

Tom Lantos Human Rights Commission Briefing
Briefing Series on the Shrinking Space for Civil Society

Kenya: Tensions between Human Rights and Security,
and the Shrinking Space for Civil Society

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Aide Memoire prepared by Panelists

**SHRINKING CIVIC SPACE IN KENYA:
IMPLICATIONS FOR DEMOCRACY AND LONG TERM STABILITY**

Summary

Kenya has one of the most vibrant civil societies in Africa, boasting one of the most active, innovative and enduring non- governmental sectors in Africa. Civil society has historically played a critical role in complementing the government's development efforts as well as being a critical counterbalance to government excesses during various phases of the country's half century of independence.

Since the Jubilee Coalition came into power in March 2013, Kenya's hard won civic space has been steadily shrinking. There have been vicious social media attacks on citizens' engagement and civil society by government supporters and State House-based operatives, attempted and threatened legislative caps on foreign funding for NGOs, arbitrary arrests of human rights defenders, and intimidation and jailing of bloggers critical of government officials.

The legislative environment is worrisome as well, with the passage of restrictive media laws by a Jubilee-dominated Parliament and the recent hasty enactment of the Security (Amendment) Law. The Kenyan government has shown a disturbing determination to clamp down on independent and dissenting voices reminiscent of the days of single-party rule under President Moi.

Kenya's 2010 Constitution contains a progressive bill of rights which guarantees the freedoms of expression, information, assembly, and association. Kenya is also a signatory to all the major international human rights and governance treaties and conventions. The recent moves by the Jubilee government have undermined Kenya's international image as a constitutional democracy. Allowing civil society to be silenced through restrictive legislative frameworks, arbitrary funding limits, threats, harassment and intimidation by the state would fundamentally undermine efforts to build Kenya as a strong, stable and united country that guarantees peace and sustainable development for all its citizens. This would further erode Kenya's capacity to continue to play a lead role in promoting peace and stability in East and Central Africa. This also has an indirect but systematic attack and limitation of the constitutional commissions, like the Kenya National Commission on Human Rights, which work with and rely on NGOs.

Recommendations

The United States government and other friends of Kenya from the US private sector should take every opportunity, both publicly and in private conversations with Kenya's leadership, to emphasise the vital role that a free and vibrant civil society and media play in the democratic development of any country and especially an emerging democracy such as Kenya. More specifically, the US Government should urge its Kenyan counterpart to:

1. Respect and uphold its own Constitution and the regional and international human rights treaties to which it is a signatory which protect the freedoms of expression, information, assembly and association.
2. Bring to an end any official and non-official actions intended to threaten, harass or intimidate civil society organizations, human rights defenders and the media.
3. Review the legislative framework governing civil society and the media to bring them in conformity with the Constitution and Kenya's international obligations.
4. Repeal the recently passed security laws in so far as they violate Kenya's Constitution, and undertake an inclusive process of consultation with all stakeholders aimed at establishing an effective legislative framework aimed at securing the country without violating fundamental human rights.

KENYAN GOVERNMENT ATTACKS CIVIL SOCIETY

As Kenya tittered on the edge of the precipice following the 2007-8 post-election violence, civil society played a key role in preventing the country from sliding into full scale civil war by campaigning for a just resolution that looked not only into the immediate causes of the violence, but also addressed the deeper structural failures that led Kenya to the brink. It was also instrumental in calling for international mediation of the crisis.

When Uhuru Kenyatta and William Ruto formed the Jubilee Coalition, they mounted a vicious anti-ICC campaign. With Kenyan civil society led by KPTJ having been at the forefront of seeking justice and accountability for PEV including through the intervention of the ICC, the stage was set for an inevitable clash.

The Jubilee coalition began its attack on civil society in its election manifesto, which promised to “Introduce a Charities Act to regulate political campaigning by NGOs, to ensure that they only campaign on issues that promote their core remit and do not engage in party politics.” The Jubilee Coalition’s animus against civil society worsened when KPTJ through one of its members, the Africa Centre for Open Governance (AfriCOG) filed an election petition in the Supreme Court challenging the process through which Uhuru Kenyatta and William Ruto were declared winners of the 2013 elections. Even before Jubilee’s win was confirmed by the Supreme Court, the coalition’s supporters unleashed a vicious and sustained social media attack against civil society which they now christened “the evil society” and accused them of being agents of foreign masters.

Making good on their campaign promise, shortly after coming into power, the Jubilee Coalition attempted to control civil society by proposing amendments to the Public Benefit Organizations (PBO) Act, even before its operationalization, which would have, among other measures, imposed a limit on foreign funding for civil society organizations to a maximum of 15%, all of which would have to be channeled through a government-appointed body. As most civil society organizations rely on multilateral and bilateral foreign funding as well as donations from foreign foundations, this would sound a death knell to civil society as we know it in Kenya. The law would have also required the fresh registration of all public benefit organizations, which would not only have been hugely disruptive, but also subjected the ‘political’ (read: independent-minded) CSOs that the governing coalition threatened to deal with in its election manifesto to an arbitrary registration regime entirely controlled by the government.

The proposed amendments were narrowly defeated in parliament in late 2013 following sustained lobbying of MPs by civil society and Kenyans, whose livelihoods depended on the work of the independent sector. The government has since appointed a task force ostensibly to collect public views on the PBO Act before proposing new amendments. However, in December 2014, even before the task force completed its work, the government proceeded to deregister hundreds of NGOs which it accused of non-compliance with the law, including 15 unnamed organizations which it accused of channeling funds to terrorist groups, although no criminal charges have been brought against such alleged groups.

SHRINKING SPACE FOR MEDIA FREEDOM

The legal framework that Kenya's media must operate in has increasingly become a dangerous landscape. In January 2014, two controversial media laws came into force: The Kenya Information Communications (Amendment) Act 2013 (KICA Act); and The Media Council Act 2013. These laws impede media freedom in a number of ways that threaten media independence by allowing for undue control by government, political and commercial interests. These include introducing undue state involvement in media regulation, imposing excessive fines on media outlets and journalists for professional breaches which have been equated with criminal offences within the KICA Act, and undermining the independence of bodies dealing with complaints against the media.

The last year has also seen unprecedented attacks on bloggers and other social media activists, a number of whom have been arrested, charged in court and, in at least one case, jailed for two years for the offence of 'undermining a public official' following expression of critical views and exposure of corruption in government.