

NGOs, Legislation and Self Regulation in Zimbabwe

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In 2004 I wrote my LLM thesis on the NGO bill in Zimbabwe. When asked to comment on President Mugabe's refusal to sign the bill into law after it had been passed by parliament I said that the refusal was a masterstroke on his part but it was a hollow victory for civil society if at all it could be considered a victory. A masterstroke because Mugabe came away appearing like the voice of reason who was prepared to listen to the international community and the NGO sector by choosing to snub parliament which had sent the bill to him for his assent. A masterstroke because nothing more could be achieved by signing the bill than had already been achieved by its tabling and subsequent passing in parliament. We all remember how in 2004 a lot of NGOs simply closed shop and/or relocated as a direct consequence of the NGO Bill. The victory rang hollow because by the time the President refused to assent, civil society had already been decimated by the closures and moreover, it was made clear that the bill had only been put on the backburner and was not dead. If anything, the powers that be were using the bill as leverage by letting it hang over civil society as an axe in mid air on condition that civil society towed the line. The powers that be have now decided the axe should come down with ferocity.

Considering the composition of parliament, the new bill which makes supposedly minor but very significant changes can only be introduced with the consent of the two MDC formations. The attempt to change the legislation considering the MDCs role in it is shameful, unfortunate, treacherous, worrying and mindboggling. Shameful because it comes at a time when civil society activists are still facing serious charges in the High Court whilst other activists are routinely arrested or otherwise harassed by the police. Unfortunate because civil society did so much to bring about change in Zimbabwe alongside the MDC in difficult circumstances in the hope that come the new political dispensation, legislation would be passed that conforms to the constitution and creates an enabling environment for civil society.

Many still remember being beaten up and locked up in the same filthy cells with the new ministers such that this legislation can only be viewed as treachery. Did we suffer together so that when you get power you would

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take away the constitutionally enshrined right of freedom of association they ask. Further it's only just recently that this government was taking all the help it could get from NGOs to fight the cholera pandemic and to feed the multitudes affected by the last poor farming season without looking at the particulars of how the NGO offering the assistance was registered.

Worrying because it is a well known fact that the State has always sought to severely curtail if not cripple NGO operations in Zimbabwe yet the MDC seems quite content to act alongside Zanu PF to enact legislation that limits rather than extends the rights of the NGO sector. Does this mean that in principle the MDC believes that it is necessary to severely curtail the ability of NGOs to operate and that in 2004 it merely opposed the NGO Bill because it was expedient to do so, or rather is it that having tasted power albeit shared with Zanu PF, the MDC is now prepared to do all it can to limit criticism and has chosen the vocal NGO sector as its first target.

In 2004 the parliamentary legal committee which was then chaired by an MDC MP commented on the NGO bill saying "Taken together, the provisions of this Bill will allow the Government of Zimbabwe to stoporganisations from operating....." and concluded that the bill was unconstitutional² Since one of the provisions related to the abolition of the dual registration of NGOs either as trusts or under the PVO act, we can only now assume that the minister has indeed decided to stop organisations from operating and that which was unconstitutional before MDC joined the government suddenly seems not so bad after all, or is simply a case of when in Rome do as the Romans do. When prime minister Morgan Tsvangirai was speaking at the 10 annual conference saying that "our partners" are preventing us from making progress and delivering on promises I could not help but be reminded of 'Newspeak' in George Orwell's *1984*, where words, are used in precisely the opposite sense to their real meaning. Social welfare falls under the MDC so they can't blame partners in the inclusive government when they are the ones busy drafting the legislation.

Mindboggling because what else did minister Mpariwa think the mischief this amendment aims at is anything other than trying to bring all NGOs particularly the ever unpopular but very necessary human rights NGOs under full government control. Whilst there are some intellectuals within Zanu PF, it boggles the mind how they always seem to out think the MDC and get them

² Report of the parliamentary legal Committee on the non- governmental organisations Bill, 2004, [h.b. 13, 2004].

to agree to some of these shenanigans for want of a better word. Mark Twain once wrote 'suppose I was an idiot and suppose I was a member of parliament/congress, but then I repeat myself....' it appears he could well have been correct. The very history of the MDC and the bulk of its leadership have strong roots in the civil society movement in Zimbabwe and we expect them to be more sensitive to Zanu PF's age old tactics in their attempt to curtail civil society. To avoid any doubt or claims of ignorance it is instructive to set out the history of the never ending State's attempt the curtail NGOs in Zimbabwe.

State and civil society relations in Zimbabwe have been characterized by mistrust and intolerance. During the post independence era there was a quiet displeasure over civil society as demonstrated by attempts to silence some organisations or failing that to ensure government control of them. From the late 1990s onwards the State has loudly voiced its displeasure with the volume increasing with each passing year. The first legislation in Zimbabwe governing NGOs The Welfare Organizations Act was passed in 1967.³ The Act was enacted two years after the unilateral declaration of independence (UDI) by the Smith government.⁴ It was enacted primarily to give government control over the NGOs who were perceived of as being aligned to the liberation movements fighting colonial rule in Rhodesia. The NGOs were playing an important role in disseminating information abroad about the human rights situation in Rhodesia and also raising money for the liberation struggle. Through their extensive networks, NGOs also played an important role in smuggling nationalists out of the country and ensured that

³ Welfare organizations Act [93/67].

⁴ On [November 11, 1965](#), Ian Smith unilaterally declared the country independent from British rule, in what became known as the [Unilateral Declaration of Independence \(Rhodesia\)](#) (UDI) by the Rhodesian Government. The declaration was out of frustration by the British government policy known as [NIBMAR](#) (No Independence Before Majority African Rule), to the consternation of the white minority [Rhodesian Front \(RF\)](#) government, led by [Ian Smith](#). This was internationally condemned and international sanctions were applied to Rhodesia from 1965 to independence as Zimbabwe in 1980.

⁴ See generally T Ranger and N Bhebhe (eds). *Soldiers in Zimbabwe's Liberation War* Harare: University of Zimbabwe, 1995.

those who left received an education. At the same time the NGOs were criticizing the Smith government on its violations of human rights and calling for the imposition of sanctions. The Act was thus enacted in an undemocratic State that was fighting to remain in power. At the time the Act was promulgated, Rhodesia was regarded as a pariah State that did not pay regard to internationally recognised human rights hence the passage of many repressive laws including the Welfare Organizations Act.⁵

The ruling ZANU PF party is aware of the role that NGOs played in the liberation struggle. For example the Catholic Commission for Justice and Peace (CCJP) an NGO undertook the enormous task of investigating and documenting the human rights abuses committed by the Rhodesia security forces. It also denounced the internal settlement and was active in the negotiations and diplomatic efforts throughout 1978 and 1979 that led to the Lancaster House peace agreement and independence.⁶

When the Act was amended and renamed the Private Voluntary Organizations Act in 1995, it did not repeal the repressive sections but rather retained them and added new sections that gave government greater powers over NGOs.⁷

Over the past five years, accusations have been traded between the government of Zimbabwe and Non-Governmental Organizations [hereinafter referred to as NGOs]. The government alleges that NGOs are engaged in political activities rather than the work they are registered to do. President Robert Mugabe has commented that NGOs are

⁵ See generally N Bhebhe B Burumbo: *African Politics in Zimbabwe, 1947-1958*. Harare: College Press 1989.

⁶ See generally Randolph, R.H. *Dawn in Zimbabwe: The Catholic Church in the new Order: A report on the activities of the Catholic Church in the Zimbabwe for the five years, 1977-1981*. Gweru: Mambo, 1985.

⁷ Welfare Organizations Amendment Act 1995.

hatcheries of political opposition...The moment they seek Governmental power and office as has happened in Binga, we begin to view them differently as political opponents. And political opponents are dealt with politically. ..They should not cry, for they have redefined the rules of engagement,⁸

On one occasion when the president was addressing parliament, the president indicated that 'NGOs must be instruments for the betterment of the country and not against it. We cannot allow them to be conduits of foreign interference in our national efforts.'⁹ The Minister responsible was also quoted in the media as saying

Some NGOs and churches are causing too much confusion in the country because they are converting their humanitarian programmes into politics...The government cannot allow that to happen so we are saying they should go under scrutiny where we revise all modalities in the country.¹⁰

On the other hand the Civil society sector has been vocal in its condemnation of the government for alleged gross violations of human rights. ¹¹ In response to this controversy, the government instituted the Non Governmental Organisations Bill [hereinafter referred to as the NGO Bill], which was passed by Parliament on 9 December 2004.¹² The NGO Bill was to

⁸'Mugabe warns against meddling' *The Herald* 13 October 2002 at 1.

⁹ Speech made at the official opening of the Fifth Session of the Fifth Parliament of Zimbabwe by his Excellency the President, comrade R G Mugabe, on 20th July 2004.

¹⁰'NGOs causing confusion' *The Herald* 5 April 2004.

¹¹See for example a report by Amnesty international entitled 'Toll of impunity' available at <http://web.amnesty.org/library/Index/engaf460342002> (accessed 2 January 2005).

¹² Non-Governmental Organizations Bill 2004, H. B. 13, 2004. Passed by Parliament on 9 December 2004.

replace the Voluntary Organizations Act had the president not refused to sign it into law.¹³

Despite the bill not having been signed into law, the State's hostility towards civil society continued to increase. Speaking at the inaugural session of the human rights council in Geneva 2006, the minister of Justice Patrick Chinamasa said that Zimbabwean NGOs operating the human rights and governance areas are

*set up and financed by developed countries as instruments of their foreign policy...their objectives include destabilization and interference with ...our political processes, creating and sustaining opposition groups ...and promoting disaffection and hostility amongst the local people against their popularly elected government.*¹⁴

On 4th June 2008, the Minister wrote a letter purporting to suspend field activities of all NGO operating in the country until further notice. The herald and chronicle of 7th June reported the Deputy Minister of Information as having said that the government had suspended the licenses of all NGOs and asked them to reapply for re-registration. It is with this history in mind that the unfolding events must be analysed.

It is unfortunate and at the same time instructive that the similarity in the attitude of Zanu PF and MDC regarding the NGO sector in Zimbabwe has been displayed so early into the GNU. Unfortunate because the MDC has decided to turn its back against its long time partners at a time when there is still much that needs to be done to put Zimbabwe on the road to success. Without the cooperation and assistance of the sector, it is unlikely that the dream of a Zimbabwe for all will be achieved. A few months ago we were applauding the Prime Minister's engagement with the civil society sector, today we are wondering if the consultations were just a Judas Kiss. Already

¹³ Private Voluntary Organizations Act [\[Chapter 17:05\]](#).

tensions are coming to the fore between the MDC and civil society regarding the new constitution, which the MDC appears to have determined, should be done by itself and ZANU PF at the exclusion of everyone else. Instructive because the attitude shows why civil society needs to be vigilant. The MDC clearly views the NGO sector not as a development partner, or a necessary watchdog in a young democracy but rather views it through ZANU PF's lenses as an enemy of the State. If this inauspicious start is anything to go by, I have no doubt that very soon civil society activists who voice anything but support for the GNU and the flawed constitutional processes will be painted by the MDC as enemy number one to the applause from the sidelines of ZANU PF. Civil society has a role to play and should play it even if it means confrontation with MDC. One of the reasons why the Matabeleland atrocities which oddly enough are not mentioned much nowadays under the GNU took place partially because sections of civil society were prepared to look away in an effort to appease the new government. If we are not careful, many excesses will occur under the watch of the GNU but not receive the criticism they deserve for fear of being labelled anti progress. NGO that are speaking a different message to that of MDC to donors are being viewed with suspicion and labelled leftists, hardliners etc.

It would appear that after their inconvenient marriage the parties to the GNU agreed to adopt ZANU PF's concepts regarding civil society. I will call it the 'if you are not with us you are against us' concept espoused by the ZANU PF led government. Stripped to its barest, the concept permits no criticism regardless of whether the criticism is justified or not. It comes from the belief that only the ruling party knows what is best for Zimbabwe and its people. It is by no means a new proposition but has through the years characterized the ZANU PF rule. As way back as 1980 civil society that dared question the government's position especially on issues of the one party State that was being mooted were quickly labeled as enemies of the State and dissidents.

It would appear that MDC has been sold this concept and swallowed it hook line and sinker and is now leading the rally to bring all NGOs under full

government control so that later when the criticism from Civil society becomes deafening as it obviously will given the increasing failures of this government, they will then shut down those NGOs they dislike. This initial step is thus critical to the plan to further curtail civil society.

The reason for the paper is not to take a jibe at ZANU PF, the MDC formations or their odious creation the GNU. Rather it is to put the issue of NGO legislation in Zimbabwe into proper perspective and offer a few suggestions as to how the problems could be solved.

The participation of civil society is generally regarded as critical in a democracy as it helps to fulfill the notion of rule by and for the people. Contrary to this accepted norm, civil society in Zimbabwe has to a large extent been effectively banned from playing a role in the democratizing process in that country. Tensions between the State and civil society will continue to exist because of the contestation of space that both the State and civil society try to occupy. The hallmark of a functioning democracy is the realization that civil society plays an important role as watchdogs, think tanks and, providers of various essential services which the government is not able, willing or qualified to provide. In Zimbabwe the provision of food, essential medicines, legal services are but few of the critical tasks that the NGOs undertook with unsurpassed dedication distinction during the dark times we are emerging from.

Given this important role that the sector plays it requires all stakeholders to ensure that State civil society relations in Zimbabwe are at least normal rather than strained and/abnormal to ensure that needed reconstruction takes place.

It is by no means suggested by this paper that the GNU has all to do to ensure the relationship works. Indeed civil society also has an equally important role to play in ensuring that it becomes the strategic partner that government can work with. Over the years, it has become increasingly clear that there was a problem with the civil society legislation currently in place. In 1996,

NGOs started a campaign to have the Act repealed.¹⁵ A petition was drafted which concluded that;

Civil society has always and continues to make valuable contributions to the development of this nation and that Government has on numerous occasions committed itself to promoting good governance, democracy and the rule of law. The Private Voluntary Organisations Act runs contrary to these commitments. We, the undersigned are therefore determined to have the Private Voluntary Organisations Act repealed. We demand a democratic environment free of the threatened government interference for meaningful NGO participation in Zimbabwe. We call upon the Minister to institute an open and serious discussion with NGOs so as to involve them in the drafting of acceptable NGO legislation.¹⁶

Another meeting was held on 4 September 1996 at the Holiday Inn hotel by the northern region. These meetings have been followed by many other meetings too numerous to mention. However, nothing came out of these meetings and the tensions continued to simmer and culminated in the NGO bill being drafted without consultation with the NGO sector and its subsequent passing into law by parliament.

In 2005 when I was at NANGO, it was agreed that the reason why the State targeted the NGOs was because of twin factors i.e. the obvious problems with the PVO Act and the State's desire to curtail the activities of NGOs particularly those that dealt with governance and democracy. It was agreed that the best way to solve the problems within the sector was to introduce a

¹⁵ For example, ZimRights organised a conference on NGO Activism at Adelaide Acres June 17-19, 1996.

¹⁶ Campaign for the Repeal of the PVO Act, Joint Statement by Non Governmental Organisations and Concerned Citizens demanding the Repeal of the Private Voluntary Organisations Act 1995 [Chapter 93], October 1996, 2.

voluntary self regulatory authority for the sector so that should the State try to intervene the sector could always respond by saying that it was in fact taking care of the concerns and therefore there was no reason for the State to interfere. The strategy of self regulation has worked in many countries with a history of serious State repression. It is not enough to claim entitlement to self regulation as a route away from State legislation similar to other professional bodies such as lawyers' medical personal, architects and estate agents without putting in place a structure that self regulates and thus removes the need for government intervention. Put differently the sector must take steps to put in place a regulatory mechanism so that they can point to it rather than try to duck the issues by pointing to other bodies that already have self regulatory bodies in place.

The failure to put the self regulation structure in place means that the NGO sector will always be a target of government legislation; the sector is undoubtedly important and receives significant resources for development work making it a natural and fierce competitor to government for much needed yet dwindling funds. Whilst the failure to put the structure in place lies squarely with NANGO and the sector, the blame lies mostly with the donor community who despite spirited lobbying by NANGO refused to fund the establishment of the regulatory authority. The failure to fund the establishment of the authority has left the sector vulnerable to the government attacks/intervention meaning that the sector is not fully empowered to do its work without fear of government sanction. I say the blame lies mostly with the donor community because people like me and others at the NANGO secretariat and indeed the sector as a whole must shoulder a bit of the blame simply because we gave up on setting up the regulatory authority without having considered other options such as levying a fee on all NGOs to establish the authority, or maybe by setting up the authority and having it run as a commission with commissioners only needing to meet when the need arose so that at least there was in place some form of regulatory authority that could be pointed out to as the organization

responsible for policing the sector. It is important that the formation of the body be driven by the sector rather than by the NGU as this will have great implications on the independence/impartiality of the body.

The second issue that is of concern is the blanket acceptance by the sector and NANGO that there is a need for legislation to govern the NGO sector. My PhD supervisor once asked me why I thought there was need for legislation when the Constitution already provides for the freedom of association.

Additional legislation to a Constitutional provision usually leads to the right being limited rather than enhanced. An analysis of Zimbabwean legislation shows a propensity to pass laws that limit in any way possible Constitutionally guaranteed freedoms. Can someone explain why a law is needed for NGOs and why NANGO moves for such a law, have the other alternatives been pursued, many countries do not have NGO legislation choosing instead to have the NGOs being guided in their conduct by their self regulator and the various laws that govern aspects such as labor, the movement of funds etc.

The most widely used model for civil society is where there is no specific regulation for civil society organisations. The only legislation that affects them is company and tax laws of the country. This model is premised on the basis that the State does nothing that can be interpreted as curtailing the freedom of association. Civil society organisations are left to choose how they want to be constituted. They can register or not register as they please. The only regulation they face is when they take public funds in the course of their activities. This model is found in most of the developed world and is based on the premise that civil society is not under any threat and hence has no need for protection of the law. This model is ideal considering that given the chance to legislate the State does not normally legislate within the spirit and letter of the constitution given the tensions that exist between civil society and the State. Where the State gets the opportunity to limit civil society rights it is more likely to do so.

In view of this, one wonders why there is an acceptance of the need for legislation rather than a rejection of it in preference to the model of no legislation or in favour of self regulation. We have already noted the circumstances under which NGO legislation was first introduced in Rhodesia. The Act was enacted in an undemocratic State that was fighting to remain in power. At the time the Act was promulgated, Rhodesia was regarded as a pariah State that did not pay regard to internationally recognised human rights hence the passage of many repressive laws including the Welfare Organizations Act.¹⁷ So clearly the introduction of NGO legislation in Zimbabwe had nothing to do with creating an enabling environment or assisting the development of the sector. Rather, the law was intended to give government control of the sector so that it could watch that sector's activities and interfere. It is in this light that any proposed legislation regarding NGOs should be viewed. The question should be what additional benefit or strength does additional legislation provide over and above the constitution and other international norms relating to the freedom of association. Why must the law force me to associate in one way and not any other, surely that affects my right to associate?

There are enough laws governing the right to association without asking for or accepting any other, Section 19 of the constitution of Zimbabwe, Article 20 of the Universal Declaration and Article 10 of the African charter to name but a few guarantees this right.

In conclusion, I wish to make 3 proposals viz;

1. That a panel should be set up with NANGO leading the process to examine the need if any for legislation governing the NGO sector in Zimbabwe and;

¹⁷ See generally N Bhebe & B Burumbo: *African Politics in Zimbabwe, 1947-1958*. Harare: College Press 1989.

2. For that panel to set up and create terms of reference for a self regulatory authority and to find ways to make that authority the acceptable body including looking at the option of the body being a creature of statute.
3. That the panel comes up with strategies that lead to effective communication between the sector and the three arms of the State to ensure that State civil society relations are functional to achieve development.