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

MEMORANDUM

This Bill will repeal the Private Voluntary Organisations Act and establish a new non-governmental organisations Act which will provide for an enabling environment for the operations, monitoring and regulation of all non-governmental organisations.

In more detail, the individual parts of the Bill are as follows:

Part I

Clause 1 sets out the Bill's short title. Clause 2 defines the terms that are used throughout this Bill.

Part II

Clause 3 will establish a non-governmental organisations Council. Functions of the non-governmental organisations Council are outlined in clause 4. Clause 5, 6 and 7 will regulate matters related to funds of the Council, financial year of Council and accounts of, and audit of accounts of Council funds. Clause 8 will provide for the appointment of a Registrar of non-governmental organisations.

Part III

This Part deals with matters related to the registration of non-governmental organisations (clause 9 and 10). Clause 11 will deal with the cancellation or amendment of certificates. Clause 12 will require every non-governmental organisation to carry out its activities under its registered name.

Clause 13 will allow the director of a registered non-governmental organisation to surrender the certificate of registration. The director will also be able to apply for a new certificate of registration in the event that the old certificate was cancelled or surrendered (clause 14).

Any non-governmental organisation which is aggrieved by any decision of the Council in relation to the rejection of an application for registration may appeal to the Minister (clause 15).

Part IV

This Part provides for the administration of non-governmental organisations. Clause 16 provides for the need for every director of a registered non-governmental organisation to produce reports and returns at the end of each financial year. Clause 17 will regulate funding for local non-governmental organisations. No local (NGO) shall receive any foreign funding or donation to carry out activities involving or including governance issues.

Clause 18 will require every registered (NGO) to have a registered address in Zimbabwe. A registered non-governmental organisation may also establish branch committees where the organisation may delegate some of its activities (clause 19). Clause 20 will empower the Registrar to determine that any branch of a non-governmental organisation shall not be subject to the control and direction of that non-governmental organisation and make it an independent and separate non-governmental organisation. Clause 21 will provide for audit of accounts of a non-governmental organisation. Clause 22 will give the Minister power to appoint an officer to inspect any aspect of the affairs or activities of any non-governmental organisation.

Part V

Clause 23 will give the Council power to investigate maladministration in non-governmental organisations. If the Council finds that there has been maladministration in an organisation, the Council will be empowered to censure the persons responsible for it, or to direct the taking of measures to prevent its recurrence, or to cancel or amend the organisation's registration. Under the clause, the Council will have to act fairly when conducting investigations i.e. it will have to give everyone concerned an opportunity to be heard and also will have the right to be furnished with reasons on the Council's decision.

Any person affected by the decision of the Council is entitled to appeal to Minister if he is not satisfied by that decision. Clause 24 will set out the procedure to be followed when the Council has referred a question of suspending an organisation's committee members to the Minister. The Minister will be obliged to conduct any necessary investigations and if in the Minister's opinion there has been serious maladministration and it is in the public interest for all or any of the organisation's committee members to be suspended, the Minister will have power to suspend them. Before doing so, however the Minister will have to give the committee members concerned a reasonable opportunity to make representations.

Committee members who have been under suspension for 30 days will automatically go out of office. If all committee members of a non-governmental organisation have been suspended, the Minister will have power to appoint trustees to manage the organisation's affairs pending the election of a new committee.

Clause 25 will empower the Registrar to adjudicate disputes within non-governmental organisations.

Clause 26 will provide for general offences and penalties and will specify the penalties that may be imposed on persons who commit them.

Clause 27 will provide for the evidential provisions. Under this clause a certificate from the Registrar stating whether or not an organisation is registered under the Act will be admissible in any proceedings, civil or criminal, at present such certificates are admissible only in criminal proceedings. Clause 28 regulates how contributions unlawfully collected are to be utilised.

Clause 29 will empower the Minister to dissolve the organisation if the organisation ceases to function and the persons responsible in terms of its constitution for dissolving the organisation fail or are unable to dissolve it within six months. In Clause 30 the Minister may direct any person holding or having control of any money collected contrary to this Act, to retain to either the contributor or to the Minister and thereupon the Minister will later return the money to every contributor known. Clause 31 will empower the Minister to make regulations with regard to the form, of any application, authority, certificate, notice, order or register to be made. Clause 32 will validate the lawful registration of private voluntary organisations which was done under the repealed Act to be registration under this new Act. Clause 33 will repeal the Private Voluntary Organisations Act [*Chapter 17:05*] and save any statutory instruments which were in force under the repealed Act.

The Schedule contains provisions applicable to Council Members.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II

NON-GOVERNMENTAL ORGANISATIONS COUNCIL AND REGISTRAR OF NON-GOVERNMENTAL ORGANISATIONS

3. Non-governmental Organisations Council.
4. Functions of the Council.
5. Funds of Council.
6. Financial year of council.
7. Accounts and audit of Accounts of Council funds.
8. Registrar of Non-governmental Organisations.

PART III

REGISTRATION AND EXEMPTION OF NON-GOVERNMENTAL ORGANISATIONS

9. Non-governmental organisations to be registered.
10. Registration.
11. Cancellation or amendment of certificate.

ADMINISTRATION OF NON-GOVERNMENTAL ORGANISATIONS

12. Non-governmental organisations not to carry on activities except under registered name.
13. Surrender of registration certificate.
14. Restoration of cancelled or surrendered certificate.
15. Appeals.

PART IV

16. Books, accounts, records, etc.
17. Funding of local non-governmental organisations.
18. Registered address.
19. Branch committees.
20. Branches not controlled by non-governmental organisation.
21. Audit of accounts.
22. Inspections and examination of accounts.

PART V

MISCELLANEOUS

23. Investigations by Council.
24. Suspension of executive committee and appointment of trustees to manage organisation.
25. Registrar may adjudicate disputes with non-governmental organisations.
26. General offences and penalties.
27. Evidence and presumptions.
28. Contributions unlawfully collected.
29. Minister may dissolve certain organisations.

30. Disposal of assets of non-governmental organisations.
31. Regulations.
32. Transitional provision.
33. Repeals.

SCHEDULE: Provisions applicable to members of the Council.

PRESENTED BY THE MINISTER OF PUBLIC SERVICE, LABOUR AND SOCIAL WELFARE

BILL

To provide for the registration of non-governmental organisations, to provide for an enabling environment for the operations, monitoring and regulation of all non-governmental organisations; to repeal the Private Voluntary Organisations Act [*Chapter 17:05*] and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Non-Governmental Organisations Act, 2004.

2 Interpretation

(1) In this Act—

“contributions” means movable or immovable property, including money or anything that can be exchanged for or converted into money, which is acquired or received as a gift or donation or otherwise and which is not transferred in fulfilment of a legally enforceable obligation;

“Council” means the Non-governmental Organisations Council established by section *three*;

“contributor”, in relation to the collection of contributions, means any person from whom contributions are collected;

“director”, in relation to a non-governmental organisation, means the individual person for the time being responsible for the affairs of such organisation;

“foreign funding or donation” means any funding provided or donation made by—

- (a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) 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.

“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;

“issues of governance” includes the promotion and protection of human rights and political governance issues;

“local authority” includes such authority as may be prescribed;

“local non-governmental organisation” means any association of persons, whether incorporated or unincorporated, that consists exclusively of permanent residents or citizens of Zimbabwe who are domiciled in Zimbabwe;

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“non-governmental organisation” means any foreign or local body or association of persons, corporate or unincorporate, 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 or 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 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 a 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 unincorporate, 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 other bodies, associations or institutions as may be prescribed;

“register” means register referred to in section *eight*;

“Registrar” means the Registrar of Non-governmental Organisations referred to in section *eight*;

“repealed Act” means the Private Voluntary Organisations Act [*Chapter 17:05*].

(2) Where contributions are collected from the public in respect of a body or association referred to in subparagraph (vi) or (viii) of the definition of “non-governmental organisation” in subsection (1), whether or not such body or association is formed under any enactment, the provisions of this Act, in so far as they are not inconsistent with any other enactment applicable to such body or association, shall apply to such body or association.

(3) This Act shall apply to every non-governmental organisation as defined in subsection (1) whether or not its legal status within Zimbabwe is subject to any agreement with the State and whether or not its constituent deed or instrument is registered with the High Court or the Deeds Office.

PART II

NON-GOVERNMENTAL ORGANISATIONS COUNCIL AND REGISTRAR OF NON-GOVERNMENTAL ORGANISATIONS

3 Non-governmental Organisations Council

(1) There is hereby established a council to be known as the Non-governmental Organisations Council which shall exercise the functions conferred upon it by this Act.

(2) Subject to this section, the Council shall consist of—

(a) five representatives from non-governmental organisations or associations which the Minister considers are representative of non-governmental organisations; and
(b) one representative who shall not be under the level of Under Secretary from each of the following Ministries—

- (i) the Ministry for which the Minister is responsible;
 - (ii) the Ministry responsible for health;
 - (iii) the Ministry responsible for justice;
 - (iv) the Ministry responsible for finance;
 - (v) the Ministry responsible for youth and gender affairs;
 - (vi) the Ministry responsible for foreign affairs;
 - (vii) the Ministry responsible for local government;
 - (viii) the Ministry responsible for information and publicity;
 - (ix) Office of the President and Cabinet;
- and

(c) the Registrar, *ex officio*.

(3) Members of the Council referred to in paragraphs (a) and (b) of subsection (2) shall be appointed by the Minister from among persons nominated for that purpose by the appropriate organisation, association or Ministry.

(4) Before making an appointment in terms of subsection (3), the Minister shall call upon the organisation, association or Ministry concerned to nominate such number of persons as the Minister may specify who, in his or her opinion, are suitable and available for appointment as members of the Council:

Provided that the Minister may—

- (i) appoint a person to be a member of the Council who has not been so nominated and may decline to appoint any person so nominated;
- (ii) where he or she has called for nominations in terms of this subsection in respect of any appointment to the Council and no nominations have been made in respect of such appointment within such period as he may determine when calling for such nominations, appoint any person to be a member of the Council whether or not, in his opinion, the person so appointed is able to represent the views of the body whose nominations were called for.

(5) Members of the Council shall be appointed by the Minister for such period, not exceeding three years, as he or she may specify on their appointment.

(6) The Minister shall designate one of the members to be the chairperson of the Council.

4 Functions of the Council

(1) The functions of the Council shall be—

- (a) subject to this Act, to consider and determine every application for registration and every proposed cancellation or amendment of a certificate of registration; and
- (b) to conduct investigations into the administration and activities of non-governmental organisations in terms of section *twenty- three* and, following such investigations, to hear

- representations from the organisations and to take such disciplinary or other action as may be appropriate in accordance with that section;
- (c) to advise the Minister and registered non-governmental organisations in respect of any matter arising out of the administration or operation of this Act or any other matter referred to it by the Minister or the Registrar;
 - (d) to promote and encourage the co-ordination of the activities of registered non-governmental organisations having similar or related objects;
 - (e) to formulate rules for the registration or deregistration of non-governmental organisations;
 - (f) to formulate a code of conduct for non-governmental organisations; and
 - (g) to submit to the Minister an annual report concerning the administration and operation of this Act.

(2) The Schedule shall apply to the terms of office, vacation of office, suspension and dismissal of members of the Council, and the procedure to be followed at Council meetings.

5 Funds of Council

(1) The funds of the Council shall consist of—

- (a) any moneys that may be payable to the Council from moneys appropriated for the purpose by Act of Parliament; and
- (b) any loans, donations and grants made to the Council with the approval of the Minister by any person or by any government of any country; and
- (c) any fees or charges in respect of any services rendered by the Council in terms of this Act; and
- (d) any other moneys that may accrue to the Council, whether in the course of its operations or otherwise.

(2) Moneys not immediately required by the Council may be invested in such manner as the Minister may approve on the recommendation of the Council.

6 Financial year of Council

The financial year of the Council shall be a period of 12 months ending on the 31st December in each year.

7 Accounts and audit of accounts of Council funds

(1) The Council shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Council's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the Council shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

(3) The accounts of the Council shall be audited at least once a year by an auditor who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

8 Registrar of non-governmental organisations

(1) There shall be a Registrar of non-governmental organisations who shall be the person for the time being holding the office of Director of Social Welfare in the Ministry responsible for social welfare or any other person performing that function.

(2) Subject to this Act, the Registrar shall maintain at his or her office a Register of non-governmental organisations in which he or she shall enter all such particulars in relation to the registration of non-governmental organisations and their constitutions as he or she is required to enter by or in terms of this Act or any decision or order of a court.

(3) The Register shall be open to inspection during office hours by any member of the public on payment of the prescribed fee, if any.

PART III

REGISTRATION OF NON-GOVERNMENTAL ORGANISATIONS

9 Non-governmental organisations to be registered

(1) No non-governmental organisation shall—

- (a) commence or continue to carry on its activities; or
- (b) seek financial assistance from any source;

unless it has been registered in respect of the particular object or objects in furtherance of which it is constituted.

(2) No person shall collect contributions from the public except in terms of this Act.

(3) No person shall in any manner take part in the management or control of a non-governmental organisation, knowing that the organisation is contravening subsection (1).

(4) No foreign non-governmental organisation shall be registered if its sole or principal objects involve or include issues of governance.

(5) Any person who contravenes subsection (2) and (3) shall be guilty of an offence and liable—

- (a) in the case of a contravention of subsection (2) to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) in the case of a contravention of subsection (3), to a fine not exceeding level four or to imprisonment for a period not exceeding five months or to both such fine and such imprisonment.

10 Registration

(1) The director of any non-governmental organisation which is required to be registered shall lodge with the Registrar in the prescribed manner an application for such registration together with the prescribed application fee and the constitution of the organisation.

(2) Every application shall include the following information relating to the organisation—

- (a) the names, nationality and addresses of its promoters;
- (b) its sources of funding;
- (c) its plan of action or projected activities for the next three years.

(3) The constitution of every non-governmental organisation shall include the following—

- (a) the name of the organisation;
- (b) the organisation's objects;
- (c) the powers of the organisation;
- (d) the organisational structure and mechanisms for its governance;
- (e) the procedure for convening meetings;
- (f) the terms and conditions of office bearers and the removal of such office bearers from office;
- (g) the procedure for resolving disputes;
- (h) the procedure for amending the constitution;
- (i) the procedure for dissolving or winding up the organisation and the manner of disposal of its assets upon dissolution;
- (j) disclosure provisions for all foreign donations to the organisations;
- (k) any other matter which the Council may prescribe.

(4) A non-governmental organisation shall, within 30 days of lodging an application in terms of subsection (1), publish at its own expense in a national newspaper or a newspaper circulating in the area concerned a notice containing the prescribed information and shall submit proof to the Registrar that such notice has been published.

(5) Any person may within 60 days or such other period as may be prescribed, lodge with the Registrar an objection to the grant of the application, setting out the grounds on which such objection is made, and the Registrar shall submit any such objection to the Council for consideration.

(6) The Registrar may at any time before the application is determined by the Council require any non-governmental organisation which has applied for registration to supply any further information in connection with its application which he may deem necessary.

(7) Where the Registrar is satisfied that the requirements referred to in subsections (1), (2), (3), (4) and (5) have been complied with, he or she shall submit the application, together with the constitution of the organisation, any objection to the grant of the application and any further information supplied in connection with the application to the Council and the Council may—

- (a) after considering the application, grant it and direct the Registrar to issue to the organisation concerned a certificate of registration subject to such conditions as the Council may impose; or
- (b) reject the application if it appears to the Council that the organisation is not operating *bona fide* in furtherance of the objects stated in its application for registration.

(8) Where the Council rejects an application for registration wholly or in part, the Registrar shall notify the applicant organisation of the rejection, and inform it of the grounds upon which the rejection was based.

(9) The registration of an organisation under this section and the objects in respect of which it has been registered shall be published by the Registrar in the *Gazette*.

(10) Where a registered non-governmental organisation wishes to change its name or add to or alter any of the objects in respect of which it is registered, the director thereof shall apply to the Registrar for the certificate of registration thereof to be amended accordingly; and the provisions of this section shall apply, with necessary changes, as if such application were an application for registration.

(11) Every non-governmental organisation which is registered in terms of this Act shall—

- (a) pay an annual registration fee as may be prescribed; and
- (b) receive an annual registration certificate.

11 Cancellation or amendment of certificate

(1) The Council may at any time cancel any certificate of registration—

- (a) on the ground that the organisation has ceased to operate *bona fide* in furtherance of the objects for which it is registered; or
- (b) if any remuneration or reward, which in the Council's opinion is excessive in relation to the total value of the contributions received by the organisation concerned, is retained or received by any person other than a person for whose benefit the contributions were intended; or
- (c) if the organisation fails to comply with any condition of its registration; or
- (d) if the organisation ceases to function as a non-governmental organisation; or
- (e) if the Council considers that the objects in respect of which the organisation was registered are merely ancillary or incidental to the other objects of the organisation; or
- (f) if the organisation fails to submit to the Registrar a report or return which it was required to submit in terms of section *sixteen*, and fails to rectify the default within three months after being requested to do so by the Registrar; or
- (g) if the organisation is found guilty of maladministration in terms of section *twenty-three*.

(2) The Council may at any time direct the Registrar to amend a certificate of registration—

- (a) for the purpose of correcting any error therein or by varying the conditions attaching thereto; or
- (b) by the deletion therefrom of any of the objects in respect of which the organisation in question was registered, if in the opinion of the Council the organisation is no longer *bona fide* operating in furtherance of such objects.

(3) Before cancelling or amending a certificate of registration in terms of subsection (1) or (2) the Council shall cause the director of the non-governmental organisation concerned to be notified, in writing of the proposed cancellation or amendment and of the reasons for it, and shall afford the organisation a reasonable opportunity to make representations in the matter.

(4) If the director of a non-governmental organisation receives a written request from the Registrar to lodge with him for the purposes of cancellation or amendment any certificate of registration granted to such organisation and, without reasonable excuse, fails to comply therewith within 90 days of the receipt of such request, he shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding two months or to both such fine and such imprisonment.

(5) The cancellation of a certificate of registration under this section or the deletion therefrom of any of the objects in respect of which the organisation in question was registered, shall be published by the Registrar in the *Gazette* and shall take effect as from the date mentioned in such publication, whether or not the certificate has been lodged with the Registrar in compliance with a request made under subsection (4).

12 Non-governmental organisations not to carry on activities except under registered name

(1) No registered non-governmental organisation shall—

- (a) carry on its activities; or
- (b) seek financial assistance from any source; or
- (c) collect contributions from the public;
under a name other than the name under which it is registered.

(2) Any person who in any manner takes part in the management or control of a registered non-governmental organisation, knowing that such organisation is contravening the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

13 Surrender of registration certificate

The director of a registered non-governmental organisation may surrender to the Registrar the certificate of registration thereof, and the Registrar may thereupon accept the surrender subject to such of the prescribed conditions as the Registrar may impose.

14 Restoration of cancelled or surrendered certificate

Upon the application of the director of a non-governmental organisation the certificate of registration whereof has been cancelled or surrendered, the Registrar may grant to the organisation a fresh certificate of registration and section *ten* shall apply, with necessary changes, in connection with an application for, and the granting of, a certificate of registration under this section.

15 Appeals

(1) Any non-governmental organisation which is aggrieved by any decision of the Council relating to the rejection, either wholly or in part, of an application for registration or to the cancellation, amendment, surrender or restoration of a certificate of registration may appeal against that decision to the Minister.

(2) The Minister may confirm the decision of the Council or, subject to this Act, give such other decision as in his opinion the Council ought to have given, and may instruct the Council to do everything necessary to give effect to his decision.

PART IV

ADMINISTRATION OF NON-GOVERNMENTAL ORGANISATIONS

16 Books, accounts, records, etc.

(1) The director of every registered non-governmental organisation shall be responsible for ensuring that books, accounts and records are kept to the satisfaction of the Registrar and shall within two months after the end of each financial year render to the Registrar the prescribed reports and returns and such additional information as may be required by the Registrar.

(2) Every registered non-governmental organisation shall have an annual budget showing the details of its expenditure and proceeds, including income, accruals and donations from local and foreign sources.

17 Funding of local non-governmental organisations

No local non-governmental organisation shall receive any foreign funding or donation to carry out activities involving or including issues of governance.

18 Registered address

(1) Every registered non-governmental organisation shall have a registered address in Zimbabwe.

(2) Notice of any change of the registered address shall be given within twenty-one days thereof to the Registrar.

19 Branch committees

(1) Every registered non-governmental organisation which conducts its operations wholly or partly through branches established and functioning under the control and direction thereof shall constitute a committee for every such branch and the said organisation shall grant to every such branch a letter of delegation in the prescribed form and subject to the prescribed conditions.

(2) Upon the cancellation or surrender of a certificate of registration issued to a non-governmental organisation, any delegation granted thereby to any branch thereof shall automatically lapse.

20 Branches not controlled by non-governmental organisation

The Registrar, after consultation with the Council, may determine that any branch of a non-governmental organisation which is not subject to the control and direction of that organisation shall, for the purposes of this Act, be deemed to be an independent and separate non-governmental organisation.

21 Audit of accounts

The director of every non-governmental organisation shall, within three months after the end of each financial year of that organisation, cause an account of its expenditure and revenue for that financial year to be audited by an auditor registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]:

Provided that if the Council is satisfied that the financial position of a non-governmental organisation is such that the employment of such an auditor is not justified he may, subject to such conditions as he may determine, authorise the appointment of some other person to audit the accounts.

22 Inspections and examination of accounts

(1) The Minister may appoint any officer in the Public Service as an inspecting officer—

- (a) to inspect any aspect of the affairs or activities of any non-governmental organisation and to examine all documents relating thereto;
- (b) to examine the books, accounts and other documents relating to the financial affairs of any non-governmental organisation;

and to report thereon to the Registrar.

(2) The Council shall ensure that every inspecting officer is provided with an identity document identifying him or her as an inspecting officer and he or she shall, on request by any person affected by the exercise of his or her powers under this Act, produce the identity document issued in terms of this subsection.

(3) For the purpose of any inspection or examination in terms of subsection (1), an inspecting officer may—

- (a) by notice under his hand, delivered to the person concerned personally or sent to him by post, require any person to produce to him any book or other document which has any bearing on the subject of the inspection, examination or audit; and
- (b) retain for a reasonable period any book or document produced to him by virtue of a notice under this subsection or voluntarily by any person.

(4) Any person who, having received notice under subsection (3), fails to produce any book or document referred to in subsection (3) which he may be able to produce, shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(5) Any person who—

- (a) wilfully hinders or obstructs an inspecting officer in the exercise of his functions in terms of this Act; or
- (b) falsely holds himself out to be an inspecting officer;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding four months or to both such fine and such imprisonment.

PART V

MISCELLANEOUS

23 Investigations by Council

(1) In this section—

“maladministration” means—

- (a) theft or misappropriation of the funds or property of a non-governmental organisation; or
- (b) any improper conduct on the part of an officer, employee or member of the executive committee of a non-governmental organisation which—
 - (i) prevents the organisation from carrying out the objects for which it was registered; or
 - (ii) would justify the cancellation of the organisation’s certificate of registration in terms of section *eleven*;
- (c) any contravention of any provision of a code of conduct as may be prescribed.

(2) If the Registrar has reasonable grounds to suspect that there is or has been maladministration in a registered non-governmental organisation, the Registrar may institute an investigation into the organisation’s activities.

(3) The Minister, at the request of the Chairperson of the Council, may appoint an inspecting officer under section *twenty-two* for the purposes of an investigation under subsection (2) and that section shall apply, with necessary changes, to the conduct of such investigation.

(4) The Council shall ensure that anyone whose conduct is being investigated under this section is given a reasonable opportunity to explain that conduct.

(5) If, after an investigation under this section, the Council finds that there is or has been maladministration in the non-governmental organisation concerned, the Council may take any one or more of the following courses of action—

- (a) censure any Director, office-bearer, officer or employee of the organisation;
- (b) direct the organisation’s executive committee to take such measures as the Council may specify to ensure that maladministration does not recur;
- (c) subject to section *eleven*, cancel or amend the organisation’s certificate of registration;
- (d) if the Council considers that the maladministration may constitute an offence, report the matter to the police;

- (e) if the Council considers that the maladministration warrants the suspension of all or any of the members of the organisation's executive committee, refer the matter to the Minister:

Provided that, before taking any action in terms of paragraph (a), (b), (c) or (e), the Council shall ensure that the organisation and every Director, office-bearer, officer or employee of the organisation directly affected by the action is given a reasonable opportunity to make representations in the matter.

(6) Any person who is aggrieved by any action taken by the Council in terms of paragraph (a), (b), (c) or (e) of subsection (5) may appeal against it to the Minister.

(7) An appeal under subsection (6) shall be lodged in writing with the Minister within thirty days after the appellant is notified of the Council's action, and shall specify the grounds of the appeal.

(8) On an appeal under subsection (6), the Minister may, after making such investigation as he or she considers necessary and giving the Council and the appellant a reasonable opportunity to make representations in the matter, confirm, vary or set aside the Council's action or make such other order in the matter as he considers appropriate.

(9) An appeal shall lie to the Administrative Court against any decision of the Minister made in terms of subsection (8).

(10) An appeal in terms of subsection (9) shall be made in the form and manner and within the period prescribed in the rules of court.

(11) In an appeal in terms of subsection (9), the Administrative Court may confirm, vary or set aside the decision appealed against and may make such order, whether as to costs or otherwise, as the Court thinks fit.

24 Suspension of executive committee and appointment of trustees

(1) Where the Council, in terms of paragraph (e) of subsection (5) of section *twenty-three*, has referred to the Minister the question of suspending all or any of the members of the executive committee of a registered non-governmental organisation, the Minister shall without delay conduct such investigation into the matter as he considers necessary and, if he is satisfied that—

- (a) there is or has been serious maladministration in the organisation; and
- (b) it is in the public interest for all or any of the members of the organisation's executive committee to be suspended;

the Minister may, by written notice to the director of the organisation and every committee member concerned, suspend the member or members from exercising all or any of their functions:

Provided that, before doing so, the Minister shall ensure that the director of the organisation and every committee member concerned is notified of the proposed action and of the reasons for it, and is given a reasonable opportunity to make representations in the matter.

(2) the Minister may at any time revoke a suspension in terms of subsection (1).

(3) Where the Minister has suspended members of the executive committee of a registered non-governmental organisation in terms of subsection (1) from exercising all their functions, and the suspension has not been revoked within thirty days, the member's office shall thereupon become vacant.

(4) Where the Minister has suspended some but not all the members of the executive committee of a registered non-governmental organisation and has not revoked the suspension within thirty days, the remaining members shall forthwith call for the appointment or election of new members in accordance with the constitution of the organisation.

(5) Where all the members of the executive committee of a non-governmental organisation have been suspended, the Minister may appoint two or more persons as trustees to institute procedures for the appointment or election of a new executive committee and to run the organisation's affairs pending such appointment or election.

(6) Subject to the Minister's directions, trustees appointed under subsection (5) shall have all the powers of the executive committee of the non-governmental organisation concerned.

(7) The office of a trustee appointed under subsection (5) shall terminate as soon as the vacant offices on the executive committee of the non-governmental organisation concerned have been filled.

(8) An appeal shall lie to the Administrative Court against decision of the Minister made in terms of subsection (5).

(9) An appeal in terms of subsection (8) shall be made in the form and manner and within the period prescribed in the rules of court.

(10) In an appeal in terms of subsection (8), the Administrative Court may confirm, vary or set aside the decision appealed against and may make such order, whether as to costs or otherwise, as the court thinks fit.

25 Registrar may adjudicate disputes within non-governmental organisation

The Registrar or any officer delegated by him, may adjudicate disputes between members of a non-governmental organisation at the invitation of the executive committee of a non-governmental organisation or of a general meeting of members of the organisation as provided under the organisation's constitution.

26 General offences and penalties

(1) Any person who—

(a) collects or attempts to collect or instructs another person to collect or attempt to collect any contribution in furtherance of any of the objects mentioned in paragraphs (a) to (j) of the definition of "non-governmental organisation" in section *two*, except where the collection is—

- (i) on behalf of and with the authority of a registered non-governmental organisation; or
- (ii) on behalf of any body, association, institution, or service excluded from that definition by subparagraphs (i) to (x) thereof; or

(b) collects or attempts to collect or instructs another person to collect or attempt to collect any contribution for or on behalf of an unregistered non-governmental organisation;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding four months or to both such fine and such imprisonment.

(2) Any person who falsely represents or causes or permits any other person falsely to represent to any member of the public that he is associated with a non-governmental organisation shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(3) Any person who, is or in connection with—

- (a) any application for the registration of a non-governmental organisation or the exemption of such an organisation under section 10; or
- (b) any application for the registration of the alteration of the name of a registered non-governmental organisation;

makes a statement or submits information that is false or misleading in a material particular, not having reasonable grounds for believing the statement or information to be true, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding four months or to both such fine and such imprisonment.

(4) Any person who becomes, continues to be or acts in the capacity of an office-bearer or officer of a non-governmental organisation within five years after having been convicted under the law of Zimbabwe or of any foreign country of any offence involving dishonesty shall be guilty of an offence.

5) Any person who is guilty of an offence in terms of subsection (4) shall be liable to a fine not exceeding level five or to imprisonment for a period not exceeding four months or to both such fine and such imprisonment.

(6) For the purposes of subsection (4)—

“office-bearer”, in relation to a non-governmental organisation, means a member of the governing body of—

- (a) that organisation; or
- (b) any branch, section or committee of that organisation; or
- (c) any local, regional or subsidiary body forming part of that organisation;

“officer”, in relation to a non-governmental organisation, means any person employed by that organisation or any branch, section or committee thereof or by any local, regional or subsidiary body forming part of that organisation, whether or not he or she receives any remuneration or reward for such work.

27 Evidence and presumption

(1) A certificate purporting to be signed by or on behalf of the Registrar and stating whether or not a non-governmental organisation is registered under this Act shall be admissible as evidence in any court on its production by any person, and shall be *prima facie* proof of the matters stated therein.

(2) If in a prosecution for an offence under subsection (2) of section *twenty-six*—

- (a) it is alleged that the organisation which the accused person represented himself or was represented to be associated was not in existence at the time the offence is alleged to have been committed; and
- (b) a certificate is produced to the court by any person which purports to have been signed by the Registrar and states that at the time of the alleged offence no such non-governmental organisation was registered under this Act or had applied for registration;

it shall be presumed unless the contrary is proved that the organisation was not in existence at that time.

28 Contributions unlawfully collected

(1) The Minister may, by order in writing under his hand—

- (a) direct any person holding or having the control of any money, securities or other property, representing any contributions collected contrary to this Act, to retain the possession or control thereof until a further order in regard thereto is made by him;
- (b) direct any person holding or having control of any money, securities or property such as are mentioned in paragraph (a)—

- (i) to return to every contributor who is known the money, securities or property contributed by such contributor and to transfer or deliver the balance, if any, to the Minister, and to supply proof to the Minister of having complied with such order; or
- (ii) to transfer or deliver such money, securities or property to the Minister, and thereupon the Minister shall return to every contributor who is known the money, securities or property contributed by such contributor.

(2) Any money, securities or property which cannot be returned to the contributor in terms of subsection (1) or which were received from any unidentified contributor shall be paid into the Guardian’s Fund for the account of such contributor and shall be dealt with in accordance with the Administration of Estates Act [*Chapter 6:01*].

(3) Any person who contravenes or fails to comply with an order in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

29 Minister may dissolve certain non-governmental organisations

(1) Where a non-governmental organisation ceases to operate and the persons responsible in terms of its constitution for dissolving the organisation fail or are unable to dissolve it within six months thereafter, the Minister may dissolve the organisation on their behalf and shall dispose of the assets of the organisation in accordance with its constitution if it ceases to function and the persons responsible in terms of its constitution.

(2) The Minister shall ensure that before any organisation is dissolved in terms of subsection (1), it is notified of the proposed action and of the reasons for it, and is given a reasonable opportunity to make representations in the matter.

(3) An appeal shall lie to the Administrative Court against the decision of the Minister made in terms of subsection (1).

(4) An appeal in terms of subsection (3) shall be made in the form and manner and within the period prescribed in the rules of court.

(5) In an appeal in terms of subsection (3), the Administrative Court may confirm, vary or set aside the decision appealed against and may make such order, whether as to costs or otherwise, as the court thinks fit.

30 Disposal of assets of non-governmental organisations

Upon the dissolution of a non-governmental organisation, whether in terms of section *twenty-nine* or voluntarily or otherwise, its assets shall be distributed and disposed of as provided for in its constitution, and any surplus remaining thereafter shall vest in the State as *bona vacantia*.

31 Regulations

(1) The Minister may make regulations providing for—

- (a) the form of any application, authority, certificate, notice, order or register to be made, given, issued or kept under this Act and any other form which may be required in carrying out this Act;
- (b) the books, accounts and records to be kept by non-governmental organisations and the manner in which they shall be kept;
- (c) the procedure to be followed on the dissolution of a non-governmental organisation and the manner in which its assets shall be disposed of;
- (d) the circumstances under and the conditions upon which contributions may be collected by one non-governmental organisation on behalf of another non-governmental organisation;
- (e) the manner in which persons shall be authorised by registered non-governmental organisations to collect contributions on their behalf;
- (f) a non-governmental organisations operation manual;
- (g) any other matter which in terms of this Act is required or permitted to be prescribed; and generally for the better carrying out of the objects and purposes of this Act.

(2) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

32 Transitional provision

Every non-governmental organisation which, immediately before the date of commencement of this Act was lawfully registered as a private voluntary organisation under the repealed Act shall be deemed to be registered as a non-governmental organisation under this Act.

33 Repeal and savings

(1) The Private Voluntary Organisations Act [*Chapter 17:05*] is repealed.

(2) Notwithstanding subsection (1) any statutory instrument which immediately before the fixed date was in force under the repealed Act; shall remain in force as if it had been made under this Act.

SCHEDULE (Section 4)

PROVISIONS APPLICABLE TO NON-GOVERNMENTAL ORGANISATIONS COUNCIL MEMBERS

Paragraph

1. Disqualification for appointment to Council.
2. Vacation of office by member.
3. Dismissal or suspension of members.
4. Filling of vacancies on Council.
5. Meetings and procedure of Council.
6. Remuneration and allowances of members of the Council.
7. Validity of decisions and acts of Council.
8. Minutes of proceedings of Council.

Disqualification for appointment to Council

1 (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

- (a) is not a citizen of Zimbabwe; or
- (b) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
- (c) has, within a period of five years immediately preceding the date of his or her proposed appointment, been convicted—
 - (i) in Zimbabwe, of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is—

- (a) a member of Parliament; or
 - (b) a member of two or more other statutory bodies;
- shall not be appointed as a member of the Council, nor shall he or she be qualified to hold office as a member.

(3) For the purposes of subparagraph (b) of subparagraph (2) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

Vacation of office by member

2. A member shall vacate his or her office and his or her office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the Minister of his intention to resign, or on the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence; or

- (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence; or
- (c) if he or she becomes disqualified in terms of subparagraph (a), (b) or (c) of subparagraph (1) of paragraph 1 or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
- (d) if he or she is required in terms of paragraph 3 to vacate office.

Dismissal or suspension of member

- 3 (1) The Minister may require a member to vacate his or her office if the member—
- (a) has, subject to subparagraph (3), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a member; or
 - (b) has failed to comply with any term or condition of his or her office fixed by the Minister in terms of this Act.
 - (c) is mentally or physically incapable of efficiently carrying out his or her functions as a member; or
 - (d) has been absent without the permission of the Council from two consecutive meetings of the Council of which he or she was given at least seven days' notice, and there was no just cause for the member's absence.
- (2) The Minister may suspend a member—
- (a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in subparagraph (a) of subparagraph (1); or
 - (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

(3) A member suspended in terms of subparagraph (a) of subparagraph (2) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Minister showing cause why no finding of misconduct rendering him or her unsuitable to be a member of the Council should be made.

- (4) The Minister shall require a member suspended in terms of subparagraph (a) of subparagraph (2) to vacate his or her office if—
- (a) no representation are made by the member in terms of subparagraph (3); or
 - (b) the Minister finds that, notwithstanding representations made in terms of subparagraph (3), the member is guilty of the misconduct alleged.

Filling of vacancies on Council

4. On the death of, or vacation of office by, a member, the Minister may appoint a qualified person to fill the vacancy.

Meetings and procedure of Council

- 5 (1) The Council shall hold its first meeting on such date and at such place as the Minister may fix, and thereafter the Council shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided the Council shall meet at least three times in each year.

- (2) The chairperson of the Council—
- (a) may at any time convene a special meeting of the Council; and
 - (b) shall convene a special meeting of the Council on a written request of—
 - (i) the Minister, within such period as the Minister may specify; or
 - (ii) not fewer than two members not later than 14 days after his or her receipt of such request.

(3) Written notice of any special meeting convened in terms of subparagraph (2) shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the chairperson or the Minister, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson of the Council, where the chairperson of the Council has convened the meeting in terms of subparagraph (a) of subparagraph (2); or
- (b) the business specified in the request for the meeting, where the chairperson of the Council has convened the meeting in terms of subparagraph (b) of subparagraph (2).

(5) The chairperson or, in his absence, the vice-chairperson shall preside at all meetings of the Council:

Provided that, if the chairperson and the vice-chairperson are both absent from a meeting of the Council, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Eight members shall form a quorum at any meeting of the Council.

(7) All acts, matters or things authorised or required to be done by the Council may be decided by a majority vote at a meeting of the Council at which a quorum is present.

(8) At all meetings of the Council each member present shall have one vote on each question before the Council and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Council and shall be incorporated in the minutes of the next succeeding meeting of the Council:

Provided that if a member requires that such proposal be placed before a meeting of the Council, this subparagraph shall not apply to such proposal.

(10) For the better exercise of its functions, the Council may establish committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Council itself from exercising that function, and the Council may amend or rescind any decision of the committee in the exercise of that function.

(11) Subparagraphs (2) to (9) shall apply with necessary changes, to committees and its members as they apply to the Council and its members.

Remuneration and expenses of members

6. Members of the Council shall be paid—

- (a) such remuneration, if any, as the Minister may, from time to time, fix for members generally; and
- (b) such allowances, if any, as the Minister may, from time to time, fix to meet any reasonable expenses incurred by members in connection with the business of the Council.

Validity of decisions and acts of Council

7. No decision or act of the Council or act done under the authority of the Council shall be invalid on the ground that—

- (a) the Council consisted of fewer than the minimum number of persons prescribed; or

(b) a disqualified person acted as a member of the Council at the time the decision was taken or act was done or authorised:

Provided that the Council shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b).

Minutes of proceedings of Council

8 (1) The Council shall cause minutes of all proceedings of and decisions taken at every meeting of the Council to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting of the Council shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

(3) The Council shall cause copies of all minutes that have been signed as provided in subparagraph (2) to be sent without delay to the Minister for his information.

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