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The Non-Governmental Organisations Act [Chapter...]

An Act to provide for the registration of voluntary organizations thereof, to provide for a framework for self-governance in promotion of the principle of self-regulation by non-governmental organisations, to provide a framework for raising of funds by non-governmental organisations and for public accounting for those funds, to provide for the establishment of the Non-Governmental Organisations Board of Zimbabwe, to define the functions, powers and responsibilities of these bodies, and to provide for matters connected to or incidental to the foregoing.

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Date of Commencement

This Act shall come into existence at the date it is published in the Government Gazette.

PART I

PRELIMINARY

Short Title

1. This Act may be cited as the Non-Governmental Organisations Act [*Chapter...*]

Interpretation

2. In this Act-

“Accounts” means all books of accounts, statements, records and balance sheets giving details of all income and donations received from whatever source, all payments and expenditure and all assets of a Non-Governmental Organisation.

“Accountability” means the obligations of persons or authorities entrusted with public and private resources of a non-governmental organisation to ensure that the finances are properly managed and are used for the programmes for which they were allocated and in accordance with the stated aims and objectives of the organisation. It also means the obligation to be answerable and accountable to the persons and groups whose interests it seeks to

advance.

“Audit” means an independent examination of the finances by a qualified auditor.

“Board” means the Governance Board for Non-Governmental Organisations established in terms of Part IV of this Act.

“Code of Conduct” refers to the Code of Conduct that will be formulated in terms of this Act.

“Minister” means the Minister who is in charge of matters pertaining to social welfare.

“Non-governmental organisation” means any non-profit making non-governmental body that receives funds from a donor or donors and which performs work intended to benefit the public or a sector of the public and which applies any fees or profits from its activities to the furtherance of its objects.

“Non-governmental organisation values” refers to the values set out in the code of conduct to be formulated in terms of this Act

Application

3. (1) Subject to sub-section 2 of this section, this Act applies to all non-governmental organisations that –
- a) are established in Zimbabwe for the benefit of members of the public or sections of the public and will include organisations that provide the following types of service: charity, relief, community development, land reform, environmental protection, lobbying for equitable international trade and international debt relief, education, gender awareness, legal assistance, human rights, prevention of cruelty to animals, scientific inquiry, and/or the provision of funds for any one or more of the above; and
 - b) is not established or controlled, directly or indirectly, by the State or any of its organs; and
 - c) is formally constituted in terms of a written governing instrument such as a Constitution or a Trust Deed; and
 - d) is obliged to apply its resources for the public benefit and is precluded from transferring or distributing, whether directly or indirectly, any benefit to its members, trustees, donors, directors, officers, or to their associates or members of their families, except next of kin, provided that the organisation may pay to such persons reasonable remuneration for services rendered in connection with carrying out its work.
- (2) This Act will not apply to-
- a) governmental and quasi-governmental bodies;
 - b) political parties, trade unions, confederations of trade unions, employer organisations and religious bodies;
 - c) private organisations that are funded exclusively by the person or persons who established or run these organisations and do not collect funds from the public or internal or donor agencies;
 - d) small organisations, in that their income and expenditure per annum, does not exceed the limit prescribed therefore by the Board from time to time;
 - e) informal organisations that are established for the benefit of the members only and which do not have governing constitutions;
 - f) any other organisations that may from time to time be prescribed for the purpose by the Board.

4. Registration of non-governmental organisations

All non-governmental organisations to which this Act applies in terms of s 3 must apply to register in terms of this Act and any such organisation will have the right to be registered provided that it satisfies the requirements contained in this Act.

5. Controls over non-governmental organisations

All non-governmental organisations to which this Act applies in terms of s 3 will be subject to the controls and disciplinary processes provided for in this Act.

PART II

OBJECTIVES OF ACT

6. The objectives of this Act are -

- (1) to establish an independent, responsible and self-monitoring system for civil society by providing for a framework for responsible and effective self-regulation and accountability of non-government organizations and thereby to increase public and donor confidence in the work of such organisations;
- (2) to protect the rights of non-governmental organizations, work as an affirmation of the fundamental constitutional freedoms of peaceful assembly, expression, and association;
- (3) to promote the work of non-governmental organisations and to enhance their capacity to deliver public services by lobbying for such things as fiscal incentives and tax exemptions.
- (4) to facilitate a constructive relationship between government and non-governmental organizations in order to advance the public good.

PART III

GOVERNANCE OF NON-GOVERNMENTAL ORGANISATIONS

7. Establishment and functions of governing bodies

- (1) The following will be the bodies responsible for governance of non-governmental organisations in Zimbabwe:
 - a) A Governance Board for Non-Governmental Organisations (“the Board”) that will carry out the functions allocated to it in terms of this Act; and
 - b) The National Association of Non-Governmental Organisations (NANGO)
- (2) The Board must consult with NANGO in relation to the formulation of matters of policy relating to non-governmental organisations.
- (3) The National Association of Non-Governmental Organisations will be recognised by the Minister and the Board as the apex body for all non-governmental organisations in Zimbabwe and it will have the legal status to represent these organisations in all matters affecting non-governmental organisations.
- (4) The National Association of Non-Governmental Organisations will be an autonomous body and will be separate and independent from both Government and the Board and all other person, organs and authorities in Zimbabwe.
- (5) The National Association of Non-Governmental Organisations will assist non-governmental organisations to strengthen their operations so that they are able to comply fully with the code of conduct provided for in this Act and their other obligations in terms of this Act..

PART IV

THE GOVERNANCE BOARD

8. Legal status of Board

Subject to the provisions of this Act, the Board will be a juristic person capable in its own name of suing and being sued, or purchasing and otherwise acquiring, holding and alienating property, whether movable or immovable, and any right and interest therein, of entering into contractual commitments, and generally of performing such acts and doing such things as juristic persons may by law perform.

9. Powers and functions of Board

The functions of the Board will be:

- (a) to assist non-governmental organisations to perform their work effectively for the benefit of the public;
- (b) to process expeditiously applications by non-governmental organisations for registration in terms of this Act;
- (c) to enforce the code of conduct for non-governmental organisations that will be drawn up in terms of this Act and to ensure that non-governmental organisations act in the public interest in accordance with their objectives;
- (d) to investigate allegations of misconduct on the part of registered non-governmental organisations and to exercise the disciplinary powers given to it in terms of this Act;
- (e) to recommend to the Minister a policy framework to govern the work of non-governmental organizations, their relationship with Government, their access to resources and information, and any other issues of policy relating to the achievement of the objects of this Act;
- (f) to do such other things as are reasonably necessary and incidental to the achievement of these functions.

10. Membership of the Board

(1) The NGO Board will consists of 26 members appointed by the Minister as follows:

- (a) two members appointed by the Minister for their ability and experience in social service planning and administration or professional qualifications or their suitability otherwise for appointment;
- (b) two members selected from a list of three persons nominated by NANGO on the basis of their exceptional ability, experience and qualification in the area of NGOs management and administration;
- (c) two members selected from a list of three persons nominated by NANGO who are Zimbabwean citizens and hold legal qualifications;
- (d) one member of NANGO to represent each of the five operational regions of NANGO selected by the Minister from list provided of two nominees per region;
- (e) two members selected from a list of three persons elected by women's rights NGOs;
- (f) one member selected from a list of two persons nominated by human rights NGOs;
- (g) one member selected from a list of two persons nominated by organisations representing disabled persons;
- (h) one member selected from a list of two person nominated by organisations involved in rural development work;
- (i) one member selected from a list of two person nominated by organisations working in the area of HIV/ AIDS.
- (j) one member selected from a list of two person nominated by organisations working in the area of provision of health services;
- (k) one member selected from a list of two person nominated by organisations working in the area of children's rights.
- (l) one member selected from a list of two person nominated by organisations dealing with media freedom;
- (m) one member selected from a list of two person nominated by organisations working with the youth;
- (n) one member selected from a list of two person nominated by organisations working in the area of transparency and accountability;

- (o) one member selected from a list of two person nominated by organisations working in the area of environmental protection and sustainable agriculture;
 - (p) one member selected from a list of two persons nominated by organisations working in the area of culture and the performing arts;
 - (q) one member selected from a list of two person nominated by organisations operated by the churches;
 - (r) one member selected from a list of two persons nominated by organisations working in the area of education and training;
 - (s) one member selected from a list of two persons nominated by organisations working in the area of small enterprise development.
- (2) In nominating persons to sit on the Board, the nominating organisations must take into account the following criteria
- a. The need to nominate persons of high integrity who are committed to efficient management of non-governmental organisations and of the need for transparency and accountability within these organisations;
 - b. The need to nominate persons who have experience in the field of management of non-governmental organisations;
 - c. The need for gender balance in the persons nominated;
 - d. The need to ensure that the Board is composed of persons representing all the different regions of Zimbabwe.
- (3) The organisations that are empowered to nominate persons to sit on the Board must convene a meeting of the organisations concerned to agree on their nominees, provided that if no agreement can be reached the organisations will vote on whom to select as nominees.
- (4) At least one of the persons nominated by the organisations must be a person who is based in a place other than Harare.
- (5) The Board will elect from its members a Chairperson and Deputy Chairperson.
- (6) If the organisations that have nominated a Board member decide that the Board member has conducted himself or herself in a manner that is inconsistent with the proper performance of his or her duties as Board member, the organisations can request the Minister to remove that member from the Board and if the Minister removes that person, the organisations will then nominate a further person to sit on the Board.
- (7) In areas that require specialist technical expertise the Board may appoint experts in these fields as advisors to the Board.

11. **Persons ineligible to be Board members**

No person may be appointed to the Board who

- (a) has been convicted of a criminal offence for which he or she has been sentenced to a terms of imprisonment of not less than six months;
- (b) is an unrehabilitated insolvent;
- (c) a Member of Parliament;
- (d) is an office bearer in a political party.

12. **Term of office of Board members**

The members of the Board will hold office for three years and may be re-appointed for one further term of three years.

13. **Removal and resignation of Board Members**

- (1) The Minister may, on the recommendation of the other Board members, dismiss a member of the Board if

the Minister is satisfied that that member is unsuitable to continue to hold that office or is incapable to performing his or her duties.

(2) A Board member may resign by tendering his resignation in writing to the Chairperson or Vice Chairperson of the Board.

14. **Filling of vacancies**

(1) The Minister may appoint a person to fill any vacancy on the Board provided that if the person whose post has become vacant was appointed from a list of persons nominated by organisations representing a particular sector, the Minister must call for two nominations from those organisations and must fill the vacancy by selecting one of the two persons nominated.

(2) The remaining members of the Board shall lawfully continue with business as if they constituted a full compliment of the Board.

15. **Procedures of Board**

(1) The Board will meet for the dispatch of its business and regulate its meetings and procedures as it thinks fit, provided that five days notice of all meetings must be given to Board members.

(2) A majority of the number of Board members at any one time will form a quorum of any meeting the Board

(3) At all meetings of the Board each member present will have one vote on each question before the Board, provided that in the event of an equality of votes, the Chairperson or the person presiding will have a casting vote in addition to a deliberative vote.

(4) The Registrar must attend all meetings of the Board but will not have a vote, provided that where he or she is unable for good reason not to attend, he or she may send an appropriate member of his or her staff to attend in his or her place.

(5) A member of the Board who is in any way interested, directly or indirectly, in matter to be considered by the Board must disclose in writing this fact and the nature of the relevant interest to the Board and the Board must require that member to recuse himself or herself if the nature of the interest is such that it may influence his or her decision on the matter and if the Board discovers subsequently that a Board member took part in deliberations on a matter where he or she had an interest in the matter which was not disclosed to the Board, the Board shall declare the proceedings in respect of that matter to be null and void.

PART V

FUNDING OF BOARD

16. **Funds of the Board**

(1) The funds of the Board will comprise-

- (a) such sums as may be appropriated by Parliament for this purpose;
- (b) such fees, fines and other charges as may be payable in terms of this Act;
- (c) such other moneys and assets as may accrue to the Board including donations, money accruing from rental of assets, interest on capital or from loans.

(2) The Board must deposit all funds received to the credit of a Bank account to be opened in its name with a Banking institution registered in Zimbabwe and approved by the Minister.

17. **Accounts and Auditing**

- (1) The Registrar will be the accounting officer of the Board, and will be responsible for ensuring due compliance by the Board with this Part.
- (2) The Board must keep proper accounts and other records in accordance with generally accepted accounting principles and practice.
- (3) Annual financial statements must be prepared by the Board which must include an Income and Expenditure account and a Balance Sheet, and must truly and fairly reflect the transactions and financial position of the Board.
- (4) The accounts of the Board will be examined and audited annually by independent auditors, appointed by the Board with the concurrence of the Minister.

18. **Budget**

The Board must by a date to be fixed by the Minister in respect of each year, prepare its budget, including an indication of the amount of which an appropriation by Parliament is requested, and submit the same to the Minister for his approval.

19. **Annual report**

The Board must present an annual report on its operations and finances to the Minister whereupon the latter will table the report before Parliament as soon as possible in its current or immediate following session thereafter.

PART VI

THE REGISTRAR

20. **Appointment**

- (1) There will be a Registrar of Non-Governmental Organizations, whose office will be a public office and will form part of the public service.
- (2) The Minister will appoint the Registrar on the recommendation of the Board and the Registrar will be part of the public service but the Registrar will be answerable to the Board who will control and supervise the performance of his duties.
- (3) The Registrar will be assisted by such staff as the Board may deem appropriate in terms of numbers, qualifications and related matters, and these staff members will be appointed by the Minister on the recommendation of the Board and will be civil service employees.

21. **Functions**

The functions of the Registrar will be-

- (1) to implement the decisions of the Board on all matters that the Board is charged to act in terms of this Act.
- (2) To record the proceedings of the Board's meetings, as generally of the Board's business otherwise dispatched, including the notices contemplated in Part V.
- (3) To present a full annual report of his office's activities to the Board, and transmit, or cause to be transmitted, copies to the Minister, and to the Non-Governmental Organizations body contemplated in Part V.

22. **Keeping of register of non-governmental organisations**

The Registrar must keep

- a) a national register of all non-governmental organisations which must be kept up to date and must contain details of the name of the organisation, its main objectives, its key areas of operation, its Board of

Trustees if any, its management board and its directors and other executive members.

b) a provincial register in each province of the non-governmental organizations operating in that province, and must contain details of the name of the organisation, its main objectives, its key areas of operation, its Board of Trustees if any, its management board and its directors and other executive members.

23. Public Register

The register of non-governmental organizations is a public document and will be available for inspection during business hours at the office of the Registrar and in such other places as the Board may from time to time determine.

PART VII

REGISTRATION OF NON-GOVERNMENTAL ORGANISATIONS

24. Criteria for registration

- (1) A non-governmental organisation may not be registered by the Board if it does not have all of the following:
 - (a) a Constitution;
 - (b) provisions in the Constitution that require the organisation to operate for the benefit of the public or a sector of the public and whose funds are to be applied for this purpose, apart from the payment of reasonable fees and salaries for work done for the furtherance of the objects of the organisation;
 - (c) provisions in the Constitution that will ensure transparency and financial and general accountability of the organisation;
 - (d) an executive, or some other governing body, however styled, that will receive and approve reports of the audited finances and operations of the organization;
 - (e) Board members and officers who have the fiduciary duty to the organization, and who must exercise their duties to the organization with care and diligence and maintain the confidentiality of non-public information about the organization.
- (2) As soon as possible after commencing operations, the Board, in consultation with the National Association of Non-Governmental Organisations, may decide upon additional criteria that that will be used to determine whether an applicant is a suitable juristic person to be registered in terms of the Act, and a notice setting out these criteria must be published in the Government Gazette, in a national newspaper and in appropriate provincial newspapers.
- (3) Any non-governmental organisation that satisfies the criteria for registration set out in subsections (1) and (2) of this Act will be entitled as of right to be registered in terms of this Act.

25. Facilities for Registration

- (1) In each of the provincial capitals, the Minister must provide a facility for the decentralized receipt of applications of registration of non-governmental organizations at offices of the Social Welfare department offices.
- (2) The provincial receiving offices must organise for the expeditious forwarding of applications for registration to the Board.

26. Applications for registration

- (1) A non-governmental organization that is required to be registered in terms of this Act must apply for registration within the time periods set out in subsection 2.

- (2) A new organisation must apply for registration within six months of the date when it commenced operations and an organisation that was already operating at the time of this Act coming into operation must apply for registration within twelve months of this Act coming into operation, whether or not the organisation was already registered under preceding legislation and whether or not the organisation is registered as a Trust in the Deeds Registry Office.
- (3) A non-governmental organisation that wishes to be registered must lodge an application for registration in the prescribed form together with the prescribed fee and the application form for registration must be simple, easily accessible and available in the three main official languages of the country.

27. Consideration of applications by Board

- (1) The Board must deliberate upon and decide upon applications for registration as soon as reasonably possible and notify the applicant of the result of its deliberations.
- (2) Registration takes place when the applicant receives a certificate to that effect issued under Registrar's seal as well as a document from the Registrar setting out the rights and obligations of a registered non-governmental organisation in terms of this Act and any other law.
- (3) If an applicant has not received notification of the decision relating to its application after four months of the lodging of its application at any one of the designated receiving points, the applicant may, by written notice to the head office of the Board, require the Board to consider and decide upon its application within one month. If the applicant receives no response to its notice within the one month the applicant will be deemed registered in terms of this Act and will be regarded as having the rights and obligations of a registered Non-Governmental Organisation.

28. Appeal against decision to refuse registration

- (1) A non-governmental organisation that is refused registration by the Board may appeal against this decision to the Administrative Court and the Administration may set aside the decision of the Board and order it to register the organisation or may order the Board to reconsider its decision taking into account various specified matters or may dismiss the appeal.
- (2) The lodging of an appeal will suspend the decision appealed against.

PART VIII

DISCIPLINE OF REGISTERED NON-GOVERNMENTAL ORGANISATIONS

29. Code of Conduct

- (1) The National Association of Non-Governmental Organisations will develop a Code of Conduct for Non-Governmental Organisations through a genuinely consultative process with non-governmental organizations throughout Zimbabwe
- (2) This Code will be given to the Minister and to the Board and it will be published in the Government Gazette and in newspapers and copies of it must be sent to all non-governmental organisations in Zimbabwe.
- (3) This Code of Conduct must be observed by and will regulate the activities of all non-governmental organisations in Zimbabwe.
- (4) The Code will be enforced by the Board.
- (5) Misconduct in terms of the Code will include the following;
 - a) mismanagement;
 - b) negligent performance of duties;
 - c) fraud, theft and corruption;
 - d) breach of any of the values contained in the Code of Conduct.

30. **Investigation of alleged breaches of Code**

- (1) The Board will investigate all alleged violations of the provisions of the Code that it becomes aware of as a result of reports made to it directly by individuals or organisations or reports referred to it by the National Association of Non-Governmental Organisations.
- (2) An investigations into an alleged violation will be made initially by investigators under the control of the Registrar and if the Registrar decides that there is substance in the allegation, the Registrar will refer the matter for the Board.

31. **Corrective action**

- (1) Unless the breach is so serious that it warrants immediate disciplinary action, the Board must refer the matter to the National Association of Non-Governmental Organisations and allow to take such steps as it considers necessary to rehabilitate, re-align, correct, or otherwise assist the organization to rectify, or to stop, the violation, and record the action it has taken in a record that it will keep for the purpose.
- (2) Where the National Association of Non-Governmental Organisations National has been unable to resolve the matter in this manner within three months of the matter being referred to it for this action, it may refer the matter back to the Board for further action.
- (3) The Board may itself attempt to resolve the matter by mediation and counselling of the organisation concerned and for this purpose the Board may establish an ad hoc mediation committee consisting of the Registrar and to members of the Board.

32. **Disciplinary Action**

- (1) In serious cases and in cases that the National Association of Non-Governmental Organisations and the Board has been unable to resolve by mediation, the Board may take disciplinary action against the organisation concerned.
- (2) Before taking disciplinary action, the Board
- (3) A Disciplinary Committee of the Board will consist of three members of the Board one of whom must be a member who holds legal qualifications.
- (4) The Disciplinary Committee must give at least 14 days notice of a hearing to the organisation alleged to have committed the violation.
- (5) The organisation concerned will be represented at the hearing by the chief executive officer of the organisation.
- (6) The Disciplinary Committee will have power to subpoena witnesses to testify to any matter, being relevant to the case in question, that may be before it for its consideration.
- (7) Prior to the commencement of a hearing into an allegation, the Disciplinary Committee may order further investigations to be carried out.
- (8) Before the Disciplinary Committee arrives at any decision, it must carry out a full and fair hearing.

33. **Penalties for violations**

- (1) If the Disciplinary Committee decides that a non-governmental organisation has been guilty of a violation of the code, it may recommend to the Board that any of the following penalties should be imposed:
 - (a) a written caution to the organization; or
 - (b) a fine of up to \$100 000 which will be paid into the funds of the Board; or
 - (c) suspension of the registration of the organization for a period of up to six months or
 - (d) deregistration of the organization.
- (2) The Board may impose the penalty recommended by the Committee or may substitute one of the other penalties imposable.
- (3) The Board must also refer all cases of fraud, theft and corruption to the police for full investigation into possible criminal charges.

34. **Appeals**

An organization found guilty of misconduct may appeal to the Administrative Court against the finding that it has been guilty of misconduct or against the penalty imposed or against both the finding and the penalty. The Administrative Court may dismiss the appeal or may set aside the finding of misconduct or may substitute for the penalty imposed a lesser penalty from the penalties that the Board was empowered to impose or may direct the Board to rehear the matter and give instructions on procedures to be followed at the rehearing.

PART IX

ANNUAL REPORTS OF REGISTERED NON-GOVERNMENTAL ORGANISATIONS

35. Each registered non-governmental organisation must before 1 December each year lodge with the Registrar an annual report and this report will be open for public inspection at the Registrar's office.

36. A Non-Governmental Organisation may elect to leave out from its report information about the identity of donors who have specified that they wish their identities to remain anonymous.

PART X

FUNDRAISING AND FINANCIAL SUSTAINABILITY OF NON-GOVERNMENTAL ORGANISATIONS

37. **Fundraising**

Non-governmental organizations will be permitted to raise, by lawful appropriate means, and to collect funds and other resources inside and outside Zimbabwe.

38. **Registration of Commercial Ventures**

Commercial ventures in which non-governmental organizations may be involved in order to raise funds must be registered in terms of the laws ordinarily applicable for such ventures.

39. **Profits from Commercial Ventures**

Where, as a means of raising funds, an organization undertakes a commercial venture, the profit accruing from such venture will be tax-exempt up to such percentage of the profits as will from time to time be prescribed by the Board for the purpose.

40. **Donations from inside Zimbabwe**

Subject to such limits as may from time to time be prescribed by the Board, donations by Zimbabwean juristic and natural persons to one or more non-governmental organizations for the furtherance of their activities will be tax-deductible.

41. **Tax-Exemption on Income**

Income accruing to organizations by means of grants received from external or domestic sources, or from interest, rentals, or capital gains, shall be tax-exempt.

PART XI

GENERAL

42. Regulations

- (1) The Minister may make regulations for the purpose of carrying out or giving effect to this Act on the recommendation of the Board, or wherever he considers it necessary for the attainment of the objects and provisions of this Act
- (2) The Board shall make regulations with respect to the matters that by this Act requires or permits to be prescribed for the purpose of carrying out or giving effect to this Act.
- (3) Regulations made in terms of this Section may provide penalties for any contravention thereof, provided that no such penalty shall exceed a fine of ... or imprisonment for a period of, or both such fine and such imprisonment.

PART XII

OFFENCES AND PENALTIES

43. Offences

- (1) Any person who is guilty of violating any of the provisions of this Act will be guilty of an offence and liable to...
- (2) A conviction for an offence in terms of this Act will not be a bar to a prosecution for an offence

PART XIII

REPEALS AND SAVINGS

44. Repeals and savings

- (1) This Act shall not derogate from the terms of any agreement concluded between the Government of Zimbabwe and any international organization with respect to its operations in Zimbabwe during the validity of such agreement.
- (2) The following Acts are repealed to the extent indicated hereunder-

| Name of Act | Extent Repeal |
|-------------|---------------|
| | |