



# Data for Governance Alliance Policy Brief No. 8

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Capturing civic space – A new wave of declining civic space in Africa

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## Introduction

Civil society organisations (CSOs) are at the centre of the data-based advocacy and engagement project for with Laws.Africa is a part of an initiative that seeks to enhance Pan-African Civil Society participation and engagement with the African Governance Platform (AGP) to protect and promote human rights across the continent. CSOs are facing increasing hostility and constricting operating space, thereby threatening the impact of the work CSOs do and their contribution to democratic consolidation in Africa. Already facing rough terrain in advancing democracy and development, CSOs are now faced with existential threats themselves, manifesting in new non-profit organisations (NPO) laws, and antagonistic attitudes from state actors. The restriction of civic space is part of a global trend of democratic backsliding, but for African states the repercussions are more far reaching on account of the already fragile state of democracy we find ourselves in.

## Civic space and democracy

Flourishing civic space can be directly linked to flourishing democracies and political economies. Not only is civic space an indicator of democracy; it is also a marker of socio-economic advancement. Restricted civic space on the other hand undoes citizen agency. Undone citizens agency means that people are unable to self-organise towards societal actualisation. Open civic space is indispensable for open societies, and allow publics to make their political, social, and economic choices and spur their own growth with ownership and sustainability. Any development pursued devoid of people at the centre is vacuous of sustainability. Because civic space is about people, there is no democracy without civic pace, democracy itself being about the people.

If true democracy that delivers on its promises and dividends is to be attained, it must be people centred- and people focused, and there is no way one can take civic space out of that equation. Civic space is the primary way through which organised society effects its influence and impact on society, from holding to account those in power (socially, economically, and politically), to organising to solve local problems, and to partnering with governmental authorities to advance interests of the society. Civic space allows for organisation – from women's rights to climate change, human rights, transparency, human security, humanitarian support, entrepreneurship, governance, workers' rights, and to rights of minorities.

## The African development and growth agenda

Africa's statements of intent in democratic growth manifesting through the African Unions (AU) Agenda 2063 places development, especially economic development, at the centre.<sup>1</sup> Given the above of people participation through civic space, without strengthened civic space the results and outcomes of Agenda 2063 and other development agenda is all too predictable. In recognition of this, the AU has sought to spotlight, promote, and encourage civil society and has set up mechanisms for consultation and engagement. The AU has a Civil Society Division under the Citizens and Diaspora Directorate (CIDO). Its core mandate is to mainstream civil society contributions through all aspects of AU principles, policies, and programs.<sup>2</sup>

The Economic, Social and Cultural Council of the African Union (ECOSOCC) was established to give effect to the commitment by the AU to enhance the participation of African civil society in the implementation of the policies and programmes of the Union, including those to promote and defend a culture of good governance, democratic principles and institutions, popular participation, human rights, and freedoms as

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<sup>1</sup> African Union, Agenda 2063: The African We Want, [https://au.int/Agenda2063/popular\\_version](https://au.int/Agenda2063/popular_version).

<sup>2</sup> African Union, Civil Society Division, <https://au.int/en/civil-society-division>.

well as social justice.<sup>3</sup>

In accordance with Article 4 of the AU Constitutive Act, the ECOSOCC is an organ of the AU. It is different in that unlike other structures that are established through legal binding protocols or treaties, the Statutes that establish ECOSOCC were adopted by the Assembly of the AU at its Third Ordinary Meeting in July 2004. ECOSOCC includes cluster/sectoral committees on various focus aspects, and these Committees are envisioned as the key operational mechanisms of ECOSOCC to formulate opinions and provide inputs into the policies and programmes of the African Union.

## **Civic space as a democracy enabler**

So why being so fixated with civic space? It is because issues of civic space are not merely about the space for non-governmental organisations (NGOs) or civil society organizations (CSOs) to operate. These issues are greater and more important than that. Rather, it is about human rights, good governance, accountability, transparency, inclusion, rule of law and development. Naturally, a decline in civic space will be marked by a decline in human rights and freedoms.

By their nature people must coalesce over issues of common interest, organise, and self-organise to confront socio-economic and political issues around them, and societal shocks too. To this end civil society has three primary functions.

The first is self-governance of the people and by the people. Democracy is multi-layered. While the people elect a government, they must, and they retain powers to self-govern and to self-organise. All power in a democracy rest in the people who are supreme, and who elect unto themselves a constitution as their social contract. But above that constitution as supreme law, the people are supreme in their collective. Thus, when “we the people” elect unto them a constitution, that very act gives them the authority to determine the terms of the continued subsistence of that constitution and its form, and the terms of social and political relations within that society. For this to be possible, the people must be able to self-organise, and this predominantly happens through civil society.

The second is being a partner to the government. Government is not partnered with because it is struggling, but it is partnered with because that is the right thing to do. That is how democracy works. Government is put into place by the people and the people have a responsibility and indeed a duty, to ensure that their government succeeds, and this they do through organising themselves via civil society and vehicles of economic enterprise to support the work of government. Being partners in governance does not imply seeing things from the same page, or doing the same things, or not calling each other out. Far from it.

The third is to solve local problems. Not all problems can and should be left to the government. Even if the government were able to solve all problems within its jurisdiction — which is practically impossible — it is undesirable for the people to play no role in solving local problems. The vehicle through which people solve their own community problems is civil society. This inculcates a sense of collective and individual responsibility over issues of societal concern. Accountability, civic duty, responsibility to country, patriotism, participation, and active citizenship, are built through empowerment to respond to local problems. This way, the people drive the process of growth and development, and change becomes a societal value.

## **Why restrict civic space?**

Yet in many African countries the role of civil society - in particular NGOs - is being seen as a threat, a threat to political power, a threat to unfettered access to public resources and a threat to impunity. Where the prime occupation of political elites seems to be retention and consolidation of political power over economic development and social cohesion, civil society has become a group designated as an enemy. NGOs have to be enemies — sell-outs, unpatriotic people, foreign stooges! Their demand for accountability is a threat. Their focus on good governance and democracy, rule of law and human rights is a threat to power. Their monitoring, documentation and narrative setting are a problem! Across Africa, governments are becoming increasingly uneasy with NPOs and are beginning to either pass

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<sup>3</sup> African Union, Economic, Social and Cultural Council (ECOSOCC), <https://ecosocc.au.int/en>.

or propose NPO laws to subject to executive direction and control. Many justifications are being put on the table, including perceived lack of, or inadequate, regulatory frameworks for NPOs. These days, compliance with the Financial Action Task Force (FATF) Recommendation 8 on addressing money laundering and countering financing of terrorism is a favourite.<sup>4</sup> Repressive governments are grabbing the moment to gag NGOs, using the convenient smokescreen of compliance with the FATF Recommendation. But if one reads these laws that are being proposed, it tells a story of opportunism and revulsion to scrutiny and accountability. It is ironic that governments are accusing NPOs of lacking transparency and accountability, but these laws actually seek to limit what NGOs can do to hold governments themselves accountable. These new laws are subjecting or seeking to subject NGOs to excessive and undesirable executive control, limiting the scope of what NGOs can do, and imposing serious hurdles to registration compliance and stiff penalties for non-compliance.

Some UN Human Rights Special Procedures have recently produced a position paper titled *The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures* (June 2022), which looks at the unintended consequences of the counter-financing of terrorism measures on human rights and civic space.<sup>5</sup> This paper sets out the position of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, on the human rights and rule of law implications of countering the financing of terrorism (CFT) measures implemented pursuant to international CFT norms and standards. According to the position paper, "The Special Rapporteur's mandate expresses deep concern that CFT measures have increasingly been implemented in marked contravention of fundamental international law norms, including CFT-specific obligations and broader international law obligations".

But much of it is political as opposed to genuine efforts to regulate CSOs in ways that allow for efficiency, efficacy and greater space and freedom to operate. So, these NPO laws must not be seen in isolation. They must be seen alongside the many other laws that we are witnessing restricting not just NPO space, but spaces of organising generally. The constriction of civic space is part of a bigger project of autocratic consolidation, and aversion to scrutiny and accountability. A common threat in autocratic to semi-autocratic states is the capture and co-option of institutions meant to exact accountability. This is happening with both state and non-state institutions and actors. What this does is to smoke out every voice of accountability, let alone dissent. With civil society, the raft of laws being deployed include anti-gatherings and anti-protest laws; cyber and digital security laws, including surveillances and internet shutdown laws; laws that restrict collective job action; and many other examples. It is the classic case of *lawfare*.

But the decline in civic space is also being driven by attitudes and practices, not just NPO laws. For instance, in Zimbabwe local government officials are increasingly getting interested in self-appointing as regulators of NPOs in their provinces, districts and even wards. Yet local government officials have no official role in regulating NPOs. A local government official was recently stopped only through a court

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<sup>4</sup> Financial Action Taskforce (FATF), FATF Recommendations, March 2012, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> and FATF, Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8), <https://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html#:~:text=FATF%20Recommendation%208%20requires%20that,for%20the%20financing%20of%20terrorism.FATF%20is%20the%20global%20money%20laundering%20and%20terrorist%20financing%20watchdog.The%20inter-governmental%20body%20sets%20international%20standards%20that%20aim%20to%20prevent%20these%20illegal%20activities%20and%20the%20harm%20they%20cause%20to%20society.The%20FATF%20Recommendations%20set%20out%20a%20comprehensive%20and%20consistent%20framework%20of%20measures%20which%20countries%20should%20implement%20to%20combat%20money%20laundering%20and%20terrorist%20financing,as%20well%20as%20the%20financing%20of%20proliferation%20of%20weapons%20of%20mass%20destruction.The%20Recommendations%20set%20an%20international%20standard,which%20countries%20should%20implement%20through%20measures%20adapted%20to%20their%20circumstances.>

<sup>5</sup> United Nations Human Rights Special Procedures, *The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures* (June 2022), <https://www.ohchr.org/sites/default/files/2022-06/2022-06-13-SRCT-HR-CFT-Position-Paper.pdf>

order in doing this.<sup>6</sup> This subtracts from the whole government approach, where competing government entities all seem keen to regulate NPOs.

There is a strong appetite for a strong, omnipotent state. Over the years, civil society in Africa has remained as a strong voice to question authoritarianism and authoritarian tendencies, much to the dislike of automatic and semi-autocratic governments. The work of CSOs often involves criticism of government's policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental and is a tried and tested way of establishing a better level of protection of human rights.

## A colonial project

What is ironic is that restrictions of citizen agency expressed through association, assembly, and speech, are colonial creations with a singular motive to oppress, repress and suppress. NPO laws were enacted to restrict citizens movements, including grassroots movements, labour unions and indigenous and local political movements, and to subject them to state control.

In the liberation era, political movements often started as social movements organised in whatever civic space there was. Post-independence, the first crop of opposition political organisations mutated from civic groups. With some old liberation movements and their successors acutely aware of the power of organising in civic space, and wanting to consolidate power and stay long, civic space has become a target for restriction. Old laws and structures of controlling civic space, being colonial in nature, have not only been maintained but are now being tightened. By its nature, excessive regulation of civic space is anti-people, colonial and oppressive.

Law and order are an old and tired justification that colonial and new oppressive governments alike deploy to undermine whatever they deem uncomfortable. Thus, the decolonisation and decoloniality agenda must not escape or spare the limitations to civic space that we are witnessing.

## Restrictions in civic space as part of broader democratic regression

It is easy to perceive the decline in civic space in isolation, but the reality is otherwise. Instead, this is part of broader democratic regression being witnessed globally, with Africa taking a sharp lead.<sup>7</sup> Declining civic space is not peculiar to Africa but is a global trend. Washington DC-based International Centre for Non-Profit Law (ICNL) records that since 2017, restrictive enactments amount to 76%, while enabling amounts only to 24% globally. 70 countries globally have enacted or are enacting some restrictive laws, and 25 of those countries are in Africa.<sup>8</sup>

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<sup>6</sup> *Zimbabwe Human Rights NGO Forum and Crisis in Zimbabwe Coalition Trust v Provincial Development Coordinator (Harare Metropolitan Province) and 4 Others* HH 501-21. The Provincial Development Coordinator for Harare Metropolitan Province had, through a 30 June 2021 directive to NPOs, issued a 9 July 2021 deadline for the submission of 2021 workplans by all NGOs operating in the Harare Metropolitan Province. In doing so the official had acted *ultra vires* as he was purporting to exercise powers he did not have seeing as his office had no mandate to regulate the operations and clearances of NGO activities. Further, the official's actions violated the right to lawful administrative conduct under the country's Constitution.

<sup>7</sup> With Africa, according to Afrobarometer, the challenges to democracy are supply side as opposed to demand side. According to Afrobarometer, the majority in Africa prefer democracy as the mode of governance, but this demand is not being met by the current leadership and governance. See Afrobarometer, Democracy in Africa: Demand, supply, and the 'dissatisfied democrat' Policy Paper No. 54, February 2019, [https://www.afrobarometer.org/wp-content/uploads/migrated/files/publications/Policy%20papers/ab\\_r7\\_policypaperno54\\_africans\\_views\\_of\\_democracy1.pdf](https://www.afrobarometer.org/wp-content/uploads/migrated/files/publications/Policy%20papers/ab_r7_policypaperno54_africans_views_of_democracy1.pdf).

<sup>8</sup> Unpublished International Centre for Non-Profit Law (ICNL) presentation on civic space global trends,

According to the ICNL, restrictive laws are manifesting in the form of lifecycle laws (existential laws), freedom of expression and assembly, foreign funding, freedom of information, tax, public participation, disinformation, right to privacy/surveillance, cybercrime and counter terrorism financing and anti-money laundering. For the later, the FATF Recommendations are the laws being used, as detailed above. Emergency laws have also been used, especially in the wake of the COVID-19 pandemic. These have been enabled by the declarations of states of emergencies, states of disasters, states of public health emergency and simultaneous state of disaster and state of emergency in the various countries. There have been prohibition of movement and gatherings, curfews, lockdowns and fake news and disinformation measures put in place in a number of countries. So, as ICNL observes, the trends suggest that governments are more adept at using a wider range of restrictive laws that go beyond traditional regulatory laws and more subtle measures that impact a wider range of rights and freedoms.

## Conclusion and recommendations

What remains clear is that the work of civil society in Africa is indispensable if Africa is going to build on its democracy and respect for human rights and freedoms. Civic space enables civil society to thrive and is a vital component of democracy.

But there is also a crucial side to civic actors and NGOs in Africa's economy that governments often pay little attention to, as they seek to silence and pacify NGO. It is the economic and social protection contribution of NGOs. Granted, some will - and for good reason - ideologically question quantifying NGO contribution to a society in economic terms for reasons that NGOs do not exist for economic benefit, and considerations of the politics of aid and its role in developing or under-developing a society. But we have a present reality that we cannot ignore in Africa, and it is that in real dollar terms, NGOs are making significant contributions to foreign exchange inflows in our countries. In February 2022, some Southern African NGOs launched a special report titled *Punching Holes into a Fragile Economy? The Possible Economic Impact of the Private Voluntary Organisations Amendment Bill Gazetted on 5 November 2021*.<sup>9</sup> This report details NGOs' economic contribution to Zimbabwe's fragile economy, and how a disruption of that contribution will have ripple effects to economic sustainability, and even political stability. The results are staggering. This report made it clear that in Zimbabwe, NGOs working with development partners are the biggest contributor to social protection, and there still remains a huge unmet social protection need. As of February 2022, NGOs in Zimbabwe were the third biggest contributor to foreign currency inflows after export receipts and diaspora remittances — more than what foreign direct investment (FDI) was bringing to the table. This is based on figures that the country's central bank released. These trends are similar in a number of African countries.

The simple reality is that no society can be vibrant, politically, economically, and socially without civil society. The more robust the partnership between government and civil society, the more rigorous the partnership, the better any society is placed to confront societal shocks and develop sustainably. Effective partnerships between governments and NGOs are recognised as being crucial in accelerating sustainable development. The role of NGOs is even more important in low-income countries where the fiscal space is limited – which is the reality of most African states.

The following recommendations are made:

### To governments

- Support civil society and a build a culture of vibrant civic

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Johannesburg, July 2022.

<sup>9</sup> Accountability Lab-Zimbabwe, Southern Defenders and Zimbabwe Human Rights NGO Forum, *Punching Holes into a Fragile Economy? The Possible Economic Impact of the Private Voluntary Organisations Amendment Bill Gazetted on 5 November 2021*, February 2022, <https://kubatana.net/wp-content/uploads/2022/03/Research-Repoort-Punching-holes-into-a-fragile-economy-Possible-economic-impact-of-PVO-Amendment-Bill.pdf> .

engagement and participation.

- Finance civil society organisations and encourage a vibrant civic space.
- Ensure enabling administrative and regulatory frameworks and processes, including doing away with stringent and compulsory registration laws; and
- Help build positive narratives on the role of CSOs in societies.

### **To the AU and AU bodies**

- Censure states that are proliferating anti-NGO laws and engaging in practices that militate against the flourishing of civic space.
- Develop continental guidelines on NPO laws to guide individual member states on law and regulations development around NPOs.
- Actively support the development, freeing up and growth of civic space, including through funding civic actors and providing them with technical support.
- Enhance spaces for CSO-government collaboration at regional and domestic levels; and
- Strengthen the AU-CSO platforms for engagement, including the AU Civil Society Division, the Economic, Social and Cultural Council (ECOSOCC) and the African Governance Architecture (AGA).

### **To CSOs**

- Explore new, unique, and non-traditional platforms and ways to exact accountability and to mobilise. This includes retooling, repurposing, and re-capacitation as necessary to meet the demands and exigencies of the day.
- Build and increase solidarity and strategic interventions in defence of civic space; and
- Build positive narratives on CSO contributions to democratic consolidation in Africa and African countries.

**END**

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## **About Data for Governance Alliance**

The Data for Governance Alliance is a four-year project that promotes data-based advocacy and engagement between pan-African civil society organisations (CSOs) and African Union organs. The project is led by Afrobarometer with partners, including CDD Ghana, the Institute for Development Studies at the University of Nairobi, the Institute for Justice and Reconciliation and Laws.Africa. The project is funded by the European Union.



# Data for Governance Alliance

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