PUTTING CITIZENS' VOICE AT THE CENTRE OF DEVELOPMENT:
Challenging Shrinking Civic Space across Africa

'Africa will be a continent where the institutions are at the service of its people. Citizens will actively participate in the social, economic and political development and management.' **Agenda 2063, African Union**

I. Introduction

The African Union (AU) has set out a clear vision through Agenda 2063. It is one where the continent's citizens are front and centre in defining their development agenda and where Africa's resources benefit all Africans. A critical enabler of this vision is citizens' right to organise and their ability to speak out against poverty, inequality and injustice. In fact, the AU has designated 2016 as the 'Year of Human Rights'. Yet across the continent, there is an alarming and growing trend of citizens' fundamental rights to assembly, association and free speech being restricted. Even the AU is putting into question its commitment to democratic participation, restricting civil society's attendance at AU summits in Kigali in July 2016 and also for January 2017.

A range of governments are (mis)using new and existing laws to limit the creation of legitimate Civil Society Organisations (CSOs), restrict their operations, and control their funding. Since 2012, 136 restrictive laws have been introduced worldwide, 29 of those have been in Sub-Saharan Africa [1]. Across Africa, these restrictions are acute and appear to be getting worse [2].

- AU has designated 2016 the **African Year of Human Rights** but decides to restrict CSO participation in AU Summits

- **29 restrictive laws** have been introduced in Sub-Saharan Africa since 2012

- AU and Member States should **value and promote civil society's contribution** to development

Limited civic space restricts the ability of citizens to participate in public life and speak truth to power. This constrains one of society's primary tools to prevent political capture of the state and its resources. Addressing poverty and rising inequality therefore requires average citizens and the organisations that represent them to have the legal, political and social space to operate and influence the policy agenda. Achieving this requires us all – governments, donors, private sector, civil society and citizens – to protect, nurture and celebrate civic space.

Promoting civic space does not tacitly imply that civil society should be unregulated and free from government oversight. On the contrary, reasonable regulation is legitimate, necessary and can enhance effectiveness and accountability in the sector. Yet any regulation must not be overly burdensome, driven by political motives and designed to stifle independent voices. This policy brief aims to highlight the issue of closing civic space and is based on detailed research commissioned by Oxfam from the International Centre for Not-for-Profit Law (ICNL). The research focused on six countries [3] from across the Horn, East and Central Africa and its analysis is drawn on to identify broader trends and recommendations.

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1   ICNL (2015), 'Shrinking Civil Society Space in HECA: Managing the Implications', Internal Report.
2   For more detail see Civicus (2015), Civil Society Watch Report 2015, http://www.civicus.org/images/CIVICUSCivilSocietyWatchReport2015.pdf
3   Research was conducted in Kenya, Uganda, South Sudan, Ethiopia, Rwanda and Somalia with selection of these countries driven by Oxfam operational needs.

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# II. Current Trends and Status of Civic Space in Africa

Across the continent there is a proud history of civic activism that is under threat. Social movements and activists were a vital component of most independence struggles, and civil society was a driving force behind state formation and state building[4]. Building on this tradition, the AU has established a strong normative basis for civic participation through a number of key legal instruments, policy frameworks and specific organs: The African Charter on Human and Peoples' Rights, the African Charter on Democracy, Elections and Governance and the creation of the Economic Social and Cultural Council, amongst others. It is therefore clear that Africa's governments agree and have committed in law to ensuring that citizens are allowed space to act, advocate and speak out.

However, such commitments that protect civic space are being eroded as many governments across the region characterise civil society more as political opponents than organisations making a positive contribution to social change[5]. While exceptions exist, the current trend is for citizens, activists and the organisations that represent them to have less space within which to operate. These trends are outlined below with a snapshot of the key civic space drivers, risks, laws and issues highlighted from research conducted in the six countries of focus.

Challenges with regulation, self-regulation and over-regulation of CSOs

A key moment in the recent restrictions on civic space was in 2009 when Ethiopia adopted the Charities and Societies Proclamation (ChSP)[6]. This severely constrained the sector by, amongst others, capping foreign funding at 10% of an organisation's budget if it works on rights-based issues or advocacy. It further imposed a 30% cap on administrative expenses, with costs related to advocacy categorised as administrative rather than operational. Since Ethiopia's adoption of the ChSP, laws and policies that restrict the formation and operation of CSOs have spread across East Africa and beyond. These include:

Key Trends Transforming Civic Space

- Redefined **role of the state**: Unity and economic progress over democratic governance (South Sudan, Ethiopia, Burundi)
- Challenges with Regulation, Self-regulation and **Over-regulation** of CSOs
- **Increased insecurity**: rise of extremism, increased conflict, rise of refugees and IDPs (Al-shabab, Kenya and Somalia)
- Changing nature of **technology** – more platforms, more surveillance (Ethiopia)
- **Solidarity** amongst CSOs at the national and regional levels

- **Kenya**: Public Benefit Organisations Act, 2013 and proposed amendments

- **Rwanda:** NGO Laws, 2012 and implementing regulations

- **Somalia:** draft NGO Bill, 2015

- **South Sudan:** NGO Bill, 2015 passed in February 2016

- **Uganda:** NGO Act, 2016
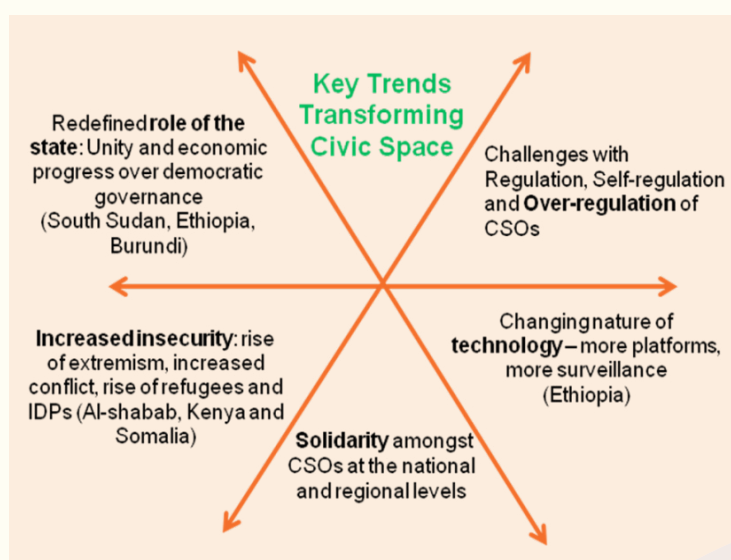
Countries across the continent continue to follow this trend. In each case, registering an organisation has become more difficult, with additional legal requirements and administrative procedures imposed. As many CSOs – whether national or international – have underdeveloped governance and accountability structures, they have often been unable to meet new reporting and administrative requirements. This leads many governments

4   Lewis, D. (2002), 'Civil Society in African Contexts: Reflections on the Usefulness of a Concept', Development and Change, 569-586.

5   Faris, E. (2012), 'Restrictions on the operation of civil society organizations in Africa violate freedom of association', AfricLaw: Advancing the rule and role of law in Africa: http://africlaw.com/2012/06/11/restrictions-on-the-operation-of-civil-society-organizations-in-africa-violate-freedom-of-association/, retrieved June 22, 2015.

6   Hodenfield, T. (2014). 'The hypocrisy of foreign funding laws in Ethiopia.' Open Democracy, https://www.opendemocracy.net/openglobalrights/tor-hodenfield/hypocrisy-of-foreign-funding-laws-in-ethiopia, retrieved August 4, 2015.

to question CSO legitimacy, professionalism and effectiveness. It further leads to a perception – rightly or wrongly – that many CSOs are more concerned with their own survival than the needs of the communities they aim to support.

New and improved regulation of CSOs, if designed effectively and in good faith, can strengthen accountability, enhance aid effectiveness, raise the quality of services being delivered, and strengthen civil society's overall credibility. However, experience has shown that much bureaucratic oversight has become overly burdensome: a tool to obstruct and constrain independent voices rather than enhance accountability. Many CSOs are unable to cope with complex, changing procedures and struggle to obtain the unrestricted funding required to build organisations that can achieve full compliance. In Kenya for example, one source of confusion has been that CSOs can register under a variety of laws and their legal structure can take at least six different forms, even though the government prefers one omnibus form of registration for diverse types of CSOs. These uncertainties can create operational challenges for CSO management and administration.

In Somalia, CSOs serve a vital role as the primary providers of humanitarian and development aid. An estimated one-third of the population depends on this assistance[7]. In much of the country, however, there is no meaningful legal framework or state apparatus for regulating CSOs. Local authorities take advantage of the confusion to impose their own, arbitrary regulatory requirements, often in an attempt to control procurement and collect bribes[8]. In South Sudan, the NGO Act contains complicated and costly registration procedures. Organisations must register with multiple government authorities, each charging their own fees, and re-register every year. Failure to register or re-register may be penalised with substantial fines or imprisonment up to six months[9]. In Uganda, annual re-registration is mandatory and requires the submission of burdensome documentation. CSOs must also register with local government and gain approval seven days before any "contact" with constituents or beneficiaries.

	Main Driver	Key Risks	Legal Framework	Comments
ETHIOPIA	Ideological commitment to 'developmental state'	Crackdown on dissenting voices, international NGOs, funding restrictions	Charities and societies proclamation (2009), The Anti-Terrorism Proclamation (2009)	• From 2,275 registered local NGOs in 2009 to 1,701 in 2011. • Prospects of opening up of civil society space is poor in the mid-term.
KENYA	Govt. efforts to limit influence of CS over ICC, Countering Terrorism of Al-Shabab	Legal uncertainty, regulatory crackdown	Public Benefit Organisation Act (2013), not yet enforced. Multi-stakeholder Task Force on Amendments (2014)	• Legal situation remains uncertain, making context unpredictable. • Govt. control over ICC process and efforts to counter terrorism have had a significant impact.
RWANDA	Need to foster national unity and rebuild the state following genocide in 1994	Organizational independence, crackdown on dissenting voices	NGO laws (2012), Law on Public Demonstrations and Public Gatherings (1991)	• Narrative around national unity is abused to crack down opponents.

Increased insecurity affecting civic space and CSOs

The rise of extremist groups, militarised responses to insurgency, conflicts in fragile states, and transnational crime, has led to a dominance of the security agenda in many contexts. Increasingly, governments across the region have reacted to the threats posed by violent extremists by asserting more control over civic space. CSOs

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7   See, for example, Somalia NGO Consortium (2014), 'Briefing Note on Somalia, 69th Session of UN General Assembly', http://somaliangoconsortium.org/download/578571d69da9a.

8   See, for example, Somalia NGO Consortium (2014), 'Briefing Note on Somalia, 69th Session of UN General Assembly', http://somaliangoconsortium.org/download/578571d69da9a.

9   See, ICNL Civic Freedom Monitor: South Sudan, http://www.icnl.org/research/monitor/southsudan.html, last updated 6 September 2016.

have often been viewed with particular suspicion as potential cover organisations for extremist groups,

however no evidence has been offered that demonstrates CSOs are more likely to be co-opted than private enterprises[10].

In Ethiopia (Anti-Terrorism Proclamation, 2009) and Kenya (Security Law Amendment Act, 2015) laws grant government officials broad powers to curtail rights in the pursuit of countering violent extremism. In mid-2015 in Kenya, the NGO Bureau deregistered and froze the accounts of several organizations, including leading human rights advocates Haki Africa and Muslims for Human Rights (MUHURI), apparently based on allegations that they are tied to violent extremists[11].

In Somalia, ongoing concerns about money transfers ending up in the hands of Al Shabaab have made it too risky for many commercial banks to operate, thereby restricting the ability of CSOs to receive funding and continue their activities. In Uganda, experts fear that the Anti-Money Laundering Act 2013, will be used to limit cross-border funding of civil society because the government has broad discretion to prohibit transfers without having to provide justification. In Ethiopia, the Anti-Terrorism Proclamation 2009, uses overly broad language to define "terrorist activities" and "encouragement of terrorism". These vaguely worded provisions have been used to justify dispersing peaceful assemblies, imprisoning journalists, and targeting religious minorities without due process of law. Ongoing insecurity can further fuel cycles of violence, as is the case in South Sudan where vicious attacks and assassinations were perpetrated against human rights defenders[12]. While addressing extremist threats and safeguarding security is paramount, any response should not specifically target CSOs or be used to stifle independent voices..

	Main Driver	Key Risks	Legal Framework	Comments
SOMALIA	Unclear. Need to reassert role of Central Government	Lack of conducive legal framework, political and security fragility	A draft NGO Bill in preparation. Specific legislation exists in Somaliland (Somaliland's NGO Act 2010)	• The 'New Deal' for Somalia (2013) has increased tensions between Govt and CS and brought risks to NGOs. • Al-Shabab has had significant impact on civil society space.
S. SUDAN	Crackdown on political opponents	Violence (Civil War Since December 2013)	NGO Act (2003), a new NGO Bill approved in 2015 but then rejected by President.	• Process to approve and enforce new NGO Bill has been stalled by civil war. • Absence of rule of law provides a very unpredictable and risky context for CSOs.
UGANDA	Political stability and alignment to national priorities	Crackdown on dissenting voices	NGO Amend. Act 2006 and NGO Registration Regulations, SI 113-1, 1990. NGO Bill 2015, Public Order Mng. Act 2013	• New NGO Bill likely to bring severe restrictions and burdensome requirements on NGOs. • Elections in Feb 2016 were characterised by repression.

Redefined role of the state: unity and economic progress over democratic governance

As the rights-based approach to development gained prominence in the 1990s and 2000s, many CSOs shifted their focus from service delivery to policy related advocacy and influencing. More recently, CSOs are being pushed to focus more on non-confrontational, service delivery work. This is part of a trend requiring CSOs to align their resources and efforts to government defined national development priorities. Some governments have a strong ideological commitment towards the "developmental state" which prioritises political

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10   *See, for example, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, A/HRC/31/65, 22 February 2016.*

11   *See Kubania, Jacqueline (2015), 'Muslim Human Rights Group Accuses Kenyan Government of Harassment' Guardian, 23 June 2015, http://www.theguardian.com/world/2015/jun/23/muslim-human-rights-group-accuses-kenyan-government-of-harassment*

12   *See Civicus (2016), 'Joint Submission to UN Universal Periodic Review: Republic of South Sudan, 24 March 2016, http://www.civicus.org/images/South%20Sudan%20UPR.pdf*

cohesion and economic progress over human rights and democratic governance. According to this ideology, dissenting voices are a threat to national interests[13]. This is the basis on which CSOs in Ethiopia are regulated by the ChSP, which is among the most restrictive laws in the region.

Patterns are emerging where neighbouring states apply similar legislation and tactics, learning from one another about how to control civic space. In countries like Rwanda, Burundi and South Sudan, the dominant state narrative to prevent independent CSO advocacy has been to build national unity, safeguard economic development and prevent ethnic conflict. When civil society criticises government policy, they are often labelled 'anti-development', 'anti-national', or 'politically motivated'. Yet speaking truth to power should not be construed as anti-development. Rather, it is vital to holding governments accountable and protecting citizens' fundamental rights. This rhetoric undermines the legitimacy of civil society and its ability to contribute to policy debate and socio-economic development more broadly.

III. Implications and Conclusion

Civil society across Africa has played a central role in the continent's history and development since independence. However, the hard fought gains on citizen voice and democratic participation are being reversed by worsening restrictions on civic space. The consequences of this have not only been felt by the activists, social movements and civil society groups that face the sharp end of undue restrictions, but by society at large. Without CSOs and the independent voices they represent, the ability to address abuses of power and build responsive, accountable institutions is severely constrained.

Civil society and civic activism at large are facing very real threats on several fronts. Burdensome registration requirements or vague administrative procedures limit their ability to operate. Excessive and invasive oversight by government and security authorities has prevented civil society actors from effectively carrying out their day-to-day, often life-saving, activities. Access to funding remains a major concern with many governments restricting access to vital foreign funds. Indeed globally, more than a third of all restrictive laws introduced or adopted since 2012 have related to the foreign funding of CSOs. This can greatly hamper CSO work, compromise their financial viability and effectively be a way to starve CSOs and activists of the resources needed to operate.

Increasingly, governments also continue to view public gatherings and outspoken critics as threats to their political power. Governments have used a variety of means to stifle

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13   *Centre for International Human Rights, Northwestern University School of Law (2009), 'Sounding the Horn: Ethiopia's Civil Society Law Threatens Human Rights Defenders', https://www.law.northwestern.edu/legalclinic/humanrights/documents/EthiopiaCSOPaper-Nov2009.pdf , last accessed July 25th 2016.*

HOPE FOR A SILVER LINING? EMERGING SOLIDARITY AMONGST CSOS AT THE NATIONAL AND REGIONAL LEVELS

Despite these challenges, civil society has achieved some success in pushing back against restrictive laws and policies. For example, in Ethiopia, small gains have been made through a multi-stakeholder dialogue between local CSOs and government on the administrative costs regulations cited above. In Kenya, a broad civil society coalition has been able to unite behind evidence-based advocacy to defend the sector and defeat several proposed amendments to the PBO Act that would have capped foreign funding of PBOs at 15% of their budgets, among other restrictive provisions. In Uganda, litigation has been used successfully to strike down the Anti-Homosexuality Act, and a case is now pending regarding the Public Order Management Act (POMA). In South Sudan, CSOs have been adept at mobilising international donor networks to discourage the government from passing restrictive laws.

At the AU level, the ACHPR has issued communications, resolutions and reports expressing concern about shrinking civic space. The Regional Economic Communities also offer promise in addressing the issue and seeking redress when violations occur. For example, the East African Community's (EAC) East African Court of Justice, although a relatively new body, is emerging as a potential driver of change. Several organisations including the Pan African Lawyers' Union (PALU) and the East Africa Civil Society Organisations' Forum (EACSOF) have engaged extensively with the EACJ in the hope that it can play a leading role safeguarding civic space.

protests, including requiring long notice periods and government approval before staging an assembly, and broadly interpreting criminal defamation and sedition laws to apply to statements critical of government officials. Without the ability to gather, protest and voice their concerns, citizens and civil society more broadly are unable to perform their vital function of speaking truth to power and holding public officials to account.

As economic inequality and social exclusion rise across the continent, there is a critical need for civil society to have the space necessary to engage in constructive dialogue with government and other stakeholders. Without a vibrant civil society capable of articulating and acting on citizen aspirations, governments deny their nations an important partner to interrogate policy, co-create solutions to development challenges and improve citizens' quality of life. Challenging vested interests and resolving some of the most intractable challenges the continent faces – rising inequality and political capture of state resources, increasing instability, youth unemployment, adapting to changing climate, amongst others – requires citizens' voices to be heard and civil society to be part of crafting solutions. This requires governments to put in place an enabling framework for civic action and to value the contribution civil society makes.

The African Union has affirmed that citizens and civil society are a vital part of how national governments and regional institutions will achieve their development aspirations. As we approach the end of this AU designated 'African Year of Human Rights', it is time to put these commitments into practice and recognise civic space as a key enabler not just of AU Agenda 2063 but for the realisation of all human rights. Let the AU's commitments not ring hollow for the citizens, activists and organisations across the continent that face increasing restrictions on their fundamental rights to free speech, association and assembly. Rather, may 2016 signal a turning point whereby governments across the continent fully recognise the contribution that civil society makes to development and put in place the enabling framework for civic action to flourish.

IV. Policy recommendations

To the African Union:

- The African Union Council of Ministers should adopt a strong decision to protect civic space and citizens' participation in all AU Member States and in AU organs and policy processes. This includes reversing recent decisions excluding civil society from AU Summits, ensuring full participation of civil society moving forward and leading by example for all member states to follow.

- The African Union Commission should appoint a Working Group on Civic Space and Citizens' Participation that gives recommendations to the AUC Chairperson to address the issue.

- The Pan African Parliament, as a continental legislature, should develop a model law on CSO regulation at continental, regional, and national levels to provide a clear framework for strengthening and protecting CSO space in Africa.

- The Economic Social and Cultural Council (ECOSOCC) should engage the AU Permanent Representatives' Committee (PRC) and Executive Council with the objective of championing the establishment of mechanisms for including civil society in national and regional processes including reviewing and relaxing the requirements for African CSOs to have at least 50% of their resources from their members in order to be qualified for ECOSOCC membership.

To national governments / AU member states:

- Ratify, domesticate and fully implement the African Charter on Democracy, Elections, and Governance (ACDEG) and African Charter on Human and Peoples' Rights including developing and submitting the required reports to the African Union on progress on implementation.

- Review national laws that regulate civic space and ensure they are in line with AU and international standards. Any repressive laws or policy regulating civic space should be urgently scrutinised, amended or repealed.

- Establish national procedures and platforms to facilitate meaningful consultation and participation of civil society in all policy development and implementation processes.

To civil society – national and international – across the continent:

- Constructively engage with policy makers and government officials proposing evidence-based solutions to public policy challenges.

- Engage in civil society self-regulation mechanisms where appropriate and enhance internal accountability and effectiveness.

- Maximise advocacy opportunities offered by regional and continental bodies by developing sustainable frameworks of engagement and strengthening internal capacity to engage with these fora.

- Challenge the exclusion resulting from overly restrictive accreditation requirements and eligibility criteria for observer status and participation in the AU bodies. Promote inclusive, transparent and people-centred mechanisms to achieve broad based participation.

- Offer technical capacity to national governments, Regional Economic Communities and the AU to strengthen civic space and provide the enabling framework for civic action to flourish.

Bibliography

African Commission on Human and Peoples' Rights Report on "Freedom of Association and Assembly in Africa": http://www.icnl.org/research/resources/ACHPR%20English%20REPORT%2021.05.2015.pdf

CIVICUS/ICNL Enabling Environment National Assessments: http://www.icnl.org/globalforum2015/wp-content/uploads/2015/04/Enabling-Environment-National-Assessment.docx

Council on Foundations country notes: http://www.cof.org/global-grantmaking/country-notes

Faris, E. (2012, June 11). Restrictions on the operation of civil society organizations in Africa violate freedom of association. Retrieved June 22, 2015, from AfricLaw: Advancing the rule and role of law in Africa: http://africlaw.com/2012/06/11/restrictions-on-the-operation-of-civil-society-organizations-in-africa-violate-freedom-of-association/

Hodenfield, T. (2014, April 25). The hypocrisy of foreign funding laws in Ethiopia. Retrieved August 4, 2015, from Open Democracy: https://www.opendemocracy.net/openglobalrights/tor-hodenfield/hypocrisy-of-foreign-funding-laws-in-ethiopia

ICNL/CIVICUS/Community of Democracies/UN Special Rapporteur Africa Regional Workshop Report on "Protecting Civic Space"

ICNL NGO Law Monitor: http://www.icnl.org/research/monitor/

Lewis, D. (2002). Civil Society in African Contexts: Reflectiuons on the Usefullness of a Concept. Development and Change , 569-586

UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Thematic and Country Reports: http://freeassembly.net/

USAID CSO Sustainability Index for Sub-Saharan Africa: www.usaid.gov/africa-civil-society

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