

Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa

by Godfrey M. Musila



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ON THE COVER

Civil activists demonstrate in Nairobi outside parliament buildings over two recent parliamentary bills they say will curb hard-won freedoms and muzzle government critics. Credit: TONY KARUMBA/AFP/Getty Images.

Freedoms Under Threat: Anti-NGO Measures in Africa

by Godfrey M. Musila

Executive Summary

Over the last 15 years, 12 African countries have adopted legislation or policies that improperly constrained nongovernmental organizations (NGOs): Sudan, Rwanda, Ethiopia, Zambia, Tunisia, Algeria, South Sudan, Uganda, Sierra Leone, Egypt, Burundi, and Tanzania. Six countries—Rwanda, Zambia, Sudan,² Malawi, Egypt, and Mozambique—have anti-NGO measures pending or may be moving to introduce them, while six—Kenya,³ Malawi, Nigeria, Congo-Brazzaville, Angola, and Zimbabwe—have introduced such measures only to have them abandoned by the executive, rejected by the legislature, or invalidated by the courts. These laws and policies seek to impose state control over civil society, particularly NGOs that work on human rights and governance issues.

This report describes and analyzes the approaches that African governments are taking to impose restrictions that handicap NGO activity on the continent. In particular, it examines anti-NGO framework legislation, of which Ethiopia's 2009 Charities and Societies Proclamation (CSP)—recently replaced—is a progenitor. The report also assesses other, auxiliary legal instruments by which states are seeking to achieve the same goals; such instruments may be ostensibly related to counterterrorism, controls on money laundering, or cybersecurity.

Most of the major anti-NGO legislative and policy measures reviewed here violate human rights commitments undertaken as part of global and regional human rights treaties, in particular those relating to freedoms of association, assembly, and expression. These violations are established by applying a *limitations test* to determine whether any abridgements of rights are legitimate. As is more fully explained in an appendix, the study finds that anti-NGO measures fail the limitations test because they discriminate in singling out certain NGOs and their leaders, because they are unnecessary in an open and democratic society, and because they lack proportionality in terms of the means deployed and ends sought.

In Africa, as in other regions of the world, restrictions that hamstring NGO activity form part of a broader strategy adopted by regimes to narrow democratic space and prevent challenges to the rule of strongmen and governing parties. While NGOs have successfully pushed back in some cases, Egypt and Sierra Leone became the latest to adopt NGO-curbing legislation in 2017 and 2018, respectively. Also notable, however, is Ethiopia's new Civil Society Proclamation, adopted in February 2019, which is a substantial improvement on the notorious 2009 CSP.

Curbs on NGOs working in Africa, particularly those that focus on human rights and governance, are being imposed in the context of a global assault on democracy that often appears to be coordinated across borders. Antidemocratic African governments are not only copying or drawing inspiration and succor from one another, but may also be finding comfort in the shadow of illiberalism cast by major actors on the global stage. The report finds some evidence of learning and support among governments. This includes public declarations by legislators and government officials who defend their anti-NGO actions by referencing measures undertaken elsewhere on the continent and beyond. Evidence can also be found in legal texts that use language similar to foreign laws, and in demarches by governments in search of support from other governments. Despite such evidence of transmission, however, it is uncertain whether it is the

result of active efforts to disseminate “worst practices” or simple imitation.

Learning among NGOs on how to push back is more visible and traceable, in part because of the important work of organizations that provide technical support across the continent. To counter restrictive anti-NGO measures, NGOs have employed strategies ranging from lobbying and protests to litigation and cross-sectoral coalitions. Experience shows that outreach to policymakers can be effective when NGOs coalesce around a common objective and develop a coherent strategy, including the identification of champions within legislative bodies who can carry their message forward.

Given the trend toward anti-NGO regulations, this report explores which other African countries may soon seek to impose such regulations. Political and economic vulnerabilities, preexisting limits on freedoms of assembly and association, and susceptibility to backsliding in transitional settings are all good indicators of which countries are likely to pursue anti-NGO measures. Developments in Malawi and Zambia suggest that they are possible candidates. In Congo-Brazzaville and Kenya, where legislative proposals have failed in the Senate and National Assembly, respectively, new attempts may come in the wake of tactical retreats by governments facing strong opposition.

The report concludes with recommendations to African civil society, African governments, and the international community and donors. Among several recommendations to civil society, it is proposed that NGOs should challenge anti-NGO measures in court and seek the application of the quantitative limitations test, which affords the groups an opportunity to propose less restrictive measures for achieving identifiable governmental objectives—in this case, accountability in the sector. To complement foreign sources of funding without compromising the resource base and independence of NGOs, African governments should explore incentives that encourage donations from citizens and private entities. Donors, meanwhile, should prioritize flexible funding models, as well as “pooled” and “basket” funds, that take into consideration the strategic nature of the challenge faced by civil society in Africa.

“Curbs on NGOs working in Africa, particularly those that focus on human rights and governance, are being imposed in the context of a global assault on democracy that often appears to be coordinated across borders.”

Introduction

Over the last 15 years, 12 African governments have adopted measures constraining the legitimate activities of NGOs. Seven countries currently have proposed and pending restrictions, and in six countries, attempts to adopt such measures failed in the legislature, in the courts, or due to withdrawal by the executive. These laws aim to control NGOs in varying ways, including by limiting the flow of foreign funding, placing limits on hiring of foreigners, making it difficult to register organizations, and permitting governmental meddling in the sector while erecting obstacles in the operational environment.

Across the continent, such measures are contributing to reversals of democratic gains that were made as part of the wave of democratization in the early 1990s. In North Africa, the negative steps are reversing openings produced by the Arab Spring. The phenomenon is deeply concerning because the vibrancy of organized civil society has a direct bearing on the capacity of citizens to hold governments to account and to protect human rights in settings where the authorities turn too easily to repressive means.



Hundreds of Zimbabweans gathered outside the parliament as members started the impeachment process of President Robert Mugabe in 2017 in Harare. Credit: Gallo Images / Netwerk24 / Felix Dlangamandla.

The Context of the Crackdown

Curbs on civil society organizations, particularly those that work on human rights and governance, are taking place in the context of a global retreat of democracy.⁴ In Africa, as in other regions of the world,⁵ restrictions that hamstring NGO operations are part of a broader strategy adopted by regimes to narrow space for democratic activity. Even as the Arab Spring was expanding freedoms in some North African states, governments in several other African countries started to adopt a slew of restrictive measures that included anti-NGO legislation.

Although African politics and political mobilization tend not to be ideologically driven—in the sense that they often revolve around dominant personalities and ethnicity rather than ideas—African countries are not immune to the spread of illiberal ideologies. Illiberal rule privileges the (imagined) majority's rights over the rights of minorities or dissenting individuals, and it dismantles institutions designed to prevent any group or individual from monopolizing the public sphere. For this reason, illiberal ideas have purchase with leaders and political systems that exclude sections of the population, usually on grounds of ethnicity. Leadership transitions have been commonplace across Africa for some time, and power now changes hands through regular elections in many countries, but nearly three decades after the epoch-defining fall of the Berlin Wall, geopolitical contests among major powers are breathing new life into repressive regimes and the “African Big Men” of old. This revival is evident in campaigns to entrench personal or de facto one-party rule by changing the constitutional framework, and in multifaceted assaults on civil society and political opposition.

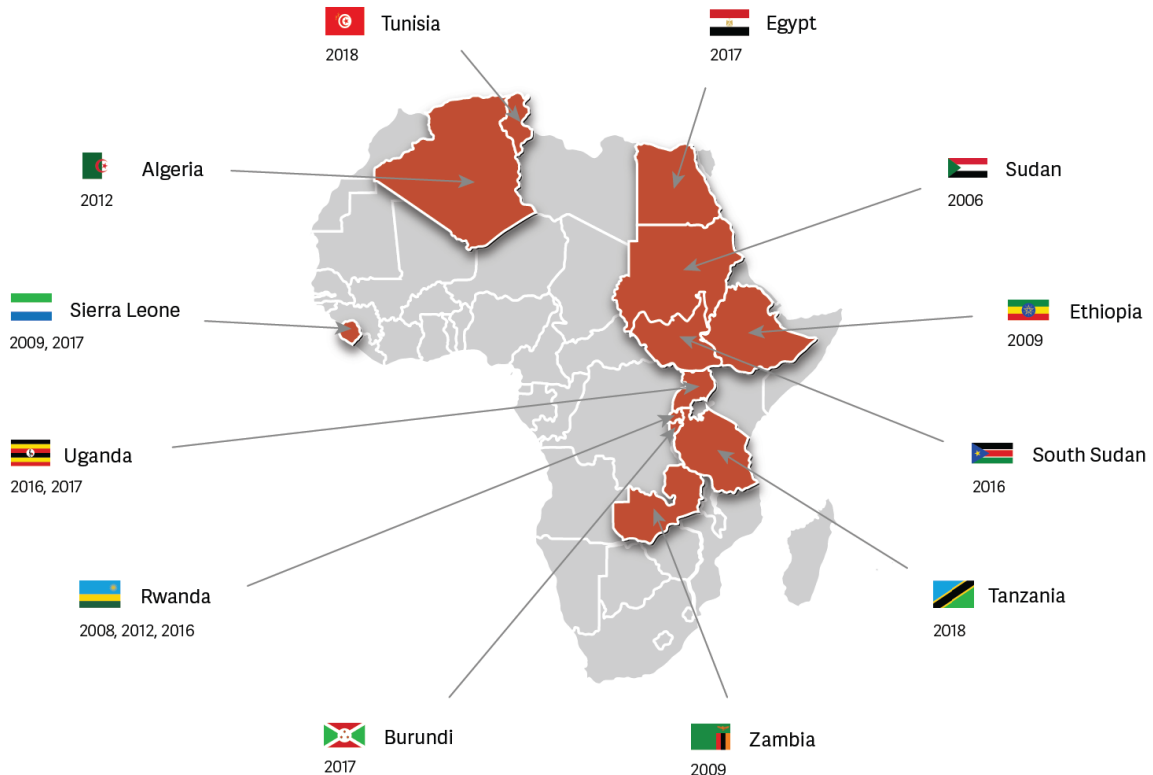
The global antidemocratic wave overlays the local context in which African NGOs operate: weak opposition parties that lack the capacity to offer alternative policies or to oversee government effectively, corruption and sometimes intractable governance challenges, and a combination of weak economies and nearly nonexistent domestic philanthropic sectors that forces nonprofits to rely on external sources of funds.

Although no attempt is made in this report to analyze laws outside Africa, there are parallels between anti-NGO measures adopted across the continent since 2006 and those adopted in Russia and China—two influential global actors that have forged close ties with African governments. Sudan’s anti-NGO law coincided with the first of several Russian laws,⁶ closely followed by Rwanda’s measure in 2008. Russia’s second wave of legal restrictions coincided with those of several African countries—notably Ethiopia, Zambia, and Mozambique—while China’s 2016 and 2018 regulations came alongside measures by several other African governments surveyed in this report. It is difficult to establish specific links between the African laws and those adopted by the two global powers, but the close relationships built in Africa since 2000—particularly by China—support a modeling hypothesis.

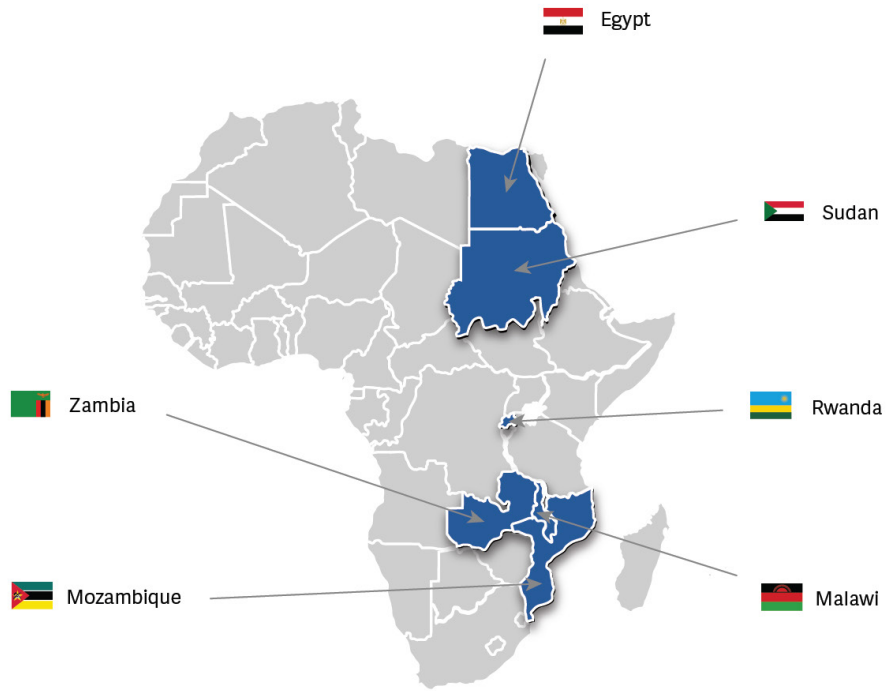
Maps: Adopted, Pending, and Failed Anti-NGO Measures in Africa since 2004

The highlighted countries have one or more adopted, pending, or failed anti-NGO measure.

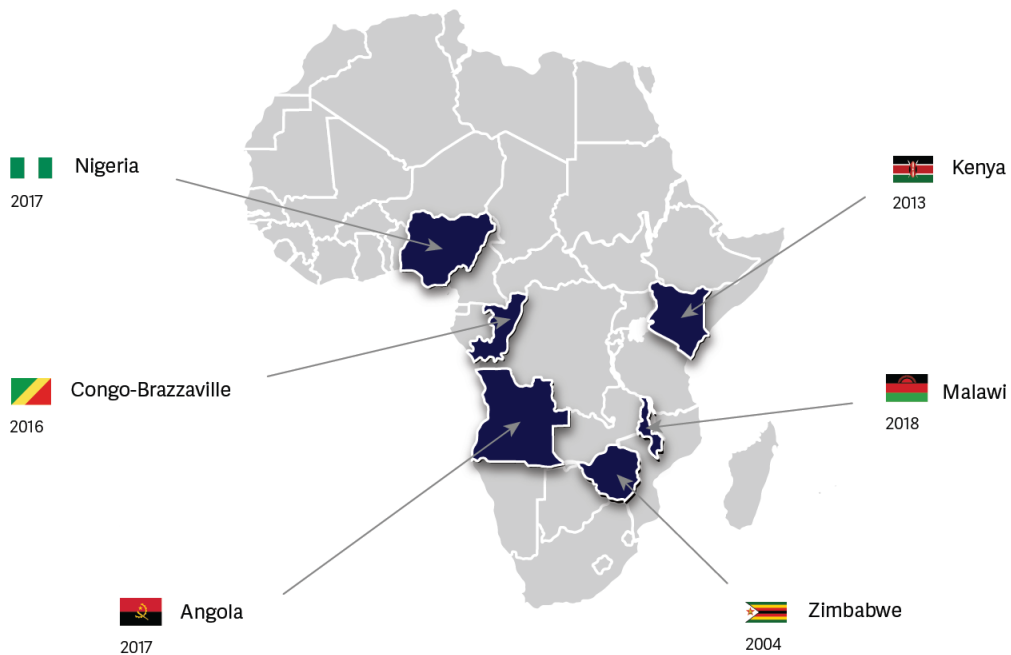
Countries with Adopted Anti-NGO Measures



Countries with Pending Anti-NGO Measures



Countries with Failed Anti-NGO Measures



Understanding Anti-NGO Measures

Efforts to impose control over the NGO sector have taken a variety of forms in the last 15 years. Sudan’s Voluntary and Humanitarian (Organization) Work Act of 2006 and Ethiopia’s CSP are examples of **anti-NGO framework legislation** that provide a comprehensive set of rules designed to rein in civil society. States also often resort to **overly broad national security measures**, a category that encompasses counterterrorism laws, public order laws, finance-sector laws on issues like money laundering, and cybersecurity laws. A third and less common approach is the use of **amendments to existing laws and policies**, illustrated by Kenya and Malawi.

Anti-NGO Framework Legislation

A majority of the 20 states examined in this report have overhauled or are in the process of overhauling the legal regime that governed the nonprofit sector since the early 1990s. The aim is to not only starve the sector of resources, but also establish more effective government controls, even to the point of essentially taking over the sector. Since Zimbabwe’s aborted attempt in 2004—when the president declined to sign a draft law passed by Parliament⁷—12 countries have adopted or are in the process of adopting anti-NGO framework legislation: Sudan, Ethiopia, Uganda, South Sudan, Kenya, Rwanda, Sierra Leone, Burundi,⁸ Egypt, Nigeria, Congo-Brazzaville, and Angola.

Framework legislation adopted since 2004 has entailed some combination of four categories of measures:

- Establishing onerous registration requirements that are subject to broad bureaucratic discretion
- Limiting, capping, or excluding foreign funding and staff hires
- Permitting improper state interference in the internal affairs and operations of civil society organizations
- Excluding organizations from material areas of activity that are deemed political.

Registration Requirements

Freedom of association allows individuals to organize in various ways to pursue or advance particular interests. Many organizations that grow organically in society are never formalized, while others are constituted by written agreements and might establish a code of conduct or a charter to govern their internal affairs. Laws that **mandate registration** of such organizations, rather than mere **notification** of their existence, improperly abridge the right to freedom of association.⁹ All of the NGO laws surveyed in this report have mandatory registration requirements, and this alone amounts to a violation of freedom of association.

Another type of restriction pertains to the number of founding members required to form an organization. In several framework laws, such as those in Tunisia, Angola, and Kenya, an organization can be duly constituted by two founding members. But others, such as those in Sudan and Egypt, impose a minimum membership of 30 at registration, which is burdensome and may constitute a violation of freedom of association.¹⁰ In Algeria, the mandated number of founding members ranges from 10 to 25, depending on whether the organization is community based or national. The Algerian law also requires that a national organization’s founding members be spread among at least 12 *wilayas*, or provinces.¹¹

In some cases, several layers of mandatory registration are imposed—at the national level within one or several government ministries as well as in a local administrative area where the NGO operates, depending on the structure of the state. Thus in the case of Uganda, foreign NGOs register with the national NGO Bureau, but they also require letters from the embassy of their home country in Kampala and from the

Ugandan Ministry of Foreign Affairs, as well as “recommendations” from the relevant line or sectoral ministry in Uganda and the NGO Monitoring Committee in the district or county of operation, which can reject an application.¹² All these operate as additional filters with real power to determine the outcome of an application. In other cases, such as in Burundi, registration of foreign NGOs is more centralized within the Ministry of Foreign Affairs, subject to a nod from the sectoral or line ministries, but successful applicants must still sign a mandatory memorandum of understanding with local authorities in the area of operation.

Multilayered registration requirements are accompanied by multilayered procedures for appealing unfavorable licensing decisions and for mandatory approval of individual projects. Whatever the structure of government, the exercise of overly broad and unfettered discretionary powers by the authorities responsible for registration carries great potential for abuse, and involving multiple levels of administration in the registration process expands the opportunities for obstruction. In some countries, such as Sudan, discretion is often cleverly used to withhold registration or to tacitly deny renewal of registration; many applicants are left in limbo, without a yes or no answer. This has serious implications for NGOs that rely on donor funding, and the delays might be calculated to disrupt such funding.

“In some countries, such as Sudan, discretion is often cleverly used to withhold information or to tacitly deny renewal of registration.”

NGOs face additional challenges in settings where the registration process includes a probationary period, as in Rwanda, or where there is mandatory periodic renewal. Renewal may be annual, as in South Sudan, every two years, as in Sudan and Burundi, or every five years, as in Rwanda, Uganda, and Egypt. Periodic renewal is not problematic per se, but it creates room for abuse, and groups that hope to continue their legal existence must tread carefully around sensitive topics. Additional opportunities for violations of freedoms of association and assembly appear where security personnel, usually intelligence officials, are inserted into the registration process—usually to “clear” applicants, as is the case in some of the states surveyed—or where applicants require documents such as “certificates of good conduct” (of NGO officials and board members), “recommendation letters,” or “clearance letters” from agencies other than the one that issues operating licenses, as in Uganda, Burundi, Sudan, and Kenya. Opportunities for inordinate delays abound in these cases.¹³

Conditions for NGOs are more favorable when there is a single agency responsible for any registration process, the authorities must respond to applicants by a certain deadline, and grievance or appeal procedures are clearly delineated. While national authorities may have legitimate reasons to vet national and foreign NGOs for any national security risks, or require that NGO leaders have no criminal record, they should be aware that courts might find them in violation of the right to freedoms of assembly and association when the limitations test is applied due to unfair application procedures, inordinate registration delays, and unnecessary registration conditions.¹⁴

Restrictions on Foreign Funding and Hiring of Foreigners

One of the most damaging types of anti-NGO measure, adopted in various forms across Africa, is the limitation or prohibition of foreign funding. Under the CSP in Ethiopia, for example, NGOs that received more than 10 percent of their funds from foreign sources were designated “foreign agents.” This effectively placed them under the watch of security agencies and could justify an additional layer of restrictions. In Kenya, as was the case for five other failed changes to the progressive Public Benefit Organizations (PBO) Act, a proposed funding cap was abandoned in 2013 following sustained pressure from NGOs and the political opposition. Nonetheless, in October 2014 President Uhuru Kenyatta gave a fiery speech in which he vowed “not to allow organizations advancing foreign interests to destabilize the government,” leading to renewed calls to cap foreign funding.¹⁵

No other country surveyed has caps on foreign funding, but in some, such as Tunisia, NGOs are required to make foreign funding public, while in Egypt, any participation by a foreign NGO in the activities of a national NGO must be approved by the government. As described below, a related form of interference involves governments having a say in NGOs' budgets and how their money is spent.

The UN special rapporteur for freedoms of assembly and association rightly observes in this regard that "the ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small."¹⁶ In a majority of African countries, high poverty rates, the lack of a philanthropic sector, and the absence of government incentives for private donations heighten the impact of laws that prevent NGOs from seeking and obtaining resources from foreign donors. Moreover, as the experience of Equatorial Guinea attests,¹⁷ even when public funding programs are instituted, they do not seem to offer a viable model for fostering an independent nonprofit sector. Government funds may weaken NGOs when so-called government-organized NGOs (GONGOs) displace critical, accountability-seeking groups. The International Center for Not-for-Profit Law (ICNL), in a submission to a Kenyan task force set up to make proposals on the review of the 2013 NGO law, observes that

"...government funding can be a double-edged sword. While access to government funding is critical to the survival of civil society in many countries, in other places accepting government funding is seen as a risk to organizations' independence. Ideally, government funding is available to those organizations that wish to make use of it, but it is not required, and the acceptance of government funding does not infringe on an organizations' independence any more than other donor funding."¹⁸

Governments' intentions to enfeeble human rights and governance NGOs by restricting foreign funding is made evident by the exemption of development organizations from the remit of foreign funding restrictions. Such exemptions were first adopted in Ethiopia, and in Kenya they were proposed but failed. As seen in Ethiopia, exempting development organizations from the restrictions contributes to an immediate schism within civil society. State-driven delegitimization campaigns primarily target human rights and governance NGOs, and the exempted development NGOs have an interest in fence-sitting while others mobilize against the funding constraints. This undermines the solidarity within civil society that is crucial to effective pushback. The evolving case of Tanzania—where development NGOs were spared by the initial crackdown but have since been included in a broad campaign that targets NGOs, independent media, and the political opposition—illustrates that nobody is really immune from interference by a repressive government, and any false sense of comfort among development NGOs will in all likelihood be short-lived.

Some framework laws place restrictions or conditions on NGOs' hiring of foreigners by requiring variously that authorization be sought from national authorities to hire foreigners on a full-time or part-time basis, as in Egypt and Burundi; that NGOs hire foreigners only when comparable skills are lacking at home; that foreign employees be paired with local staff for mentoring, with a clear skills transfer or "succession plan" in place, as in Uganda and Kenya;¹⁹ or that NGOs align hiring practices with ethnic quotas, as in Burundi. Foreign hires may also be subject to specific preliminary procedures to be applied in their home country, or at the foreign mission of the prospective host state, as in Uganda. Work-permit fees are a standard requirement. Many of these conditions and procedures are problematic when applied abusively, but would otherwise stand up to legal scrutiny.

“As seen in Ethiopia, exempting development organizations from restrictions contributes to an immediate schism within civil society.”

Operational Impediments and Interference in NGO Activities

Measures that instruct or allow state officials to interfere in the day-to-day running of organizations impose unnecessary hardship on NGOs, and in many instances violate freedoms of association and assembly. In a majority of the countries surveyed, state authorities interfere in the internal affairs of NGOs through a combination of tactics. They include requiring that NGO activities be aligned with government developmental priorities; imposing onerous obligations to periodically provide information such as minutes of meetings, financial data, and project plans; requiring NGOs to grant officials access for impromptu on-site visits and searches; and investing broad powers in government officials at multiple levels to monitor and evaluate projects and activities. In some cases, the mandated frequency and extent of reporting to designated government bodies—monthly, quarterly, or annually—impose heavy burdens on NGOs and may constitute unnecessary interference.

The legal regime established by Burundi in January 2017 stands out for its unabashedly invasive framework, which decrees a role for government agencies so large that it appears to obliterate the autonomy of national and foreign NGOs. Government officials are empowered to enforce ethnic quotas for local staff, choose beneficiaries of NGO projects, and review performance by instituting an extensive monitoring and evaluation mechanism through an interministerial agency. According to NGOs, the government demands that 30 percent of their budgets be deposited in the Central Bank, and there are fears that these funds could be misappropriated.²⁰ The allocative decisions of bilateral donors are also subject to ministerial fiat—a minister can veto a donor decision to give a grant to a foreign NGO—if the funds sought by such an NGO “were already designated by the external donor for Burundi.”

Beyond the risk of bureaucratic gridlock that could slow NGO work, Burundian authorities have already demonstrated their willingness to intervene in the affairs of NGOs. In November 2017, disagreement between an international NGO and the Ministry of Agriculture over program design led to a suspension of operations, while another NGO was deregistered for allegedly distributing rotten seeds.²¹ As of January 2019, many foreign NGOs were said to have failed to meet conditions that the Interior Ministry described as “nonnegotiable” by the stipulated deadline of December 31, 2018, and had closed their offices. Citing a diplomatic source in Burundi’s capital, the *East African*, an influential regional newspaper, reported that as many as 30 international NGOs could leave, removing \$280 million from an impoverished country where 67 percent of the population lives below the poverty line.²² Some, including Humanity & Inclusion,²³ which focuses on people with disabilities, found the mandatory ethnic quotas to be unacceptable and chose to close their operations. The intrusive regulation of foreign NGOs comes after several national NGOs—which are governed under a separate law adopted in 2017 but are subject to similar intrusions—were already banned in 2016–2017, including Ligue Iteka, the oldest human rights nonprofit in the country.

“Governmental discretion in the approval of programs operates, in some cases, as a tool for co-opting NGOs or annexing them to government ministries.”

The requirement that NGOs align their objectives with the government’s developmental priorities constitutes one of the most severe violations of the freedom of individuals to associate freely and pursue their chosen interests. Governmental discretion in the approval of programs operates, in some cases, as a tool for co-opting NGOs or annexing them to government ministries. In Angola, the functions of the Institute for the Promotion and Coordination of Community Aid (IPROCAC) under a 2015 decree included designating programs and projects for NGOs that complement those of the executive and determining, “in consultation with ministerial departments and local authorities,” the locations where projects are to be implemented. If the measure had not been struck down by the courts, NGOs would have had little say in deciding not only the themes they worked on, but also the beneficiaries of their programs. In Egypt, cancellations of approved programs and denials of requests for approval have been reported during

the transition to a new NGO law adopted in 2017.²⁴ The Ministry of Social Solidarity is also said to have suspended 500 NGOs in one governorate “for failure to achieve objectives.”

Bans on “Activities of a Political Nature” and Work on “Politically Sensitive” Themes

Even when not stated explicitly, an overarching objective of anti-NGO measures is to weaken voices that call for accountability. It should not be surprising that in countries where these laws were adopted or are being considered, democracy can be said to be in retreat, with curbs on independent media and the political opposition. Anti-NGO measures also aim to weaken coalitions between opposition parties and NGOs or civil society in general. In practically all of the countries surveyed, there are legal prohibitions against NGO involvement in “activities of a political nature,” such as funding, supporting, or providing material assistance to political parties or candidates.

While governments can legitimately enact separate legal regimes for political parties, NGOs, and other associations, demarcating neat boundaries for fields of operation is a slippery slope, and can lead to abuses. Even if the fields of NGO operation could be circumscribed narrowly to exclude “politics”—no easy feat—the exact definition of “supporting political parties” and “providing any material assistance” to such parties is anyone’s guess. The experience from Angola, Kenya, Ethiopia, Uganda, Burundi, Rwanda, and elsewhere shows that ruling parties are happy to take endorsements and campaign support from, and even collaborate with, trade unions, teachers’ associations, cultural or ethnic associations, religious organizations, and other types of civil society groupings. It is evident that the real targets of these prohibitions are human rights and governance NGOs.

Overly Broad National Security Measures

When governments face challenges in their attempted use of framework legislation, or when such laws offer inadequate tools for “containing” NGOs, measures that fall under the broad rubric of national security can serve as an alternative weapon against civil society. Invoking national security plays on public fears and lends illegal government actions a veneer of legitimacy. National security measures may include counterterrorism legislation, laws against money laundering, cybersecurity laws, public order acts, and security-related exemptions in access to information legislation.

“Invoking national security plays on public fears and lends illegal government actions a veneer of legitimacy.”

As of January 2019, 23 African states—5 in Southern Africa, 7 in East Africa, 1 in Central Africa, 7 in West Africa, and 3 in North Africa²⁵—had adopted access to information laws (also known as freedom of information laws), and the African Union has endorsed its human rights commission’s 2013 Model Law on Freedom of Information,²⁶ which is influencing legal reform across the continent. Unfortunately, implementation remains a key challenge, and some of these laws contain improper exclusions that criminalize possession of information deemed to threaten the country’s broadly defined national security. As with Tanzania’s Access to Information Act, 2016, and Kenya’s Access to Information Act, 2016, these clauses operate as additional restrictions on free speech and undercut efforts by citizens and NGOs to hold governments to account.²⁷

Across the continent, public order laws like Uganda’s Public Order Management Act of 2013 and Nigeria’s Public Order Act of 1979, under which states can legitimately regulate public gatherings and protests, are a staple for governments when dealing with the opposition and civil society.²⁸ Many governments do not tolerate even peaceful marches, and violent dispersals of protesters by security forces are routine. In some countries, such as Burundi, simply walking or jogging on the street in pairs or small groups is banned on security grounds,²⁹ and activists face egregiously long prison sentences for security-related offenses.³⁰ In these conditions, NGO activities that depend on the ability to mobilize and assemble to voice concerns

suffer severe constraints beyond those imposed by NGO-specific legislation.

Governments in some countries, such as Sudan, use a combination of security-related laws to have NGO leaders arrested, detained without trial, or prosecuted for offenses that include terrorism, undermining state security and the constitutional order, and espionage.³¹ While Sudan's restrictive 2006 NGO law is used to starve NGOs of financial resources, deny them registration, and ban them outright, the state routinely uses these other laws to disrupt civil society activity by keeping human rights defenders bogged down in their own security-related court cases.

These legislative and policy moves have significant consequences for civil society and abridge the freedoms of association and assembly in specific ways outlined in the appendix to this report. In Kenya, Nigeria, Sudan, Ethiopia, Tunisia, and Egypt, authorities have used counterterrorism and related money-laundering concerns to rationalize anti-NGO measures. In Kenya and Nigeria,³² authorities have accused sections of civil society of "supporting terrorists," prompting a defamation lawsuit by one NGO in Kenya.³³ In Sudan, Ethiopia, and Egypt,³⁴ governments have followed through on such claims by actively prosecuting NGO activists, journalists, and opposition figures on charges including "joining a terrorist organization," "belonging to a terrorist organization," "joining an illegal group," and the more nebulous "undermining national security."³⁵ Thousands of people have been tried and imprisoned under various security laws in these countries, and many organizations have been shuttered.³⁶

In Kenya, the government has used counterterrorism and money-laundering legislation to crack down on NGOs that criticize or oppose certain state actions, and these groups in turn accuse the government



Ethiopian President Sahle-Work Zewde delivers a speech at the Parliament in Addis Ababa. Credit: EDUARDO SOTERAS/AFP/Getty Images.

of targeting them to avoid accountability for abuses.³⁷ In 2015, the government placed 86 individuals and organizations on a list of alleged supporters of terrorism and froze the accounts of two NGOs following a deadly terrorist attack that killed 147 people at a university in Garissa near the Somali border. In subsequent years, even as it stalled on the implementation of the progressive PBO Act passed in 2013, the government continued to deploy the old 1990 law, along with the counterterrorism and money-laundering legislation, to deregister leading human rights and governance NGOs and freeze their accounts,³⁸ leading to court challenges.³⁹

Seven of the African states surveyed have adopted specific cybersecurity laws,⁴⁰ although some cyber-related issues are addressed in legislation governing information and communication technology (ICT) sectors across the continent.⁴¹ A number of governments have inserted provisions in cybersecurity legislation that directly affect NGOs, journalists, and activists and abridge freedoms of association and assembly. Of those surveyed here, Tanzania and Uganda have drawn attention in recent years for hugely unpopular legislation that constrains the NGO sector.

In Tanzania, a country with a gross domestic product (GDP) per capita of about \$1,000, a group of 65 African NGOs has decried the adoption of several laws that impose severe curbs on civil liberties,

“Seven of the African states surveyed have adopted specific cybersecurity laws.”

including a \$900 annual license fee for bloggers and operators of online television outlets under the Electronic and Postal Communications (Online Content) Regulations of 2018.⁴² Even those who can afford the fee risk losing their license for content that “causes annoyance” or “leads to public disorder.” Another law, the Cybercrimes Act of 2015, prescribes heavy sanctions for social media users who post “false, deceptive, misleading or inaccurate” information with the intent to “defame, threaten, abuse, insult or ... mislead the public.”⁴³ Tanzania is known to use cybersecurity laws to restrict civil society discourse and activity. More than 10 people, including a lecturer, students, and opposition leaders, have been prosecuted and jailed for insulting the president.⁴⁴ In Kenya, a similar provision in the Computer Misuse and Cybercrimes Act of 2018 was declared unconstitutional by the High Court, and its application was suspended, following a petition by an NGO and unions of bloggers and journalists.⁴⁵ Their concerns

were warranted: In 2015, Kenyan police used an unrelated provision in Section 132 of the penal code that proscribes “hate speech and undermining the authority of a public officer” to prosecute and jail a university student.⁴⁶ The student had used coarse language on Facebook to protest the president’s enactment of a repressive security amendment bill, most of which was subsequently gutted by the High Court.

Modification of Existing Laws

In two cases, Malawi and Kenya, rather than creating a new framework to govern NGO activity, governments have sought to introduce restrictions by amending existing laws. In Malawi, regulations published by the government increased the fees owed by NGOs by as much as 2,000 percent, prompting a lawsuit that led to a court-ordered freeze on the new fee structure in January 2018.⁴⁷ In November of that year, the Malawian parliament proposed even more far-reaching changes through the NGO Act Amendment Bill. The legislation would create a new NGO regulatory body appointed by a cabinet minister, with harsher penalties for breaches of the NGO law.⁴⁸ It would also increase fines for noncompliance from \$70 to \$20,000, a colossal sum in a country with a GDP per capita of \$338, according to the World Bank.

In Kenya, meanwhile, the new government elected in 2013 made six successive attempts to modify the PBO Act—a progressive law passed by Parliament and signed by the outgoing president just months prior to the elections.⁴⁹ All of the attempts were loudly opposed by NGOs and the political opposition, and the High Court ordered the government on October 31, 2016, to publish the original PBO Act in the official gazette to bring it into operation.⁵⁰ The government refused to comply, prompting NGOs to request that two cabinet secretaries—overseeing the Ministry of Devolution and Planning and the Ministry of Interior

and Coordination of National Government—be held in contempt of court.⁵¹ The court ruled in the NGOs' favor on May 12, 2017. Rather than implement the court order, however, the government continues to apply the outdated NGO Act of 1990, and it is unclear how the situation will be resolved. The broad-based Civil Society Reference Group, an alliance of over 1,500 leaders of national and international NGOs that ran a multiyear campaign for the adoption of the PBO Act,⁵² continues to insist on its implementation. Indeed, Kenya represents an interesting case study of the pitched battles that have characterized the struggle between governments on the continent that seek to narrow democratic space on the one hand and civil society sectors that seek to preserve democratic gains on the other.

Tables: Adopted, Pending, and Failed Anti-NGO Measures in Africa since 2004

The following tables list all adopted, pending, and failed anti-NGO measures in Africa since 2004 as well as each country's Freedom Status from Freedom House's *Freedom in the World 2019* report

Adopted Anti-NGO Measures

Country	Legislation	Freedom Status
Sudan	Voluntary and Humanitarian Work (Organization) Act of 2006	Not Free
Rwanda	Law No. 55/2008 Governing NGOs Law No. 04/2012 Governing the Organization and Functioning of National NGOs Law No. 05/2012 Governing the Organization and Functioning of International NGOs Law 56/2016 Establishing the Rwanda Governance Board	Not Free
Ethiopia	Charities and Societies Proclamation of 2009	Not Free
Zambia	NGO Act No. 16 of 2009	Partly Free
Tunisia	Law 30 of 2018	Free
Algeria	Law on Associations 12-06 of 2012	Not Free
South Sudan	NGO Act of 2016	Not Free
Uganda	NGO Act of 2016 NGO Regulations of 2017	Not Free
Sierra Leone	NGO Policy Regulations of 2009, revised in 2017	Partly Free
Egypt	Law 70 of 2017	Not Free
Burundi	Law No. 1/01 of 23 January 2017 Law No. 1/02 of 27 January 2017 Organic Framework of Non-Profit Associations	Not Free
Tanzania	Non-Governmental Organisations Act (Amendments) Regulations, 2018	Partly Free

Pending Anti-NGO Measures

Country	Legislation	Status	Freedom Status
Rwanda	Law No. 05/2012 of 17/02/2012 on (International) NGOs Law 56/2016 Establishing the Rwanda Governance Board	New policy currently under review, but no publicly available amendments	Not Free
Zambia	NGO Act No. 16 of 2009	Changes proposed in 2016 but not adopted.	Partly Free
Sudan	Voluntary and Humanitarian Works Act, 2018	A draft of the proposed law, which include highly restrictive provisions, was discussed in a workshop in November 2017.	Not Free
Malawi	NGO Amendment Bill	New restrictive draft law published in November 2018.	Partly Free
Egypt	Law 70 of 2017	Prime Minister formed a committee in late 2018 to consider changes to Law 70. It is unclear if the law will be amended or replaced.	Not Free
Mozambique	Law of Associations of 1991	Amendment law drafted in 2009 to improve 1991 law still pending.	Partly Free

Failed Anti-NGO Measures

Country	Legislation	Status	Freedom Status
Kenya	Amendments to the Public Benefit Organizations Act of 2013	A progressive Public Benefit Organizations Act was adopted in 2013, but the government has sought to amend it repeatedly. Court-ordered implementation of the act remains in limbo.	Partly Free
Malawi	NGO Fees Regulation	New fees regulation issued in early 2018 halted by High Court	Partly Free
Nigeria	HB585, NGO Bill of 2017	New law introduced in December 2017 failed to pass through parliament	Partly Free
Republic of Congo (Brazzaville)	NGO Bill	New law introduced in 2016 failed to pass out of Senate	Not Free
Angola	Presidential Decree No. 74/15	Executive decree published in 2015, then invalidated by court in 2017	Not Free
Zimbabwe	NGO Bill of 2004	Bill passed by Parliament, not signed into law by president	Partly Free

States Learning across Borders

As anti-NGO legislation spreads in Africa, evidence of cross-border learning—among both governments and NGOs—has emerged.

With respect to governments, legislators and executive officials in some cases have made overt statements meant to legitimize their anti-NGO measures by citing those undertaken elsewhere. The late Umar Jibril, sponsor of Nigeria’s NGO Bill of 2017, referenced Israel, Kenya, and unnamed countries in Europe as examples of other states with legislation similar to what he proposed.⁵³

Less obvious but hardly secret signs of cross-border learning can be found in the text of legislation. While many anti-NGO measures follow a familiar pattern, some problematic provisions appear to have been borrowed verbatim from laws adopted elsewhere.

Thus in the Nigerian case,⁵⁴ the 2017 bill is riddled with provisions that mirror Sierra Leone’s 2016 draft NGO Policy Regulations, which were eventually adopted in 2017. Both measures mandated registration (sections 2.3.2.1 Sierra Leone, 11–15 Nigeria) and renewal of registration every two years (sections 2.3.2.2 Sierra Leone, 16 Nigeria). Huge swathes of the Sierra Leone policy regulations on “project design and implementation” (sections 2.4–2.17)—covering subjects such as project registration, the contents of NGO project proposals, approval of funding and clearing of individual projects, monitoring and evaluation, and project funding and assets—are very closely mirrored in sections 25–29 of Nigeria’s draft law, with minor modifications. Both measures would result in improper state control of NGO programs, if not outright co-optation of NGOs.

Victoria Ohaeri, a Nigerian lawyer who provided technical support to Sierra Leonean NGOs opposing the draft NGO regulations when they were published in early 2016, thus writes of the Nigerian bill:

“Three months later [following her involvement in Sierra Leone], precisely in June 2016, Nigeria’s federal lawmaker, Honourable Umar Buba Jibril sponsored Nigeria’s NGO Bill, which in my view, is an appalling imitation of the Sierra Leonean NGO Policy. The provisions of Nigeria’s NGO Bill are not just similar to the Sierra Leonean Policy, but were also copied verbatim in a number of sections. Of all the things Nigeria needs to copy from Sierra Leone, restrictive legislation should never be one of them.”⁵⁵

Lessons from National Experiences to Counter Anti-NGO Legislation

NGOs have deployed a mix of strategies to counter or reverse restrictions on their work. These range from lobbying legislators, policymakers, and the international community to organizing protests, filing litigation, building cross-border coalitions, and using technical experts to help develop lobbying strategies, educate legislators and NGO leaders, and prepare draft legislation. Experience shows that outreach to policymakers has been effective when NGO activists coalesce around a common objective and develop a coherent strategy to mobilize varied demarches, including the identification of champions within legislative bodies to carry their message. This was the case in Nigeria, Uganda, and Kenya, where NGOs developed common platforms and coordinated messaging, public education, and lobbying.

One notable success story comes from Nigeria, where civil society drew on support from African networks to mobilize against the 2017 NGO Bill. The example illustrates how local actors can successfully leverage continental organizations to send an unequivocal message of disapproval to legislators who seek to deploy discredited African and international examples as justification for their proposed restrictions. In an effort coordinated by Chidi Odinkalu, who came to the task with his experience as former chair of the Nigerian Human Rights Commission and a prominent member of the Nigerian Bar and international civil society, Nigerian NGOs recruited the participation and support of regional, continental, and global human rights experts.⁵⁶ They coalesced around the idea that the bill fell afoul of human rights, leading to the eventual collapse of the legislature’s will to advance the measure. After two readings in the lower house, it failed to

proceed from the committee stage after public hearings on December 13 and 14, 2017. It is unlikely to be revived in its current form.

The following factors, drawn from the experiences of the countries surveyed, can be considered key ingredients for effective NGO pushback against anti-NGO measures:

Unity of purpose: As several cases illustrate, unity of purpose among NGO actors serves to advance collaborative efforts even where cleavages exist within civil society. In Nigeria, as in Uganda and Kenya, NGOs developed coherent, multifaceted strategies involving marches, lobbying, interventions in the media, and written submissions and representations to legislative and policy bodies, with each component of civil society playing a role. The degree to which basic civil liberties are respected in a country has a bearing on whether NGOs can organize in this way.

Capacity: The capacity of civil society to mobilize expertise for the analysis of legal texts and policies, the formulation of responses, and the preparation of their own draft policies and legislation is critical to the success of such activities. Several international organizations, notably ICNL, have added immense value to the work of national civil society. In multiple countries, ICNL has provided expertise to support local coalitions' engagement with legislators and policymakers and to formulate interventions.

Cross-border learning: Ohaeri's role in Sierra Leone, where she supported NGOs engaging with policymakers, constitutes a positive form of cross-border collaboration that extends to sharing experiences on how to run successful campaigns to counter repressive laws. The ICNL has led similar initiatives in several countries where new policies were under consideration in 2018.

The elements below are not fully within the control of NGOs, but they may still determine the success or failure of pushback against anti-NGO campaigns:

Vibrancy: The vibrancy of NGOs matters in countries where restrictive measures are initiated: It determines whether the groups can marshal favorable public opinion, assemble resources, and recruit allies within and outside government to successfully defeat legislative initiatives, or at the very least exclude the most destructive measures from the agenda. Experience shows that where civil society is vibrant—usually in relatively strong multiparty democracies like Nigeria and Kenya, or where for other reasons the government is somewhat responsive to public opinion, especially in aid-dependent countries—NGOs stand a chance of forcing government to reverse course. In relatively closed societies dominated by single parties or the military, NGOs lack avenues to voice their concerns and the resources necessary to mobilize a coherent strategy. In such countries, press freedom might be restricted or under serious threat.

Legitimacy: As the cases of Kenya, Nigeria, and Ethiopia illustrate, the legitimacy of the leading NGOs plays a critical role in blunting state-led accusations and propaganda that seek to portray NGO leaders as lacking in probity, unfit to run organizations, and valid targets of government intervention. In Ethiopia, official propaganda was extremely effective in painting human rights and governance NGOs as unaccountable and NGO leaders as elitist, self-serving, and possibly unpatriotic agents of foreign powers. But in Kenya, the invalidation by courts of executive orders to freeze accounts of leading NGOs undercut the government's campaign against them. The groups' advocacy and visibility in Kenyans' search for justice regarding the postelection violence of 2007–08 marked them out as targets for the government, but also as victims of persecution in the public eye. Lack of accountability is a common accusation leveled against NGOs in countries where anti-NGO measures have been adopted. In some, such as Sudan, NGO leaders have faced persecution, been detained without trial, or been tried on trumped-up espionage charges that often collapse under the slightest judicial scrutiny. Detractors of NGOs find it more difficult to dismiss groups that are rooted in communities, practice financial probity, demonstrate selflessness in their service,

generate local solutions, and do not rely entirely on foreign resources.⁵⁷

Use of courts to dramatize the NGO cause: The cases of Kenya, Malawi, Angola, and Zambia illustrate the important role courts can play in pushing back against anti-NGO measures. In the judiciary, NGOs may find an important institutional counterweight against executive and legislative action, as well as space to dramatize a vital cause before a national and global audience. Litigation has been used to good effect—albeit in limited fashion—to declare unconstitutional a new framework law on procedural grounds (Angola), to prevent amendments to an existing law that would have hiked registration fees (Malawi), to stop the deregistration of NGOs and force the government to negotiate with such groups (Zambia), and to order the executive to implement a progressive framework law and protect NGO actors from executive orders freezing their funds (Kenya). The appendix to this report sets out a structured litigation strategy to protect freedoms of association and assembly based on the limitation of rights framework, which has yet to be deployed in any of the situations surveyed. Experience shows, however, that judicial recourse works best when it forms part of a larger strategy developed by NGOs and their supporters.

“Experience shows, however, that judicial recourse works best when it forms part of a larger strategy developed by NGOs and their supporters.”

Political will: Several experiences—notably in Uganda and Ethiopia—demonstrate that governments’ willingness to genuinely engage with civil society and work collaboratively on legal formulations that preserve freedoms while ensuring that state agencies have the tools to address serious security threats is a *sine qua non* for successful pushback. In Uganda, official receptiveness to at least some of the ideas proposed by NGOs led to the exclusion of certain provisions before the draft law was passed.⁵⁸ In Egypt, by contrast, the government’s stonewalling and refusal to meaningfully consult with NGOs, following the adoption of Law 70 in 2017 within two days of its introduction in the legislature, rendered NGO efforts fruitless. When the government came under pressure not to implement it, the law was embargoed for six months, but it was still ultimately approved by President Abdel Fattah al-Sisi.⁵⁹ In Sierra Leone, where at least part of the legislative process was shrouded in secrecy, NGOs were excluded from the final stages following disagreement on key provisions during earlier government-NGO deliberations. As of December 2018, the newly elected government under President Julius Maada Bio was reportedly open to revisiting the debate on the NGO regulations.

Which Countries Could be Next?

In several countries, the government is preparing to introduce new restrictions on NGO activity, or signaling that it may do so.



Malawi

On January 1, 2018, the Ministry of Gender published new NGO Fees Regulations, hiking the amounts that organizations are required to pay. The High Court froze their implementation in April 2018 following a lawsuit brought by the Council of NGOs in Malawi (CONGOMA), which has expressed fear that the regulations could hobble the sector.⁶⁰ According to CONGOMA, the government continues to flout the court order. On November 9, 2018, the government escalated the situation when it published a draft amendment law that envisages several changes to the NGO Act of 2001. The bill proposes to establish a government-controlled NGO authority, and to impose stiff fines of up to \$20,000 for violations of the NGO law. This step marks a hardening of government's stance, and NGO pushback against these increasingly harsh measures is expected to continue in 2019 and beyond.



Zambia

President Edgar Lungu's clampdown on the opposition and assault on civil liberties has elicited widespread condemnation, though the trend began before he rose to the presidency in 2015. In 2013, in addition to charging an NGO leader with sedition for his call for accountability in the police force, the government commenced proceedings to ban NGOs that refused to register under the 2009 NGO Act, prompting objections from the UN special rapporteur on freedoms of peaceful assembly and association. In July 2014, when a consortium of 10 NGOs sued the government for enforcing the 2009 law, which they argued violated constitutional rights, the government asked foreign missions to defund unregistered NGOs. It subsequently requested an out-of-court settlement and withdrew the proceedings to prohibit them. The government's position nevertheless continued to harden. In 2016, it proposed changes to the 2009 NGO Act, ostensibly to "enhance NGO participation in development." A 2017 shadow report by NGOs to the UN Universal Periodic Review process details the NGOs' ongoing fight to repeal the 2009 law as well as public order laws that are used against government critics and the opposition.⁶¹ In October 2018, the vice president called on NGOs to support the government's plans to amend rather than repeal the act, as NGOs are demanding. Given the government's and NGOs' differing visions for the law, the story is likely to evolve further in 2019.⁶²



Tanzania

Donors and the political opposition have expressed concern over narrowing democratic space since the election in 2015 of President John Magufuli. Among other forms of pressure, opposition leaders have been charged with sedition, and some imprisoned, while others have been induced to join the ruling party. The government has also cracked down on reproductive health groups—particularly those that support the rights of LGBTI (lesbian, gay, bisexual, transgender, and intersex) people.⁶³ It has taken a stand against family planning, leading to a diplomatic rift with the European Union, the World Bank, and other donors. In the second part of 2017, leading NGOs drew attention to a government effort to "verify" NGO credentials, warning that it could be used to deregister the targeted groups.⁶⁴ A hefty registration fee of \$900 was imposed on bloggers under the 2018 Electronic and Postal Communications (Online Content) Regulations. When the government expressed its intention to introduce a new NGO policy, NGOs prepared a "model" policy to contribute to the process, with support from technical experts. It remains to be seen whether the government will follow through with a new NGO policy.



Mozambique

NGOs operate under the Law of Associations, No. 8 of 1991. Although a raft of 10 changes were proposed in 2008–09 with the support of the UN Development Programme, as of January 2019 the legislature had not adopted them. The text of the proposed changes is not publicly available, but the current law appears to suit the government's needs. NGOs in Mozambique work under some of the most restrictive, even dangerous conditions in the region, and have been effectively silenced.⁶⁵ Between 2010 and 2017, several NGO leaders were harassed, arrested, abducted, or killed. In 2015, prominent constitutional lawyer Gilles Cistac was shot dead in the Mozambican capital in broad daylight, reportedly for interpreting the constitution in favor of the main opposition party, RENAMO, which took up arms following the disputed election of 2014. Separately, Article 1 of the 1991 law, which prohibits the creation of organizations that would offend public morals, was used to deny registration to LAMBDA, an LGBTI organization, for nine years. In 2017, the Constitutional Court declared this provision unconstitutional.

Recommendations

The need to preserve freedoms of association and assembly, and with them democratic space for NGOs and ordinary citizens, lies at the core of the countermeasures adopted by NGOs and champions of democratic governance, with the support of partners and donors. Below, this analysis concludes with key recommendations for NGOs, governments, and the international donor community.

For Civil Society

1. NGOs in countries that have adopted repressive framework laws should explore opportunities to have the relevant portions revised by legislatures (or through executive rule-making) or invalidated by appropriate judicial organs. In particular, litigation focused on the freedoms of association and assembly offers a potent tool not only to reverse legal provisions that improperly curtail NGO activity, but also to publicly dramatize the NGO cause and to delegitimize government actions. Other than in Angola, Zambia, and Kenya, it does not appear that anti-NGO laws—particularly the three broad types of measures addressed in this report, namely NGO framework laws, national security laws, and public order laws—have been challenged in court after adoption.
2. To counter some of the pernicious accusations made against NGOs, particularly that they are self-serving, “foreign agents,” or otherwise lacking in transparency, the groups should work to build legitimacy through their rootedness in communities and commitment to service and good governance, while ensuring that they are free of corruption (including by adopting internal anticorruption policies). Those that rely exclusively on foreign donors should build capacity to implement projects with limited donor input and pursue innovative ways to raise resources locally. In particular, NGOs should cultivate direct appeals to the public—a potential resource that is used rarely, if at all—to tap funds from the growing middle class. Although some sections of the population across Africa may be unbanked, the penetration of mobile payment options could allow NGOs to reach millions of small donors. Such campaigns would hold innumerable “legitimacy dividends” for human rights and governance NGOs that sometimes carry the stigma of reliance on foreign funds. Pooling resources and fostering inter-NGO collaboration in the implementation of strategic programs and projects can also strengthen autonomy among national NGOs, helping to deflect some of the attacks on their reputations.
3. Solidarity within civil society is key to effective pushback against anti-NGO measures, and as demonstrated by several of the cases surveyed, including Ethiopia and Tanzania, nobody is immune: The false sense of comfort that development NGOs tend to have when they are excluded from the remit of funding restrictions is often short-lived. The belief that the fight is not their fight is misplaced, because curbs on human rights and governance NGOs eventually reverberate throughout the NGO sector. NGOs from all fields of activity should seek to build collaborative platforms and coalitions and pursue joint advocacy at all times, even if there is no current threat of repressive legislation. In some contexts, more developed national NGOs should organize awareness-raising sessions for other NGOs concerning compliance with government policy.

For Governments in Africa

4. Governments should uphold their international and regional human rights commitments regarding freedoms of association, assembly, and expression. Mandatory registration procedures that are susceptible to abuse of discretion and that interfere in the normal operations of NGOs or their external sources of funding are not in keeping with these commitments. Governments are entitled to pursue legitimate interests, such as suppression of criminal activity and protection of national

security, by closing off avenues for terrorist financing and money laundering. They also have an interest in ensuring accountability in the nonprofit sector. But these objectives can be aligned with a commitment to freedoms of association and assembly and made to nurture rather than harm an open and democratic society.

5. To truly complement foreign sources of funding without compromising the resource base and independence of NGOs, governments should explore incentives that encourage donations from citizens and private entities, including in the corporate sector. Tax-deductible donations should form part of these options. A government-resourced NGO fund could also be designed and operated in a way that does not enfeeble critical NGOs through co-option or diversion of resources to government-friendly NGOs or causes. An autonomous and sustainably resourced fund that is shielded from excessive government influence in the distribution of grants, for example through an oversight board composed of independent members, would be ideal. In terms of financing, a direct charge on the state's consolidated fund—meaning the allocation would not depend on the annual parliamentary budget process—or a fixed percentage of revenues from designated natural resources, where applicable, would ensure that the NGO fund is free from political interference.

For the International Community and Donors

6. Foreign government officials should raise concerns about anti-NGO measures with officials from African nations where NGO activities are restricted. In public statements and private engagements, diplomats and members of legislative bodies should emphasize that anti-NGO legislation is considered a high priority, will be regularly monitored, and will remain tied to diplomatic engagement.
7. Foreign governments should encourage African governments to repeal or amend anti-NGO legislation through the use of both penalties (sanctions and other tools) and incentives (including foreign and military assistance and trade legislation and delegations). For example, any process of US reengagement with the government of Sudan should include a requirement that the Sudanese government make substantial revisions to the Voluntary and Humanitarian Works Bill of 2018. In Kenya, the United States should condition certain forms of assistance on implementation of the PBO Act.
8. Recent research suggests that only one out of 29 existing global initiatives to counter democratic reversal is funding NGOs in Africa.⁶⁶ Given the likely continuation of the trend of democratic backsliding and repressive anti-NGO measures, donors should make two key reforms. First, prioritize flexible funding models that take into consideration the strategic nature of the challenge faced by civil society in Africa. Existing models of funding focus on projects rather than long-term, general support with inbuilt flexibilities, and they contribute to perceptions that external donors are defining the priorities of national NGOs. Instead, those NGOs need to drive their own agendas, with donors showing a greater willingness to be responsive to their needs. This will enhance NGO legitimacy in the eyes of citizens and government alike. Second, donors—including the US government—should prioritize the use of “basket” or “pooled” funding mechanisms, through which multiple donors contribute money to a fund that supports civil society. (These funds, too, should be made available for general support rather than project-specific grants.) Such funding mechanisms counteract the impression that NGOs are serving the particular interests of any single donor. It is especially important that contributors to such a fund be diverse, ideally including both African and non-African donors from both the public and private sectors.
9. Both the African Union and the United Nations should build on the work already done by respective rapporteurs and the African Commission on Human and People's Rights Study Group

on the Freedom of Association and Peaceful Assembly in Africa to keep the issue of anti-NGO legislation high on their agendas. In particular, the African Commission's special rapporteur on freedom of association and peaceful assembly, together with country rapporteurs, should raise NGO concerns at the highest levels in African countries and support NGOs that are engaged on the issue as appropriate.

Legal Appendix

To view the legal assessment of anti-NGO measures, please visit: <https://freedomhouse.org/report/legal-assessment-anti-ngo-measures>.

Footnotes

To view the complete list of report footnotes, please read the report online at: <https://freedomhouse.org/report/special-reports/freedoms-under-threat-anti-ngo-measures-africa>.



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