

The Legislative Environment for Civil Society In Africa

A Synthesis Report

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Introduction

In almost all African countries, political liberation was supported extensively by people's movements, faith-based formations and various constellations of civil society. There was a close link between civil society and political society. From North to South, West to East, civil societies—organized and informal—played critical roles in the dismantling of colonialism, apartheid and other forms of domination. This was not only true of Africa—it was also true of other parts of the world. In Eastern and Central Europe, civil society played a major role in the fall of communist states and the subsequent wave of democratization that followed.

Inspired by the changes that were brought about by people's power, a number of donors and some governments invested heavily on civil society as an agent of change. In some quarters civil society was even considered as a 'magic bullet' (Edwards and Hulme, 1997).ⁱ Civil society's role was not limited only to the political and civil liberties arena—it was also seen as instrumental in promoting development, reducing poverty and administering humanitarian aid. Civil society, in particular, non-governmental organisations assumed major roles and became major forces in development.

Even recent studies across the globe have attempted to show that civil society, or what is generally referred to as the third sector make massive contributions to the Gross Domestic Products of their governments. These studies were conducted as a response to the fact that this sector has more often been sidelined by policy-makers. In the words of renowned scholar Lester Salamon of The Johns Hopkins University, 'social and political discourse remains heavily dominated by a 'two-sector model' that acknowledges the existence of only two social spheres outside of the family unit—the market and the state, or business and government' (Salamon, 2003)ⁱⁱ. And for a long time, civil society contributions were kept out of the official statistics. This is still the case in many countries. As a result civil society's potential and real contribution in policy debates and formulation has been ignored or at worst challenged.

However as *The Johns Hopkins Comparative Non-Profit Sector Studies* have shown, 'the third sector is a major economic force'. A study of 35 countries in 2003 (16 advanced, 14 developing and 5 transitional) showed that the third sector was a \$1.3 trillion industry as of the late 1990s—this represented about 5.1% of the combined GDP of the 35 countries. Further, the study showed that the sector was the seventh world largest economy—that is if civil society was a national economy—it would be the seventh ahead of Italy, Brazil, Russia, Spain and Canada and just behind the United Kingdom and France. The sector is also a major employer, employing more than 39.5 million fulltime equivalent workers (Salamon, 2003).

Clearly, the third sector is a major force to reckon with—hence over the years especially in developed countries, there has been a move towards looking for a middle way as a result of the state and the market. Civil society has become that middle way between the sole reliance on the state and sole reliance on the market to cope with public demands (Salamon, 2003).ⁱⁱⁱ This is not

so however in many of the developing or transitional states. There is still the tendency to ignore the contributions or even roles played by various constellations of civil societies in the various spheres—be they political, economic, cultural, and social or various combinations. In most countries as we discuss later, this sector is viewed with suspicion—despite the fact that most of these governments came into power through the support of civil society formations or were themselves civil society formations before.

More recently, the space for citizens' participation in various levels of the body politic has been shrunk. More and more, legal instruments have emerged to regulate how groups should conduct their activities. The recent attempts to close the space for citizens and their formations are not particularly African—it is a global phenomenon symptomatic of the growing backlash and pushback on democracy. The democracy deficit is a governance question and citizens as major players in that arena become targets.

It is therefore important that an analysis of the recent closure of public spheres by nation states be located in the broader governance question. There is no dispute that regulation is necessary and is an international practice—however most of these laws do not meet the international standards and principles that protect citizens' rights. Ironically, these laws also violate their own constitutions—reinforcing the view that in the majority of these countries there are 'constitutions without constitutionalism'. In addition to legal instruments some of which are directed primarily at civil society formations in particular NGOs of the advocacy type and others are indirect—there are other non-legal tools that governments use to curtail the activities of the third sector. True, some groups have not conducted themselves in transparent ways, and some have been involved in questionable activities; the response however is disproportionate to the behavior displayed by civil society.

This paper is therefore a discussion of the legislative environment under which civil society, in particular organized formations, operate in Africa. It is based on twelve African countries (Angola, DRC, Ethiopia, Liberia, Mauritius, Mozambique, Seychelles, Sierra Leone, South Africa, Uganda, Zambia and Zimbabwe). In all these countries we studied civil-state relations, existing NGO laws and NGO policies, including other laws that have an impact on NGOs, national constitutions, processes and the general political economy of the third sector. The merging findings point to some interesting conclusions. More studies are underway in Botswana, Cameroon, Ghana, Kenya, Lesotho, Madagascar, Malawi, Namibia, Nigeria, Senegal, and Swaziland. The findings from these will be integrated into the current paper. This paper is therefore work in progress—nevertheless the countries studied already are significant to begin a discourse on state-civil society relations, public spaces, and the general legislative environment for citizens and their formations. One of the emerging findings is that the political context determined the emergence of these legal instruments.

This paper is divided into five sections. The first section is an overview of state-civil society relations in the twelve countries. A historical and contextual analytical framework is employed. The section tracks the various relations that have developed over the years between states and civil society depending on the political context and country particularities. In a way this section gives the context under which current laws have emerged. It argues that these laws should be understood as resulting from a political process of colonial struggles, post-independence and contemporary state formation.

The second section gives an outline and discussion of the laws enacted mainly to regulate civil society, in particular NGO laws and policies. The section also outlines some of the laws that are not enacted for NGOs but have a direct and indirect impact on the very existence and functionality of civil society organisations.

The third section discusses the processes followed in enacting these laws—whether the process is consultative or state-driven. The section also looks at authorities enacted to monitor civil society, including reporting and registration authorities.

Section four discusses the provisions of these laws and what they impact on, particularly general freedoms enshrined in international conventions and national constitutions. This is juxtaposed against international instruments that protect and defend civil society's right to entry, assembly, association and expression among others.

The final section gives some reflections.

State-Civil Society Relations in a Historical Perspective

The relationship between citizens and the state as well as that between organized formations and their governments vary from one country to another. Even in one country, relations are not always the same—they change periodically. The context, in most cases politics, determines the nature and character of relations. At one given time, relations are cordial and collegial; at another, relations are conflictual and adversarial. This fluidity is perhaps the strength that ought to be built on as more and more countries recede in their democratic credentials. The diversity of opinions and views as well as expertise and strategies ought to the strength of the relations between states and their people as they both seek to transform their conditions. Despite the nebulous nature of state-civil society relations, there are however some characteristics that are common in some of these countries.

Colonial Space: Blurred Boundaries between Civil and Political Societies

In almost all the countries under study, civil society associations, including churches and other informal networks were the bedrock of the struggle against colonialism and other forms of exploitation. In South Africa, the struggle against apartheid was not won only through liberation movements such as the African National Congress, among others. Mass movements such as the United Democratic Front (UDF) and other black consciousness groups helped to dismantle apartheid. Organized groups like the Black Sash, the Legal Resources Centre, South African Civics Organization (SANCO) and trade unions used different legal and non-legal strategies to isolate the regime. They were therefore in direct collision with the state^{iv}; however their relationship with the political-liberation movements blurred. There is no doubt however that some groups colluded with the apartheid state. But in the main groups fighting for political and civil rights were the basis on which national struggles were waged. The same is true of Zimbabwe, DRC, and other countries under study. In Liberia, for example, traditional societies (susu) and other grassroots formations have historically been in existence throughout the country. As the National NGO Policy (2007)^v notes, these and later on the faith based institutions facilitated the transformation and socio-development of the country. With the advent of the war in 1989–2003, civil society organisations, in particular international organisations, had to step in to address the humanitarian and socio-political and economic crisis.

In the DRC, as is discussed by Ekeh (1972, 1975)^{vi}, there was a creation of two publics as a result of colonization. One was the primordial public, which was made up of ethnic groups and community associations. These were established to meet the welfare needs of those colonized. The other was civic public that bore the symbols and institutions of the post-colonial state. In Mauritius, where the relationship between the colonial government and citizens was that of the powerful and the powerless, civil society groups were established to address the needs of the colonized.^{vii} In Angola, civil society activity is traceable to XIX century when indigenous civic groups as well as cultural associations were launched to reaffirm their cultural heritage and convene ideas on launching an anti-colonial struggle.^{viii} Most of these movements were instrumental in the 20th Century creations of national liberation movements.

The general trend is that associational life, both formal and informal, was more often the basis for an anti-colonial struggle. Some associations gave rise to national leaders and supported the struggle to free their countries. Others transformed themselves into liberation movements. In this period, the lines were indeed blurred between political society and civil society. Political parties that later on became ruling parties soon after independence had strong relations with civil society.

These relations however changed in most cases soon after independence as a result of the movement towards one-party system.

Post-Independence: Closed Spaces, Adversarial Relations

The close relations between political movements—later liberation—and ruling parties soon transformed into one of ‘the hunter and the hunted’ as more and more countries adopted one-party systems. From Mozambique to DRC, Angola to Zambia, relations became sour. In Angola for example, with the eruption of the war in 1975 destroying the social fabric and the attempted coup in 1977, there was a movement by MPLA to introduce a one-party state. With it came party created organisations and institutions such as women’s organisation (Organizacao das Mulheres Angolanas), the national youth movement (Juventude do MPLA) and trade unions. This will have ramifications for the current state of relations between the state and civil society formations. In Mozambique, the same happened; the one-party state created mass organisations, cooperatives and state farms. Organisations close to the ruling party dominated the public sphere. These were groups referred to as mass democratic movements, such as women’s organisations, organisation of journalists and national youth associations.^{ix} An AfriMAP paper submitted to the APRM Country Review Mission (2009) supported this assertion. It stated:

Under the one-party state, civil society participation was limited by various constraints inherent to the political system itself. Spaces for discussion, through the FRELIMO party branches and committees, or the network of People’s Assemblies, were hierarchically structured and clearly subordinate to the political guidance of the party. Below the official party structures and the People’s Assemblies, there were the so-called Mass Democratic Organisations...The few autonomous organisations that existed, even when they had objectives different from those of the state and the ruling party, were subject to their control. The private sector operated in a context of strong state intervention, and there were no adequate mechanisms for its interaction with the government which dictated almost unilaterally all the rules of the game.^x

In the second Republic of DRC (1965–1990), a coup in 1965 led to a de facto one-party state. Multi-party politics was outlawed as a result and so was social activism curtailed. This led to the unification of the labour movements into one union aligned to the ruling party. Cultural associations were also outlawed—so was independent media. The single-party system replaced all forms of association, sounding a death knell to civil society. Like in most countries, the church, in particular, the Roman Catholic Church remained playing the roles of civil society in such as areas as education and health.

In Uganda, a five-year guerilla warfare that led to NRM regime set the stage for the current relations between the state and civil society groups. As various writers of the Ugandan context attest, a young and fragile NRM regime was concerned about security threats to its power base. As a result, the regime was suspicious of groups that claimed to be independent (Larok, 2009)^{xi}. One of the ironies of democratization and the subsequent stability it brings is that more and more groups spring up—and regimes become more controlling. This is what happened in Uganda; the mushrooming of NGOs led to the NRM regime introducing measures of control that were informed mainly by security and administrative concerns (Larok, 2009).

It is important to note that in all these countries even though associational life and independent media were outlawed, these institutions continued to operate outside the confines of the law. Most of them went underground. Some of those attempts to curtail the activities of civil society and other forms of associational life were taken up by successive regimes that introduced multi-party systems.

Transitional-Democratic Open Societies, Complex Relations

Although all the countries under study embraced multi-party systems and held periodic elections, developed constitutions that enshrined civil and political rights for their citizens, and formed part of the democratization wave, the plurality of them still maintained their suspicion of civil society. In many ways the democratic dispensation and its inherent contradictions and ironies made that the public space was opened up for popular participation. However different relations developed as a result. In some countries three types of relations developed between the state as a result of the different configurations of civil society and the character of the state: collegial and collaborative, especially for service delivery groups; adversarial, particularly for human rights monitors and advocacy based groups; and no particular relation, especially for survivalist groups like community based organisations. This is certainly the case in South Africa, whose constitution also enshrines all kinds of freedoms. The political context in South Africa has allowed for the vibrancy of civil society but its fragmentation as well as more and more leaders from civil society joined the democratic state and the private sector after 1994. The development challenges of the country such as HIV-AIDS, land reform and the general poverty levels has meant that at times civil society has had to engage the state in confrontational ways. Again groups that have done so such as the Treatment Action Campaign (TAC), social movements and other interest based groups have had different relations with the state—at times confrontational but also collegial depending on the context. It is this fluidity in relations that has contributed towards some form of constitutional democracy in South Africa.

In Mozambique, the Constitution of 1990 established for the first time the freedoms of expression and association (articles 51 and 52). The proliferation of laws such as Press Law (Law no 18/91) guaranteed various freedoms such as those of association and assembly. The 1990s therefore saw the opening of public space for associations and the reconfiguration of state-civil

society relations. There was a move towards more consultation and cooperative mechanisms between government, business and civil society. As a result, civil society in Mozambique has 'gradually increased its ability to influence government planning and policies, while the government has been increasing its channels for interaction with civil society' (AfriMAP, 2009). There are concerns however that even though relations are cordial and collaborative, the independence of civil society might be compromised. In Angola however, relations between the state and civil society are still viewed from the perspective of history—one that tended to close the space for civil society. The advent of many groups has helped in the democratization of the public space. At least these groups can use the Bicesse Accord, which among other things recognized the rights of political parties, freedom of assembly and association.

In Seychelles, although the government has strong control over the media, there is widespread acceptance that recent changes in government have facilitated a move towards creating opportunities for civil society in contributing to the country's needs. The role of government is viewed as facilitative.^{xii} As new institutions, however civil society groups still face nascent challenges, and their relationship with the state might change as they grow. The same openness seems to characterize the Mauritian state of relations. There is a thriving civil society that has up to now been engaged in open dialogue with the state. The general trend is that of a government that views civil society as a partner in development—and the relationship is that of mutual respect especially on social issues. A salient conclusion is that suspicions abound about the current support from government as this might lead to co-option.

In other countries, there was a very short period between opening up of the political space and its subsequent closure. In the DRC, for example, in the 1990s, civil society flourished as a result of liberalization. Human rights organisations were among the first to emerge to address the human rights violations of the state. This led to a breakdown in relations. The state did not want to share the public space and the new groups lacked experience in engaging the regime. As in most countries, liberalization facilitated the emergence of new political players, some of whom came from civil society. This led to tensions between the state and civil society groups. The National Sovereign Conference (1991–1992) somewhat politicized civil society—leading to many of them playing political roles in DRC's Mobutu. Under Kabila's reigns, there was an attempt to control civil society by channeling financial and other forms of aid through government, harassment and arrest of activists and difficult registrations requirements.^{xiii} These relations however were not static—for example, in 1998, Kabila adopted a more conciliatory approach to civil society. And when Joseph Kabila took over, there was a move by some in civil society to government. This was partly because Kabila also adopted a conciliatory approach by unbanning political parties and encouraging civil society and other formations to take part in formulating laws of the country. Hence civil society played key roles in the Inter-Congolese Dialogue.

The political contexts in Zimbabwe, Uganda and Ethiopia are worth noting in terms of their current relations with civil society. In Zimbabwe, cracks started developing in the mid-1990s when students from the University of Zimbabwe made several demonstrations against rising food prices and the general state of the country. Trade unions soon followed suit leading to the formation of the Movement for Democratic Change (MDC) in 1999. This was the moment when relations strained between the state and many civil society formations. Since 2000, the state has viewed civil society, in particular advocacy and human rights groups as an extension of the opposition. Just as the government has consistently argued that MDC is a 'puppet of the West', so have civil society groups. One of the weaknesses of civil society during this time was to be synonymous with the opposition. This is the context under which the current relations ought to

be understood. Even though Zimbabwe has now formed a Unity Government, those strained relations have not changed. In Ethiopia, the strained relations can be traced back to the 2005 Presidential elections where some activists and members of the opposition and journalists were arrested for questioning the credibility of the elections. In Uganda, although the NRM was always sensitive to its security, the advocacy work of some NGOs especially the anti-corruption campaigns and the 'mabira' crusade (a mobilization of groups against the state's proposal to give away a significant portion of natural tropical rain forest to an investor for sugarcane), governance reports critical of the country, among others could have heightened the speed at which government then controlled the space.

What these contexts show is that state-civil society relations are fluid and have been changing historically between pivotal moments in history and between various encounters with each other. In some instances the relations have moved from cooperation to adversity and back to cooperation. In others, the relations have moved from supporting each other during the liberation environment to that of suspicion both under one-party state and in today's multi-party system. The new trend however is for states to revisit old laws with the view of tightening them so that it is easy to control associational life. And where none exists, new ones are crafted to regulate civil society activities. Larok (2009) cites a highly placed official in the Ministry of Internal Affairs commenting that, 'the mobilization capacity of civil society took government by surprise and their strength can no longer be taken for granted'.

Given these dynamics it is important to understand the context and locate the discussion as well as discourse of the 'legal environment for civil society in the wider political and governance context'. The legal operating environment for civil society in these countries is a product of the history of colonial struggles, post-colonial independence and contemporary state formation. It is therefore important to ask, what are the political contexts that shape the legal instruments in these countries? Could it be that there are worrying trends in civil society that warrant these laws? Or is the state just concerned about the narrow conception of security? Is this a peculiar feature of African states? What about the fact that globally there is a backlash against democracy? Could this be a backlash against democracy and not an attack on civil society? What is the relationship between governance deficit and repression? In short is it not that these laws have emerged as a result of the deficits in governance in those countries?

An Outline of NGO Laws in Selected Countries

The context and the nature of state formation in these countries shape the kind of laws that have been crafted. As stated earlier, some are enabling and others are controlling and as such repressive. There is a strong relation between adversarial relations and repressive legal and non-legal tools on the one hand and between cordial and enabling environments on the other.

It is instructive that in all these countries, their constitutions enshrine the various freedoms (of assembly, association, and expression) and rights such as political, civil and economic. This is despite the nature of the regime.

In countries that have enabling laws or where relations between civil society and the state are cordial and of mutual respect, the laws are embedded in their constitutions. In other words, there is an effort to align the letter and spirit of the constitution with the policies and further legislation on specifics. In South Africa, for example, the NPO Act, 71-1997 made a clear

distinction between creating an enabling environment for civil society and the other objectives regarding administration and regulation. Further the Act promoted cooperation and shared responsibility between the state and civil society. The preamble of the Act, for example states:

- To provide for an environment in which nonprofit organisations can flourish
- To establish an administrative and regulatory framework within which non-profit organisations can conduct their affairs

In the DRC, in addition to the Constitution, the law that regulates civil society is Law no 004/2001 which determines the registration process of groups. In Mauritius, section 12 of the Constitution guarantees the right to freedom while section 13 guarantees the right to freedom of assembly and association. However laws specific to civil society include, the Civil Code and the Registration of Associations Act, (4/465, 1979), Cooperatives Act, and Companies Act. Other laws that have an impact on civil society include Industrial relations Act, Income Tax Act, Public Collection Act and Public Gathering Act among many others. In Seychelles, civil society is regulated through the Registration of Associations Act.

In Angola, the Constitutional Review Law no 12/91 is the legal framework for the regulation of civil society. The Law of Association (no 14/91) was enacted, soon followed by Decree Law no 5/01, which regulates associations and institutions of public interest. In addition, civil society is also affected by Regulatory Decree law no 84/02 that regulates activities of NGOs, their registration, accountability and taxation among other things. And in Mozambique, the Law of Association, no 8/91 regulates registration and taxation among other things. In addition, Decree Law no 55/98 regulates and defines the legal operation framework for international organisations. Other laws cited earlier such as those pertaining to the press and media also impact on civil society operations.

In Uganda, the NGO Act (2006) is the main law regulating civil society. However, the NGO Regulations (2008) and the NGO Policy (2009) are other frameworks that impact on the operations of civil society. In Zimbabwe, the NGO Bill of 2004, which was not passed, was meant to be the principal law that would regulate the activities of civil society. However, various parts of that Bill have resurfaced in various pieces of legislation—for example, on Constitutional Amendment no. 18 and the Electoral Act. Laws such as Access to Information and Protection of Privacy Act (AIPA) and the Public Order Security among others also had impacts on civil society. In Zimbabwe, the minister responsible for NGOs once issued a memo/letter that closed the operations of civil society. This shows that at times regimes may not need to enact a law to control the activities of civil society. In Ethiopia, the main law is the Charities and Societies Proclamation (2008). This law is mirrored against the Ugandan NGO Act and the Zimbabwean NGO Bill. Zambia's NGO Bill was still shelved during the time of writing. Liberia and Sierra Leone have NGO Policy Regulations and these regulate the operations of both local and international NGOs.

In all these countries, states have justified their reasons for such laws. In the main, states have often legitimized these actions by couching them in counter-terrorism measures, protecting national security, curbing NGO abuse and ensuring that NGOs are accountable and transparent. In some instances, for example, Liberia and Sierra Leone, states have argued that NGO Policy Frameworks are meant to align NGO work with country priorities. And yet in some extreme cases, states have argued that civil society groups represent foreign interests and pose a risk to national security. In an interview with the BBC's Zeinab Badawi on HardTalk, on April 2, 2009,

Prime Minister Meles Zenawi responded to a question that the NGO Law undermined the independence of civil society by saying:

‘It does not undermine the independence of Ethiopian civil society organisations. What it undermines is the funding of civil society organisations in Ethiopia who are involved in political activities from foreign sources. And I believe the practice in all developed countries is that political activities are funded from local sources.’^{xiv}

He went on to say that only those NGOs involved in political activities will be affected. He said, ‘all those NGOs who are involved in economic, social and environmental developmental activities are not required to source their money locally’. But these areas are political by nature—indirectly these NGOs are affected by working in these areas.

Processes Followed: Consultation v/s Non-Consultation

There seems to be a relation between the type of regime and the nature of approach. In more stable and enabling environments, the approach in crafting these laws was consultative, for example in countries such as South Africa. However in countries that are concerned about security threats to their political power base, the approach was state-driven. Also interesting in these selected countries is the responsible authorities for registration, monitoring and general operations of civil society. In most of these countries, a board or state agency manages the affairs of civil society. Who is appointed and who appoints them is an interesting area of enquiry.

In Uganda, the process was state-driven even though on a number of occasions civil society groups tried to influence the end product. Larok has documented the response by NGOs as soon as the government decided to amend the 1989 NGO Statute. He says:

‘There was a spontaneous rise of NGO action and campaign in opposition to most aspects of the bill. Several memos, lobby letters and meetings sought to improve the proposed bill to create a more enabling environment for NGOs. ...despite all the above valid concerns and the spirited effort by NGOs to influence the proposed legislation for the better, including the development, by NGOs, in 2004 of an ‘Alternative NGO Bill’, the campaign only succeeded in preventing the bill from being passed earlier than when it was eventually done. On April 7th 2006, Parliament passed the Bill into an Act of Parliament with little, if any, of NGO suggestions’ (Larok, 2009).

In Zimbabwe, the bill was state-driven even though civil society organisations campaigned hard to stop it from being passed in Parliament. However as stated earlier, the Minister responsible for NGOs in 2007 literally wrote a letter that stopped the activities of NGOs in the country. In Ethiopia, the state drafted the law and presented it for comments. A number of groups made submissions and even requested meetings with the Prime Minister. He met them at least twice to take their concerns but still maintained that the law did not violate anyone’s constitutional rights.^{xv} The Zambian bill was also drafted by government and CSOs made submissions. In Angola, the laws were driven by the state; there is no evidence that civil society was consulted. The same seems to have happened in Mozambique.

In other countries, however the process was consultative. This was the case in Liberia, Sierra Leone and South Africa. In the South African case, the formulation of the law was a lengthy and rigorous exercise. It involved consultations between government, civil society and other development partners. A number of NGOs played leading roles in the formulation of the law, for example, the now defunct Development Resources Centre. In Sierra Leone, about three consultative workshops took place between 2003 and 2008 involving government, civil society and development partners. In Liberia, a similar process took place in 1988. In Mauritius, it seems that generally law-making is consultative.

Although these findings are not conclusive, they nevertheless point to some interesting trends. Where the relations between the state and civil society are somewhat cordial, the process leading to the formulation of the laws seems to have been consultative. The consultation continues in many forms. The legal environment in those countries is also enabling. However in countries where the relations are adversarial, the process was state-driven and civil society groups tried frantically to influence the process to very minimal success. The environment in those countries is not enabling and tensions still persist.

Except for a few cases, it is also interesting to draw a link between the type of approach (consultative or state-driven), the type of existing environment and the relations, and the ministry responsible for the registration and general oversight of NGOs.

In environments that are somewhat enabling and where the process was consultative, the relevant ministry is either one responsible for social development like South Africa, (Angola is an exception here because the relevant ministry is that of social assistance and reintegration), ministry of finance and economic affairs (Liberia) and ministry of development and economic development (Sierra Leone). The Registrar of Associations is responsible for NGOs in Mauritius.

Zimbabwe is exceptional in this case because it regulates NGOs under the ministry of public service, labour and social welfare despite the fact that its process was not consultative—its relations with civil society are strained and the environment is restrictive.

On the other extreme are those that have restrictive environments and their regulatory authorities seem to logically follow. In Uganda, the ministry of internal affairs is responsible for the registration of NGOs and a board appointed by the minister and dominated by government officials supervises the work of NGOs. In Ethiopia, it is the ministry of justice that is responsible for NGOs and a state-dominated agency supervises the work of NGOs. In DRC too, it is the ministry of justice that is responsible for NGOs. In Mozambique, it is the ministry of foreign affairs and cooperation. In Zambia, if the bill is passed, NGOs will have to be registered by the ministry of home affairs.

The Impact of the Laws on Civil Society

'The rise of strong civil society organisations, vibrant and vocal media institutions in Africa was not bestowed by some benevolent leadership. They reflect the will of the people to hold the leadership of their countries accountable'^{xvi}

It is this vibrancy and the need to hold governments accountable that most civil society organisations have been targeted by restrictive laws and hostile political environments. The

response to these groups varies from country to country depending on the political environment. In somewhat enabling environments like South Africa, civil society is viewed as a partner in development and as such many rights are respected. They however face the challenges of funding, fragmentation and the general capacity and leadership problems.

It is however in restrictive environments that this paper puts a lot of emphasis. Generally most of these laws in their negative nature are used to curtail the activities of civil society and at the extreme render citizens' action for the public good a dangerous activity—leading to harassment, arrests, imprisonment, and at times torture for those involved (Larok, 2009). The World Movement for Democracy has outlined in their global report on *Defending Civil Society*, the various methods used to restrict civil liberties. They remark that 'in less than a year, more than twenty countries globally have introduced restrictive legislation and regulations aimed at undermining civil society and diminishing the space in which they operate'. They further observe that the 'ongoing backlash against democracy has been characterized by a pronounced shift from outright repression of democracy, human rights and civil society activists and groups to more subtle government efforts to restrict the space in which civil society especially democracy oriented groups operate'. The various methods used vary from imprisonment, torture, disappearances and harassment to more sophisticated measures such as legal and administrative obstacles such as barriers to entry, bureaucratic paperwork and stringent requirements for registration. Other obstacles include arbitrary dissolution of NGOs, stringent oversight and control by the state, as well as creation of look alike Government patronized NGOs. The impact differs from country to country but in general the following barriers are created:

- a) *Narrow Definition of NGOs*: These laws are premised on very narrow understanding of what civil society is—more often they equate NGOs with civil society. For example, the Ugandan NGO Law defines an NGO as 'an organisation established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services, to the community or any part of it'. The problem with this definition is that it excludes or rather it is silent on governance matters, policy and human rights issues—most of which define the political landscape in Africa. The danger is that as long as the state enacts a law based on this narrow definition, it can and when it deems necessary invoke this law to curtail the activities of those groups that operate in the democracy, governance and human rights fields.
- b) *Cumbersome Registration*: the registration process in most of these countries is stringent and cumbersome. It is also bureaucratic. More often registration takes more than 6 months, for example in Uganda.
- c) *State-Centric Board*: In most of these countries the state has put in place a governing Board which is dominated by government officials. In Uganda for example, the NGO Registration Board does not provide for representation by NGOs. Rather it has representation from state security operatives (internal security organization and external security organization). Could this be a confirmation that the state views civil society as a security threat? In Zambia, the bill envisages that 10 members of the Board shall be ministerial appointees. In addition, such boards are appointed by the minister responsible for the registration of NGOs. These Boards are given unfettered discretion on NGO matters and their decisions as shown below can only be appealed through the minister in charge and not through the courts of law.

- d) *No Provision for Appeals:* Most of the NGO laws do not provide for an appeal process in the event that an NGO is aggrieved by the decision of the Board. And where there is an appeal process, it is to the minister responsible for NGOs and his or her decision is final. The minister bears so much authority and arbitrary power over the fate of NGOs. And yet in enabling environments NGOs can appeal to the courts of law.
- e) *Barrier to Freedom of Association, Assembly and Expression:* these laws violate the freedom of association that is enshrined in constitutions. This is also in violation of many international and regional agreements such as the International Covenant on Civil and Political Rights (articles 19, 21 and 22), the UN Declaration on Human Rights Defenders (article 19 and 20), the African Charter on Human and People's Rights, among others.
- f) *Barrier to Right to Fundraise:* Most of these laws have restrictions on fundraising. For example, the Ethiopian Proclamation requires that local NGOs working on governance and political areas mobilize not more than 10% of their resources from international sources. If they do so, they cease to be Ethiopian. And yet international organisations are not allowed to work on political areas. Funding is also restricted by the Zimbabwe NGO bill.

Reflections

What this paper has sought to show is that the legal operational environment for civil society should be located within the broader governance and various epochs of state formation. The character of the state and its record in governance determines the nature of relations it establishes with those that seek to monitor its activities. Secondly, this paper has shown that the resurgence of restrictions on citizens' participation in public spheres and in the body politic is a global phenomenon. It is a backlash on democracy and not necessarily an attack on civil society; civil society happens to be collateral damage. However where there are good governance principles and institutions and democracy is thriving, the legal environment is enabling.

A question that needs to be pursued in successive research activities is whether the greatest threat to civil society's operating space is the regulatory environment or civil society itself. Has funding of civil society opened the space or curtailed it? And what are civil society groups protecting by protesting these laws? What is the value of civil society groups in different countries? And do groups need to be registered to work on behalf of citizens?

Is it not given that freedom of association and assembly will always be contested especially in politically unstable contexts?

End Notes

ⁱ For a detailed discussion of whether or not civil society is a magic bullet, see Hulme D and Edwards M (1997) *NGOs, States and Donors: Too Close for Comfort*. Palgrave Macmillan.

ⁱⁱ Salamon, L, Sokolowski, S.W and List, R (2003) *Global Civil Society: An Overview*. The Johns Hopkins University: Baltimore, MD.

ⁱⁱⁱ For an overview of the global associational life's growth, see Salamon, L, Sokolowski, S.W and List, R (2003) Global Civil Society: An Overview. The Johns Hopkins University: Baltimore, MD.

^{iv} See Moyo, B (2009) 'Regulation or Strangulation? NGO Laws in Africa, Part 1: South Africa', in www.thoughtleader.co.za/bhekinkosimoyo

^v Republic of Liberia (2007) Draft National Policy on Non-Governmental Organisations in Liberia, 5th July.

^{vi} Cited in the DRC Country study.

^{vii} See Mauritius Country study.

^{viii} See Angola Country study.

^{ix} See Mozambique Country study.

^x AfriMAP (2009) AfriMAP Submission to the APRM Country Review Mission, February.

^{xi} Larok, A (2009) Engaging with the State: A Political Analysis of the Legal Environment for NGOs in Uganda and an Agenda for the Future. Paper Commissioned by TrustAfrica for the PAP-CSO Dialogue, May 25th.

^{xii} Seychelles Country study.

^{xiii} DRC Country study.

^{xiv} BBC, HardTalk, see Zenawi tells BBC's HardTalk: 'This would be my last term'. You believe him? <http://www.ethiomeia.com/adroit/2171.html>, accessed 21 May 2009.

^{xv} Moyo, B (2008) Regulating Civil Society in Africa: Contextualizing Ethiopia's Societies and Charities Proclamation in State-Civil Society Relations. Unpublished Paper prepared for TrustAfrica: Dakar, Page 10: Personal communications with some Ethiopian CSOs that attended the meeting with the Prime Minister, June, 04, 2008

^{xvi} Statement made by Vice President of Ghana John Mahama at the Opening Ceremony of the Pan African Parliament's 11th Session, 18 May 2009.