

There seems to be some confusion about the prevailing situation in Zimbabwe regarding NGO activities. On 4th June 2008, the Minister of Labour and Social Welfare 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.

Its hoped that this paper will explain the powers that can be exercised over registered NGOs . It must be said that this is not the first time that such statements/directives have been made by the government. On 13 September 2002 the government issued a public notice advising NGOs to register as per section 6 of the (PVO) Act.¹ The notice warned that those NGOs that continued to operate without being registered risked prosecution. During the 2007 independence celebrations the Minister of information informed a group of ZANU PF party members that the government was to cancel the licenses of all Non Governmental Organizations and reregister only those who were not advocating for regime change.² Within a week the state gazetted new guidelines that sought to regulate the operations of local and international NGOs.

State and civil society relations in Zimbabwe have generally been characterized by mistrust and intolerance. 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

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,³

¹Government advert to PVOs *The Herald* 13 September 2002.

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³'Mugabe warns against meddling' *The Herald* 13 October 2002 at 1.

On one occasion when the president was addressing parliament, he 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.’⁴

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.⁵

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 in 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.

The government’s position on NGOs is thus not new. It is against the backdrop of such sentiments expressed as the government’s view and policy on civil society that we seek to examine the position relating to the cancelation and/or suspension of NGOs.

In light of these often repeated threats to shut down/suspend NGOs, it is important to provide a brief explanation on the freedom of association and the laws governing the suspension and/or closure of NGOs operating in Zimbabwe. This paper applies specifically to local NGOs rather than to international NGOs which operate in terms of memorandums with the government which set out their terms.

⁴ 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.

⁵ ‘NGOs causing confusion’ *The Herald* 5 April 2004.

What does the freedom of association constitute? At a minimum it includes the right to form and join an association freely. Since one joins or forms an association to achieve certain goals, the right must include the ability of the group to operate freely without government interference. In addition the associations should be able to raise funds freely in order to function.

The freedom of association is guaranteed by the constitution of Zimbabwe.

Section 21 of the Constitution provides;

(1) Except with his own consent or by way of parental discipline, no person shall be hindered in his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations for the protection of his interests.

(2) The freedom referred to in subsection (1) shall include the right not to be compelled to belong to an association.

(3) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights or freedom of other persons;

(c) for the registration of companies, partnerships, societies or other associations of persons, other than political parties, trade unions or employers' organisations; or

(d) that imposes restrictions upon public officers;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) ...

As a constitutional right, the freedom of association is jealously guarded by the courts. In the case of *In re Munhumeso & Ors* the Supreme Court of Zimbabwe emphasised that

the importance attaching to the exercise of the right to freedom of expression and assembly must never be underestimated. They lie at the foundation of a democratic society and are one of the basic conditions for its progress and for the development of every man.⁶

The Constitution is clear that limitations can be placed on the freedom of association provided the limitations are reasonable in a democratic society. The phrase necessary in a democratic society has been defined to mean;

something more urgent than merely useful or desirable, and considering that tolerance, broad-mindedness and pluralism are hallmarks of democracy and that democracy does not mean that the views of the majority must prevail, and that restrictions must be appropriate and proportionate to the legitimate aim pursued.⁷

The Law governing the operations of the NGO sector in Zimbabwe is the **Private voluntary Organisations Act CAP 17: 05** (hereinafter referred to as the Act) The Act does not grant the right to associate; rather it simply provides a mechanism for the association. It is not meant to hinder/limit the freedom of association guaranteed by the constitution but rather to enhance the right. Legislation that seeks to curtail rather than enhance a constitutional freedom would generally be held as invalid to the extent that it curtails the freedom.

Once an organisation has been registered, there are prescribed circumstances in which the organisation can be shut down/suspended in terms of the Act.

In terms of section 10 the Board and not the Minister can cancel a license.

Section 10 provides

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

(a) on any ground,

The Act sets out additional grounds upon which the registration can be cancelled. However, before such cancellation, due notice is required under section **10 (3) which reads**

(3) Before cancelling or amending a certificate of registration in terms of subsection

⁶ *In re: Munhumeso & Ors* 1994 (1) ZLR 49 (S).

⁷ The Neglected Right: Freedom of Association in International Human Rights Law. Human Rights First Publication, unpublished paper December 1997.

(1) or (2) the Registrar shall cause written notice of his intention to do so to be given to the secretary of the organization concerned, and shall afford him a reasonable opportunity of showing cause why the certificate should not be so cancelled or amended.

It is clear from the foregoing that whatever powers the Minister may have, they do not include the right to cancel a licence. Any cancellations that may be done by the Board are subject to various appeals which have the effect of suspending the cancellations.

The powers of the Minister are set out in **section 21 which clearly provides that:**

(1) If it appears to the Minister on information supplied to him in respect of any registered private voluntary organization that—

(a) the organization has ceased to operate in furtherance of the objects specified in its constitution; or

(b) the maladministration of the organization is adversely affecting the activities of the organization; or

(c) the organization is involved in any illegal activities; or

(d) it is necessary or desirable to do so in the public interest;

the Minister may, by notice in the Gazette—

- (i) suspend all or any of the members of the executive committee of a registered private voluntary organization from exercising all or any of their functions in running the affairs of the organization;

The above in no way equates to suspending the NGO. It relates clearly to the suspension of the executive. The organisation whose executive has been suspended continues to operate. What is clear is that the Minister can do this in respect to individual organisations and must specify the reason for the suspension of the executive. Further, as the AWC case demonstrated, the Minister is required to afford the executive an opportunity to be heard before implementing the suspension.

The only time when this was done was in 1995 when the Minister issued a gazette, or notice, that the Executive Committee of the AWC was suspended, indefinitely, and stopped from

exercising its roles and responsibilities.⁸ A caretaker administration was installed but later replaced with an elected Committee comprising of ZANU (PF)'s Women's League members.⁹ The gazetted executive Committee applied to the Supreme Court in 1996, asking the Court to rule on the constitutionality of the Act. In 1997, the Court found in their favor on the basis that, the applicants had been given no chance to respond to the charge or complaint leveled against them and that therefore, there had been no impartial hearing.¹⁰

The only time when the Minister is empowered to write a letter making an order under his own hand is **section 26**. This section very specifically relates to funds that have been unlawfully collected.

In terms of the Act, the Minister also has powers to make regulations, i.e. delegated legislation. This is provided for under **section 28**. Clearly, the letter by the Minister can not under any circumstance be deemed to be a regulation as it is not made within the prescribed format but further is outside the scope of the permissible issues that the Minister can make regulations relating to.

One question that needs to be answered is what constitutes field operations. Does operating a home for the elderly or orphaned including feeding and housing such people equate to field operations. Similarly what of home visits to HIV/AIDS sufferers to provide them with anti retroviral drugs which if skipped for one day would spell doom for the patient?

What then does the Minister's letter amount to? Since the letter is clearly outside the ambit of the law, it should be regarded private correspondence that the Minister has chosen to enter into with specific NGOs. The letter is not in itself illegal. It should be regarded as a request and not as an order because the Minister is not empowered to make such an order. If anything, the letter is at best an interpretation of the law as the Minister understands it. What is clear is that the letter is not the law and neither does it change the law. It therefore follows that any activity that is not consistent with the letter does not constitute criminal activity. NGOs operate by virtue of their objects which are registered with the ministry and not by

⁸ GOZ, Government Gazette Extraordinary, Vol. LXXIII, No. 59A, 2 November 1995.

⁹ 'Team of Trustees to run association of women's clubs' *Sunday Mail* 5 November 1995;

¹⁰ *Holland & Ors. V. Minister of the Public Service, Labour and Social Welfare*, Zimbabwe Law Reports, 1997 (1), pp. 186.

virtue of letters written by the Minister. The legality of any action by NGOs who continue to conduct field work will be determined by the law as set out in the Act.

As long as an organisation is registered and its objectives require it to do specific things, that organisation is actually by law required to carry out those activities. Indeed section 10(c) provides that the certificate of registration can be cancelled if the organization has failed to comply with any condition of its registration; those organisations that have as one of their objectives the requirement to do field work would be taking action that results in the cancellation of their licences if they comply with the letter. That is what the law says.

In view of the above, there are two options available to organisations. The first is to continue with field operations and challenge any arrests that may follow if at all. The second is to comply with the request by the Minister.

The letter underscores many issues. The first is the need for the Ngo sector in Zimbabwe to push for legislation that creates an enabling environment that enables NGOs to freely carry out their activities without undue government influence. Further it demonstrates the need for the establishment of a self regulatory structure which would enable the sector to address concerns within the sector and thus move away from government regulation. It also demonstrates the need for civil society to constantly engage with all stakeholders so that there is a clear understanding of the role of civil society. Clearly constant engagement would ensure that issues are tabled and addressed without having to wait until things come to a head as they have done now to the expense of the needy beneficiaries.

That the government may well have its own genuine concerns about the conduct of some NGOs goes without saying. Perhaps the greatest barrier to civil society's participation in Zimbabwe is 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 of the government regardless of whether the criticism is justified or not. It stems 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 organizations 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.

The current scenario is regrettable. Gone is the day that we live by the saying that when elephants fight it is the grass that suffers. The wellbeing of the people must be paramount. The decision to suspend field activities may turn out to be counterproductive for its authors.