

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Independent Expert on human rights and international solidarity**

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(Please use this reference in your reply)

26 June 2024

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; Special Rapporteur on the situation of human rights defenders and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 50/17, 52/4 and 53/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the draft Law Governing Non-Governmental Organizations**. If enacted, the bill, that was submitted to the President for final assent, would repeal Law 04/2012 and Law 05/2012 concerning the organization and functioning of national and international Non-Governmental Organizations.

We would like to offer the following comments on various provisions of the draft law, which, if not amended, may restrict the exercise of freedom of peaceful assembly and of association in ways that are incompatible with article 21 and article 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Rwanda on 16 April 1975, and articles 10 and 11 of the African Charter on Human and People's Rights, to which Rwanda has been a party since 22 July 1983.

In article 1, the draft law determines the establishment, organization and functioning of Non-Governmental Organizations. The draft law gives greater powers to control national and international Non-Governmental Organizations to the Rwanda Governance Board (RGB), which is a public institution "mandated to promote good governance principles and monitor service delivery across public and private sector institutions as well as Civil Society Organizations".

We would first like to highlight that article 21 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of peaceful assembly. It states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the 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". Article 22 of the ICCPR protects the right to freedom of association with others. Also, articles 5 and 7 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (most commonly known as the Declaration on Human Rights Defenders), states that everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; (b) To form, join and participate in non-

governmental organizations, associations or groups; (c) To communicate with non-governmental or intergovernmental organizations.

In this context, we would also like to recall that the Human Rights Council in its Resolution 22/6, calls upon States to ensure that “procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law” (A/HRC/RES/22/6, para. 8).

We welcome that the draft law includes provisions such as the possibility for Non-Governmental Organizations to create agreements with other entities and partnerships with the government (art. 8), and to conduct commercial activities (art. 10), as these are important to enrich the possibility of actions of the civil society. Also, provisions that recognize the right of Non-Governmental Organizations to express opinions and views, and to participate in the design of national policies and legislations, to advocate for the protection and promotion of human rights (art. 8) are crucial to advance the right to participation. Besides, having one law that regulates both local and international Non-Governmental Organizations could create a more welcoming environment for the development of the civil society sector as well as a safer and more enabling environment for human rights defenders in Rwanda.

#### *Limitations to freedom of peaceful assembly and of association*

Chapter II includes common provisions relating to the functioning of an organization, and Chapter III, provisions specific to national Non-Governmental Organizations. The draft law requires all Non-Governmental Organizations to register before being allowed to operate (arts. 6 and 19), and it includes vague provisions regarding the refusal of granting certificate of legal personality or a certificate of registration (“evidence indicating that the applicant organisation is harming or intends to harm the security, peace, health, unity of Rwandans, public order, good morals or the rights and freedoms of others”, art. 7). Moreover, the law does not present clear provisions regarding how to act when a Non-Governmental Organization is not satisfied with the refusal of the registration or grant of legal personality (art. 6).

The draft law includes additional obligations for national Non-Governmental Organizations, including the submission of actions plans, and “not to exceed 20% of its budget on overhead costs in programs that are not in the interest of its beneficiaries” (art. 9). Moreover, the draft law indicates that a Non-Governmental Organization “that contravenes the provisions of this law commits a fault” (art. 42) is subjected to a temporal suspension of its activities for a period of up to three months (art. 43) or a definitive suspension and revocation of its legal personality when a Non-Governmental Organization fails to rectify a “fault” (art. 44), and the suspension of the members of management considered to have committed a fault (art. 45). In addition, the draft law stipulates that the regulations of the Board in charge of Non-Governmental Organizations “may determine other administrative faults and sanctions” (art. 46).

The draft law includes provisions that require international Non-Governmental Organizations to renew their certificates periodically, subject the sale and disposal of assets by international Non-Governmental Organizations to Government supervision and require them to seek the Government’s approval when closing down operations.

Moreover, the law indicates that activities of international Non-Governmental Organizations can be suspended on broad grounds such as “unforeseen events” without providing time limits for the suspension (arts. 16, 31, 32 and 34).

We would also like to further refer to the report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, which states that where a registration license has been rejected, the organization “should have the opportunity to challenge the decision before an independent and impartial court” (A/HRC/20/27, para. 61).

Other parts of the draft law increase the registration requirements by requesting documents that could threaten the privacy of both Non-Governmental Organizations and individuals, such as bank account information, support letters from districts, notarized minutes, notarized statements of acceptance of responsibilities, identity cards and criminal records, among others (arts. 20 and 29). This is in contradiction with article 8 of the Declaration on Human Rights Defenders.

The draft law gives authority to Government officials to interfere in a Non-Governmental Organization’s administration including by authorizing them to suspend members of management (art. 45) and by subjecting to approval by the national organ in charge of non- governmental organizations any changes in an organization’s name, statutes, management or headquarters, and objectives and/or activities (arts. 9 and 12).

The right to freedom of association protects the independent decision-making capacity of associations to determine their internal operating rules, including their statutes and other relevant documents. This right not only guarantees the ability to form associations, but also the ability of associations, once created, to carry out the activities for which they were created.

In its collective dimension, the right to freedom of association guarantees the ability to organize according to one's own determinations and to act to achieve one’s goals. This implies that the authorities must refrain from interfering with the internal affairs of the associations. Furthermore, it should be noted that associations also enjoy the right to privacy enshrined in article 17 of the International Covenant on Civil and Political Rights. Therefore, States should not have the ability to subject decisions and activities of associations to approval. In relation to their objectives, the authorities should refrain from carrying out a priori examinations of the objectives determined by the associations, as it directly interferes unduly with the freedom of members to association.

Furthermore, the draft law contains unclear and vague provisions regarding the activities that the Non-Governmental Organizations could perform, prohibiting acts that could “jeopardize the unity of Rwandans, peace and security, public order and health, good morals, good conduct, freedom and fundamental rights of other or political activities” (arts. 12 and 43), and that support or finance terrorist activities, without providing specific and detailed definitions.

Certain provisions of the draft law place limitations on budgetary matters, by regulating how the organization’s assets need to be used as well as imposing a limit for operational costs (art. 9), prohibitions on fundraising activities (art. 12), and audits (art. 15).

International human rights law and standards recognize the freedom of associations to access resources as part of the right to freedom of association. Article 22 of the ICCPR protects all activities of an association including activities directed at accessing resources or funding, subject to restrictions consistent with ICCPR art. 22(2) only. This includes the freedom to seek, receive and use resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities. Consequently, any undue limitations on associations’ freedom to access funding violate States’ obligations under article 22 of the ICCPR<sup>1</sup>.

Any restrictions to the exercise of the right to freedom of association must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in General Comment No. 27 (CCPR/C/21/Rev.1/Add.9), restrictive measures must “be appropriate to achieve their protective function” and “be the least intrusive instrument amongst those which might achieve the desired result” (paragraph 14), while “the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law” (paragraph 15). Furthermore, as the Human Rights Committee emphasised in General Comment No. 34 (CCPR/C/GC/34), any restrictions to the freedom of expression “must not be overbroad” (paragraph 34), “may not put in jeopardy the right itself” (paragraph 21) and may never be invoked to justify the muzzling of any advocacy of human rights (paragraph 23).

In other parts of the draft law, unclear listings of requirements and details of fees calculation could allow future administrative procedures diminishing the principle of certainty and predictability of the regulations (arts. 20 29 and 30). The draft law establishes as a requirement for registering a Non-Governmental Organization “collaboration letters issued by District authorities” and payment of a “non-refundable fee to be determined by the Board”. In the case of International Non-Governmental Organizations, the requirements include proof of funding and annual action plans “that should align with the development plan of Rwanda and memoranda of understanding signed with state organs”, and “memorandum of understanding with the line ministry or another government organ”.

Article 19 of the draft requires Non-Governmental Organizations to comply exclusively with the activities and plans provided in the registration process, impeding the natural evolution of Non-Governmental Organizations’ action. Moreover, it imposes the requirement that annual reports and plans must be approved by ministries and districts.

Associations and their members should enjoy the right to carry out their activities freely, which includes freedom of expression, changing their statutes, carrying out actions that encourage public participation, etc. In the case of associations that defend human rights, no limitations should be imposed on the types of activities they carry out, as long as their activities are carried out in accordance with international human rights standards. Just as States should not interfere with the

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<sup>1</sup> General principles and guidelines on ensuring the right of civil society organizations to have access to resources - A/HCR/53/38/Add.4, para 11

structure and internal functioning of associations, States must also refrain from undue interference in the substantive actions of the associations.

The imposition of restrictions on the activities of associations; the imposition of certain purposes on associations; the imposition of disproportionate burdens on the associations or their members, workers or beneficiaries; the elaboration of obstacles to the development of their activities; or the imposition of a fine for certain activities would amount to undue restrictions on the right to freedom of association.

We recall that the right to freedom of association is also guaranteed under article 10 of the African Charter, article 8 of the African Charter on the Rights and Welfare of the Child, and articles 12(3), 27(2) and 28 of the African Charter on Democracy, Elections and Governance.

Besides, the guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission), adopted in May 2017, also states, among others: i) the independence of civil society and the public sphere shall be ensured, ii) procedures relating to the governance of associations and assemblies shall be clear, simple and transparent, iii) State decisions shall be clearly and transparently laid out, with any adverse decisions defended by written argumentation on the basis of law and challengeable in independent courts of law, iv) sanctions imposed by states in the context of associations and assemblies shall be strictly proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all situations brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned comments.
2. Please explain how your Excellency's Government intends to ensure the law is compatible with Rwanda's obligations under international human rights law and standards, including articles 21 and 22 of the ICCPR and article 10 and 11 of the ACHRP, as well as the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
3. Please explain how your Excellency's Government intends to remediate the inconsistencies with international human rights standards enshrined in the draft law.
4. Please provide any information on the remaining stages of the process of the draft law before its adoption, including your government's plan for wider consultation with civil society and concerned individuals and groups.

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](#) after

48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We also encourage the Government to take all necessary steps to carry out a detailed review of the Draft Law with a view to bring it into line with international norms related to freedom of peaceful assembly and of association.

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

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