Report from the African regional workshop on

Protecting Civic Space

November 17-18, 2014
University of Pretoria, South Africa

Convened by the International Center for Not-For-Profit Law (ICNL), CIVICUS, and the Community of Democracies in cooperation with the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association.

Highlights

Maina Kiai, *UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, addressed the workshop stating, "We can and must do better as activists, partners and donors on the local, national, regional, and international levels to overcome this great challenge of our time: those who would try to silence their peoples' collective voices. Most worryingly, we have seen efforts to constrain peoples' fundamental rights by despots and supposed democrats alike, not only in Africa, but worldwide."

Ambassador Maria Leissner, *Secretary General of the Community of Democracies*, expressed her solidarity with civil society activists in Africa and around the world working to address the "international disease" of restricting civil society. She emphasized that this is not a "West versus the rest" issue, but rather a global conflict between "democrats and crooks; governments that have asked their people for their mandates through elections and those that seek to hold power by any means."

About the Workshop

U.S. President Barack Obama hosted 47 African heads of state in Washington, DC on August 4-6, 2014 for the U.S.-Africa Leaders Summit.[1] Civil society's contributions to development and the trend of closing civic space in Africa were among the topics addressed during side events such as the Civil Society Forum. Convening a regional workshop focused on protecting civic space was among the key recommendations coming out of the Forum.[2] Participants in the Forum identified the need to deepen conversations, foster collaboration among key actors and to translate broader principles into actionable strategies for protecting civic space. To address this, the co-conveners[3] held an African regional workshop on "Protecting Civic Space" on November 17-18, 2014 at the University of Pretoria in South Africa.

The workshop included 48 participants, including 19 African civil society representatives from 14 countries in East, West, Central and Southern Africa and 9 Africans representing international organizations and donor agencies. One third of workshop participants are women. Participants were chosen based on their knowledge of key issue areas, experience in mobilizing civil society, history of engaging with government actors, influence on other civil society actors within their own countries and the region, and success in defending and/or expanding civic space. Participants were also selected to represent a variety of countries and sub-regions. Unfortunately, several invited participants were unable to join the workshop because of Ebola-related and other restrictions on visas.

In preparation for the workshop, participants and organizers chose priority issues confronting African civil society to address during the conference. The selected *key topics* were:

1) *Responding to constraints on freedom of assembly and expression;*
2) *Coalition-building and advocacy strategies; and*
3) *Protecting civil society's right to access resources.*

The workshop included plenary discussions, a panel presentation, small-group discussions on each key topic, and presentations from global leaders working on issues related to the protection of civic space such as Maina Kiai, UN Special Rapporteur on the Rights to Freedom of Peaceful

---

[1] https://www.whitehouse.gov/us-africa-leaders-summit

[2] See Key Recommendations from civil society for the U.S.-Africa Leaders Summit (August 4, 2014): https://www.whitehouse.gov/sites/default/files/docs/gameday_consultations_recommendations_powerpoint1.pdf

[3] The workshop was co-convened by the International Center for Not-for-Profit Law, CIVICUS, and the Community of Democracies in cooperation with the Office of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, as part of their series of regional dialogues on access to resources. The workshop was generously supported by USAID, as part of President Obama's Stand with Civil Society Agenda through the Legal Enabling Environment Program (LEEP), and the Government of Sweden, through the "Protecting Civic Space and the Right to Access Resources" project implemented by the Community of Democracies.

Assembly and Association (herein "UN Special Rapporteur") and Ambassador Maria Leissner, Secretary General of the Community of Democracies. The workshop format was designed to encourage participants to share their experiences on the country and regional levels in improving protections for civic space, with a particular emphasis on disseminating successful strategies. Workshop findings were collected from pre-arrival questionnaires, and session discussions. Rapporteurs and moderators assisted in compiling notes and editing this report.

Participants collectively identified obstacles to their work, shared experiences and best practices, and identified priority issues looking forward. Key recommendations addressed how African civil society colleagues and the international community can better expand and protect civic space. Workshop findings and recommendations encapsulated in this report will hopefully serve as a useful resource for civil society activists and donors as they consider strategies to protect civic space.

Workshop Findings

Key Topic #1: Responding to constraints on freedom of assembly and expression

Since 2012, ICNL has tracked more than 20 restrictive laws and regulations that have been drafted or adopted in Sub-Saharan Africa that restrict freedom of assembly and expression. In considering responses to these constraints on freedom of assembly and expression, participants emphasized the interconnectedness of assembly, association and expression rights. People need the freedom to form and operate organizations (association) that are empowered to speak out on issues of shared concern (expression), including through peaceful demonstrations (assembly). In all cases, the regulatory framework should be enabling.

Law reform. Though international human rights law now enshrines robust protections for freedom of assembly and expression, many governments fail to domesticate these laws and norms. In too many African countries, restrictive laws, including outdated colonial statutes, discourage people from holding peaceful assemblies to voice their concerns. In South Africa, several repressive laws have been repealed including the *Riotous Assembly Act*, the *Group Areas Act* and the *Fundraising Act*. Today, the *Regulation of Gatherings Act* provides an enabling framework whereby conveners are obligated to provide notice of the assembly but do not need authorization from the government. This law can serve as a model for other African countries. It was also noted that some countries, including South Africa, have good laws but still sometimes have bad practices.

Monitoring and documentation. Participants highlighted the importance of monitoring and documenting the implementation of laws on assembly and association to ensure that the people's rights are respected. Participants noted that civilian oversight of police is especially important. The creation of civilian review authorities, similar to ones that exist in the United States might be useful. These bodies tend to be most effective where there is political will to address problems with police conduct, the civilian review mechanism has real power to ensure police compliance with constitutional rights, and laws reinforce human rights norms.

Litigation. In some instances, courts have proven to be an effective forum to challenge restrictive laws. Law-makers have tried to eliminate this option by eliminating the opportunity for judicial review of certain decisions and by writing broad government discretion into statutes. Still, in Tanzania, the 1993 case of *Rev. Christopher Mtikila v. the Attorney General* led to the evolution of the regulatory framework from a strict prohibition on assemblies to a requirement that conveners obtain "authorization" to the current "notification" system. Participants also cited a 2014 decision by the African Court on Human and Peoples' Rights (ACHPR) in the matter of *Konaté v. Burkina Faso*, which struck down the country's defamation law as violating the freedom of expression. The UN Special Rapporteur expressed his interest in providing amicus briefs on international norms to support litigation protecting civic space.

Research and education. Participants agreed that systematic research and public education is critical to building a more democratic culture. Governments and even members of the public tend to be wary of dangers associated with protests, but participants noted that civil society activities promote peace and security by providing peaceful means for people to express themselves. To address this gap in understanding, thorough research and sophisticated analysis are necessary to inform successful public advocacy against restrictions on freedom of assembly and expression. In Burundi, research was undertaken in 2014 that analyzed in detail the *Law on Public Meetings* and compared it to relevant international law and norms.[4] The research was subsequently distributed to interested people in the international community and will form the basis of a public education and consultation project to raise awareness about the restrictive law. The project will also prepare civil society activists to participate in roundtables with officials.

Building regional norms. Progressive regional norms can be useful tools in protecting civic space by creating additional bases for activists' arguments. African regional norms are particularly persuasive to government officials who view the global human rights movement as not reflective of "African values." Participants applauded the ACHPR for establishing in 2012 a project to repeal criminal defamation, libel, and sedition laws which inhibit free expression. In addition, the ACHPR established a Study Group on Freedom of Association and Assembly that produced a report on the enjoyment of those freedoms in Africa. The report has been adopted by the ACHPR and will be published shortly. The Study Group is now working on Guidelines on Freedom of Association and Assembly to provide practical advice for officials and activists on how to translate norms into law and practice. The Guidelines are expected to be finalized by the end of 2015.

Key Topic #2: Coalition-building and advocacy strategies

Advocacy in favor of civic space is most successful when it has a broad base of support, representing a diversity of civil society organizations (CSOs) and perspectives. National, regional, and sub-regional groupings have been formed across Africa to reinforce civil society advocacy efforts. These African groups have further collaborated with global partners to obtain funds, skills and information not readily available in the local contexts.

---

[4] Audace Gatavu, "Analysis of the Legal Framework for Civil Society in Burundi: Case of the December 2013 *Law on Public Demonstrations and Assemblies,*" International Journal for Not-for-Profit Law (December 2014), http://www.icnl.org/research/journal/vol16iss2/v16n2%20Gatavu.pdf.

Reactive versus proactive advocacy. Much of civil society's advocacy is in reaction to government activities such as introducing new laws or policies. This is appropriate since a primary function of civil society is to hold government accountable. However, participants underlined the need for civil society to also be proactive in its advocacy. By focusing on regulatory issues before they become crises, civil society can take the initiative in advocating for a more enabling framework. One example of this balance comes from the Nigeria Network of Non-Governmental Organizations (NNNGO). Two restrictive bills were introduced in Nigeria in 2014, *Foreign Contributions (Regulation) Bill* imposes restrictions on foreign funding of CSOs and the *NGO Regulatory Agency Bill* requires project-level approval by government authorities for all CSO operations. NNNGO mobilized its hundreds of member organizations to advocate against the draft bills, but also prioritized opening a broader dialogue with officials about how the civil society sector should be regulated in the future.

Technical assistance as advocacy. Civil society advocacy is often aimed at changing government policy. As a result, relations between civil society and government in many African countries are characterized by antagonism and conflict. Participants observed, though, that when civil society provides government officials with technical assistance in the form of research or analysis, their advocacy is better received. In Kenya, for example, CSOs responded to government efforts to limit access to foreign funding in late 2013 by providing evidence of the number of jobs that would be lost and the overall economic importance of the sector. This convinced many people in parliament and the general public that the restrictions were inadvisable and the amendments were withdrawn.[5]

Inclusivity. Civil society coalitions and networks can play a critical role in empowering vulnerable and marginalized persons and groups. As part of the World Movement for Democracy network, Women and Human Rights in Mali has increased the representation of women in political processes and advocated for greater respect for women's rights. And as governments seek to target "troublesome" human rights defenders and marginalize LGBTQ persons, civil society coalitions can provide much-needed protection. The successful legal challenge to Uganda's *Anti-Homosexuality Act, 2014* was the result of an alliance between LGBTQ advocacy organizations and their allies in the broader civil society such as the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) and Chapter Four Uganda.

> *"If you want to walk fast, walk alone. If you want to walk far, walk together."*
> *- African Proverb*

Information flow. One important role for coalitions and networks is information sharing. By keeping civil society colleagues up-to-date on relevant news, the latest research, and

---

[5] New amendments to the *Public Benefit Organizations Act, 2013* were introduced in October 2014 and the Government of Kenya formed a multi-stakeholder task force to conduct public consultations on the proposed amendments.

programmatic or funding opportunities, coalitions empower member organizations to successfully advocate for civic space. The NGO Forum, convened twice yearly by the African Centre for Democracy and Human Rights Studies (ACDHRS) brings together hundreds of African CSOs to share experiences and information. ACDHRS maintains a mailing list containing thousands of organizations and regularly disseminates information of common interest. Successful collaborative advocacy growing out of the NGO Forum has benefited civil society in Zimbabwe, women human rights defenders, and many others. Participants and conveners agreed that the workshop contact list should serve as an additional platform for sharing and disseminating information.

Coalition and network typologies. It was noted that every workshop participant was a member of one or more coalitions or networks. In an effort to better understand the variety of collaborative mechanisms in existence, the following typology was developed.

	"Coalition"	**"Network"**
Timeframe	Short-term	Long-term
Focus	Issue- or campaign-based	Thematic or geographic base
Structure	Informal (minimal administrative hierarchy, no board of directors, etc.)	Formalized (secretariat, general assembly, board of directors, etc.)
Advantages	Flexible; events-driven	Accountable; sustainable
Challenges	Unregistered coalitions are often not recognized by governments and/or donors; Lack of operational cohesion/leadership	Registration processes often do not account for networks that have organizational (as opposed to individual) members; Administrative costs are relatively high
Examples	African Lawyers for the Defense of Civil Society, CSO Reference Group (Kenya), Brainforest coalitions (Gabon)	Pan African Human Rights Defenders Network, Nigeria Network of NGOs, International Commission of Jurists

Key Topic #3: Protecting civil society's right to access to resources

In the last two years, an increasing number of governments have imposed restrictions on CSOs' access to resources, particularly targeting funding from international sources. In the current funding landscape for civil society in Africa, these restrictions can have devastating effects, forcing CSOs to cease or pare down their operations. Ethiopia is the paradigmatic example, where the 2009 Charities and Societies Proclamation forbade CSOs receiving more than 10% of their funding from abroad from engaging in rights-based work. Similar efforts have also been undertaken – so far unsuccessfully – in Kenya and Nigeria.

Resources as a right. The UN Special Rapporteur dedicated a thematic report to restrictions on foreign funding. In his report, he made clear that the freedom of association necessarily includes the right to freely seek, receive and use resources. Participants were thankful for the report as it has provided important "soft law" in support of the right to access resources. They

page 7

professed to have used and quoted the report in their own advocacy and called for strengthening and entrenching the right to access resources among other recognized rights.

General Principles. Participants attention was drawn to another useful resource -- "General Principles" on "Protecting civic space and the right to access resources" as elaborated by the Community of Democracies with UN Special Rapporteur. These general principles are:

1) The ability to seek, receive and use resources is inherent to the freedom of association and essential to the existence and effective operations of any association;
2) States must allow associations to seek, receive and use foreign funding as a part of their obligation under international human rights law to mobilize resources available within the society as a whole and from the international community; and
3) Civil society and the corporate sectors should be governed by an equitable set of rules and regulations (sectoral equity).

Participants agreed that the General Principles are a useful tool to inform and empower civil society to pushback against restrictions. They suggested, however, that the principles should be more explicit on the ability of informal and unregistered associations to access resources; linkages should be made to other rights such as the rights to property and to privacy; the 'sectoral equity' should be more nuanced to avoid civil society organizations being held to overly-bureaucratic or stringent requirements simply because the private sector is subject to such; and the Principles should be used by civil society in processes within the UN system such as treaty body reporting and the Universal Periodic Review.

Justifications for restrictions. Participants highlighted a few common arguments governments use to justify restrictions on access to resources:

➢ *Counterterrorism and anti-money laundering* efforts necessitate increased scrutiny over international money transfers. This is based on the presumption that terrorist organizations are especially inclined to use CSOs as cover for illicit transfers.
➢ *Aid effectiveness, transparency and accountability* are enhanced by limiting international funding of CSOs. The presumption being that much of the international funding for CSOs is "wasted" on administrative costs and does not reach beneficiaries.
➢ *Civil society sustainability* is enhanced when CSOs are forced to rely on domestic resource mobilization, rather than being dependent on international donors.
➢ *State sovereignty and protection against external interference in domestic affairs* necessitates that a government maintain control over the flow of resources across its borders. International donor support to activists working towards changing official policies is viewed as especially pernicious.

Counterarguments. Participants put forward powerful counterarguments to the justifications listed above:

- *Counterterrorism and anti-money laundering* are causes that can be advanced by civil society, not a reason to tighten controls on them. There is no compelling evidence that civil society organizations are any more susceptible to cooptation for these ends than private companies or other entities.
- *Aid effectiveness, transparency and accountability* are goals shared by all stakeholders. Basic annual reports for government regulators, regular reporting to donors, and self-regulatory mechanisms facilitate the necessary transparency and accountability.
- *Civil society sustainability* is crucial to the development of a democratic society. Governments, donors and civil society leaders should work together to find appropriate solutions in each context. Restrictions on access to resources only weaken the sector and diminish its positive impact on society.
- *State sovereignty and protection against external interference in domestic affairs* are concepts should be understood within the context of a pluralistic and globalized world. State sovereignty should not be used as an excuse to contravene states' human rights obligations under international, regional and domestic laws.

__Real__ reason for restrictions. Participants noted that the justifications put forward by governments are often not the "real" reasons for imposing restrictions on foreign funding. Governments' primary reason for restricting the flow of international funding is to retain political control. Viewing mobilized populations as a threat, these governments understand that an effective way of limiting civil society's impact is by cutting off its access to critical funding. Another reason cited by participants is the competition over international donor funding between governments and civil society. The same governments that seek to impose restrictions on foreign funding of CSOs welcome international aid and investment.

Donors' role. Requirements imposed by international donors can sometimes exacerbate CSOs' difficulty in accessing resources with excessive administrative and bureaucratic "red tape." Notably, requiring organizations to be registered in their home country impedes CSOs in highly restrictive environments from obtaining funding. In this regard, participants cited the September 23, 2014 Presidential Memorandum on "Deepening U.S. Government Efforts to Collaborate with and Strengthen Civil Society"[6] as a positive development. The memorandum calls for the U.S. Government to work "with civil society organizations even when local laws restrict the ability of civil society to operate." Participants noted that donor countries must balance their political and strategic interests in any country with the interest in protecting civil society. Too often, security and economic interests trump human rights and civic space. The U.S. Government and other donors' engagement with the Ethiopian government despite its human rights record is a case in point.

---

[6] http://www.whitehouse.gov/the-press-office/2014/09/23/presidential-memorandum-civil-society

Recommendations

Participants compiled a list of recommendations based on their discussions and experiences, prioritizing recommendations to constituencies present at the workshop, African CSOs and the donor community.

1) Responding to constraints on freedom of assembly and expression:

To African CSOs:
- Undertake additional *research* on the civil society sector and the legal framework for civic space to inform advocacy efforts and counter mischaracterizations of the sector.
- Pursue *impact litigation* to challenge restrictive laws in domestic and regional courts.

To International Donors:
- *Fund litigation, peaceful protests* and other civil society activities currently deemed too contentious or political by some donors.
- *Include civil society in negotiations with governments* where possible to ensure that civil society concerns are not overshadowed by other strategic interests.

2) Coalition-building and advocacy strategies:

To African CSOs:
- Foster *inclusive coalitions* that engage advocacy and delivery organizations as well as specific groups such as women, LGBTQ people and rural-based CSOs.
- Identify and engage *allies in government* to achieve better advocacy outcomes and improve the relationship between government and civil society.

To International Donors:
- *Provide more "core" funding* to CSOs, coalitions and networks, with a particular emphasis on funding women's organizations.
- Provide regional and country-specific *technical assistance and capacity-building* programming to strengthen civil society and its advocacy for increased civic space.

3) Protecting civil society's right to access resources:

To African CSOs:
- *Diversify funding sources* to decrease dependence on international donors. Alternatives might include crowdsourcing via social media and approaching private sector entities.
- *Use proven counterarguments* to reframe the public debate around international funding.

To International Donors:
- *Adapt funding requirements,* especially in restrictive environments, including providing funding to unregistered groups where necessary.
- *Provide non-financial support* in the form of diplomatic advocacy and emergency visas to civil society activists under threat.

Workshop Participants

Cathryn Archibald
CIVICUS

Zephaniah Aura
USAID/Kenya

Alexious Butler
USAID/South Sudan

Daniel Calingaert
Freedom House

McDonald Chipenzi
*Foundation for
Democratic Process
(Zambia)*

Simon Delaney
*Delaney Attorneys
(South Africa)*

Solange Fiaty
*West African Human
Rights Defenders Network
(Togo)*
(Moderator)

Hannah Forster
*African Centre for
Democracy and Human
Rights Studies
(The Gambia)*
(Rapporteur)

Audace Gatavu
*Nibitegeka and Associates
(Burundi)*

Sipho Gumedze
*Swaziland Lawyers for
Human Rights*

Patricia Hunter
USAID/DCHA/DRG

Ryota Jonen
*World Movement for
Democracy*
(Rapporteur)

Brian Kagoro
*United Nations
Development Program*

Waruguru Kaguongo
*Office of the UN Special
Rapporteur*
(Moderator)

Lyvia Kakonge
USAID/Uganda

Maina Kiai
*UN Special Rapporteur on
the Rights to Freedom of
Peaceful Assembly and
Association*

David Kode
CIVICUS

Emily Krunic
USAID/Rwanda

Amb. Maria Leissner
*Community of
Democracies*

Francesco Lembo
*Community of
Democracies Secretariat*

Katherine Liao
*UN Office of the High
Commissioner for Human
Rights*

Djingarey Maiga
*Women's and Human
Rights (Mali)*

Peter Malnak
USAID/Rwanda

Jeremy Meadows
USAID/AFR/SD

Manyawkal Mekonnen
*Ethiopian Lawyers
Association*
(continues on next page)

page 11

David Moore
ICNL

Aaron Myers
Lifeline Embattled NGOs Fund

Kamau Ngugi
Human Rights Defenders Coalition (Kenya)

Jean Baptiste Niyongabo
Action for Peace and Development (Burundi)

Oyebisi Oluseyi
Nigeria Network of NGOs

Marc Ona Essangui
Brainforest (Gabon)

Nicholas Opiyo
Chapter Four Uganda

Lisa Peterson
U.S. Department of State

Irene Petras
Zimbabwe Lawyers for Human Rights

Patrick Phoso
USAID/Malawi

Greg Saili
USAID/Zambia

Abdourahman Sallah
Biodiversity Action Journalists Gambia

Livingston Sewanyana
Foundation for Human Rights Initiative (Uganda)

Hassan Shire Sheikh
Pan African Human Rights Defenders Network

Dhananjayan Sriskandarajah
CIVICUS

Harold Sungusia
Legal and Human Rights Centre (Tanzania)
(Rapporteur)

Emerson Sykes
ICNL

Mandeep Tiwana
CIVICUS

Arnold Tsunga
International Commission of Jurists
(Moderator)

Ine Van Severen
CIVICUS

Jeffrey Vize
Office of the UN Special Rapporteur

Emily Wann
USAID/Mozambique

Monica Wisner
USAID/Ethiopia

❖ Special thanks to the *Centre for Human Rights* at the University of Pretoria and the campus staff for hosting the workshop.

All photos courtesy of Jeffrey Vize.

Useful Resources

African Commission on Human and Peoples' Rights, *Report* and *Guidelines on Freedom of Association and Assembly in Africa* (*forthcoming in 2015*)

CIVICUS, *Civil Society Index- Rapid Assessment*: http://civicus.org/csi/

CIVICUS, *Enabling Environment Index*: http://civicus.org/eei/

Community of Democracies, *Protecting Civic Space and Access to Resources Project:* http://www.community-democracies.org/Working-for-Democracy/Initiatives/Regional-Dialogues

Community of Democracies and UN Special Rapporteur, *General Principles on Protecting Civic Space and Access to Resources*: http://www.community-democracies.org/Working-for-Democracy/News/General-principles-on-protecting-civic-space-and-t

ICNL, *NGO Law Monitor* (country reports): http://www.icnl.org/research/monitor/

ICNL, *Online Library* (laws and other documents): http://www.icnl.org/research/library/

UN Special Rapporteur reports, news and other useful information are available at freeassembly.net and http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx.

USAID, *Civil Society Sustainability Index for Sub-Saharan Africa*: http://www.usaid.gov/africa-civil-society

World Movement for Democracy, *Defending Civil Society Report* and *Toolkit:* http://www.wmd.org/projects/defending-civil-society

For more information, please contact:

Federica Donati, OHCHR: fdonati@ohchr.org
Francesco Lembo, Community of Democracies Secretariat:flembo@community-democracies.org
David Kode, CIVICUS: david.kode@civicus.org
Emerson Sykes, ICNL: esykes@icnl.org