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**Regional Cluster Report**  
**CONFERENCE ON AN ENABLING ENVIRONMENT FOR CIVIL**  
**SOCIETY, Sept. 1996**  
**South Africa**

*Cluster: Malawi, Zimbabwe, Zambia, Mozambique, Angola,  
Botswana, Lesotho*

Resume

The context is scanned using examples from the different country scenarios. The analysis and reporting combines, in an evidence-based format, the issues around the nature and evolution of civil society, its relations with other stake-holders, its capacity and mandate, and the environment in which it should operate. Country highlights are then dealt with to elicit evidence, and where possible/useful, to highlight comparative dimensions.

## **Praxis**

The simultaneous emphasis on legislation and policy is crucial. Especially within the context of our present socio-political experience as a region, good laws are necessary but not sufficient for an independent, responsible and viable NGO Sector. Taking this conceptual option might also help dispose us towards the inclination to support NGO models where the emphasis is on broad-based popular struggles in which the democratic potential of ordinary people is cultivated. Ultimately the NGO Sector cannot be an answer in itself and for its own sake. Yet it is important to strengthen its obvious potential to be an alternative and largely voluntary, and in the result potentially more democratic centre of popular social struggles as well as a training ground for democrats among ordinary people.

Another point seems to also derive from the above. It appears that the main strength of this initiative will lie in its continuity and ability to go beyond a platform for legislative discussion (present and desired), but also a network of activist and innovative linkage, an opportunity for the identification and initiation of (more) capacity-building possibilities for NGOs, an opening into (more) discussion of ancillary aspects of effective NGO work eg Financial Sustainability, Context-specific Advocacy work, etc.

For instance it will appear from the analysis of Zimbabwe that the emphasis cannot be in the past, (except for what the past is worth as an experience), but in the possibilities provided for future collusive work among concerned actors especially in Government, and Civil Society to build an alternative and ideal policy and legal regime for NGOs in the country.

## **A Digest of Key Convergent and Divergent Issues in the Cluster**

### *History and Relations with the State*

In broad strokes the NGO Sector in the cluster seems to have developed through four principal milestones: First, during colonial times there are variant cases of

voluntarism that have not found a decent place in the annals of the histories of the different countries. These were especially philanthropic and class/gender/age-group consortia with a strong peer educational and value-transmission function. Although the recollection of this phase is made difficult on account of obvious historiographical problems of dominance and servitude in international social relations, the benefit of even a stressful recollection lies in the assertion of the value drive of any *bona-fide* not-for-profit sector, and also in the placement of value in the voluntary efforts of many ordinary people who do not have desks and date-stamps with which to receive Fiscal benefits from Government, but who come together with the genuine and fervent concern for Social Progress. Perhaps that may begin to give us a pointer to new frontiers for the discourse on an enabling policy and legislative environment.

The second phase is during the colonial period when the main benchmarks of the voluntary sector were either in the realm of parochial and sometimes elitist concerns like the Society for the Prevention of Cruelty to animals in Zimbabwe, or were philanthropic (read political once every ten times) efforts aimed at alleviating the distress that was the result of the colonial experience, or efforts by indigenous resistance groups to colonial edifice. The third phase has been the period soon after the attainment of Flag Independence when in many African countries of the cluster the NGO's have enjoyed a honeymoon with the state with the new emphasis on developmentalism. Here the relationship has been so collusive that it has not been easy for the voluntary sector to also look critically at government conduct and process.

In many of the cluster countries, it being now many years after independence, there is a new realisation that in virtually all of the scenarios the state has failed to deliver and people have reaped a "grain of wheat". Within this new polity, civil society has realised that it needs now to engage politically, define its own space, articulate an alternative development paradigm, and demand accountability from the State. This in fact is the fourth phase.

It will appear from the reports from Zambia and Zimbabwe that the State has not found itself comfortable relating to civil society in the fourth phase. It is important to grasp the outlines of the broad picture, though in miniature detail the post-modern State may make concessions here and there and allow NGOs some semblance of participation. For instance in Lesotho the Government has allocated NGOs a slot in the National Planning Board and promised NGOs representation on the Law Reform Commission established in 1993, albeit not yet functional. In the same country Central Planning informs NGOs through the Lesotho Council of

NGOs about the availability of funds for development projects for which proposals have to be submitted, and there is mention being made of the possibility of that funds generated through the Lesotho Highlands Water Development Project will be available to NGOs.

But as mentioned earlier, the more emphatic picture in this fourth phase of the historical development of NGOs in the cluster is one of uneasy-bedfellowship. Even in the aforementioned Lesotho situation, there is a general perception that NGOs when they involve themselves in Rights based work are being used for political purposes and this controversy has in some ways threatened the "credibility" of even the Lesotho Council of NGOs. On this account it is useful to place a new emphasis on an alternative jurisprudence that gives permissive space to civil society to engage at the political, rights based level. The starting point would be to recreate the basis of NGO voluntarism as the fundamental Right of Citizens to Association and Expression (c.f. Botswana Constitution Secs. 12 & 13; Zimbabwe Constitution Secs. 20 & 21; Lesotho Constitution Secs. 14 & 16, etc). This would then proffer a basis for deconstructing the proscriptive regulatory principle and for establishing a Rights basis. From the reflections on this point coming out of my cluster, it is possible to suggest two levels of principles that could govern regulation of the voluntary sector:

#### 1. **The political level.**

The first aspect here would be to recognise the scope of voluntary action, no matter how and where initiated, with the *caveat* only that it be *bona fide*.

The second connected aspect is to appreciate the right space for civil society to engage in rights based work. When in Zimbabwe the Zimbabwe Human Rights organisation organised a demonstration to commemorate the fatal shooting by police of innocent civilians in Harare, a demonstration that was then hijacked by agent provocateurs, the State castigated Zimrights so heavily that it wittlessly suggested that there were now Zimlooters who would end up in Zimprisons. The third aspect is to recognise that responsible regulation is premised among other things on the involvement of those who are to be regulated or governed. This way arbitrary regulatory power is proscribed and a mechanism is put in place to, as it were, regulate the regulators. To this end this principle of regulation would suggest that NGO's themselves must be part of the agency responsible for self accounting of NGO's, or must be solely responsible for the same. A final aspect here is to recognise that if NGO's are involved in the crafting of a regulatory environment, they must also be involved in amendments to that environment so that they do not suffer net prejudice with respect to their space and right to operate. There could be possibilities then of building into emerging legislation the residual right of

NGO's to be consulted before any amendments on NGO's are passed in Parliament.

## 2. The legal / Jurisprudential level

In the experience and discussions of the cluster, there are two aspects to emphasise here :

The first is to ensure that the regulation of the voluntary sector takes departure in a rights based jurisprudence, in other words *in favorem libertatis*. It is obviously possible that without this legislation a national legal scenario can have as its inarticulate premise the need to control and limit. It emerges from the requirements for instance of the 1978 Fundraising Act of South Africa that NGO's must first be authorised by the State in terms of the Act before they receive any contribution "solicited, accepted or obtained" from outside the Republic of South Africa. This was clearly motivated during the Apartheid era by the need to check on who would support the liberation effort from outside the South African borders.

The second aspect can be constructed in the broad realm of the human rights jurisprudential concern to ensure that limitations on rights should only be such as are reasonably justifiable in a democratic society. The test is three fold:

- whether the legislative objective is sufficiently important to justify the limiting of a fundamental right ;
- whether the measures designed to meet the legislative object are rationally connected to it and are not arbitrary, unfair or based on unreasonable considerations;
- whether the means used impair the right of freedom no more than is necessary to accomplish the objective.

### Self Governance

The other question that emerges is of course the question of self governance of NGO's. The broad point that should be established here is that although it is important to clean ourselves up as NGOs, we must not be derailed and made to pre-occupy ourselves with self-image correctitude to the extent that we fail to engage

because we feel that we are not "clean enough". The point is that Rights based work exposes NGOs to the societal contradictions underpinning the struggle against vested interests, and hence to the wrath, at the very least discomfort, of the powerful interests in society. In the regulatory realm, this antagonism may translate into deregistration or refusal to register, even for the cleanest NGOs. In essence, with the current political terrain in the Region, for the State the primary expediency of Regulatory power might not lie in its utility for management auditing, but in its prostitutability for narrow political ends. Perhaps this is why the Lesotho, Botswana and, outside our cluster, even South African country reports all suggest that although regulatory law is existent in those countries, the follow-up is poor and many NGOs simply end up doing what they think is useful for them in spite of the law. In Lesotho, discussions between the Legal Aid Officer at FIDA-Lesotho, Rethabile Sakoane and her colleagues, and the Registrar General's office, disclosed that there is hardly a sufficient human resource portfolio at the office to effect monitoring and follow-up (whatever the intrinsic value of these), in such a way that the office shelves still contain long-dissolved societies--the dead--among the living!

Malawi provides an interesting example of clear attempts by the NGO co-ordinating body to come up with a code of conduct for local NGO's. So does Zambia. Zimbabwe is grappling with models of governance and accountability in the co-ordinating body itself. The Botswana council is new, and is still trying to work out its arena of work. But reflections in the cluster seem to point to five useful purposes of self regulation for NGO's. As there would be space elsewhere for discussing details of codes of conduct during the conference, I propose to confine myself here to the perceived benefits that may emanate from a good self governance model and practice on the part of NGO's.

- The enhancement of credibility
- It is also a form of leadership training in terms of appropriate value systems, self management and leadership integrity.
- It enhances accountability to the public as well as to constituencies of the NGO's in question .
- It enhances the capacity of NGO's in visioning, planning, management and programming.
- It facilitates the retention of the value based principle.

**Public Accountability v Public Information**  
**with sub-notes on the Media**

One problem confronting civil society in the cluster is the problem of access to

information. Most of the Media, both print and electronic, is controlled by the state and / or parochial private sector interests. Hence both are not independent. In this context it is difficult for NGO's to contribute meaningfully to the social justice and development debate, because they simply do not have information. This is particularly worrisome with the emerging matrix of "decentralised co-operation" where obviously civil society in the cluster cannot be in effective partnership with multi-resource, data-strong actors like the World Bank and the European Union, indeed their own governments. When I was in Malawi I took occasion to sit in in a World Bank and NGO's meeting called to brainstorm on co-operation and partnership. One of the World bank representatives present suggested to the NGO's that as NGO's and the World bank in Malawi they both had something to contribute to a new partnership. In his estimation, he went on, the comparative advantage of NGO's in Malawi *vis-a-vis* the World Bank was that they had grassroots contacts and abundant goodwill and the zeal to work in development. On the other hand the World Bank could also bring in to the relationship massive funding, "and we also have an incredibly deep pool of *knowledge*". Although I shifted in my chair at what in my humble view was the the political and ideological incorrectness of this observation, I am afraid I admitted in my heart that unfortunately it was true at this point in time in the history of the region's development, or is it under development!

This places a challenge on the voluntary sector in the cluster to make urgent demands for not only a freedom of information and constitutional affirmation and jurisprudence, but also the opening up of public information resource outlets accessible to the public and the NGO's themselves. It is difficult to conceive of constructive engagement and accountability in a situation where you don't know what the other person or entity is supposed to do, has done, not done and will do.

The other option would be for NGO's themselves to seriously look into the setting aside of resources, or the sourcing of same, for putting up their own Media.

### Capacity Building

Capacity building in the cluster discussions emerged in two packages. The first is the concern about technical capacity that will accompany the new policy and legislative regimes that may be ushered in by the evolving or potential process of charting an enabling environment. In this regard NGO's would want to be strengthened in the areas of putting together organisational values and attitudes, visioning and mission, appropriate and effective systems and structures, staff development in the different aspects of NGO endeavour, and organic and creative



linkage with constituencies and laterally with other actors.

But there is a second, and perhaps more fundamental, level of capacity building. This is the need to build political capacity for NGO's in the cluster to understand and articulate a progressive development discourse, to unpackage globalisation and root their own working in authentic African needs and demands, to engage the State creatively and critically, to organise and marshal ordinary people on issue based platforms for social justice, to democratise internally and to consistently otherwise broaden the democratic space on a day to day basis.

At a more immediate and practical level, this concern for political capacity is in turn seen at two levels differentially in the region. The one level is for countries like Zimbabwe and Mozambique, and to an extent Botswana, which need to have the capacity to actually initiate and streamline discussions on an enabling environment for civil society. The other level is for countries like Malawi and Zambia which need to continue what they have started, by ensuring that their interests and their agenda are not sidestepped, that they can still make legitimate demands from the State, and that their entire engagement continues to be value based and inspired by a genuine will to enhance the democratic space of ordinary people in their countries. This would translate into among other things not coming up with flagrantly obtuse opportunities and resources for the aggrandizement of NGO personalities..

*The Nature of Civil Society in the Region/Cluster*  
with sub-notes on agenda and identity

Again in the cluster experience there are fundamental questions of the scope and ambit of the voluntary sector. Definitions of what is Civil Society, and/or on what considerations some actors in Civil Society should be excluded from the vinculum of say NGOs, cannot be politically neutral. Let us take the example of one important Civic actor in the region.

It appears that throughout the sector, in both existing and proposed policy and legislation (e.g. Malawi Draft Law), the ambit of the definition of NGO's does not encompass Trade Unions. This is of particular interest in a cluster where all the countries are undergoing some form or another of the Bretton Woods driven Economic Structural Adjustment Programmes, characterised by massive retrenchments of workers, cascading standards of living for ordinary people, and over-permissive environments for international (read Western) finance capital

surplus appropriation. It seems to me in a context like this that trade unions play a very crucial role both on the social and structural development planes. The reality on the ground bears it out that trade unions cannot, and are not playing a parochial class based role of protecting shop-floor interests, but are championing a comprehensive social justice agenda. In Zimbabwe for instance as appears more fully under the Malawi part of the report herein, the Zimbabwe Congress of Trade Unions was the first organisation to pioneer a "beyond - ESAP study". Ultimately this perhaps advocates, as previewed already herein, the case for a unitary and comprehensive law of voluntary organisation as such, to enable citizens to organise and congregate around ideas -- a potentially new form of politics on the continent! I do not share the concern that I have heard in the past that such permissive legislation would erode the essential (serious) value of Civil Society, as the process opens up to non-issue based voluntarism, which could be a concern especially with regard to the Fiscal incentives/benefits. I think that can be worked out in terms of detail and the evolution of some broad social guideline and legal convention. Things would then work themselves out, and the value drive would be maintained so that one should not be apprehensive within that scope of the emergence of flippant social organisation, say an Association of Bespectacled Women of Angola (ABWA).

## **Issues from the country contacts and discussions**

### **ZAMBIA**

A. The tripartite process of meetings between NGOs, the Government and donors started about early June 1996 and so far about 4 meetings have been held. A working group has been formed to spearhead the process. In terms of initiation, the process was born partly of the general aspirations from the non-Governmental and Governmental sectors, but more specifically out of the visioning process started especially by the Gender-advocacy organisations after Beijing.

B. It is also interesting to note that the NGOs have made a lot of impact especially

in the evolution of multi-partyism in Zambia. The State clearly notices the strength and potential of NGOs, as is evidenced by the fact that the State President has made reference of some sort or other to the NGOs during well-nigh every public political address. As previewed in the discussion on praxis, this is important to understand because it establishes clearly the context and possibilities in which and for which the discussions on NGO Policy and Legislation are taking place.

C. As in many other country scenarios, the present contact arrangement is such that the NGOs are regulated through the Ministry of Community Development. It is felt by the NGOs that the ideal scenario should not only be one where the contact point between them and Government goes beyond "regulation" to even include self-regulation by NGOs, but also where NGOs are not restricted to one "parent Ministry" so to speak, but have Liaison points established for them in all the key Social and Public Service Ministries. Surely NGOs, some of whom have a long history of involvement in the provision of education, should deserve a guaranteed space in say the Ministry of Education policy-making echelons so that they can also input therein their experience and "interests". Equally, NGOs who enjoy (or suffer) partnerships with donor NGOs outside Zambia may also want to have a liaison point in the Ministry of foreign affairs as a forum in which their interests and aspirations may be represented.

I found this concern by the Zambian NGOs to be legitimate. Other studies have already shown too the inherent limitations in having a single ministry as contact point for NGOs, including that the relationship of such ministry with NGOs would tend to be coloured by the other primary concerns/mandate of the same ministry.

D. The NGO Co-ordinating committee has been given the mandate to do a Code of Conduct for their members. Codes of Conduct should be encouraged and in fact built into the principal NGO governing legislation in order to have a mechanism of self-regulation for NGOs, which mechanism is in turn important for dissuading Government from finding excuses for proscriptive regulation.

E. Concomitantly, (the) co-ordinating body(ies) for NGOs should be strengthened to enhance their capacity to play the role envisaged in "D" above.

F. Legislation should affirm the Constitutional right of NGOs to exist and serve. Article 20 of the Universal Declaration of Human Rights, 1948 affirms the right of individuals to "peaceful assembly and association". It is important that this right is not only transcribed into national constitutions, but is also affirmed and understood to apply to juridical persons like NGOs as well as the right of natural persons to congregate in such.

G. Regarding the question of fiscal incentives/benefits, NGOs, apart from the lessons they might glean from the Malawi proposals, *infra*, would also want to be considered in allocations from the regular annual national budget, and/or when at the end of each year budgets are retired, they may also get an allocation from their sector-related ministries from funds that would not have been spent during the given financial year. This issue must be discussed as it relates to an issue NGOs are continually seeing as crucial: their financial Sustainability.

H. During this conference Zambian NGOs would also want us to discuss the relationship between international and domestic/indigenous NGOs, as well as explore together capacity-building possibilities for NGOs as they engage in this process.

## MALAWI

In terms of the generation of ideas on an ideal legislative and policy framework for NGOs in a given country context, as well as tripartite coalition to achieve the same, one would say a lot has been achieved in Malawi.

A. The NGO Law process, as it is being generally called, was motivated by three principal issues/concerns:

- \*Affirmation of the right to existence for NGOs,
- \*The question of the credibility and integrity of NGOs,
- \*Fiscal benefits/Incentives for NGOs.

B. I think it could also be crucial to revisit the issue of why Trade Unions are left out in the definition of NGOs to be encompassed by the proposed legislation. In an economic and socio-political context such as our Third World scenario, Trade Unions inevitably go beyond the representation of "parochial" shop-floor interests to articulate a broader Social Justice agenda (in Zimbabwe for instance they were about the first group to undertake a "Beyond ESAP" Study). Given this, would we not want Trade Unions to also have their right to exist affirmed, to be viable through among other things what might accrue from the fiscal incentives, etc? Would excluding such a (potentially) principal African civic actor not be falling into the pitfall of a neo-classical definition of NGOs and their work? Granted that they may already be governed by other more specific legislation, but that is the next point here;

C. We need to look at the present NGO Law initiative in conjunction with parallel legislation governing some sectors of the NGO Community itself-- labour, if the

above were granted, disability legislation, Memoranda of Understanding governing usually the status of international NGOs, etc.

Apart from the more mundane legalistic concern to avoid conflicts in the laws and so on, the more urgent concern here is to make sure that there is some basic standard of rights which as it were is not given by the right hand and taken away by the left.

D. A crucial issue which the Malawian NGOs are grappling with is the proposal in their draft law for a NGO Liaison Board established at Section 3 therein. The Board would be composed of 10 members representing NGOs, government and specialist profession representatives eg from the Law Society and the Accountancy. Its duties specified at Section 3.2 of the proposed draft legislation would be as follows:-

- a) to consider for approval or rejection applications for registration as an NGO..
- b) to de-register an NGO which has violated the Act.
- c) to appoint, supervise and terminate the services of a Registrar of NGOs.
- d) to provide a regular forum for consultations between Government and NGOs and the donor community.
- e) to make annual reports in the ministry on the NGO community, the implementation of the Act and "other connected matters".
- f) to recommend to the Minister amendments to the Act or necessary subsidiary legislation.

These proposed duties warrant a closer analysis:

The concept of the liaison body itself seems to have a two-fold inspiration. On one level there is an obvious need for NGOs to institute, and where present, enhance mechanisms for self-regulation. On another there seems to be the inarticulate premise to want to continue with a semblance of the tripartite coalition of Government, NGOs and Donors. Yet it is important to look with a magnifying glass at whether the Liaison Board itself would be needed, if so, what its powers would be.

If the Liaison Board is going to be a regular forum for tripartite consultation as well as make annual reports on the NGO community and even recommend to the Minister, amendments to the Act and secondary legislation, then it is possible that this could militate against the role of the Council of NGOs in Malawi (CONGOMA). Regarding the principal function of registration and de-registration of NGOs, it is fundamental that this be exercised for purely regulatory rather than limiting purposes. To achieve this there is not only need to ensure that the Board,

should it be desired, is appropriately composed but also to give clear guidelines to the Board for the same. The net purpose perhaps must be to limit the discretionary ambit of the Board in this crucial arena of the determination of the existence or non-existence of NGOs. I must mention here that the Malawian NGOs have indicated that they would like during to benefit from the experiences of others, if any in the establishment and operation of the equivalent of their proposed NGO Liaison Board.

E. The Malawian NGOs have thought through and done quite some work in the area of fiscal incentives/benefits for NGOs. Among the issues that have arisen in this regard are the following:-

- \* the relatively favourable tax treatment granted to international NGOs as compared to that of domestic NGOs is perceived as discriminatory and inappropriate. It is felt that there needs to be clear objectives and criteria applied even handedly to all NGOs both domestic and foreign.

- \*Government representatives have expressed concern about the difficulty of ensuring effective administration control over fiscal exemptions, and of preventing the opportunity for abuse. Indeed there was one government view that tax exemption should not be an automatic consequence of exemption but should continue to be regulated within certain criteria by the tax office itself and not by the proposed Liaison Board.

- \*There appears to be broad agreement as to the desirability of encouraging philanthropy through tax concessions to donors. One donor suggestion that came up was that tax privileges should be "Programme-related rather than institution-based". Regarding the question of NGO trading activity, there were views expressed by government representatives that the need could arise to impose tax obligations upon NGOs which engage in general trading in competition with tax-paying business entities. Connectedly, it would also be important to ensure that exemptions from import and customs duties would only be utilised by NGOs for the sake of their co-activities and not for "on trading".

F. There is consensus among various NGO actors that the crafting of an enabling/ideal framework for NGOs, if it is to be meaningful, also prompts a deliberate capacity-building effort by and for NGOs, in order to enable them to function effectively in the possible new arena of responsibilities that may be ushered in by the new environment. In the context of an enabling environment that ensures responsibility and self-accounting, NGOs must not only be technically equipped to

“manage themselves” so to speak, but must also be strengthened to organically enhance their linkage with their stakeholders/owners, but also laterally with other development and development-advocacy actors. Hence some of the possible areas for capacity building mooted by the NGO actors were self-understanding for NGOs including Visioning, Organisational values and attitudes, as well as “self-management skills including appropriate and effective Systems and Structures, Staff craft competence, linking with constituencies, networking, etc.

## ZIMBABWE

For Zimbabwe the benefit of the conference seems to be more in the opportunity to start on a comprehensive discussion course and the mapping out of a strategic action plan for collusive work between and among NGOs, donors, and the Government, apart of course from the direct benefits of the input expected to come from the working exercises in the different aspects to be discussed--Registration, regulation, Resource/Fiscal questions, etc. What must already be previewed here however is the fact that in Zimbabwe the Welfare Organisations Amendment, 6 of 1995 has ceased to be ‘a painted devil’ but a real concern in the wake of the “gazetting”/suspension of the entire Executive of the Association of Women’s Clubs towards the end of 1995. The designated women have taken up the matter for litigation and it is currently pending in the Courts. As the case is currently *subjudice* (which is a euphemism for judicial unaccountability), I shall not be confident here to deal (squarely) with its merits. Presently let us look at the overall context in the country and also at possibilities for change.

The Government has consistently expressed its support for the not-for-profit sector, especially where the latter supplements Government provision of vital social infrastructure and services. In the realm of policy dialogue however, or where NGOs have articulated an alternative social-development discourse, this bed-fellowship has not easily found form beyond, where inevitable and/or utilitarian, convenient political ‘goodspeak’. For instance, in his Budget Statement presented to the Parliament of Zimbabwe on Thursday 25 July 1996, the Minister of Finance, The Honourable Herbert Murerwa, spared a whole key introductory paragraph to the importance of this partnership. Said Murerwa:-

“Mr Speaker, the time tested adage, “Divided we fall, united we stand” is as relevant to Zimbabwe today as ever before. The reform path that we have chosen offers tremendous opportunities for

investment and the growth of the economy: "I am convinced that in order to exploit these opportunities fully, the existing partnership and trust between Civil Society, labour, the private sector and Government should be nurtured and strengthened. It is only through this that we can achieve our shared goal of alleviating poverty through rapid economic growth."

(Zimbabwe, *Budget Statement, 1996* @ p.2)

As they listened to the Minister, the Churches in Zimbabwe sat with unease because The Ministry of Finance had just totally disregarded the extensively researched and wide-consultation-based input which the Churches had submitted to the Ministry under the rubric: "A People Centred National Budget". Far from even acknowledging receipt of the popular, broad-based input into the National Budget thus facilitated through the midwifery of the Churches--to my mind the process and package representing an incontrovertibly authentic Civic initiative--the Ministry chose to "incorporate" the Churches' input by simply prefacing the Budget document with a rather oversubscribed biblical verse.

Such a typical "Fowler's paradox" context lends credence to the Zimbabwean Civil Society's hypothesis that if one attempts a political reading of the post-1990 principal amendments to legislation governing some key sub-sectors of Civil Society--labour, students, voluntary organisations--one notices a consistent trend on the part of the State to muzzle alternative centres of popular participation, especially against the backdrop of a 1990 and beyond Economic Structural Adjustment programme that seems to have worsened the poverty situation and also created the new poor. The reference here is to the amendment of the Welfare Organisations Act in 1995, and before it of the Labour Relations Act in 1992, and before both of the University of Zimbabwe Act in 1990.

Zeroing in on the new Private Voluntary Organisations Act, the Act permits the creation of any body or association of persons the objectives of which are providing for the material, mental, physical or social needs of individuals or families, prevention of distress for persons or families, raising families or persons' standards of living, provision of funds for legal aid, prevention of cruelty to animals, and/or the collection of contributions to aid any of the above. There is also an enabling provision for the inclusion of such other unspecified categories as may be prescribed from time to time.

Bodies that are expressly excluded from the ambit of the Act include any



Governmental organisation (national, regional, etc), any religious body confining itself to religious work, any trust executed by deed of trust with the High Court, any educational trust approved by the Minister, any self-benefitting body or association, any health association ( registered under a separate Act of Parliament), any body approved by the Minister to benefit a hospital or nursing home, the Zimbabwe Red Cross Society, and any political organisation "which limits itself to political activities".

More or less like the Lesotho Societies Act of 1966, the legislation is fairly detailed in terms of the mode of registration of voluntary organisations. To be registered a PVO must lodge with the Registrar a copy of the Constitution of the organisation, arrange for the publication of the constitution in a locally circulating newspaper and provide proof of such to the registrar, and file an application for registration with the registrar. The constitution of the organisation must include such particulars as how the managing committee of the organisation is constituted and how vacancies shall be filled, how assets would be distributed in the event of dissolution, and a statement that the organisation is not for profit and that it shall uphold the laws of Zimbabwe.

What perhaps may have to be looked at more critically are the controversial powers given to the Minister, in terms of S.20(A) of The Act, inserted by S.8 of Act 6/95 (the Amending Act), to suspend the Executive of a voluntary organisation and provide her own (interim) Executive whenever "it appears to the Minister, on information supplied to (him) with respect to any registered private voluntary organisation that:-

- (A) The organisation has ceased to operate in furtherance of the objectives specified in its Constitution, or,
- (B) The maladministration of the organisation is adversely affecting the activities of the organisation, or,
- (C) The organisation is involved in any illegal activities, or,
- (D) It is necessary or desirable to do so in the public interest..."

The first weakness of this sweeping legislation seems to be in that it controverts the Right to association in S.21 of the Constitution of Zimbabwe. Although there are limiting clauses in the Constitution regarding the exercise of this right, which clauses also prompt some possible ambiguities in interpretation, there seems to be prospects that the constitutionality of S.20(A) of the PVO Act could be successfully challenged, given some recent attempts by Zimbabwean Courts to read fundamental rights provisions *in favorem libertatis* (for instance **In re Munhumeso 1994 (2) ZLR 49**). A broader interpretation of the freedom of expression (see **Retrofit (Pvt)**)

Ltd v The Posts and Telecommunications Corporation SC. 136/95), could also be another head of argument. The threats on the other hand stem from the fact that, with the overarching politics of patronage and post-modern collapse of the Social Ethic, citizens cannot be too sure on which day of the week a Judge chooses with impunity to deliver a judgement written from the fountain pen of the political bosses.

Another leg of argument should also be isolated here. This is the whole question of the Right to a fair hearing as both a Constitutional Right and Natural Justice principle. S. 18(9) of the Constitution of Zimbabwe reads in pertinent part:-

“Every person is entitled to be afforded a fair hearing, within a reasonable time, by an independent and impartial Court or other adjudicating authority established by law, in the determination of the existence or extent of his civil rights or obligations.”

In the case so far dealt with under the PVO Act, the Minister has published in the Government Gazette the names of the affected Executive Committee members without furnishing reasons for his action, and impliedly purporting to act on “information”. In addition, the effect of the so-called suspension is that the affected Executive Committee members may not be re-elected to the Executive Committee until, or worse still unless, the Minister revokes the “ban”. So, on the basis of “information” the Minister has determined that the members may not fully participate in the activities of their organisation. This, it is submitted, is a determination which should entitle affected members to “a fair hearing” before it is made, which was not the case in this experience. The Minister’s determination had the effect of curtailing the members’ freedom of association. Consequently, insofar as the Act empowers the Minister to act without so much as giving reasons, let alone according the members a fair hearing, S.20(A) of the Act is inconsistent with S.18(9) of the Constitution.

Yet at the same time the bases given for possible suspension are also facets of conduct that could be regulated by existing legislation and common law. The leadership of an organisation may simply be prosecuted for illegal activities. At the same time if there are internal problems of governance the Courts of the Land would/(should) be open to hear complaints from disgruntled members (compare Botswana: Mpho and Ors v Matante 1964- 67 BLR 76; Phikane v Geoffrey Leteemane & Ors Misca No 48 of 1994).

Civil Society in Zimbabwe however could also capitalise on the emerging spirit in

Government that may be behind the drafting of the **Private Voluntary Organisations (General) Regulations, 1996**, which effectively alter significant parts of the principal Act. In particular, the Statutory instrument requires the Board (set up under the Act) to grant members of an NGO's Executive Committee an opportunity to show cause why they should not be suspended, requires the responsible Minister to provide written reasons for suspending members, and establishes, or rather affirms, the right to Judicial review of decisions by the Minister to suspend members of an NGO's Executive Committee.

## **MOZAMBIQUE**

The portfolio of NGOs found in Mozambique includes:-

- \*Socio-economic development organisations: integrated rural development activities, social assistance, health, education, agriculture, environmental, social research,
- \*Human Rights/Humanitarian organisations: defence and support of Human Rights struggles, disability, community care, etc,
- \*Professional associations/Group interest bodies: promotion and defence of professional groups, trade unions, Farmers and peasant associations, etc.

The main umbrella or networking or co-ordinating organisations are:

- \*LINK-NGO Forum: information exchange, working group and meeting forums, institutional development for local associations, national and regional networking, advocacy and lobbying,
- \*FORUM MULHER: Women's network, gender and development issues, capacity-building, lobbying, etc,
- \*MONASO-AIDS and sexual diseases education network,
- \*OTM: Trade unions network.

The registration of voluntary organisations is defined and undertaken in terms of the Decree for the formation of local associations (1991). The co-ordinating NGOs in Mozambique feel however that this process is made difficult by the widespread corruption and also by the red tape. Furthermore, in a vast and country within problems of accessibility the registration of NGOs away from the capital city is extremely slow and not always functioning.

A process is currently under way for the designing of a new law to govern the not-

for-profit sector in Mozambique. But, in the words of the LINK and Kollima secretariat:-

“Whilst the government is pursuing the long process of designing a new law concerning the activities of NGOs in Mozambique, and without the minimum of consultation and dialogue, the situation remains inefficient and ineffective”.

The NGO Sector has a very clear vision of the kind of legal environment they would want to work in. They would want simple and robust registration systems, easily accessible to the different geographical regions/provinces. They would want to evolve a code of conduct that ensures the integrity of NGOs. They would want minimum bureaucracy, as well as the assertion that they have a right to participate in comprehensive social justice programmes including rights-based work. They would also want the latitude to import project and organisational equipment/goods free of taxes and duties, to fundraise free of tax obligations, etc. The concomitant responsibilities that they see are to fulfil minimum reporting and accountability to an autonomous administrative body, and to co-operate with Government officials and plans at appropriate and mutually beneficial levels.

## **BOTSWANA**

The formal origins of the NGO Sector in Botswana are traced to relatively recent historical crisis points like the 1965-69 drought and famine when NGOs were formed generally to deal with welfare matters particularly famine relief. At that point in time, the Government was more concerned with relief facilities reaching the people than with within the legality or otherwise of bodies instrumental in assisting in the same.

It was only in 1972 that a law dealing with “Societies” and “Associations” was enacted. In the analysis of some Botswana NGOs, the striking feature of the 1972 law was its simplicity.

The law accords the power and responsibility to register voluntary organisations to a Registrar who is an officer in the public service and is appointed by the Minister of Home Affairs.

For a voluntary organisation to be registered it must furnish the Registrar with its governing documents, list of office bearers, and must indicate that it operates and holds its meetings in Botswana.

The Registrar has the power to refuse to register an organisation if its objects are unlawful, prejudicial to or incompatible with peace, welfare and good order in the country; the membership of the organisation is not clearly defined and there are no rules for dissolution of the organisation". The Registrar can also refuse to register an organisation if he "doubts the capability of the members to manage its affairs; its Constitution is repugnant to the laws of the country; where the organisation does not exist or its name so closely resembles that of other registered societies that it is likely to deceive the public or members of the society"

If an organisation is refused registration it may appeal to the Minister. The decision of the Minister is subject to judicial review.

Besides the framework on establishment and registration, the law has scope for very little else. Specific "accountability" duties towards the government include the filing of annual accounts, and any such changes as may have occurred with regard to the objects of the organisation, office bearers, etc. Generally the rest is left to be governed by the internal rules. Each Constitution, however, must state the general powers of each organ and office-bearer of the organisation, for instance the power of the Annual General Meeting, General Assembly, Secretary-General/ Chief Executive, etc. A recent study by the *Democracy Research Project* discloses that quite a good few of voluntary organisations do not follow their own internal rules. For instance in some cases elections are not held according to the Constitution. In one organisation the last elections were held in 1965 and the members assumed that elections would only be held if an office-bearer died.

It has already been observed that where members are aggrieved by any internal governance issues a claim may lie in the Courts at the behest of such members.

Where they make profit, NGOs are subject to taxation. The law permits an organisation to seek exemption under the Income Tax Act from the Minister of Finance and Development planning. It would have to be shown that the profit so made is not distributed as dividends to shareholders.

There are currently no tax rebates on donations to NGOs .

## ANGOLA

*Information had not come from Angola at the time of writing this report on account of the fact that their paper was still being translated from Portuguese into English.*

*However, concerns/expectations I garnered from the Angolan participants who include members from the umbrella body that houses about 260 members, when they arrived for the Conference include:*

\* Discussion of the relationship of and mutual perceptions between Government and the Voluntary Sector, including the problematic that Government tends to recognise and apparently prefer to co-operate with those NGOs that work in the primary or complementary development sector, and not with those who are engaged in Human Rights work.

\* Discussion of Financial Sustainability of NGOs not only vis-a-vis the Fiscal incentives and the raising of funds locally but also with respect to donors whose funding mechanisms are sometimes not clear to the NGOs with the result that in some instances funds end up not reaching the intended beneficiaries.

\* Discussion around the nature of the law of Associations in Angola, comparable to Mozambique. Would its over-arching principle of providing the framework for activities of associations for the interests of their members not militate against the broader Civic mandate/desire to serve the general public beyond members of an NGO?

## LESOTHO

NGOs in Lesotho are registered under three pieces of legislation, the Societies Act of 1966, the Friendly Societies Act of 1882, and the Co-operatives Proclamation of 1948.

Apart from the Statute, the Law office has gone further to issue out a simple Manual setting out the requirements for registration. The Manual is meant to assist prospective applicants to prepare their documents for registration of their societies. In the estimation of the NGOs in Lesotho, the Manual has been very helpful coming in to assist as it were many people who would not have deciphered unwieldy legislative material.

The production of the Manual in Lesotho calls to mind the whole question of State technical assistance in the registration and life of NGOs. A Malawian Government official for instance suggested that there may be need to envisage in the indicators for an enabling environment the role that Government could play to help NGOs to register in terms of the documentation, situation analysis, etc. On the other hand this was seen as patronising on the part of the State.

The Lesotho legislation is very leading/instructive especially with regard to the rules and regulations that must be submitted on application. Detailed guidelines are put down and these include about 22 items, ranging from the objects of the proposed NGO to the manner of calling the Annual General meeting, etc.

As in Botswana, Zimbabwe, etc, the Registrar may refuse to register a Society on "public safety, morality, order," etc, ( S.7).

Comparing to the discussions on the Malawi Draft Law, *supra*, on the role of the proposed NGO Liason Board, another point needs to be captured here. This is the point on accountability in terms of reports, financial statements, etc, to appropriate organs of Civil Society governance. It emerges for instance that whereas in Lesotho the Registrar is empowered to demand reports from NGOs in terms of S.14 of the Societies Act. Yet at the same time the Lesotho Council of NGOs in its Constitution provides that every member is required to give reports to the LCN. Add to that the expectations that the membership of an organisation in Lesotho may have towards accountability from its officers. Not to mention donor expectations. There is hence need to examine carefully how to mainstream the expectations of the different stakeholders to ensure that NGOs are not consumed by oversupervision.

### Conclusion

There appears to be need to follow up on information and build a reliable database at the cluster level. There might also be merit in stimulating lateral discussions possibly through a workshop at Governments level, on the question of the enabling environment that they would want to see in their countries for the civil sector. This could mediate tensions of ownership and help speed up the process of change.

T. Mutasa, September 1996

Zimbabwe