Shrinking Civic Space in Africa: When Governments Crack Down on Civil Society

Smidt, Hannah

Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:
GIGA German Institute of Global and Area Studies

Empfohlene Zitierung / Suggested Citation:
Smidt, H. (2018). *Shrinking Civic Space in Africa: When Governments Crack Down on Civil Society.* (GIGA Focus Afrika, 4). Hamburg: GIGA German Institute of Global and Area Studies - Leibniz-Institut für Globale und Regionale Studien, Institut für Afrika-Studien. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-60572-3

G | G A Focus | AFRICA

Hannah Smidt

Shrinking Civic Space in Africa: When Governments Crack Down on Civil Society

GIGA Focus | Africa | Number 4 | November 2018 | ISSN 1862-3603

A growing number of governments in sub-Saharan Africa are now cracking down on civil society organisations addressing human rights issues. Governments are not only shrinking the space for civic activism, but also destroying the backbone of democracy and inclusive development.

- In many countries in sub-Saharan Africa, civic space has been shrinking since the early 2000s – mirroring a global trend of restrictions being imposed on civil society organisations. Governments intimidate and arrest activists, and publicly criticise their advocacy work. They also promulgate restrictive policies, such as laws that curtail the foreign funding of domestic civil society groups, and resort to subtle ways of restricting civil society's operating space – for instance, via cumbersome registration processes for civil society organisations.

- Civil society organisations monitor and publicly expose human rights abuses. If governments commit severe abuses, they therefore have an incentive to impose restrictions on civil society activists and to silence their criticism. This incentive is stronger and civil society in greater danger when governments face pressure to live up to international human rights norms – for instance, if they have previously committed to human rights treaties or fear investigation by the International Criminal Court.

- Isolated and sporadic government restrictions do not silence civil society. Instead, activists protest such restrictions and find creative ways of making human rights violations known – for example, via social media. However there has been a worrying decline in publicly voiced criticism recently as governments impose a large number of different restrictions, ones that render it difficult and indeed dangerous to expose government misbehaviour.

Policy Implications

The shrinking of civic space calls attention to the unintended consequences of promoting human rights abroad. International pressure to live up to human rights norms has led governments to impose restrictions on domestic civil society activists to silence their criticism. Nevertheless, the current policy shift towards mobilising private investment in selected African countries (per the G20 Compact with Africa) should not deflect international attention from the precarious situation of human rights defenders. Only an independent and active civil society can deepen democracy and guarantee equitable and sustainable economic development in sub-Saharan Africa and elsewhere.

Dr. Hannah Smidt
Research Fellow
hannah.smidt@giga-hamburg.de

GIGA German Institute of Global and Area Studies
Leibniz-Institut für Globale und Regionale Studien
Neuer Jungfernstieg 21
20354 Hamburg

www.giga-hamburg.de/giga-focus

Civil Society in Africa

Since the end of the Cold War, civil society organisations (CSOs) have become increasingly active in sub-Saharan Africa (Tripp 2018). Trade unions, student organisations, and church-based groups in sub-Saharan African countries can take a large share of the credit for the waves of political liberalisation and democratisation that swept across the continent in the 1990s (Gyimah-Boadi 1996). In its wake, the number of non-governmental organisations (NGOs) with human rights and pro-democracy agendas has been steadily growing. Many private, not-for-profit, voluntary organisations – which are autonomous from the state, and here collectively referred to as CSOs – are today active in monitoring government behaviour and pressuring governments in areas of human rights abuses, corruption, and violations of democracy. Their activism has threatened the hold on power of several government leaders in sub-Saharan Africa, and sometimes even contributed to their removal from office – for example in Burkina Faso in 2015, or in Senegal in 2012.

While a few governments have indeed initiated further democratic reforms and improved their human rights records in response to pressure from CSOs, many have reacted instead by either co-opting these groups or by cracking down on their activities. Figure 1 illustrates that the number of different forms of government-imposed restrictions on civil society groups is on the rise across sub-Saharan African countries. Since the early years of the new century onwards, governments in sub-Saharan Africa have imposed an increasing number of different restrictions on CSOs. Governments in Senegal, Tanzania, Uganda, and Zambia require CSOs to undergo cumbersome registration processes and criminalise those that fail to register themselves. The government in Niger, meanwhile, has banned several CSOs and prohibited others from travelling within specific parts of the country. Human rights groups in Rwanda continuously report a fear of government-sponsored harassment, and some have reacted by self-censoring their publications.

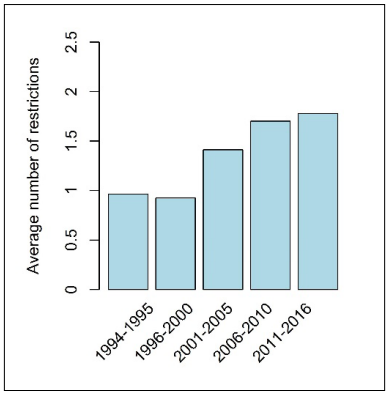

Figure 1
Average Number of Restrictions per Country in Sub-Saharan Africa from 1994–2016

Source: Data was collected from annual human rights reports (1994–2016) published by the US State Department 2018.

Yet, the upward trend in restrictions is not uniform across the continent. While Figure 2 illustrates that civil society in East Africa (Burundi, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, and Uganda) faced more restrictions in 2015 as compared to in the year 2000, there are also positive developments observable. Restrictions on CSOs in West Africa have markedly declined in the past 10 years. And, there have been no targeted policies and practices against CSOs in Botswana, Lesotho, Namibia, South Africa, and Zambia since 2005.

Understanding the causes and consequences of government-sponsored restrictions on civil society is important for consolidating democracy. Independent CSOs are crucial for holding governments accountable for their behaviour. If the states start to interfere and control the operations of CSOs, human rights activists will find it harder to monitor and expose corruption, human rights violations, and other forms of government misbehaviour.

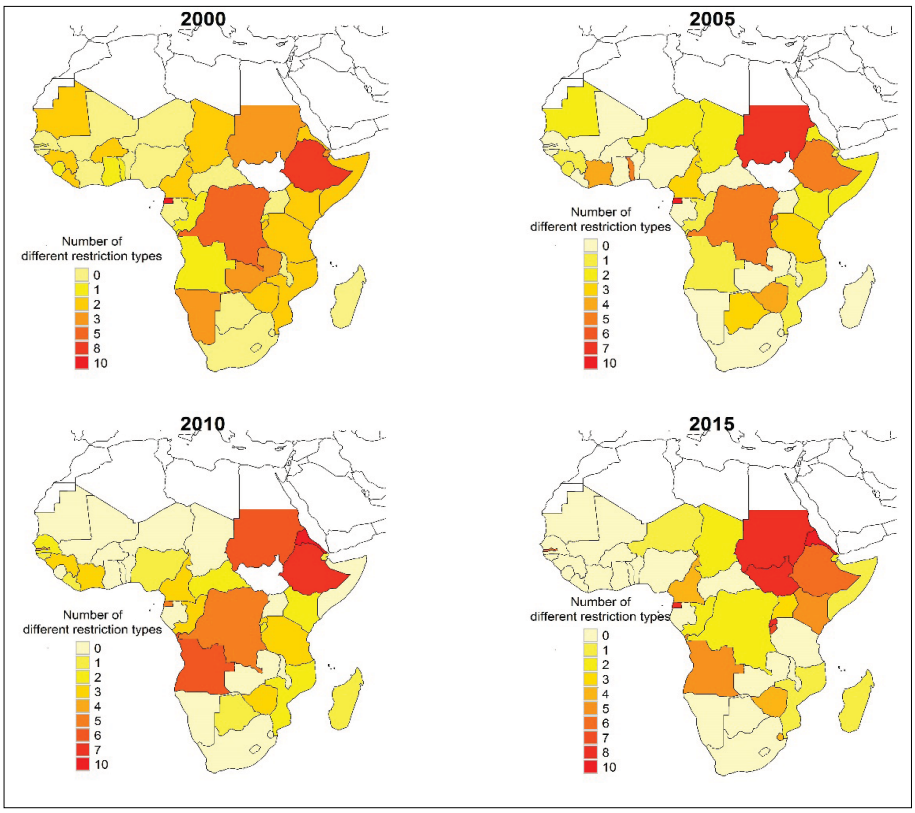

Figure 2
Regional Trends in Restrictions across Sub-Saharan African Countries, 2000–2015

Source: Data was collected from annual human rights reports (1994–2016) published by the US State Department 2018.

Note: The data records 12 different types of restriction on civil society groups: banning specific ones; curtailing travel; restricting their visits to government sites; limiting their domestic funding sources; limiting their international funding sources; creating difficulties in obtaining visas, or denying visas; creating difficulties in registering as CSOs; censoring their publications; harassing civil society activists; keeping them under surveillance; arbitrary arrests; and, murdering activists.

Associational autonomy is a fundamental precondition for democracy (Dahl 2015: 98). The citizen as an individual has limited power to effectively shape the political agenda. Independent CSOs allow citizens to effectively participate, then, in politics and to express their demands to those who govern their country, for example through lobbying, mobilising voters, and organising protests. CSOs are also loci of civic education, providing citizens with information and opportunities for discussion, deliberation, and the acquisition of political skills. Where governments repress or co-opt CSOs, they harm the exercising of democracy.

Causes of Restrictions

It is important to note that some African governments are more prone to restricting CSOs than others. International donors and their human rights advocacy shape governments' decision to "shrink" civic space. Researchers show that governments in countries receiving larger sums of overseas development aid tend to impose more foreign-funding restrictions on CSOs. In so doing, governments seek to prevent the growth of an independent civil society that could criticise its policies and potentially support its political challengers. For example, in 2009 the Ethiopian government adopted a law that prohibits CSOs from receiving more than 10 per cent of their overall funding from foreign donors. This policy threatens the survival of many civil society groups. Of the 2,275 Ethiopian CSOs existing at the end of 2009, only 1,701 were still active by the end of 2011. Only 12 or 13 of the 125 previously existing Ethiopian organisations working on human rights survived the foreign-funding law (Dupuy, Ron, and Prakash 2015). Since 1999, Angola, Benin, Burundi, Eritrea, Rwanda, Sierra Leone, Somalia, Sudan, Uganda, and Zimbabwe have all adopted

policies to restrict foreign funding for domestic civil society groups (Dupuy, Ron, and Prakash 2016).

If they do commit significant human rights violations, African governments impose more restrictions on civil society. Governments seek to silence the critical voices of civil society organisations – that could otherwise monitor and expose these abuses. This incentive for imposing restrictions on CSOs is stronger when governments face acute international pressure to honour their human rights commitments (Bakke, Mitchell, and Smidt 2018). Pressure to appear as a human rights-abiding member state of the international community originates from a number of sources. First, there are human rights treaties – such as the Convention Against Torture (CAT) or the International Covenant Of Civil and Political Rights (ICCPR). These treaties provide clear benchmarks for the criticism of human rights conditions. Governments that previously ratified a human rights treaty also subsequently find themselves under increased international scrutiny. They need to deliver regular reports on their human rights practices to treaty bodies such as the United Nations Human Rights Committee, which oversees compliance with the ICCPR. Treaty ratification can also spark civil society activism and put human rights on the political agenda, thereby channelling attention to a lack of government compliance in this area. Consequently, ratifying governments are more vulnerable to sanctions for any violations of human rights norms. If governments that previously ratified a human rights treaty lack the will or capacity to improve the human rights situation in their country, they tend to hide abuses – and therefore restrict critical civil society groups.

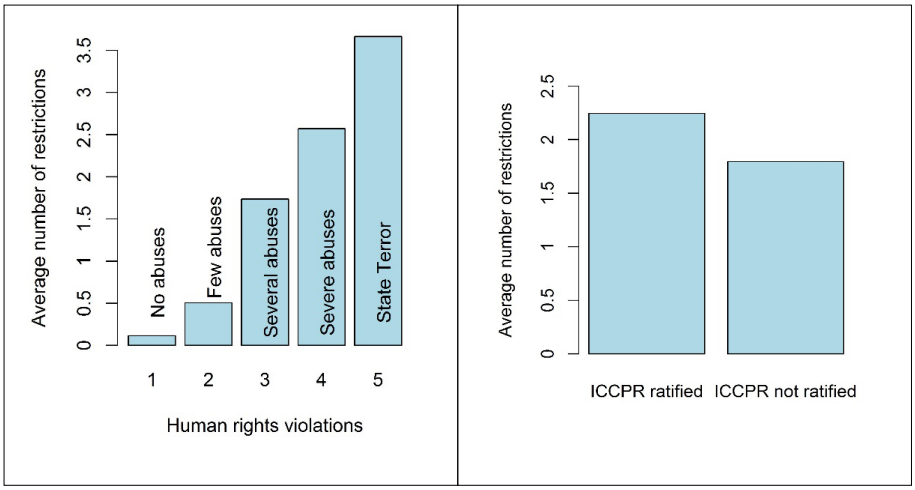

Figure 3 (left) Human Rights Abuses and Restrictions across Sub-Saharan African Countries (1994–2016)
Source: Gibney et al. 2017.

Figure 4 (right) ICCPR and Restrictions across African Countries (1994–2016), across Regimes that Commit Human Rights Abuses
Source: OHCHR 2018.

Figure 3 illustrates the relationship between human rights violations and the restrictions imposed on civil society groups across African countries between 1994 and 2016. While human rights-abiding governments employ on average fewer than 0.2 restriction types, African governments that more severely repress their citizens impose significantly more restrictions on civil society. The worst human rights abusers use on average nearly 3.5 different restriction types against civil society. Figure 4 shows that governments that ratified the most prominent human rights treaty – the ICCPR – employ on average more restrictions against civil society compared to those that did not previously commit to this international human rights treaty. Overall, governments that severely abuse human rights and face international pressure to hide these violations are the most prone to shrinking the civic space.

Second, international pressure to hide human rights violations and restrict civil society groups can also originate from governments' acceptance of the jurisdiction of the International Criminal Court (ICC). The ICC works with CSOs on the ground to document the atrocities that fall under its jurisdiction, including genocide, crimes against humanity, and war crimes. Human rights-abusing governments seek to obstruct these working relationships between local civil society and the ICC. For example civil society groups in Kenya suffered defamation and harassment by President Uhuru Kenyatta and Vice President William Ruto, who have both been under investigation at the ICC for the atrocities committed after the 2007 elections. These elections were highly contested, and led to large-scale communal violence between different ethnic constituencies. Kenyatta and Ruto were allegedly involved in organising reprisal killings against members of the non-Kikuyu ethnic groups perceived as supporting the opposition. Upon being called for his first hearing at the ICC, Ruto publicly stated: "NGOs should stop interfering with government matters, writing letters to their donors abroad to support the ICC intervention, and compiling reports about post-election violence. It is none of their business" (HRW 2013: paragraph 12).

Consequences of Restrictions: The Case of Kenya

CSOs have responded to such restrictions in various ways. Overall, these responses reveal that the government cannot so easily diminish civil society's motivation and ability to inform on government-sponsored violations. Adaptation and resistance are constant features in the history of non-state activism in Kenya specifically, which has one of the most vibrant and diverse civil society landscapes in sub-Saharan Africa. Figure 5 below illustrates the Kenyan government-imposed restrictions and the reactions by CSOs to them, from 1992 to today.

During the era of rule by the authoritarian leader Daniel arap Moi (1978–2002), Kenyan civil society had to overcome a range of restrictive practices and policies. With the political opening up of the country in 1992, a growing number of NGOs became active in monitoring and exposing the anti-democratic behaviour of Moi and his administration. The government did not react favourably to this. It often ordered the use of excessive force to suppress demonstrations by critical CSOs. In 2001, the police arbitrarily detained 71 activists of the Release Political Prisoners Group, including prominent civil society leader Kivuthu Kibwana. The government also closely monitored CSOs' activities. National media and public speeches were used to defame the work of human rights defenders. Finally, the government misused the NGO Act to deregister critical civil society groups. Yet, many CSOs continued to operate and thus to criticise the government. In reaction to police violence, civil society activists wrote a letter of complaint to the police and engaged in consequent protests for example.

Under the democratically elected president Mwai Kibaki (2002–2013), the situation of Kenyan civil society activists improved. The government refrained from public defamation campaigns against CSOs. It was more responsive to civil society groups, such as to their requests to monitor the prison situation, and it also even built up partnerships with these groups in some policy areas. Despite these positive developments, the government of Kibaki did not fully call a halt to its restricting of the operating space of CSOs. Government agents continued to use excessive force

during anti-government demonstrations. In the aftermath of the 9/11 terrorist attacks, the Kenyan government restricted the rights of critical and of Muslim CSOs, disguising these practices (such as the arbitrary arrest of activists) as counterterrorism measures. In 2010, unknown gunmen with alleged affiliations to the government killed two prominent activists who had been collecting evidence on police violence. While some activists fled the country, the majority of Kenya's civil society groups resisted government-imposed restrictions and continued to operate. Civil society staged several demonstrations against the new antiterrorism laws. In 2007, 40 CSOs united to defend Maina Kiai, the chairman of the National Commission of Human Rights and an outspoken critic of the government, against politically motivated corruption charges.

Finally, under the current presidency of Uhuru Kenyatta (2013–today), civil society in Kenya has suffered the most severe restrictions in the history of the country. The government has significantly increased its acts of harassment against human rights defenders, including the arbitrary arrest of civil society members as well as conducting raids on their offices and homes. On a number of occasions, government security personnel have used lethal force against demonstrators – leaving activists dead or injured. The Kenyatta government has also used antiterrorism measures as a pretext for clamping down on civil society activism.

Of course, the terror threat against Kenyan people is real – as shown by different high-profile terrorist attacks (such as the Westgate Mall one), while Kenyan security forces are currently involved in the fight against the Islamist group Al-Shabaab in Somalia. But this terror has also served as a welcome excuse for the government to exert tighter control over its critics. Government leaders also revived the strategy of defamation, which, as noted, had been previously used by the Moi regime (1992–2002). That is, government officials launched a public smear campaign to discredit the work of human rights activists – alleging them to be paid by foreigners and to be responding to external problems.

Beyond these restrictive practices, the government has also adopted several policies to "legally" restrict civil society activism. In 2014, it passed a new law that restricts the foreign funding of CSOs to a maximum of 15 per cent of their total income. In the same year, and in the following one too, over 1,000 CSOs were forced to deregister – including the prominent Kenyan Human Rights Commission (KHRC).

Civil society in Kenya is on its knees, but it is not altogether dead. Activists have had to relocate their homes out of fears of arrest. CSOs have had to close their offices. However, CSOs are also finding new ways of expressing dissent. They use music, paintings, and performances to voice criticism, and actively engage on social media too. Civil society groups continue to organise demonstrations against restrictions, and they seek to counter the narrative of the government by educating the public on how to distinguish facts from fake news. Many civil society groups threatened with or affected by deregistration continue to operate regardless, such as the KHRC for example. Beyond resisting restrictions, CSOs have also formed strategic partnerships with political leaders in an attempt to portray themselves as less threatening to the state. As of today, government-imposed restrictions have made it difficult for civil society to operate. Yet, they have not been able to prevent civil society groups from providing critical information to both domestic and international publics.

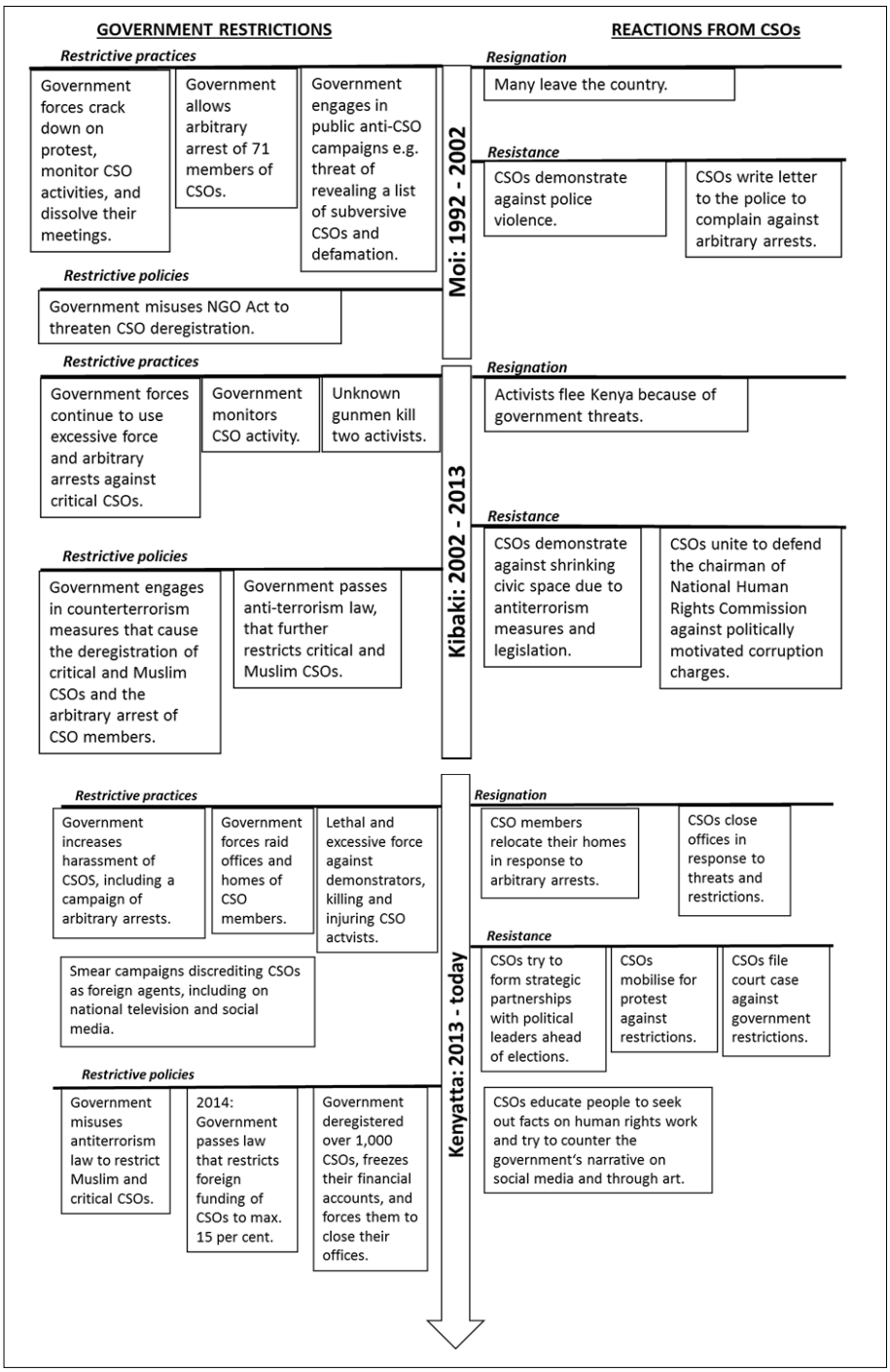

Figure 5
Timeline of Restrictions and Responses by Civil Society in Kenya, 1992–today
Source: US State Department 2018; ICNL 2018; Amnesty International 2018.

Kenyan civil society was remarkably resilient across all three restrictive regimes, resorting to creative adaptation and resistance strategies. Indeed, cross-national analyses also show that sporadic or only few restriction types being imposed significantly increase Amnesty International's public shaming campaigns (so-called Urgent Actions) as well as international media reports on human rights violations. Yet, if governments ratchet up repression and impose six or more different types of restriction, public criticism against the government tangibly decreases. Various restrictive practices and policies implemented together – such as bureaucratic obstacles paired with defamation, harassment, and censorship – diminish human rights defenders' ability to monitor the government and to publicly expose abuses through international human rights and media organisations (Smidt et al. 2018).

External Support – A Sensitive Issue

While the situation of CSOs has markedly improved in some countries (in most West African ones, for example, and in some in Southern Africa too), other governments in sub-Saharan Africa have found new ways of controlling and restricting civil society. Since the early years of the new century, CSOs operating on the continent have faced an increasing number of restrictions being imposed on their activities. Civil society space in sub-Saharan Africa is thus shrinking, but civil society activists also skilfully adapt to these imposed restrictions – and, indeed, find new ways of expressing criticism against the government as well.

International partners of African countries should be aware that their own policies may have detrimental consequences for government behaviour towards civil society. International campaigns promoting human rights have led to a government-sponsored backlash against domestic civil society. To alleriate international pressure, including investigation by the ICC, African governments have discredited human rights defenders and restricted their activities. International support given to human rights and civil society has prompted governments to justify their crack-down on CSOs under the guise of concerns about national sovereignty and foreign interference. The governments of Ethiopia, Kenya, Uganda, and of other states too have accused CSOs of pursuing foreign goals and not being accountable to their own people. However, defending human rights and supporting civil society is not "imperialist." International partners should avoid playing into the hands of this rhetoric by authoritarian governments, by making their support more transparent and by communicating how it is beneficial to the population in the recipient country as a whole.

Governments in sub-Saharan Africa and elsewhere have also misused the international fight against terror to justify restrictions on critical civil society groups. International policymakers need to be sensitive to this justification strategy, especially if they rely on sub-Saharan African governments for effective counterterrorism operations. Researchers also find a connection between development aid and foreign-funding restrictions, arguing that governments fear the growth of independent civil society as a by-product of increased foreign aid. Donor states should make sure that development aid does not undermine civic space. CSOs and governments often compete for donor funding. If international donors are dissatisfied with government performance, they look for alternative partners in civil society. Reducing this competition for foreign funding between civil society and government, and providing more long-term resources to the former, can certainly alleviate some of the scepticism of governments towards foreign-funded civil society groups – and also help the long-term planning of domestic CSOs.

Finally, the G20 group – under the presidency of Germany, and with its Compact with Africa strategy – puts a special emphasis on private investments in African countries. Such investments can promote growth, and thus provide the basis for a vibrant independent civil society in African countries. Creating employment opportunities independent of the state certainly goes a long way towards alleviating civil society leaders' vulnerability to government co-optation. In the long run, it could free up resources for CSOs that are autonomous from both the government and from foreign donors (Gyimah-Boadi 1996: 129–130). In the short term, however, the current policy impetus to mobilise private investments in African countries should not lead policymakers to neglect the current situation of human rights defenders in their partner countries.

References

Amnesty International (2018), *Kenya 2017/2018*, www.amnesty.org/en–/countries/africa/kenya/report–kenya/ (26 September 2018).

Bakke, Kristin, Neil Mitchell, and Hannah Smidt (2018), *When States Crack Down on Human Rights Defenders*, manuscript under review.

CIVICUS (2015), *Attacks on Civil Society. Undermining Democracy and Development in Kenya*, www.civicus.org/images/Kenya%20Policy%20Action%20Brief.pdf (25 September 2018).

Dahl, Robert (2015), *On Democracy*, with a New Preface and Two New Chapters by Ian Shapiro, London: Yale University Press.

Dupuy, Kendra, James Ron, and Aseem Prakash (2016), Hands Off My Regime! Governments' Restrictions on Foreign Aid to Non–Governmental Organisations in Poor and Middle–Income Countries, in: *World Development*, 84, August, 299–311.

Dupuy, Kendra E., James Ron, and Aseem Prakash (2015), Who Survived? Ethiopia's Regulatory Crackdown on Foreign–Funded NGOs, in: *Review of International Political Economy*, 22, 2, 419–456.

Gibney, Mark, Linda Cornett, Reed Wood, Peter Haschke, Daniel Arnon, and Attilio Pisanò (2017), *The Political Terror Scale*, www.politicalterrorscale.org (25 September 2018).

Gyimah-Boadi, Emmanuel (1996), Civil Society in Africa, in: *Journal of Democracy*, 7, 2, 118–131.

HRW (Human Rights Watch) (2013), *Kenya: Rights Defenders under Attack*, 4 October, www.hrw.org/news/2013/10/04/kenya–rights–defenders–under–attack (25 September 2018).

ICNL (The International Center for Non–Profit Law) (2018), *Civic Freedom Monitor: Kenya*, www.icnl.org/research/monitor/kenya.html (27 September 2018).

OHCHR (United Nations Office of the High Commissioner for Human Rights) (2018), *Status of Ratification: Interactive Dashboard*, http://indicators.ohchr.org (25 September 2018).

Smidt, Hannah, Dominic Perera, Kristin Bakke, and Neil Mitchell (2018), *Silencing Their Critics: How Effective Are Governments in Restricting Civil Society?*, manuscript under review.

Tripp, Aila Mari (2018), In Pursuit of Autonomy: Civil Society and the State in Africa, in: John W. Harbeson and Donald Ro (eds), *Africa in World Politics: Constructing Political and Economic Order*, New York: Routledge, 89–110.

US State Department (2018), *Human Rights Reports*, www.state.gov/j/drl/rls/hrrpt/ (26 September 2018).

About the Author

Dr. Hannah Smidt has been a postdoctoral research fellow at the GIGA Institute of African Affairs since February 2018. She previously held a postdoctoral position at the University of Oxford, and completed her PhD at University College London in May 2017. Her research focusses on election-related violence, democratisation, and civil society.
hannah.smidt@giga-hamburg.de, www.giga-hamburg.de/en/team/smidt

The author would like to thank Laura-Sophie Neubauer for her thorough work as a research assistant in gathering detailed evidence on the restrictive practices and policies in Kenya, and on the resistance and adaptation strategies of civil society organisations to them.

Related GIGA Research

Civil society has been facing increasing pressure around the world in recent years. The spaces for citizens and NGOs to assemble and campaign for rights and their interests have been shrinking globally, not only affecting actors in authoritarian regimes but also facilitating the emergence of authoritarian practices in formally democratic contexts. At the GIGA, the Institute of African Affairs studies this trend in African countries. Against this background, the decisive question is: "What shapes and maintains the global increase of civil society restrictions?" In this thematic GIGA Focus edition authors employing different perspectives explore the dynamics of shrinking civic space and shed light on this worrying trend. At the GIGA, research on this phenomenon and related topics is carried out within Research Programme 1 "Accountability and Participation" and within the International Diffusion and Cooperation of Authoritarian Regimes (IDCAR) research network (https://idcar.giga-hamburg.de/).

Related GIGA Publications

Glawion, Tim (2018), *Revolts in Central Africa: Protests, Politics, and Ways Forward*, GIGA Focus Africa, 3, July, www.giga-hamburg.de/en/publication/revolts-in-central-africa-protests-politics-and-ways-forward.

Grauvogel, Julia, and Charlotte Heyl (2017), *Democracy in Africa: Against All Odds*, GIGA Focus Africa, 7, November, www.giga-hamburg.de/en/publication/democracy-in-africa-against-all-odds.

Loch, Jasmin, and Bettina Bunk (2016), *Gender Politics, Authoritarian Regime Resilience, and the Role of Civil Society in Algeria and Mozambique*, GIGA Working Paper, 292, October, www.giga-hamburg.de/de/publication/gender-politics-authoritarian-regime-resilience-and-the-role-of-civil-society-in-algeria-and-mozambique.

Sombatpoonsiri, Janjira (2018), *Manipulating Civic Space: Cyber Trolling in Thailand and the Philippines*, GIGA Focus Asia, 3, June, www.giga-hamburg.de/en/publication/cyber-trolling-in-thailand-and-the-philippines.

Wischermann, Jörg, Bettina Bunk, Patrick Köllner, and Jasmin Lorch (2016), *Do Associations Support Authoritarian Rule? Tentative Answers from Algeria, Mozambique, and Vietnam*, GIGA Working Paper, 295, December, www.giga-hamburg.de/de/publication/do-associations-support-authoritarian-rule-algeria-mozambique-vietnam.

Imprint

The GIGA German Institute of Global and Area Studies – Leibniz-Institut für Globale und Regionale Studien in Hamburg publishes the Focus series on Africa, Asia, Latin America, the Middle East and global issues. The GIGA Focus is edited and published by the GIGA. The views and opinions expressed are solely those of the authors and do not necessarily reflect those of the institute. Authors alone are responsible for the content of their articles. GIGA and the authors cannot be held liable for any errors and omissions, or for any consequences arising from the use of the information provided.

General Editor GIGA Focus Series: Prof. Dr. Sabine Kurtenbach
Editor GIGA Focus Africa: Apl. Prof. Dr. Jann Lay
Editorial Department: James Powell, Petra Brandt

GIGA | Neuer Jungfernstieg 21
20354 Hamburg
www.giga-hamburg.de/giga-focus
giga-focus@giga-hamburg.de

GIGA
German Institute of Global and Area Studies
Leibniz-Institut für Globale und Regionale Studien