**We cannot accept the concept of the banning of foreign funding to NGOs working in the governance field according to constitutional, regional and international Conventions. Whilst it appears that the real intention is to ban foreign funding for political parties activities using NGOs as conduits, the government should state its intentions specifically without banning funding for all organisations working in the governance field.**

## **PROPOSAL 2**

**NGOs that have been duly registered to continue receiving foreign funding.**

### **4.4 CRIMINALISATION**

The penalties stipulated in the Bill for contravening are harsh and unnecessary. Should the government retain the provision, it is prudent to allow NGOs, which do not comply with the necessary provisions to be given enough, time to wind up and not for the government to take over the assets.

## **PROPOSAL 1**

**Each organization that fails to comply should be given the option to dispose of the assets in a way it deems fit and as stated in its constitution as long as it does not contravene the Common laws of the country.**

## **5.CONCLUSION**

ZESN is of the view that it is in the national interest that there be a more friendly legal framework governing the NGO community. This would be in keeping with the values of the various international, continental and regional bodies that we are members of. Indeed, it would also be in keeping with our own Bill of Rights as articulated in our constitution.

The country's credibility was on the mend with government's move towards electoral reform. However, that this piece of legislation has already done the opposite.

Civic society has a duty to monitor and observe the forthcoming elections, conduct civic and voter education and supplement the work of electoral management bodies.