

Freedom under siege:
The shrinking civic space and violations
of Freedom of Association and Assembly
in Sub-Saharan Africa: Strategies for
countering restrictions



CSV

Centre for the Study of
Violence and Reconciliation



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The Centre for the Study of Violence and Reconciliation (CSVR) is an independent nongovernmental organisation established in South Africa in 1989. We are a multi-disciplinary institute that seeks to understand and prevent violence, heal its effects and build sustainable peace at community, national and regional levels. We do this through collaborating with, and learning from, the lived and diverse experiences of communities affected by violence and conflict. Through our research, interventions and advocacy we seek to enhance state accountability, promote gender equality and build social cohesion, integration and active citizenship. While primarily based in South Africa, we work across the African continent through collaborations with community, civil society, state and international partners.

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1 Introduction

Sub-Saharan Africa has recorded an increasing number of national governments cracking down on civil society organisations addressing human rights and social justice issues over the past two decades. Human rights activists, journalists, social movement leaders, political activists and trade unionists are amongst those who have shone the spotlight on gross human rights violations, authoritarian tendencies, corruption, lack of service delivery and social justice challenges – holding national governments and leaders accountable for development, good governance and respect for human rights and the rule of law. Their civic participation and activism have often been met with brutal force, including, physical assaults, arbitrary detention, torture, killings, intimidation and surveillance by the intelligence, breaking of cyber laws to effect internet shutdowns and enforced disappearances, amongst others. Politically sensitive periods such as elections, including the pre, during and post-election periods, have witnessed an increase in the curtailment of the freedoms of association and assembly. Attacks and persecution against activists working on land, environmental and indigenous rights are also on the increase.¹

The crackdown on human rights defenders and civil society, as well as the shrinking of civic space, flies in the face of commitments by many African countries to uphold the rights to freedom of association and assembly, as shown by their being signatories to international and regional human rights instruments, which include the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR). In addition, national constitutions of most African countries guarantee freedom of association and assembly. However, the same national governments are increasingly contravening these rights in their quest to hold onto power, suppress dissenting voices and intimidate those speaking the loudest about human rights violations and corruption that has become endemic in most African societies. In some countries, the politicisation of the judiciary has become pervasive, with the criminal justice system and court processes being used as tools with which to further suppress and violate rights and liberties.

Notwithstanding attacks and threats to fundamental rights and freedoms, and the shrinking civic space in sub-Saharan Africa, human rights defenders and civil society organisations have continued to play a watchdog role on the violation of human rights, as well as governance and democratic processes in their countries. They have intensified their efforts through innovative ways, raising awareness about human rights violations in their countries and exposing their governments' excesses. Social media has been used as a tool to share country experiences about the violations of rights to freedom of association and assembly with the wider regional and international community. Civil society organisations have also embarked on strategic litigation to facilitate the release of detained, tortured and/or disappeared activists.

The continued cracking down on civil society organisations addressing human rights issues in Sub-Saharan Africa not only shrinks the civil space but also destroys the backbone of inclusive development and democracy. Given the lack of political will by national governments to uphold the rights to freedom of association and assembly, there is a need for both continental and international mechanisms to step up efforts in upholding these rights in sub-Saharan Africa.

This briefing paper provides an overview of the shrinking civic space as well as the situation on the violations of the rights to freedom of association and assembly in sub-Saharan Africa. The briefing paper also highlights innovation and strategic advocacy approaches employed by sub-Saharan Africa's civil society to defend their civic participation space.

1. Hannah Smidt "Shrinking the Civic in Africa: When Governments Crackdown on Civil Society, November 2018.

2 An overview of shrinking civic space and freedoms of association and assembly violations in sub-Saharan Africa

The operating environment for civil society organisations has been deteriorating, with governments using state machinery including law enforcement and state security services as well as the judiciary and legislative arms of the government to intimidate social justice and human rights activists and organisations. Arrests², enforced disappearances, torture, threats of closure and deregistration of Non-Governmental Organisations (NGOs)³, and enactment of restrictive laws severely curtail citizen participation and freedoms of association and assembly. Governments also resort to subtle ways of restricting civil society's operating space through a cumbersome NGO registration process.⁴ Civic activism has been met with the shrinking of civic space by national governments who have resorted to promulgating restrictive laws and policies that violate freedom of association and assembly (examples include Cameroon, Zimbabwe, Nigeria, Uganda, Kenya, Zambia and Malawi), some have put in place cumbersome registration processes or foreign funding regulations for civil society organisations (for example, Egypt) silence any criticism of the state and state apparatus. The impact of these retrogressive laws is that mobilising, speaking out and holding the governments accountable is becoming increasingly difficult and a risk for civil society organisations. The obsession with national security and economic development by some governments is increasingly closing space for civil participation. Civil organisations are often accused of being foreign agents and branded 'anti-economic development' and a threat to national security. Critical voices are often cast as a threat to national interest. Consequently, there has been an increase in blatant attacks on human rights defenders in Zimbabwe, Zambia, Tanzania and Egypt where the arbitrary arrests of activists is on the increase. It has also been reported that in some countries where NGOs receive large sums of donor funding from Western countries, governments tend to impose more restrictions on civil society organisations.⁵

The nature and intensity of cracking down on civil society in sub-Saharan countries vary. However, common characteristics in the clampdown against freedoms of association and assembly on human rights defenders include gross human rights violations and violations of international and regional humanitarian laws. These restrictions on freedom of association and assembly become more pronounced during politically sensitive periods in the majority of countries. Their manifestations can be observed during elections, as was the case in Kenya, Uganda and Zambia; when incumbents undertake processes to amend electoral laws and extend their terms in office as experienced in Burundi⁶, Guinea⁷ and the DRC⁸. In most instances, human rights defenders,

2. See Human Rights Watch report on Zimbabwe, Tanzania, Zambia, Mozambique and Malawi in 2019. Available at: <https://www.hrw.org/news/2020/01/14/southern-africa-weak-rights-protections> [Accessed 30 January 2020].
3. In 2018, Zimbabwean President threatened to withdraw Zimbabwean NGOs' registration certificates, accusing them of "dabbling in politics" – see Newsday at <https://www.newsday.co.zw/2018/12/ed-threatens-to-de-register-ngos/> [accessed 28 January 2020]. Also, in 2018, Kenyan NGOs working on accountability, abuses by security forces and elections faced threats of closure and cancellation of their NGO registration from the BGO Board – see Human Rights Watch Report at: <https://www.hrw.org/world-report/2018/country-chapters/kenya> [Accessed 30 January 2020].
4. See an analysis of Legislation on NGOs in Ethiopia, Kenya, Rwanda, Uganda and Tanzania. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/656_NGO_Legislation_East_Africa.pdf [Accessed 30 June 2020].
5. Hannah Smidt "Shrinking the Civic in Africa: When Governments Crackdown on Civil Society, November 2018.
6. Human Rights Watch reported on the Burundian government's crackdown on activists, journalists and opposition parties since 2015 when President extended his Presidential term and stood for elections, winning the election that entrenched his 3rd Presidential term. Available at <https://www.hrw.org/news/2019/04/29/burundi-crackdown-continues-shadows-impunity> [Accessed 30 January 2020].
7. See <https://www.reuters.com/article/us-guinea-politics/thousands-in-guinea-march-against-presidents-possible-third-term-bid-idUSKBN1X31QY> [Accessed 30 January 2020]
8. <https://www.accord.org.za/conflict-trends/civic-space-restrictions-in-africa/> [Accessed 30 January 2020].

activists and the media working on electoral issues are targeted. Media houses, for example, are often closed or their accreditation is withdrawn, thereby effectively frustrating the role of the media to monitor and provide a non biased outlook on the political, social, economic, human rights and governance landscape. The closing down of the internet for several days, while carry out unprecedented human rights violations against citizens, social movement leaders, trade unionist leaders and civil society⁹ has been evidenced. In some countries, internet shutdowns have stretched on for weeks¹⁰ or month(s) in an attempt to crush popular revolt by the masses.^{11,12}

3 The role of the African Union

The African Union (AU) has set out the continental vision and aspirations for the next 50 years – 2013 to 2063 – through Agenda 2063. Agenda 2063 is presented as Africa’s blueprint and master plan, a manifestation of a Pan-African drive for freedom amongst others, prioritising peace and democratic governance. Aspiration 3 envisions “An Africa of good governance, democracy, respect for human rights, justice and the rule of law”. A critical enabler of this vision is citizens’ right to organize and have the liberty to speak out against poverty, inequality and injustice. The African Charter on Democracy, Elections and Governance (ACDEG) guarantees the right to freedom of association.¹³ The African Commission on Human and People’s Rights, the AU’s premier human rights mechanism, is the custodian of human rights enshrined on the African Charter on Human and People’s Rights (African Charter), and the mechanism is mandated to promote and protect human rights in Africa. The African Charter recognises African citizens and people’s rights to freedom of association¹⁴ and freedom to assembly.¹⁵ African Member States who have ratified the African Charter are required to report to the African Commission on the state of human rights in their countries, including the rights to freedom of association and assembly, through submitting periodic reports every two years. However, submission of periodic reports to the African Commission by African Member States has been sporadic at the very least, and almost non-existent at the most. Furthermore, advocacy efforts to protect freedom of association and assembly in Africa have been bolstered by the African Commission on Human and People’s Rights’ adoption of the Guidelines on Freedom of Association and Assembly in Africa in 2017. These guidelines provide guidance to African Member States to ensure that their national laws, policies and practice adhere to the regional and international human rights standards on freedom of association and assembly. The guidelines also serve as a reference for civil society for the protection and implementation of rights of association and assembly in Africa.¹⁶ The mandate of the African Commission on Human and People’s Rights Special Rapporteur on human rights defenders in Africa, a special mechanism created by the African Commission in 2004, includes receiving and investigating the situation of human rights defenders in Africa, and developing strategies to increase their protection through the AU Member States. This mandate also includes investigating and promoting the right to freedom of association and assembly.

9. See Al Jazeera’s article on internet shut down in Zimbabwe at <https://www.aljazeera.com/news/2019/01/zimbabwe-imposes-total-internet-shutdown-crackdown-190118171452163.html> [Accessed 30 January 2020].

10. DRC’s internet shutdown was over 20 days from 31 December to 20 January. See <https://www.aljazeera.com/news/2019/01/dr-congo-internet-restored-20-day-suspension-elections-190120062941741.html>

11. Sudan’s internet shutdown spanned 36 days. See <https://netblocks.org/reports/sudan-internet-recovery-after-month-long-shutdown-98aZpOAo> [Accessed 30 January 2020]

12. <https://www.hrw.org/news/2019/01/17/east-africa-civic-space-shrinking>

13. Arts 12(3), 27(2) and 28 of the African Charter on Democracy, Elections and Governance (ACDEG)

14. Art 10 of the African Charter on Human and People’s Rights.

15. Art 11 of the African Charter on Human and People’s Rights.

16. Agenda 2063: The Africa We Want, African Union, 2016.

Notwithstanding the normative framework guaranteeing, and mechanisms promoting and protecting the rights to freedom of association and assembly, there is a growing trend of citizens' fundamental rights to assembly, association and free speech being restricted. Governments continue to use new and existing laws to limit the creation of legitimate civil society organisations, restrict their operations and control their funding. According to the Africa Annual Report, about 136 restrictive laws have been introduced worldwide, and 29 of those have been in Sub-Saharan Africa since 2012.¹⁷

4 The role of the United Nations

A number of United Nations human rights instruments set out provisions on human rights to freedom of association and assembly. These provisions are included in the Universal Declaration of Human Rights¹⁸, the International Covenant Of Civil Rights and Political Rights (ICCPR),¹⁹ the International Convention on the Rights of the Child,²⁰ the Convention on the Elimination of All Forms of Discrimination Against Women.²¹ The above-mentioned instruments have been ratified by the majority of countries in sub-Saharan Africa, and these rights are enshrined and guaranteed in their national Constitutions.

Notwithstanding the commitments by Member States to uphold these rights and to report periodically to the United Nations Human Rights Council through the Universal Peer Review process, to review the human rights records of all UN Member States, including records on upholding the rights to freedom of association and assembly, these rights continue to be violated with even alarming levels of impunity and disregard for the rule of law. UN Member States, including the majority of countries in sub-Saharan Africa are also mandated to report to the UN Treaty bodies on their obligations in terms of the UN instruments that provide for the rights to freedom of association and assembly.

The Special Rapporteur on the rights to freedom of peaceful assembly and association, an independent expert appointed by the UN Human Rights Council, is part of the special procedures of the Human Rights Council. The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and association was established in 2010 to “gather all relevant information, including national practices and experiences relating to the promotion and protection of the rights to freedom of peaceful assembly and association, to study trends, developments and challenges concerning the exercise of these rights, and to make recommendations on ways and means to ensure the promotion and protection of the rights to freedom of peaceful assembly and association”, amongst others. The Special rapporteur submits annual reports, undertakes fact-finding country visits, submits urgent appeals and allegation letters to Member States on alleged violations.

The Special Rapporteurs, both at AU and UN levels are accessible to civil society organisations, human rights defenders, journalists, trade unionists, social movements and social justice activists, as well as citizens – who often bear the brunt of violations of these rights; and are also accessible to Member States. The mandate of Special Rapporteurs has its limitation as governments decide who to invite and when, and in some instances, governments' itinerary for the Special Rapporteur visit does not include the participation of civil society organisations and activists, and in this case, civil society organisations only get to be informed about these visits, especially official visits after the fact.

17. Africa Annual report, 2017/2018.

18. Art 20 of the Universal Declaration of Human Rights provides for the right to freedom of association and art 20(1) provides for the right to assembly.

19. Art 22 of the International Covenant on Civil and Political Rights provides for the right to freedom of association and art 21 provides for the right to assembly.

20. Art 7(c) of the International Convention on the Rights of the Child and art 15 provides for the right to freedom of assembly.

21. Art 15 of the Convention on the Elimination of All Forms of Discrimination Against Women guarantees the right to freedom of association for women.

5

Civil society innovation and strategic advocacy approaches to defending rights and civic space

Human rights defenders, journalists, social movement leaders, political activists and trade unionists have in the main been the vanguard of the voiceless in the fight against human rights violations, authoritarian regimes, corruption, social justice challenges, holding governments and leaders accountable for development, good governance and respect for human rights and the rule of law (for example, Swaziland, Mozambique, Zimbabwe and Lesotho). Amidst the challenges of the shrinking civic space and the violations of the rights to freedom of association and assembly, civil society, human rights defenders and activists' efforts to monitor and publicly expose human rights abuses, bad governance and social injustice have also intensified. Governments restrictions, arbitrary detention, torture and arrests have not deterred activists' voices; instead, civil society organisations are increasingly finding creative ways of exposing gross human rights abuses. Through the use of technology, networking platforms and litigation, amongst others, the innovation and advocacy strategies on defending human rights and the civic space can be replicated across sub-Saharan Africa, to ensure the rights to freedom of association and assembly for both citizens and activists. Some of the innovative ways employed by civil society in defending human rights and civic space are discussed below.

5.1 Networks and Partnerships

The formations of networks and coalitions at national, regional and continental levels, to share information about human rights abuses, security threats, advocacy strategies, as well as the establishment of support groups, have been additional vehicles used by civil society organisations and activists in response to governments' restrictive laws. Networks or associations have been successfully formed at national levels and across field/professional/issue focus (for example, in Zimbabwe, South Sudan, Malawi and The Gambia) and at regional and continental levels, and these have been critical for swift information sharing, support mobilisation, reporting of gross human rights abuses and formulating an advocacy strategy for addressing and mitigating violations.

5.2 Use of Social media and VPNs

Social media has become one of the most potent weapons used by civil society for sharing in real-time, gross human rights abuses, including violations of freedom of association and assembly, by law enforcement and intelligence operatives. Images and videos widely shared by citizens, human rights activists, journalists and human rights defenders tagging both thematic and country special rapporteurs at AU and UN levels, via twitter and other social media platforms, alerting them to the human rights abuses in their countries. Member States' human rights abuses have been exposed this way. In some instances, this has had the positive effect of detained or abducted activists and human rights defenders being released. Civil society actors and human rights defenders have adopted the use of virtual private networks (VPNs) to access blocked social media platforms and ensure connectivity during internet shut down periods (for example, Zimbabwe, DRC and Sudan).

5.3. Litigation

Litigation is another tool that civil society and human rights defenders have relied on, to enforce the guaranteed rights to freedom of association and assembly in sub-Saharan Africa. Arrested activists and human rights defenders' right to appear before the courts within 48 hours has been enforced by public interest litigants. Through networks and real-time information sharing amongst activists, human rights defenders are the first on the scene of arrests or at police stations where activist colleagues are detained to provide legal representation for bail application and the ensuing court process.²² In instances where arrested activists' whereabouts are unknown or where the state refuses to bring them before the courts within the prescribed time, or where an abduction or enforced disappearance is suspected, following an arrest; litigants have petitioned the courts for *habeas corpus* orders²³, to demand the immediate release of the detained or that the detained be brought before the courts to establish the lawfulness of the detention. Through litigation, judicial landmark decisions in favour of human rights defenders have been handed down by the courts as have been seen in Kenya and Angola where courts declared some of the government's decisions to stifle the work of civil society organisations as being unconstitutional.

5.4. Peaceful demonstrations, sit-ins and Petitions

Civil society organisations in sub-Saharan Africa have also used peaceful demonstrations or protests, sit-ins and petitions as a tool to voice their dissatisfaction for social justice and human rights challenges in their countries. Sudan's peaceful protests and sit-ins led by women activists and women human rights defenders inspired communities and professional groups to join, gained traction and forced the international community and African leaders to take action, leading to a revolution and political transition in the country. Similarly, Zimbabwe's 2019 peaceful protests which lamented the socio-economic hardships in the country, were led by trade unionists, opposition political parties and were joined by citizens. In both countries, government retaliated against such peaceful actions with brutal force, leaving behind dead bodies and scores of peaceful protestors imprisoned (in Zimbabwe, detained persons included children). In most sub-Saharan countries, intolerance for peaceful dissent and the disregard for peaceful assembly are increasingly becoming the norm (as highlighted in Sudan and Zimbabwe above). Although the strategy of peaceful demonstrations and sit-ins comes at a cost for activists and citizens on the forefront, it has in some instances brought about change (as reported in Sudan).

22. In December 2019, it was through litigation that Zambian human rights defenders and activists who were arrested just before Christmas, appeared before the courts for their bail application and immediate release from detention on bail on 23 December 2019.

23. Zimbabwean activists and human rights defenders have petitioned the courts for habeas corpus orders on numerous occasions to counter the actions of the police to detain activists and move them from one police station to another with the intention to either detain them for longer, or to deny them access to legal representations (when their legal representatives cannot access them).

6 Conclusion

The rights to freedoms of association and assembly are under siege as seen in countries where paranoid governments insist on clinging to power and consider any dissenting voices to their repressive and authoritarian rule as enmity to the state. Rampant and brazen violations of these rights and the reprisals targeting citizens and activists exercising these rights, as well as human rights defenders defending both the spaces for civic participation and those whose rights have been violated by state actors, are on the rise.

With the growing trend of shrinking civic space across the globe and mainly in Sub-Saharan Africa, civil society organisations, activists and human rights defenders are equally rising to the occasion in defending the space. As highlighted above, repression and violations of the rights to freedom of association and assembly are often pitted against the innovative ways and measures employed by civil society and activists to hold the Member States accountable to their human rights commitments. As national governments become more desperate, and as they resort to suppressing civil society and activists' voices, innovative advocacy strategies to counter governments' actions continue to be employed. Technology and digitisation of information have made it easy to share information with the human rights mechanisms and special procedures on the trends and prevalence of these violations in sub-Saharan Africa.



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