



Africa's Democracy: "Is the Environment Enabling or Disabling"



Launch:
**(Dis) Enabling the Public Sphere:
Civil Society Regulations in Africa (Volume 1)**
&
State of the Union South Africa Report
23rd February 2011, Pretoria South Africa

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1. Introduction

The Southern Africa Trust, Trust Africa, Institute for Global dialogue and Continental Advisory Research Team of civil society organisations launched two publications; *(Dis) Enabling the Public Sphere: Civil Society Regulation in Africa (Volume 1)* and the *State of the Union South Africa Report*. 92 participants attended the launch including government departments, foreign diplomats, civil society and the private sector.

In 2009, a consortium of 14 non-governmental organisations'¹ working in the African continent initiated a project called the State of the Union. The project aimed to assess the compliance of the African Union decisions and instruments by African Union member states. The first phase of the project focused on 10 African countries including South Africa. The State of the union project tracks and engages governments and the African Union on their commitments by managing in-country research, community hearings and national consultations. There is a huge gap between law and practice as well as between signing, ratification and implementation of international statutes. The other problem is the lack of harmonisation between African Union decisions and the practice of most member states. As a result, many important decisions being taken at continental level risk the danger of not being nationally implemented. The Africa Union Assembly of Heads of State and Government called for the prioritisation and acceleration of the signing and ratification of African Union treaties. The findings of the Study will help stakeholders to monitor progress, hold government accountable and support government to deliver the African Union Policy Standards and Framework.

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State of the Union South Africa Report

The *State of the Union South Africa Report* assesses South Africa's compliance with African Union instruments. The report analyses South African compliance with 12 African Union instruments; human rights and governance, women's rights, children and youth rights, agriculture and conservation of nature and natural resource, and health. The report analysed each instrument from its legal status, objectives and popularisation of each instrument.

¹ These organisations' include the Southern Africa Trust, Fahamu, the Centre for Citizens Participation in the African Union, AfriMap, the Africa Governance Monitoring and Advocacy Project, the Open Society Initiative, the Civil Society Learning and Capacity Building Centre, the Al-Ahram Centre for Political and Strategic Studies, the Information and Documentation Centre for Woman and Child's Rights, the African Forum for defence of human Rights, the centre for Advanced social science and the citizens governance initiatives, the Institute for Democratic Governance and Oxfam International.

The second publication launched on the same day was the book on civil society regulations in Africa entitled *(Dis) Enabling the Public Sphere: Civil Society Regulation in Africa (Volume 1)*. This is the first volume in a series that considers the public sphere and how it is regulated in post-colonial Africa. The Southern Africa Trust and TrustAfrica were concerned over the accelerated levels at which the public space for citizens and their formations is shrinking. The publication covers a total of eighteen countries in Africa². The public sphere refers to the space in society where citizens freely discuss issues of common interest. The book unpacks the political and administrative justifications for regulating the space by post-colonial African state. Graça Machel, founder and president of the Foundation for Community Development, in her foreword of the book says “I cannot but emphasize the point that for Africa to develop, there is a need for her citizens to be enabled to utilize their capabilities in ways that are not restrictive, controlling or even disempowering”. Instead of resuscitating old colonial statutes that were developed to deny Africans of their freedom of assembly, association and expression, our governments should be concerned about providing an enabling environment for investments, entrepreneurship, empowerment and equitable development. Governments should focus on creating spaces for everyone to contribute to development. Africa is set to develop only if her citizens play active roles in their governance.

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The book provides an analysis and understanding on the legislative and regulatory environment under which civil society organisations are operating in Africa. It provides an overview of the state and civil society relation in Africa and outlines the laws that have been enacted mainly to regulate civil society organisations. The publication provides an analysis on the process followed in enacting laws regulating civil society, registration of civil society formations and the impact on the operating environment of civil society. The democratic dispensation being experienced in Africa has increased spaces for engagement between the state and civil society organisation. However, new and emerging regulations being introduced are countering these efforts.

² Zimbabwe, Namibia, South Africa, Lesotho, Swaziland, Malawi, Zambia, Ethiopia, Uganda, Kenya, Tanzania, Angola, Mozambique, Cameroon, Democratic republic of Congo, Gabon, Madagascar and Mauritius

2. Opening Of the Launch and Public Dialogue

The launch was opened by Neville Gabriel, Executive Director at the Southern Africa Trust. In his opening remarks, he made reference to the Tsunami of freedom that has been sweeping to the north of Africa where emerging and aspirational class of people are challenging repressive forces that many thought were beyond their control-groups of people for whom our current



Neville Gabriel, the Southern Africa Trust

structures of society offer a bleak future. In reference to the events in North Africa, Mr. Gabriel also quoted Rumi, an ancient Sufi mystic from Turkey on freedom and the true meaning of life." *Every particle in the sands of the desert, if it only gets its scent becomes the bird of life, opens its wings and flies away. A bird in the cage is under someone else's control but when he breaks the cage and flies away, what becomes of the control? Where even is the bird?"*

The lessons we should learn from the desert Tsunami is that progressive gains, even liberation cannot be sustained without the meaningful inclusion of all parts of our societies in all spheres of public life. Africa's liberation struggle continues not only on the economic front and but also in the way states and non-state actors relate to each other.

The State of the Union Report addresses what lies above and below Africa's current development trajectory. Too often we only ask what must be done and how it should be done but we seldom ask why our development efforts sometimes works in a sustained way and fail so spectacularly as we are seeing in North Africa and the very different responses of government (Bahrain and Libya). The likely outcomes raise the question even more sharply.

Disenabling the public sphere addresses that question, it is about the environment in which cooperative or repressive relations between state and civic formations occur. It addresses questions about systemic change that is needed to transform post independence relations between state and non-state actors in Africa for better and more sustained development outcomes.

The African Union has many statements of intent(some binding and others not) that offer a way of transforming state and non-state relations in Africa, but many countries fail to comply. In order to avoid the desert Tsunami in the north moving down the lakes, forests, Savannah's and deserts in the south, it is hoped that these reports will help to transform the ways our societies function for sustained regional integration and development that works for the poor.

3. Presentation of the State of the Union South Africa Report

Andre Mangu from the University of South Africa presented the finding of the South African report on the *State of the Union*. The findings of the South Africa report indicate that of the twelve (12) African Union instruments assessed, South Africa has signed and ratified eleven (11). The 12 African Union instruments cover the areas of human rights and governance, women's rights, children and youth rights, agriculture and conservation of nature and natural resource, and health. The outstanding instrument to be ratified by parliament is the African Charter on Democracy. Eight (8) of these African Union instruments qualify as treaties and become legally binding on state parties upon signing and ratification.

The government of the Republic of South Africa signed the African charter on Human and peoples' rights in 1996 and ratified the agreement into domestic law. The African charter on Human and peoples' rights seeks to protect individual and collective rights, civil, political, socio-economic and cultural rights, group and peoples' rights. Despite its ratification and incorporation into domestic law, the African Charter on Human and Peoples' Rights remains unknown by the majority of South Africans. The lack of awareness of African Union instruments impacts negatively on citizen's ability to exercise their rights and discharge their responsibilities.

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Andre Mangu, IDGPA



Professor Andre Mangu (left), the Institute for Democracy, Governance, Peace and Development in Africa (IDGPA) and Dr. Siphamandla Zondi (right), Institute for Global Dialogue

The African Union Convention on preventing and combating corruption was signed and ratified by South Africa in 2005. In order to fight corruption, South Africa established constitutional and legislative bodies, passed several pieces of legislation and adopted several Codes of Ethics and strategies. The government has put in place mechanisms to popularise the convention on preventing and combating corruption. These include school educational programmes, media sensitisation, and the protection of whistle blowers.

South Africa Compliance with the African Youth Charter: The government signed and ratified the charter in 2009. The implementation of the Africa youth charter is left to the National Youth Development Agency (NYDA) within the context of the National Youth Policy (NYP) (2009-2014) and the Youth Desk in partnership with Government, CSOs, and local partners. The implementation of the African Youth Charter remains a tremendous challenge. The African

Youth Charter should be popularised into a people's affair with ownership invested in the youth. Popularisation had to be made through the translation of the African Youth Charter in local languages, distribution to relevant stakeholders, media, workshops, conferences,



Rural women in Malawi travel long distances to fetch clean water for household use.

meetings, rallies, marches, community gatherings, official and unofficial documents. Many youth are still not aware of the existence of the African Youth Charter, or their rights and duties therein. The media could have played a leading role in educating the youth. South Africa has made tremendous efforts to comply by signing and ratifying the African Youth Charter, adopting policies, formulating programmes and establishing mechanisms to promote the rights of the youth. The main challenge lies in their

implementation.

South Africa was instrumental in the launch of the African Union, New partnership for African Development and the Africa Peer Review Mechanism. Despite the fact that South Africa has made significant progress in ratifying the African Union instruments, there are still a number of challenges being experienced. The general citizenry of the country are not aware of the existence of these instruments. There is urgent need for government to begin to popularise the African Union instrument to general citizenry. The awareness exercise will also cater for state official to which there exists also a knowledge gap of the African Union instruments.

The African Charter on Democracy has been signed but not yet been ratified. South Africa has therefore not complied with this key African Union instrument, three years after its adoption in January 2007. However, the signing of the African Charter on democracy constituted a step in the right direction. Several indicators demonstrate South Africa's commitment to free and fair elections; participatory democracy, rule of law, human rights, and good political governance. South Africa is governed by a supreme, entrenched and legitimate constitution. Women participate in national politics, with South Africa having one of the highest numbers of female politicians on the continent. The Independent Electoral Commission is one of the institutions established by the Constitution to support democracy. This report recommends that South Africa should sign, ratify and enforce the African Charter on Democracy. The South African government should exercise leadership in championing rights lest it loses its role as peace-maker and champion of democracy in Africa. In terms of popularisation, the

There is no policy, legislation, programme or development strategy that can succeed without the involvement of people and all stakeholders.

African Charter on Democracy is not well-known among South Africans, officials, political leaders and civil society organisations.

The report recommends that government should regularly review its legislation, policies and programmes to ensure their compliance with African Union instruments. There is no policy, legislation, programme or development strategy that can succeed without the involvement of people and all stakeholders. Full compliance with the 12 selected African Union instruments and any other international instruments would require some coordination at the governmental level and regular follow-up on government to implement its commitment under the African Union instruments.

4. Response to the State of the Union Report

Siphamandla Zondi from the Institute of Global Dialogue responded to the state of union report by stating the concern that the Africa union has continued to develop several instrument and making decisions but the change resulting from the implementation has not been significant. The report is not very clear on the recommendations on how to ensure the instruments are popularised among the general citizenry. The methodology of the research could have provided more information on the persons interviewed. There is need to nuance the fact that the implementation of the law will translate into automatic change. Siphamandla concluded by indicating that report should provide space for continuous dialogue of all stakeholders on supporting government initiatives to comply and popularise the African Union instruments. The success of the African Union requires all its member states to deliver on all their commitments and implement its various instruments.

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5. Presentation of (Dis) Enabling the Public Sphere: Civil Society Regulations in Africa (Volume 1)

Bhekinkosi Moyo from Trust Africa presented the findings of the publication on Dis (enabling) the public sphere, civil society regulation in Africa. The study was commissioned to fully understand the regulatory environment under which civil society operate in Africa. The relationship between the citizens and the state, as well as that between organised formations and their governments has varied and continues to vary from country to country.

The democratic dispensation and its inherent contradictions have opened up the public space for popular participation but at the same time invited scrutiny of the state. In some countries, three types of relations developed between the state and civil society due to the different configurations of civil society and the character of that state. The first was collegial and collaborative, especially among service delivery groups that were mainly NGOs. The second was adversarial, particularly for human rights monitors and advocacy-based groups. The third was that of survivalist groups like community-based organisations that did not develop a particular relationship with the state.



Dr. Bhekinkosi Moyo, TrustAfrica

In the publication, most governments responded swiftly to governance and human rights advocacy organisations. The motivation for regulating this type of civil society emanated from the fact that they viewed these groups as instruments of foreign (former colonial) powers to influence the political direction of their countries. Governments have been asking the question; whose agenda are these groups implementing? The view of most governments is that these groups are powerful agents representing imported agendas that need to be

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constrained. Are governments justified in holding this view? This is an open challenge to civil society organisations of an advocacy nature-given that aided civil society groups involved in service delivery have not attracted the same wrath from governments.

Another issue that has in many ways incensed governments in Africa is liberalisation or neo-liberalisation and how it has affected development and policy making. Many African governments have resisted forcefully, the liberalisation agenda. Perhaps rightly, they have seen

many aided non-governmental organisations (including service delivery ones) as instruments of foreign promoters of liberalisation to ensure the shrinking of state machinery in Africa while at the same time expanding the space for private service providers (non-governmental organisations) through the governance decentralisation agenda. In many ways, this has been viewed by states as weakening their power and shrinking their control over resources-therby shrinking the political control of the country's development path and rendering governments ineffective. Related to this of course is the whole question of who is providing the money?

Some governments have been wary about the West, particularly regarding funding from bilateral donors and have responded by capping the amounts coming from outside for non-governmental organisations. Yet the funding landscape is changing. Funding is more diversified now than before with the entrance of new bilateral donors from the historical South and new funding mechanisms and channels such as global funds, private mega-philanthropies and



Women demonstrating for their voice to be heard in South Africa

African sources of aid. The terrain is fast changing and the old assumptions for regulating the space for civil society based on their sources of funding might not apply anymore.

Different countries illustrate different forms of relations and how these relations have developed. In South Africa, for example, all three kinds (collaborative, adversarial and survivalist) developed based on the contexts and the actors involved. The country's constitution, for example, enshrines all kinds of freedoms. As chapter two discusses, the political context in South Africa has allowed for the vibrancy of civil society. However, the same civil society has fragmented over the years as more of its leaders joined the democratic state as well as the private sector especially after the 1994 dispensation.

In Mozambique, the Constitution of 1990 established, for the first time, the freedoms of expression and association. The proliferation of laws such as the Press Law also guaranteed various freedoms such as those of association and assembly. The 1990s thus saw the opening up of public spaces for associations and the reconfiguration of state-civil society relations. Indeed, there was a move towards more consultation and co-operative mechanisms between government, business and civil society.

In Angola, relations between the state and civil society are still viewed from the perspective of a history that tended to close the space for civil society. The advent of many groups has helped in the democratisation of the public space. At least these groups can use the *Bicesse Accord*

which, among other things, recognises the rights of political parties, freedom of assembly and association.

Among the islands, particularly Seychelles, Madagascar and Mauritius, relations between civil society and the state are forged very much in line with the history of the state. In Seychelles, for example, although the government has strong control over the media, there is widespread acceptance that recent changes in government have facilitated a move towards creating opportunities for civil society in contributing to the country's needs. Government is viewed as being facilitative. Yet this might just be a reflection of the fact that civil society institutions are still nascent and could change as more complex issues develop.

In Mauritius, there also seems to be a greater degree of openness. Civil society has up to now been engaged in an open dialogue with the state. The general trend is that government views civil society as a partner in development and the relationship is one of mutual respect, especially on social issues. Suspicions still abound about the current support from government despite the good relations. Some groups are wary that this might lead to co-optation.



Members of civil society raising concerns about issues affecting their work in rural communities

In Madagascar, the political climate has had implications for the character of civil society. It is too early to tell what direction civil society will take, but what is clear in politically charged contexts is that civil society too often tends to be polarized along political fault lines. This often results in civil society being questioned around its legitimacy, something that has already begun in Madagascar.

In other countries, there was a very short period between the opening up of the political space and its subsequent closure. In the Democratic Republic of Congo, for example, in the 1990s, civil society flourished as a result of liberalisation. Human rights organisations were among the first to emerge to address the human rights violations of the state. This led to a breakdown in relations. The state did not want to share the public space and the new groups lacked experience in

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engaging the regime. As in most countries, liberalisation facilitated the emergence of new political players, some of whom came from civil society. This led to tensions between the state and civil society groups.

The political contexts in Zimbabwe, Uganda, Ethiopia, Kenya and Swaziland are worth noting in terms of their current relations with civil society. In Zimbabwe, cracks started developing in the mid-1990s when students from the University of Zimbabwe demonstrated against rising food prices and the general state of the country. Trade unions soon followed suit leading to the formation of the Movement for Democratic Change (MDC) in 1999. This was the moment when relations strained between the state and many civil society formations. Since 2000, the state has viewed civil society, in particular advocacy and human rights groups, as an extension of the opposition. Just as the government has consistently argued that the MDC is a 'puppet of the West', civil society groups have heard the same accusations. One of the weaknesses of civil society during this time was to be seen as being synonymous with the opposition. This is the context in which the relations ought to be understood.

In Ethiopia, the strained relations can be traced back to the 2005 Presidential elections where some activists and members of the opposition and journalists were arrested for questioning the credibility of the elections. In Uganda, although the ruling National Resistance Movement party was always sensitive to its security, the advocacy work of some non-governmental organisations, especially the anti-corruption campaigns and the 'mabira' crusade (a mobilisation of groups against the state's proposal to give away a significant portion of natural tropical rain forest to an investor for sugarcane), and civil society governance reports, among others, could have heightened the speed at which government then controlled the space.



People in rural areas gather to address the challenges they face to civil society organisations working in their communities in Malawi

In Malawi, it is worth noting that strained relations resurfaced between the state and civil society due to civil society's campaign against the third term bid by President Bakili Muluzi. The interesting thing is that it was civil society in Malawi that first developed a draft non-governmental organisations' Bill. However, due to political calculations, the state took over the process and left out the areas that civil society groups had wanted addressed in the bill.

South Africa has made some efforts in creating an enabling environment for civil society and the sector has gained the recognition of a pertinent partner in development. Government's

response to civil society groups varies from country to country. The need to hold government accountable has caused civil society organisations to be targeted by restrictive laws and hostile political environment.

The crafting of laws to regulate civil society activities vary from country to country. The book shows some interesting trends, where the relationship between the state and civil society are cordial and the process leading to the formulation of the laws seem to have been consultative. The regulatory environment in such countries is also enabling. On the other hand, in countries where the relations are adversarial, the process leading to formulation of laws was state driven and civil society groups tried frantically to influence the process with minimal success.

Dr.Moyo concluded his remarks by stating that the findings of the publication will be an informative resource for development actors and serve as a rallying point for participatory and accountable governance, democratic development and deliberative policy making.

6. South African Government Address on Creating an Enabling Environment for Civil Society Participation

Mapena Bok from the Department of Social Development in the Republic of South Africa addressed the dialogue on behalf of the Director General. In his address, he mentioned that civil society in South Africa is a well developed third sector. Civil society often plays an intermediary or linking role between the poor and marginalised and government or donor organisations.

South Africa like any other democratic government has created an enabling legal environment for civil society to support and encourage the formation of organisations. On the basis of the fundamental principles of the Bills of Rights, the current legal framework on civil society organisations enable organisations to establish themselves as legal structures and regulates the way in which such legal structures operate. Civil society formations provide tax and other incentives for the sector to financially sustain itself. The right to freedom of religion, belief and opinion, freedom of expression and freedom of association as contained in the Bills of Rights is essential for civil society formations.

The entry point for civil society in South Africa is the Non-Profit Organisations (NPO) Act administered by the Department of Social Development to which benefits from the existing enabled environment can be derived.

The Non-profit organisation Act is aimed at encouraging civil society to maintain adequate standards of governance, transparency and accountability and to create an environment within which the public may have access to information on registered organisations. There are currently more than 74,000 registered civil society that operate in different areas.

There is still much to be done to make the environment more enabling. The Non Profit Organisation Act was one of first mechanisms introduced by government to provide an enabling environment for civil society. The department conducted a study on the impact of the Non Profit Organisation Act on the sector and the findings of the study indicated there is an enabling environment for the sector. However, the report recommends that government should embark on a process to review the current legislation with a view of improving certain administrative requirements to make it easier and simpler for organisations to get registered.



Kgalema Motlanthe, the Vice President of the Republic of South Africa, at a meeting with civil society to frame the Anti-Poverty strategy for South Africa

7. Discussion Session

Vukani Mthintso Executive Director of International development cooperation and Ingrid Srinath Executive Director of CIVICUS emphasized the importance of building constructive engagement between civil society and government. Legislation is important to guarantee space for non-state actors in policy engagements. The new emerging economic powers are introducing new laws tied to the aid given to developing countries. Civil society faces a shift in geopolitics and economic powers are scrambling for resources as a result of the global



Participants pay attention to discussion about civil society's freedom to participate in civic matters

economic meltdown. These new laws are curtailing and shrinking non state actors' space to engage in policy making processes.

The programme Director of the launch Chris Maroleng from eTv Africa Channel facilitated feedback and debate from participants. Participants at the launch indicated the need for civil society to be strengthened and stand united. Civil society has been speaking from divergent

views and there is need to approach policy development with a coherent/ common position. Civil society is still fragmented and the sector needs to work on promoting coordination for effective policy engagement. Civil society needs to hold itself accountable as well and ensure credible representation at policy development platforms.

The space for government, civil society and private sector may be changing but there is need for this space to be contested by stakeholders. The enabling environment should not be an end in itself, civil society must work together to increase coherence and coordination.

With regard to the South Africa report of the State of the Union, some participants raised issues such as why governments are not in hurry to ratify, domesticate and popularise international instruments signed on behalf of the citizens; the capacity of public servants to implement these instruments and if NEPAD cannot include in its mandate, the monitoring of the implementation of African Union decisions. Others raised the issue of enforcement mechanisms to oblige Member State to comply with AU decisions.

Theminkosi Mhlongo, Head of Programmes at the Southern Africa Trust, gave the vote of thanks. In his closing remarks he emphasized the need for civil society to continuously create space for engagement for Africa's development. There is need to increase social dialogue between the different sectors of our societies at national and regional levels and shared visioning of what the societies and Africa to be like.

Statement made by Vice president of Ghana John Mahama May 2009 "*The rise of strong civil society organisations, vibrant and vocal media institutions in Africa was not bestowed by some benevolent leadership. They reflect the will of the people to hold the leadership of their countries accountable,*"