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# **Why NGOs Should Be Aware of The NGO Policy**

**A Publication of Society for Democratic  
Initiatives, Sierra Leone (SDI-SL)**

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## **About SDI**

*Society for Democratic Initiatives, Sierra Leone (SDI)* has six years experience since its inception in 2003. All throughout its existence, SDI has focused on freedom of information and expression, mainly which led to the drafting of Sierra Leone's Freedom of Information Bill and the formation of the Freedom of Information Coalition and Access to Information Network Sierra Leone in a bid to encourage a wider campaign, SDI has worked on other governance issues such as the African Review Mechanism, social accountability, and other human rights related issues like access to justice, legal aid and prison visitation. SDI is a part of the Global Campaign for Freedom of Information (FOINET); African Freedom of Information Network and the International Media Lawyers Association. With institutional supports from National Endowment for Democracy (NED), SDI is a well established civil society organization. SDI similarly work with Open Society Justice Initiatives (OSI) on media policy and constitutional law challenges on draconian media laws in Sierra Leone

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## Introduction

Draft NGO Policy Regulations (NGO Policy) were prepared in 2008 and are pending review and approval by the Government of Sierra Leone (GOSL) and the Parliament of Sierra Leone.

The process of preparing the draft NGO Policy and the content of the NGO Policy have raised serious concerns within civil society, or at least within a segment of civil society in Sierra Leone. In order to help educate and inform the debate regarding the NGO Policy, the Society for Democratic Initiatives (SDI) has prepared this Handbook, through a grant received from the International Center for Not-for-Profit Law, under the auspices of the NGO Legal Enabling Environment Program, a USAID-funded project.

The purpose of this handbook is to outline:

1. The international standards governing

the relationship between governments and civil society;

2. The commitment to freedom of association enshrined in the international treaties to which the Government of Sierra Leone is a signatory;

3. The provision for freedom of association in the National Constitution of Sierra Leone;

4. The procedures for establishing and operating an NGO in Sierra Leone according to current NGO policy;

5. The extent to which NGO policy in Sierra Leone diverges from international standards, Sierra Leone's international commitments, and its National Constitution.

## **Part I: International Principles Protecting Civil Society**

It is important for civil society members and prospective members to understand their right to form associations, such as NGOs, free from interference from governments, individuals, or other groups.

In a report compiled by the International Center for Not-for-Profit Law and the World Movement for Democracy and published in 2008 (<http://www.icnl.org/knowledge/news/2008/3-21.htm>), six international principles are set forth that govern and protect CSOs.

These principles are all rooted in the framework of international law, and therefore applicable to countries, based on their ratification of applicable international covenants and treaties.

These standards are designed to defend civil society organisations against government infringements of their rights and activities.

**2**

### **Principle 1: The Right to Entry (Freedom of Association)**

(1) International law protects the right of individuals to form, join and participate in civil society organizations.

(a) Broad scope of right. Freedom of association protects individuals in their right to establish a wide range of civil society forms, including trade unions, associations, and other types of NGOs.

(b) Broadly permissible purposes. International law recognizes the right of individuals, through NGOs, to pursue a broad range of objectives.

Permissible purposes generally embrace all 'legal' or 'lawful' purposes and specifically includes the promotion and protection of human rights and fundamental freedoms.

(c) Potential founders. The

architecture of international human rights is built on the premise that all persons, including non-citizens, enjoy certain rights, including freedom of association.

(2) Individuals are not required to form a legal entity in order to enjoy the freedom of association.

(3) International law protects the right of individuals to form an NGO as a legal entity.

(a) The system of recognition of legal entity status, whether a "declaration" or "registration/incorporation" system, must ensure that the process is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place.

(b) In the case of a registration/incorporation system, the designated authority must be guided by objective standards and restricted from arbitrary decision-making.

**Principle 2: The Right to Operate Free from Unwarranted State Interference**

(1) Once established, NGOs have the right to operate free from unwarranted state intrusion or interference in their affairs. International law creates a presumption against any state regulation that would amount to a restriction of recognized rights.

(a) Interference can only be justified where it is prescribed by law, to further a legitimate government interest, and necessary in a democratic society. States must refrain from restricting freedom of association through vague, imprecise, and overly broad regulatory language.

(b) It is incumbent upon the state to ensure that applicable laws and regulations are implemented and enforced in a fair, apolitical, objective, transparent and consistent manner.

(c) Involuntary termination or dissolution must meet the standards of international law; the relevant government authority should be guided by objective standards and restricted from arbitrary

decision-making.

(2) NGOs are protected against unwarranted governmental intrusion in their internal governance and affairs. Freedom of association embraces the freedom of the founders and/or members to regulate the organization's internal governance.

(3) Civil society representatives, individually and through their organizations, are protected against unwarranted interference with their privacy.

**Principle 3: The Right to Free Expression**

Civil society representatives, individually and through their organizations, enjoy the right to freedom of expression.

(a) Freedom of expression protects not only ideas regarded as inoffensive or a matter of indifference but also those that offend, shock or disturb, since pluralism is essential in a democratic society. NGOs are therefore protected in their ability

4

to speak critically against government law or policy, and to speak favorably for human rights and fundamental freedoms.

(b) Interference with freedom of expression can only be justified where it is prescribed by law, in the interests of a legitimate government interest, and necessary in a democratic society. States must refrain from restricting freedom of expression through vague, imprecise, and overly broad regulatory language.

(c) Stemming from the well-recognized protection of individuals to freedom of assembly, NGO representatives have the right to plan and/or engage in the advocacy of legal aims, including human rights and fundamental freedoms.

**Principle 4: The Right to Communication and Cooperation**

(1) Civil society representatives, individually and through their organizations, have the right to

communicate and seek cooperation with other elements of civil society, the business community, international organizations and governments, both within and outside their home countries.

(2) Individuals and NGOs have the right to form and participate in networks and coalitions in order to enhance communication and cooperation, and to pursue legitimate aims.

(3) Individuals and NGOs have the right to use the Internet and web-based technologies to communicate more effectively.

**Principle 5: The Right to Seek and Secure Resources**

Within broad parameters, NGOs have the right to seek and secure funding from legal sources. Legal sources must include individuals and businesses, other civil society actors and international organizations, inter-governmental

organizations, as well as local, national, and foreign Governments.

**Principle 6: State Duty to Protect**

(1) The State has a duty to promote respect for human rights and fundamental freedoms, and the obligation to protect the rights of civil society.

The State's duty is both negative (i.e., to refrain from interference with human rights and fundamental freedoms), and positive (i.e., to ensure respect for human rights and fundamental freedoms).

(2) The State duty includes an accompanying obligation to ensure that the legislative framework relating to freedom of association and civil society is appropriately enabling, and that the necessary institutional mechanisms are in place to ensure the recognized rights to all individuals.

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## **Part II: International Instruments of Freedom of Association**

The Sierra Leonean Government has committed itself to a number of international treaties requiring it to protect its citizens' right to freedom of association. These are as follows:

### **International Covenant on Civil and Political Rights**

Article 22 presents freedom of association as a fundamental human right, meaning it is a right inherent to human beings, not granted by any particular government:

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.*

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.*

Article 2 further mandates that governments take necessary legislative and other actions to ensure that rights enshrined in the Covenants are adequately protected. It provides thus:

1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

2. *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional*

*processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

*3. Each State Party to the present Covenant undertakes:*

*(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

*(B) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State; and to develop the possibilities of judicial remedy;*

*(c) To ensure that the competent authorities shall enforce such remedies when granted.*

**Article 5** disallows governments, groups, or other individuals from encroaching on such fundamental

human rights:

*1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*

*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.*

### **Optional Protocol to the International Covenant on Civil and Political Rights**

The first optional protocol to the ICCPR establishes an individual complaints mechanism whereby individuals in member States can submit complaints, known as communications, to be reviewed by the Human Rights Committee.

*Article I: A State Party to the Covenant that becomes a Party to the*

present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

*Article 2: Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.*

**African Charter on Human and People's Rights (ACHPR)**

Article 10 enshrines the freedom of association and emphasizes that 'no one may be compelled to join an association'. It states in full:

1. Every individual shall have the

*right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.*

The African Commission on Human and People's Rights - the body responsible for implementing the provisions of the charter - ruled in *Civil Liberties Organisation (in respect of the Nigerian Bar Association) v Nigeria* (Communication 101/93) that states have an affirmative duty to abstain from interfering in the free formation of associations among their citizens.

**Vienna Convention on the Law of Treaties**

Article 27 forbids national governments who are party to international treaties from violating the provisions of those treaties with their own national laws. It states that such a government 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

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### **Part III Provisions for Freedom of Association in the National Constitution of Sierra Leone**

Sierra Leoneans' right to associate is enshrined not only in the international treaties outlined above, but also in the National Constitution of Sierra Leone.

**Article 5(1)** of the Constitution states that Sierra Leone is to be a Republic based on the principles of Freedom, Democracy, and Justice.

**Article 15(3)** outlines the need to recognise and protect fundamental human rights and individual freedoms.

The right to freedom of association is detailed in **Article 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.*

## Part IV: Sierra Leone NGO Policy

Under the legal framework in Sierra Leone, civil society organisations are required to register with government ministries or other agencies to operate. To register as an "NGO," organisations must register under the NGO Policy with the Ministry of Finance and Development, and also the Sierra Leone Association of Non-governmental Organisations (SLANGO). Civil society organisations can also register with the Registrar's office as a not-for-profit company and can engage in profit-making activities provided that the proceeds are used for charitable purposes alone. Community-based organisations are required to register with the Ministry of Social Welfare, Gender and Children's Affairs and also with various local government authorities around the country. Civil society organisations can also register with the leading coalitions in the country to gain recognition.

This section will focus exclusively on the legal framework affecting NGOs that is, the NGO Policy Regulations (hereinafter, NGO Policy). The existing NGO Policy that governs the NGO sector was enacted in 2000. The Government, working with SLANGO, prepared a newly proposed NGO Policy in 2008. This section will focus on the draft NGO Policy that remains pending.

### **Definition of NGO**

The final policy draft 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'.

Excluded from NGO status are 'religious bodies', groups with a 'political or ethnic bias', and 'community-based organizations' (CBOs) - defined as 'group(s) of community members working together as...independent non-profit making charitable organization(s)'.

### **Application & Registration**

NGO founders must take care to meet the following criteria in order to be granted official NGO status! Without NGO status, and the support of the GOSL that NGO status brings, groups may find it difficult, if not impossible, to conduct their activities and fulfil their missions effectively.

#### **a. Selecting area of work**

The NGO application form provides for a wide range of work to be undertaken by NGOs.

Prospective NGO founders are required to select their area of concentration from the following categories: education, health and sanitation, agriculture, arts and culture, relief, skills promotion, consultancy, human rights, gender, small scale industries, social / community development,

environment, or finance. There is also space to indicate 'other'.

**b. Additional documents**

Together with the application form itself, applicants must submit:

- a copy of their organisation's constitution;\*
  - a memorandum and articles of association;\*
  - a copy of the certificate of registration in the country of origin, and evidence of their activities in that country; \*\*
  - an attestation from GOSL representatives in the country of origin (e.g. Embassy, Consulate, High Commission), and a letter of request for registration of the subsidiary in Sierra Leone; \*\*
  - the organisation's logo;
  - a staff list including local and expatriate workers;
  - details of the work and residential permits of expatriate staff;
  - registration fee (no refund possible); and
  - a mission statement.
- \* For international bodies, these will be the documents of the parent organisation registered in the organisation's country of origin.  
\*\* For foreign/international organisations only.

**C. Mission Statement**

Applicants must submit a mission statement outlining the NGO's purpose, objectives, and target beneficiaries. These must promote the well-being and welfare of Sierra Leoneans, in accordance with GOSL development policies.

**d. Agreement**

Before an NGO can commence its activities, it must sign an Agreement with GOSL.

**e. Requirements**

In order for an application for NGO status to be successful, the organisation must supply details of the following:

- identifiable office space(s) with a sign board visibly displayed;
- an accessible postal address;
- a bank account in the organisation's name with at least two signatories and evidence of accessible funds to support the organisation's activities;
- a clearly delineated administrative structure;
- a staff body of at least five full-time employees and/or volunteers excluding secretaries, messengers, and drivers;\*
- a Board of Trustees or equivalent policy-making body, which may be based within or outside Sierra Leone (contact details required);\*\*

- evidence that the NGO will contribute to employment and training in Sierra Leone;  
- a transparent accounting system, so that the organisation is accountable to its donors, GOSL, and the Sierra Leonean people. The organisation should be able to produce annual accounts for auditing purposes, a summary of overheads/direct support to beneficiaries, staffing costs (local and expatriate), and estimated financial contributions from Sierra Leonean communities/GOSL.

\*NGOs must strive to employ nationals of Sierra Leone before employing non-nationals.

\*\* This may not be predominantly comprised of members of a single family group.

### **Project Proposals**

When deciding on projects to implement, NGOs must include and inform the Ministry of Finance and Economic Development (MOFED) and the relevant line ministry at every stage in the decision-making process. No NGO project can be implemented within Sierra Leone unless this has been done. Any change in a project during the implementation stages must be communicated to the relevant line ministry and MOFED.

A project proposal, which is to be submitted to the line ministry of the

implementing agency and the Project Review Committee at the MOFED, must include the following information:

- 1. type of activity;**
  2. category and estimated number of target beneficiaries;
  3. estimated duration of project;
  4. total funds needed and breakdown of sources of funds;
  5. categories and number of personnel required to implement project;
  6. total personnel cost;
  7. list and estimated value of imported items required, and details of duty waiver requests; implementation strategy;
  8. total administrative cost;
  9. signature of target beneficiary representative; and
  10. approval by line ministry and recommendation to MOFED for registration.
- NGOs must also submit annual reports on projects implemented to the NGO Unit.

### **Emergency Waivers**

Project registrations may be waived in emergency situations by request to MOFED, but a report on the project

must be submitted to MOFED within fourteen days of commencement of the project.

### **Re-registration**

Every registered NGO must renew its registration with the NGO Unit every two years. Re-registration commences in September (applications must be submitted in September of the year the previous registration certificate expires), and ends in January of the next year. Late applications may be granted an extended deadline in exceptional circumstances, but may be charged a late-application fee.

MOFED requires an independent assessment of NGO performance at the re-registration stage, and requests the following documents (listed in re-registration application form):

- a summary of final donor project narratives and financial reports;
- specific external project audits undertaken at donor request;
- a copy of most recent audit of Sierra Leone operations;
- proof of paid membership to the Sierra Leone Association of NGOs (SLANGO).

Failure to re-register will lead to the deletion of the NGO from the NGO register, and the suspension of GOSL support to that NGO.

### **Tax Exemptions**

According to the Income Tax Act 2000 (Articles 8 and 9), charitable

organizations and NGOs engaged in income-generating activities are exempt from paying income tax in certain circumstances, and may be issued with a certificate of exemption by the Income Tax Department. Failure to secure this certificate will adversely affect the NGO's re-registration prospects. A tax clearance certificate must also be obtained from the National Revenue Authority (NRA) in order for a re-registration application to proceed.

### **Unsuccessful Applications**

In cases where the NGO Supervisory Committee rejects an application for NGO registration, the applicant must be informed of the reasons for rejection. The unsuccessful applicant then has a maximum period of three months in which to reapply for NGO status, and will not be required to pay a second registration fee. A second rejection will not be subject to further appeal.

### **Customs Duties**

NGOs may apply for a duty waiver of import taxes on imported goods (e.g., for capacity-building items), but all such waivers must be approved by MOFED. Only NGOs that are properly registered may apply for a duty waiver. In most cases, waiver clearance for an NGO will only be granted by the Ministry after recommendation by the Minister.

The duty waiver application is complex: a list of imports needed to



carry out the approved NGO program must be submitted, together with detailed distribution plans and shipping documentation, approved by the government. All items presented for duty waiver must bear relevance to the approved NGO project, and no additional allowance is permitted except for replacements.

Imports excluded from duty waivers (except in emergency situations/when permitted by relevant line ministry) include goods imported for monetization, imported items which can be locally produced at comparable quality and cost, and personal items for NGO personnel.

### **Role of Government**

#### **a. Structure**

The mechanisms for starting and maintaining an NGO in Sierra Leone are carefully controlled by the Government via MOFED, which oversees all NGO registrations and monitors the relationship between the NGOs, GOSL, donors, and beneficiary communities.

The NGO Supervisory Committee advises GOSL on NGO policy, ascertains whether prospective applicants for NGO status have met the above requirements, and determines registration fees. It also oversees the NGO Unit, which conducts interviews with applicants, undertakes field/office verifications, monitors and evaluates all NGO programs in Sierra Leone in collaboration with relevant line ministries, and keeps a register of NGOs. The NGO Unit will also

establish an NGO Inter-Agency Committee, which will meet at least quarterly to review NGO projects and national NGO strategy.

Sectoral Standing Committees and Projects Review Committees (one for every sector ministry) also oversee NGO activities and report to MOFED via the NGO Unit. SLANGO is the umbrella organisation of NGOs, supported by GOSL, with a mandate to: encourage networking between member NGOs; provide a unified voice for NGOs in their dealings with GOSL and the donor community; organise necessary training for NGOs; and act as an accrediting body for NGOs.

#### **b. Powers**

##### **i. Information & Monitoring**

NGOs are required to provide all information requested by MOFED regarding their status, organisation, activities, and all project proposals before NGO projects can be implemented (see Project Proposals).

NGOs are required to submit to GOSL and SLANGO details of all funds committed by donors for project implementation, including the amount committed, the sources of funding/details of donors, and any details of installment arrangements or other donor requirements.

##### **ii. Regulation of Funding**

The transferral of capacity-building assets for NGOs must be done through

SLANGO and MOFED, which ensure that certain operational criteria are met. In the case of closure of an NGO, all assets must be disposed of in collaboration with GOSL. Even if non-governmental donors' funds are provided for NGO capacity-building, these funds must be transferred to SLANGO.

### **iii. Sanctions**

MOFED is responsible for enforcing the policy and may levy sanctions recommended by the NGO Supervisory Committee if it is found that an NGO is failing to comply with policy guidelines. Sanctions include the cancellation or suspension of registration certificates and restrictions on duty-free concessions. 'Other' undefined sanctions may also be determined by the NGO Supervisory Committee. Non-compliance can be reported directly to MOFED.

No sanction can be taken against an NGO unless the NGO has been given 30 days' notice. During this time the NGO may appeal against the charge to the Minister of MOFED.

### **c. Justification**

The GOSL justifies this system on two main grounds. First, it provides a means of coordinating NGO activities in Sierra Leone through the GOSL and SLANGO, thereby allowing for more effective development of civil

society: Second, it ensures much-needed transparency and accountability for the NGO movement.

### **d. Implications**

The elaborate bureaucracy increases the timeframe for applications and approvals, because prospective NGOs must deal with several layers of Government at every stage of their application. Slow procedures make it harder for NGOs to be established. They also hamper NGO operations in the long term: the duty waiver application process, for example, prevents NGOs from responding to demands that arise during the course of the programme, to changing external circumstances requiring different imported materials, or to emergency situations that demand a fast response.

Because the procedures are complex and involve a large amount of cooperation with the Government - through the submission of applications, interviews, payment of registration fees, auditing, and re-registration - the potential for governmental abuse and corruption is significant.

A high level of government involvement in NGO operations also increases the pressure on NGOs to comply with government policy, or risk losing their official status. These pressures make it harder for NGOs to conduct their activities, and limit the extent to which civil society can expand and flourish.

## **Part V: Analysis of Sierra Leone NGO Policy in light of International & Constitutional Provisions for Freedom of Association**

The current draft NGO policy in Sierra Leone contradicts the GOSL's international and constitutional commitments to freedom of association in the following respects.

### **1. Mandatory Agreement with State and Re-registration.**

According to international standards (1 and 2), individuals have the right to establish organisations to pursue their collective goals on an independent basis and without undue governmental interference. The NGO Policy in Sierra Leone, in requiring not only registration but also an agreement with the GOSL and mandatory re-registration every two years, denies civil society groups their fundamental right to form and operate as independent organizations. First, the NGO Policy requires that all NGOs must register and sign an agreement with the GOSL before they can commence operations. Accordingly, for an NGO to exist and undertake any activities, it must register (unregistered NGOs are forbidden), and must *agree to serve the state* pursuant to a specific

signed agreement. Potential NGOs are clearly prohibited from activity if it is not directly connected/contracted with the GOSL. The requirement to conform NGO objectives to government priorities is inconsistent with the freedom of association, effectively denying civil society's existence as an independent force within the country. Second, the NGO Policy provides for re-registration every two years. Such a provision is both expensive and burdensome for organizations, and serves as an opportunity for government to terminate organizations that may be unpopular or not in favor with a particular government. Normally, as a matter of good practice, registrations are of indefinite length, ending only when an organization goes out of business, or is suspended or terminated for good cause (such as willful breach of the law).

### **2. Mandatory Membership in SLANGO.**

The ACHPR (Art.10.2) states that "no one may be compelled to join an association." The NGO Policy in

Sierra Leone would require all NGOs to register with the Sierra Leone Association of NGOs (SLANGO) in order to seek registration with the MOFED. Moreover, re-registration requirements will help ensure that SLANGO receives a steady stream of membership dues, to be paid on a compulsory basis. This requirement runs directly counter to the freedom not to join an association, so clearly protected by the African Charter.

3. Registration Process. According to international standards (1.3a), the process of attaining legal entity status (whether by declaration or registration) should be based on 'clear, speedy, apolitical, and inexpensive procedures'. As demonstrated above, the NGO registration process in Sierra Leone is, instead highly complex, time-consuming, costly (registration fees must be paid every two years), and subject to strong political pressure due to the high level of cooperation with MOFED and its subsidiaries necessary at every stage of the process. The NGO Policy provides extensive regulations surrounding the process of registration, including (among other provisions) an unannounced field visit from the NGO Unit, an unspecified

registration fee (if set too high, likely to be prohibitive), and a limited right of appeal from a denial, not to an impartial arbiter (such as a court), but only to the registration body itself.

4. Arbitrary Decision Making.

International standards (1.3b, 2.1b) also require that 'in the case of a registration/incorporation system, the designated authority must be guided by objective standards and restricted from arbitrary decision-making', and that 'regulations [should be] implemented and enforced in a fair, apolitical, objective, transparent and consistent manner'. This cannot be ensured under the current NGO Policy because the bodies overseeing the registration process are formed and controlled exclusively by the GOSL: MOFED, the NGO Supervisory Committee, and the NGO Unit. There is no independent body to enforce objective standards or hold government decisions to account, and no mechanism or independent course of appeal for ensuring transparency or consistency in government decisions. International standards (2.1c) also state that 'involuntary termination or dissolution [of associations] must meet the standards of international

law'. In Sierra Leone, however, NGOs can be dissolved at any time for failing to meet any of the above criteria, established and judged by the GOSL alone.

#### 5. Government Interference.

International standards (2.1-3) make clear that 'NGOs have the right to operate free from unwarranted state intrusion' in their 'internal governance and affairs' and that 'international law creates a presumption against any state regulation that would amount to a restriction of recognized rights'. This is affirmed in ICCPR (Art. 5), and was included in a ruling by the African Commission on Human and People's Rights (Communication 101/93), which decreed that states have an affirmative duty to abstain from interfering in the free formation of associations among their citizens. Nevertheless, government interference in NGO activity in Sierra Leone remains extensive.

All NGOs must be registered with MOFED and are subject to continual internal monitoring by its subsidiary NGO committees. The registration process entails many levels of interaction with government officials, via interviews, on-site inspections, and paperwork processing. Once

established, an NGO is subject to government supervision in every action it takes: the execution of a project, import of materials, transfer of capacity-building assets, acquisition of funds, and so forth. There is in fact no aspect of NGO activity that is free from government intervention under the current NGO policy. This level of intervention can be deemed 'unwarranted' on two grounds. First, it dramatically restricts NGO activity - by making it extremely difficult to establish or operate an NGO in Sierra Leone without meeting government resistance - which is a direct infringement of citizens' right to associate. Second, it does not further a 'legitimate government interest...necessary in a democratic society' as required by international standards (2.1b), but rather serves only to provide the GOSL with information about, and control over the NGO community.

#### 6. Vague and Overbroad Regulatory Language.

Governments are required to 'refrain from restricting freedom of association through vague, imprecise, and overly broad regulatory language' under international standards (2.1a). Yet the NGO Policy in Sierra Leone remains unclear (registration fees are not specified) and confusing:

numerous bodies are responsible for different aspects of NGO registration and monitoring (MOFED, relevant line ministries, the NGO Supervisory Committee, the NGO Inter-Agency Committee, NGO Unit, SLANGO, and Sectoral Standing and Projects Review committees). The regulatory framework is exceptionally broad and makes highly labour-intensive demands on NGOs; for example, project proposals (which must include certain required information) must be approved by MOFED before an NGO can undertake a single operation. A sprawling, ill-defined NGO Policy therefore restricts freedom of association in a way that is expressly forbidden by international standards. It also violates the Vienna Convention on the Law of Treaties (Art. 27), which forbids national governments who are party to international treaties - as the GOSL is - from violating the provisions of those treaties with their own national laws.

**7. Limits on Free Expression.**

International standards (3) protect citizens' right to free expression, allowing civil society to voice ideas that may even 'offend, shock, or disturb', to 'speak critically against government law or policy', and to engage in 'the advocacy of legal

aims, including human rights'. This is because pluralism - the expression of differing viewpoints and opinions - is considered 'essential in a democratic society'. The National Constitution of Sierra Leone also emphasizes the importance of upholding freedom, democracy, and justice (Art. 5.1). The requirement for NGOs to ensure their objectives conform to the GOSL strategic priorities effectively excludes those NGOs critical of government actions -- such as human rights NGOs -- from registering as an NGO and receiving the protection of the Policy.

It also means that NGOs that are critical of government actions - this is particularly the case for human rights NGOs - have no protection under the current policy. On the contrary, they are dependent on government approval in order to exist at all. This creates a perverse incentive for NGOs not only to refrain from making statements that could be badly received by the GOSL, but actively to conform to government policy rather than suggest improvements to it. The result is a dramatic curtailment of freedom of expression among civil society organisations and NGOs, which is essential to a functioning

democracy.

**8. Limits on Permissible Purposes.**

The National Constitution (Art. 26) makes clear that freedom of association allows citizens 'to form or belong to any political party, trade unions or other economic, social or professional associations, national or international'. International standards (1.1a,b) also stress that the right to associate extends to a broad range of groups, 'including trade unions, associations, and other types of NGOs', and that these in turn may have a broad range of objectives, including all legal purposes and especially 'the promotion and protection of human rights and fundamental freedoms'.

Yet the NGO Policy in Sierra Leone prohibits a number of groups from seeking NGO status, including 'religious bodies', groups with a 'political or ethnic bias', and 'community-based organizations' (CBOs).

As a result, in practice, many political and human rights groups are denied NGO status - and the official sanction and support that makes their activities viable - because of their religious, political, or ethnic nature. By withholding the privilege of registration, the

**20**

NGO Policy also withholds the opportunities for CBOs to carry out any of the prescribed activities in collaboration with the Government or any other funding agency. This restriction of freedom of association clearly contravenes international and constitutional provisions.

**9. State Duty to Protect.** Finally, it should be noted that according to international standards (6.1-2), the state's duty to protect civil society is both negative and positive in nature.

The state must refrain from interference but also ensure - in an active way, by imposing a legislative framework that is 'appropriately enabling' - that human rights and fundamental freedoms are respected.

While it has been shown that GOSL is not performing its negative duty (interference in NGO activities is excessive), it is also clear that current NGO Policy includes no positive provisions for facilitating freedom of association and expression. No part of the Policy is intended to simplify the procedures, to make it easier for NGOs and prospective NGOs to operate. According to international standards, GOSL is failing in its duty to enable a healthy and vibrant civil society.

## Conclusion

Although the right to freedom of association is enshrined as a fundamental human right in international standards, international instruments, and the Sierra Leonean Constitution, current NGO policy in Sierra Leone makes it very difficult for NGOs to exercise this right in practice. Unless organizations comply with a highly burdensome set of governmental fees and regulations necessary to attain and maintain status as an NGO, they struggle to survive in Sierra Leone.

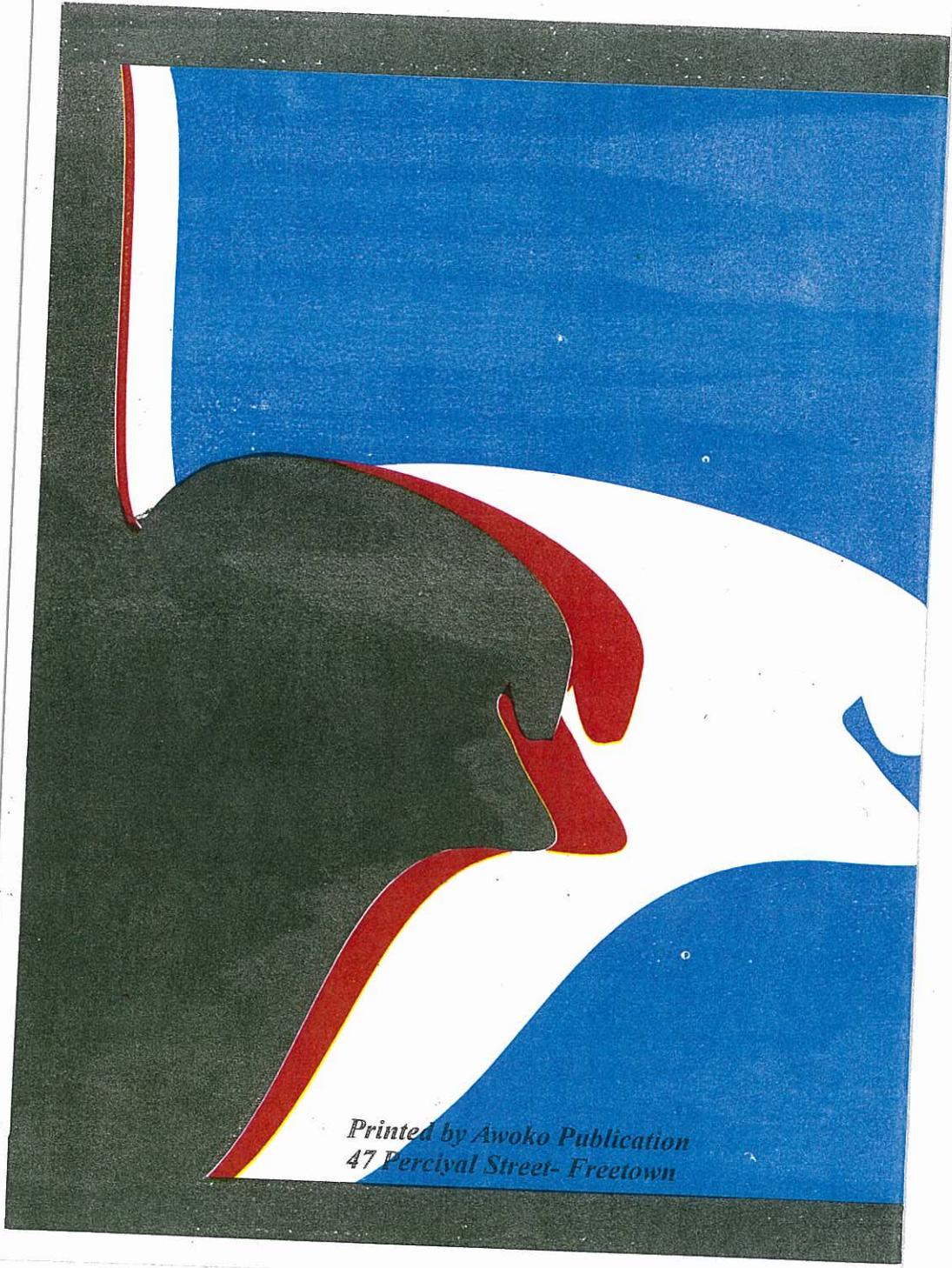
It is hoped that Sierra Leonean policy will eventually be brought in line with international and constitutional standards, granting civil society organisations greater independence and flexibility in their activities.

## About the Author

**Mr. Emmanuel Abdulai** is founder and executive director of the Society for Democratic Initiatives, Sierra Leone, an NGO that focuses on human rights education, freedom of expression, legal aid and prison monitoring, and anticorruption campaigns in Sierra Leone. A lawyer by education and training, he is a Steering Committee Member of the International Media Lawyers Association, an Oxford University base media Lawyers think tank. Mr. Abdulai is a member of the West African Media Defense Network that is working towards media law reform and providing legal aid to journalists in the sub-region. In addition, he is the editor-in-chief of the *Demo-Rights Magazine*, and author of dozens of articles and reports on human rights in the region. A champion of freedom of expression and information, Mr. Abdulai drafted Sierra Leone's Freedom of Information Act in 2005.

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