

EAST AFRICAN CIVIL SOCIETY ORGANISATIONS' FORUM

Strengthening Civil Society in the Integration Process



EACSO BREAKFAST MEETING REPORT ON “ANALYSIS OF THE ENVIRONMENT FOR CIVIC SPACE IN RWANDA”

Our Vision for East Africa is
“A community in which citizens are fully engaged in all affairs affecting their lives”.

1.0. Introduction

The "National Consultations on CSO operating environment" breakfast meeting organized by East African Civil Society Organizations' Forum (EACSO) Rwanda Chapter was held on 24th April 2014 at The Manor Hotel in Kigali, Rwanda.

The main objective of the meeting was to bring together CSOs under EACSO-Rwanda Chapter to scan the CSOs operating Environment in Rwanda, discuss the constraints and recommend changes that they feel would enhance the working environment of CSOs in Rwanda.

The turn up was very interesting with 23 CSOs present and on time. The meeting started by introduction of participants and thereafter a word of introduction from Martha from EACSO Secretariat who highlighted the importance of this meeting as a way of self-reflection to harness the CSOs operating environment.

2.0. Remarks by Mrs. Martha Mushi - EACSO Secretariat



Mrs. Martha Mushi

She began by thanking the participants for arriving on time, she went ahead by telling participants that this session was indeed important if we are to have or create an environment that is conducive for CSOs to operate and stressed that Uganda, Kenya, Tanzania and Burundi had already completed the session.

She highlighted article 27 of the EAC Treaty that gives room for CSOs to operate and engage with EAC secretariat. The article on "Creation of an Enabling Environment for the Private Sector and Civil Society" broadly provides for the promotion of continuous dialogue with the private sector, civil society and other interest groups at both national and Community levels.

3.0. Legal Issues Affecting of CSOs in Rwanda



Mr. Samuel DUSENGIYUMVA

In his keynote address, Mr. Samuel DUSENGIYUMVA, NGO Lawyer from Rwanda Bar Association analyzed the regulatory environment for civic space in Rwanda. His papertook into consideration the legal framework that regulates but also informs the operations of civil society. He mainly analyzed the main regulatory body regarding CSOs in Rwanda, the Law N° 4/2012 (NGO Law) and the Law N.05/2012 regulating International NGOs. The legal issues that emerged during the discussion session were more centered on the NGO law and include the following:

Lack of clear mechanism to engage the government in decision making process;

The existing mechanisms for self-regulation within the sector but instead the state being the one to settle disputes (Rwanda Governance Board – RGB) instead of going through the justice system. This is particularly critical in the event of a dispute between CSOs.

JADF law does not consider the role and support of CSOs.

Autonomy and independence of EACSOF Rwanda (currently hosted by the Rwanda Civil SocietyPlatform) was very much emphasized. EACSOF has not registered and therefore has no legal status. This is affecting its relevance and credibility before development partners.

4.0. Issues Raised from Plenary Sessions

During break out session, participants were split into three groups and analyzed the questionnaire given to them. The following issues were presented in the plenary:

The Law regarding registration of NGOs of 2012 has many requirements in terms of documentation.

The continuing changes in laws and policies that CSOs are not given a platform to participate in drafting.

No clear vision due to dependency on donors; CSOs tend to switch to what the donor dictates thus deviating from their core organizational principles.

Lack of capacity to do evidence based advocacy based on research that can convince the government in advocacy.

A number of CSOs still face serious capacity issues which hamper their development and also their functional effectiveness. This is attributable to a number of factors including, lack of financial resources to keep staff with the required capacity.

The policy of disengagement at district levels where CSOs are only limited at Sector levels.

Bureaucracy, processes and procedures e.g. the tax exemption law require many procedures for CSOs to get exemption.

5. Changes that CSOs Need to See Happen in Rwanda

From groups' presentations, the following recommendations were emphasized:

EACSOFRwanda registration need to be expedited, this was emphasized by all members that EACSOFRwanda should never be part of the Rwanda Civil Society Platform, that it should get legal status as soon as possible.

There needs to be a Clear framework for CSOs to engage the government. Within Economic and Social Council, CSOs should be given a voice. Revive the platform of engagement that existed under the Prime Minister's office (Rwanda Economic and Social Council-RESC) that has disappeared under the Rwanda Governance Board.

Clear laws managing CSOs needs to be in place.

CSOs need to develop a strong partnership and have a strong voice.

CSOs to put much emphasis on evidence based advocacy.

Put in place a platform where every member feels comfortable with and that reflects their aspirations.

Independence from the state. Reducing controlling hand by the government for instance the legal personality laws and suspension clauses.

CSOs representation that is members owned and run.

Tax exemption laws need to be made clear for CSOs.

JADF should be independent from the state. This to be done by doing advocacy on national levels on JADF activities.

6.0. Opportunities

The NGO Law was enacted in April 2012, following a consultation between the government, the parliament and NGOs. Proposals coming from NGOs have been only partially included in the law formulation. Nevertheless, the new law marks advancement in the relationships between public authorities and NGOs. In fact, it warrants freedom and autonomy of associations, it establishes a "registration" system rather than an "authorization" system, and it defines clear rules concerning the right of association to recur against authorities' decisions.

The NGOs law of 2012 permits NGOs to conduct commercial activities when the profit from such activities is meant to be used for the organization objectives. Commercial activities carried out by NGOs respond to the laws regarding enterprises and cooperatives.

The NGO Law provides for NGOs to "enjoy financial, moral and administrative autonomy" and that the government of Rwanda and NGOs may engage in partnerships. Moreover, the Law provides that government should include in the national budget funds meant for supporting NGOs, while the modalities for granting the support would be defined by the public authority in charge of NGOs (such authority is defined by the law as a Minister, while it has been further identified in the RGB).

ANNEX 1 : LEGAL ANALYSIS OF CSOs OPERATING ENVIRONMENT

Introduction

This paper analyzes the regulatory environment for civic space in Rwanda. It takes into consideration the legal framework that regulates but also informs the operations of civil society. The legal framework for CSOs in Rwanda is multi-faced, as different laws regulate NGOs (national and international NGOs) and other kinds of citizens' collective actions and organizations. However, the main regulatory body regarding CSOs in Rwanda consists of the Law N° 4/2012 (NGO Law).

Analysis of the NGOs Legal environment in Rwanda

Analysis of the NGO Law

The NGO Law was enacted in April 2012, following a consultation between the government, the parliament and NGOs. Proposals coming from NGOs have been only partially included in the law formulation. Nevertheless, the new law marks advancement in the relationships between public authorities and NGOs. In fact, it warrants freedom and autonomy of associations, it establishes a "registration" system rather than an "authorization" system, and it defines clear rules concerning the right of association to recur against authorities' decisions.

Chapter One: General Provisions:

- Definitions;
- Categories;
- Freedom of dealing in commercial activities;

Chapter II: Registration and Application for Legal Personality

- Application for registration and legal personality
- Authority in charge of registration
- Temporary certificate of registration of a national NGO
- Requirements for temporary certificate
- Refusal to issue a temporary certificate
- Appeal against the refusal to issue a temporary certificate

Chapter III: Conflict Resolution

Chapter IV: Rights and Responsibilities of an NGO

Chapter V: Monitoring of Functioning of National NGOs

- Supervision;
- Warning to an NGO;
- Temporary suspension;
- Final suspension

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Chapter VI: Dissolution of an NGO

- Dissolution of an NGO by its organ
- Dissolution by a judicial decision;

Chapter VII: Miscellaneous, Transitional and Final Provisions

- Partnerships
- Debates in meetings of the general assembly;
- Harmonizing functioning and statutes of NGOs with the law.

In brief the law N° 4/2012 provides for national NGOs to be registered and periodically evaluated by an autonomous body, the Rwanda Governance Board (RGB), which also register the faith-based organizations. Organizations can operate before the registration, however the pre-registration period shall not exceed 2 years. Registration requires:

i) authenticated statutes; ii) head of office and full address of the organization; iii) name of the legal representative and of his/her deputy, as well their duties, address, CV and judicial records; iv) minutes of the general assembly which appointed the legal representative.

Registration can be refused, but the competent authority shall provide in writing the reasons thereof in a period of 60 days. Reasons for refusing are: a) non fulfilment of registration requirements; b) evidences that the organization intends to jeopardize security, public order, health, morals or human rights. The legal representative of the NGO can file a case against the refusal decision in the competent court.

The Law also provides for a set of rights and duties of NGOs. On such basis, the registration of an NGO can be temporary suspended by the competent authority. Such suspension can become final if the causes leading to the suspension itself are not removed. In addition, in this case a case can be filed against the suspension decision. Moreover, the judicial authority can dissolve NGOs.

NGOS can be composed by natural persons or by autonomous collective voluntary organizations.

NGOs are categorized under three main categories, according to their objective and membership: a) public interest organizations, which serve "public interest"; b) common interest organizations, which act in a specific domain in favor of their members; c) foundations, which have the purpose to establish a fund or to collect funds and to manage and use them to support beneficiaries.

NGOs can conduct commercial activities when the profit from such activities is meant to be used for the organization objectives. Commercial activities carried out by NGOs respond to the laws regarding enterprises and cooperatives.

The NGO Law provides for NGOs to "enjoy financial, moral and administrative autonomy" and that the government of Rwanda and NGOs may engage in partnerships. Moreover, the Law provides that government should include in the national budget funds meant for supporting NGOs, while the modalities for granting the support would be defined by the public authority in charge of NGOs (such authority is defined by the law as a Minister, while it has been further identified in the RGB).

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Overview of the INGO Law

The Law N.05/2012 regulates International NGOs. As the NGO law, this law substitute previous laws allowing for a greater autonomy of INGOs. The law requires INGOs to be registered and to have a legal status to operate. INGOs can operate provisionally when the registration process is in progress.

Registration is possible for up to 5 years, but information should be provided to authorities each year. Actually, a long list of documentation and information is required to INGOs, including the implementation schedule and its various stages of planning, detailed cost estimates with data, an indication of who will continue activities launched by INGOs after they have completed their work, and all information relating to its geographical establishment throughout the world.

For applying for a registration longer than one year, some more documents are requested, including the "strategic plan" of activities for more than one year, showing its budget execution and performance indicators endorsed by the Line Ministry;

In the case of INGOs, the Directorate General for Immigration and Emigration plays a registration and monitoring function similar to that of RGB. Registration can be at national level, for the organizations working in more than one district, or at district level for those working in just one district. In all cases, the registration of organizations requires that relevant authorities (for instance District Mayors or line ministries) provide a "collaboration letter" and approve organizations annual reports. As registration of INGOs should be renovated annually, therefore collaboration letter and reports should be issued each year by relevant public bodies. Through the interviews and discussions with NGOs, it emerges that often the need to obtain collaboration letters by the line ministries and by district authorities is perceived as an incentive to engage in "concrete activities", such as those regarding the direct delivery of services or the provision of funding to local public initiatives (such as the JADF "open days" carried out ad district level). Moreover, it discourages organizations to engage in activities that can potentially generate mistrust in local authorities or line ministries, such as monitoring of service delivery and policy implementation. with these rules can be a condition for issuing the "collaboration letter" required for maintaining the registration of INGOs.

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Other regulations impacting the operating environment of NGOs

In addition to the NGO Law, other regulations influence the development of CSOs in Rwanda, particularly at grassroots level. These include:

Legislation regarding **cooperatives**, as national policies promote the transformation of grassroots organizations in cooperatives; cooperatives are mainly meant to have economic objectives and are regulated by the Rwanda Cooperative Agency, which registers them and provides them support;

Law N.06/2012 that concerns **Faith Based Organizations** is relevant to the life of many CSOs (particularly CBOs) that function under the umbrella of churches and other religious institutions. In addition to faith based NGOs, often churches and other religious institutions are the places where people meet and discuss about emerging issues, sometimes also concerning development, access to public services and even on public policy implementation at local level).

Media Law which was issued in 2012, regulates not only "commercial media" but also "community media", defining the rules for the exercise of journalism and of publishing activities. The law provides for a wide autonomy of journalists and publishers. The law however provides that the dissemination of information can be limited for national interest and public order interest.

Legislation and regulations in relation to decentralization. While NGOs and other CSOs are not requested by their own regulation to take part to the bodies set up for promoting local development, decentralization regulations (and particularly recent minister orders concerning the functioning of JADF – Joint action development forum) require to CSOs to participate in JADF, to contribute to the implementation of District and Sector Development Plan and to sign "Performance Contract" that are periodically evaluated. The compliance with these rules can be a condition for issuing the "collaboration letter" required for maintaining the registration of INGOs.

Challenges Facing NGOs Operating Environment in Rwanda

Some of the challenges facing NGOs operating environment in Rwanda include but not limited to:

A first issue concerns the relationships between NGOs and local authorities: Participation to JADF, to local development plan at district and sector level, and to "performance contracts" often are managed in a different way in different districts and with different CSOs. In some cases, "participation" is mandatory for CSOs; in other cases just as an "opportunity". In some cases CSOs are required to modify their activities according to existing local plans while in other cases, they are just required to inform LA about their own plans, etc.

A second issue concerns the role assumed sometime by the public authorities in the life of CSOs. This situation is noted particularly in case of conflicts within the NGOs and among the members of the organizations, public authorities have been intervening in some cases just for moderating conflicts. In other cases authorities intervened in a stronger way. Even, in some cases, "imposing" changes in the boards. While the state intervention aims at facilitating the life of organizations and at reducing the impact of the conflicts or crises, nevertheless it is interference reduce the sphere of autonomy granted to NGOs by the law and government general policies and risk to transform the nature and functioning of concerned organizations.

A third issue concerns the possibility that the requirement to all local organizations to register themselves (mainly as cooperative or as NGO) would generate undesired effects. Particularly it can foster a tendency by some "informal organizations" to remain invisible (as consequence that these organizations cannot play a clear and transparent role in governance processes). A further possible consequence is the change of the original scope of organizations in order to be registered. Such risk can involve cooperatives that in some cases consist of groups of people originally created to solve problems or to advocate for solutions, rather than for carrying out economic activities.

On the side of legal framework, there are some imperfections such as the competent court in case of disputes, the competent organ to determine who benefit the assets of a dissolved organization.

Conclusion

The enactment of the above discussed laws has largely improved the NGO operating environment in some respects, and impacted in some others. For instance, the transformation into cooperatives of some local association was perceived as a consequence of an issue of accessibility of the registration authority which is Rwanda Governance Board. In addition, it has to be noted that awareness of the reforms established by these new law needs improvement.

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