

Adjust, Resist, or Disband: How Does Civil Society Respond to Repression in Zambia?

Zambia has a large and active civil society, consisting of secular non-governmental organizations carrying out rights-based and development activities, in addition to church groups and trade unions. However, in recent years, the Zambian government has closed the political space for civil society actors, reflecting a wider downturn in national respect for political and civil liberties. How is this trend in increased political repression impacting domestic and international civil society organizations (CSOs) operating in the country? This paper investigates the effects of closing civil society space in Zambia, and reveals some of the strategies that CSOs employ to survive.

Brief Points

- Zambia had a welcoming political environment for civil society between 1990 and 2009.
- The adoption of the repressive NGO Act in 2009 marked a negative turn in the relationship between government and civil society organizations (CSOs).
- CSOs have adopted several strategies to ensure their survival in the country's currently repressive environment. This includes adjusting the focus of their activities away from politically sensitive topics, resisting by registering under the Companies Act, and disbanding when it is no longer feasible to operate.

Marja Hinfelaar *Southern African Institute for Policy & Research (SAIPAR)*

O'Brien Kaaba *University of Zambia and SAIPAR*

Introduction

Zambia has had a vibrant civil society since the 1990s, when the country reintroduced multiparty democracy. In the twenty years that followed, civil society organizations (CSOs) played a key role in holding government accountable and directing public discourse on major governance issues.

Throughout that time, donor countries and various Western cooperating partners channeled large sums of foreign aid through CSOs, in order to build up a strong civil society capable of providing social services and fostering good governance.

Things changed dramatically in 2009, however, when the Zambian government reacted negatively to civil society criticism and introduced the new Non-Governmental Organizations Act (hereafter, the NGO Act), which effectively closed the space for CSOs. From that moment on, Zambia joined other countries that have seen increased legal and extra-legal measures intended to clamp down on the activities of CSOs.

But to what degree does political repression affect the political advocacy of local CSOs and international CSOs working in Zambia?

In order to answer this question, we conducted interviews with key informants in Zambia during the first quarter of 2019, as well as reviewing CSO documents, official government policies and laws, court proceedings and judgments, and informal statements about CSOs from political leaders. One of the goals of our research, which was funded by the Government of the Netherlands, was to determine whether receiving Dutch funding has had any impact on organizational survival strategies in Zambia under the NGO Act.

Our findings reveal how political advocacy evolves in a restrictive political climate. This paper discusses our findings and offers some policy recommendations. Our recommendations are particularly relevant for policies aimed at the promotion of inclusive development through CSOs and transnational CSO cooperation.

A Short History of Zambian Civil Society

Since the reintroduction of multiparty democracy in the early 1990s, Zambia has experienced two important moments for opposition forces in Lusaka. The first, running from the early 1990s to roughly about 2009, was characterized by the opening up of space for these forces after the era of the one-party state. When the private media expanded, hundreds and then thousands of civil society organizations formed, and these associations faced fewer official and unofficial restrictions on their activities. The second moment, beginning at around 2009, has been a period of increasing political repression, as successive leaders (Presidents Banda, Sata, and Lungu) have sought to tighten their grip on power in response to a narrow electoral mandate and mounting opposition. Since then, the space previously opened up to non-state political actors has been progressively eroded. Critical media have been closed down or intimidated into compliance. Non-Governmental Organizations (NGOs) have been muzzled, and the right of university and college students to engage in protests has been sharply curtailed.¹

There are two likely explanations for the increase in repression. First, the ruling party, the Patriotic Front (PF), is positioning itself as a vanguard party. The constitution of the ruling Patriotic Front party draws directly on the discourse of the former ruling party led by Kenneth Kaunda, the United National Independence Party (UNIP), which was the only party legally allowed to exist in Zambia between 1973 and 1990. The PF constitution declares that “the Party is the supreme organization and the guiding political force in the land”. It goes on to say that “all the public institutions, State-owned enterprises and popular mass and similar organizations” shall be “led by persons who are members of the Party and who are uncompromisingly committed to achievements of the Party” (Action Aid, 2019).

A second reason for civil society’s struggle is decreased funding levels. Western donor support to Zambia, as expressed in percentage terms, dropped from over 35% of the national budget in the late 1990s to less than 3% in 2016. This represents a massive decline, one that has had an impact on the donors’ leverage vis-à-vis the Zambian government. Declining funding for civil society increased

organizational vulnerability to “co-optation” by the ruling party.

An example symptomatic of this reduction in donor focus is the fact that the Embassy of the Netherlands closed its doors in Zambia in 2013. Dutch cooperation with Zambian NGOs is now channeled through the organization HIVOS (which has a small office in Lusaka and a regional office in Harare), as well as through other international CSOs such as Cordaid, Action Aid Netherlands, Free Press Unlimited, International Union for the Conservation of Nature (IUCN), and the World Wildlife Fund (WWF). Some Dutch funding is further channeled through the European Union.

Legal Regulation of Civil Society

There are four pieces of domestic legislation under which CSOs can register as legal entities in Zambia: the Societies Act (Chapter 119); the Land (Perpetual Succession) Act (Chapter 186); the Non-Governmental Organizations Act 2009 (NGO Act); and the Companies Act 2017. None of these pieces of legislation were specifically passed to enhance the positive roles of CSOs. The Societies Act was passed in the 1950s to stifle nationalist movements from advocating for independence. The Land (Perpetual Succession) Act was passed in the 1920s as a mechanism for incorporating societies to hold land continuously in trust. The NGO Act was passed in 2009 largely to stamp out critical NGOs through the introduction of onerous registration requirements and limitations on the geographical reach and focus area of NGOs, as well as through new stringent penal sanctions against members of staff of NGOs for defaulting on legal requirements.

Resistance from NGOs resulted in the government agreeing to collaborate with civil society to review the NGO Act, a process that continues today. The Companies Act is the primary law providing for the incorporation of business entities as companies and their regulation. It is not primarily intended for regulation of NGOs, but rather to empower companies to govern themselves freely, provided they adhere to the basic rules of corporate government. However, the Act provides for non-profit entities to register as companies limited by guarantee (charitable companies). Before the passing of the NGO Act in 2009, very few NGOs were registered under the Companies Act. However, in response

to the restrictive mechanisms of the NGO Act, many organizations have opted to register under the Companies Act.

Apart from this onerous regulatory regime, NGOs often face threats from and prosecution by authorities, usually based on colonial pieces of legislation. Several NGO leaders have been arrested and were saved through litigation and judicial intervention. For example, Joe Kasonk-omona, an LGBT activist, was arrested in 2013 while he was live on TV (Muvi TV) advocating for the decriminalization of homosexuality. He was charged with the offence of idle and disorderly conduct. The High Court declared his arrest unconstitutional in 2015.² Similarly, in 2013, MacDonald Chipenzi, then the Executive Director of the Foundation for Democratic Progress (FODEP), was arrested and charged with the offence of spreading false information. The High Court also freed him and declared the provision under which he was arrested unconstitutional.³ More recently, in September 2017, the police arrested six CSO activists, including Laura Miti (CEO of Alliance for Community Action) and Lewis Mwape (CEO of Zambia Council for Social Development), following their protest against official corruption outside the National Assembly grounds. They were charged with the offence of “disobeying lawful orders”.⁴ They were later acquitted by the courts.

Although the courts have tended to be the refuge of last resort for persecuted NGOs, recent cases have shown that when criticism is directed against the judiciary, the courts are equally quick to close civic space. For example, in 2018, the Supreme Court sentenced Gregory Chifire, a civil society activist, to six years imprisonment for alleging that some Supreme Court judges had taken bribes in determining a high-profile commercial case.⁵

Shrinking Space for Media Freedom

The shrinking political space does not only affect CSOs, but also the media. Since President Mwanawasa’s death in 2008, independent media freedom has been deteriorating.⁶ Under the rule of Mwanawasa’s successor, Rupiah Banda, critical media institutions were threatened with closure, and government threats prevented publications considered hostile to the Banda administration from receiving advertising, cutting off a major source of their revenue.⁷ More

recently, in the 2016 Zambian general election, the US State Department noted that the election was marred by serious restrictions on the media, with biased press coverage severely impeding the fairness of the election.⁸

Ever since coming into power during the 2016 general election, President Edgar Lungu has continued his predecessors’ assault on media freedom. In order to muzzle the media, the Lungu administration has strategically utilized a toolkit of legal threats, political pressure, and the co-optation of private media organizations. These tactics have diminished the media’s independence, thereby acutely undermining its credibility and impartiality, and as a consequence, further limiting space for civil society to engage with the public and hold government accountable.

Civil Society in Zambia: To Adjust, Resist, or Disband?

How have CSOs been responding to the adoption of the NGO Act, and what strategies do they employ in order to keep their doors open and continue to function? Our interviews with CSO representatives in 2019 highlighted three ways in which CSOs respond in the face of repression.

Adjust

Many NGOs have moved away from working explicitly on politically sensitive topics to areas like ‘accountability’ and ‘service delivery’. NGOs that have continued their public work on political topics have adjusted their interactions with the government. Since there are political barriers to civil society operations, NGOs have learned how to state their political concerns more neutrally and to look for available spaces for political engagement and dialogue. They further adjust by learning from each other and from partner organizations based in neighboring countries that have had long experience with political repression. NGOs also ensure that their organization’s legal standing, policies, finances, and administration are in order, so that the government cannot denounce them on that front. They try to remain engaged with political elites.

Resist

NGOs have resisted the NGO Act by not complying with it and instead registering under

the Company Act. Others exercise non-compliance by making use of existing structures. For instance, the NGO Caritas falls within the influential Catholic Church in Zambia (and beyond), which is exempted from legal registration requirements.

Non-compliance has worked, as evidenced by the fact that registration under the NGO Act is very low (550). The Registrar of Societies noted recently that out of 22,000 registered societies, only 9,341 societies (CSOs) filed their annual returns in 2018, a situation that is “not pleasing to government”.⁹ This helped to prompt the government to review the NGO Act.

NGOs have also been coming together to organize legal defenses when they encounter arrest and other legal problems. Some activists make use of their high public profile and consequently become (almost) untouchable. Given that the mainstream media has come under attack, they make use of social media as an alternative.

Disband/Disappear

Many organizations have gone off the radar and/or have lost their erstwhile NGO status. Often this demise coincides with the departure of the founder of the NGO, since mentoring for succession is often lacking within organizations. Additionally, many NGOs have gone silent through self-censorship. As a result, organizational messaging stays within the NGO sector and does not impact wider society.

Non-Government Intimidation

Opposition Parties

The political opposition expects civil society to support them by default, so if CSOs say something against them, they feel as if they have been betrayed. Depending on the issue, this sense of betrayal can be accompanied by threats against CSOs.

Private Sector

The private sector (especially mining companies) funds local organizations that will publicly contradict civil society findings. They support national and international campaigns to make counterstatements.

Recommendations

Based on the above findings, we offer the following recommendations:

1. Donors should advocate for a holistic review of Zambia's CSO legal framework.

Very often, repression against CSOs is carried out using the legal system, usually by arresting and charging CSO activists under colonial pieces of legislation that are inconsistent with modern human rights and constitutional norms. It is recommended that cooperating partners working with Zambian CSOs should consider designing programs intended to advocate for holistic review of all old repressive laws and push to have them repealed and replaced with laws that foster an open democratic space.

This could be done by, for instance, taking advantage of occasional receptiveness within government to legal reform, such as we see in the decision by the Zambian government to reconsider the NGO Act. Legal reforms should not only be intended to purge laws of repressive provisions, but they should also focus on strengthening public accountability mechanisms and strengthening public watchdog institutions.

2. Donors should allocate funds that can be used to pay for the legal costs of CSO activists.

When CSO activists have been targeted, they have only been freed by Courts. Vindicating their rights through litigation is an expensive exercise as they have to rely on the services of lawyers, who often act in a private capacity and charge commercial rates. Considering that this scenario may continue for the foreseeable future, it is recommended that program funding for CSOs working in the governance sector and at risk of reprisals should include funds intended to offset the costs of legal proceedings.

3. Donors should support CSO coalitions and partnerships.

One of the strategies for CSOs to resist repression has been to work through partnerships and coalitions of similar minded CSOs on sensitive issues. It is recommended that cooperating partners consider supporting CSOs through these self-initiated coalitions. Not only do these coalitions reduce the risk of isolated individuals and specific CSOs being targeted, they also increase the possibility of CSOs taking concerted positions on major public discourses.

4. Donors should encourage organizational learning.

Zambian CSOs have reached out to their counterparts in other countries such as Uganda and Zimbabwe, countries with relatively longer histories of repression, to learn about strategies for adjusting to shrinking political space. It is recommended that this trend be recognized by cooperating partners in order to help CSOs to establish systematic mechanisms for cross-border consultation, mutual learning, and support with other CSOs.

5. Donors should encourage and fund CSO use of alternative media.

The shrinking of space for conventional media has led some CSOs to explore new ways of getting their message out to the public, such as through social media platforms. Considering that use of social media is fast-growing, especially among youth, it is recommended that future cooperating programs with Zambian CSOs should consider including components that will help support CSOs to effectively mobilize, engage, and advocate through such new innovative social platforms. ■

Notes

1. Marja Hinfelaar, D. Resnick and S. Sishuwa (forthcoming) *Cities and Dominance: Urban Strategies for Political Resettlement Maintenance and Change - Zambia Case Study* (ESID Working Paper, University of Manchester).
2. See the case of *The People v Paul Kasonkoma HPA/53/2015* (Judgment of 15 May 2015)
3. See the case of *MacDonald Chipenzi and Others v The People HPR/03/2014* (Judgment of 4 December 2014)
4. www.bintroo.com/corruption-in-zambia-42-fire-trucks-for-42m-african-union/
5. See the case of *Savenda Management Services Limited v Stanbic Bank Zambia Limited and Gregory Chifire Appeal No. 37 of 2017 Selected Judgment No.47 of 2018*
6. Marja Hinfelaar, Danielle Resnick, and Sishuwa Sishuwa, *Cities and Dominance: Urban Strategies for Political Resettlement Maintenance and Change - Zambia Case Study* (n.p., 2019), 10.
7. Hinfelaar, Resnick, and Sishuwa, *Cities and Dominance*, 10.
8. Zambia 2018 Human Rights Report, Country Reports on Human Rights Practices for 2018 (n.p.: United States Department of State: Bureau of Democracy, Human Rights and Labor, 2018), 1.
9. Kampyongo Threatens Deregistration of Political Parties Defaulting on Annual Returns, 27 March 2019

THE AUTHORS

Marja Hinfelaar is Director of Research and Programs at Southern African Institute for Policy and Research (SAIPAR), Lusaka, Zambia.

O'Brien Kaaba is a lecturer in law at the School of Law at the University of Zambia and a Senior Research Fellow at SAIPAR.

THE PROJECT

'Adjust, Resist, or Disband? The Effect of Political Repression on Civil Society Organizations in Bangladesh and Zambia' is a project funded by the Government of the Netherlands, examining the impact of repressive legislation on civil society organizations (CSOs) in Bangladesh and Zambia, and the ways in which CSOs respond to legal repression.

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