REPORT

OF THE

PARLIAMENTARY LEGAL COMMITTEE

ON THE

NON- GOVERNMENTAL ORGANISATIONS BILL, 2004, [H.B. 13, 2004]

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1. INTRODUCTION

1.1 Mr. Speaker Sir, the Parliamentary Legal Committee ("your committee.") considered the constitutionality of the Non-Governmental Organisations Bill, HB 13, 2004 ("The Bill") and regrets to report that in the opinion of the committee, the provisions of clauses 2, 9, 10, 11, 15, 17, 20, 22, 23, 24, 29 and 32 are inconsistent with the Constitution of Zimbabwe and therefore unconstitutional.

A. One of the stated objectives of the Bill is said to be the provision of "an enabling environment for the operations, monitoring and regulation of all non- governmental organisations" and yet it is your committee's view that far from seeking to provide such an environment, the Bill, when read as a whole constitutes a determined and pervasive attempt to curtail and extinguish the fundamental freedoms of the people of Zimbabwe enshrined in the constitution. Mr. Speaker Sir, it is your Committee's opinion that this Bill is a cynical and comprehensive attack on the rights of the people to organize themselves in the promotion, protection, defence and advancement of their freedoms and liberties. It is a calculated attempt to all but extinguish just about all the rights and liberties contained in the constitution. To seek to control, circumscribe and prevent the people from organising themselves into such bodies as they may deem fit for monitoring and promoting respect for their constitutionally guaranteed rights is just as good as saying the people do not have those rights.

B. Mr. Speaker, Sir, Your Committee has taken notice of the historical and present context under which the Bill is being introduced. It has also considered the objects of the Bill as explained to the nation by the government and in particular the responsible Minister. We have also had the privilege of having government's underlying reasons for seeking to enact the Bill explained to us in some detail by one of our members Honourable Kumbirai Kangai. We understand that the government is extremely unhappy with the work of many non-governmental organisations particularly those working in the field of human rights, and hence seeks to control and close down some if not all of them because, it is alleged they have been used by imperialist forces to destabilize the country and effect regime change. The ban of foreign funding to non- governmental organisations, it is said, is in response to some statements by foreign powers allegedly indicating that they are working with the opposition and civil society to effect regime change in the country. For this reason, we have been told, the government can not sit by while non- governmental organisations (NGOs) work in cohort with the opposition and foreign powers to effect regime change in the country. We are further told that the government is determined at all costs to curtail human rights in the country in order to protect itself from being removed from power by foreign powers using local NGOs as a front.

C. Mr. Speaker Sir, it is your committee's considered opinion that the truth lies elsewhere. Our view is that as the human rights situation in Zimbabwe has deteriorated and worsened in the last five years as confirmed by the report of the African Commission on Human Rights, which must have been the last straw for the government. The government has increasingly seen the work done by NGOs

particularly those working in Human Rights, as providing a recording of human rights violations in the country, which have contrasted sharply with the government's version of a country at peace with itself and with an impeccable human rights record.

D. Mr. Speaker Sir, it is your committee's view that local human rights NGOs have played an important part in the struggle to protect, promote and defend human rights in the country and in particular in informing Zimbabweans and the world of the true human rights situation in the country. They have painstakingly recorded and reported on a varied range of human rights issues carefully documenting incidents of political beatings, intimidation torture, rape, killings, unlawful arrests and detention, destruction of homes and other properties, the suppression of media freedoms, etc, etc. They have provided legal, counseling, and medical assistance to victims of human rights abuses. They have campaigned for a return to the rule of law and a cessation of state sponsored human rights violations. In doing all this work, the local NGOs have been heavily dependent on foreign funding for their activities for the simple reason that there isn't local funding to support this sort of work.

E. The government has been heavily critical, indeed antagonistic towards the NGOs, which have been doing this work accusing them of propagating and disseminating false information concerning the human rights situation in the country.

F. It is in this context that the true intentions behind the attempt to promulgate the Bill must be understood. To be fair, the government has not hidden its intention to control and if necessary to close down NGOs accused of recording and propagating false information about human rights abuses in the country. In his speech at the

opening of this session of Parliament on 20 July 2004, the President made it very clear that the government intended to deal with NGOs which stood so accused. He said,

> *"Non- Governmental Organisations must be instruments for the betterment of the country and not against it. We cannot allow them to be conduits of foreign interference in our national efforts."*

1.8 The responsible Minister had similar sentiments when he said,

> *"Some NGOs and churches are causing too much confusion in the country because they are converting their humanitarian programmes into politics…The government cannot allow that to happen so we are saying they should go under scrutiny where we revise all modalities in the country. [See The Herald of 5 April 2004]"*

1.9 Mr. Speaker Sir, it is your Committee's view that rather than seek to address the human rights situation as recorded and reported by these NGOs, the government has, instead, chosen to kill the messenger by seeking to control and close down NGOs including, by the mere fact of denying them access to foreign funding, an act of itself, which will render any human rights organisation which will survive the registration process, completely useless.

1.10 Mr. Speaker Sir, when read as a whole, it is plain that the main targets of the Bill are those NGOs which promote , protect and defend human rights and hence the definition of the term "governance issues" [in the circulated amendments to the Bill] as embracing the human rights contained in the International Covenant on Civil and Political Rights. It seems clear to us that the Bill's primary object is the closing down, silencing and rendering ineffective of all local human rights organisations monitoring and promoting human rights in the country as well as to prevent

international or foreign human rights organisations from operating in the country. Quite how, it can be thought or believed that a Bill whose effect is to achieve the above, can possibly be consistent with the Constitutional imperative and directive to promote, protect and defend the human rights outlined in the Declaration of Rights is frankly mind-boggling.

1.11 It is for this reason that your committee, Mr. Speaker Sir, has no hesitation in finding that a Bill, which seeks to curtail the ability of the Bill to protect, promote and defend their human rights, is inherently unconstitutional. It is a most serious attack on the Declaration of Rights to seek to prevent people from organising themselves in such forms and ways they may deem necessary in order to collectively promote, protect and defend the very rights the constitution has so elaborately pronounced.

1.12 Mr. Speaker Sir, it is your Committee's view that the Bill does not seek to regulate but seeks to control, to silence, to render ineffective and ultimately to shut down NGOs around which Zimbabweans have organized themselves for the promotion, protection and defence of their Constitutionally guaranteed rights. Ask yourself Mr. Speaker Sir, whether it is sensible to provide in the Constitution that every Zimbabwean has the freedom to personal liberty or the freedom from torture and then provide in a subsidiary law that NGOs formed by Zimbabweans to secure those rights through legal aid, providing medical assistance to victims or through litigation cannot be registered if one member or director is not a Zimbabwean domiciled in Zimbabwe or that they can not receive foreign assistance to pay for the legal fees of an unlawfully arrested person or for a victim of unconstitutional and unlawful acts of torture?

1.13 In short it is ridiculous to say through the Constitution, that people have human rights but then go on through an Act of Parliament to prevent them from organising themselves to assert, protect, promote and defend those very rights the Constitution has guaranteed them. It is pretty much like saying someone has the right to life but they are prohibited from eating.

1.14 Mr. Speaker Sir, it is for the above reasons that your committee finds all those clauses of the Bill which seek to achieve the silencing, the control and ultimately the closure of NGOs, to be unconstitutional. Each of those clauses are considered in turn below.

2. CLAUSE 2

1. This is the interpretation clause of the Bill, which inter alia define "foreign non governmental organisation," "local non- governmental organisation" and a " non- governmental organisation" as follows:

2.1.1 *"foreign non- governmental organisation" means any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe who are domiciled in Zimbabwe;*

1. *"local non- governmental organisation" means any association of persons, whether incorporated or unincorporated, that consist exclusively of permanent residents or citizens of Zimbabwe who are domiciled in Zimbabwe;*
2. *"Non- governmental organisation" means any foreign or local body or association of persons, corporate or unincorporated, or any institution, the objects of which include or are one or more of the following-*
    a. *the provision of all or any of the material, mental, physical or social needs of persons or families,*
    b. *the rendering of charity to persons or families in distress,*
    c. *the prevention of social distress or destitution of persons and families,*
    d. *the provision of assistance in, or promotion of, activities aimed at uplifting*

the standard of living of persons or families,

e. *the provision of funds for legal aid,*
f. *the prevention of cruelty to, or the promotion of the welfare of animals,*
g. *the promotion and protection of human rights and good governance,*
h. *the promotion and protection of environmental rights and interests and sustainable development,*
i. *such other objects as may be prescribed,*
j. *the collection of contributions for any of the foregoing;*

but does not include-

i. *any international organisation or institution whose privileges, immunities, rights and obligations in Zimbabwe are governed by the Privileges and Immunities Act [Chapter 3:03]; or*
ii. *any governmental organisation or quasi- governmental organisation or institution whose legal status is that of an instrumentality or arm of any foreign government; or*
iii. *any institution or service maintained and controlled by the state or local authority; or*
iv. *any religious body in respect of activities confined to religious work; or*
v. *any educational trust approved by the Minister; or*
vi. *any body or association of persons, corporate or unincorporated, the benefits from which are exclusively for its own members; or*
vii. *any health institution registered under the Health Professions Act [Chapter 27:19], in respect of activities for which it is required to be registered under that Act; or*
viii. *any body or association in respect of activities carried on for the benefit of a hospital or nursing home which is approved by the Minister; or*
ix. *any political organisation in respect of work confined to political activities; or*
x. *the Zimbabwe Red Cross Society established by the Zimbabwe Red Cross Society Act [Chapter 17:08]; or*
xi. *such bodies, associations or institutions as may be prescribed;*

A. It is obvious that the definition of non- governmental organisation is extremely wide. It covers just about every conceivable organisation or

association involved in any aspect of civic work, including humanitarian assistance, social assistance, legal aid, recreation and entertainment.

B. To the extent that the definition of NGO includes political parties, trade unions and employers' organisations, it is plain that it is unconstitutional since section 21 (3) (c) of the Constitution specifically excludes trade unions, political parties and employers' organisations from having to be required to register for any purpose whatsoever. It is no answer to say a poltical party would be required to register only for those activities not "confined to political activities", whatever this might mean. Nor is it enough to say a trade union would be required to register if its work is confined to the exclusive benefits of its own members. The fact is that, in its wisdom the Constitution excludes these organisations from having to be required to register. The simple fact is that no legislation can seek to compel trade unions, employers' organisations and political parties to register at the risk of not being allowed to operate and of criminal sanctions.

1. CLAUSES 9, 10 AND 11

0.1. Mr Speaker Sir, it is your committee's considered view that the registration process provided in clauses 9, 10 and 11 is inconsistent with sections 17, 19, 20 and 21 of the Constitution.

0.1. No time limit is set for the consideration of an application. The application is required to reveal considerable amount of "personal" details concerning the organisation, the provision of which information would be an undue infringement of the right to privacy as protected in section 17 of the Constitution. There is also no provision for the

making of representations to the Council which considers the application. There is the prohibition against commencing or carrying out activities until registration. An application can be rejected and a registered organisation can be de- registered if it is concluded that it is not operating in bona fide furtherance of the objects stated in its application. The appeal against a rejection is to the same Minister who appoints the Council which would have rejected the application. If any member of the Council were to be in favour of the registration of an organisation against the wishes of the Minister, the Minister has the power to dismiss that member.

0.1. It is your committee's view, that when read together and taken cumulatively these provisions are an undue and unconstitutional limitation to the freedoms of expression, association, conscience and privacy.

0.1. Clause 9 provides that no NGO shall commence work or carry on its activities or seek financial assistance, unless it is registered. It is your committees view Mr. Speaker Sir that the proposed requirement for individuals who have associated with each other for the protection of their interests to register, is in contravention of Section 21 of the Constitution. Its effect is to hinder individuals from associating together in the promotion or protection of their rights and interests. The hindrance of the enjoyment of the freedom of association in this manner can only be deemed constitutional if it is in the "interests of public defence, public safety, public morality, public health and town and country planning." It is plain that the hindrance of this right in the manner proposed in the Bill has nothing to do with interests of interests of public defence, public safety, public morality, public health and town and country planning. Even if it were, it would fail the test of

being reasonably necessary in a democratic society as envisaged by section 21 (3) of the Constitution.

0.1. It is the Committee's opinion that clause 9 also infringes Section 19 and 20 of the Constitution. Section 19 of the Constitution provides for the protection of freedom of conscience. The interpretation section in the Bill defines the objects for which individuals must register when they associate together. They must register if they are to do charity work, to alleviate suffering and distress, and to uplift the standard of living of families and communities. Religious communities, in terms of section 19 of the Constitution, have the fundamental right to manifest and propagate their religion through worship, teaching, practice and observance. The practice and observance of religious faith often involves charity, alleviating suffering and distress, and uplifting standards of living of families and communities.

0.1. This work is not a matter of preference; it is a fundamental part of religious faith. The Bill seeks to permit religious communities to work without registration only where they do "religious work" or where they operate educational trusts approved by the Minister of Education. The term "religious work" is not defined, but specific mention of charity, alleviating suffering and distress and uplifting standards of living to the fact that these things are not necessarily included in the term 'religious work.'

0.1. Each religion defines what its followers must do in the practice of that religion. The Bible defines what Christians must do in their practice of Christianity; the Koran defines what Moslems must do in the practice of Islam. The Bible states in several places in both the new and the old testaments that Christians are to do charity work, to care for the

widow and the orphan, to provide for those in need. The Christian faith for example in Luke Chapter 4 verse 18 provides in the words of Jesus Christ that;

> *The Spirit of the Lord is upon me, because He hath anointed me to preach the gospel to the poor, He hath sent me to heal the broken hearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are bruised (King James Version). Other versions say, "to set at liberty them that are oppressed."*

0.1. A Christian is one who follows and practices these things that Jesus Christ instructed him to follow and do, by example. A Christian must therefore, in the practice of Christianity, engage in a Ministry of mental, physical and emotional healing, in providing for the needy, in championing and promoting the rights of those who are oppressed, in providing education, including religious instruction. Thus the work of charity, alleviating suffering and distress, and uplifting standards of living for which the Bill covers requires religious bodies to register. Essentially, the work of the religious group is human rights work. It is human rights work to strive to enable individuals and communities to access their rights, and this is what Christ requires Christians to do.

0.1. Doubtless other believers in other religious faiths are required to work of the same nature. The Constitution enshrines the right to do, manifest and propagate their faith through practice and observance of their faith. It is an integral part of the faith and their identity, which is protected in section 19 of the Constitution. To require religious groups to register with anybody inorder to practice and observe faith is to hinder them in the enjoyment of their right, which is enshrined in Section 19 of the Constitution. Thus clauses 9 and 2 are unconstitutional to the extent that they would oblige religious bodies to register to do so called religious work.

0.1. An essential element of the work of NGOs is to share, access and disseminate information. They also individually or collectively commit themselves to the dissemination of such information to sections of the community who do not ordinarily have access to it. NGOs also commit themselves to the dissemination of information on Zimbabwean laws to communities in need. Access to and dissemination of information is part of the fundamental freedom of expression as protected in Section 20 of the Constitution. To require anybody to register before engaging with others in accessing and disseminating information is to hinder the enjoyment of the fundamental right. For this reason too, clause 9 is in our view unconstitutional.

0.1. Clause 9 (4) of the Bill provides that no foreign NGO that engages principally or solely in issues of governance shall be registered. The interpretation section defines issues of governance as including the promotion of human rights and further defines a foreign NGO as one, which includes people who are not citizens or permanent residents domiciled in Zimbabwe. This means that an NGO which includes Zimbabweans domiciled outside Zimbabwe cannot be registered. This means that people who are domiciled in Zimbabwe are prohibited from forming NGOs with, for example, Zimbabweans residing outside Zimbabwe for a common interest. For example, a development association for the development of a rural area or community from which such people originally come, cannot be formed with people originally from that area who are domiciled outside Zimbabwe even though they might be citizens. This provision is patently unconstitutional. It seeks to hinder people living in Zimbabwe from enjoying their freedom to associate with whomsoever they please for the promotion of their interests, in contravention of Section 21 of the

Constitution.

0.1. Just how the prohibition of Zimbabweans from associating with other Zimbabweans domiciled elsewhere and indeed from associating with foreigners can be thought to be consistent with the constitutional guarantee of the freedom of association is beyond your committee's comprehension.

0.1. It is important to note that under Section 21(3) (c), the Constitution specifically allows a law to deal with the registration of companies, partnerships, societies and other associations of persons. Undoubtedly the right to register will have to be conceded, but it is the manner in which the registration and thereafter the control of non-governmental organisations is proposed in the legislation that is subject of the challenge. The point will have to be made that reference to "registration" in Section 21 (3)(c) of the Constitution is to be construed as no more than registration. It does not permit of control thereafter, since control is quite a distinct concept to the formalities of registration.

1. CLAUSE 17.

0.1. Clause 17 of the Bill provides that no local NGO shall receive foreign funding or donations to carry out activities relating to issues of governance. This clause is in contravention of section 19, 20 and 21 of the Constitution. If an individual needs money in order to exercise the enjoyment of any of her/ his rights, then he/ she should be able to receive money from whatever source she/ he desires. For example, if a religious organisation requires funds to carry out its human rights work extending charity, alleviating suffering, providing education or

hospitals, then it would be allowed to receive funds even from other religious organisations outside Zimbabwe. If an NGO requires funding in order to exercise the enjoyment of its right to disseminate information, it should be able to receive funding from whomsoever, including organisations and individuals outside Zimbabwe. To prohibit NGOs from receiving foreign funding is to hinder the enjoyment of their fundamental rights enshrined in the Constitution. It is also an infringement of the right to freedom of association in Section 21 of the Constitution. If an NGO wishes to associate with a foreign-based individual or organisation in an agreement for the provision of financial aid, then the exercise of such a fundamental right cannot be hindered.

0.1. Ironically and so much for the supposed evils of foreign funding, the NGO Council is itself permitted to receive foreign funding with the approval of the Minister.

1. CLAUSE 11 AND 15

0.1. For the same reasons advanced above clauses 11 and 15 of the Bill are unconstitutional. Clause 11 provides for the cancellation by the Council of the registration of any NGO on various vague grounds such as that the NGO has ceased to operate in genuine furtherance of its objects or that it has failed to comply with any condition under which it was registered or that it has ceased to operate as an NGO. There is little, if anything at all, which an NGO can do to prevent its de-registration, An appeal against de- registration lies to an interested party who controls the Council, in the person of the all powerful Minister possessed of the unlimited power of life and death over NGOs. The outcome of an appeal of an unwanted NGO is a foregone conclusion. When taken together, the provisions of clauses 11 and 15

are inconsistent with the freedoms of association, expression and the secure protection of the law and hence violate sections 18, 20 and 21 of the Constitution.

6. **CLAUSE 20**

6.1 Clause 20 of the Bill empowers the Registrar to order the separation of a branch of an NGO from its mother body. It is your committee's view that this clause is unconstitutional for it directs and forces people who have chosen to associate with each other to stop so associating in violation of section 20 of the Constitution.

6.2 Individuals decide that they want to associate together for a common purpose as provided for in the Constitution. They determine how they wish to carry out their work, including the formation of their branches. They submit an application for the registration in terms of their own agreement as individuals associated together and commence their work as agreed. The Registrar of NGOs then unilaterally decides the individuals should not work together in one association. This is unconstitutional because the decision on whom to associate with is entirely up to the individuals concerned in terms of Section 21 of the Bill of Rights. Their decision on whom to associate with is inviolate, only the individuals change their minds.

1. CLAUSE 22, 23 AND 24

0.1. Clauses 22, 23 and 24 provide for extensive and intrusive powers to violate the right to privacy of NGOs under the guise of investigation. The Council has power to investigate "maladministration" within an

NGO. Maladministration includes not only financial wrongdoing but also improper conduct by people within the NGO that would justify cancellation of the registration. The Registrar may institute an investigation and the Minister, at the request of the council Chairperson, can appoint a public officer to conduct an investigation. This inspector can inspect not only the financial affairs of the NGO but also "any aspect of the affairs or activities of any" NGO. If, after such investigation, the Council finds that there is maladministration, it can take various measures, the most drastic of which is to cancel the registration of the NGO. If the Council considers that the maladministration warrants suspension of all or any of the NGO's executive committee, it can refer the matter to the Minister. The Minister may suspend all or some of the members of the executive committee. If the suspension is not lifted within 30 days, the members' posts become vacant.

0.1. Mr. Speaker Sir, it is your Committee's view that clauses 22, 23 and 24 being excessively intrusive, are a violation of the right to privacy as contemplated and provided for in Section 19 of the Constitution. They are also an undue hindrance to the freedom of association as provided for in Section 21 of Constitution and for that reason too they are unconstitutional.

1. CLAUSE 29

Clause 29 seeks to empower the Minister to dissolve NGOs. For the same reasons that have been outlined above, this clause would infringe the freedom of association and is consequently unconstitutional.

1. CLAUSE 32.

2. Clause 32 states that;

> *Every NGO which, immediately before the date of commencement of the Act was lawfully registered as a private voluntary organisation under the repealed Act shall be deemed to be registered as an NGO under this Act.*

1. The import of this clause is to create hordes of outlaws in respect of institutions and organisations that have hitherto lawfully operated as *univesitas* or trusts as it assumes that all NGOs that are not registered under the Private Voluntary Organisations Act [Chapter 17;05] are illegal and yet common law provides for such bodies. It is submitted that to the extent that clause 32 seeks to ban such organisations and to criminalise their existence without giving that transitional period within which to bring themselves into compliance with the new law. It is unduly oppressive and arbitrary. It can hardly be consistent with the letter and spirit of Section 21 (1) of the Constitution. To that extent the Clause is unconstitutional.

1. CONCLUDING REMARKS:

2. Taken together, the provisions of this Bill will allow the Government of Zimbabwe to stop human rights organisations from operating. At the very least, they will enable completely politically partisan actors to interfere at every turn in the affairs of these organisations and to de-register them at the drop of the hat. The provision prohibiting any foreign funding whatsoever cuts off the very livelihood of these organisations.

1. If the major human rights organisations in Zimbabwe are silenced and closed, this will be a devastating blow to the cause of human rights in Zimbabwe. Without these organisations, many human rights

abuses will go unreported and unpublicized and most victims will be left without any protection whatsoever.

1. Without the legal assistance organisations, many people will be taken into custody, and will be held for long periods and brutalised, and no lawyers will be engaged to do do whatever they can to try to protect the rights of these victims. Without medical assistance organisations, many victims of torture and violence will be left without any medical treatment and psychiatric counseling.

1. Mr. Speaker Sir, it is your committee's conclusion that clauses 2, 9, 11, 17, 15, 17, 20, 22, 23, 24, 29 and 32 are unconstitutional. We recommend this conclusion to the house.

Prof. W. Ncube
CHAIRMAN

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