

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Development Cooperation Framework (DCF) (2019-2023), which defines the overall objectives and principles surrounding the development partnership as well as undertakings by the various partners supporting development process in the country and recently submitted to the Cabinet. The DCF contains a number of provisions interfering with the right to freedom of association and freedom of expression. The policy is due to be launched on 28 February 2019.

We have previously expressed our concerns to your Excellency's Government regarding NGO policy regulations which had been adopted in December 2017 in a joint communication from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, sent on 22 February 2018, case no. SLE 1/2018. We regret that no response to this letter has been received, and we are seriously concerned that many of the issues raised with your Excellency's Government have not been addressed in the new iteration of this policy under the DCF.

We are concerned by allegations related to the lack of an open, transparent and inclusive dialogue during the consultative process that was carried out to review the DCF.

We are seriously concerned that the provisions of the DCF relating to the functioning of civil society organisations, which remain largely the same as the NGO policy, may have a severely detrimental effect on NGOs' ability to carry out their work and impinge greatly on the exercise of the rights to freedom of expression and association which are guaranteed under international human rights law, in particular under Article 19 and 22 of the International Covenant on Civil and Political Rights, acceded to by Sierra Leone on 23 August 1996.

In addition to all the concerns raised in the joint communication sent on 22 February 2018 regarding: (1) restrictions on the scope of NGOs and Community-based organisations (CBOs), including the alignment of the NGO's mission with the Government's development policies and limitations in the project formulation; (2) burdensome requirements policies in relation to eligibility criteria, registration guidelines,

renewal of registration, project registration, funding, taxation and fees, management of staffing and human resources and (3) sanctions for non-compliance, we wish to express the following additional concerns on certain provisions of the DCF.

Articles 5.2.1 and 5.3.1.

The new DCF has increased restrictions on the scope of activities which NGOs are permitted to carry out by introducing Article 5.2.1(ii), which states:

*“Organisations wishing to operate as NGOs in Sierra Leone must (...) register in not more than two categories/sectors”.*

and Article 5.3.1 which states:

*“New NGOs shall be limited to two categories only. Extension of categories in subsequent registrations is dependent on performance.”*

We are concerned that these restrictions unduly and arbitrarily limit the ability of NGOs to carry out their work in situations where cross-sectoral action is required. Given the varying developmental and humanitarian demands which NGOs must respond to, they must be afforded sufficient flexibility to carry out their work as they see most effective, which includes operating in multiple sectors to ensure that all Sierra Leoneans in need of their services may benefit, for example those organisations which work across the health, education and gender sectors. It is also unclear from the text, regarding Article 5.3.1, how performance of new NGOs would be assessed, when the extension of categories may be permitted, whether this option is available to already existing NGOs and who will be the competent authority to appraise the performance.

As stated by the Special Rapporteur on freedom of peaceful assembly and association, “[m]embers of associations should be free to determine their statutes, structure and activities and make decisions without State interference. Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights” (A/HRC/20/27, para. 64). The African Commission on Human and People’s Rights has expressed similar positions in its Report on Freedom of Assembly and Association in Africa (page 36, para. 39, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014).

Furthermore, we underscore that the right to freedom of association protects equally associations which are not registered. “Individuals involved in unregistered associations should be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions. This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalisation could then be used as a means to quell dissenting views or beliefs”. (A/HRC/20/27, para. 56)

Articles 5.3.3.(ii)(e) and 5.7.4.

Article 5.3.3.(ii)(e) states:

*“Submission of a list of assets acquired in the past two years and evidence of having surrendered assets for projects completed to the line ministry or as determined by the Minister of Planning and Economic Development”*

Article 5.7.4. states that:

*“NGOs should manage programme assets in line with their agreements with donors and programmes funded by partner governments or organizations. At the end of the programme, NGOs will inform the N.G.O Unit of MOPED and the Sector Ministry on how the remaining assets will be used. It is expected that reallocated assets, or the resources raised from their sales will be used for development purposes in Sierra Leone”*

We note that these two articles, when taken together, may prove to be contradictory regarding the disposal of assets at the end of completed projects and the requirement for their surrender to the line ministry. We note that the language of the second article largely attenuates the first, taking into account donor and partner requirements. Many donors and partners include specifications with regards to the disposal of assets at the end of completed projects which may run against the requirements of Article 5.3.3. Moreover, we deem these articles to be unnecessary, given that, by definition, NGOs are precluded from profiting from the disposal of these assets.

Article 5.4.5

Article 5.4.5. states that:

*“NGOs shall share their development plans with Sector Ministries and inform the Local Council before operating in any locality. The Local Council shall issue a certificate of compliance with a minimal administrative fee of Le 50,000- fifty thousand leones.”*

We are concerned that the requirement for a certificate of compliance issued by the Local Council may add an extra layer of control over the activities of NGOs and may affect their independence. The requirements necessary to obtain a certificate of compliance are not included in the DCF, nor is it explained how often a certificate of compliance must be renewed or who is to pay the administrative fee. Taken together with registration and re-registration fees, this may constitute an unnecessary financial burden, especially on small organisations and preclude them from carrying out their work to the best of their resources.

Article 5.14

Article 5.14 of the DCF provides for enforcement, compliance and sanctions for NGOs and includes the following subsections:

*5.14.4. NGOs shall face sanctions recommended by the NGO Supervisory Committee including the following reasons:*

- *c) Refuse registration or halt the operation if the activities of any are considered to be in contravention of its stated objectives;*
- *d) Refuse registration or halt the operation if they provide misleading or false information and making false declarations with intent to deceive;*
- *e) Refuse registration or halt the operation if the NGO persistently fails to abide by the provisions of this policy; and*
- *f) Refuse registration or halt the operation if the NGO demonstrates by its nature, composition and operations over the years that it is not developing/promoting the capacity of Sierra Leoneans and/or seeking the development interest of the community (ies) it purports to be promoting in the executing of its operations.*

*5.14.6. Any NGO to which a sanction has been applied shall be given 30 days within which time it may appeal against the sanction. Such an appeal should be made to the Minister of Planning and Economic Development whose decision is final.*

We express our concerns with regards the problem of refusal of registration/suspension established in subsections 5.14.4. (c), (d), (e) and (f) from the previous NGO policy, as these subsections now explicitly provide for refusal of registration or halt of operations of NGOs which are not in compliance, whereas previously the type of sanction applied was discretionary. We remind your Excellency's Government that "[t]he suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient."(A/HRC/20/27, para 75)

We further express our concerns over Article 5.14.4.(d), due to the broad discretionary powers it gives the NGO Supervisory Committee and the Minister of Planning and Economic Development in the determination of what they believe to be misleading or false information. We express apprehension that this provision may adversely affect freedom of expression under Article 19 ICCPR and stifle critical voices in NGOs for fear of refusal of registration or halt of operations.

With regards to Article 5.14.6., we note that, according to the article, the Minister of Planning and Economic Development has final say in the event of an appeal against sanctions imposed by the NGO Supervisory Committee, including refusal of registration and halt of operations. In our view, this may have serious consequences on the exercise of the right to freedom of association as the exercise of the right effectively comes down to a governmental determination, rather than a determination made by an independent judicial body.

We wish to remind your Excellency's Government of the recommendations made by the African Commission on Human and People's Rights in its Report on Freedom of Assembly and Association in Africa which states that "[s]hould the authorities refuse an association registration, they must provide clear, legally substantiated reasons for doing so, and the law should specify that the association have the right to challenge their judgement, including through prompt appeal to a court" (page 35, para. 37).

We highlight that the aforementioned concerns expressed with regards to the DCF should be considered cumulatively with the concerns already expressed in the joint communication sent on 22 February 2018, and we urge your Excellency's Government to take these concerns into account before the entry into force of the DCF on 28 February 2019.

We further urge your Excellency's Government to review the DCF, in consultation with all interested parties, to ensure that its contents are compatible with international human rights standards, especially regarding Articles 19 and 22 of the ICCPR.

We finally urge your Excellency's Government to enhance its cooperation with the mandates of the Special Procedures of the Human Rights Council, to take into account the concerns raised, and to avail of any technical assistance that Special Procedures may be able to provide in order to ensure the full promotion and protection of human rights in Sierra Leone.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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