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The Operational Environment and Constraints for NGOs in Kenya: Strategies for Good Policy and Practice

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I. Introduction

The qualitative and quantitative growth of NGOs in Kenya over the last quarter of the 20th century has been enormous. For instance, NGOs registered a cumulative growth of over 100% between 1977 and 1987.¹ By 1995 there were at least 23,000 women's organizations in the country.² Most of these organizations are registered under the Ministry of Culture and Social Services. Those NGOs that are registered by the NGO Coordination Bureau (under the Office of the President) are at least 1441 compared to only 250 in 1993.³

Vibrant and secure civic organizations often play a vital role in society. It is not surprising therefore that the move to liberalize laws with a view to permitting and encouraging civic organizations has resulted in a trend described as the "new scramble in Africa" and Kenya exemplifies this trend.⁴ The main proponents of the move towards greater participation of these organisations base their arguments on the need to protect associational rights. There have been however, on the other hand, a school of thought that postulates the essential need to protect the public from the real and perceived abuses and frauds by unscrupulous organizations. Thus the universal problem of regulation of civic organisations arises.

This paper considers the regulatory concerns confronted by the various stakeholders (NGOs, governments, funders, international agencies for instance) seeking to encourage the growth and development of independent legitimate civic organizations in Kenya. Given the compelling reasons for encouraging the activities of NGOs in Kenya, we argue in this paper that it is necessary to promulgate sensible laws, regulations and administrative systems in Kenya. We trace the evolution of civic organizations, the evolution of legal systems to support the sector and identify practical difficulties that these organisations have encountered in their operations. By drawing on various experiences on legal fiscal and regulatory structures around the world we develop and propose a set of recommendations and policy options that will permit, encourage and regulate the existence of civic organizations in Kenya and their meaningful participation in the development process.⁵

II. The Evolution of NGOs in Kenya

A. preliminary remarks

The roots of NGOs in Kenya may be traced to philanthropy mainly in the colonial times. During this early period, the activities of NGOs largely focused on welfare. As this report amply demonstrates, these activities later changed and developed to cover not only the provision of services but also political action and advocacy. It may indeed be aptly stated that the emergence of new democracies ushered in the era of a vibrant civic sector. These civic organizations reached their zenith in Kenya during the period after the relaunch of the multiparty politics era in the 1990s. This is largely attributable to the fact that political pluralism greatly enhanced the space for legal implementation of the right of freedom of association and the institutions of democracy.

In this section, we will firstly look at the establishment of charities (and charitable organizations). Secondly, we will discuss the change of focus from welfare organisations to specialized concerns and awareness-raising initiatives - the civic sector working with the general public to bring wider changes to society. We will also cover the relationship between NGOs and government, emergent definitions of NGOs, their activities and typology.

The operational environment of NGOs will be explored within the pre-1990 period when the role of the NGOs did not involve outright questioning and challenging the governmental authorities and the post-1990 era where more activism is discernible on the part of NGOs. Under such laws as the Societies Act, for instance, certain affairs were seen as a preserve of the government.⁶ This limiting legal structure was a legacy of the colonial laws based on restrictive associational rights.⁷

It is instructive to point out at this juncture that NGOs are not new to Kenya. It is the scale of their operations that has changed. Although the first organizations that could have been characterised as NGOs were religious in origin, the characterisation of NGOs changed radically due to what has been referred to as the crisis of the state.⁸

B. The colonial Period

During the colonial period in Kenya, freedom of association was not entertained⁹ and the two main types of civic organizations operating were: religious/philanthropic associations and the so-called people's organizations. In the 1940s numerous social groupings were formed and consisted largely of women groups. Perhaps these were the precursors of the present day maendeleo ya wanawake organizations (MYWOs). Generally, four broad categories of NGOs are discernible in this era. First, there were local charitable organizations, largely Christian initiatives such as the Young Men Christian Associations (YMCA) and the Young Women Christian Associations (YWCA). The Young Women Christian Organization (YWCA) was operational by 1930. Second, there were the indigenous ethnic welfare associations. These were mainly involved in self-help activities most of which were confined to urban areas.

The third group comprised the secular service providing NGOs especially after the World War II. Among these organizations were the war veterans' associations and the Kenya Farmers Association (KFA). The KFA was originally a settler association although with time and specifically after independence it involved African farmers. Last, but not least, there existed occupational associations and professional bodies.

C. 1963-1990

Prior to the 1990 NGO Act there was no specific institutional and legislative framework to govern the NGO sector. The result is that NGOs were registered under various laws such as the Companies Act, the Societies Act, the Ministry of Culture and Social Services and the Trustees Act. Hence the major constraints at this time were related to the lack of a clear national framework for appreciating NGOs' role in development; institutional capacity weaknesses; poor co-operation and networking; tensions between NGOs and government; and geographical maldistribution.

In a survey conducted in the mid 1990s it was revealed that 75% of all registered NGOs were located in Nairobi.¹⁰ The administration of these NGOs prior to the 1990 NGO Act does not appear clear. After independence the Government was supportive of NGOs. This policy decision was taken in view of the fact that NGOs were largely seen as instruments to supplement the development programme of the public service. Accordingly the Kenya National Council of Social Services (KNCSS) was formed in 1964 as a quasi-governmental institution under the Ministry of Culture and Social Services.¹¹ The main objectives of the KNCSS were to coordinate NGO activities and advise the Government. This Council apparently failed to meet the expectations of both the Government and the NGO sector. It was subsequently disbanded in 1990 and its activities taken over by the NGO Coordination Board established under the NGO Act.

The absence of a clear and efficient NGO administration over the years has resulted in the dearth of comprehensive and coherent empirical information. For instance, there is contradictory empirical data on the growth of NGOs in Kenya. While some studies indicate that the overall growth between 1977 and 1987 was about 100%¹², others put the growth for the period 1974-1988 at 229%¹³.

The decade of the eighties in Kenya was characterised by an escalation of such problems as poverty, civil strife, conflicts, internal displacements, and general degeneration of the socio-economic and political systems. These and other related events adversely impacted the pattern of people's interaction. The development of NGOs in the 80s and 90s was phenomenal and appeared to be directly linked to the problems mentioned. By the end of the decade of the '80s indigenous NGOs in Kenya had grown by over 150% in a period of ten years.¹⁴ Several factors account for this growth.

First, there were numerous economic ills in Kenya. It was apparent that the Government had failed to deliver the much-needed economic leadership. The World Bank and the IMF prescribed that market forces be used to address the worsening economic situation. These initiatives were not successful in tackling the problems. NGOs were therefore poised to fill the gaps where the Government and the market forces had failed. In some cases there was dire need for NGOs to assume functions, which had been abandoned by the state especially in the fields of social services.

Second, the new wave of people's organizations was in search for a new basis for facilitating their struggle for participation in the decision-making process. The escalation of economic decline and market forces characterised by structural adjustment programmes (SAPs) and haphazard liberalisation of the economy (as prescribed by the World Bank and the IMF) set the stage for NGOs as these organizations were viewed by many as the panacea for those ills and the way forward for taking action on matters affecting the lives of the people.

Third, NGOs were formed as development agents. Kenya is endowed with enormous amounts of resources. Unfortunately, there has been uneven allocation of these resources for development. In terms of development, NGOs were formed to rebel against this marginalisation, to tap this wealth and to redistribute it on a win-win basis for all stakeholders.

Fourth, some NGOs were formed partly to take responsibility and push for socio-political change. This political role is mainly evident in policy advocacy activities and is often viewed by the civil society as necessary in keeping the people in the Government on their toes. Hence, it is not surprising that NGOs in this category have repeatedly faced threats of deregistration.¹⁵

D. Definitions, activities and typology of NGOs

The theoretical models and practical operations of NGOs present varied interpretations and definitions of what an NGO is. Consequently, various descriptions have been advanced. More often than not, all sorts of organizations have been lumped together as NGOs. These include women groups, inter-governmental organizations, associations, trade unions and others. The original typology of NGOs was basically social welfare groups whose major function was care and welfare. The early groups concentrated on charity and welfare organizations because community development was generally seen as prerogative of the government.¹⁶

Earlier attempts were made by the Kenya National Council for Social Services (KNCSS) to define an NGO as a "non-profit making organization based on voluntary resources and services". It further added that NGOs should have legal status, and also have development and welfare as the principle directive.¹⁷

NGOs are sometimes confused with Community Based Organizations (CBOs). Not all NGOs however, are CBOs. The latter only benefit their own members and hence they are membership organizations. CBOs like all other non-governmental intermediaries have generally broad-based membership, built from grassroots. Their beneficiaries are their own members and "owners" or founding members. On the other hand, NGOs though are generally founded out of private initiatives, can also be public entities benefiting the other person. They can be "client-oriented" versus "member-oriented" organizations.

NGOs are also defined voluntary and autonomous organizations whose life exists between the citizens on the one hand and the state and market on the other. Their main purpose is to promote collective welfare or public good. They include professional and business associations and federations, democracy promotions, human rights and good governance groups and cultural groups, Parents/Teachers Associations, clubs and natural resource users.¹⁸

Great emphasis is laid on registration in many definitions. Under this school of thought, an NGO must be registered under an Act of Parliament. It must also have an agenda that promotes development and enjoy some measure of autonomy. With the emergence of global and societal problems characterized by rapid complex and often-unpredictable political institutional, environmental, demographic and socio-economic changes, NGOs' existence and agenda is now multi-faceted. Specific societal changes that have spurred the development of NGOs include periodic worldwide recessions, emergence of new diseases, recurrence of armed conflicts in the

region, environmental degradation and climate change and dwindling job opportunities as a result of population growth rate that is not matched with industrial growth.

In the broad sense, every organization, in society that is not part of the government and is not for profit making is considered to be an NGO. Terminologies such as “civil society” have become increasingly common in the context of NGOs. This broad definition is based on academic interpretation and is problematic because it embraces a large variety of diverse organizations.

Sustainability as prerequisite for NGOs’ existence poses more definitional problems. Arguments are now being advanced that, given the roles that NGOs play in development, NGOs can make profits that can be ploughed back into the financial mainstream to expand and sustain its developmental agenda. NGOs are thus seen as development agents bringing their role development into sharp focus. This is a move away from the restrictive model where an NGO was seen only as social welfare provider.

The very nature and multiplicity of NGOs as underscored, makes the fashioning of an encompassing definition problematic in the Kenya context. NGO’s activities are so varied that it is unlikely that any one definition will include all NGOs. The government and the NGO community, in the run up to the promulgation of the Non-Governmental Organization Act of 1990, coined a definition that they considered satisfactory.¹⁹

As pointed out above, the original concentration of NGOs was largely in social and welfare activities. Over a period of time however, NGOs activities have become diversified and now cover the following:

1. Environment, energy and conservation measures
2. Health, Food and nutrition
3. Water and Sanitation
4. Population matters
5. Shelter
6. Relief Services
7. Programmes for disabled persons, children, youth, women, destitute, religion
8. Communication
9. Informal Sector
10. Education.

III. The Emergence and Development of Regulatory Regimes Governing NGOs

This part will focus on the governance and operation of NGOs. It will cover relational operations for instance between NGOs *inter se*; NGOs and governments or funders on the other hand and issues of accountability and management on the other. The reasons that triggered the current law governing NGOs will be outlined and the role of the NGO Act examined.

By 1986, it was still apparent that NGOs’ work in development was tremendous and yet uncoordinated. It was acknowledged that co-ordination had not been effectively done by the KNCSS. In the same year, the Ministry of Culture and Social Services therefore attempted to legislate NGOs’ activities in the country by presenting another paper to the Cabinet on the need for Co-ordination of NGOs in the country. The process did not take off as it was overtaken by a presidential directive in 1989 to his officers to start the process of co-ordination of NGOs under the Office of the President.

The reasons that triggered the current law governing NGOs are diverse and complex. Suffice it to say that a multiplicity of factors prevailing in the eighties provided the context within which the new law was drafted. First, there were newspaper reports of unscrupulous NGOs. These NGOs were reportedly engaged in such practices as importation of luxurious vehicles for resale, acquisition of arms²⁰ and high-powered communication equipment, to name but a few.²¹ This state of affairs was perceived as telling evidence that the co-ordina-

tion of NGOs under the umbrella of the Kenya National Council for Social Services (KNCSS) had failed.²²

Second, the Government was concerned that the donor community especially in the implementation of civil rights interventions was now focusing greater attention on NGOs.²³ For instance, the United States of America seemed to be sending signals that most African governments were corrupt and by 1992 had adopted a policy of working more closely with NGOs.²⁴ In this regard some NGOs were perceived as potential threats to the Government's sovereignty. The channeling of donor funds through the NGOs rather than through the Government was seen as opening way for sharp practice as well as bringing the Government into disrepute.

The matter progressed when President Moi appointed an inter-ministerial Task Force on NGOs in the country. After thorough study of the NGOs, the inter-ministerial Committee recommended the co-ordination of this sector within the total development framework. Faced with the new draft law NGOs successfully lobbied for representation on the NGO Board and for provisions on self-regulation.

The evolution of the enactment of the NGO Coordination Act may also be attributed thirdly, to the need for Kenya to fulfill some of her international obligations. Chapter 27 of Agenda 21 creates an example of such legal obligations. This provision requires that governments of states parties take concrete measures to facilitate NGO coordination. The normative principles contained in Principle 10 of the 1992 Rio Declaration and in Agenda 21 have been critical especially in relation to the role of civil society in environmental management, which is receiving growing recognition. These procedural rights of access to information, participation in decision-making, freedom of association and access to justice are relevant to environmental advocacy.²⁵ Governments are also required to ensure autonomy of civil society organizations.

Besides the foregoing factors explaining the promulgation of the new NGO legislation, there remains the undisputed role of the government to regulate. The state's basis for regulation is the juridical social contract - individual rights are surrendered to the state in return for security, peace, and order. This is coupled with the new paradigm that the state is not the sole regulator but that the main role of the state is that of a facilitator.²⁶

Thus, regulation is a government function from which it cannot derogate. In exercising this function the government naturally considers practical reasons. For example, it has to ensure that the very essence of government is not undermined. Therefore the government is obligated to guard against misuse of resources by NGOs partly because of diverse funders and the sums of money involved. In addition there was the need for safeguarding the public interest, say by maintaining professionalism. Last, there is need to guard against the weakening of state legitimacy and the undesirable tendency of impinging on national sovereignty by NGOs.²⁷ The argument here is that there is no need for a shadow state that bypasses the powers left of government. In any event the state should safeguard governmental authority.

There is however, general acceptance by the government of the crucial role that NGOs play in development and the government recognises the importance of working closely with this sector. This point is well captured in the Government's current Poverty Reduction Paper, which states:

The Government will focus resources on improving the provision of and access to basic social services that are most needed by the poor. They are education, particularly primary education, health and water supply. In all these activities the Government will seek a closer working relationship with development NGOs religious organizations, and other private providers to increase the range and quality of provision (emphasis added).²⁸

This policy statement is evidence of the realization that the optimum approach to development is through co-operation between NGOs and governments for greater effectiveness.²⁹ Governments cannot be pushed to the periphery because NGOs by themselves, cannot effectively undertake development activities of countries³⁰ and vice versa since each has its own comparative advantage over the other.

Accordingly, the government has on several occasions involved NGOs on government task forces and communities on matters that are of interest to both government and NGOs. A number of NGOs are members of the inter-ministerial task forces, for instance on environment and health. The government task force that led to the enactment of the Environment Management and Coordination Act, 1999 included key NGO actors.

IV. The Legal and Institutional Framework

To a great extent the law lags behind increasing NGO diversity. This raises problems due to the negative attitude of the law toward control and management of NGOs, ambivalent/restrictive laws relating to political activism, fundraising and the general absence of laws in certain areas.

A. International Legal Provisions

The protection of the freedom of association is enshrined in the Universal Declaration of Human Rights (UDHR) of 1948. Article 20 of the Declaration states: “Everyone has the right to freedom of peaceful assembly and association.” Although the Declaration is not a legally binding instrument most of its provisions constitute generally accepted principles of law and/or represent fundamental considerations of humanity.³¹ Most African countries including Kenya have ratified this Declaration.

Kenya has also been a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, since January 3, 1976 (the date of the Convention’s entry into force). The Convention recognizes the rights to freedom of association.³² The Covenant creates a legal obligation for all states parties to submit periodic reports to the Committee. Kenya has always been in breach of this obligation. In 1993, the Committee reported that Kenya had not submitted a single report.³³ The Committee further noted that the rights recognised by Kenya as a state party to the Convention have not been incorporated in the municipal law of Kenya. It expressed concern that the Government had frustrated efforts by NGOs to spread awareness of the rights recognised in the Covenant.³⁴

Another binding multilateral treaty ratified by most African states is the International Covenant of Civil and Political Rights (ICCPR), 1966. This Covenant states:

*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*³⁵

The protection of the freedom of association is also enshrined in the African Charter on Human and Peoples Rights (ACHPR).³⁶ The Charter provides:

*Every individual shall have the right to free association provided that he abides by the law*³⁷

At the regional level the East African Community (EAC) Treaty captures the spirit of promoting a conducive operational environment for NGOs.³⁸ The Treaty provisions enjoin the states parties to facilitate and ensure public participation and civic involvement in decision-making both at the national level and at the community (regional) level. Equally encouraging is the EAC’s Memorandum of Understanding (MoU) on the Environment through which the three East African Community Partner States commit themselves to enhancing the participatory role of the civil society in the environmental management field.³⁹

Procedural rights are indispensable in implementing and enforcing substantive rights. Thus they are critical especially in relation to the role of civil society in environmental management, which is receiving growing recognition within the East African Community. These procedural rights of access to information, participation in decision-making, freedom of association and access to justice are particularly indispensable to environmental advocacy.⁴⁰ A window of opportunity lies in the Memorandum of Understanding on the Environment. The challenge is at the doorsteps of the civic organizations to secure and enforce these rights.

B. Constitutional Provisions

The Constitution of Kenya has provisions of direct relevance for NGOs. These are mainly the provisions dealing with the freedoms of speech, assembly and association. These fundamental rights and freedoms of the individual are protected under Chapter V of the Constitution. Of particular significance is Section 80, which provides for the protection of the freedom of association and assembly. Under this section every person is guaranteed the right to assemble freely and associate with other persons. This includes the right to form or belong to associations.

There are, however, certain constitutional limitations on those freedoms. These limitations must be provided for under the law. Such law must be reasonably justifiable in a democratic society. Thus the freedom of assembly and association may be curtailed for the protection of public defence, public safety, public health, public order, public morality, rights and freedoms of other persons or for imposition of reasonable conditions relating to, say, registration and martial law.⁴¹

These limitations been used to impinge on the operation of NGOs in Kenya. Environmental advocacy is considered political activism, environmental gatherings broken up and policy-focused environmental NGOs activities restricted. The attack on the Green Belt Movement members and other environmental leaders in 1999 amply testifies to this fact. These leaders were involved in the fight against environmental injustices and were reportedly attacked by state security forces for attempting to protect the Karura Forest that had been allocated to private developers.⁴²

Permissible restrictions to the associational rights must meet at least two requirements. First, the restriction must be “contained in or done under the authority of any law”. Second, the restriction must be either reasonably required or shown “to be reasonably justifiable in a democratic society”. Courts, therefore, decide on whether the restriction is authorised under any law before proceeding to decide on its reasonableness. Thus, in *Imanyara v. Attorney General*⁴³ it was held that chiefs (under the Chief’s Authority Act) have no powers to issue licences for meetings or cancel such meetings once licensed because such restriction is not contained or done under the authority of any law. Therefore a chief who cancels a proposed assembly infringes on the constitutional rights of persons seeking to assemble. Upon that finding the court, in this case, declined to examine whether the restriction would have been justified.

In the United States, the Supreme Court has held that a person faced with unconstitutional licensing law may ignore it and engage with impunity in the exercise of the fundamental human right for which the law purports to require a licence.⁴⁴ The essence of this case is that a law must be lawful within the meaning of the Constitution (that is, it must make adequate safeguards against arbitrary decision, and provide adequate guidelines and be subject to effective control against abuse by those in authority).

Constitutional limitations on the freedom of association may take various forms. For instance, the constitution may provide that a person may only associate for “legitimate purposes” or “according to law” or is subject to the “procedure provided by law” and so on. The important point is, whatever phrase is used, constitutional limits must be placed on what the relevant law can restrict. While NGOs must operate according to the law, in many cases, existing NGOs laws fail to judiciously balance the rights of individuals to exercise their freedom of association against the need for public protection.⁴⁵ If the laws governing NGOs are made very restrictive they effectively negate the very essence of the constitutional guarantees.

As indicated above the procedural right of access to information is particularly indispensable to environmental NGOs in decision-making. The Kenyan Constitution provides for the freedom of access to information. There are, however, weaknesses, as the law does not give a positive constitutional obligation to collect and disseminate such information. As a result civic organizations especially environmental NGOs have not been informed of decisions in their field of mandate or how these decisions were made.⁴⁶

C. Laws dealing Specifically with NGOs

There are three basic registration options for civic organizations in Kenya. The first is administered by the Department of Social Services under the Ministry of Culture and Social Services. The civic organizations ordinarily registered under this option consist of community groups operating in fairly limited administrative areas such as locations and divisions within the district. Renewal of the registration is required to be made annually although the District Social Development office rarely enforces this requirement.⁴⁷

Civic organizations may also register with the registrars at the Attorney General's Office. This is mainly for the organizations applying for registration as societies or associations (under the Societies Act); trusts (under the Trustees Act); or company limited by guarantee (under the Companies Act). This option of registration gives the organizations legal persona, and the organizations can operate countrywide and have broad objectives.

The NGO Coordination Bureau of the Office of the President registers national, regional and international NGOs.⁴⁸ It also maintains a register of NGOs; approves names; determines the registration procedure including exemption from registration; conducts administration of NGOs; and deals with matters relating to exemption from duty and fees, among other functions. Under this option NGOs are subjected to close scrutiny, supervision, constant harassment and often deregistration by the National Intelligence Service (NIS)⁴⁹ and the Bureau without consultation with the NGO Council as required by law.⁵⁰

1. The NGO Coordination Act No. 19 of 1990

Given the plethora of legal instruments governing NGOs in Kenya prior to the promulgation of the NGO Coordination Act, there was theretofore no definition of what the term NGO stands for or encompasses. Under this Act's Section 2, an NGO is defined to mean:

A private voluntary grouping of individuals or associations not operated for profit or for other commercial purposes but which have organised themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare development, charity or research in the areas inclusive but not restricted to health relief, agricultural, education, industry and supply of amenities and services.⁵¹

The Act establishes a governmental agency and a self-regulatory agency to govern NGOs and their operations in Kenya. The government agency is the NGO Co-ordination Board established under section 3 of the Act. The Board consists of about 20 government appointees five of whom are appointed on the recommendation of the NGO Council. Under section 7, the functions of the Board include coordinating and facilitating the work of NGOs, maintaining the register of NGOs, receiving and discussing reports of NGOs, advising the government on the activities and role of NGOs, providing policy guidelines to NGOs, approving reports of the NGO Council, and approval of the NGO code of conduct prepared by the NGO Council.

The self-regulatory agency is the Kenya National Council of NGOs⁵² established under section 23 of the Act. The Council is given powers to adopt its own structure rules and proceedings. It is mandated to ensure self-regulation of NGOs via a code of conduct and other regulation on such matters as activities, funding, foreign affiliations, national security, training and institutional building. Consequently the Council has established, *inter alia*, an executive committee, a board of trustees and the general assembly as the administrative structure.

Membership to the Board: Council of NGOs

The Act gave more powers to the NGOs through the NGOs Council. To facilitate self-regulation among NGOs, the Act provided for

*a Kenya National Council of Voluntary Agencies as a collective forum of all the voluntary agencies registered under the Act.*⁵³

This name was changed to be National Council of NGOs under the Miscellaneous Amendment bill of 1991. The Council became a forum through which NGOs could collectively front a fight against the government, as was the case for the land clashes that be-devilled the Rift Valley in the early 90's. The NGOs suspected the Government to be the instigator of the clashes and made no secret about the fact.

Some of the NGOs have argued that the Council was not necessary, because NGOs were not consulted in its establishment. However the reality of the matter is that it is the presence of this Council in the Act that has occasionally made the government uncomfortable. Seven of the Council's members are also members of the NGOs Co-ordination board. This in essence means that NGOs are represented on the Board and can contribute to and influence the outcome of the decisions of the Board especially on registration of NGOs.

Seven members of the Council represent 1/3 of the total composition of the Board's possible 22 members although the Executive Director is an Ex-officio member with no voting rights. Although the apparent Government representation and its appointees is in the majority in numbers, the presence of the Council on the Board is of benefit for the NGO community.

Under Section 9 the Board is mandated to establish a documentation centre on NGOs in Kenya. Under Section 11 of the Act the Minister determines application fees for registration from time to time. Currently the fee stands at Kshs. 10,000. This figure is probably too high for small emerging NGOs to afford. The certificate of registration is dealt with under Section 12. Subsection (4) of this section provides that the certificate of registration may contain such terms and conditions as the Board may prescribe. No guidelines are given on such terms and conditions as may be prescribed.

Section 14 of the Act provides that:

14. The Board may refuse registration of an applicant if -
 - it is *satisfied* that its proposed activities or procedures are not in the *national interest*; or
 - (b) it is *satisfied* that the applicant has given false information on the requirements of subsection (3) of section 10; or
 - (c) it is *satisfied*, on the recommendation of the Council, that the applicant should not be registered (emphasise added).

Needless to state, this provision can be abused by an overzealous Board that may determine anything to be detrimental to the national interest.

Subsection (3) of section 10 referred to in section 14 lists some of the information to be included in an application for registration of an NGO. Such information includes the sectors of proposed operations, locations of the activities, their duration, sources of funding and relations with other organizations, among other information.

Appeals against the Board lie to the Minister.⁵⁴ Section 3A provides that appeals against the decision the Minister lie to the High Court within 28 days of receipt of the decision. State-established organizations are exempted from registration. All other NGOs would be guilty of an offence if they operated without registration under the Act. Persons convicted of this offence face stiff penalties including disqualification from holding office in any NGO for 10 years.⁵⁵ Section 24 obligates the NGO Council to develop a code of conduct for NGOs. The Minister is also empowered to make rules for the efficient carrying into effect of the Act.⁵⁶

Until October 1992 the Minister's decision to deregister an NGO for uttering a false statement was final. The Statute Law (Miscellaneous Amendments) Act, of 23 October 1992 introduced subsection (3) to section 34 providing for the right of appeal against such decision to the High Court.

2. The NGO Council Code of Conduct 1995

In exercising the powers conferred by section 24 of the NGO Act the Council prepared the NGO Code of Conduct in 1995.⁵⁷ The Code establishes a Regulatory Committee⁵⁸ consisting of a chairperson, an advocate of at least ten years standing elected from amongst three nominees of the Law Society of Kenya (LSK), one person elected from amongst members of the Board of Trustees, four persons elected by the General Assembly and a chief executive officer (who is also an ex-officio member and secretary).

The Regulatory Committee enforces the Code of Conduct and it is answerable to the General Assembly. Its duties include promoting adherence to the Code, regularly reviewing the Code, reviewing applications by potential members for registration, compiling reports by the General Assembly and recommending cancellation or suspension of certificates of registration of NGOs.

The Code of Conduct sets out such values as probity; self-regulation; justice; service; cooperation; prudence and respect. True to the spirit of the Code, most NGOs are members of NGO networks. The purpose of these networks is to rationalise the activities of NGOs working in the same or similar fields, or geographical/administrative areas; by sharing experiences and cooperating to achieve their various goals. These are basically informal fora for the exchange of views and information. For example the Green Belt Movement (GBM) has maintained links with numerous environmental groups and organizations at the local, national, regional and international level. This networking has enabled the GBM to establish a strong African environmental movement based on sharing of experiences and information.⁵⁹ There are currently over 14,000 NGOs under the umbrella of at least 20 NGO networks and associations in 10 countries in the East and Southern Africa sub-region.⁶⁰

3. General laws dealing with NGOs

There are also laws regulating general types of associations such as laws dealing with labour/trade unions, religious organizations, cooperatives and other specialised NGOs such as political parties. Although most of these laws have a bearing on the operation of NGOs in Kenya they are of a general nature and little direct relevance.

Some of the general laws of direct relevance for NGOs include the Companies Act and the Societies Act. The Public Law Institute (PLI) is an NGO originally registered in February 1981 under the provisions of the Companies Act. It had to register again in 1993 under the NGO Co-ordination Act. Most other civic organizations are registered under the restrictive Societies Act⁶¹ enacted within the colonial setting and used in the single-party era in Kenya to curtail the demand for political pluralism.⁶²

In addition to registration under the NGOs' Act, NGOs are still subject to other legislative requirements by other laws, such as the Immigration Act and the Finance Act. More specifically, the hiring of foreign nationals to fill NGOs' staff positions are subjected to provisions of the Immigration Act for obtaining work permits for such staff. The Kenyanization policy under the Immigration Act demands employment of Kenyans in all sectors of the economy including human resource positions created by NGOs. The practical difficulty here is the apparent interference by the state machinery in internal running of organizations.

Section 28 of the NGO Regulations 1992 states that

“Any registered organization wishing to obtain entry permits in respect of prospective employees shall, where no persons with comparable skills are available locally apply in writing to the Principal immigration officer through the Board for the issuance of the required permits”

The purport of the requirement that all NGOs register under the NGOs Act was to provide, through a register, streamlined and ready information on the sector in the country. Despite this requirement, some organizations are still registered or new entrants are registering under the Companies Act, Societies Act or through Ministry of Home Affairs, Culture and Social Services. This reveals lack of co-ordination between the Government departments that administer those statutes and the NGOs' Co-ordination Board. The latter has initiated action

to harmonize the relevant Acts and seal the existing loopholes. Without consensus among the Government departments including the Registrar General's department at the Attorney General's office on this, the loophole still exists.

4. Provisions of the tax laws dealing with NGOs

There are some tax laws that affect the operation of NGOs in Kenya. These include provisions on income tax, sales tax/value added tax (VAT), customs duties, exemption from taxation or deductions or credits for gifts and donations. The government has on a number of occasions made statements that this privilege had been abused.⁶³

The NGO Co-ordination Regulations 1992 contain tax-related provisions. Regulation 29 deals with exemption from duty. It provides that an NGO may apply to the Minister for the time being responsible for finance for exemption of certain imports from duty. In order to benefit from this regulation, the concerned NGO must be able to prove at least one of the following:

- (i) The foreign exchange used in acquiring the goods is not raised in Kenya
- (ii) The importation of the goods will generate foreign exchange for Kenya
- (iii) The importing NGO has, through income-generating activities, earned foreign exchange equivalent to the price of the goods
- (iv) The cost of the goods does not exceed 35% of the annual budget of that NGO
- (v) The price of similar goods in the local market exceeds that of the imports by at least 30%.

A cursory look at these provisions evinces the main rationale for these regulations as to preserve foreign currency within the country. Moreover, accessing this facility can be a cumbersome process and submission of a request does not necessarily mean that such a request will be granted.

Regulation 30 is on application for exemption from tax. NGOs may also seek and obtain exemption from tax in respect of value added tax (VAT) and income tax. The former (VAT) applies to goods and services necessary for meeting the objectives of the NGO or to income generating activities while the latter (income tax) is applicable to expatriate employees of NGOs.

All applications for exemption from duty or tax are made through the NGO Coordination Board to the Minister for finance.⁶⁴ Because of credibility reasons recent budgetary allocations by the Government have adopted a two-pronged approach whereby some NGOs could be exempted from tax while others pay.⁶⁵

5. Special provisions

There appear to be no special provisions for enforcing laws against NGOs or special sanctions special procedures and judicial provisions. Neither is there special rules setting out the liability of the officers of NGOs or rules/procedures for making government grants to or contracts with NGOs. All NGOs are treated equally and there is clamour for differential treatment although this remains contentious.⁶⁶ However, there have been reports of plans to introduce new legislation towards the end of the 2000 to further restrict the current freedoms.⁶⁷ This new changes if enacted would pose great danger to the freedom of association.

6. NGO Coordination Regulations

Regulations or official documents implementing or interpreting the above laws include the NGO Coordination Regulations 1992 and the Rules and Regulations of the NGO Council of Kenya (Approved by the General Assembly of the NGOs Council of Kenya on 15th July, 1993). These Rules and Regulations also constitute the Constitution of the NGO Council. There are no available pending drafts of laws dealing with the above.

Pursuant to section 32 of the NGO Act the Minister has made the NGO Coordination Regulations, 1992.⁶⁸ The following regulations highlight much of the dilemma of most NGOs operating in Kenya today: Regulation 8 deals with approval of names. The Director of the Bureau is given wide discretion in deciding whether to ap-

prove a proposed name or not. For instance, s/he may refuse to approve a proposed name on the mere ground that such a name in her/his opinion is undesirable.⁶⁹

Equally controversial are Regulations 12 and 17 on refusal of registration and cancellation of registration respectively. Regulation 21(i) prohibits NGOs from becoming connected with any groups of a political nature established outside Kenya except with the Board's consent. Appeals to the Minister under section 19 of the Act are required to be in writing and to clearly set out the grounds on which the appeal is based.⁷⁰

Form 3 set out in the First Schedule of the Regulations is used in application for registration of NGOs. Paragraph 17 of this form deals with cancellation of registration. The Board is enjoined to take every reasonable care and precaution to ensure fairness in the exercise of its discretion. This would ordinarily presuppose giving grounds and details of deregistration. In practice, however, this is not always the case as illustrated by the CLARION Case discussed below.

(a) Miscellaneous Amendment

At the commencement of the Act in 1991 after the Presidential Assent, the NGOs found the Act very repulsive. It had to be fought at all costs. What followed was a series of meetings between NGOs themselves to lay a common strategy against the Act. At the same time, NGOs held series of meetings with relevant government departments, for instance, the Office of the president and the Attorney General's office to come up with a compromise position. One of the ways forward was to repeal or amend those sections of the Act that were seen as impinging negatively on the work of NGOs. After lengthy discussions and through the Legal sub-committee of the NGOs Board, particular sections of the Act were amended as subsidiary legislation⁷¹ through the Attorney General's office.

(b) Specific amendments

As a starting point, NGOs had drafted their own legislation namely "the Private Voluntaries (PVOs) Act to replace the NGOs Act. This was obviously rejected by the government. The compromise position was therefore the amendments below:

- *Duration and validity of the registration Certificate:* - Section 13 (1) that required NGOs to re-register after every three years was repealed under consideration that NGOs can be perpetual entities if they so desire.
- *Appeals:* The powers of the Minister were curtailed in circumstances of disagreement between an NGO and the Minister. An NGO would have recourse to the high Court as the final arbiter in the event of such a disagreement. This was applied when Clarion was de-registered by the NGOs Board within the powers of the Minister. When an appeal was made to the High Court, the Board rescinded its decisions and re-registered Clarion, most probably under the notion that the de-registration had been flawed in the first place
- *Council Membership:* Council membership on the Board was increased from 5 to 7 members giving the NGO Council higher latitude on the Board.

The NGO Coordination Board does not strictly adhere to the foregoing regulations. Indeed there have been instances whereby new NGOs are registered irregularly in direct disregard of the laid down procedures. In this regard the NGO Council has regularly protested this malpractice.⁷² On its part the Council has been accused of laxity in taking disciplinary action over errant NGOs.⁷³ Consequently, the regulatory wars between the self-regulatory agency (the Kenya National Council of NGOs) and the government agency (the NGO Coordination Board) rage on.

V. Problems faced by NGOs in Kenya

The operations of NGOs in Kenya and other countries are hampered by many factors. These have implications for NGO autonomy. For instance, the operational environment of NGOs determines the effectiveness of programmes and projects undertaken by those NGOs. There are both external and internal environments that impinge on NGOs' performance and output.

Operational environment: Economic

Donors - Political - Social - State departments - Beneficiaries - Law - Founders

Under systems theory, organizations' behavioral pattern largely depends on the environment (both external and internal) in which they are operating. How NGOs as organizations are run or behave depends on for instance, the political, economic, and social conditions in the country. For example the donors, the founders and the beneficiaries will influence and drive the NGOs operations. Below we identify some of the constraints that NGOs face.

A. Lack of Autonomy

Kenyan NGOs, like many other Southern non-governmental organizations (SNGOs), have over the years maintained links with their Northern counterparts. In 1988 approximately 10% of the external aid used by Kenyan NGOs was through direct funding. The rest (about 90%) was through Northern non-governmental organizations (NNGOs).⁷⁴ It is important to note that this type of NGO "dependency" is perceived as a threat to NGO autonomy and accountability to the public. While some NGOs claim autonomy in their operations, basing them on their mission and objectives rather than any dictates from other stakeholders, the reality of the situation is that the donors' influence is normally a factor to contend with. It is trite knowledge that "whoever pays the piper calls the tune".

This danger of loss of autonomy may however be minimized by NGOs through clearly articulated principles that funders should adhere to; effective coordination among themselves and avoidance of unhealthy competition with the government for resources and attention. NGOs need to build capacity within the widening political space to ensure that they reap the maximum benefits from the consolidation of procedural rights. Through cooperation with governments environmental NGOs have, for instance, been able to access environmental information, been able to freely associate and exchange speech to be able to access environmental justice.⁷⁵

B. Government Interference

1. NGOs & Governments: *Strange Bed Fellows?*

In Kenya NGOs are encouraged to collaborate with the government although the government is often critical of the high profile of NGOs' advocacy campaigns especially against government policy.⁷⁶ In Kenya's country position paper to the World Summit for Social Development (March 1995, at p. 41) the Government immortalises its commitment to enhancing social integration within the context of diversified political groups, local and international NGOs and pressure groups.⁷⁷ In spite of these assurances, NGOs and the government are yet to perceive each other as partners/collaborators in a practical sense.

For instance, in the area of environmental governance NGOs that have been involved in assessing the environmental impact of Government sponsored projects face hostility and threats.⁷⁸ Cases of opposition to projects (in the form of strikes and demonstrations) have been violently resisted by those in the Government. In the Karura Forest Saga environmental activists and other demonstrators were arrested in violent confrontations

with the developers.⁷⁹ The barriers occasioned by an atmosphere of suspicion and rivalry rather than cooperation and understanding have not been dismantled.⁸⁰ The immediate challenge remains to find effective channels of communication and constructive dialogue between the Government and civil society organizations.

Recently, several NGOs have decried the constrained democratic space for participation and lack of the political will for stakeholder involvement in the governance and management of social services.⁸¹ Other constraints include insecurity,⁸² inadequate resources and mismanagement of resources; marginalisation of women; externally formulated macro-economic policy and implementation of liberalisation and SAPs; reluctance to address corruption and poor governance structure.

Although the NGO sector is guaranteed independence this appears yet to be realised in practice. For example, the Regulatory Committee is an oft-cited case of rights on paper only.⁸³ Leadership problems associated with charismatic leaders on one hand and leaders committed to participation on the other are also common.⁸⁴ This situation is made worse by staff problems especially intra-staff tensions.⁸⁵

2. Restriction of fields of operation

In Tanzania the National Policy of NGOs states that NGOs are not permitted to engage in any political activities.⁸⁶ In South Africa NGOs often clash with the government especially on the issues of aid⁸⁷ and legitimacy.⁸⁸ Kenyan NGOs have not been spared this problem. Between January and December 1995 human rights and other policy-focused advocacy NGOs were harassed by persons believed to be acting for the government. Kituo cha Sheria and Kenya Human Rights Commission were fire-bombed six times; two human rights NGOs were banned and a number of NGO meetings disrupted by police at times violently.⁸⁹ Recently in September 2000 the offices of Release Political Prisoners (RPP) pressure group were robbed in what was described by the groups' leaders and other human rights activists as a move to silence the organization.⁹⁰

Perhaps one of the most striking examples of the limitations of freedom of association in Kenya is the case of the deregistration of the Centre for Law and Research International (CLARION). CLARION was registered in 1994. On 20th February 1995 it was deregistered by the NGO Board on the grounds that the NGO had violated its terms of registration; published material that damaged the credibility of the Government of Kenya and disseminated materials harmful to certain sectors.⁹¹

Several problems emerged from this case. First, the chairman of the NGO Board had on his own motion (and not the entire board as required by law) issued the notice of the intended cancellation of registration. Second, CLARION was not given the right of hearing by the Board as required by law. Third, no response was forthcoming from the Board regarding what reports were offensive or the relevant parts of the reports. Last, although the NGO Council representatives on the Board did not vote their decision had no impact as they are a minority.

CLARION pursued an appeal and there was international pressure for the government to reinstate the legal status of CLARION. The NGO Council held a special General Meeting in which it denounced the manner of deregistration of CLARION and mapped out strategies for a conducive operational environment for NGOs in Kenya. The registration of CLARION was restored by the High Court in June 1996, shortly after the NGO Board had rescinded the deregistration.⁹² This decision served to spur civic activity in Kenya.

In 1998 the Government also sent out a clear message to policy-focused NGOs that they were being closely monitored when it deregistered six NGOs soon after the 1998 bomb blast disaster in Nairobi for alleged involvement in the terrorist acts. The NGO Council intervened and it emerged that the Government could not substantiate its claims against the NGOs. They were subsequently reinstated.⁹³

3. Limited Access to Justice

Access to environmental justice is one of the fundamental norms required for the public to effectively participate in decision-making. In Kenya, access to the courts by NGOs is to a great extent curtailed. In *Wangari Maathai v. Kenya Times Media Trust Ltd.*⁹⁴ the plaintiff was a resident of Nairobi and the Coordinator of the Greenbelt Movement (an NGO working on the conservation and sound maintenance of the environment). The plaintiff filed the suit seeking a temporary injunction restraining the defendant from construction of a proposed complex in a recreational park in Nairobi. The Court upheld the traditional restrictive position on *locus standi* by holding that for one to maintain an action they must show special damage or peculiar injury beyond that which is suffered by other affected people.

This case illustrates the negative impact that the consistent strategy by the Kenyan courts of using a conservative and narrow interpretation of standing to sue can have on the operations of non-governmental environment advocacy organizations. In a number of jurisdictions the courts have interpreted standing to sue liberally to enhance access to justice.⁹⁵ Recent cases indicate, albeit in *dicta* form, that the courts are willing to move away from the traditional restrictions on standing to sue.⁹⁶

The most recent development in the use of the law to defend environmental rights is perhaps the enactment of the Environmental Management and Coordination Act 1999. The Act establishes the right to a clean and healthy environment and creates a duty to safeguard the same. Significantly it overcomes most of the hitherto limitations on standing to sue by providing that an aggrieved person need not show special damage or peculiar injury beyond that which is suffered by other affected people.

There are also hurdles to accessing environmental information occasioned by poor bureaucratic coordination. For example, agency responsibilities (between and within ministries) overlap thus bringing about conflicts. There are currently more than 77 statutes of relevance to the environment, administered by several ministries and departments. Hence lack of effective coordination between government agencies means that environmental NGOs must seek information from so many sources with no assurance that the information so obtained is reliable in terms of both quality and quantity. Moreover, state bureaucracies tend to treat documents in their possession as secret.⁹⁷ A number of the policy focused NGOs operating in the field of environment in Kenya have criticised the manner in which the Government and the donor community handles projects in the country. The main issues in contention are the isolation by Government of NGOs from the projects and application of wrong solutions in carrying out the projects.⁹⁸ The Environment Management and Coordination Act provides a legal basis for seeking and obtaining relevant information.

C. Absence of Internal Democratic Institutions in NGO Management

NGOs have also faced problems that may be of their own making. Very few NGOs cultivate internal democratic institutions and some have been accused of embezzling funds.⁹⁹ Good management practices demand that obvious key management concepts and principles such as sustainability, accountability, transparency, which are necessary for institutionalized formal procedures are put in place. However, excessive formal procedures may potentially reduce NGO efficiency and capacities, frameworks, cost effectiveness analysis (type of projects identified, and the people who shape the decisions). Balancing these concerns is a delicate issue which is not helped by the fact that donors are more interested in short-term, output oriented project methodologies regardless of the management structure of an NGO.

1. Administrative Efficiency or inefficiency of NGOs

While a number of NGOs have achieved administrative efficiency, most have major difficulties here. Efficiency cannot be guaranteed because of the nature of NGOs themselves. Many of them are new, small and without guaranteed future. This is especially the case with local or national NGOs (LNGOs) that are still struggling to put effective and efficient management systems for good governance in place and whose survival largely depends on donor funding. There are also the problems of legitimacy. In certain cases NGOs may be easily set

up. It all depends on whether one can write convincingly to donors.¹⁰⁰ Such NGOs are weak and face the risk of lack of continuity. Thus the modern trends of official funding bypassing Northern NGOs are opposed by some Southern NGOs. When donor priorities determine funding there is the danger of public sector corraling the voluntary sector, whether or not NGO services are welcome by the poor. This has two main risks: it may deflect NGOs from their chosen functions and/or bring the whole sector into disrepute.

2. Sustainability

NGOs have difficulties in achieving sustainability and replicability in their projects. Sustainability has become a buzzword within development circles. It describes the ability of a given project to remain viable after external support is terminated. NGOs' project sustainability is a lifeline to their existence. Several factors put NGOs' sustainability in jeopardy. These include those factors that are likely to enhance organizational stability some of which are: having a clear vision and mission, finances, human resource capacities in the organization and managerial skills in the organization especially the management style. Indeed the failure of NGOs to become sustainable is poignantly captured in the following statement:

Some NGOs seem to be simply getting tired of the effort and continual monitoring involved in maintaining the community involvement which is a pre-requisite of a sustainable project. They are discouraged by the number of failed projects, the number of abandoned projects, the number of groups who make no attempt to break their dependency on the NGO, but simply solicit for new resources year after year.¹⁰¹

By and large, NGOs' concerns are of a short-term nature. This does not augur well for continuity and sustainability.

3. Accountability

There are also problems of accountability in some NGOs. Despite what some think of corruption in governments, there is also fraud in the private sector and NGOs are not above corruption.¹⁰² At times cost effectiveness is not prioritised. It is not unusual to find NGOs with too large staff and very high salaries.¹⁰³ Of course there is the danger of professionalism sliding away if the salaries are too low. One of the most asked questions is: To whom are NGO leaders accountable? Various arguments have been advanced suggesting accountability to such authorities as the boards of trustees, Government, donor agencies, staff and even project partners.¹⁰⁴

Many feel that NGOs should be accountable to their benefactors¹⁰⁵ while others think that NGOs should be directly answerable to the people they serve.¹⁰⁶ One danger of accountability to project partners is that in most cases NGO leaders develop such close relationships with the former that it leads to absence of pressures for performance. On the other hand mutual accountability between Northern NGOs and Southern NGOs is difficult because of the existing unequal relationships. Whatever approach is taken NGOs may still find it acceptable to be accountable also to the Government at least for two inter-related reasons. This kind of accountability would facilitate compliance with provisions of accountancy laws, NGO regulations and their equivalent. It would also increase the proportion of funds from Government agencies. The bottom line is that publicly contributed funds require rigorous accountability to protect both the donor and the recipient. Toward this end the NGO Council has produced relevant guidelines for presentation of audited accounts.¹⁰⁷ During the official launch of the new standards the Government took the opportunity to remind NGOs to stick to their role as development agents or risk deregistration for engaging in subversive activities.¹⁰⁸

D. Financial resources

Dwindling financial resources constitute another major problem for Kenyan NGOs. It is largely due to two main factors: global economic recession, and political transformation-the geopolitics in the North and foreign policy.¹⁰⁹ The most visible effects of this problem include reduction of services and the demise of weak NGOs. This could however provide an opportunity for NGOs to review their mission and goals and engender sustainability in their programmes of work.

Dependence on Northern NGOs for support largely because of competition for funds is not sustainable in the long run and may result in duplication of roles as different NGOs place themselves strategically to receive resources from their northern allies. Equally problematic and attributable in part to the same trend is the rivalry, isolation and irregular, subjective documentation - all geared toward fundraising and not maximising on the synergies between NGOs working in the same fields.

VI. Conclusions and Proposals for Reform

A. Limitation of Discretion

The wide discretion granted to the NGO Coordination Board and to the Minister under, among others (Sections 12, 14, 19, and 32 of the Act) is subjecting the exercise of the associational rights under Section 80 of the Constitution to unreasonable prior restraint such as registration, deregistration and other bureaucratic red tape. Although the law seeks to limit or derogate from the basic right of individuals in order to achieve legitimate objects such as public order, it does not make guidelines or safeguards against arbitrariness. The law should provide narrow, objective and definite standards to guide the authorities.

The NGO Act gives sweeping and wide powers and discretion to the Minister and to the Board. For example, the 28 days time limit within which appeals against the Minister's decision is to be made to the High Court may prove too restrictive especially to the small NGOs. This is particularly so because of much time spent on seeking information from the Bureau and from the Minister and finding appropriate legal representation.

There are no guidelines provided under the Act on the prescription of terms and/or conditions in certificates of registration. The conditions under section 12 (4) are therefore based purely on the subjective opinion of the Board. This is often coupled with a presumption against NGO autonomy.¹¹⁰ Further, the Board has no adequate guidelines. For example, under section 14 it only needs to be "*satisfied*" of the named sets of circumstances to refuse registration. There is no stipulation that such satisfaction be reasonable. Second, and most important, the proposed activities and procedures must be in the "*national interest*". The focus of examination of section 14 perforce turns on the phrase *national interest*. Whereas, there appears to be little or no detailed judicial pronouncement on what may be regarded as national interest within the meaning of the fundamental rights provisions or the constitution, the importance of associational rights has always been emphasised. Yet NGOs still labour under the restrictive interpretation of these rights. The Board inextricably links national interest to public security with the appalling result that more than 100 NGOs have reportedly been denied registration on grounds of "national interest" or "public security".¹¹¹ In an attempt to avoid these traps some NGOs seek registration as companies limited by guarantee. Even this avenue has not escaped investigation by the Directorate of special intelligence.

Articles 10, 11, and 12 of the Act require that all organization in Kenya fitting the description of NGOs as defined in the Act shall apply for registration and be issued with a certificate of registration in accordance to this part. The law does not specify how long it would take for a decision to be made on the application before a new NGO is registered. The reality has been that registration period for NGOs range from 6-24 months or even more. The process of waiting for the registration and getting the NGO off ground can be a gruesome experience

and a frustrating period of long waiting. It is noted here that it is illegal to operate an NGO in Kenya without a valid certificate obtained under this Act. Under these circumstances, organizations without registration should not operate, neither can they be viable funding outlets. The donors also prefer to deal with registered organizations as legal entities for funding. This has occasionally led to lobbying behind the scenes to obtain registration papers from the vetting offices.

B. On Funding Problems

The dependency on Northern NGOs for funds should be reduced. This could be done through mergers or amalgamation of NGOs with similar visions, missions and/or goals. The possibility of rationalisation through for instance, staff reduction, shedding off programmes and reduction of operational areas is another option worth considering. Third, many Kenyan NGOs are inefficient. They should adapt more efficient methods of using scarce resources. Fourth, NGOs could identify alternative sources of funding such as mobilisation of local resources say, through provision of consultancy services in their respective areas of expertise to generate income. Such initiatives could include involvement in industry, multilateral finance and other intergovernmental institution's projects. NGOs can also utilize volunteer services.

C. Capacity building

There is urgent need to pay due regard to professionalism. To effectively participate in policy matters NGOs need core competence, experienced staff and institutional infrastructure. Pointers for the future rest on developing strategic approaches to facilitate as well as deliver the desired goals. The existing structures could be strengthened through competent staff recruitment; seeking longer-term funding; establishing allies in Government, academia, trade, and politicians; negotiating new roles in decision-making processes such as popular participation, seeking to be consulted on policy, sitting on commissions; and developing new North-South partnerships.

Effective environmental management for instance, requires that responsible and empower institutions work together especially groups having complimentary and interdependent roles and functions. Developing institutional synergies and partnerships is important both from performance and political perspective. Partnerships for co-ordination and collaboration can produce better resource management. Partners must have proper skills to share and collaborate. Appropriate partnership, mechanisms, guidelines and procedures have to be in place to enhance environmental reforms and management.

Conscious of the lack of capacity among the NGOs or the Civil Society in general, some organizations have adopted as one of their agenda to build relevant capacities for the NGOs and Governments in Africa.

D. Definition and Operation

There is need to develop a better typology in the definition of NGOs to reflect the reality. The current dichotomy of international versus national is not adequate. Other categories such as welfare versus awareness-raising could be explored. Formal equality places small local groups in a vulnerable position in the increasingly competitive world. In the public and national interest, specific rigorous procedures could be made applicable to international NGOs. This is particularly necessary in light of the great political and economic influence and power that these organisations wield.

As this study reveals state patronage is evident especially in the state agency, the NGO Board. The nature of the agency's role demands that its membership be professional and not political. It should also be certain and not subject to the caprice of political whims such as the changing of Board members every time the cabinet is reshuffled.

Both at the national level and at the community level NGOs need to build capacity within the widening political space to ensure that they reap the maximum benefits from the consolidation of environmental procedural rights. A prerequisite of this is a strong and vigorous civic sector that is well informed so as to influence decision-making. Environmental NGOs must have access to environmental information, be able to freely associate and exchange speech to be able to access environmental justice through the courts and other related avenues.

NGOs should lobby the Government to ratify international and regional agreements that guarantee the right of the freedom of association and to enact laws whose principal aim is to promote and not to restrict civic organizations. Such laws should broaden civil liberties and protect NGOs from arbitrary state interference. To this end civic organizations should speak loudly about the essence of democratic governance whose cornerstones include freedom of association.

Further, small groups of individuals and informal civic organizations at the grassroots such as village groups ought to be able to engage in lawful activities without necessarily having to organize a special legal entity. In the same vein the registration process for NGOs should be made expeditious, inexpensive and simplified by, among other things, removing bureaucratic discretion.

Government decisions refusing registration of NGOs should be subject to appeal in independent courts of law or competent tribunals. An NGO's existence should only be terminated or controlled for the most flagrant of legal or ethical violations.

The law governing NGOs should require written responses that cite and explain specific details of the basis for refusal to register or for deregistration of an NGO. Further, it should include provisions on seeking and obtaining information and sanctions for violations.

The NGO Act as it is now has provisions that may be seen as relics of the one party state. There is therefore need for reforms to make the Act cater for the prevailing multisectoral representation. There is also need to operationalise the Act. A case in point is the Regulatory Committee which, though a quasi-judicial body, has no independent secretariat and as such has to rely on volunteers. Furthermore it has no registry and no clear procedural rules.

Governments, NGOs, donor agencies and other stakeholders involved in participatory approaches could support the funding of several local and regional based research institutes to create a resource rich environment in which NGO work should lead to pressure for performance and self-evaluation. Establishment of a national level consultative mechanism involving the Government and NGOs as well as the business sector would provide timely access to documentation and resources in order to participate effectively. A priority in this regard would be building the institutions' technological capacity to gather, organize and disseminate information. The dynamic knowledge should be stored in records e.g. reports, charts, papers, etc. (not in the programme staff memory where there is the risk of the memory leaving when the person does). Equally, the NGOs Council could be expanded accordingly to have geographical emphasis and sectoral specialisation; as well as strengthen its mandate to ensure popular participation.

The Government should create an enabling social, political and economic environment that enhances NGO work by fully implementing the obligations under international and regional legal instruments and respecting human rights, fundamental rights and the rule of law. The measures adopted to enforce the anticorruption and related legislation should be strengthened to combat corruption in all sectors of society. Similarly the Government should foster peace, as this is an essential prerequisite for the enjoyment of the right of the freedom of association. This could involve including NGOs in the mechanisms for conflict prevention and resolution.

Finally, there is urgent need to develop a clear policy framework on stakeholder participation and mechanisms to ensure involvement of stakeholders. Toward this goal nurturing partnerships between the Kenya government and NGOs is of great significance.

E. Enlargement of Political Space to Influence Policy Making

There is arguably need for more political space for NGOs to contribute to policy processes in the country. The government in Kenya controlled all public policy and decision-making processes on development for a long time. However in the last decade or so, and with proliferation of political activities under the banner of multi-partism that encourages free thinking, expression, and association, activities of civil societies including NGOs has been pronounced. Questions on the rights of the citizens as enshrined in the Kenya's Constitution are taking centre stage.

Policy participation by NGOs and civil society is always labeled political activism and discouraged if not restricted. The government for the most part, does not sanction participatory policy making or promote and facilitate NGO involvement by, for instance, availing government data and information. Such information remains "classified" and is not released in a timely manner or widely disseminated. Moreover, civic associations are restricted by tight regulation and legal and bureaucratic hurdles. Government agencies fail to understand that democratic government is strengthened not weakened by an active society. However in the midst of all that, there is no doubt that NGOs have influenced outcomes of policy-making processes at different levels either directly or indirectly. Specific sections of the law changed through NGO involvement include:

- *The repeal* of section 24 of the Kenyan Constitution by Act No.12 of 1991 that restored multiparty status in the country. This amendment came after prolonged "wars" between the government (read KANU) and pro-democracy forces led by NGOs.
- *The enactment of the Constitution of Kenya Review Commission Act 1997*. This was introduced to facilitate a comprehensive review of the Constitution after the 1997 General Elections and ensued after confrontations between the government on the one hand and civil society groups, religious organizations and opposition parties under the umbrella of the National Convention Executive Committee (NCEC) on the other.
- *Awareness creation*: NGOs have also been at the forefront in creating awareness and giving guidelines on national issues. For example: In September 1993, the Law Society of Kenya (LSK), the Kenya Human Rights Commission (KHRC) and the International Commission of Jurists – Kenya Section (ICJ) jointly held a seminar in Nairobi on governance and accountability. This seminar resolved to come up with a model Constitution, which they did in 1995.

F. Need for Decentralisation

Decentralization and devolution have important implications for governance especially in the realm of the environment and natural resources management. Some ministries and departments with jurisdiction over valuable resources have been reluctant to redistribute associated responsibilities, authority, power, or to sanction and facilitate policy making especially in resource control decisions. There is definitely a case to be made for sectoral co-ordination of development activities between NGOs, government and other development agencies at the district or grassroot level of development.

The 1989-1993 Development Plan noted that since NGOs had become increasingly involved in development activities, their efforts needed to be strengthened by the District Focus for Rural Development (DFRD). It was noted that, NGOs in collaboration with the District Development Community groups and local authorities would enhance the process of local participation in the development projects. The current development plan (1997-2001) however relegates the role of NGOs to arid and semi-arid areas, development of fishing infrastructure and development of technology culture only. It is apparent that the prominence that was previously given to NGOs in the context of DFRD in the earlier plan has been set aside.

Despite the provision in the NGOs' Regulations (1992) that there should be NGOs' sub-committee within the District Development Committees (DDCs), the NGO Board, after a familiarization tour in a number of provinces looking at NGOs' work in 1994, noted that such sub-committees were non-existent. Within the wider context, the DDCs have lost credibility in local development. Due to structural and legal problems, they lack authority to enforce compliance from NGOs in development matters at the district level.¹¹²

Appendices

Main Laws in Kenya Affecting NGOs

- The Constitution of Kenya
- The Societies Act Cap. 108
- The Companies Act Cap. 486
- The NGO Coordination Act No. 19 of 1990 (received Presidential assent on 14th Jan. 1991).
- The NGO Coordination Regulations 1992 - Legal Notice No. 152 of 1992
- The NGO Council Code of Conduct 1995 - Legal Notice No. 306 of 1995
- The Cooperative Societies Act Cap. 490
- Rules and Regulations of the NGOs Council of Kenya (Approved by the General Assembly of the NGOs Council of Kenya on 15th July, 1993).

Some Relevant International Legal Instruments

- The African Charter on Human and Peoples Rights (Adopted June 1981, Nairobi; came into force October 21, 1986).
- Universal Declaration of Human Rights, 1948.
- Freedom of Association and Protection of the Right to Organize Convention, 1948 (adopted by the General Conference of ILO on July 9, 1948)
- Universal Declaration of the Rights of Peoples, Algiers, 1976.
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Treaty Establishing the East African Community.

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- Wangari Maathai v. Kenya Times Media Trust Ltd* HCCC NO. 5403 of 1989 (N. Dugdale J.)
- Paul Nderitu Ndungu v. Pashito* unreported High Court of Kenya decision.
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Abbreviations and Acronyms

KFA	Kenya Farmers Association.
NGO(s)	Non-Governmental Organization(s)
MYWO(s)	maendeleo ya wanawake organization(s)
YMCA	Young Men Christian Associations
YWCA	Young Women Christian Associations
KNCSS	Kenya National Council of Social Services
WB	World Bank
IMF	International Monetary Fund
SAPs	Structural Adjustment Programmes
NNGOs	Northern Non-Governmental Organization(s)
SNGOs	Southern Non-Governmental Organization(s)
CLARION	Centre for Law and Research International
UDHR	Universal Declaration of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant of Civil and Political Rights
ACHPR	African Charter on Human and Peoples Rights
EAC	East African Community
LSK	Law Society of Kenya
VAT	value added tax
PLI	Public Law Institute
NIS	National Intelligence Service
GBM	Green Belt Movement
CBOs	Community Based Organizations
PVOs	Private Voluntary Organizations

Endnotes

- * This paper was written with research assistance from Josphat Ayamunda and Catherine Mwangi.
- 1 Fowler, A. (1988) "New scrambles in Africa: Will they constrain or construct Southern NGOs?" Paper presented at the East African NOVIB Seminar, Nairobi, October 1988
 - 2 Commonwealth Foundation (1995) *Non-Governmental Organizations: Guidelines for Good Policy and Practice* Commonwealth Foundation, London. p.8.
 - 3 Muiruri, D. W. (2000) *Non-Governmental Organizations in Kenya: Improving the Regulatory Framework* Unpublished University of Nairobi LL.B. dissertation.
 - 4 Fowler, A. (1988) "New scrambles in Africa: Will they constrain or construct Southern NGOs?" Paper presented at the East African NOVIB Seminar, Nairobi, October 1988.
 - 5 We use the terms NGOs and civic organizations interchangeably to cover organizations in the civil society that are voluntary, independent and not self-serving.
 - 6 See, for instance, Section 4 and the subsidiary legislation proscribing certain organizations considered dangerous to the good government of the Republic under this Section.
 - 7 The role of the Special Branch was instrumental, for example in vetting organizations, proscription, etc.
 - 8 Clayton, A. (1999) *NGOs and Decentralised Government in Africa* INTRAC, UK.
 - 9 This right to freedom of association has further undergone cruel times in the post-colonial Kenya, for example see, Kiai, M. "Freedom of assembly true on paper only" *People Daily* (Nairobi) January 26, 1999, p. 15.
 - 10 NGO Council (1996) "A proposal for the NGOs sector survey" NGO Council, Nairobi.
 - 11 Munio, R. & Musumba, B. (1995) "Analysis of community based organizations in Kenya: The case of Machakos and Nairobi Districts" Research Report for Ford Foundation, Nairobi, December 1995. First attempts to regulate NGOs were in 1964 when the Kenya Government facilitated the founding of the Kenya National Council for Social Services (KNCSS) as an umbrella NGO under the companies Act limited by guarantee without share Capital. The KNCSS was housed in the then Ministry of Culture and Social Services (the current Ministry of Home Affairs, Culture and Social Services). It has been noted that the original focus of NGOs was mainly on social welfare activities hence being placed in this Ministry.
 - 12 Supra note 1.
 - 13 Alice (1997) "Non-Governmental Organizations in Kenya: A Review of Issues and Literature" (on file at NGO Council's Resource Centre, Nairobi).
 - 14 Fowler, A. & Rick, J. (2000) *The Role of Southern NGOs in Development Cooperation* INTRAC, UK. p. 5.
 - 15 See, for instance, Ndirangu, I. et al (1990) "Errant NGOs to be struck off" *Daily Nation* (Nairobi) Friday, December 14, 1990.
 - 16 Alan Fowler (1993) *NGOs and promotion of democracy in Kenya*. - University of Sussex.)
 - 17 Kenya National Council of social Services (1988) *Directory of NGOs in Nairobi, Kenya*.
 - 18 Fox, Leslie 1997, *Legitimate and effective partners in sustainable development. A strategy for strengthening African Civil Society Capacity Building* Technical Group of the African Region, The World Bank Washington D.C
 - 19 The definition of a non-governmental organization in the Kenya context, is given in Part IV below.
 - 20 Public statements had been made by public servants. Politicians including the Head of State saw NGOs as "security threat" to the country despite their other positive contributions to the country's development. One such point of reference was president Moi's concern on the genuineness of NGOs after one NGO operating in Kitale was found with weapons, and military uniforms smuggled into the country under the guise of relief food. While at a public function in Kajiado, a small town near Nairobi in 1989, the President, referring to the Kitale incident cast doubts on the sincerity of NGOs. Security of the state was at stake, so it appeared!
 - 21 Munio, R. & Musumba, B. (1995) "Analysis of community based organizations in Kenya: The case of Machakos and Nairobi Districts" Research Report for Ford Foundation, Nairobi, December 1995.

- 22 The reason advanced for this state of affairs was that NGOs were registered under various statutes therefore making coordination virtually impossible.
- 23 The World Bank is one international institution that was at the forefront in shifting focus to NGOs. See, e.g., World Bank Annual Report 1992.
- 24 Chege, S. (1999) "Donors shift more aid to NGOs" in *Africa Recovery* Vol. 13 No. 1 June 1999, pp. 6-7, at p. 6.
- 25 Kameri-Mbote, P. (2000) "Recent and ongoing cases in the environmental field: Pursuing sustainable environmentally sound development" Paper presented at the ELAW Meeting, July 2000, Arusha, Tanzania.
- 26 Breyer, S. (1982) *Regulation and its Reform* Harvard University Press, Cambridge, Massachusetts, and London, England.
- 27 Recent studies indicate that NGOs have become a potential threat to nation-states. This is in part due to their influence in decision-making as some sit on big government and big corporate agencies. For an interesting discussion of this issue see Mehra, C. "NGOs' growing clout is a source of concern" *Daily Nation* (Nairobi) December 17, 1998, p. 6.
- 28 Government of Kenya (2000) *Interim Poverty Reduction Paper for the Period 2000-2003* Government Printer, Nairobi. pp. 12.
- 29 *Daily Nation* "VP: Govt will work with NGOs" *Daily Nation* (Nairobi) March 10, 1999, p. 48; Kimemia, M "Saitoti to NGOs: Let us work together" *Sunday Nation* (Nairobi) March 14, 1999, p. 4; *Daily Nation* "Leakey reassures NGOs" *Daily Nation* (Nairobi) October 29, 1999, p. 3.
- 30 Ndi, D. "Poverty rising despite increased NGO activity" *Sunday Nation* (Nairobi) December 20, 1998, p. 10.
- 31 Brownlie, I. (1983) *Basic Documents in International Law* Oxford University Press, Oxford. p. 250.
- 32 See, Art. 8.
- 33 *Kenya Jurist* (1993) "Report on the economic, social and cultural rights in Kenya" *Kenya Jurist* June/August, 1993 pp. 43-45.
- 34 *Ibid.*
- 35 Article 22 (1) of the International Covenant of Civil and Political Rights, 1966.
- 36 Adopted June 1981, Nairobi; came into force October 21, 1986.
- 37 Article 10 (1) of the African Charter on Human and Peoples Rights.
- 38 Article 127 of the Treaty Establishing the East African Community. The Treaty entered into force in mid 2000.
- 39 See Art. 15 of the MoU.
- 40 These normative principles are contained in Principle 10 of the 1992 Rio Declaration and in Agenda 21. The three East African countries subscribe to this Declaration. For a discussion of these principles in the context of environmental litigation see Kameri-Mbote, P. (2000) "Recent and ongoing cases in the environmental field: Pursuing sustainable environmentally sound development" Paper presented at the ELAW Meeting, July 2000, Arusha, Tanzania.
- 41 Section 80 (2) Constitution of Kenya.
- 42 Veit, P. (1999) "The role of citizens and NGOs in environmental advocacies" in *Innovation* Vol. 6, No. 2, October, 1999, pp. 13-15, at 14.
- 43 HCCC No. 1208 of 1994 (unreported) cited in Stevens, J. "The Constitution and the Public Order Act: constitutionality of the requirement of a permit to hold a peaceful assembly" *Nairobi Law Monthly* No. 64 November 1996, pp. 17-28 at 18.
- 44 *Shuttleworth v. Birmingham* 394 US 147, 22 L Ed 2d 162, 167, 89 S Ct 935, cited in Stevens, J. "The Constitution and the Public Order Act: constitutionality of the requirement of a permit to hold a peaceful assembly" *Nairobi Law Monthly* No. 64 November 1996, pp. 17-28
- 45 Veit, P. (1999) "Protecting environmental advocacy NGOs in Africa" in *Innovation* Vol. 6, No. 2, October, 1999, pp. 7-9.
- 46 Ringia, D. et al (1999) "Legal hurdles to accessing environmental information" in *Innovation* Vol. 6, No. 2,

- October, 1999, pp. 16-18.
- 47 Munio, R. & Musumba, B. (1995) "Analysis of community based organizations in Kenya: The case of Machakos and Nairobi Districts" Research Report for Ford Foundation, Nairobi, December 1995.
 - 48 It is said that Kenya is some form of NGO registering shop for East and Central Africa because of its relatively friendly legal framework for charitable organizations, see Ndung'u, W. "Role and functions of NGOs in Kenya" People Daily (Nairobi) April 18, 2000, pp. 11 & 12.
 - 49 Njuguna, M. "NGO registration hitch: hundreds of applications pending" Daily Nation (Nairobi) August 13, 1999, p. 20.
 - 50 Munio, R. & Musumba, B. (1995) "Analysis of community based organizations in Kenya: The case of Machakos and Nairobi Districts" Research Report for Ford Foundation, Nairobi, December 1995.
 - 51 This is by virtue of Statute Law (Miscellaneous Amendments) Act, of 23 October, 1992. Cf. the 1990 definition: NGO "means a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organised themselves nationally or internationally for the promotion of social welfare development, charity or research through mobilization of resources".
 - 52 Herein referred to as the NGO Council.
 - 53 NGOs Act, 1990, Part IV, section 23 (1)
 - 54 Section 19.
 - 55 Sections 20 and 22.
 - 56 Section 32.
 - 57 Legal Notice No. 306 of 1995.
 - 58 section 15 of the Code.
 - 59 People Daily "Green Belt Movement stretches its wings" People Daily (Nairobi) April 18, 2000, pp. 11 & 13.
 - 60 ICSW (1999) The Copenhagen Papers No. 6: "An East and Southern African Regional Forum on Social Development" Mbagathi, Nairobi, Kenya, March 13-14, 1999, International Council on Social Welfare (ICSW), Montreal, pp. 22.
 - 61 Cap. 108.
 - 62 Supra note 6.
 - 63 Some NGOs have reportedly used the tax exemptions to evade tax by bringing into the country exempted goods only to release them into the market to compete with taxed goods. See e.g. Irungu, G. "KRA [Kenya Revenue Authority] to monitor NGOs' activities" People Daily (Nairobi) July 17, 1999, p. 11.
 - 64 Sections 29 (2) and 30 (2).
 - 65 Irungu, G. "KRA [Kenya Revenue Authority] to monitor NGOs' activities" People Daily (Nairobi) July 17, 1999, p. 11. There have been, however, criticism that the Government's move would be abused by its officials, see Daily Nation "Withdraw levies on NGOs, says Kituyi" Daily Nation (Nairobi) June 30, 1999, p. 17.
 - 66 Muganda, C. "Are local NGOs a committed but crooked lot?" People Daily (Nairobi) August 22, 1999, p. 8.
 - 67 These fears were expressed by the NGO Council. Amongst the changes set to be introduced include reduction of NGO representation in the NGO Coordination Board by about 50% and replacement of the authority of the Council with the Directorate of Security Intelligence. See Mulluka, S. "NGO body wants rival to be probed" People Daily (Nairobi) August 7, 2000, p. 19; Ng'ang'a, M. "NGOs could be wiped out" People Daily (Nairobi) August 4, 2000, p. 3.
 - 68 Legal Notice No. 152 of 1992.
 - 69 See regulation 8 (3) (b) (ii) GO Coordination Regulations 1992
 - 70 Regulation 27.
 - 71 Miscellaneous Amendments Act of the NGOs Act, 1991
 - 72 See Mulluka, S. "NGO body wants rival to be probed" People Daily (Nairobi) August 7, 2000, p. 19; Ojwang', A. "Ong'wen cites irregular practice at NGOs board" Sunday Standard (Nairobi) June 11, 2000, p. 2.

- 73 Opala, K. "Acrimony in the NGO sector" Daily Nation (Nairobi) March 23, 1999, p. 5.
- 74 Fowler, A. & Rick, J. (2000) The Role of Southern NGOs in Development Cooperation INTRAC, UK p. 8.
- 75 One success story of how the good relationship between NGOs and governments can be fruitful is the participation of Sierra Leone in work of the WTO's Committee on Trade and Environment (CTE) where the Government of Sierra Leone was able to get the necessary technical and human resource support from the NGO sector. On this see Chaytor, B. (2000) "Cooperation between governments and NGOs: The case of Sierra Leone in CTE" in Konz, P. et al (eds.) (2000) Trade, Environment and Sustainable Development: Views from Sub-Saharan Africa: A Reader United Nations University Institute of Advanced Studies (UNU/IAS), Tokyo, and International Centre for Trade and Sustainable Development (ICTSD), Geneva, pp. 89-93.
- 76 Daily Nation "NGOs warned on civic education at the Coast" Daily Nation (Nairobi) February 16, 1999, p. 4.
- 77 Quoted in Kibwana, K. (1995) "The role of civil society in Africa's democratization and rebirth" in Wanjala, S. & Kibwana, K.(1997) Democratization and Law Reform in Kenya Claripress Ltd., Nairobi, pp. 385-396 at 391.
- 78 Radoli, M. "Project critics anger leaders" Daily Nation (Nairobi) March 4, 2000, p. 16.
- 79 See Munyua, C. & Agoya, V. "Green Belt Movement demonstrators arrested in city" People Daily (Nairobi) June 30, 1999, p. 24.
- 80 A Kenyan Cabinet Minister is on record as having said that NGOs are a dangerous weed which must be weeded out, see Daily Nation "Sunkuli condemns NGOs" Daily Nation (Nairobi) July 22, 1999, p. 16; People Daily "Sunkuli lashes at NGOs and media" People Daily (Nairobi) July 22, 1999, p. 5.
- 81 ICSW (1999) The Copenhagen Papers No. 6: "An East and Southern African Regional Forum on Social Development" Mbagathi, Nairobi, Kenya, March 13-14, 1999, International Council on Social Welfare (ICSW), Montreal. p. 5.
- 82 Barasa, L. "Kerio NGOs in quit threat: Work to be put off over insecurity" Daily Nation (Nairobi) November 15, 1999, p. 5.
- 83 NGO Council (2000) " Proposal on the Strengthening and Enhancing of Good Governance in the Voluntary Sector" GO Council, Nairobi.
- 84 See for example, Nation "Wrangles scuttle multi-purpose women's project" Daily Nation (Nairobi) February 17, 1999, p. 20.
- 85 Wandetto, J. "Suspect NGO boss goes underground" People Daily (Nairobi) February 16, 1999, p. 5.
- 86 Clayton, A. (1999) NGOs and Decentralised Government in Africa INTRAC, UK, p. 20. Cf. Regulation 21 (i) of the NGO Regulations of Kenya which prohibits NGOs from becoming connected with any groups of a political nature established outside Kenya except with the Board's consent
- 87 Mehra, C. " NGOs' growing clout is a source of concern" Daily Nation (Nairobi) December 17, 1998, p. 6.
- 88 Chege, S. (1999) "Donors shift more aid to NGOs" in Africa Recovery Vol. 13 No. 1 June 1999, pp. 6-7, at p. 7.
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