



# The future of NGOs - different perspectives

*CDE held its first debate on 31 January 1996. The speakers were Rams Ramashia, president of the National NGO Coalition, Dennis Davis, professor of Commercial Law at UCT as well as director of the Centre for Applied Legal Studies at Wits, and Khehla Shubane, co-chairman of the local government task team and senior researcher at the Centre for Policy Studies. The debate was chaired by CDE executive director Ann Bernstein. A diverse audience of nearly 200 attended.*

The future of South Africa's NGOs and the present controversy which surrounds them is not a simple debate.

Of particular concern is a proposed bill, drafted and drawn up by private initiative, which now has the interest of government. This has to be taken seriously since, if it ever became law, it will affect civil society as a whole.

## **Ann Bernstein posed five underlying themes to start the debate:**

- What role can and should NGOs play now that SA is a democratic state?
- How should the new South African democracy ensure the best possible enabling environment for a strong and vibrant NGO sector? What policies, programmes and attitudes are required?

## **WHAT ARE THE CDE DEBATES?**

During 1996 CDE will run a series of debates on topics of crucial importance to current national policy issues. The intention is to air issues underlying the topic and to raise the challenges that must be met by the players and the policy makers. Following each debate, CDE will publish a pamphlet summarising the event. These will be widely distributed and publicised as CDE's contribution to keeping the debate alive.

- Does South Africa really need a new legal framework for NGOs? The onus of proof is on those advocating the new framework. Why does South Africa need the proposed bill and should it include more government control?
- Should there be a voluntary NGO co-ordinating council? What should its role be? How will it effectively represent the tens of thousands of diverse NGOs in South Africa? Why has the government indicated that it wants the NGO sector to speak with one voice? Is this what the NGOs themselves want? How can such a co-ordinating council prove that it is not self-appointed and currying favour for its members amongst government?
- What is the role of the democratic state in funding NGOs, if any? If the state does get involved, what are the consequences for the NGOs?



# What the speakers had to say ...

**Rams Ramashia** explained the formation and role of the National NGO Coalition: The coalition is a voluntary association of provincial and sectoral NGOs. It is not compulsory for South African NGOs to affiliate, nor is the coalition a gatekeeper for funding. The coalition does not purport to represent all NGOs in the country. It is independent of government and political parties. It believes that organisations, like individuals, have a constitutional right of association. The coalition's vibrancy lies in its diversity.

It is common cause that the recent positive political changes in our country created new challenges for NGOs. Loss of leadership to government and the private sector, funding crises and the advent of the RDP are some of the issues which the coalition is helping its members to address.

During apartheid rule, policy development was the exclusive domain of apartheid bureaucrats and this caused a great deal of harm to disadvantaged communities. Now that South Africa is a democracy, the temptation to leave this important role in the hands of government is even greater. Since government is not the sole repository of wisdom, knowledge and goodwill, the coalition encourages and promotes citizen participation in policy formulation, policy analysis and policy debate.

Over and above their traditional role of service delivery, NGOs now have an emerging strategic role to build and strengthen civil society and to promote participatory democracy.

## Some of the coalition's strategic objectives:

- to promote community participation in the implementation of the RDP
- to advocate policy positions which advance the interests of marginalised members of the community
- to inform its members of macro-environmental changes which may create opportunities and threats to the NGO communities
- to improve cross-border networking and cross-pollination of ideas and development experience in Southern Africa and other parts of the world
- to work towards creating an enabling environment for NGOs.

On this point, said Mr Ramashia, the coalition strongly believes that the existing legislative framework conceived in the days of apartheid needs to be changed.

He emphasised that the coalition was neither the author nor the sponsor of the draft Non-Profit Organisations Bill. This had been initiated by the Development Resource Centre before the coalition was formed. Although initiated with noble intentions, the bill in its current form is unacceptable owing to inherent flaws. The coalition has negotiated with the DRC to ensure that the proposed bill is debated at provincial, regional and sectoral levels. Non-coalition members should also be involved.

**Khehla Shubane** said the variety and diversity of NGOs underpins South Africa's democracy.

Their continued existence and growth in number should be encouraged.

However, South Africa's NGOs are characterised by dependency on foreign funding, a hangover from the days of apartheid which needs to be broken. Other distortions resulting from the past are the antagonistic relationship between NGOs and government, unbalanced racial composition of NGOs and the belief in the right to financial support. He pointed out that NGOs cannot speak on behalf of society as a whole, only on behalf of their own members. Their leadership is not elected by society as a whole and therefore they do not have the right to interfere with the centrality of elected officials of government. He agreed to their right of association, but warned against the tendency to centralisation that could develop through macro-associations which tended to engender the very properties that individual NGOs fight against. Above all, South African NGOs represent a capacity which

often does not exist anywhere else. In the field of adult education, for example, the NGOs have achieved a great deal while the state has a poor track record.

Mr Shubane said NGOs are capable of introducing savings and efficiencies in certain areas of delivery. Also, NGOs can effect deliveries into certain sectors of the market extremely successfully. They are also introducing the dimension of divergence into the general policy debate. This is to be encouraged.

The long-term health of our society is dependent in part on the vitality of NGOs, specifically the promotion of their diversity.

**Professor Dennis Davis** said NGOs are critical to South Africa's democratic enterprise. They have a history of delivery and the wherewithal to ensure the accountability of parliamentarians. But the NGO sector has been weakened. The draft Non-Profit Organisations Bill was introduced to strengthen the NGOs, but the draft bill, in the time-honoured fashion of South African legislation, has exactly the opposite effect.

Professor Davis disclosed that some while ago he had been briefed by the DRC to write the tax section for their proposals which forms the basis of the draft bill. He concentrated on the existing system of tax incentives and suggested that there were substantial inadequacies. It was put forward that, if the level of tax incentives were to be expanded, the government had a right to a definition of the organisation as a true NGO to differentiate it from, say, a local bridge club. This issue was left open. Professor Davis said he suspects that, wrongly and in a misconstrued fashion, the draft bill picks up this cudgel and suggests that if an NGO complies with the conditions set out, it may qualify for all these tax incentives. This was never the purpose of the initial approach.

However, this raises a serious issue: how is an NGO to be defined for the purpose of allowing tax exemptions? This issue will be discussed by

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the Katz Commission later this year and it should be done in a way which does not give rise to government control.

Professor Davis expressed concern about the proposal in the draft bill to establish a statutory Non-Profit Organisations Commission. He questioned its proposed composition (15 of the 25 commissioners will in effect be appointed by the minister) and the wide powers it might legally wield.

The fundamental issue, he suggests, is the purpose of the bill. Is it yet another attempt to control that part of South African society

which up until 1994 had been one of the most heartening aspects of our country - a vibrant civil society? Bearing in mind the present difficulties faced by NGOs with regard to funding, is this bill an attempt by government to squeeze the life out of the NGOs and shape them in the image of government? As a lawyer reading this text, he said, it most certainly is. This is cause enough for fundamental protest by a coalition of NGOs and for a suggestion by NGOs as to how, if South Africa is to have such a bill, it be a lot better than this draft.

# What the audience contributed ...

■ Which present laws undermine the existence of NGOs? Public debate so far had produced generalities, with no specific laws being cited.

■ Isn't there existing legislation which could be adapted to handle NGO registration rather than an entire new bill being drafted and yet another government commission being established?

■ The DRC, sponsor of the draft bill, pointed out that it had not distanced itself from the bill as a whole or from the process which it had stirred up: that of discussion. There are sections the DRC disagrees with, particularly Sections 29 and 30 (which deal with the powers of inspection of the proposed Commission and its right to appoint and suspend trustees), and the organisation would not like to see the bill go through in its present form.

■ The process of discussion around the draft bill makes assumptions about a category of organisations which it calls NGOs. There is no clear line dividing these from, say, a vintage car club which may lobby for a reduction in the fuel price or a stamp collectors' association. These organisations, which have never been part of and have never wanted to be part of this process, are well catered for by existing legislation.

■ The National NGO Coalition is proceeding from the point where certain existing legislation such as the Fund Raising Act was intended by the previous government to frustrate the work of NGOs.

■ Certain existing legislation is clearly hopeless and stifling. But there are other laws such as the Companies Act and the Trust Property Control Act which could be amended to afford some sort of control. But this raises again the question, what is this draft bill seeking to do? If it is only the tax aspect which concerns the proposers of the bill, the Income Tax Act could be amended.

■ The DRC said the lively reaction to the publication of the draft bill tragically obscures four

years of discussion and negotiation which lies behind the proposals. This involved meetings throughout the country and the formation of provincial coalitions. When the draft was ready, the DRC realised that several provisions conflicted with the results of the discussion process. The DRC conceded that it took what is, in hindsight, clearly a foolish and naive decision to release the draft bill for debate.

■ The departure point in the discussions on the draft bill should be to define the problem. This is an enormously complex issue.

■ There is so much South African NGOs can do because parliamentarians and provincial councillors are physically stretched. With regard to regulation, bear in mind that NGOs must be the most market-sensitive entity. With any hint of non-performance or scandal the funding will dry up.

■ The stronger the NGOs, the better our society. The Gauteng legislature would welcome greater NGO co-operation on issues such as housing. The new government structures could benefit from the experience and knowledge developed by the NGOs.

■ The draft bill must be seen as highlighting the plight of small NGOs which do not have the facilities or powers to work through existing laws. Given the difficulties with funding which has been undercut by the government's RDP, NGOs must organise to ensure a strong presence.

■ NGOs must not forget that they are people-driven. They are formed according to the needs of people. They are grass-roots organisations.

■ The non-profit sector has not been able to maintain its pre-April 1994 position, particularly with regard to funding.

The welfare sector has faced subsidy and grants cuts from the state with no opposition simply because it has no lobby. The state must come out in support of the non-profit sector's role in society. Private welfare organisations need strong representation into government.

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# Concerns raised and the challenges which still need to be met

- The need to re-emphasise the 'civicness' of NGOs. They are people-driven organisations, formed and established to meet specific needs of a given community. As such they have a diversity and vibrance which should be encouraged, not curtailed. Generally, the NGOs of South Africa have a solid track record of delivery and service.
- South Africa requires an enabling environment in which NGOs can operate. Of particular concern are the small, struggling organisations which have difficulty raising funds and which have no legal persona. The major fault line is between those who believe that the enabling environment requires the passing of new, comprehensive regulations in a non-profit organisations bill, and those who believe that all that is necessary is to scrap or amend existing legislation.
- Underlying the issue of an enabling environment is the question of definition. What is an NGO? Is a legal definition necessary?
- It is important for legislators and government to note the sheer diversity of the non-profit sector as a whole. The 1995 edition of Prodder's Southern African Development Directory divides its NGO listings into 31 sectors ranging from bursaries and scholarships to conflict resolution to resource and information centres. Are all of these to be included during the discussion/legislative process? Is this practical if it means regulating civic society in its entirety? Within the draft bill, the different roles and functions of the NGOs are inadequately catered for.
- It is desirable or necessary to regulate South Africa's NGOs given their market sensitivity? Any NGO which lacks integrity and fails to deliver is unlikely to raise funds.
- Different sectors within the non-profit sector as a whole need to group to form effective and efficient lobbies into government.
- The concern about funding. Now that South Africa's NGOs are no longer perceived to be in opposition to an oppressive government, donors have shifted funding to finance the RDP.
- NGOs carrying out functions for the state at the state's expense should be subject to legal accountability. It may be that the recently expanded requirements of the Auditor General are sufficient to regulate these NGOs. But this should not mean that all NGOs need to be regulated.



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