



RECOMMENDATIONS

- African leaders should commit to creating and reinforcing an enabling environment for CSOs and the media to do their work free from government attacks, and allow for meaningful CSO participation in political processes at all levels.
- African regional bodies such as the ACHPR and the AU Commission should call for an end to government harassment of and attacks on CSOs and the repeal of repressive NGO and anti-homosexuality laws.
- CSOs should mobilise and work in partnership with international organisations to push for an end to government restrictions and attacks on their work and greater protection for activists.
- CSOs should take a broader, more holistic approach to advocating issues such as LGBTI rights, by framing them in the language of non-discrimination and equal rights.
- CSOs should look to more innovative ways to generate local funding, cultivating African philanthropy nationally and regionally.

Challenging the Negative Discourse on Human Rights in Africa

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EXECUTIVE SUMMARY

The recent proliferation of non-governmental organisations (NGOs) and independent media across Africa is an important positive development. They play an essential role by investigating government policy, exposing corruption and human rights violations, advocating for the rights of minorities and vulnerable communities, and providing social services. However, their work is under threat due to a backlash from the continent's leaders against the imposition of 'Western' ideas of human rights.

This policy briefing highlights the shift in human rights discourse among African leaders towards more anti-imperialist rhetoric and the placing of African traditions above human rights. It provides examples of how local civil society organisations (CSOs) are challenging this view in the face of increasing government attacks. CSOs are crucial to positive transformation and the universal protection and promotion of human rights, and more needs to be done to protect human rights and create an enabling environment for CSOs.

A SHIFTING HUMAN RIGHTS DISCOURSE

In 2000, the adoption of the African Union's (AU) Constitutive Act was meant to extend and deepen Africa's commitment to human rights, democracy, governance and development.² The AU's predecessor, the Organization of African Unity, set the framework for human rights protection and promotion through the establishment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights.³ The AU's Constitutive Act reflects the human rights principles set out in the African Charter on Human and Peoples' Rights.

However, in recent years the discourse on human rights has often been at odds with the instruments and institutions that form Africa's human rights system. States have invoked the principles of sovereignty and

non-interference to prevent interventions in support of human rights. The slow pace of ratification of some of the instruments and the lack of enforcement mechanisms have also called into question the efficacy of institutions and the political will of the continent's leaders.

Africa's leaders increasingly attempt to locate so-called 'traditional values' within the realm of human rights. This approach appears to be in line with Article 17(3) of the African Charter, which says, 'The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.'⁴ Governments seeking to justify their authoritarian and repressive conduct find it convenient to challenge the universality of human rights in an attempt to stifle discussions on the rights of minorities, accountability and justice, corruption and other abuses.

In pushing the traditional values narrative, African leaders have sought to either introduce new laws or strengthen existing ones. For instance, new anti-lesbian, gay, bisexual, transgender and intersex (LGBTI) laws not only tighten the existing colonial-era sodomy laws but also appear to be rooted in Article 18(1) of the African Charter, which states, '[T]he family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral [sic].'⁵

In 2008, for example, the South African government introduced the Traditional Courts Bill, which sought to grant individual traditional leaders sole authority to interpret and enforce controversial versions of customary law that infringe upon women's rights, such as the practice of forced marriage (*ukuthwala*) and discriminatory social and economic practices (eg, denial of access to land and inheritance). It also prohibited rural people from opting out of the jurisdiction of traditional courts. CSOs succeeded in having the Bill withdrawn from Parliament for further consultations and reviews in 2013, and Parliament allowed it to lapse in February 2014.

Uganda's 2014 anti-homosexuality law raised the penalties (including life imprisonment) for some forms of consensual same-sex conduct between adults.⁶ Under the law, local and international NGOs doing advocacy work on human rights issues were at risk of criminal sentencing of up to seven years if they attempt to work on LGBTI issues. On August 1, Uganda's Constitutional Court declared the Act 'null

and void' after a constitutional challenge from lawyers and activists.

Similarly, Nigeria's same-sex marriage law criminalises public displays of affection between same-sex couples and restricts the work of organisations defending gay people and their rights.⁷ The law imposes a 14-year prison sentence on anyone who '[enters] into a same-sex marriage contract or civil union' and a 10-year sentence on individuals or groups, including religious leaders, who 'witness, abet, and aid the solemnisation of a same-sex marriage or union'.⁸ In the Gambia in August 2014, the National Assembly passed a bill increasing penalties for same-sex relationships to life imprisonment.⁹

Beyond the traditional values narrative, African leaders have also sought to use the rhetoric of 'Western imperialism' and imposition of rights to shield themselves from taking responsibility for abuses. This is exemplified by the case of the International Criminal Court (ICC). The fact that all the major cases before the ICC are from Africa has been used as the basis for accusations of double standards, perceived Western imperialism and racism. The AU has called for non-co-operation with the ICC and, after the ICC's indictment of President Omar al-Bashir of Sudan, pushed for the quick establishment of an African Court of Justice and Human Rights, an idea mooted years before tensions arose between the two institutions. Significantly, in June 2014 African leaders adopted an amendment to a protocol establishing the court that provides immunity from prosecution for serving heads of state and senior government officials for a range of serious crimes, including war crimes, crimes against humanity and genocide.¹⁰

At the same time, African CSOs working on human rights and democracy have faced accusations of forcing Western approaches and methodologies of addressing human rights issues onto the African context. They are frequently referred to as mouthpieces of foreign governments seeking to impose Western values on the continent. International donors' support of African CSOs has driven the rhetoric that CSOs are merely agents for Western attempts to set the agenda on human rights.

These accusations and the often-tense relationship between African governments and CSOs are nothing new, but they have intensified in recent years. This can be attributed partly to the concerted effort by CSOs to highlight human rights abuses, in particular sensitive

issues such as LGBTI rights, corruption, justice and accountability.

CSOs' DRIVE FOR CHANGE IN THE FACE OF GOVERNMENT ATTACKS

African CSOs now find themselves at the forefront of the fight against a regressive approach to human rights issues. They seek to debunk the narrative of African traditions trumping human rights, and push back against the rhetoric of Western imperialism. To accomplish this they use various strategies, including regional mobilisation on certain issues, increasing media profiles, peaceful protests, intense lobbying of government officials, and advocacy with regional institutions.

The burgeoning African LGBTI human rights movement has led the way in calling for an end to discrimination and violence against LGBTI people and the repeal of sodomy laws. Only a decade ago, many African countries had no LGBTI organisations engaged in public advocacy or human rights work. This work has seen some progress, despite sustained government attacks. For example, in May 2014 LGBTI groups successfully lobbied the ACHPR to adopt a resolution on the 'Protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity'.¹¹ Other important successes include LGBTI activists in Uganda winning a lawsuit against a tabloid newspaper that had published pictures of alleged homosexuals under the headline 'Hang Them', and Malawian activists successfully lobbying former President Joyce Banda to impose a moratorium on arrests under that country's sodomy law.¹²

African CSOs have also united to challenge African governments' positions on the ICC. Local NGOs in Kenya, Nigeria and Malawi have successfully lobbied and campaigned against visits to their countries by al-Bashir. A continental coalition of civil society groups has also used the media and lobbied African government officials to co-operate with the ICC.¹³

CSOs and the media have played an important role in the fight against corruption on the continent, a noticeable contrast from just two decades ago, when they were virtually absent. Since 2012 the Black Monday Movement in Uganda – a coalition of local NGOs and civil society groups – has taken to the streets to highlight the effects of corruption and to press public

officials to act. Through shrewd tactics and media strategies, the movement has managed to generate considerable coverage and spur debate on corruption.

In South Africa, civil society coalitions such as the Right2Know Campaign have protested against the Protection of State Information Bill, introduced in March 2010. The Bill has been criticised as being inconsistent with South Africa's constitution and international human rights obligations. CSOs have expressed major concerns about it, including the lack of protection for whistle-blowers and journalists publicising information as a matter of public interest.¹⁴

Increased CSO activism on human rights has provoked a government backlash in several countries, including threats against and harassment, arbitrary detention and prosecution of activists; censorship of independent media and nongovernmental voices; and the promulgation and use of laws that violate the fundamental rights of freedom of expression and association.

While attacks on individual human rights activists are not new, a new facet of the assault on civil society is repressive legislation nominally aimed at regulating non-governmental work or combatting terrorism that is instead used to restrict civil society activity and punish activists. In Angola, Burundi, Ethiopia, Kenya, South Sudan, Uganda, Zambia and Zimbabwe, to name a few, governments have enacted restrictive NGO and media laws, or attempted to do so.¹⁵ While many African CSOs have been affected by these developments locally, there have been few efforts to mobilise and form a major coalition to challenge them.

CSOs face other challenges. For example, they have been unable to mobilise greater citizen participation and action on sensitive issues such as LGBTI rights. Some African leaders have not only used traditional values rhetoric to garner support for homophobic laws but have also accused CSOs of elevating LGBTI rights above other rights, supposedly spurred on by Western donors. The US government's aid cuts and the suspension of aid by some European governments to Uganda, in reaction to the anti-homosexuality law, have played into this narrative.¹⁶ As a result, CSOs have had to defend their actions to local citizens who accuse them of promoting the aid reductions.

CSOs also face a number of internal challenges. A lack of local funding and their reliance on donor aid make it difficult to challenge the perception that they

are the mouthpieces or agents of Western governments. In addition, tough economic conditions and cuts in donor funding have caused some organisations to close and obliged others to reorient their work. CSOs are often forced to work in areas in which they are more likely to attract funding, perpetuating the perception that they work on issues of interest only to their mainly Western funders. Finally, CSOs have been unable to organise themselves regionally to address the growing raft of restrictive laws and attacks against them.

CONCLUSION

Despite the external and internal challenges highlighted, African CSOs continue to play a key role in pushing for the universal protection and promotion of human rights. The examples used show that civil society is not a passive actor in the face of shifting and increasingly negative government discussions on human rights. However, there is a need for wider international recognition of this discourse on human rights on the continent and the accompanying restrictive operating environment for CSOs seeking to highlight the issues.

ENDNOTES

- 1 Tiseke Kasambala is the Southern Africa Director at Human Rights Watch. This policy briefing is written in her personal capacity.
- 2 AU (African Union), *The Constitutive Act of the African Union*, http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf, accessed 10 July 2014.
- 3 AU, 'The Assembly', <http://www.au.int/en/organs/assembly>, accessed 10 July 2014.
- 4 ACHPR (African Commission on Human and Peoples' Rights), 'African (Banjul) Charter on Human and Peoples' Rights', http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf, accessed 10 July 2014.
- 5 *Ibid.*
- 6 For analysis of the law see Human Rights Watch, 'Uganda: Law rolls back basic rights: Museveni signs anti-homosexuality bill', 24 February 2014, <http://www.hrw.org/news/2014/02/24/uganda-law-rolls-back-basic-rights>, accessed 15 July 2014.
- 7 See Human Rights Watch, 'Nigeria: Anti-LGBT law threatens basic rights', 14 January 2014, <http://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic-rights>, accessed 15 July 2014.
- 8 *Ibid.*
- 9 See Human Rights Watch, 'Gambia: President should reject homophobic law', 10 September 2014, <http://www.hrw.org/news/2014/09/10/gambia-president-should-reject-homophobic-law>, accessed 12 September 2014.
- 10 See IJRC (International Justice Resources Center), 'African Union approves immunity for government officials in amendment to African Court of Justice and Human Rights' statute', 2 July 2014, <http://www.ijrcenter.org/2014/07/02/african-union-approves-immunity-for-heads-of-state-in-amendment-to-african-court-of-justice-and-human-rights-statute/>, accessed 17 July 2014.
- 11 ISHR (International Service for Human Rights), 'African Commission adopts landmark resolution on LGBT rights', 22 May 2014, <http://www.ishr.ch/news/african-commission-adopts-landmark-resolution-lgbt-rights>, accessed 16 July 2014.
- 12 Human Rights Watch, 'Africa's small steps toward LGBTI equality', 17 July 2013, <http://www.hrw.org/news/2013/07/17/africas-small-steps-toward-lgbti-equality>, accessed 16 July 2014.
- 13 See ISS (Institute for Security Studies), 'At the new African Court, will power mean impunity?', ISS Today, <http://www.issafrica.org/iss-today/think-again-at-the-new-african-court-will-power-mean-impunity>, accessed 17 July 2014.
- 14 For example, see Right2Know, 'Secret State of the Nation 2013', report, 18 February 2013, <http://www.r2k.org.za/wp-content/uploads/R2K-SECRET-State-of-the-Nation-Report-18-Feb-2013.pdf>, accessed 15 July 2014.
- 15 *Global Trends in NGO Law: A Quarterly Review of NGO Legal Trends around the World: NGO Laws in Sub-Saharan Africa*, 3, 3, June 2011, <http://www.icnl.org/research/trends/trends3-3.html>, accessed 16 July 2014.
- 16 See Plaut M, 'Uganda donors cut aid after president passes anti-gay law', *The Guardian*, 25 February 2014, <http://www.theguardian.com/global-development/2014/feb/25/uganda-donors-cut-aid-anti-gay-law>, accessed 15 July 2014; Reuters, 'US cuts aid to Uganda, cancels military exercise over anti-gay law', 19 June 2014, <http://www.reuters.com/article/2014/06/19/us-usa-uganda-gay-announcement-idUSKBN0EU26N20140619>, accessed 15 July 2014.

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