

GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

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NGO LAWS IN SUB-SAHARAN AFRICA

Introduction

Over the last year, 17 Sub-Saharan African¹ countries celebrated 50 years of independence. The passage of this milestone has provided an opportunity for celebration and reflection about the progress made, as well as the challenges that continue to confront the region. Civil society groups played an important role in the struggle against colonialism.² In the post-independence period, advocacy, development, and human rights organizations (typically referred to as “NGOs”) emerged across the continent.³ In addition, NGOs increasingly played a critical role as service providers. Indeed, some commentators described their growth as an “explosion of associational life in Africa.”⁴

The expansion of associational life in Africa was part of a “global associational revolution.”⁵ The political transition in a number of countries has been attributed to this revolution. Consequently, this has led to greater regulatory attention. A Ministry of Internal Affairs official in Uganda commented that “the mobilization capacity of civil society took government by surprise and their strength can no longer be taken for granted.”⁶ There are a few countries that have put in place, or are working towards developing

¹ In this issue the term Africa will refer to Sub-Saharan Africa. For an analysis of the NGO laws governing North Africa and the Middle East, see ICNL, *Survey of Arab NGO Laws*, Global Trends in NGO Law, Volume 1, Issue 4, March 2010, available here: <http://www.icnl.org/knowledge/globaltrends/GloTrends1-4.htm>.

² Bhekinkosi Moyo, *The Legislative Environment for Civil Society in Africa: a Synthesis Report*, Trust Africa, May 25, 2009, available at: <http://www.trustafrica.org/documents/LegislativeEnvironment.pdf>.

³ Michael Edwards, *The Challenges of Civil Society in Africa*, Trust Africa, February 12, 2009, http://www.trustafrica.org/index.php?option=com_content&task=view&id=166&Itemid=51&lang=en.

⁴ Michael Bratton, *Civil Society and Political Transition in Africa*, Institute for Development Research (IDR) Reports Vol. 11, No. 6 (1994), pg. 6, <http://www.worlded.org/docs/Publications/idr/pdf/11-6.pdf>. A more recent study assessing trends of democratic citizenship in 11 African countries from 1999-2008 found that civic participation (e.g., attendance at community meetings, joining others to raise issues, and going to a demonstration or protest) is trending upward, despite declines in engagement in civil society networks (e.g., active membership of both religious and voluntary associations). See Afrobarometer, *Are Democratic Citizens Emerging in Africa?*, Afrobarometer Briefing Paper No. 70, May 2009.

⁵ Lester M. Salamon, Helmut K. Anheier, Regina List, Stefan Toepler, S. Wojciech Sokolowski et. al., *Global Civil Society: Dimensions of the Nonprofit Sector*, the Johns Hopkins Center for Civil Society Studies, 1999.

⁶ Bhekinkosi Mayo, *The Legislative Environment for Civil Society in Africa: A Synthesis Report*, Trust Africa, May 25, 2009, <http://www.trustafrica.org/documents/LegislativeEnvironment.pdf>.

enabling laws and regulations to support civil society organizations. Many governments, however, are suspicious of civil society, and are drafting, enacting, and applying laws to regulate civil society that often restrict or narrow civic space.⁷

In recent years civil society organizations around the world have had to confront restrictive laws and policies that reinforce this backlash against civil society. This trend has found fertile ground in Africa and the number of restrictive laws is on the rise. The push-back against civil society has taken on a particular flavor and form in Africa. Where governments are fragile, particularly in post-conflict environments like Sierra Leone, an independent civil society can be viewed as fostering political opposition, a threat to the viability of incumbent regimes. In Africa, this trend arguably springs from the historical role that civil society played in ridding the continent of politically oppressive colonial and apartheid regimes, and the fear that similar citizen action is a threat to current less democratic regimes.⁸ Thus, many laws enacted or proposed in the region are intended to maintain tight government oversight and control over the activities and structure of civil society organizations.

In the last several years, countries including Ethiopia, Sudan, Uganda, Zambia, Sierra Leone, and Zimbabwe have considered or enacted legal measures and/or policies that restrict civic space. These restrictions have taken many forms. In some countries, unregistered associational activity is criminalized, as in Uganda. In others, CSOs are subjected to political litmus tests, as in Nigeria. In still others, CSOs are limited in their ability to receive foreign funding, as in Ethiopia. These restrictions limit the ability of individuals to exercise their freedom of association and prevent CSOs from carrying out their work. Regardless of the rationale behind these regulations, the degree of such control, in many cases, reaches draconian proportions and should be carefully scrutinized. The right of association is guaranteed under the African Charter for Human and People's Rights (ACHR), and limits on the right must be demonstrably necessary.⁹

Overview of African NGO Laws

This global trend has been “characterized by a profound shift from outright repression of democracy, human rights, and civil society activists and groups to more subtle government efforts to restrict the space in which civil society organizations...operate.”¹⁰ It is within this global context that the same trend

⁷ The International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: a Report of the World Movement for Democracy* (February 2008), available at: <http://www.icnl.org/knowledge/news/2008/3-21.htm>. See also David Moore, *Legal Trends in Sub-Saharan Africa*, the 2009 USAID NGO Sustainability Index (NGOSI) for Sub-Saharan Africa, available at: http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/civil_society/angosi/ANGOSI_Reports/2009/2009_African_NGO_Sustainability_Index_6_Legal_Trends.pdf.

⁸ See Bhekinkosi Moyo, *The Legislative Environment for Civil Society in Africa: a Synthesis Report*, Trust Africa, May 25, 2009, available at: <http://www.trustafrica.org/documents/LegislativeEnvironment.pdf>.

⁹ African Charter on Human and Peoples Rights, Article 11.

¹⁰ The International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (February 2008), available at: <http://www.icnl.org/knowledge/news/2008/3-21.htm>.

is unfolding in Africa. In this issue of Global Trends we provide examples of enacted or proposed regulatory measures – including laws, policies and regulations – that illustrate how this trend is taking shape in the region.

A. Registration

1. Mandatory Registration

A number of laws and drafts require informal groups of persons to register as formal legal entities and prohibit them from conducting activities unless they do. By prohibiting any associational activities – even informal activities, such as a group of neighbors meeting weekly to discuss political events – without prior registration, these laws clearly infringe upon the right to free association protected by the International Covenant on Civil and Political Rights and other conventions. Furthermore, mandatory registration is often used by repressive governments as a tool to crack down on individuals and organizations that are critical of government policies – as in **Ethiopia**, where the government used the mandatory registration process to amend a human rights organization’s statutes by removing “monitoring of elections” and “provision of voter education” from the organization’s mandate.¹¹ Some examples of laws that impose mandatory registration include:

- **Ethiopia’s** 2009 *Proclamation for the Registration and Regulation of Charities and Societies* requires “any charity or society” to register with the Charities and Societies Agency within three months of formation.¹²
- The 2009 *Non-Governmental Organisations’ Act* of **Zambia** criminalizes unregistered organizations. Anyone operating an unregistered NGO is subject to a fine and/or imprisonment up to three years.¹³
- **Uganda’s** *Non-Governmental Organizations Registration Act* criminalizes unregistered activity. “[A]n organization which ... carries out any activity without a valid ... certificate of incorporation commits an offense” and the director or officer responsible is liable for “a fine not exceeding twenty currency points or imprisonment not exceeding six months or both.”¹⁴
- In **Zimbabwe**, “no private voluntary organization shall commence or continue to carry on its activities or seek financial assistance from any source unless it has been registered in respect of a particular object or objects in furtherance of which it is being conducted.”¹⁵
- Although legal registration is not mandatory for all civil society organizations in **Sierra Leone**, the *Policies and Guidelines for the Operation of Non-Governmental Organizations* requires “all

¹¹ Observatory for the Protection of Human Rights Defenders, *Annual Report 2010*, available at: http://www.ecoi.net/file_upload/1939_1285153303_ethiopia.pdf

¹² *Proclamation for the Registration and Regulation of Charities and Societies*, Articles 64(2) and 65(4).

¹³ Republic of Zambia, *the Non-Governmental Organisations’ Act*, 2009, Article 10(1), (2), and (4).

¹⁴ Republic of Uganda *Non-Governmental Organizations Registration Act* (amended 2006), Article 2(5) and (6).

¹⁵ *Zimbabwean Private Voluntary Organizations Act*, Article 6(1)(a) and (b); see also *Code of Procedure for the Registration and Operations of Non-Governmental Organizations in Zimbabwe* (General Notice 99 of 2007), Article 1.

NGOs”¹⁶ to “register and sign an agreement with the government of Sierra Leone before they can commence operations.”¹⁷ In order to register, NGOs must also provide proof of membership in the Sierra Leone Association of Non-governmental Organizations (SLANGO), a quasi-governmental umbrella group.¹⁸

2. Burdensome Registration

Even in countries where registration is not mandatory, the process of registration may be so difficult that it effectively prevents NGOs from being registered. These provisions impose time-consuming and financially costly bureaucratic hurdles, and may discourage groups from ever applying to register in the first place – preventing the emergence or consolidation of a strong and independent civil society. Such barriers include a lack of clarity regarding the registration procedures; complex documentation requirements; prohibitively high registration fees; and excessive delays in the registration process.

- In **Angola**, the NGO registration is a complicated and cumbersome process, in part, because several different government agencies regulate the registration process and apply inconsistent criteria, often leading to confusion and redundancy.¹⁹ An NGO must register first at the local level, and then request a certificate from the Ministry of Justice or a Provincial Commissioner.²⁰ However, before issuing certificates for national organizations, the Ministry of Justice may require these NGOs to first seek approval from the national-level government body tasked with managing civil society operations, the Unit for the Co-ordination of Humanitarian Aid, UTCAN for authorization. UTCAN may in turn request the authorization of the Ministry of Justice and other ministries before approving the application. This process of going back and forth between ministries can go on for years.²¹

¹⁶ A non-governmental organization (NGO) is defined by the 2009 *NGO Policy Regulations, Policies and Guidelines for the Operations of Non-Governmental Organisations in Sierra Leone* to mean “any independent, not-for-profit making, non-political and charitable organisation, with the primary objective of enhancing the social, environmental, cultural and economic well being of communities.” Article 2.1.1. According to the *NGO Policy Regulations*, NGOs are required to register with the Ministry of Finance and Economic Development, after first registering with the Sierra Leone Association of Non-governmental Organizations (SLANGO).

¹⁷ *NGO Policy Regulations, Policies and Guidelines for the Operation of Non-Governmental Organizations*, Articles 2.2.5 and 2.2.6.

¹⁸ Id. at Form A p.32 and Article 2.3.2.2. The initial registration form asks for “Proof of membership of NGO umbrella organization (if any),” however, the requirements for renewal of registration (which is necessary every two years) include “Proof of paid up member of Sierra Leone Association of Non-governmental Organizations (SLANGO).”

¹⁹ 2009 USAID NGOSI: Angola, p.39, available at:

http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/civil_society/angosi/ANGOSI_Reports/2009/2009_African_NGO_Sustainability_Index_AO.pdf.

²⁰ Organizations only working at the local or provincial level register with the Provincial Commissioner in their area; Angolan *Law of Associations* (14/91), Article 13, and Regulatory decree (84/02) Article 16.

²¹ 2009 USAID NGOSI: Angola, p.39, available at:

http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/civil_society/angosi/ANGOSI_Reports/2009/2009_African_NGO_Sustainability_Index_AO.pdf.

- In **Burundi**, many local associations are effectively prevented from registering because they are not able to travel to the Ministry of Home Affairs, in Bujumbura, the capital city, and some of the required registration documents are only issued in Bujumbura. Some of these required documents include the police records of all founding members, which are necessary for obtaining the required certificate of “good conduct, character, and moral standards.”²² In addition, the documents required for registration are numerous and difficult to complete, particularly given the limited organizational capacity of NGOs in the country and filing is costly.²³
- **The Democratic Republic of Congo (DRC)** requires domestic organizations to undergo a two part registration process to acquire legal personality.²⁴ Organizations must obtain approval from “the Minister who has jurisdiction over the specified sector of activities” in which the organization intends to operate. After receiving line ministry approval, they must submit a formal request for legal personality to the Ministry of Justice.²⁵ In addition, organizations must submit “certificates of good conduct, lifestyles and morals from all members of staff charged with the administration or management of the organization.”²⁶

Some laws include provisions that require registered NGOs to re-register frequently, subjecting organizations to additional costly administrative requirements. For example:

- NGOs must renew their registration after the first year of operation in **Uganda**.²⁷ NGOs are also required to pay a fee in order to re-register.
- The *NGO Policies and Guidelines* of **Sierra Leone** provides that “all registration shall be for two calendar years.”²⁸
- In **Zambia**, NGOs are required to re-register every 5 years.²⁹
- In **Rwanda**, international NGOs were required to renew registration annually. However, under recently enacted legislation, the renewal period has been extended to five years.³⁰

²² Burundian Law-Decree *on the organizational framework of non-profit organizations* 1/11 April 18, 1992 (loi-décret – loi n° 1/11 du 18 avril 1992 portant cadre organique des associations sans but lucrative), Article 5. See also USAID NGOSI 2009: Burundi, p.45, available at:

http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/civil_society/angosi/ANGOSI_Reports/2009/2009_African_NGO_Sustainability_Index_BI.pdf.

²³ Id.

²⁴ Democratic Republic of the Congo, *General Enforceable Provisions to Non-Profit Making Organisations and Charitable Corporations* (Law N° 004/2001 of 20th July 2001), Articles 3 and 4.

²⁵ Id.

²⁶ Id. at Article 3.

²⁷ *A permit is issued in the first instance for a period of twelve months from the date of issue of the permit. A permit is renewable in the first instance for thirty-six months from the date of renewal and in case of a subsequent renewal, for a period of sixty months.* Ugandan 2009 NGO Regulations, Article 7(3) and (4).

²⁸ *NGO Policy Regulations, Policies and Guidelines for the Operation of Non-Governmental Organizations*, Article 2.3.2

²⁹ *Zambia Non-governmental Organisations Act* (2009), Article 14.

³⁰ *Rwanda Law on Organisation and Functioning of International Non Governmental Organizations*, Article 15, (2011), is pending Presidential authorization. On the other hand, it appears that under the new law governing local

3. Large Number of Required Founders

Many countries in the region also require a large number of founders before an NGO may be formed. **Angola** requires a minimum of 15 members (for national organizations) and 7 members (for organizations with a regional or local scope);³¹ and **Sudan** requires organizations to have 30 members to register.³² The requirement of a large number of founders is a substantial barrier for some organizations in sparsely populated areas or with less popular causes. In **Mozambique**, 10 founders are required, and organizations must provide criminal records for all of them, which, according to one member of the commission charged with revising the *Law of Association*, is “one of the most difficult documents to obtain in Mozambique.”³³ By contrast, **South Africa** has no minimum number of required members or founders, and the Companies Act of **Ghana**, under which many NGOs are registered, allows “[a]ny one or more persons” to “form an incorporated company,” provisions that facilitate formation and registration of organizations.

4. Broad Government Discretion

Registration provisions in many countries include vague language and sweeping grants of power to agencies or ministries, allowing government employees broad discretion when evaluating registration applications from would-be NGOs.

- In **Mozambique**, the *Law of Association* prohibits “the formation of associations that possess a secretive character,”³⁴ and foreign associations may only be “authorised to pursue their purposes in Mozambican territory provided that these [purposes] are not contrary to the principles of national public order....”³⁵
- According to the **Nigerian** Criminal Code, Societies are deemed unlawful if formed for the purpose of “interfering with, or resisting, or encouraging interference with or resistance to the administration of the law.”³⁶

NGOs, all NGOs will be required to register. *Law on Organisation and Functioning of Local Non Governmental Organizations*, Article 15. Clarification of this provision is being sought before the President signs the measure.

³¹ Angolan *Law of Association*, Article 12.

³² Republic of Sudan, *Law on Regulating Voluntary and Humanitarian Work of 2006*, Article 9-1. An association may be exempted from this requirement if it can prove that it can be financially stable with fewer members; see Article 9-2.

³³ Gus tavo Toshiaki Lopes Sugahara, *MOZAMBIQUE: The Mirror of Narcissus – Knowledge and Self-conscience for a better development of the Mozambican Civil Society*, CIVICUS Participatory Civil Society Assessment Report, December 2010, available at:

http://www.google.com/url?sa=t&source=web&cd=3&ved=0CCcQFjAC&url=http%3A%2F%2Fwww.undp.org.mz%2Fen%2Fcontent%2Fdownload%2F2472%2F11281%2Ffile%2FParticipatory%2520Civil%2520Society%2520Assessments%2520Report.pdf&rct=j&q=according%20to%20Paulo%20Cuinica%20CIVICUS&ei=Ftf4TfWfFsg0QGn_eG0Cw&usg=AFQjCNEKdNlQXxO-Svev4phAvELnAmAg, and Mozambican *Law of Association* No. 8/91 July 18, 1991, Article 4.

³⁴ Mozambican *Law of Association*, Article 2.

³⁵ Id. at Article 17.

³⁶ Nigerian Criminal Code, Article 62.

- In **Ethiopia**, “merely formed Charities and Societies shall have no legal personality,” and registration may be denied to organizations that are “likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia.”³⁷ These and other provisions governing the registration process are vague and provide a substantial amount of discretion to registration officials. Consequently, NGOs have had difficulty registering and have endured long delays, repeated requests for information from the regulatory agency (Charities and Societies Agency), and in some cases denial on invalid grounds.³⁸
- Throughout the registration process in **Uganda**, NGOs must seek “letters of recommendation” from eight government officials, guarantors, and promoters.³⁹ These requirements confer excessive discretion to the government to deny registration where organizations must receive endorsements from government representatives as a prerequisite for registration. The law also fails to provide objective bases on which the registration authority (the NGO Board) may rely in order to make decisions about registration applications.
- In **Zimbabwe**, “the Registrar may require any private voluntary organization which has applied for registration to supply any further information in connection with its application which he may deem necessary.”⁴⁰ This, among other provisions, provides the registration authority with wide and largely discretionary powers to make decisions about applications for registration.

B. Restrictions on Activities: Government Supervision and Monitoring

In many countries in the region, organizations that have been successful in their applications for registration may still be subject to invasive government supervision. These laws invite arbitrary interference in NGO activities by empowering governmental bodies to exercise stringent supervisory oversight of NGOs. Invasive oversight may take the form of (1) extensive investigatory powers; (2) the power to interfere with an NGO’s operations; (3) restrictions on the ability of NGOs to carry out certain program activities without the approval of the government ; and (4) complete bans on certain activities.

1. Extensive Investigatory Powers

Some laws encourage government harassment through repeated inspections and requests for documentation.

- The 2009 *Charities and Societies Proclamation* allows the **Ethiopian** government to institute inquiries into a charity or society without limitation or notice. During such an inquiry, an organization is obligated to produce accounts and statements on “any matter in question at the inquiry.”⁴¹ Government inquiries may also require the officers or employees of an organization to appear before government officials to “furnish orally or in writing ... any information” or to

³⁷ Ethiopian *Proclamation for the Registration and Regulation of Charities and Societies*, Articles 65(1) and 69(2).

³⁸ *Defending Civil Society: a Report of the World Movement for Democracy* (February 2008), available at: <http://www.icnl.org/knowledge/news/2008/3-21.htm>.

³⁹ Ugandan *2009 NGO Regulations*, Article 5.

⁴⁰ Zimbabwe *Private Voluntary Organisations Act*, Article 9(4)

⁴¹ Ethiopian *Charities and Societies Proclamation*, Article 84.

“transmit” any document demanded.⁴² The law also fails to provide procedural protections, such as notice, an opportunity to object, the right to counsel, or the right to a hearing, for those affected by these sweeping powers.

- The *Interception of Communications Act* of **Zimbabwe** authorizes the government “to intercept mail, phone calls and emails without court approval.”⁴³ On February 13, 2011, a Zimbabwean Facebook user was arrested for “advocating or attempting to take over government by unconstitutional means” after he left an innocuous message about events in Egypt and Tunisia on Prime Minister Morgan Tsvangirai’s Facebook page.

2. Interference with Operational Activities

Several laws grant government authorities the right to interfere in an NGO’s internal governance and management.

- Organizations in **Ethiopia** must notify the regulatory authorities within seven days of a general assembly meeting.⁴⁴
- NGOs working in **Uganda** must eventually replace all foreign employees with Ugandans.⁴⁵
- In **Zimbabwe**, authorities may request that organizations holding non-public gatherings “submit to [the regulatory authority] from time to time or at such regular intervals as it may require a list of the members of the [organization] who are entitled to attend the meeting[s] concerned.”⁴⁶
- A draft NGO Bill in **Nigeria** would have authorized a government-controlled NGO Council to “do anything which in its opinion is calculated to facilitate the carrying out of its actions under the act.”⁴⁷

3. Government Authorization or Approval Required for Activities

Many countries in the region require NGOs to obtain prior authorization or approval before undertaking programmatic activities. Such provisions are part of a growing and ominous trend where governments have distorted measures adopted by the international community to strengthen international development efforts, such as the *Paris Declaration on Aid Effectiveness* and the *Accra Agenda for Action*. These measures have been used as an excuse to restrict independent funding and to funnel aid through government-endorsed or planned programs.

- NGOs in **Senegal** must receive approval for their programs from two different ministries – Social Development and Finance – and must regularly submit reports on projects for evaluation by the

⁴² Id.

⁴³ Interception of Communications Act of Zimbabwe, Article 6(1).

⁴⁴ Ethiopian *Charities and Societies Proclamation*, Article 86.

⁴⁵ Ugandan *2009 NGO Regulations*, Article 14(a)(iii).

⁴⁶ *The Public Order and Security Act* (POSA) of Zimbabwe, Article 23 (8).

⁴⁷ *Defending Civil Society: a Report of the World Movement for Democracy* (February 2008), available at: <http://www.icnl.org/knowledge/news/2008/3-21.htm>.

Ministry of Social Development.⁴⁸ NGO leaders have complained that this process undermines the autonomy of CSOs.

- In **Uganda**, the law requires NGOs to give seven days' notice before making "direct contact with people in any rural area of Uganda."⁴⁹
- Organizations wishing to operate in **Sierra Leone**, must demonstrate that the organization's purpose is "in conformity with [Government of Sierra Leone] GOSL development policies, and will promote the well-being and welfare of Sierra Leoneans."⁵⁰ The law also provides that NGOs must "discuss" all projects with the line ministry and [Ministry of Finance] MOFED, and the project itself must be "registered" before work commences.⁵¹ This standard combines rigid conformity to a government-mandated policy with vague and subjective standards of "well being."
- The **Democratic Republic of Congo** requires NGOs to "inform the Minister of Planning about their development activities, projects for implementation and the financial resources they have raised in order to carry out activities."⁵²
- Among its powers, the NGO regulatory body in **Tanzania** has the authority to "facilitate and co-ordinate activities of Non-Governmental Organizations;" and "to provide policy guidelines to Non Governmental Organizations for harmonizing their activities in light of the national development plan"⁵³

4. Complete Prohibition of Activities

In the most extreme cases, governments have instituted a complete ban on certain NGO activities.

- **Equatorial Guinea** restricts NGOs from promoting, monitoring, or engaging in any human rights activities and requires government approval for gatherings with political purposes, if there are more than ten individuals.⁵⁴ As a result, there is not a single legally registered independent human rights group in the country.⁵⁵
- **Angolan** law prohibits NGOs from participating in "all activities of state organs; electoral processes; and from influencing national policy through the government or parliament."⁵⁶

⁴⁸ Senegal Decret N° 96-103, Modifiant Le Decret 89-775 Du 30 Juin 1989 Fixant Les Modalites D'intervention Des Organisations Non Gouvernementales (ONG)

⁴⁹ Ugandan 2009 NGO Act, Article 13(a).

⁵⁰ Sierra Leone, *NGO Policy Regulations*, Article 2.2.1.

⁵¹ Id. at Article 2.5.

⁵² The Democratic Republic of Congo, *General Enforceable Provisions of Non-Profit Making Organisations and Charitable Corporations* Law N° 004/2001 of July 2001, Article 44.

⁵³ Tanzania 2002 NGO Act, Article 7(1).

⁵⁴ *Defending Civil Society: a Report of the World Movement for Democracy* (February 2008), available at: <http://www.icnl.org/knowledge/news/2008/3-21.htm>.

⁵⁵ Human Rights Watch, *Statement on Universal Periodic Review Outcome of Equatorial Guinea*, March 19, 2010, available at: <http://www.hrw.org/en/news/2010/03/22/human-rights-watch-statement-upr-outcome-equatorial-guinea>.

⁵⁶ Angolan *Law of Association* (14/91 of 11 May 1991), Article 8.

Consequently, civil society groups have been unable to effectively advocate on behalf of their constituents or in favor of certain policies, or to serve as effective government watchdogs.⁵⁷

- Similarly, in **Tanzania**, an international NGO must “refrain from doing any act which is likely to cause misunderstanding among indigenous/domestic NGOs.”⁵⁸

C. Restrictions on Foreign Engagement

Restrictions on foreign engagement have appeared in recent years in several countries in the region. Most notably, **Ethiopia** bars “foreign organizations” from conducting any activities related to the issues of human rights, women’s rights, children’s rights, or good governance,” and defines “foreign organizations” as any group that receives more than 10 percent of its funding from abroad.⁵⁹ Other governments have moved to restrict and control the flow of resources from abroad to domestic NGOs.

- An NGO Bill was enacted in **Zimbabwe** in 2004 (though not signed into law) that would have prohibited local NGOs engaged in “issues of governance” from accessing foreign funds.⁶⁰
- In **Eritrea**, the government broadly restricts the U.N. and bilateral agencies from funding NGOs, and requires all donor funds to flow through government ministries; allowing NGOs to receive funding only if there is insufficient capacity at the ministry level.⁶¹
- In **Uganda**, registration of a foreign organization requires a recommendation from the diplomatic mission in Uganda or a duly authorized government office of the organization’s home country.⁶² Prior to registration, the NGO Board (a government agency within the Ministry of Internal Affairs) must approve an organization’s structure, foreign employees, and its plan to replace its foreign employees with Ugandans.⁶³
- After the International Criminal Court (ICC) issued a warrant for **Sudanese** president Omar al-Bashir, the government of Sudan expelled thirteen International NGOs.⁶⁴ The UN described the groups as “integral” to the world’s biggest humanitarian operation.⁶⁵ A senior U.N. humanitarian affairs official, Rashid Khalikov, reported “significant signs of an erosion of

⁵⁷ See USAID NGOSI 2009: Angola, p.41, available at:

http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/civil_society/angosi/ANGOSI_Reports/2009/2009_African_NGO_Sustainability_Index_AO.pdf.

⁵⁸ Tanzanian 2002 NGO Act, Article 31(c)(iii).

⁵⁹ Ethiopian *Proclamation on Charities and Societies*, Articles 2 and 14(5).

⁶⁰ Zimbabwe 2004 NGO Bill, Article 17.

⁶¹ Eritrean Administration Proclamation No. 145/2005.

⁶² Ugandan 2009 NGO Act, Article

⁶³ Id.

⁶⁴ Rob Crilly, *Darfur refugees face disaster as Sudan expels NGOs in al-Salaam Camp: Bashir drives out 13 agencies in anger at his arrest warrant*, Irish Times.Com (6 March 2009), available at:

<http://www.irishtimes.com/newspaper/world/2009/0306/1224242373098.html>.

⁶⁵ United Nations Office for the Coordination of Humanitarian Affairs - Integrated Regional Information Networks (IRIN), “Sudan: NGO expulsion to hit Darfur’s displaced” ReliefWeb (9 March 2009), available at:

<http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7PYDRU?OpenDocument>.

humanitarian response capacity, with a concurrent impact on the lives of people in Darfur" since the 13 foreign and three domestic NGOs were expelled."⁶⁶ In the first half of 2011, the Sudanese government continued to restrict international humanitarian aid by "den[ying] flight clearance to dozens of UN flights, impos[ing] travel restrictions on NGO workers, arrest[ing] a dozen immunization workers, and detain[ing] ... community leaders."⁶⁷

Conclusion: New and Ongoing NGO Law Initiatives

In the midst of this restrictive trend, a few countries have undertaken efforts to improve the legal environment for civil society. Both **Kenya** and **Rwanda** are in the midst of reviewing their laws governing civil society. So far, the reform process in both countries has been uncharacteristically inclusive and the proposed laws include a number of potentially liberalizing provisions.

In **Kenya**, legislation to amend or replace the *NGO Coordination Act of 1990* is being drafted by both civil society groups and the government. The civil society-sponsored draft is scheduled to be reviewed by the Kenyan Law Reform Commission in July 2011, before it is submitted to Parliament.

In **Rwanda**, two comparatively liberal laws governing national and international civil society organizations were recently enacted. The final versions of the bills enacted by the Senate have not been circulated, and await the signature of the President. However, the *National Non-Governmental Organizations Act* submitted to the Senate included a number of enabling provisions, including:

- Reasonable registration requirements for organizations to obtain legal identity. Limited power is given to the registrar to deny registration to organizations, and decisions must be made within a specified time. The law also includes an automatic right of appeal for organizations denied registration. Existing registered organizations need not re-register. However, it appears that the enacted law requires *all* NGOs to register, but efforts are underway to obtain clarification from the Office of the President that registration is in fact voluntary.
- Specific authority for NGOs to engage in business operations, if profits are used for the organization's objectives.
- NGO governance provisions to strengthen NGO internal operations and legitimacy.
- Mediation processes established for resolving NGO internal conflicts.
- Affirmative right and administrative vehicles established for NGOs to participate in policy and legislative development.

The *International Non-Governmental Organizations Act* also considered by the Senate has many provisions similar to those found in the "*National Act*." One of the most important changes found in this

⁶⁶ Reuters, *Sudan says to never reverse decision to expel NGOs*, AlertNet (20 March 2009), available at: <http://www.alertnet.org/thenews/newsdesk/N20521830.htm>.

⁶⁷ Radio Dabanga, *ICC Prosecutor: 'genocide continues unabated in Darfur'*, June 8, 2011, available here: <http://www.radiodabanga.org/node/14970>.

new law is the extension of registration from a single year to five years for international NGOs. Other provisions that were of concern to international groups, including arbitrary limits on expenditures for administrative expenses and taxation of non-Rwandan employees, appear to have been resolved satisfactorily.

The outcome of these initiatives has yet to be determined. However, it is clear that the current legal environment for civil society in Africa presents significant obstacles as well as a few opportunities. In order to successfully minimize the obstacles and capitalize on the opportunities, NGOs, donors, and citizens will need to be equipped with adequate knowledge about the legal framework governing civil society and its impact on advancing development goals. Although the legal framework for civil society is one of many factors that affect how conducive the overall environment is for NGOs, without an enabling legal and regulatory environment, both the rights and freedoms of citizens and the breadth and reach of social and economic development recede.