

# NEWS BULLETIN

## RESEARCH FINDINGS REVEAL A WEAK CIVIL SOCIETY SECTOR DUE TO THE DESIGN AND IMPLEMENTATION OF REGULATORY FRAMEWORKS

The National Development Agency (NDA) shared findings of a study commissioned by the organization to analyse the current legislative, policy and regulatory environment for the civil society sector in South Africa, and the extent to which the frameworks impact on the functions and functioning of the sector. The study was conducted by the Human Sciences Research Council (HSRC) and Foundation of Human Rights (FHR).

Findings from the study revealed several deficiencies in the current design of regulatory frameworks for the civil society sector, chief amongst others being regulations that do not promote responsibility, transparency and accountability in the sector instead of assuming that the state must play an administrative justice role for the sector, while the sector's only role is to comply. The findings also revealed the need to review and amend current regulatory framework in order to tailor-make interventions according to the sizes of various CSOs and CBOs.

"We commissioned this research to begin a policy development debate on behalf of the CSOs as a way to correctly locate accountability, responsibility and provide a path for the sector to take back their power to reach the country's development goals. It is clear from the findings that the current frameworks are somewhat a hindrance to the development process, however, it is encouraging that there is room and willingness to make improvements from strategic partners who support the participation and independence of the sector in a range of development initiatives", Mrs Thamo Mzobe, Chief Executive Officer of NDA.

Other key findings point out to the poor implementation of regulations which in essence contribute to misconceptions about the nature and role of civil society, and the role that 'regulation of CSOs' plays. Some of the reasons for this are closely related to the Department of Social Development NPO Directorate's ambitious mandate as the primary regulatory body, however, this has not been matched by the necessary resources to effectively implement its mandate, resulting in weak implementation of its mandate and declining levels of compliance by CSOs with reporting requirements.



Mr Thulani Tshefuta, Chair of Convener NEDLAC Community gave an outline of the "Limitations of Regulatory Frameworks for Civil Society in South Africa" and agrees that, "Active citizenry is one of the key tenants of achieving social capital, a position where people and communities are not just passive beneficiaries but part of the solution in their development.

The introduction of regulatory mechanisms came with the promise of formalization, professionalization and increased funding for the sector. One of the unintended effects of the legal instruments is the erosion of self-responsibility and self-initiative, including intra-sectoral accountabilities. Top-down regulatory instruments tend to introduce the compliance versus course dichotomy. Regulatory measures must not change the DNA of civil society of agility, responsiveness, relevance, self-reliance and sustainability".

He further noted that the current regulatory frameworks do not promote innovation that can come through social entrepreneurship. As such, NEDLAC recommends regulatory frameworks that help unleash and realise the potential CSOs and some elements must lead to the institutionalization of Public-Community-Partnerships to the scale of Public-Private-Partnerships. Lastly, they need to consider self-regulation by the sector and outline government's support thereof. Speakers at the webinar included Advocate Gary Pienaar from Developmental, Capable and Ethical State unit in the HSRC;

Dr Zaid Kimmie of Foundation of Human Rights and Former Executive Director of SADC Council of NGOs, Mr Glenn Farred who all pointed out the urgent need to correct the misalignment between the frameworks and the current realities in the sector; and to close the accountability gap in the sector. A set of regulations governing the CSO sector such as the NPO Act, NDA Act, Income Tax Act and Companies Act also needs to be harmonized to bring about complete and beneficial transformation of the sector.

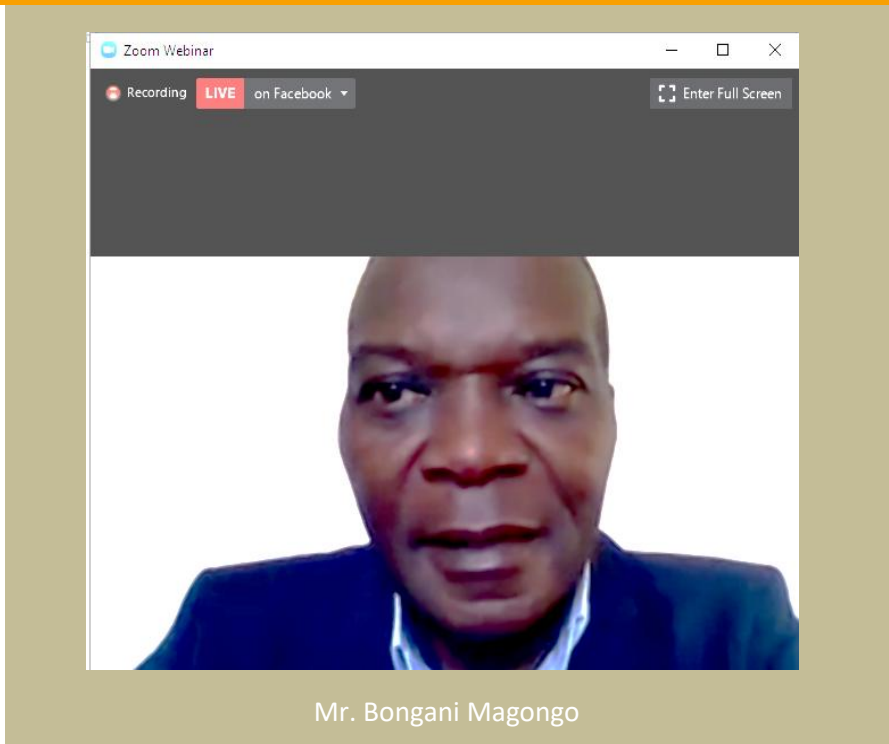
The NDA's Executive Director for the Development Management and Research unit, Mr Bongani Magongo, highlighted the importance of CSOs as the critical component of how the state deals with socio-economic and population challenges of that particular state. He further alluded to the motive of the NDA in getting involved in looking at how to enhance the civil society sector in the country to a point where it takes its own responsibility of being the voice of the population and not to be a subservient of any arms of the state but rather a representative of the people.

The establishment of a Presidential Advisory Council for NPO sector was recommended as part of a future proofing plan as well the design of a universally accessible funding collection and distribution mechanism for all components of the sector derived from 1% of all Corporate Social Investment and philanthropic giving.

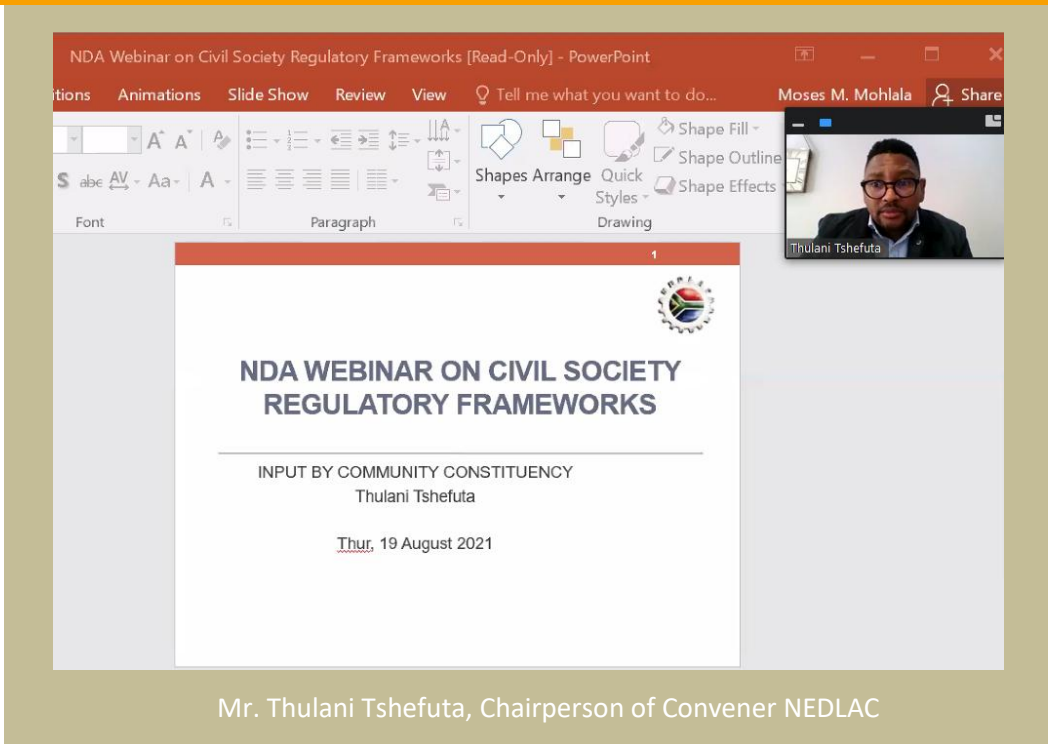
***The full research report and the policy brief can be accessed on the NDA website.***

## Say "No" to Gender Based Violence

# NEWS CONTINUE...



Mr. Bongani Magongo



Mr. Thulani Tshefuta, Chairperson of Convener NEDLAC

## Summaries of key points

### Some key findings:

- The regulations do not place appropriate responsibilities and accountability in the hands of the sector itself, instead the assumption is that the state must play an administrative justice role for the sector, while the sector's only role is to comply.
- The design of the current regulatory framework fails to acknowledge the diversity among CSOs and results in burdensome overlaps, especially for smaller CSOs and CBOs.
- The regulations have also been poorly implemented. Some of the reasons for this are closely related to misconceptions about the nature and role of civil society, and the role that 'regulation of CSOs' plays.
- The Department of Social Development NPO Directorate's ambitious mandate as the primary regulatory body has not been matched by the necessary resources to effectively implement its mandate, resulting in weak implementation of its mandate and declining levels of compliance by CSOs with reporting requirements.

### Mr Bongani Magongo, NDA Executive Director

Key drivers that the Civil Society sector should engage on:

- Abilities and capacities of the sector to define and link its agenda to the overall developmental Agenda of a country based on the needs of the citizens;
- Types of regulatory mechanisms to allow that arm of a democratic state to dictate the direction and the goals they would want to achieve, and they become independent in all aspects of independency;
- How does the sector get funded, meaning, what kind of funding mechanisms are in place to allow the sector to operate without being constraint by resources?
- Transformation of the sector.

### Advocate Gary Pienaar from Developmental, Capable and Ethical State unit in the HSRC

A list of legislative hierarchy:

- Broadest (NDA Act 1998): all PBOs whether or not established on a non-profit basis
- Slightly less broad (NPO Act): all non-profit PBOs
- More restrictive approach (Income Tax Act): NPOs working for the common good in specified areas
- Most restrictive (VAT Act): 'associations not for gain' / 'welfare organisations'

### Dr Zaid Kimmie, Foundation of Human Rights

- CSOs providing services on behalf of or with government entities should continue to be regulated in terms of the requirements of the relevant professional field with registration only an immediate precondition for state funding.
- A separate framework to regulate organisations that solicit funds from the general public (and that receive funds above some threshold amount) should be put in place in order to ensure that such organisations are able to publicly account for any funds they receive.

### Mr Glenn Farred, Former Executive Director of SADC Council of NGOs

Current Regulatory Frameworks in South Africa:

- Misalignment between the frameworks and the current realities in the sector.
- Several cold realities which includes rife competition for resources; chronic disinvestment;
- Fragmentation of the sector (NPO, NPC, NGO, etc.);
- Active hostility from the State to some components of the sector;
- Rise of state dependent NPOs dominating the landscape;
- Low levels of skill and minimal rewards;
- Shrinking accountability and reduced legitimacy.

Say "No" to Gender Based Violence