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By

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ON

THE LEGAL AUTONOMY OF NON-GOVERNMENTAL ORGANIZATIONS IN KENYA

DEDICATION

This dissertation is lovingly dedicated to my parents - Ja Mokaya and Pacy Nyaboke for the tender love and care I received from them, not forgetting their efforts of instilling in me the spirit to learn at a tender age.

To Chanyo for the love and peace of mind.

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To all my brothers and sisters, Regina, George, Karen, Dennis, Bob and Nancy for their moral support and encouragement.

To all, thanks.

LIST OF STATUTES CITED

1. The NGO Co-ordination Act.

* No case law available in this area of study.

ABBREVIATIONS

- | | | | |
|----|-------|---|--------------------------------------------|
| 1. | NGO | - | Non Governmental Organisation |
| 2. | KNCSS | - | Kenya National Council for Social Services |
| 3. | KMYWO | - | Kanu Maendeleo Ya Wanawake Organisation |
| | (now) | | |
| | MYWO | - | Maendeleo Ya Wanawake Organisation |
| 4. | GBM | - | The Green Belt Movement |

INTRODUCTION

This research is about Non-governmental organisations, their origin, the different types and their contribution to national development. This area is of interest because recently the Kenyan government has been too much at loggerheads with NGOs. The reason being NGOs are craving for independence to operate freely in Kenya whilst the government alternatively perceives of NGOs as having been left too free to operate, so that their freedom need be limited.

The controversy between the two has been due to this. This leads us to discuss what is meant by term 'NGO', their role, the meaning of autonomy and its importance. Whether autonomy has been a guarantee or not shall be discussed by looking at the degree of interference from the government on NGO operations.

This research shall be grouped into four chapters, where the above raised issues shall be discussed.

CHAPTER BREAKDOWN;

The meaning of autonomy, its importance and usefulness shall be discussed in Chapter 1. In addition the meaning of the term NGO, its origin, a mention of the different types and the role of NGOs shall be included in Chapter 1.

The second chapter shall concentrate on whether the legal autonomy of NGOs has been a guarantee or not. This will entail an examination of the matters discussed in the NGO Bill and an analysis of the legal provisions that derogate from the NGO autonomy if there be any.

In Chapter 3 shall be discussed two case studies viz; Maendeleo Ya Wanawake Organisation and the Green Belt Movement. A look at their aims, operations, any hinderances and the nature of the problems they encounter shall help us analyse whether they have been left free to carry on their operations by government or whether they have been intimidated by government.

Then shall come the conclusion in Chapter 4 together with recommendations after noting down some repercussions that may result due to a compromise of NGO autonomy.

CHAPTER I

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CHAPTER I

In writing on the subject of the legal autonomy of NGOs, it becomes necessary to define the term NGO and to also explain the meaning of autonomy before examining its importance. The danger of usurpation of the autonomy of NGO's or repercussions arising therefrom shall be advanced in the last chapter. It is also important to know what role NGO's play in Kenya before touching on the question whether they need autonomy or not. Lastly, whether autonomy has operated as a guarantee will be mentioned by passing but a full discussion on the same will be given in the next chapter.

1.0. NGO - THE UNCONTROLLED TRADEMARK

The term NGO is an uncontrolled trademark because it has no precise, concise or incisive definition. Definitions which have been offered are either too broad and general or too narrow to cater for all NGO types. For example, Kenya National Council of Social Service (KNCSS) gives the following attributes to NGOs;

- (i) An NGO is an Organization based on Voluntary resources and services and should not be profit-making nor should it be part of government.

(ii) An NGO must have legal status, either locally when formed in Kenya or outside Kenya and is operative in Kenya in which case it will be subjected to the legal provisions governing NGOs as if it had been formed in Kenya. And should have development and/or welfare as its principle objective."¹

This definition excludes traditional social welfare organisations and several other autonomous self-help community groups. It is also general in the sense that not all non-profit organisations, incorporated as societies or companies limited by guarantee claim to be NGOs or work purely for charitable purposes.

"Non-profit making organisations that contribute to the alleviation of poverty, human suffering and development in poor countries whose purpose is mobilizing commitment of volunteers, with the objective of relief and development can also be categorised as NGOs. This definition is based on the experience of the northern countries of Western Europe and North America, therefore it is too narrow in the sense that it cannot positively represent NGOs emerging in African countries today."²

"An association of bandits specialised in armed hold ups or a group of nuns occupied by divine contemplation are also NGOs."³

This situation in Kenya has reflected this difficulty because organisations seeking to be recognised as NGOs have adopted differing legal statutes using existing laws. Local, and some foreign, NGOs use the Companies Act [Limited by guarantee] to register as organisations whose major purposes or aims are philanthropic. This means they are not for profit making but guarantors of charitable goals hence they also seek exemption from tax. Others use the Societies Act or the Trustees Act while some negotiate bilateral agreements with the government of Kenya in order to obtain an official status.

An additional problem is that local community level NGOs, such as Women's groups, have no statutorily defined status i.e. one which is legally binding on office bearers and members. Usually, such groups register with the Ministry of Culture and Social Services but are themselves not incorporated in accordance with a legal statute. This is creating a number of difficulties, especially when groups possess common property or assets such as land, buildings or posho mills and subsequently become insolvent or split up for some reason or other, which is not uncommon.

Lack of consensus in their definition is caused by the fact that their philosophic range runs from charity in the noble and/or religious sense of the term to political associations.

The government of Kenya has attempted to solve this problem by means of a legislation which supplements rather than replaces, existing laws i.e. a legislation which attempts to consolidate all the different definitions. The Act defines NGOs to mean,

"a private voluntary grouping of individuals or associations, not operated for profit or other commercial purposes but which have organised themselves nationally or intentionally for promotion of social welfare, development, charity or research through mobilization of resources."⁴

The characteristics embodied in this definition either expressly or impliedly (are) include - organisations.

- (i) Voluntarily formed by a people for a specific purpose which must be charitable or altruistic.
- (ii) service-oriented and principally engaged in development and welfare activities.
- (iii) autonomous from governments and independent in pursuit of their goals.
- (iv) non-partisan

- (v) should not engage in business or commercial oriented activities i.e. non-profit making.
- (vi) Have a legal status by registering under the Non-Governmental Co-ordination Act No. 19 of 1990.
- (vii) Should be clearly accountable to a defined constituency or the people they serve.

Therefore, it should always be remembered that for an organisation to bear the character of non-governmental first, it should be privately set-up, structured and sufficiently autonomous in its activities and financing. However, it must be set up for a purpose which should be voluntary, charitable or altruistic. The organisation should in essence be non-profit making or non-commercial oriented and this ensures a character of benevolence or voluntariness. Support to development projects or activities brings in the public interest as the basis of operation and this aspect of character enhances an organization as an NGO. An organisation bearing none of these traits cannot be said with certainty and accuracy to be an NGO.

1.1 LEGAL IMPLICATION OF NGOS IN OTHER AFRICAN COUNTRIES

It is suggested that most NGOs in Africa or elsewhere are governed by their own constitutions, international laws and by Municipal or local laws. In some countries like Zaire, there are no Municipal laws specifically legislated to co-ordinate or control NGOs but the government of Zaire seeks to collaborate more closely with NGOs. In fact, NGOs in Zaire play the role of intermediaries between grassroots communities and state bureaucracy. It is now efforts in favour of co-ordination are being made.

Notably, some NGOs have attained legal status by negotiating bilateral agreements with the governments in which they seek to operate. In such instances, strict adherence to local laws does not arise but living up to the rules of diplomacy.

The government of Kenya has acknowledged that the best method of regulation of NGOs is their self-regulation, through different methods like NGOs drafting their own constitutions or registering under different existing laws of the country which they deem fit. However, in choosing the conducive statutory regime, NGO policies should be in harmony with those of government.

There are some other groups based on the voluntary spirit, most of them women groups, which do not have specific laid down

rules that regulate them. These do not automatically qualify as NGOs.

The NGO Co-ordination Act purports to control NGO finances by demanding that it be channelled through the government, imposition of tax on equipment imported by NGOs e.g. the Value Added Tax etc. What has awakened this realization has not been made clear by the government, especially to the NGO Community. This will most likely lead to complaints from the NGOs that the government is infringing on their autonomy. This is because under the diverse Acts that NGOs have been registering, there was no strict control on the receipt of foreign funds and the procedure adopted was simple. NGOs were also exempted from tax when the equipment they imported was for carrying out their activities. This denotes some autonomy on the part of NGOs.

The view expressed above is supported by the discussion in the Bill which was mostly centred on the control of NGO finances which the legislators thought may be used to destabilise the country. This objective was covered in the guise of another which is to create an enabling environment and co-ordination between NGOs and the government. These finances, having always been there yet Kenya remained peaceful, render the objectives unreal.

1.2 EVOLUTION OF NGOs.

1.2.1 Non-governmental Organisations in Kenya or elsewhere have different origins. Some have sprouted from within and other from without. Their origin is not easy to crystallize because some NGOs have emerged as a result of the harambee spirit which is a cultural fact and others based on collective responsibility based on divisions of labour up to family level.

1.2.2 Other NGOs have sprung up as offshoots of Western Christian Organisations and Philanthropical movements or people grouping together to find ways and means of solving their socio-economic problems or needs. Some have been formed by nationals to service a particular group or respond to a specific issue, others are emancipated branch of International organizations, for example, Young Women Christian Association (YWCA) while others are community based organisations led by villagers.

1.2.3 "... an NGO emerges and operates in concrete, dynamic and historical contexts. Its existence is related to certain social needs and demands of a civil society. The economic, social, political and cultural dimensions ... have been a determining influence over NGOs and its projects."⁵

1.2.4 NGOs have also emerged as survival mechanisms i.e. as social organizations to answer the various social, economic and political problems hindering people from accomplishing various tasks in the

society. In other words, people perceive that survival could be guaranteed and living conditions improved under harsh conditions of labour and resource exploitation. It can therefore be concluded that NGOs are a product of people's perception of a need and their subsequent organisation of a structured to meet that need.

In the West, Mainly in Europe and North America, NGOs have their roots deeply embedded in the christian tradition. Most of them are largely an outgrowth of missionary activities, and were developed in close relation with religious organisations and philanthropical movements. Some evolved both during and immediately after the second world war with the aim of helping the war victims in Europe. Their activities were largely in relief and welfare because these were the desired needs at that moment. After Europe had recuperated from the shocks of war, and after she had regained her development composure, the NGOs extended and expanded their activities to the Third World Countries. Examples of such NGOs are the Salvation Army, Catholic Relief Services and World Vision.

In the period of 1960s and 1970s, NGOs emerged focused almost entirely on long term development. Examples here are YMCA, OXFAM and Technoserve. Many relief oriented NGOs also started to secularize their activities way back after the Second World War. All these NGOs got more involved with long-term development, emphasizing small self-contained projects, appropriate technology

and efforts to organise and animate local communities in order to strengthen capacities for self-reliance.

The number of Northern NGOs has grown enormously especially in the period between the 1960s and 1980s. A 1981 census on the more important NGOs in the Industrialized Organisation for Economic Co-operation and Development (OECD) countries indicated that there were well over 1,702 NGOs."⁶

The majority of these NGOs are involved in the activity of channelling assistance to another well over 20,000 NGOs in the south.

The trend in their growth, shows that NGO expansion and institution took shape after the second world war. At the same time they have made a gradual shift of vision from a charity (relief and welfare) approach to strategies which emphasize strengthening the local capacities for self-reliance. Most of the Northern NGOs are even working in collaboration with NGOs in the south now, so that the benefits of their efforts can be easily recognised, in the short run, if not sustained in the long run.

1.3 NGOs IN AFRICA

Tracing the history of indigenous African NGOs is difficult, because of their diverse origins, heterogeneous activities and

unknown numbers. As noted earlier, NGOs are voluntary organizations which result due to people with common needs grouping together to accomplish various goals communally. African people have a history of organising themselves communally for their own mutual development and improvement, through the harambee spirit. There was division of labour up to the family level, which enabled everybody to play a specific role in society. Individuals were expected to share food, labour and other productive assets like land, with others.

Within this process of doing things collectively, social organisations emerged. These voluntary self-help groups, even though not fully-fledged voluntary organisations in the modern sense of the term, fits a number of NGO characteristics discussed in this chapter. Therefor, it can be argued that they were the embryos of some indigenous African NGOs. It has been observed that,

10 + "Kenya has the largest number of NGOs in Africa today
base estimated at 400."⁷

11 + The colonial situation in Africa may also have initiated some NGOs because of massive exodus of people from rural areas to town in search of white collar jobs (employment). In these urban centres, various social welfare associations emerged to sustain the migrants in their new environments. These associations became

important vehicles of solidarity and social change, and had the objective of offering welfare services to their members.

1.4 With Independence, things changed a great deal. Many organisations with social welfare as their principal objective emerged. These were dominated by religious organisations working in collaboration with local voluntary organizations. The churches e.g. NCCK provides the bulk of health and education facilities, and the local organisations looked after the welfare of their members.

1.4 Several organisations e.g. producer co-operatives, peasant associations and a variety of formal and informal community based self-help groups started to emerge with support of independent governments. Some indigenous NGOs like NCCK and MYWO greatly expanded their activities during those hard times.

1.4 It is difficult to give an accurate figure of NGOs operating in Africa today. The exercise of documenting the number of NGOs is hampered by the fact that many governments have not had the necessary NGO Monitoring mechanisms. By this is meant the means by which governments can effectively co-ordinate, document the number and regulate the operations of NGOs in their systems. Some NGOs do not even register with the relevant government agencies and have exempted themselves from notifying the government about their operations. Hence the irregularity and hardship to obtain correct data or figure on NGO numbers.

In the recent years, African countries have found themselves in a number of crises; floods, droughts, famine and civil strives. This has provided an opportunity for the coming of the northern NGOs and the thriving of indigenous ones. Given their financial weight, rarely do such NGOs wind up their activities but the continue holding on and expanding their activities. The NGO phenomenon in Africa is therefore not peculiar to the last two decades or so but is something at the root of the people's cultural traditions.

1.4 GRASSROOTS DEVELOPMENT; WHAT ROLE FOR VOLUNTARY ORGANIZATIONS?

Grassroots development has been the subject of considerable polemics and a certain amount of confusion. The definition incorporates attempts to explain "development" and "grassroots" terms which themselves have been the subject of contradiction and even dispute in recent years. The problem has also been passed in terms of "popular participation in development" or "participatory development."

However, these different concepts should not lead to any serious misinterpretation of the role played by NGOs because, in the final analysis, they cover the same reality; grassroots development is pertinent and authentic only when based on popular participation.

Participation here means people's involvement in the development process. It can also be defined as a process through which beneficiaries act to influence the direction and outcome of development programmes that affect them.

For many decades, problems of under development have plagued Third World Countries. Development approaches applied to solve these problems have not been very successful and therefore alternative ones have been called for. Alternative approaches, it has been argued, have to use strategies which have been neglected or not given the necessary attention by conventional development models. In this view, the new approaches have been geared towards activities activating people to participate in development efforts for their well-being.

It is in the light of this that NGOs are perceived and recognise as development agencies using participatory approaches in their development activities. They are also concerned with giving people experience, skills and confidence for improving and sustaining their development activities.

A participatory approach to development implies an acceptance of people as the subjects and main actors in a process leading to their greater control over their environment and widening their social space. Such widening should be built on democratic traditions and fully respect authentic people's culture.

Grassroots development depends on a certain number of thought and action, autonomy of action, flexibility and an on going dialogue. These will be elaborated on much later in the last chapter in event of what happens when NGO autonomy is compromised.

1.5

NGOs have greatly and quietly involved themselves in the fields of relief and welfare and have concerned themselves with a number of Africa's emergency situations such as floods, famine and droughts.

"However, many NGOs have now shifted their vision from relief and welfare. They have diversified their activities in order to adequately deal with the underlying causes of the problems that they try to solve. To this end they are now involved in a wide range of sectoral activities. Thus, they can now be found in such specialist fields as energy, education, vocational training and many other fields, usually operating at the level of micro-projects."⁸

Therefore NGOs and their staff require the freedom and protection necessary to enable them to perform their duties untampered with by the exercise of national sovereignty by one particular member of state. This research endeavours to establish whether these organizations have been awarded sufficient autonomy to enable them perform their tasks efficiently. NGOs legal position cannot be overlooked because they are important to Kenya's development for the services they render and extend to particularly

each and every aspect of Kenya's social, political and economic life. Without autonomy NGOs are completely at the mercy of the government.

1.5 WHAT IS AUTONOMY

The characteristic of autonomy emerges clearly from the definition of NGOs. It is also inclusive in the philosophy widely used by NGOs to describe their work, which centres on a number of claims viz; altruism, charity, efficiency, diversity, pluralism, people's participation, co-operation and institutional autonomy.

I consider autonomy to be the right to undertake or carry out anything without outside control.

"Autonomy is the right of self-government, or personal freedom, self-determination of the will apart from any object willed."⁹

Autonomy may be of a state, institution e.g. school, a college or a non-governmental organisation.

From the definition above, it follows therefore that, to be autonomous is to be independent in management, financial control, decision making, choice of membership, elections or election process in any organisation, even in the areas or territories an

organisation wishes to operate and carry out its activities or affairs. It ensures that people admitted as members of a particular organisation are committed to it that they also contribute in its affairs. It has been said,

"It cannot be forgotten that in development circles, freedom or autonomy, creativity and flexibility are important ingredients of sustainable development."¹⁰

Autonomy being a source of motivation, is a cardinal factor for the efficacy and operation of NGOs and indeed any other institution. This is because it gives NGOs impetus to carry out their activities and because the more autonomous an NGOs is, the more effective it is or it would be in its operation as an agent of development. Therefore in situations where NGOs are denied their freedom to choose their own staff, areas of operation and instead conditions are imposed on their finances and the manner through which they obtain their finances and their internal organisation & management, it can be detrimental in many ways to NGOs as shall be seen later. Interference on these areas of NGO autonomy can come from many sources.

1.6 AUTONOMY - WHICH?

Here the question which lends itself for an answer is "What source of interference on NGO autonomy is being condemned or resented?"

(i) Donor Interference:

Many Organisations, associations, political parties and individuals have been receiving financial aid from foreign countries. It has helped many voluntary organisations to promote social work among the poor and the downtrodden. However, there have been some complaints from various quarters that some political parties, organisations and individuals were misusing the aid received from foreign countries. To a larger extent this is true when one considers incidences of corruption, misappropriation, mismanagement, theft of funds and embezzlement by government officials or ministries. But NGOs are not exempt although they are more keen to use their funds properly because of monitoring mechanisms from the donors. The Full Salvation Ministry, for instance in August 1988 sought to import several prestigious cars to help fight against demons of poverty. This NGO was held not to have no good intention and therefore the cars were impounded.

Nevertheless, NGOs have been accorded a great deal of attention and recognition by many development agencies because they

are perceived as organizations using participatory approaches in their development activities.

Because of the complaints raised on misuse of aid and donor funds, some donor countries have resorted to controlling the aid they give these organizations. A mention of some of the ways donor countries control the aid is by laying stringent measures or conditions that a certain number of projects be started and completed on the finances given. Donor countries may also delay the aid intentionally and the recipient countries may be forced to demand for it, upon which it is given with strings attached.

Some donor countries may also require that annual reports be sent or given to them on how the aid sent to the recipient countries has been utilized. For example,

"Some donor organisations like the United States Agency for International Development are very strict in their accounting procedures and insist that every cent of aid or funds used in a project be accounted for. Other organisations, however, disburse the whole amount agreed upon and leave it to the recipient body, usually the government, a parastatal or an NGO, to do the accounting. This is particularly so in cases where the aid is in form of a loan."¹¹

Worse still, some donor countries or agencies send experts from abroad to supervise the projects being implemented and control the financial expenditure . This, being some form of control through, it may help in some way not to create a foreign currency dependency syndrome.

These modes of control and others, which may be discovered after deeper study, amounting to donor interference or monitoring of NGOs affairs is not strictly speaking our concern but the interference from the Kenyan government, if there be any. This would include issues as the ones discussed above and others to be discussed in the second chapter of this dissertation.

The Kenya government, for instance, requires NGOs to account for their financial expenditure by submitting annual reports on the same. If the government imposed on NGOs a requirement that all of them must account to the donors it would amount to more interference on NGOs. This may even facilitate lack of proper cohabitation with the Host government. Hence their activities are bound to fail.

1.7 CONCLUSION

This conclusion raises some important questions which have been lingering in the minds of many Kenyans.

First, is appreciated the initiative taken by the government to officially recognize the existence of the NGOs and the NGO sector in Kenya. This, it did, through legislation of an Act to coordinate them. But the Act has some shortcomings which leads us to pose the questions that will follows.

The Act does not state clearly which law supercedes the other in cases where NGOs had registered under other existing laws and apart from the NGO co-ord. Act. It cannot be accurately said that the Act brings together all previously registered NGOs under its regime because some NGOs are so much opposed to this Act that they have not registered under it but still continue to carry on their operations. Assuming that the NGO Act supercedes the previous legislations then it has not properly and largely succeeded.

Because if its success was foreseeable or if it were a reality then there would not have been so many conflicts with the protocol agreements negotiated by some NGOs with the Kenyan Government and other laws which confer legal status on NGOs. A study of the NGO coordination Bill reveals that it was not procedurally and substantially debated, rather it was rubber-stamped. The fact that it could not work when brought into force reinforces this suggestion, so that it was withdrawn after causing conflict between government and NGO sector.

This also shows a failure or tends to show the failure of integrating NGO views in national debates on economic, social and cultural issues. The government of Kenya should work towards establishing a National NGO council which works closely or in collaboration with it. The NGOs have no objection to being "coordinated" by an organization they own.

The government should also treat all NGOs equally. This has not been the case because some have specially been treated than others by virtue of their co-option to the government. This is Kanu Maendeleo Ya Wanawake, as it then was.

NGOs have played a very important role in national development regarding the economic, socio-political and cultural fields and are here to stay. It is important that their legal status be defined because they are expected to continue operating in Kenya. The government, in its wisdom or lack of it, should not evade this task by perceiving them as anti-government or by keeping divorced from their concerns.

FOOTNOTES

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CHAPTER II

CONTENTS:

- 2.0 LEGAL PROVISIONS AND DEROGATIONS FROM THE AUTONOMY OF
NGOs
- 2.1 PARLIAMENTARY DEBATE ON THE NGO CO-ORDINATION BILL
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2.0 LEGAL PROVISIONS AND DEROGATIONS FROM AUTONOMY OF NGOS

"The importance attached to the role of NGOs in national development has caused Government in some countries to enact legislation aimed at reinforcing and further facilitating the work that is carried out in this sector."¹

The second chapter of this dissertation is aimed at analysing the existing legal framework meant to ensure that NGOs maintain their character of autonomy. By autonomy, we mean freedom within a system, not necessarily keeping a distance from the Government. This may be done through self-regulation and co-ordination among the NGOs themselves which has proved a difficult task as some NGOs tend to be secretive in their operations. This is one of the grounds upon which the Government sought to enact the NGO co-ordination Act.

An analysis of NGO operations in other countries autonomously within their Governments may be useful in understanding the Kenya situation. It is important to discuss the Kenyan scenario within a wider context by looking at a lead country like India which may be viewed as a model.

Every Government has legitimate concern over what takes place within its borders. This reinforces Governments' interests in the regulation of NGOs so that they do not take unfair advantage of

their potential privileges e.g. tax exemptions. Where NGOs receive funds from foreign or external agencies, Governments may want to make sure that NGOs are not subverting important national interests. Though NGOs are meant to be no-political, where NGOs organise local groups for charitable activities with a trace of political intentions, Governments come into play to regulate their political activities. So long as this is done truly for the purpose of co-ordination, and regulation and not with an aim of centralising power and authority it is in order.

req: There should be limited co-ordination of NGOs activities from the Government to ensure a measure of autonomy. The NGO sector should be free to give some safeguards to the said limit so that the Government does not over step its boundaries.

There are no set standards at international level on the code of conduct for all NGOs. Most NGOs are based in third world countries and they vary in character, composition, financial strength, etc; that is to say some are small and others large, some can financially support themselves and others rely totally on donor agencies and so on and so forth. NGOs are purely governed by municipal law and each enjoys privileges and immunities that it negotiates with the Government of the country in which it wishes to operate in. NGOs only come into the international plane when they are signatory to international treaties, hence they become subject to the law of such treaties.

Apart from Kenya, countries like India, Uganda, Columbia, Zanzibar and some West African countries have enacted legislation co-ordinating NGOs. These countries shall be discussed to show how a measure of autonomy has been achieved by NGOs with their Governments' co-ordinating system.

INDIA

India NGOs are required to submit to registration and monitoring procedures if they want independent legal status. These requirements are established in various states, that is

Societies Registration Act of 1860,
Indian Trust Act of 1882, Charitable
and Religious Trust Act of 1920, The
Companies Act of 1956 and The Co-
operative Societies Act.

These Acts have the power of conferring legal status on NGOs. Registration makes the NGOs subject to rules and regulations that govern filing of returns, paying relevant taxes and the responsibility to maintain a healthy working environment. The Kenyan Bill should have been more concerned with tax and liability questions than with pre-occupation of politics as opposed to legal concerns on NGOs as shall be deduced from the Parliamentary debate on the Bill.

Indian NGOs are subject to provisions of the Income Tax Act 1961, under which they can claim tax exempt status if they do charitable work or income tax deductions. It is a question of negotiation on privileges and immunities with the Government of the country where an NGO operates and there are no universal standards internationally set up for all countries.

BANGLADESH

Previously NGOs receiving foreign funds had to apply to different Government agencies for registration and various other forms of approval. Clearance caused undue delay that was much criticised by NGOs. With a view towards streamlining procedures, Government created a "one - stop service" by starting a new department under the President's Secretariat Public Division called the "NGO Affairs Bureau" headed by a director general and served as a contact point between the government and NGOs. These NGOs are governed by the Foreign contributions ordinance (1982) and the Foreign Donations (Voluntary Activities) Regulation ordinance of 1978. Other Bangladeshi NGOs not receiving foreign funds continue to follow pre-existing procedures laid down for them. There are no delays because the procedure is not cumbersome, something that has been decried by Kenyan NGOs since Act no. 19 of 1990 started operating.

PHILLIPINES

Perhaps in no other constitution in the world is there a clear mandate for NGOs as in the 1987 constitution of the Phillipines. But while the official policy is clear, the means of facilitating NGO collaboration is less clear. It seems that regulation of NGOs is a weakness many African Countries cannot evade. Nevertheless, political instability mitigates this for Phillipines.

Under the Aquino government, NGOs are represented in the regional and provincial councils, there are no liaison offices in 46 departments and public corporations and there have been a series of consultations led by National Economic Development Authority. Perhaps this is the strategy that the Kenyan government was pursuing on the NGO District Focus relationships whereby NGOs are required to present their proposals to the District Development Committee (DDC). This does not tally with what happens in Phillipines because the NGOs are not represented in the DDCs. For fair considerations of the NGOs proposals, NGO should have one or two members sitting at the DDC to represent their interests.

SENEGAL

President Abdou Diouf in 1989 signed a decree concerning NGOs. It places them under the authority of the Ministry of Social Development which certifies and registers NGOs in consultation with

relevant Ministries. The decree spells out requirements for registration, including sources of finance. NGO Co-ordination is entrusted at the national level to the Ministry of Social Development and at a local level to the regional services of that ministry of Social Development and at a local level to the regional services of that ministry in consultation with District Administrative Authority. Any NGO can be visited by a representative of the Ministry of Social Development but with at least one week's advance notice.

However, NGO's are given one year to comply with the decree. Sanctions include withdrawal of registration privileges if activities no longer correspond to stated objectives or if government and NGO mutually decide to break off their agreement. The Co-ordination mechanism adapted is fair in the sense that it gives time allowance of one year for any organization to deliberate whether it can sign the decree or not.²

This gives the legislation the power of legitimacy whereas no such provisions is embodied in Act no. 19 of 1990 of Kenya. In addition, if activities no longer correspond to stated objectives the automatic consequence in Kenya will amount to deregistration compared to the penalties of senegal. Furthermore NGOs here work closely with government agencies which is a true picture that the legislation is in favour of both sides i.e. the NGO sector and the

government. Something yet to be achieved in Kenya but not with the present legislation as it stands.

governance.

the o. Similarly, Legislation that governs NGOs in Zanzibar may serve as a model to many African countries because it has been derived from the people's law and not inherited from anywhere. It has successfully served as a tool for co-ordinating NGOs for about 8 years now.

event. of

angle Kenya, not being a country of differing opinion from these discussed above, published the NGOs Co-ordination Bill of 1990 which, through several mechanisms including a board which will be established, provides for the registration and co-ordination of all NGOs operating in the country. This Bill was tabled in Parliament later in November but was withdrawn soon thereafter, only to be re-introduced and subsequently passed in December 1990. The Bill is now an Act of Parliament, having received Presidential assent in January 1991. Unfortunately the Act could not operate effectively because NGOs felt restricted in their activities, after which they forwarded their recommendations to the government in a meeting with some government officials, requesting the government to slot them into the Act. The Act was withheld *Sine die* until the Easter Week of 19-4-92 when it became operational again, with no new amendments though.

As mentioned earlier it is the legitimate concern of every government to know what happens within its boundaries. The government of Kenya did well in enacting a law to govern NGOs but the only shortcoming in so doing is that the NGOs for whom this law was intended were not involved in the law-making process. This may be one reason to explain why the Act seems bureaucratic. The government should have asked for a proposal from each NGO to make it possible to consider the intentions of both parties, because in event of lack of this everything tends to be looked at from one angle. It is well known that,

"... the constitutional stand regarding legitimacy of any law is that it must be acceptable to the people or win the confidence of the people. In event of which when any law lacks popular acceptance, no legitimacy can be bestowed upon it. People should be involved in the process of law making. Its form and contents should be subjected to public discussion. Whatever body is charged with the role of drafting constitutional proposals, should invite views from the public both in form of articles in newspapers, journals, memorandum etc. That body should also move around the country and talk with the people individually and in groups especially those that will be affected when it touches on organizations like NGOs. The idea is that there should be a continuous public discussion of it upto the time of final enactment. This is when a law can become the property of the people, whose affairs it is to govern and only so can it hope to win

become the confidence, respect and loyalty of the people. 'Law is for somewhat disingenuous to the people when they had nothing at the fall to do with its enactment.'"

This quotation brings into light that making law is a two way process. That law must take care of the interests of those it is to govern.

2.1 PARLIAMENTARY DEBATE OF THE NGO CO-ORDINATION BILL

Planning

A look at the parliamentary debate on the Bill is intended to explore the question whether the legislation was legitimately enacted to co-ordinate ngos. Although the index in the Parliamentary Hansard reports indicates that the NGO Bill was discussed 9 times, only two bear any discussion on it. After reading through the two reports of 11-12-90 and 13-13-90 it can be deduced that the purpose of passing the Bill was twofold.

The mover of the Bill Hon. Burudi Nabwera emphasises that NGOs have done a good job in terms of development and the Government needs to co-ordinate them well. However, greater emphasis is placed on "agitators" i.e. NGOs that apparently are not patriotic to the Government. The Government's intention apparently seems to seek to convert all NGOs into patriotic bodies instead of co-ordinating them. The intention of the legislature is one of self-defence. The moving of the Bill is triggered by fear of NGOs

becoming subversive. The Government's interest is therefore not for NGOs welfare but of the security of the state. This could be the reason why the Act seeks to make NGOs small powerless bodies in the hands of the Government.

Chris: think A few remarks from honourable members of Parliament shall be singled out to reinforce the foregoing suggestion.

this b The Assistant Minister for Lands, Housing and Physical Planning Mr. Gideon Mutiso said,

issue "... the security of our country is very important for our fear national development. Therefore we must safeguard the people movements of certain individuals in the country whose motives one are not fully defined and whose business is not clearly known. Furth... It is important to scrutinise these people so that we can of an know precisely where they come, what they want to engage in say be and the composition of their staff. That some of them (NGO') will be denied registration because they will appear very suspicious from the outset."⁴

"Th The legislature does not set out a criteria or scale of values to adjudge when an NGO appears subversive from the outset and when it does not. This law is one suspicious of NGOs not for the co-ordination as intended. The result of this is inhibition of NGO activity.

requirement

Throughout Hon. Shariff Nassir's speech there is nothing a prudent man would consider useful in terms of contribution of ideas that would help achieve co-ordination of NGOs by the Government, rather he is pre-occupied with religion i.e. (Muslims v. Christians) and chaos between them. A layman may be persuaded to think that the law being discussed was that of affray. Therefore extraneous issues were taken into consideration when discussing this Bill.

Grace Ogot makes an attempt to discuss substantive legal issues by quoting from the Act and proceeds to assure NGOs not to fear that their autonomy will be curtailed. Although most times people live by assurances, regarding an important law like this one, legal matters need clarity so that everything is made easy. Furthermore, these assurances have no legal standing and in event of any conflicts in interpretation of this statute, such assurances may be subject to interpretations that are one-sided.

Her other remarks like,
"The setting up of the board will curtail the working of the NGOs which have different motives other than the original ones ... and ... it is probably better to be a little bit hungry than get quite a lot of money which will create chaos,"⁵

Water down her expressed concern over NGOs regarding requirements of fee for registration, foreign aid etc. There is

greater concentration on Kenya's sovereignty instead of discussing how lack of co-ordination had manifested itself, the consequences of which would have formed good grounds for the enactment of this Bill.

The mover of the Bill exonerates the work and success of NGOs and proceeds to say that this is what necessitated the introduction of the Bill for discussion by the house. From the few remarks and as more shall reveal, this is not true of this allegation, especially when he says that this law will enable them to check and know who is doing what in a particular area. This can only be done by directly interfering with NGOs autonomy because members of the board cannot be everywhere at the same time whatever their number because NGOs are numerous thereby necessitating restrictive control mechanisms as those suggested here e.g. the board, bureau, registration, cancellation, etc.

Upto this juncture no successful discussion had been made on legal issues regarding co-ordination between the Government and NGOs in their activities yet a Mr. Ekidor on a point of order begged that the mover of the Bill be called upon to reply calling it a straight forward Bill. This is evidence that the Bill was being hurried up because also at another point in time a Mr. Kipkorir pressed for the same. The issue of the Bill being "straightforward" reflects nothing apart from the already formed intention that NGOs are dissidents. In other words, the

legislators had a fixed mind or no mind at all on the issue before the house.

Mr. Makau's earlier contribution to the Bill is that,

"a lot of NGOs can be used to destabilise the to Government especially at this time it has prospered socio-economically, ... we should not scare them off by showing that we want to have examine everything in details about them."⁶

Governor:

Seemingly the Bill is being hurried up into law to limit the work of NGOs for fear that they are dangerous. The MP fails to notice that scaring NGOs is what they are precisely doing under guise. Impliedly, the finances of NGOs are in need whereas the legislators seek to make them powerless bodies.

The

Munyi, Assistant Minister for Foreign Affairs and International Co-operation in his contribution to the Bill had this to say,

"The only thing that we cannot support is their subversive activities (which activities he does not indicate). Therefore, the most important thing is to monitor the work of the NGOs through the office of the President."⁷

Through

Apparently the most important agenda is to monitor the activities of NGOs not to co-ordinate them. The emphasis placed on the security of the state by the legislators leads them to import issues which are out of the way like,

activ "We have Kanu Youth Wingers whose responsibility is to report
band any suspicious characters right from sublocational level ...
and NGOs are requested to contribute to this important Fund
(Hawker's Fund) set up by the President."⁸

was ref
situa Such remarks render nugatory any thoughts that this Bill may
have been intended for the purpose of co-ordination of NGOs by the
Government.

be the
inter The Minister would also like NGOs to double the amount of
money they bring to this country. Greater concern, as it would
appear, is placed on the finances of these organisations.

is to par
minis The Government also appears to be using the Bill to enforce
support for itself when Munyi says,

"for their own good NGOs should ensure that they do not have
elements who do not support the Government."⁹

This can be seen as threats to NGOs something the Act (Law)
was not intended for.

NGOs
Throughout the discussion emphasis is placed on International
NGOs. This shows that very few MPs are informed about NGOs,
because there are indigenous NGOs. This perception causes the MPs
to be prejudiced against NGOs to the extent of seeing them as
bodies controlled by foreign masters engaged in subversive

activities. This is highlighted in the Assistant Minister for Lands and Housing's speech - Mutiso.

The Bill is considered opportune,

"It has come at the right time." Whether Hon. David Mwenje was referring to the socio-political economic situation or to a situation where lack of co-ordination has manifested itself is not clear. This is because Kenya has, until recently, always enjoyed a peaceful political atmosphere. A possible interpretation could be that there is fear because NGOs have won favour from many international organisations as bodies which have succeeded in development circles thus overshadowing government in development circles/activities. The opportunity that has availed itself here is to pass laws that will amount to threaten and control NGOs. The Minister issues promises which are inconsistent with the provisions of the Act when he says,

"We do appreciate whatever they are doing. We are not going to interfere with their operations."¹⁰

Worse still, is the misfortune of self-contradiction depicted in most speeches in this debate like,

"NGOs should not fear about their autonomy ... contradicts the remark that 'so the NGOs have been left a bit loose without any controlling point.' And that, 'NGOs should not be left to make independent decisions on where to assist.'¹¹

activ The most important issues regarding the Bill were overlooked. The legislators have taken a unitary stand in this direction. Mr. Mangoli's contribution to the Bill is,

devel "The most important aspect of this Bill is to ensure that all NGOs, once and for all are put in a position where they will be regulated and checked."¹²

"I'm pleased ... NGOs like Green Belt Movement, after this Bill becomes law will be monitored by the government."¹³

The Bill was passed because of the MPs self-conceit, narrow issues and personal grudges.

However, all the MPs in the opening speeches have thanked and praised NGOs for their activities significantly. But as one progresses with the speeches the statements they make like, "scrutiny will be made so that no NGOs are allowed to operate outside the system which government understands," betrays the above suggestion. Behind those blessed statements, lurk serious undercurrents of jealousy and suspicion, however. The most important point under discussion was the opinion of the legislature. Such that if the legislature decides that an organization does not deserve to be registered it will be denied registration and if it operates within a system that the government cannot understand then it cannot be left to continue operating in its own system within the government. To pass a law to scrutinize

activities of NGOs to render them powerless and inoperative is unfair. The Act is therefore an outcome of the confusion, suspicious and quite often, mistaken role of NGOs in national development.

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2.2 IT IS NGOS AND THE LAW IN KENYA;

SOME LEGAL PROVISIONS AND DEROGATIONS FROM AUTONOMY OF NGOS
CHARACTER (ACT NO. 19 OF 1990)

obviously

with Kenyans have been involved in development activities on a self-help basis long before the word NGO became fashionable, on the basis of harambee spirit. Therefore the activities of NGOs are not new to Kenyans. Despite this, Kenya has witnessed years of uncertain relationship between the government and NGOs until towards the end of 1990 when a Bill to oversee the registration and operations of NGOs in Kenya was tabled in Parliament.

article 4.

The initiative taken by the government to officially recognize the existence of NGOs and the NGO sector is appreciated. It was felt that whilst NGOs are a proper operating forum for non-government initiatives, it was necessary that their activities be co-ordinated and institutional structures set up to assist them in being more effective.

by of

Co-ordination is important because it synchronizes activities and enhances exchange of resources. It facilitates communication and reduces duplication of development efforts. No development expert, in effect, would deny the need for collaboration and co-ordination especially in the context of maximizing the efficacy of scarce resources which is what development activities entail among other things.

It is a well known fact that due to absence of dialogue in some countries, relations between NGOs and governments are characterized by skepticism, mutual suspicion and mistrust, which obviously are not conducive to development at any level. In fact, with the increased international recognition of the role of NGOs in development the past two decades have seen a hide and seek game between NGOs and governments in many African countries. This has led many to say,

"... NGO sector has become an upwardly mobile industry with great potential for development. But the manner in which they which are being treated is analogous to the way the informal sector devel artisan (Jua Kali) was viewed and treated by the formal system track from the early 70s to mid 80s. The memory of Jua Kali servi artisans, being harassed and chased away by city council ordin askaris for conducting the then illegal informal trade, is still vivid and fresh in our minds.

It is ironic that a sector which had been ignored and abused cent by official development planners is currently exonerated as near by one of Kenya's major economic sectors. The Jua Kali artisan who for 3 decades was bulldozed out of the mainstream economic system is now being glorified and even baited with easy loans and credit facilities. In this regard NGOs have in several instances been viewed not as non-governmental but as anti-government."¹⁴

2.3 Previously, a whole range of government units were responsible for piecemeal aspects of NGO activity ranging from customs clearance for imported goods to security clearance for technical assistance personnel. In a nutshell NGO contacts with the state were scattered over a wide institutional front and no individual government agency had knowledge of the NGO picture as a whole. This was a constraint insofar as obtaining reliable data on the extent, location and exact activities of NGOs was concerned.

The government had never set up a legal mechanism through which the NGO sector could formally liaise with the government at development policy level, although there have been efforts to keep track of NGOs through the Kenya National Council for Social Services since 1964, until the government came up with the NGO co-ordination Act of 1990.

It is from this point that we shall scrutinize the nature of central government co-ordination or control through several measures that have been set up. They are;

Establishment of the board, Ministerial powers of control and Inclusion of ambiguities in the Act on provisions of registration, licencing, definition of NGOs and deregistration etc.

2.3 ESTABLISHMENT OF THE BOARD (FUNCTIONS)

internati

secu "In 1964 the government created the KNCSS (Kenya National
accou Council for Social Services), whose task was to co-ordinate
the activities of the voluntary organizations with those of
government and the Local Authorities with a view to avoid
duplication. All the NGOs were required to register with the
KNCSS and provide complete description of their management
structures and staffing, sources of funding, philosophy of
operation and, where appropriate, any overseas links as well
as the range of their operations both in Kenya and overseas."¹⁵

NGOs hijack

who In short the KNCSS was supposed to execute similar functions
as those of the board, short of licencing.

Part

But with the legislation of the NGO co-ordination Act, came
the establishment of a board whose functions are to register all
such organizations in the country, issue policy guidelines and
advise the government on the organizations' roles, co-ordinate NGO
activities in liaison with a national council of voluntary Agencies
and updating the organizations' annual budgets and reports.

meetings of

The board will be the sole body allowed to renew or cancel
registration certificates and to make recommendations to the Chief
Immigration Officer on work permits for NGO personnel. NGOs will
be required to specify the locations, addresses and annual budgets,

resources, funding, duration of activities and national or international affiliations. The board will be allowed to invest in securities and bank deposits and will have to submit its books of accounts to the Auditor-General.

council.

It is evident that whatever the new board proposes to do could have been done by the KNCSS if it had been strengthened by being given more finance and personnel and given more powers. With the unilateral publication of the Bill on the part of the ministry, the NGOs and the KNCSS find themselves without an avenue to complain. The role of KNCSS has been sidelined and the recommendations of the NGOs hijacked. The question as to which will control the other and who will listen to who is still left lingering in our minds.

legislation

Furthermore, in the province of administration the board has been vested with responsibilities too wide and administratively difficult to achieve.

this is

Under Act No. 19 a council shall be formed for purposes of self-regulation by NGOs themselves. The Act goes further by requiring that a government official "supervise" the initial meetings of the proposed council until such time as it adopts its rules and procedures and decides on its structure. NGOs as the owners of the council should supervise its activities. The board as the administrative arm of the Act and its links with the self-regulatory arm of NGOs i.e. the council suggest a clear signal in

respect of centralization of power and the potential for undue control over NGOs.

The requirement that the code of conduct once drafted by the council, would be subject to the approval of the board and the minister reinforces the foregoing suggestion. Bearing in mind that the board comprises of a large number of government representatives in comparison with NGO representation, decisions which will be taken are bound to be biased against NGOs. This is especially true if the method of approving these decisions is by a majority vote.

It is undisputed that any government should indeed have the authority to approve the by-laws made through subsidiary legislation of its organizations. But the Act authorizes the government to oversee the process by which by-laws are drawn up. This is conferment of too much power on the government and at its own discretion which are prone to misuse, yet not to be questioned. This is ultra vires the government's power insofar as it infringes on NGOs autonomy to make their own laws.

In any case, the control functions of the proposed NGO coordination board can perhaps be found in various existing agencies. The board would regroup these functions, make them redundant and create a new bureaucracy to administer them. The advantage to government would be to empower the board to be more proactive in

decertifying NGOs if they are deemed no longer to serve the "national interest" or if they are "believed" to "cease to exist".
bureau will

means The establishment of the board therefore defeats the purpose of self-regulation because NGOs do not seem to have much self-regulating powers even through their own council which stands to be surveilled and scrutinized by the board. The council is a toothless organ without any measure of autonomy.

quarter

It would be recommendable if the government were to seek merely to streamline its procedures through a one - stop procedure without creating a board.

should

Section 4 of the Act deals with the composition of the board. The chairman of the board and many of its top officials will be appointed by the president and the minister designated to do so. Presidential powers under this perspective are direct interference with NGOs autonomy because these officials will respond to whatever they are directed to do from "higher authorities" or from "above". As a result NGOs will not be fairly represented and if they complain the defence most likely to be put to them is that the president has prerogative powers that authorize him to do anything and that such powers are not questionable. This will amount to direct interference on NGO autonomy; whereas the board shall regulate its own proceedings.

compliance

There is to be established a central information bureau to accomplish the task of collecting necessary data on NGOs. The bureau will be located in the office of the president and this means direct control from the government. Perhaps, it has been said, recog

"NGOs have themselves to blame for these difficulties. Over the last 3 years the government has requested that they organize themselves under the umbrella of KNCSS. Only a quarter of them have given KNCSS the necessary co-operation by providing information about their operations and paying their dues. The independence they have been jealously guarding may be whittled down under the new board, whose preoccupation should be to facilitate the good work of the NGOs."¹⁶

This argument should not be used to justify the government's attempt to curtail the NGOs autonomy, because this same problem may have been triggered by the government's laxity to obtain data on NGOs through their agencies like the KNCSS or any other government machinery and also because of seeing NGOs as suspicious anti-government organisations. This can cause NGOs to conceal their literature. Therefore co-ordination is not a one-way effort as noted hereunder,

"The key word in the Act is co-ordination, which can only be achieved through Government/NGO co-operation, based on practical experiences already gained through the existing complimentary relationship between the government and the

voluntary agencies. NGOs must acknowledge the primary role of Government governments in setting national priorities, and at the same time, they should clearly define and communicate their policy objectives. In the same way governments will have to recognize NGOs as full partners in development, and if possible, involve them in the implementation processes of national development programmes."¹⁷

In short, co-ordination has not been achieved due to the reasons above or other unknown factors.

In essence, the powers of the board are not clearly defined because in the Act the definition of the term "NGO" is not clear and it is left to the board to decide which organization qualifies to be one. NGOs therefore are not assured all the time that they are in the real sense what they are supposed to be because if the members of the board one morning wake up and they are "off-colour" they, may disqualify an organization that is truly an NGO, as one that is not.

The board is also supposed to approve financial expenditure of NGOs in their projects. It is also charged with the responsibility of paying salaries to its own members and allowances for maintenance and repair of their properties. The fact that NGOs are able to pay higher salaries than government so that more people are striving to get jobs with NGOs, has sent sensitive nerves in the

Government. The board may be used to embezzle NGO funds instead of improving the finances of NGOs. This is why there has recently been a requirement by the president that NGOs must channel their finances through the correct procedures i.e. Government. This control over NGOs finances depicts a measure to curtail their freedom to use such finances as they plan and desire for their activities.

The idea that the board should approve the NGO staff and pay salaries is on the face of it restrictive on NGO finances. Huge salaries will be paid to members who represent the Government instead, because it defeats logic to seek to implement such a policy. It is like saying NGOs are defeated in their responsibility to pay their employees. This is interference on the freedom of NGOs.

The board has also been vested with enormous powers of registration, licensing and cancellation which will be discussed hereunder. It is impossible for a bureau that is politically stacked and a council that is given financial relief and supervised by "Big Brother" (board) to achieve their goals.

2.4 REGISTRATION, LICENCING AND FINANCING OF THE BOARD

For any law to be legitimate it must be clear, brief and defined. Unfortunately the law meant to co-ordinate NGOs is ambiguous in many respects. This Lacuna(e)

may have been precipitated by lack of participation in the law making process by NGOs and possibly any intention Parliament may have been harbouring at the time of making this law.

The Act gives a very broad definition of NGOs and uses loaded terms which beg further clarification. It is not specified for instance, whether either churches or small self-help groups e.g. women groups are perceived as NGOs. It lacks distinction between donor and operational NGOs. These omissions in the definition can be restrictive on NGOs operations because they could lead to innumerable disputes over interpretations unless the definition is made clearer and more concise. Further, this mixed situation is open to possible abuse e.g. because individuals set themselves up and claim to be an NGO in order to obtain privileges that NGOs seek such as duty free importation, exemption from paying taxes etc. A difficulty then arises as to which criteria can be used to recognise and register an NGO, that can accommodate their diversity, not unduly inhibit people's initiatives to form organisations for development and welfare purposes, but will weed out illegitimate organisations. It is not strange that Government may try to manouver its way by interpreting such ambiguities in favour of its opinions and itself.

The categorisation of NGOs into national and international may cause division in the NGO mosaic; yet their solidarity is crucial. This amounts to partial treatment of NGOs i.e. those NGOs that become partisan fall in favour of the Government and are treated in a more special way. An example is Kanu Maendeleo Ya Wanawake Organisation as it then was before it cut off its links with the Government hence severing the name 'Kanu' from its own to become Maendeleo Ya Wanawake Organisation. The description of NGOs needs to be reworked so that these discrepancies are not used to accomplish ill-motives.

The Act does not clearly indicate what may become of the legal standing of NGOs under the different acts that have been used purpose (previous registrations). This is a problem because some NGOs have refused to register under the Act because it connotes a tendency to control NGOs. The provisions for registration of NGOs also amount to cumbersome procedures and bureaucratic methods which may cause NGOs to give up or yield to the compromise of their autonomy. The renewal of certificates after every 60 months (5 years) purports to turn NGOs into legal creatures of 5 years of life therefore are undesirable. This kind of requirement does not guarantee continuity of NGO projects. This is inhibition of the freedom to carry out their activities according to their wishes.

The law does not conclusively prohibit NGOs from operating anywhere in Kenya but it requires NGOs to carry out their activities across two districts and not more. This question should be dependent on the available resources of any NGO in question such that if an NGO has the resources then it should be free to operate anywhere within Kenya.

registrat

The Government's attempt to impose restrictions on the funds NGOs receive from abroad or otherwise may also jeopardise their operations. This claim by the Government is based on the allegation that NGOs funds are normally wasted and their projects unfinished or poorly executed. While this may apply to one or two cases, NGO projects are by and large better executed than Government projects. Such lame excuses should not be used to restrict NGOs.

These

There is a proviso for the possibility of change of terms and conditions during renewal of registration. This could have adverse consequences for the operations of NGOs in terms of planning and their procurement of resources, as they may not tally with the previous ones. It is most unreasonable to impose new conditions and terms at a later stage. These terms should be introduced *ab initio* i.e. at the time of registration and time allowance given to NGOs to consider them in order to decide whether to accept them or not. This is giving NGOs some kind of freedom to choose for themselves, just as in Senegal one year to consider such terms

be put at stake

before the NGOs can sign the decree. Otherwise imposition would only amount to 'choosing for NGOs' which is tying their hands.

Ford Ford

The issue that the first one hundred NGOs to register should form the council denies other NGOs the democratic participation in making rules that will govern the whole NGO community. Delay in registration may not be steered by self-neglect but due to factors like lack of registration fee or taking time to consider registration requirements, not because NGOs would not wish to participate as implied in the Act. Did the legislators foresee possibilities like 140 or 160 NGOs (any number more than 100) presenting themselves for registration at the same time? How then would 100 be chosen in law and in time?

NGOs

These are some of the instances that the board will misuse its powers in registering and choosing the first 100 NGOs thereby sacrificing the freedom of other NGOs to participate.

all points of

When the criteria for refusal of registration is not extensive enough and is not part of the application procedure, we are left wondering whether this would not lead to negative subjectivity and an environment of reduced freedom. Because the board may refuse to register an organisation simply because it thinks or it has been directed by "higher authorities" not to register it. Without a clearly defined criteria NGOs freedom may be put at stake.

under The board may also deregister an organisation on unfair grounds by virtue of the powers bestowed upon them. A name like Ford Foundation, an NGO based in Eastern and Central Africa, may not be appealing to the Government. Short of a criteria for deregistration, such an organisation may face the wrath of deregistration because the government of the day is allergic to anything 'Ford' in nature or by name. In such cases where the board may become the mouthpiece of higher authorities, NGOs cannot be said to have any autonomy especially since the Act did not formulate any rules for a hearing before cancellation or deregistration on account of the fault of an individual in the organisation.

The Act

to NGOs require very clear guidelines on legislation, incorporation and registration to be able to operate in Kenya. Regulations and rules governing privileges, tax-exemption and clearance for equipment and staff need to be interpreted clearly at all points of reference within the Government machinery. This will in effect, clear situations where power will be misused against NGOs especially concerning registration and deregistration on invalid grounds.

affairs of the

its Whereas the ban of (ACCK) Associated Christian Churches of Kenya (NGO) based in America was deregistered on reasonable grounds of importing air guns, mechanised bows and arrows, some military camouflage and sophisticated radio equipment illegally,

under the cover of 'household goods' there could be cases where extraneous factors are taken into consideration to deregister NGOs.

It is supposed that the board has power in the courts. But with the undefined powers of the board such events may become rampant.

When all is said and done, what supports the idea that the Act is a control mechanism are the powers conferred on the Minister.

Appeals are to be made against the board's decisions. The Minister is the final authority and his decisions are final.

The board may, for instance, refuse registration of an organisation on unfair grounds or cancel its registration. Bearing in mind that the Minister is responsible for the day to day affairs of the board and the approval of many of its activities, it is hardly very likely that he would hold a different opinion where the board has deregistered an NGO or refused to register.

Yet appeals are supposed to be directed to the Minister.

provisions of the Act.

operation, the

2.5 MINISTERIAL POWERS:

The Act confers upon the Minister excessive powers amounting to control of NGOs. This shall be examined from diverse perspectives starting from the question of access to the courts.

intention of the Minister is deemed the appellate body for any disputes autonomy that is unresolved whereas no access to the courts is provided for on the other hand.

The Minister is the final authority and his decisions are final. The board may, for instance, refuse registration of an organisation on unfair grounds or cancel its registration. Bearing in mind that the Minister is responsible for the day to day affairs of the board and the approval of many of its activities, it is hardly very likely that he would hold a different opinion where the board has deregistered an NGO or refused to register.

except perhaps on very exceptional cases. Yet appeals are supposed to be directed to the Minister.

provisions of the Act.

and aut
It is not possible to overrule dialogue between the Minister
interfer
and the NGOs in solving disputes, not necessarily resorting to the
register
courts. But history has known such persons with concentration of
power in their hands to misuse it i.e. using it for what is not
The
supposed to be used for. This is because these are challenges
the other
against decisions the Minister may have himself made or concerned
not neces
with when sitting in his capacity as a member of the board.
should be

The Act of
Appeals should be made to an independent body because if they
fundamenta
are to be made to the same officer who cancelled the certificate of
operation, fair decisions may not be taken.

Member
send their
Although this may not be an issue because the Minister
board. The
has no powers to deny anybody access to the courts, it imputes an
executive
intention of imposing decisions on NGOs. In such a situation the
mentioned
autonomy they are supposed to have is not seen to be guaranteed.
Ford Found

reinforces
It is not clear from the rules what happens to an NGO that has
organ becau
been refused registration or is otherwise exempted therefrom. An
considered
NGO that has been exempted from registration would not thereafter
represent the
be bound by the Act or the rules thereunder unless the exemption
is only from a specified part of the Act instead of the whole of
Yet spe
it. According to Part III S. 9 2 (a) of the Act, if the Minister
by the Minister
does not exempt the NGO he shall treat the application as an
dominated by
application for registration and shall register according to the
representation
provisions of the Act. This is legitimising arbitrary use of power

and authority (office) for the Minister which is direct interference with one of the NGOs freedoms ... to choose to be registered or not.

control.

The right to dissolve an association of free individuals is the other side of the coin, of the freedom of association. It is not necessary that the prior consent of the board and the Minister should be sought upon an intention by an NGO to dissolve itself. The Act or the regulations cannot therefore interfere with this fundamental right.

decide. No.

Members proposed to be appointed to the NGO council have to send their names to the Minister for their appointment to the board. There cannot be unfettered powers in the Minister and the executive Director to refuse or approve names because as earlier mentioned there may be a lot of discrimination against NGOs like Ford Foundation, which is not likely to change its name. This reinforces an earlier argument that the council is a toothless organ because even if it chooses its leaders they have to be considered by the Minister before they can be approved to represent the NGOs interests.

For NGOs

Yet again, the day today affairs of the board shall be run by the Minister. Remembering that the composition of the board is dominated by the Government representatives compared to NGO representation,

The minister too being the final authority his decisions are likely to represent the interests of Government whereas NGOs interests will be overlooked. This is a clear manifestation of control.

The minister is also charged with the responsibility of making rules prescribing terms and conditions for the importation of any equipment required by NGOs for their activities in Kenya. The Act is not clear as to whether such rules of duty exemption apply to items purchased locally or abroad, or it is left to the minister to decide. Nevertheless, duty exemption should apply to all items whether purchased locally or from abroad, which are for use in carrying out their activities.

This lack of clearly defined powers means lack of a clear division of responsibility of appointing members of these boards. The Minister does wield immense powers by way of formal directives. This anomaly is accentuated by the fact that more often than not, the Minister has the responsibility of appointing members of these boards.

For NGOs to be autonomous they must be left independent to make their own decisions. The minister should not assume this responsibility to the fullest, as it would appear to be. As a result it would be difficult to convince anyone about the truth of

the suggestion that the Act was passed to o-ordinate and not to control NGOs.

1. Prelim.

2. Held.

3. The w

4. OFFI

5. Scot.

6. NGO CO

7. Ibid. 1

8. Ibid. 10

9. Ibid. 7

10. Ibid. 5

11. Ibid. 4 & 5

12. Ibid. 7

13. Ibid. 5, 6

FOOTNOTES

13. *Ibid*

1. Preliminary Report on the Seminar for representation of NGOs held at the Milimani Hotel, Nairobi on February 8, 1991.

2. The World Bank/IFC/MIGA

10. OFFICE MEMORANDUM at p.2 et. seq.

3. Prof. B.A Mabueze: CONSTITUTIONALISM IN EMERGENT STATES

4. NGO CO-ORDINATION BILL, SECOND READING M.3 - 13.12.90

5. *Ibid*, p.3. 13- 12-90

6. *Ibid*, U.4 and V.2 11.12.90

7. *Ibid*, W.L. 11.12.90

8. *Ibid*, R.5 13.12.90

9. *Ibid*, R.4. 13.12.90

10. *Ibid*, Q.3, 13.12.90

11. *Ibid*, S.1, 13.12.90

12. *Ibid*, S.2, 13.12.90

13. *Ibid*, T.1, 13.12.90

14. RESOURCES - KENGO NEWS: NGO News - NGO CO-ORDINATION ACT OF 1990

15. C.M. Lekyo: Survey Report on Supportive policy framework for voluntary Non profit Development Action in Kenya
a) Objective
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FOOTNOTES

CHAPTER III

TWO CASE STUDIES

CONTENTS

3.0 (KANU) MAENDELEO YA WANAWAKE ORGANISATION

a) Objectives

3.1 FUNCTIONING OF MAENDELEO BEFORE AND AFTER CO-OPTION ANALYSED

3.2 THE GREENBELT MOVEMENT

a) Objectives

3.3 WHY THE ENVIRONMENT IS VIEWED AS A VEXED QUESTION

3.4 THE SUCCESS AND ACHIEVEMENTS OF THE GREENBELT MOVEMENT.

FOOTNOTES

We have looked at the concept of autonomy in Chapter I and considered in Chapter 2 the extent to which Act No. 19 of 1990 embodies this concept. It is timely now to study two examples of non-governmental organisations in Kenya to assess the extent to which this concept fits into our analysis of Chapter 2. These are Kanu Maendeleo ya Wanawake Organisation as it was then and the Green Belt Movement.

3.0 MAENDELEO YA WANAWAKE ORGANISATION

Maendeleo ya Wanawake Organisation (KMYWO) is a grassroots women's organisation with branches throughout the country. The organisation began in 1952, during the struggle for independence as a voluntary welfare body. It was started by a British Woman known as Nancy Shepard, as a charitable organisation, during the emergency, in places like Central province. Its major objective was the development and improvement of the status of women and living conditions of women and girls of all communities in Kenya. It is not the African woman who felt the need for and initiated its leadership. That was how maendeleo started and when the African woman took over she literally stepped into the shoes of the white woman.¹

MAENDELEO'S OBJECTIVES

1) To do:

A study of the constitution of KMYWO provides the following aims:

By way

- a) To promote the qualities of integrity, honesty, truthfulness, tolerance, service and friendship as the foundation of all activities of Maendeleo.
- b) To develop and improve the status and conditions of life of women and families of all communities in Kenya through many ways.
- c) To help find solutions for the disadvantaged women, children and disabled persons in society as a whole.
- d) To promote health for families in Kenya.
- e) To promote the legal status of women and children in Kenya.
- f) To promote leadership of women in the country through education.
- g) To co-ordinate development activities and programmes of all non-political women organisations at national, provincial and district levels.
- h) To co-operate with other non-political societies or groups with similar interests or aims.
- i) To set up branches at District, Divisional, Locational and sublocational level throughout the country.
- j) To raise funds locally and internationally in support of Maendeleo's objectives.

k) To initiate relevant programmes for girls.

l) To do all other things as are necessary to fulfil its aims and objectives.

example:

By virtue of the role bestowed upon KMYWO, it is expected to provide leadership and guidance to other women's organisations affiliated to it. It should indeed spearhead the formation of a cohesive women movement capable of influencing national decision making process and lobbying for women's representation in the political arena.

promising

But Maendeleo Ya Wanawake Organisation has largely been ineffective in empowering women and in facilitating increased participation of women in public decision making. The male dominated system has succeeded in co-opting the conservative leaders with Maendeleo while marginalising the women's organisations viewed as radical.

could

The idea of co-option means combining of an organisation's efforts, goals or objectives with another or with the Government. It also implies inter-mingling of any two or more systems. It entails the severance of a measure of freedom of the organisation being co-opted. This is what made the realisation of Maendeleo's objectives hard.

KMYWO, as

party mouthpiece

words Generally, this is not entirely an experience unique to Kenya but is a common phenomena in African countries whereby nationally sponsored women's organisations match Maendeleo's example.

foreign
However, this is not a justification for its being co-opted to Kanu as until when it was. Contrary to its objective of being non-partisan in political issues or indeed characteristically of all NGOs, following Maendeleo's affiliation to Kanu in May, 1987, its politicisation was complete. This was done by the ruling party promising Maendeleo representation at all party levels, to which Maendeleo yielded. Whereas it was earlier noted that,

Observation
"Management autonomy means holding elections freely, using an its organisations finances freely though of course responsibly, special taking its own independent decisions etc. In relation to that this, there were many problems facing Maendeleo because it gives could not take its own decisions, simply because of its with affiliation to Kanu. In fact the idea of merging MYWO with the ruling party was not taken by women but men leaders in the ruling party. The organisation therefore stood the risk of being tied by decisions emanating from the ruling party ab an initio."

independently
KMYWO, as it then was, was effectively converted into another party mouthpiece, since the women in the top management or in other

words, its leaders seemed very good pupils under the tutelage of their male gurus in the ruling party.

Phrases like,

"Foreign meddlers out to destabilise the country by pouring in foreign money"², were being mouthed at will by the KMYWO leaders.

Due to the marriage between KMYWO and Kanu, they spoke in unison against issues relating to multi-party politics etc. This violates one of Maendeleo's objectives not to be partisan and one characteristic of all NGOs of which Maendeleo is one.

Jeremiah

Observations can be made that KMYWO has been manipulated and politically controlled by the ruling party. Further, because of its acquiescence it is accorded formal support and made to feel special and powerful in comparison with other NGOs especially those that are comprised of female members for their majority. This gives a connotation that if KMYWO takes decisions which conflict with those of the ruling party it will not win the favours its accorded. This in essence means being conditioned to do, say or act the way or in the manner in which the ruling party acts or requires it to act and in such circumstances, a person or KMYWO as an NGO cannot be said to be autonomous, because it can only act independently as and when the ruling party does the same. The following four quotations reinforce the foregoing suggestion,

"For instance, KMYWO national elections, the first of this nature were held in October 1989 and the above discussion can or could be seen manifest in it. The male politicians were not supposed to interfere with the election, or in more sympathetic terms - the ruling party. But as it turned out, the opportunity availed itself for the key male politicians in the Government to ensure that their next of kin from the female gender secured or captured the leadership of this women's organisation at grassroot level. This included Mrs. Eunice Kamotho - wife of the Kanu Secretary General, Joseph Kamotho, Mrs. Eunice Nyaga - wife of the Livestock Minister, Jeremiah Nyaga, Mrs. Mary Sagini - wife of the Kisii Party boss Mr. Lawrence Sagini, Mrs Clara Omanga - wife of Mr. Andrew Omanga, Mrs Isabel Mwenje - wife of the MP for Embakazi, Mr. David Mwenje and Mrs. Mary Kamuyu - wife of Chris Kamuyu to name but a few.³

"Despite ordinary women's cries of 'rigging' and 'male interference' the powerlessness of the majority of the women in this organisation was once again affirmed".⁴

"Because the current leaders had been selected, they endorsed any policy forwarded by their 'godfathers' instead of representing the true feelings of the Kenyan woman".⁵

"Maendeleo became a slave of the ruling party, no longer were free."⁶

It is important to caution that the argument being advanced here is not directed to the male gender by a female chauvanist but rather to try and show the extent to which the Maendeleo Ya Wanawake Organisation was disabled that it could not operate on its own. Decisions had to come from higher authorities. The only advantage or disadvantage is that the ruling party had more male participants or members hence the contrast reference to the word "male".

From the very beginning even dealing with simple problems of an election became a difficult task for KMYWO. The women chose their leaders through the queuing system earlier adopted by the party. This is a clear indication that Maendeleo was hampered in taking a stand.

Following its affiliation, the KMYWO leadership at both the national and district levels became so intertwined with that of the party that the actions and utterances of the KMYWO leaders could not be distinguished from those of the ruling party by the Kenyans to start with and by agencies and other organisations giving aid to the giant KMYWO. In effect it failed to attract donor funding for its projects or programmes.

any statements the public associated with Kanu leaders while they were on the warpath against their real or imagined enemies became familiar phrases among the KMYWO leaders, especially during the heated and pregnant multi-party debate.

As the calls for pluralism thickened, the KMYWO and the party spoke in unison against the multi-party advocates. The KMYWO, through the chairperson, mouthed support for the one-party state contrary to their objective of being non-partisan on political issues. This is a clear show that this NGO became pre-occupied with other things apart from its work stated in its objectives and worse still disassociated itself with the many NGOs in Kenya which some people would like to believe are anti-government especially the Government leaders who had hijacked KMYWO.

This has led many to say that in Maendeleo we do not have leaders but followers, opportunists, people who are there only because they can benefit.

3.1 THE FUNCTIONING OF THE MAENDELEO AFTER AND BEFORE CO-OPTION ANALYSED.

The functioning of Maendeleo prior to its affiliation to Kanu was characterised by some measure of autonomy to a large extent. Leaders like Mrs. Jane Kiano largely succeeded in leading the organisation to attain its objectives. Maendeleo received aid from

any willing donor and used it for any of its projects according to preferences or priorities of the members of the organisations. No consultations had to be made before making any step hence its operation was sound.

Agnes Nde

After its affiliation to Kanu, the relationship between KMYWO, as it then was and Kanu became that of a master-servant. This is so because Maendeleo was heavily patronised financially, all the members had to be Kanu, it had to make consultation with the party before acting, for a go-ahead hence it was very unlikely that Maendeleo would influence the decisions of Kanu whereas it had to consent to whatever the party demanded. Indeed, it had no option because if it did not, the material support it was accorded by the Government could be diverted to other areas.

Introduction

Maendeleo would not serve the interests of its members unless it towed the Kanu line. But even if it so did, the interests of its members that did not fully conform to those of the party would not fully be taken care of.

The few men

The constitution of Maendeleo also cannot be amended without consultation with the party. For one to vie for a seat, in the organisation she/he has to be a member and so do on a Kanu ticket. One wonders why this cannot be done through a Maendeleo ticket. A Kanu representative must attend such meetings. This indicates the

and facts brought

fact that the organisation became heavily patronised and it could not conduct its affairs independently.

It is in early December 1991, when the MP for Kibwezi, Mrs Agnes Ndeti openly called on the ruling party to sever ties with the women's organisation. This was because Maendeleo was having trouble in attracting donor funding, because of its link with Kanu. On a special delegates meeting held on December 3rd, 1991 KMYWO was given the go-ahead to change its constitution to enable it decamp from Kanu. The Assistant Minister for Culture and Social Services under which KMYWO falls, Mrs. Grace Ogot, had reached an agreement to cut ties and remove the term 'Kanu' from their name. This was to avoid confusion about the relationship between them by foreign donors. It was also necessitated by the party's endorsement of the introduction to political pluralism, as pressure for pluralism thickened.

Concerning membership of Maendeleo of the male gender, not many people know that the organisation is for both men and women. The few men who are members of this organisation are the Kanu stalwarts. Lack of this awareness may or could presumably be caused by lack of freedom to publicise it by Maendeleo itself outrightly or by Kanu indirectly after consultations have been made.

At the end of the day, some of these explanations, opinions and facts brought into light in this paper may be true, unfounded

or exaggerated but any evil pertaining to any of the above has tended to be blamed on Maendeleo's affiliation to Kanu and the consequent curtailment of its independence to make its own decisions. This coupled with the fact that when the leaders are chosen to those big positions they alienate themselves from the rest of the Maendeleo's members leaves, no doubt that the power of decision making is a priority of a few members. When this happens organisation cannot be said to be independent because most of its members have no say. It would be wishful thinking to imagine that such top personalities will fail to implement religiously what the party directs.

In this connection the NGO co-ordination Act would be more suited to govern NGOs like Maendeleo in its affiliate status since it seeks to control the whole of the NGO mosaic. For this would only amount to making into law what the party had already achieved considering the operation of Maendeleo before its affiliation to Kanu and the other NGOs operative in Kenya presently the NGOs co-ordinating Act does not suit as legislation to govern them because it sets a kind of bureaucracy to control them which is inimical to the realisation of their objectives. This is why the NGOs and the Government fell into conflict when the NGOs forwarded recommendations to be considered by the Government to amend Act No. 19 of 1990, thereby refusing to be governed by this Act, whereupon it was withdrawn and eventually rendered operational on NGOs without any major changes or amendments.

From the turning point of Maendeleo it is closely being observed as to the manner and effectiveness it shall discharge its functions, to form base for judging whether its co-option was a liability or otherwise. This is an NGO characterised by no measure of autonomy which consequence caused it a myriad of problems. Now we shall look at the Greenbelt Movement, to find out whether it bears the same traits that Maendeleo did have or otherwise.

the conscience

the right to

desertification

OBJECTIVES:

There are

a) Short-term

1)

2)

THE GREENBELT MOVEMENT

The Greenbelt Movement is an indigenous grassroots environment/campaign with tree planting as its basic activity. It was developed under the auspices of the National Council of Women of Kenya in 1977. The Greenbelt is an effort in the direction of healing, rehabilitating and protecting the environment. Its objectives are many and varied, but mainly it is intended to raise the consciousness of the people to the level which moves them to do the right things for the environment. It endeavours to curb all desertification processes in Kenya and even Africa.⁷

OBJECTIVES;

There are short-term and long-term objectives.

a) Short-term objectives

- i) To create public awareness on desertification.
- ii) To raise awareness on the relationship between the environment per se and such issues as the fuelwood crisis, poverty, unemployment and under-employment, food crisis, overpopulation, mismanagement, of natural resources and effects of these on political and economic situation throughout Africa.

- iii) And encourage tree planting so as to provide the major energy source for over 90% of Kenya's rural population and the urban lower income groups.
- iv) To promote planting of multi-purpose trees with special reference to nutritional and energy requirements for man and his livestock.
- v) To encourage soil rehabilitation, water harvesting and conservation and protection of the catchment areas, many of which have been deforested and even settled upon.
- vi) To re-afforest and restore its natural beauty while raising people's awareness on the need to protect Kenya's remaining forests.
- vii) To create jobs in the rural areas especially for the handicapped and the rural poor.
- viii) To make tree planting an income-generating activity especially for women.
- ix) To encourage extensive tree farming by private small scale farmers.

- x) To promote zero-grazing and organic farming as a means of improving soil fertility and food production.
- xi) To promote and increase awareness on the importance of adequate and balanced diet based on traditional foodstuffs and drought resistant crops.
- xii) To create employment opportunities for young people in the agricultural sector and in the Greenbelt Movement.
- xiii) To initiate tree planting in every community in Kenya.

Long-term objectives

- i) Avert desertification process through tree-planting and soil/and water conservation.
- ii) Promotes environment conservation and sustainable development.
- iii) Promotes indigenous trees and shrubs which are rapidly becoming extinct as promotion of exotic species intensifies.

- iv) Promotes a positive image of a woman's personality by projecting her leading role in national development.
- v) Encourages indigenous initiatives which restore self-confidence in a people overwhelmed by "foreign experts".
- vi) Promotes the protection and maintenance of the environment through seminars, conference workshops etc.
- vii) Develops replicable methodology for rural development.
- viii) Carries out research in conjunction with *universities and research institutions.*
- ix) Strengthens and empowers groups and staff through training and informing.
- x) Encourages women to make their own decisions, identify their objectives and strategies and implement them in order to benefit from their labour.
- xi) Provides a forum at which the voice of those working at the grassroot can articulate preferences either by words or deeds (or both).
- xii) Emphasises the human persons as a main resource as compared to funds, formal education or specialisation.

- xiii) Seeks to encourage participants to empower themselves, strengthen their self-confidence and self-esteem and cultivate pride in their cultural values and heritage.
- xiv) Strives to share the experience gained in the Greenbelt Movement with others in the region in particular and the world in general.
- xv) Addresses itself to the poorer sectors of societies and endeavours to alleviate poverty.
- xvi) The efforts of re-afforestation contribute towards reduction of greenhouse gasses in the atmosphere and the prospects of climatic change.
- xvii) Encourages spiritual and cultural values which link people with their roots and with Nature and God. Our traditional values and systems have been eroded, undervalued and destroyed in the process of colonisation and modern mode of development. In that process many people have become economically, socially and politically marginalised. It is the spiritual and cultural values which can contribute towards restoration of self-confidence, self-empowerment and recognition of the person as the greater resource to self and country.

3.3 WHY THE ENVIRONMENT IS VIEWED AS A VEXED QUESTION

The co-ordinator of the Greenbelt Movement, Prof. Wangari Maathai says,

"It is not really a controversial issue. It is because people are only just discovering how international the environment issue is. So they are caught unprepared. People have for a long time treated the environment as though it doesn't matter partly because the public is uninformed. The Uhuru Park stand issue has awakened people concerning the environment. They have only realised that the environment isn't benign. It is not just planting trees, protecting animals, flowers and all that."⁸

People are discovering that things they once regarded positively e.g. pollution from factories, are actually having a negative impact on their environment. Dr. Maria Nzomo observed that,

"The environment has been viewed as a controversial issue because of Prof. Maathai's experience during her 1989/90 confrontation with the Government over environmental issue. Unlike in the past, Maathai had challenged the state and society on issues of gender equity and social justice, in 1989 she was opposing the Government's decision to build a skyscraper in the middle of one of the largest recreational parks in the middle of the city of Nairobi. Her opposition was based on a genuine environmental concern that clearly cut

across gender, class or race. But when she decided to seek a High Court injunction to restrain the Government from implementing its decision, the entire membership of parliament descended upon her attacking her personality. What was a national issue was then reduced into a personal gender issue."⁹

It can be seen that Prof. Maathai's sentiment was against a general environmental concern but it was turned into a personal issue, meaning the Government was not ready to support her. The only solid show of support for Maathai came from international environmentalists and external donors of the project who vindicated her by refusing to fund it.

3.4 THE SUCCESS AND ACHIEVEMENTS OF THE GREENBELT MOVEMENT

The public has generally viewed the Greenbelt Movement to have a successful story. Its successes shall be listed first and the reasons for it afterwards.

Over 1000 tree nurseries have been established. Some have died because of one constraint or another. They have produced millions of tree seedlings which have been issued to small-scale farmers, schools and churches.

Many jobs have been created both in the urban centres but mostly in the rural areas.

The campaign for indigenous trees and shrubs has been successful.

Women continue to cultivate a more positive image of themselves. About 50,000 women are involved at nursery sites.

The groups are proud of their ability to carry out their projects on their own without being patronised.

Public awareness on the need to protect the environment has increased. This has been done through many ways e.g. publication of booklets, films, etc.

The movement is spreading to other African countries and may soon be replicated throughout East and Central Africa.

Over 3000 schools have planted the trees on school compounds and have involved over 1 million school children. And over 50,000 households (small-scale farmers) have planted trees on their farms. So the Greenbelt Movement has been considered a project by the people rather than for the people. The reasons for the Greenbelt Movement's success are:

It is considered a right idea for the right time. The Greenbelt Movement took up the environment just when the world was beginning to wake up to what the environment is all about. Also because tree planting is income generating.

Its success may also be attributed to some extent to its membership. Children and men joined and so it has a very positive impact.

The main reason for the Greenbelt Movement's success is educated people. If the Uhuru Park event had happened 15-20 years ago, there is little hope that it would have succeeded. People used "I-LOVE-UHURU-PARK" stickers quietly but raised consciousness. Interesting though, the Government was caught unawares by the people's response.

Ours is the question of management autonomy which is central to the concept of NGO efficacy. The theme is important because NGOs must conduct their goals and hence freedom to experiment without pervasive ministerial control, which if over-played will stifle such initiative.

This leads us to discuss the last reason for the Greenbelt Movement's achievements and success -autonomy.

"Since its not part of the Government, its members are free to take up the work which they are able to take up and abandon

that which they think won't work. There is no bureaucracy which controls organisations that are quasi-Government."¹⁰.

This means the Greenbelt Movement unlike MYWO, former KMYWO discussed previously, has not circumbed to any pressure from the Government hence it has kept its status quo. NGOs should be non-partisan and in this respect the Greenbelt Movement and other NGOs are greatly hailed whereas MYWO until recently has been cursed and blamed for its co-option into the ruling party. This hampered its efforts to make any headway through its objectives.

"It is the ability of the Greenbelt Movement to make their own independent decisions that has earned them their success. In addition, the movement has been able to largely attract financial support from abroad and practical support from thousands of local citizens."¹¹.

Whereas recently MYWO lost support from its donor agencies because they could not differentiate it from the ruling party. Its freedom was completely stifled and that is why MYWO could not insist that the party honours its 1990 pledge for the latter's representation on the governing and executive positions in KANU. Therefore, MYWO was no threat to the Government hence it was easy for Kanu to use their tactics e.g. ceremonial affirmation, tokenism, verbal plays and promoting the conservative elements to subdue it. Affiliation

to Kanu effectively silenced the officials inside and outside Kanu.

Therefore NGOs can only make lucid contributions only when operating in an atmosphere of freedom. The Greenbelt Movement, for instance, has been conducting its affairs free from any body or party as pertains to its membership, financial provisions, elections, management, decision making and even in areas or territories of operation. In respect of this MYWO has failed to a large extent.

It suffices therefore to say that a compromise of autonomy would only serve as a last nail in the coffin for NGOs and this leads us to the next chapter on the conclusion and recommendation on the issue.

FOOTNOTES:

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and
MAENDELEO YA WANAWAKE INFORMATION BOOKLET, p.1.
2. *Ibid*, p.10.
3. *Ibid*, p.10.
4. WEEKLY REVIEW NOV. 3 1989 AT p.1.
5. WOMEN'S VOICE, April, May and June Editions.
6. SUNDAY STANDARD, OCT. 4 1990
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7. THE GREENBELT MOVEMENT INFORMATION LEAFLET P.1.
8. PRESENCE VOL 8, NO.13 p.6, 12.
9. MARIA NZOMO: Women in Politics and Public Decision Making.
and
DAILY NATION DEC. 15, 1989.
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11. *Supra* not 7 p.6.

CHAPTER 4

4.0 A COMPROMISE OF NGO AUTONOMY; REPERCUSSIONS

Hereunder shall be discussed possible consequences in event of the government stifling NGO autonomy or if it is compromised. They are not conclusive but the following are the most obvious or probable ones.

As noted earlier, autonomy is a necessity in guaranteeing that NGOs or any institution achieves its goals. It suffices to say that a compromise of autonomy would only serve as a last nail in the coffin because NGOs will no longer be free, and necessarily ready and willing to pursue their goals, due to these fears;

- (a) Lack of autonomy may lead to lack of transparency especially on the part of the NGOs or if it has been there it may become acute. This is not something desired especially in this era when transparency is needed most.

NGO activities change with ease wherever mistakes occur i.e. they are flexible. This advantage enables NGOs to adjust to changing circumstances in a manner that takes governments much longer to achieve. NGOs in this regard may make corrections on whatever they do and receive

feedback without delay. This is possible because of their independence to undertake anything. Grassroots development calls for a non-bureaucratic view of contracts and relationships, flexibility in the face of new situations, adaptability in the face of complexity.

In the event of our government imposing conditions on NGOs finances, use and the method of receiving the same, their membership, approval of their meetings and generally their internal management, NGOs might be forced or may choose to operate most of their activities underground. As for NGOs that already had been feeling threatened and were involved in clandestine movements or operations they shall even get more serious in such activities.

- (b) Usurpation of NGO autonomy by the government is inimical to the achievement of their objectives or activities. In most instances where governments have exerted control and screening of their activities, NGOs have often terminated their operations. This will even affect national development adversely whereas it would be the reverse if autonomy is a guarantee.
- (c) Bureaucracy results when any organisation autonomy has been usurped. The typical situation in such instances is

misuse of power. Leaders will use power to do what they are not supposed to do i.e. ultra vires use of power. Such an omen will only help worsen Africa's economic crisis and leaders may be tempted to resolve their problems by use of force.

It is surprising that the decentralisation policies that governments promised to pursue, for instance, Sessional Paper No.10 or the 1989-1993 National Development Plan have turned out to be just a sham that ensured that the real power remained in the hands of the central authorities (government).

- (d) Positive, steady and substantial resource flows to Africa are essential for economic recovery and development. This is a justification for donor funding of NGO activities in Africa (Kenya). The freedom to do this, if curtailed, would lead to a standstill economy or constrain development. Many governments may argue that organisations in their country should reduce dependency on donor funding in order not to lead to a foreign capital dependency syndrome. This is invalid. Paradoxically, these governments do not realise they do the same i.e. they receive or rely substantially on foreign aid.

- (e) Naturally, when a body like an NGO or an individual is autonomous it has the will or even the ability and preparedness to experiment with unorthodox ideas and practices. This willingness and preparedness or readiness to learn new things all at the time will be shattered.
- (f) NGO - State relations will become tenuous and this definitely will hinder positive challenges from NGOs to compliment the efforts of the government in development. Faced by hostile governments and other groups with vested interests who may question the NGO financial support from foreign donors, many are not equipped for such confrontation; hence they have to strike a delicate balance between supporting group activities and their urge for justice, against security of the State. It is not strange or something new that such NGOs will be viewed not as non-governmental but as anti-government.
- (g) Relations between NGOs and Local Authorities may in essence be conflictual because Local Authorities are affiliates through which the central government discharges its functions. NGOs normally establish themselves where they choose, according to the type of welcome they receive from local people. The Local Authorities normally become irritated as these

organisations usually come from overseas and take it upon themselves to ignore prevailing administrative procedures. In fact, certain employees of Local Authorities are equally ignorant of the NGO "reality" i.e. the NGO success and achievements and what is more, are necessarily arrogant.

Therefore if the government tightens conditions on NGOs, the relation between NGOs and Local Authorities may worsen to a point of resorting to arms against each other; because in exalting themselves, local authorities may start or resort to giving directives within their locality and NGOs too, in a show of manifesting their autonomy may refuse to be moved or act reluctantly to such directives.

In any case, the normal situation is that Local Authorities are controlled by the Central Government, so if, the government dislikes NGOs then automatically local authorities get infected by this same virus making it rare to find a situation where local authorities are in total Co-operation with NGOs when the central government is not.

- (h) A compromise of NGO autonomy by the government will deny NGOs and government policy dialogue to avoid duplication

and conflict in their activities. This means the government will compete in doing or carrying out the same activities as those of NGOs to surpass or supercede the latter in a bid to win favour from the local masses and vice versa. Government funds will be prone to misuse, mismanagement and embezzlement and governments may not be ready to listen to NGO complaints so that the NGOs will have no forum through which to air their grievances.

Unless there are balanced relations between governments and NGOs, it is evident that any hiatus could lead to a permanent divorce between these two sectors, the government feeling their prerogatives and sovereignty under threat, NGOs feeling suffocated by the heavy state machinery.

Understanding between these two sectors is vital.

- (i) Indigenous NGOs i.e. those that are founded locally may stand to lose local finances if they resist compromise of their autonomy. This means if they refuse to yield to any conditions that the government may impose on them concerning their management, finances, membership etc. Needless to mention, co-operation would certainly be seen by NGOs as a firmer form of control.

Justice would be denied to aggrieved parties where there is no autonomy. And an environment full of conflicts and no redress or justice will dishearten NGOs.

- (f) A guarantee of autonomy may lead to solidarity and cohesiveness of all NGOs and even with the government, by networking among themselves. For NGOs this solidarity will act in their favour against forces that seek to undermine their role in developing their countries. This has not yet been achieved because of the mistrust between the different NGOs themselves. So, if the government seeks to compromise the autonomy of NGOs this goal may never be achieved. This is because NGOs are bound to act differently in this, because their objectives may be different. Some NGOs which hold views of compromising their autonomy may accept, as in the case of Kanu Maendeleo Ya Wanawake Organisation, and other NGOs which resent the idea of co-option or compromise of their autonomy may not yield to it. Here already a conflict emerges yet solidarity is a great move towards pushing for any institutional autonomy. The situation portrays a conflict of objectives, NGOs favouring co-option would be seeking for some favour and special treatment.

This division will undermine their fight for unification for solidarity and cohesiveness. As for the government

it will lose the co-operation of a useful partner in the field of borrowing and lending of ideas which would lead to greater development and too, the privilege of consultation.

The discussion is not closed to more ideas and views.

4.1 CONCLUSION

It has been clear that the degree of interference on the legal autonomy of NGOs is too much such that it can be said that NGOs lack autonomy. Whereas it is the government's rightful place to co-ordinate or control certain institutions or organs, this should not be done without a measure of impunity. The freedom of NGOs should be subjected to democratic control. NGOs can make lucid contributions only when operating in an atmosphere of freedom. And the state has a wide ranging variety of legal checks against the activities of these organisations, for instance, the requirements before an NGO can register, requirements before an NGO can import equipment tax-free, the establishment of the board at which the minister shall be sitting in all board meetings plus other representatives of government would ensure that no clandestine objects are discussed.

If the government did not know this, it is worthwhile to state that 'The NGO Co-ordination Act' enacted to co-ordinate NGOs

instead of overcoming old restraints [lack of co-ordination] creates new ones like stifling NGO autonomy, not demarcating with utter precision and unambiguous terms between general policy and superintendence duties which fall within the competence of the minister versus duties appertaining to the day to day administration of the duties which fall within the competence of the board. It is not sufficient for the statute merely to say, "The minister shall have power to ...". This vagueness of definition serves only to blurr the line demarcating the board's and the minister's powers respectively. There are a myriad of such restraints and cannot all be stated. Hence I would like to forward the following recommendations to government and the NGO group which may help ease or dissolve the tension between them.

4.2 RECOMMENDATIONS

1. There should be shared control over decisions between government and NGOs. But this does not mean that the state has a monopoly of thoughts and actions. Therefore NGOs are called upon to safeguard their autonomy and this is by ensuring that government does not dictate policies and priorities to them. NGOs should also not overstretch this limitation or requirement unnecessarily or immaturely.
2. This can be realised through government setting up permanent structures for dialogue between itself and the NGOs. This is necessary for each of the two to represent its interests so that they can strike a compromise.
3. The government should support NGOs in their efforts to bring about participatory and sustainable development.
4. Government should officially recognise and include NGOs as an organised important sector of society with a spelt out role in national development.
5. There should be appropriate methods for NGOs to relate to the national systems of development administration. This is in reference to the District Focus for Rural Development and District Development Committees Strategies.

6. The powers conferred upon the minister deemed fit to regulate NGOs should be reduced as they are a direct interference on NGO autonomy. The minister should not be the final authority.
7. All NGOs should be treated equally and the exercise of co-option or affiliation stopped by government completely. It has been seen that the affiliation of Maendeleo Ya Wanawake Organisation into Kanu to become Kanu-MYWO effectively silenced the officials inside and outside Kanu. It is also a corresponding requirement by the NGOs themselves not to yield to such pressures of co-option.
8. Members that are to constitute the board should be chosen by government in liaison with NGOs.
9. The power to institute a suit or court proceedings by one party against the other are not reserved for any person or body, be it the minister under whose ministry the NGOs fall. So whenever all procedures to laise and come to a compromise have been exhausted and still no compromise is reached, any of the two parties (government and NGOs) may sue the other, if on the wrong, as a last resort. The courts will then invoke rules of natural justice and take other evidence necessary to decide the case between the state and the NGOs fairly.

10. There is need for legislative reform. The NGO Co-ordination Act, in light of the weaknesses inherent in it, needs to be reviewed to create an enabling environment for NGOs to pursue their objectives. And so that NGOs and government can work in unison.

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