



CONSULTATION REPORT:
HOW TO CREATE AND MAINTAIN CIVIL SOCIETY
SPACE. WHAT WORKS?
SUB-SARAHAN AFRICA

November 2015

Joint submission to the Office of the High Commissioner for Human rights (OHCHR) from the Civic Space Initiative and 26 national and regional civil society organizations in Sub-Saharan Africa

African Monitor/West African Youth Network	Burkina Faso
National Coalition of Human Rights Defenders	Burundi
Collectif des ONG pour la Sécurité Alimentaire et le Développement Rural (COSADER)	Cameroon
Association des Femmes Juristes de Centrafrique (AFJC)	CAR
Coalition Ivoirienne des Défenseurs des Droits Humains (CIDDH)	Cote d'Ivoire
Nouvell Societe Civile Congolaise (NSCC)	DRC
Citizens for Democratic Rights in Eritrea - CDRiE	Eritrea
Human Rights Council (HRCO)	Ethiopia
Brainforest	Gabon
Participatory Development Associates (PDA)	Ghana
National Coalition of Human Rights Defenders	Kenya
Transformation Resource Centre	Lesotho
Together for Rural Development (EFA)	Madagascar
Femmes et Droits Humains	Mali
Forum des Organisations Nationales des Droits Humains (FONADH)	Mauritania
Committee on Poverty Alleviation	Mauritius
JOINT - Liga de ONGs em Mocambique	Mozambique
Insight Magazine	Namibia
Independent activist	Rwanda
Convention Nationale des Associations et ONG de Développement et de l'Environnement du Congo (CONADEC)	Rep. of the Congo
Immanuel Hope for Children with Disabilities (IHCD)	Swaziland
Campaign for Good Governance (CGG)	Sierra Leone
African Centre for Peace and Humanitarian Dialogue	South Sudan
Legal and Human Rights Centre	Tanzania
Concertation Nationale de la Société Civil du TOGO	Togo
West Africa Human Rights Defenders Network (WAHRDN)	West Africa
Non-Governmental Organizations Coordinating Council (NGOCC)	Zambia

CIVICUS

Who We Are

CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS strives to promote marginalised voices, especially from the Global South, and has members in countries throughout the world.



This report is prepared by CIVICUS: World Alliance for Citizen Participation through the Civic Space Initiative, implemented in partnership with the ARTICLE 19, the International Center for Not-for-Profit Law (ICNL), and the World Movement for Democracy.

For further information please contact: David Kode
David.kode@civicus.org and Renate Bloem
renate.bloem@civicus.org

TABLE OF CONTENTS

1. Introduction	5
1.1 Objectives of the consultation.....	5
1.2 Expectations from participants.....	5
2. Overview of Human Rights Council.....	6
2.1 Responses to the presentation on the UN Human Rights Council. .6	
3. What is enabling.....	7
3.1 What does it mean to “create” and “maintain” space?.....	7
4. Brief overview of country experiences.....	8
4.1 Reactions from participants.....	10
5. Practical recommendations on civil society space.....	10
5.1 On the promotion of freedom of association.....	10
5.2 On the promotion of freedom of expression.....	11
5.3 On the promotion of freedom of assembly.....	11
5.4 For Human Rights Defenders.....	12
5.5 On civil society space and civic engagement.....	13
5.6 On promotion of civic space in restrictive environments.....	13
5.7 Restrictive contexts.....	13

1. Introduction

As part of a series of regional consultations on the space and environment for civil society, CIVICUS, under the auspices of the Civic Space Initiative (CSI), convened a civil society consultation at its headquarters in Johannesburg, South Africa from 19-21 October 2015. A diverse coalition of civil society representatives from 26 countries across Sub-Saharan Africa attended the consultation. The participants represented a broad spectrum of civil society practitioners working on a range of human rights issues including poverty alleviation, women's rights, environmental protection, rights for people with disabilities, democracy and good governance, human rights defenders (HRDs), media monitoring and civic space. Participants represented different country-contexts at the consultation ranging from places where the environment for civil society is enabling, where fundamental rights are respected to areas experiencing conflict, political transitions, countries where rights are only partially respected and places where the space for human rights activities is completely closed.

Based on the survey developed by the UN Office of the High Commissioner for Human Rights (OHCHR) and mandated by [UN Human Rights Council resolution 27.31](#) adopted in September 2014, a dialogical methodology was employed by the organizers to facilitate a reflective and exploratory process in which participants could engage in a substantive interchange on best practices on the promotion and protection of civil society space. The sessions at the consultation were structured to facilitate dialogue among participants, enable those present to clearly defined terms related to civic space in an effort to have a common understanding, discuss best practices in break-away groups to encourage more focused discussions and recommendations on civic space. While CIVICUS staff working on civic space issues facilitated most of the plenary sessions, participants themselves coordinated sessions and small group discussions.

1.1 Objectives of the consultation

In line with the follow-up resolution adopted at the 27th HRC Session in September 2014, the consultation brought together representatives of civil society in Africa to develop practical recommendations and other relevant resources and entry points for civil society to engage with Human Rights Council mechanisms pertaining to civic space issues. The consultation enabled participants to share country-wide and regional perspectives and best practices on civil society space and identify lessons for civil society organisations operating in environments where fundamental human rights are severely restricted. Participants were informed that the recommendations provided should reflect and address their specific needs and challenges and that the recommendations will be presented at the 32nd HRC Session scheduled for June 2016.

1.2 Expectations from participants

After the objectives of the consultation were outlined, participants noted that their expectations were;

- To interact with fellow participants, share experiences on civic space and agree on practical recommendations which can be implemented to improve civic space and human rights in countries in Sub-Saharan Africa.
- To reach conclusions with the recommendations that will improve the conditions and strategies aimed at protecting human rights at the Human Rights Council.

- To discuss and agree on best practices that can be implemented to challenge the status quo particularly regarding laws that restrict the activities of CSOs.
- To highlight practical examples of ways in which civil society works with government and discuss strategies to implement such examples in countries where the space for civil society is closed.
- To agree on recommendations that can be usefully applied by human rights defenders in countries experiencing conflict where violence prevails and the rule of law is not respected.
- To discuss ways in which civil society can coordinate activities across countries and regions to respond to particular cases and situations where human rights are violated.
- To discuss ways in which civil society can improve methods of communication with the aim of protecting human rights defenders and learn more about using modern tools and platforms to engage citizens.
- To learn more about the entry points into the Human Rights Council and the ways the Council works so that civil society can participate actively in the council sessions and processes to highlight violations of human rights.

1. Overview of Human Rights Council and development of Resolution 27.3 on protecting and promoting civil society space

This session was aimed at facilitating a discussion with participants on how civil society can engage with international human rights institutions and procedures. A presentation was also made on the civic space initiative.

- As the space for civil society at the national level continues to retract, international human rights mechanisms are emerging as vital platforms to amplify domestic civil society concerns.
- Moreover, with limited national avenues for redress, the UN Human Rights Council, and its ancillary bodies including UN Special Procedure mandate holders and treaties bodies, as well as the UN Office High Commissioner for Human Rights (OHCHR), were identified as essential forums to engender accountability and solidarity to address human rights violations.
- However, as the frequency and severity of restrictions on civil society increases, international human rights mechanisms must ensure that they remain fit for purpose, including through creating policies which will ensure substantive participation of civil society and by providing more sophisticated avenues to respond to human rights crises.

2.1 Responses to presentation on the UN Human Rights Council

- Participants were of the view that the Council provides the space for and serves as a great avenue through which human rights defenders can highlight human rights violations. They noted that this is particularly important as in certain countries the Human Rights Council and other international human rights processes and procedures serve as the only avenues for human rights defenders to speak out about violations as any attempt to do so at national level will be met by severe reprisals.

Participants therefore noted the following:

- That it is important for the Human Rights Council in particular to identify strategies to hold governments to account for their commitments made at the Council during UPR reviews and to ensure that states move from commitments on paper to make sure resolutions adopted are put into practice and the process of implementation is monitored.

- The Council should develop a more responsive and dynamic approach to protect civic space.
- Several human rights defenders and representatives from civil society who have been to Geneva have faced reprisals upon returning home and while others have been threatened by government officials and branded as “sell outs.”
- That the Council develops a more comprehensive approach for monitoring states and imposing sanctions for targeting civil society.
- They added that the high numbers of attacks on civil society and human rights defenders in Africa and the brutal nature of such attacks and threats to the next of kin of activists require a pro-active and concerted approach which will include a more inclusive and data-driven method to address human rights violations.
- In certain countries civil society organisations holding their governments accountable and raising concerns over human rights violations can face reprisals from their governments if they are not protected.
- That there is need for national civil society organisations to be provided with technical expertise and additional support for capacity building to enable them effectively hold their governments accountable.

2. What is enabling? What does it mean to “create” and “maintain” space

According to participants:

- Enabling means to capacitate and to empower, to support and to encourage. For civil society to act freely, an environment where information is readily available, citizens participate in decision-making process and hold governments to account without fear of victimisation and to be empowered by legislation to act.
- An environment where civil society can operate without political interference. Access to information enables civil society organisations to carry out their activities and this is linked to freedom of expression. Environments which encourage access to financial resources and accountability for civil society are also enabling.
- Accountability and responsibility by states are also pre-conditions that create an enabling environment. Conversely an environment characterised by reprisals, killings, a culture of arbitrary arrests and fear of restrictions is not enabling for civil society to operate.
- In most African countries the environment is characterised by restrictions and reprisals against civil society organisations.
- For an environment to be enabling, laws must be respected and fully implemented as in most African countries laws are enabling but they are not implemented by the authorities rendering these laws useless.
- Restrictions and cumbersome requirements in place which hinder the setting up of organisations and restrict them when they operate do not create an enabling environment.

3.1 What does it mean to “create” and “maintain” space?

Participants noted the following;

- To have laws in place that promote civil society participation and establish frameworks which enable stakeholders to act.
- To make it a right to engage, develop and maintain legal institutions and adapt mechanisms to sustain them.
- Access to these institutions should be tangible (in terms of physical places to go) and intangible (legal elements, culture, and behaviour).

- Public oversight and scrutiny have to be implementable and international conventions need to adapt and evolve to ensure they are contextual to all actors.
- Laws are implemented which make it easy for civil society to participate in governance processes and in holding governments to account as this will mean governments will see civil society as a viable partner and no longer as the “enemy” as is the case in certain countries.
- Space for civil society can be maintained by establishing obligations and clear mechanisms on how to protect civil society and clear guidelines on ways to address violations of the rights of human rights defenders when they occur.
- Equally important is the presence of oversight bodies such as courts and human rights commissions and institutions in maintaining space for civil society.
- Access to the judiciary in terms of technical expertise and the general application of the rule of law to approach the courts go a long way in maintaining space.
- Participants were also of the view that it is one thing to sign and ratify international laws and another to respect and implement them.
- When international human rights commitments are respected and implemented by the state, space is maintained.
- Maintaining, upholding and recognising opportunities for civil society to carry out their activities.
- Local governments and civil society have space to operate which is not dictated by external donors or governments.
- Development and human rights are interlinked and where civic action regularly challenges state power.
- Funds from the state enable civil society to carry out their activities and involvement of civil society in the process of adopting and promulgating laws.
- Where democratic structures and institutions are able to evaluate the implementation of development plans.
- Protection of all who work with civil society.
- Solidarity regularly practiced and there is constant engagement in decision-making processes.
- The local civil society agenda and activities should be “owned” by local civil society because in certain cases international NGOs take total control of this agenda as they have more resources to enable them to define space.

4. Brief overview of country Experiences

This session focused on presentations highlighting three country experiences and one regional experience. The presentations on Cote d’Ivoire and Kenya focused on lessons and best practices on how civil society organisations work together and in some cases collaborated with the government to promote civil society space. The presentation on South Sudan highlighted the political transition and restrictions on civic space and a presentation from the West African Human Rights Defenders Network (WAHRDN) looked at restrictions on civil society imposed by governments and non-state actors. In **Cote d’Ivoire**, the *Coalition Ivoirienne des Défenseurs des Droits Humains* (CIDDH) has played an instrumental role in advocating for the establishment of the first national law explicitly protecting human rights defenders in Africa.

- In June 2014, the National Assembly of Côte d’Ivoire adopted the Law on the Promotion and Protection of Human Rights Defenders, which codifies a number of measures to ensure effective realization of the UN Declaration of Human Rights Defenders.

- While the law provides an important precedence on the continent, further international, regional and national consideration must be given to prioritizing the development of similar legislation to address the acute violations endured by Women’s human rights defenders (WHRDs).
- The gender-specific risks, particular vulnerabilities and heightened hostility experienced by many WHRDs necessitate proportionate protection.
- It is therefore incumbent on the international community to develop stronger safeguards promoting and protecting the specific work of women human rights defenders.
- The best practice with the Ivorian law on the Promotion and Protection of Human rights defenders relates to adequate consultations between civil society and the government before the promulgation of the law.
- At the level of the West African region, **the West Africa Human Rights Defenders Network (WAHRDN)**, a coalition of human rights organizations in West Africa, has also been instrumental in documenting human rights violations and intervening to address human rights challenges.
- The network facilitates engagements with regional and international human rights mechanisms and provides support to activists under threat.
- But threats and challenges continue in the region including restrictive legislation, the ebola virus, terrorism, political contestations during elections, the policies and practices of extractive industries and attacks on civil society.
- Threats to civil society in the region emanate from state and non-state actors including armed terrorist groups in Nigeria, Mali and Niger.
- Threats to civil society have also emanated during periods of conflicts in Mali, Cote d’Ivoire, Liberia, Sierra Leone, and during political transitions in Nigeria and Burkina Faso.
- **For Kenya, the National Coalition of Human Rights Defenders (NCHRDs)** noted that some of the common threats to civic space include; promulgation of restrictive legislation, terrorism and the government response to terrorism, the freezing of the bank accounts of human rights organisations and intimidation, harassment and persecution of human rights defenders.
- There was also a distinction made by government representatives between “good NGOs” (those who provide services and infrastructure) and “bad NGOs” (those focusing on human rights, democracy, accountability and governance).
- There is need for civil society to work more with grassroots organisations in Kenya.
- All civil society organisations should dedicate resources to set up a unit or department to focus on assessing new laws.
- Maintaining connections between civil society the general public and parliaments is important.

- In Kenya, civil society organisations across the board successfully engaged in campaigns and advocacy against restrictive legislation that forced the Kenyan authorities to halt and suspend their implementation (albeit temporarily).
- In **South Sudan**, the environment is marked by conflict and the country is going through a political transition.
- The authorities are actively working to restrict the activities of civil society organisations using the Security Bill and the End User Bill.
- In addition, South Sudan struggles with extra-judicial killings and arbitrary detentions.
- The judiciary is not independent and the Human Rights Commission is not effective.

4.1 Reactions by Participants

- There are challenges in engaging with governments without making it look like a partisan issue.
- There are still onerous requirements in place in many countries which make it very difficult to set up NGOs and associations.
- It is important that the UN and UN human rights institutions question human rights reports submitted by governments without inputs from civil society.
- There are concerns about the drafting and promulgation of laws affecting civil society in certain countries without adequate consultations with civil society actors.
- Terrorism and the aftermath of 9/11 still felt by civil society as governments use the fight against terrorism as a pretext to restrict civil society activities. It may be useful to have legislation that makes a distinction between terrorism and the activities of civil society.
- Effective participation of civil society in inter-ministerial committees (open space for dialogue and employment).
- Participation of civil society in the amendment of certain laws and validation of certain studies in certain countries;

5. Practical recommendations on civil society space

5.1 On the protection and promotion of freedom of association

- Participants reiterated that freedom of association entails rights to establish associations or to belong to a particular group and these rights must be made possible with enabling legislation.
- Freedom of Association must be explicitly stated in the constitutions and provide supplementary legislation that supports freedom of association. Once freedom of association is included in the constitution and supported with supplementary legislation, it must be respected by all and implemented without any bias.
- Create clear and unambiguous standards for the registration of organisations and this must be supported by self-regulatory frameworks for civil society.

- In cases where government authorities are empowered to de-register “illegal” organisations or those that do not respect the law, clear processes for independent investigations for wrong doing must be set and mechanisms put in place for affected organisations to submit appeals against decisions taken by the authorities. Government representatives should desist from arbitrarily de-registering organisations and those who are guilty of doing so must be held accountable.
- All countries that currently have laws that restrict freedom of association should repeal them and more enabling laws should be put in place after consultations with civil society.
- States must create and support human rights institutions based at the national level which support freedom of association. These institutions should be able to operate independently without interference from the state.
- Preserve freedom of association of civil society organisations while developing and implementing counter-terrorism legislation and ensure that counter-terrorism laws do not restrict the ability of civil society organisations from carrying out their activities.
- Adopt laws that promote the creation of associations and civil society groups.

5.2 On the promotion of freedom of expression

- State authorities need to make it easy for citizens and the media to access information and this can be done using progressive freedom of information legislation or right to access information laws to complement laws supporting freedom of expression in constitutions.
- Governments should create the right environment for all media houses, agencies, newspapers, radio station, television stations and online media sources to operate freely and independently as the tendency is for public media to monopolise space.
- Governments should review and amend legal frameworks on freedom of expression and those governing the media to comply with international standards.
- Representatives of governments should not use provisions in the constitutions that promote freedom of expression to encourage hate speech. There should rather be guidelines against hate speech which hold perpetrators accountable.

5.3 On the promotion of freedom of assembly

- States and government representatives should apply laws on freedom of assembly generally across the board and should not refuse permission to groups or individuals who intend to hold peaceful protests against governments, policies and actions or those calling for reforms.
- Governments should desist from using brutal force to disperse peaceful protests and should make it mandatory for security forces tasked with crowd control to be equipped with non-lethal weapons and trained in humane means of crowd control and UN Basic Principles on the Use of Force and Firearms.

- Extra measures must be taken by governments and the international community to ensure that the right to freedom of assembly is not violated during periods of emergency.
- State of emergency laws and provisions should be reviewed to ensure that they contain human rights standards and constitutional provisions that restrict freedom of assembly should be repealed.
- State representatives and other individuals who violate the right to peaceful assembly should be held to account.
- Civil society organisation and representatives should be considered as a Special Group when drafting legislation that protects rights and emergency action should be taken to support and protect human rights defenders and representatives of the media during periods of crises and violence.
- There should be provisions in the law which grant citizens the right to public interest litigation.
- The UN Human Rights Council should establish synergy and linkages with regional organs and mechanisms like the AU, SADC, ECOWAS, ECCAS.

5.4 For human rights defenders

- United Nations human rights institution and organs should express solidarity with regional and national civil society organisations and should highlight issues about these violations.
- United Nations human rights institutions and organs should support human rights defenders living in the diaspora, to engage in human rights work, and access training and support, as they are working outside their own countries.
- There is need for high-level dialogue supported by the UN HRC on countries that are very restrictive and clear communication on how the restrictions need to be improved.
- The UN HRC in collaboration with human rights defenders should develop mechanisms to protect human rights defenders, particularly during times of crisis, as well as provide support to local human rights networks to respond during times of crisis.
- To develop a framework for the support of national human rights organisations and the media.
- The Human Rights Council should create and maintain a consistent and sustainable spotlight on extreme situations of Human Rights violations.
- The Human Rights Council should ensure marginalised groups receive special support (such as funding).

- The Human Rights Council should urge member states to urgently process visas for members during a state of crisis, and also develop an international visa for these situations.
- The Human Rights Council should be able to recommend sanctions/actions against countries that don't comply with legislation.
- The Human Rights Council should deploy observers in countries of potential/long-time crises, to highlight the issues and potential actions.
- International human rights institutions should provide legal assistance to Human Rights Defenders during times of crises.
- States with a track record of violating human rights should not be able to take up a leadership position at the Human Rights Council.
- The Human Rights Council should more regularly address regulations and restrictions on bank accounts, and other repressive measures, against civil society on the basis of national security.

5.5 On civil society space and civic engagement

- Prohibit state interference in the activities of civil society organisations.
- Establish a database on civil society to facilitate networking.
- Develop programmes to empower civil society organisations and build their capacity to enable greater access to resources and funding.

5.6 Recommendations on promoting civic space in restrictive environments

5.7 Restrictive contexts

The participants distinguished restrictive environments from others as the needs and demands from civil society in these environments are different. They identified restrictive environments as environments where;

- There is no law at national level to protect human rights defenders.
- There is restrictive legislation on freedom of assembly, association and expression.
- There is violent conflict and volatile political transitions.
- The space for civil society participation is closed.

Participants were conscious that Africa countries such as Eritrea, Ethiopia, Central African Republic, Sudan, Swaziland fall under these categories. The following recommendations were therefore proposed;

- The UN Human Rights Council should demand African countries adopt progressive laws that promote and protect human rights defenders.
- Adopt resolutions and guidelines that facilitate the creation, operation and management of associations and NGOs.
- Establish mechanisms for the protection of civil society organisations in countries experiencing crises in Africa.

- Create an emergency fund for civil society organisations in countries experiencing crises.
- Guarantee a permanent presence of the Office of the High Commissioner for Human Rights in countries experiencing crises.
- Adopt a resolution governing administrative procedures governing the access to funding for civil society applicable to all technical and financial partners.
- Take measures to implement the UN, AU and other resolutions adopted by regional organisations on the protection of the physical integrity of activists in countries of crisis.
- Support human rights defenders in countries experiencing political transitions and during elections.

CIVICUS

WE EXIST TO **STRENGTHEN
CITIZEN ACTION AND CIVIL SOCIETY
AROUND THE WORLD.**

BECOME A MEMBER

OUR MEMBERSHIP SPANS SECTORAL, THEMATIC AND
GEOGRAPHIC DIVIDES.

MEMBERSHIP IS OPEN TO BOTH INDIVIDUAL CITIZENS
AND ORGANISATIONS AND BASIC MEMBERSHIP IS FREE.

TO JOIN CIVICUS, PLEASE VISIT [CIVICUS.ORG/JOIN](https://civicus.org/join).



CIVICUS

CONTACT US



civicus.org



info@civicus.org



[/CIVICUS](https://www.facebook.com/CIVICUS)



[@CIVICUSalliance](https://twitter.com/CIVICUSalliance)

SOUTH AFRICA



CIVICUS House
24 Gwigwi Mrwebi Street
Newtown
Johannesburg, 2001
Tel: +27 (0)11 833 5959

SWITZERLAND



11 Avenue de la Paix
CH- 1202
Geneva
Tel: +41 (0)22 733 3435

UNITED STATES



355 Lexington Ave
New York
NY 10017
United States

UNITED KINGDOM



Unit 60
Eurolink Business Centre
49 Effra Road
London SW2 1BZ
Tel: +44 (0)20 7733 9696