



Protecting Democracy

RECLAIMING CIVIL SOCIETY SPACE IN AFRICA

Governing the Public Sphere: Civil Society Space in Africa

A Background Paper

Dr Bhekinkosi Moyo

Introduction

If there is an event or a series of events that demonstrate the need to protect democracy and reclaim the space for civil society; it is none other than the uprisings in North Africa and the Middle East. These have reaffirmed the crucial point in democratic and transitional studies; that is; that economic development without political and social progress is not sustainable. By all standards and indices, North Africa was always rated highly in terms of economic performance, yet simmering underneath was a revolution as a result of the closure of the public sphere. So when in 2011, popular uprisings spread like bushfire in that region, many in academia, media, civil society and governments were caught unprepared. Change came from unexpected circles, challenging assumed doctrines and theories associated with the functionality of organised formations. Yet for some of us who had been studying the public sphere in the post-colonial context were not surprised at all by these dramatic changes. In a collection of country chapters: *Disabling the Public Sphere: Civil Society Regulation in Africa*, we identified a trend in Africa and elsewhere where the sphere of public authority was increasingly clamping down on the public sphere for a variety of reasons-many of which were illegal and unconstitutional. The closing down of the space included various strategies, tactics and instruments: legal, political and administrative among others particularly by the state. But the encroachment into the public sphere was not just state driven; it also came from the economic or private sector and ironically from civil society itself. It is important to outline this, because more often the closure of the public sphere is laid squarely at the state's doors, leaving unaddressed the vagaries of the private sector and civil society itself in its diverse formations.

The following pages discuss the space for civil society in Africa in the context of the challenges of the 21st century. It must be stated here that over the last four to five years, there has been mushrooming of literature on the regulation of associational life, both in Africa and globally. Examples include, the Open Society Initiative for Southern Africa's *Civil Society Regulatory Framework* focusing on the freedom of assembly and association; the World Movement for Democracy's *Defending Civil Society*, the International Center for Non-Profit Law's various legal analyses and CIVICUS' *Civil Society Watch*, among others.

This paper discusses first the current context under which the space discussion is taking place. The paper also gives a brief historical background to state-civil society relations, taking into account the different moments in history and the various determinants. There

is also a discussion on the various ways in which the space for civil society is threatened or is affected by various contextual, historical, political, cultural, social and even economic factors. Finally is a discussion on the relationship between processes of engagement and the instruments of engagement, including the tactics and strategies employed.

Context

A few factors that impact on the governance of the public sphere in contemporary global relations need mentioning. The first is that globally there is a decline in good governance resulting in serious backlashes to the democratic governance project. This is amid an increase in multi-polarity and pluralism. Perhaps the contradictions of democracy are best captured by this moment in world history where the existence of plural societies, multiparty politics, free media and other features of democracy have led to increasing focus on accountability which in turn has resulted in negative response from those scrutinised, for example, the state.

The second factor relates to the decline in internationalism and unilateralism. The demise of the unipolar world has led to emerging economies assuming prominence in world affairs, providing some developmental models that others in the South find resonance in. The rise of BRICSA, CIVETS among others is a contextual development that has ramifications beyond global power relations. Their rise might contribute to the decline in values that were espoused by the US around such issues as good governance, rule of law, democracy and transparency among others in favour of a narrow development trajectory that does not take into account socio-political rights. It is worth mentioning that many African countries that have closed down the space for their citizens in development and governance processes, have also adopted 'Looking East' policies. This is an area we need to research closely.

The third factor worth mentioning here is the rise in regulatory mechanisms that are aimed at controlling as opposed to creating enabling environments. These factors are important in understanding the configuration and the subsequent governance of the public sphere defined here as that space in society where citizens congregate freely and discuss issues of common interest. It is that space institutionalized to regulate the state by influencing political, social and economic life. However with the rise in terrorists' activities, the space for human rights has given way to the state's defence of human lives. However more often there has been a thin line between genuine counter terrorism initiatives and pretexts for political interests. The anti-corruption drive has also given states enough room to regulate the space for civil society. Again here the line has been blurred between real anti-corruption responses and pretexts. This is summarily captured by Michael Edwards. He said;

Attempts to restrict or close down the space for independent citizen action have risen as governments from Russia to Brazil, Egypt to Cambodia and Uganda to the United States have formulated tighter laws, regulations and registration requirements for NGOs and other civic groups. Many of these attempts have been justified by reference to the 'war on terror' and the need to clamp down on support for organizations deemed to be conduits for terrorist funding, but very few cases of such leakage have been successfully prosecuted, and these

moves seem motivated by more basic, pre-existing suspicions of civil society's rising influence (Edwards 2009:2).

State-Civil Society Relations

In the majority of African countries, political liberation was supported extensively by spontaneous people's movements, faith-based formations and various constellations of civil society. A close link existed between civil society – understood in that era as people whose civic rights were denied, self-organizing for political ends – and what was to emerge as an indigenous political society. From North to South, West to East, civil societies – be they legally recognized or informal – played critical roles in the dismantling of colonialism, apartheid and other forms of domination. This force for political reform was not only true of Africa; it was also true of other parts of the world. In Eastern and Central Europe, for example, an unaided civil society played a major role in the fall of communist states and the subsequent waves of democratization that followed.

In Africa, the relationship between citizens and the state as well as that between organized formations and their governments has historically varied, and continues to vary from one country to another. Even within a country, relations are not always the same, they change periodically and contextually. The context, in most cases-politics, determines the nature and character of relations. At any given time relations may be cordial and collegial; at another time relations could be conflictual and adversarial. This fluidity is perhaps the prism through which we should analyse the ever-changing relations between the state and the public sphere and its governance. To illustrate this fluidity and the nebulous nature of relations between governors and the governed, there are three historical epochs discussed below.

Colonial Spaces: Blurred Boundaries

Civil society was the bedrock for the struggle against colonialism and other forms of oppression. In South Africa, for example, the struggle against apartheid was not won only through liberation movements such as the African National Congress and the Pan African Congress, among others; mass movements such as the United Democratic Front (UDF) and other black consciousness groups played active roles in dismantling apartheid. Organized groups like the Black Sash, the Legal Resources Centre, the South African Civics Organization (SANCO) and trade unions used different legal and non-legal strategies to isolate the regime, thus placing themselves directly in collision with the state (Moyo, 2009), in the process blurring the line between political-liberation movements and civil society or associational life. But not all formations of civil society collided with the state or worked closely with liberation movements. Some remained neutral while others colluded with the colonial state. In the main however, formations fighting for political and civil rights were the basis on which national struggles were waged. This is true of almost all African countries. The point we are making is that for the greater part of the struggle against colonialism, associational life, whether overtly or covertly, played an instrumental role in the twentieth century formation of national liberation movements. Both formal and informal forms of associational life provided the basis and foundations for an anti-colonial struggle. Some of these associations gave rise to national leaders while others transformed themselves into liberation movements, thus

blurring the lines once more between political society and civil society. It is this historical reality that explains why some political parties that later became ruling parties soon after independence had strong relations with civil society. In most cases, these relations quickly changed as a result of shifts towards a one-party system by post-independence leaders. How did this happen?

Post-Independence and Closure of Spaces

The close relations between political movements, later liberation and ruling parties, soon transformed into one of enmity and conflicts as more countries adopted one-party systems. From Uganda to the DRC, Angola to Zambia, Zimbabwe to Ethiopia, Swaziland to Lesotho, Kenya to Tanzania, Gabon to Cameroon, relations soured between civil society, especially advocacy groups, and their governments. In Angola, with the outbreak of a war in 1975 which destroyed the social fabric and then the attempted coup in 1977, there was a movement by the *Mouvement populaire de libération de l'Angola (MPLA)* to introduce a one-party state. With this, emerged party-created organizations and institutions such as women's organizations (*Organizacao das Mulheres Angolanas*), the national youth movement (*Juventude do MPLA*), and trade unions. In Mozambique, the same happened, where the one-party state created mass organizations, co-operatives and state farms. Organizations close to the ruling party dominated the public sphere. These groups were referred to as mass democratic movements and they included women's organizations, organizations of journalists, and national youth associations. And in the second Republic of DRC (1965-1990), a coup in 1965 led to a *de facto* one-party state, resulting in multi-party politics being outlawed and social activism curtailed. This led to the unification of the labour movements forming one union aligned to the ruling party. The single-party system replaced all forms of association, sounding a death knell to civil society, the media or at least its public face, as most groups went underground. Only the church, in particular the Roman Catholic Church, remained active in such areas as education and health.

Democratic Transitions, Open Societies and Complex Relations

Although most if not all countries embraced multi-party systems and held periodic elections, developed constitutions that enshrined civil and political rights for their citizens, and formed part of the democratization wave, their suspicion of civil society still remained. The democratic dispensation and its inherent contradictions and opened up the public space for popular participation but at the same time invited the scrutiny and at times wrath of the state. As a result, different relations emerged depending on contexts and the characters involved. In some countries, three types of relations developed between the state and civil society due to the different configurations of civil society and the character of that state. The first was collegial and collaborative, especially among service delivery groups, mainly NGOs. The second was adversarial, particularly human rights monitors and advocacy-based ones. The third was that of survivalist groups like community-based organizations that did not develop a particular relationship with the state.

Different countries illustrate different forms of relations and how these relations have developed. In South Africa, for example, all three kinds (collaborative, adversarial and

survivalist) developed based on the contexts and the actors involved. In Mozambique, the Constitution of 1990 established for the first time the freedoms of expression and association (Articles 51 and 52). The proliferation of laws such as the Press Law (Law No. 18/91) also guaranteed various freedoms such as those of association and assembly. The 1990s therefore saw the opening up of public spaces for associations and the reconfiguration of state-civil society relations. Indeed, there was a move towards more consultation and co-operative mechanisms between government, business and civil society.

In Angola, relations between the state and civil society are still somewhat hostile. But the advent of many groups has helped in the democratization of the public space. At least these groups can use the *Bicesse Accord* which, among other things, recognizes the rights of political parties, freedom of assembly and association. In Botswana, although the state recognizes the value and contributions of NGOs, the state's definition of civil society is very narrowly limited to NGOs. This has the danger of excluding many other formations from government funding and other opportunities. Among the islands, particularly Seychelles, Madagascar and Mauritius, relations between civil society and the state are forged very much in line with the history of the state. In Seychelles, for example, although the government has strong control over the media, there is widespread acceptance that recent changes in government have facilitated a move towards creating opportunities for civil society in contributing to the country's needs. Government is viewed as facilitative. Yet this might just be a reflection of the fact that civil society institutions are still nascent and could change as more complex issues develop. In Mauritius, there also seems to be a greater degree of openness. Civil society has up to now been engaged in an open dialogue with the state. The general trend is that government views civil society as a partner in development and the relationship is one of mutual respect, especially on social issues.

In other countries, there was a very short period between the opening up of the political space and its subsequent closure. In the DRC in the 1990s, civil society flourished as a result of liberalization. Human rights organizations were among the first to emerge to address the human rights violations of the state leading to a breakdown in relations. The National Sovereign Conference (1991-1992) somewhat politicized civil society, leading to many of them playing political roles in the Mobutu regime. Under Laurent Kabila's administration, there was an attempt to control civil society by channelling financial and other forms of aid through government. The regime harassed and arrested activists and put in place cumbersome registration requirements. These relations were not static; for example, in 1998, Laurent Kabila adopted a more conciliatory approach to civil society, and when Joseph Kabila took over, some in civil society joined government and parliament. This was partly because Joseph Kabila adopted a conciliatory approach by unbanning political parties and encouraging civil society and other formations to take part in formulating the laws of the country. As a result, civil society played key roles in the Inter-Congolese Dialogue.

The political contexts in Zimbabwe, Uganda, Ethiopia, Kenya and Swaziland are worth noting in terms of their current relations with civil society. In Zimbabwe, cracks started developing in the mid-1990s when students from the University of Zimbabwe demonstrated against rising food prices and the general state of the country. Trade unions

soon followed suit leading to the formation of the Movement for Democratic Change (MDC) in 1999. This was the moment when relations strained between the state and many civil society formations. Since 2000, the state has viewed civil society, in particular advocacy and human rights groups, as an extension of the opposition. This is the context in which the relations ought to be understood. Even though Zimbabwe has now formed a Unity Government, those strained relations have not changed.

In Ethiopia, the strained relations can be traced back to the 2005 Presidential elections when activists, journalists and the opposition were arrested for questioning the credibility of the elections. Each country has a specific contextual trajectory on how relations have developed. The point however is that state-civil society relations are fluid and have been changing historically between pivotal moments in history and between various encounters. In some instances, they have moved from co-operation to adversity and back to co-operation. In others, the relations have moved from collaboration during the liberation environment to that of suspicion, both under one-party states and in today's multi-party systems.

The regulatory environment for civil society in these countries is a product of the history of colonial struggles, post-colonial independence and contemporary state formation.

Threats to the Public Sphere

As stated previously, while the major threats have come from the state, there are other forces that have encroached into the terrain of the public sphere. These factors include the market, donors and some elements within civil society itself. The economic arena, for example, is an area that threatens civil society in different ways. As Edwards observed, the 2008 financial crisis, for example, negatively impacted on the budgets and endowments of most organizations. In addition, a new trend has emerged in which the business sector and the market have encroached into 'areas traditionally viewed as the domain and preserve of civil society, a phenomenon called philanthro-capitalism, with a mania for business metrics, commercial revenue generation and induced competition between civil society groups, supposedly designed to deliver better results' (Edwards, 2009:2).

However in the main, the state has been the principal culprit. Hence it is important to understand the context and the nature of state formation in these countries-as these shape the kinds of regulatory mechanisms laws that have been crafted. There seems to be a strong relationship between adversarial relations and repressive legal and non-legal tools on the one hand, and between cordial and enabling environments on the other. In countries that have enabling laws or where relations between civil society and the state are cordial and mutually respectful the laws are embedded in their constitutions. In other words, there is an effort to align the letter and spirit of the constitution with the policies and further legislation on specific issues.

States have justified their reasons for such laws by mainly couching them in counter-terrorism measures, protecting national security, curbing NGO abuse and ensuring that NGOs are accountable and transparent. Some states have argued that NGO Policy Frameworks are developed to align NGO work with country priorities. But, in some

extreme cases, states have argued that civil society groups represent foreign interests and pose a risk to national security.

In general the impact of these threats has been the curtailing of civil society activities and in extreme cases the rendering of citizens' action as dangerous activities. The World Movement for Democracy has outlined in its report "Defending Civil Society" the various methods used to restrict civil liberties, remarking in 2008 that;

In less than a year, more than twenty countries globally have introduced restrictive legislation and regulations aimed at undermining civil society and diminishing the space in which they operate. The ongoing backlash against democracy has been characterized by a pronounced shift from outright repression of democracy, human rights and civil society activists and groups to more subtle government efforts to restrict the space in which civil society, especially democracy-oriented groups, operate (WMD, 2008).

The various methods used vary from imprisonment, torture, disappearances and harassment to more sophisticated measures such as legal and administrative obstacles including barriers to entry, bureaucratic paperwork and stringent requirements for registration. Other obstacles include arbitrary dissolution of NGOs, stringent oversight and control by the state, as well as the creation of lookalike government-backed NGOs.

Consultation versus State-Driven Law-Making Processes

There seems to be a relationship between the type of regime and the nature of approach. In more stable and enabling environments, the approach in crafting these laws was consultative, such as in South Africa. However, in countries that are concerned with security threats to their political power base, the approach was state-driven. Also interesting in these countries is who the responsible authorities for registration, monitoring and general operations of civil society may be. In most of these countries, a board or state agency manages the affairs of civil society. Who is appointed and who appoints them is an interesting area of enquiry.

In Uganda, for example, the process was state-driven even though on a number of occasions civil society groups tried to influence the end product. In Zimbabwe, the Bill was state-driven even though civil society organizations campaigned hard to stop it from being passed in Parliament. However, as stated earlier, the Minister responsible for NGOs in 2007 unilaterally wrote a letter that halted the activities of NGOs in the country. In Ethiopia, the state drafted the law and presented it for comments. A number of groups made submissions and even requested meetings with the Prime Minister, who met them at least twice to hear their concerns but still maintained that the law did not violate anyone's constitutional rights (Moyo, 2008).¹ The Zambian Bill was also drafted by government and CSOs made submissions. In Angola, the laws were driven by the state and there is no evidence that civil society was formally consulted.

¹ Page 10: Personal communications with some Ethiopian CSOs that attended the meeting with the Prime Minister, June 4, 2008.

In other countries, however, the process was consultative. In the South African case, the formulation of the law was a lengthy and rigorous exercise that involved consultations between government, civil society and other development partners. A number of NGOs played leading roles in the formulation of the law, such as the now defunct Development Resources Centre. In Mauritius, generally law-making is consultative. In Malawi, the process was first begun by civil society but later taken over by government.

Where the relations between the state and civil society are somewhat cordial, the process leading to the formulation of the laws seems to have been consultative. The consultation continues in many forms today. The regulatory environment in those countries is also enabling. However, in countries where the relations are adversarial, the process was state-driven and civil society groups tried frantically to influence the process with minimal success. The environment in those countries is not enabling and tensions still persist.

Except for a few cases, it is also interesting to draw a link between the type of approach, whether consultative or state-driven; the type of existing environment and the relations; and the ministry responsible for the registration and general oversight of NGOs. For example, in environments that are somewhat enabling and where the process was consultative, the relevant ministry is either one responsible for social development like South Africa (Angola is an exception here because the relevant ministry is that of social assistance and reintegration); the Ministry of Foreign Affairs (Mozambique); or the Registrar of Associations (Mauritius). Zimbabwe is exceptional in this case because it regulates NGOs under the Ministry of Public Service, Labour and Social Welfare, despite the fact that its process was not consultative, and its relations with civil society are strained and the environment remains restrictive.

At the other extreme are those countries that have restrictive environments and their regulatory authorities seem to logically follow. In Uganda, the Ministry of Internal Affairs is responsible for the registration of NGOs and a board appointed by the Minister and dominated by government officials supervises the work of NGOs. In Ethiopia, it is the Ministry of Justice that is responsible for NGOs and a state-dominated agency supervises the work of NGOs. In the DRC, the Ministry of Justice is responsible for NGOs. In Zambia, previously NGOs were governed under the Ministry of Home Affairs. This has changed, however, and NGOs are now under the Ministry of Child Welfare and Development.

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