

NEW NGO REGISTRATION FEES: A HUGE STEP BACKWARD FOR FREEDOM OF ASSOCIATION IN MALAWI AND AN EFFORT TO STIFLE CIVIC SPACE

We, the undersigned civil society organizations, speaking under the Human Rights Defenders Forum (HRDF), strongly condemn a decision by the government of Malawi to implement a new regulation that unfairly raises annual registration fees for NGOs at a time when most Malawians are facing great economic hardship. We call upon the government to immediately reverse the fees and start a process of meaningful and substantive consultations on the matter.

The Non-Governmental Organisations (Fees) Regulations of 2017 gazetted effective January 1 2018 ushers in unprecedented levels of repression, designed to cripple the operations of NGOs in Malawi. For instance, according to the new regulation, some NGOs will now be required to pay K1 million, an increase of almost 1 900 percent.

Such a hike represents a huge step backward for freedom of association in Malawi and an attempt to stifle NGOs and drive underground any civil society organizations that cannot afford to pay these exorbitant fees. What we are likely to see in the wake of this regulation is a lot of CSOs going underground. This is an assault on the very tenets of democracy that Malawians fought hard for in 1994.

Restricting NGOs to this degree eliminates the opportunity citizens to peacefully express dissent and hold the government accountable for human rights violations, thereby violating a number of constitutional principles, including Section 32 (1) of the Constitution of Malawi, which stipulates that "Every person shall have the right to freedom of association, which shall include the freedom to form associations." Restricting NGOs in this manner also contravenes Malawi's commitment to international human rights law, including the International Covenant on Civil and Political Rights, which states that no restrictions may be placed on the right to free association other than those "which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." No restriction should undermine the essence of the right to freedom of association itself.

We would like to remind Government with precision by Law that NGOs, by law, are non-profit-making. This means that CSOs and NGOs in Malawi are categorically supporting the Government by doing charity work, not making profits.. Therefore, imposing such exorbitant registration fees on them is not only unreasonable but also grossly unfair. We, therefore, call upon the government to reverse the fees and immediately start a process of meaningful and substantive consultations on the matter. It is sad that despite its potentially devastating impact, CSOs were not consulted on the matter.

The manner and the sheer speed at which this regulation has been gazetted raises serious governance questions. It beggars belief that government, which is still delaying implementation of important legislation such as the Access to Information Act, would be so much interested in fast tracking this obnoxious regulation despite its potentially devastating repercussions on the operations of NGOs.

The move by the government renders credence to the conjecture that the current administration is bent on closing the civic space by suffocating the operations of NGOs. While we understand that the fees have been categorized according to the levels of an NGO's annual income and corresponding fees, our major concern is that the fee hikes are in most cases unreasonably high. It is an outrage that an NGO that used to pay K50 000 in annual fees should now be required to pay K1 million, an increase of 1 900 percent. Failure to pay the fees will incur penalties and the NGOs will face suspension of their operations if they fail to pay within three months, according to the notice. This is not only unreasonable but also unacceptable.

We, in the civil society, have no doubt that government has a hidden agenda on the matter. It is no coincidence that in the last few months we have seen various attempts by the current administration aimed at suffocating CSOs at play, including an attempt to introduce a restrictive NGO Policy and using the NGO Board to intimidate and threaten CSOs deemed critical of government with closure. The fee hike is the latest in a series of attempts by the government through the NGO Board to stifle the voice of CSOs. As CSOs, we cannot allow this to continue.

We, in the civil society, are particularly astonished by the leadership of the NGO Board. It is unfortunate that the current leadership, most of whom are themselves beneficiaries of the civil society would now be the ones to want to strangulate CSOs in the name of regulating them. It is counterproductive to view CSOs and NGOs as a threat rather than a partner in development. CSOs and NGOs play a vital role in democracy and development, as governments, through the UN mechanisms, have repeatedly acknowledged. Most recently, in resolution A/HRC/RES/31/32, the UN Human Rights Committee "recognized the important and legitimate role of individuals, groups and organs of society that are defending human rights in identifying and raising awareness of human rights impacts, the benefits and risks of development projects and business operations, including in relation to workplace health, safety and rights, and natural resource exploitation, environmental, land and development issues, by expressing their views, concerns, support, criticism or dissent regarding government policy or action or business activities, and underlines the need for Governments to take the measures necessary to safeguard space for such public dialogue and its participants."

Therefore, we in the civil society, call upon the government to reverse the fees and immediately start wide consultations with CSOs and all concerned parties on the matter

in accordance with its domestic and international obligations to protect freedom of association.

We urge the NGO Board to find other means of generating revenue, rather than punishing CSOs with such exorbitant fees. We, in the civil society, are closely monitoring the development and will not hesitate to resort to legal action should the government not reverse its decision.

Signed by:

Timothy Mtambo

Khumbo Soko

Gift Trapence

Chairperson

Secretary

Vice Chairperson

Human Rights Defenders Forum Malawi Chapter (HRDF)

This statement is endorsed by:

Human Rights Consultative Committee (HRCC)

Civil Society Education Coalition (CSEC)

Malawi Economic Justice Network (MEJN)

Malawi Health Equity Network (MHEN)

Centre for Human Rights and Rehabilitation (CHRR)

Malawi Human Rights Resource Centre (MHRRC)

Church and Society Livingstonia Synod

Centre for Development of People (Cedep)

Youth Net and Counselling (YONEC)

Youth and Society (YAS)

Civil Society Network on Transparency and Accountability (CSNTA)

Citizens Forum for the Defense of Good Governance (CFDGG)

Civil Liberties Committee (CILIC)

National League for Democracy and Development (NLDD)

Outreach Scout Foundation (OSF)

Corruption Rights Watch (CRW)

Mango Network

Rights Institute for Social Empowerment (RISE)

Karonga Youth for Justice and Development (KIJD)

National elections Systems Trust (NEST)

Centre for Legal Affairs (CELA)

Good Enough Governance Forum (GEGF)

Youth Act Alliance (YAA)

Evangelical Lutheran Development Service (ELDS)

Civil Rights Advocacy Centre (CRAC)

Centre for Conflict Management and Development Affairs (CCMDA)

Feed the Children Malawi (FCM)

Northern Region Women Forum (NRWF)