

17th EU-NGO HUMAN RIGHTS FORUM

BRUSSELS DECEMBER 3 - 4 2015



**PROMOTING &
PROTECTING CIVIL
SOCIETY SPACE**



HRDN

Human Rights &
Democracy
Network

This report aims to capture the discussions, analysis and recommendations from the 2015 Human Rights Forum on ‘Promoting and Protecting Civil Society Space’, co-organised by the European External Action Service (EEAS) and the Brussels-based Human Rights and Democracy Network (HRDN). The Forum took place at a critical moment: it was clear that civil society and the EU are grappling with a potent and rapidly evolving threat to civic space and that there is a pressing need for decisive and re-calibrated action.

It gives a sense of the diverse discussions and aims to provide a reference point for follow-up in 2016. In attempting to capture the voices of the Forum the report does not necessarily represent the views of all the members of the HRDN or the network as a whole, which gathers over 50 NGOs operating at the EU level in the broader areas of human rights, democracy and peace. The report was drafted by Toby Vogel in collaboration with an HRDN working group.

HRDN’s vision is that human rights and democracy are placed at the heart of the EU’s internal and external policy agenda. This vision should manifest itself in an EU which effectively protects human rights at home and is a force for positive change in the world. In pursuit of this vision, HRDN aims to influence EU and EU Member States’ human rights policies and the programming of their funding instruments to promote democracy, human rights and peace.

A core group of the HRDN Enabling Environment Working Group worked on the Forum, led by Kersty McCourt (Open Society Justice Initiative) together with Sebastian Bloching and Claire Ivers (HRDN Troika members from European Partnership for Democracy and Human Rights Watch), Tinatin Tsertsvadze (International Partnership for Human Rights), Vincent Forest and Miguel Rodriguez Vidosa (Euromed Rights), Lilit Poghosyan (ILGA Europe) and Christine Meissler (Brot für die Welt). With thanks to Jedidah Wakonyo for the photographs.

This report was supported by the Open Society European Policy Institute.

CONTENTS

INTRODUCTION	04
<hr/>	
01 CLOSING SPACE: CAUSES AND DRIVERS	08
COUNTER-REVOLUTION AND CRIMINALISATION OF DISSENT	09
AUTOCRATS WITHOUT BORDERS: THE POWER OF EXAMPLE	11
SOCIETAL PRESSURE, ZERO-SUM POLITICS AND BRUTAL REPRESSION	11
A CHANGING STRATEGIC ENVIRONMENT	13
- The fight against terrorism	
- Mixed messages and coherence	
<hr/>	
02 THE SHIFTING RESPONSE	17
RESPONSES FROM CIVIL SOCIETY	18
INSTITUTIONAL RESPONSES	19
<hr/>	
03 WAYS AHEAD: RECOMMENDATIONS	21
FOR CIVIL SOCIETY	22
FOR THE EUROPEAN UNION	22
<hr/>	
ANNEXES	25
REFERENCES	27

INTRODUCTION

The issue of closing space for civil society is real and burning. Around the world, governments are enacting legal restrictions to choke off independent civil society, adding to blunter forms of intimidation and persecution. In many countries the very survival of organisations and of individual activists is at risk. Activists, advocates, analysts, donors, and policy-makers grapple with a response while autocratic governments are fine-tuning their repressive instruments, often taking their cue from successful autocracies such as Russia or post-Mubarak Egypt.

Those in power fill the civil society space with 'government-organised non-governmental organisations' (GONGOs) and impose restrictive legislation on foreign funding for civil society organisations (CSOs). Activists are attacked and intimidated by people who may, or may not, be linked to the government, but are encouraged by a climate of aggression. At the same time authorities restrict funding, banking, employment, and tax status for CSOs. CIVICUS reported over 100 cases of serious threats to civic freedoms in at least 96 countries around the world (including three inside the EU) in 2014.¹ The International Center for Not-for-Profit Law (ICNL) documented that since 2012, 60 countries have enacted laws restricting the freedoms of association or assembly. Half of these laws concern incorporation, registration or operations of CSOs; one third relate to international funding; and the balance target the freedom of assembly.



**@civicus SG: Good reminder by ex-politician Leissner
@CommunityofDem that Civic Space attacks often by
politicians wanting to cling to power #EUHRForum**

“

The greatest threat to defenders' civic space is when it is extinguished through the defender being killed. It is a way to silence them and the whole of civil society.

Institutional and legal discrimination or harassment is complemented by intimidation or violence from sources acting outside the law, for example physical attacks against the premises of civic groups, which the authorities often fail to investigate properly. In many countries, those who are not with the government – independent journalists, human rights defenders, democracy activists, and advocates for a variety of causes – are under physical threat. The violent deaths of activists remain without consequences for the perpetrators, while other activists risk being thrown in jail on trumped-up charges. Taken together, legal restrictions and extra-legal harassment and violence create a powerfully adverse climate for civil society activists and their organisations. The fight against terrorism has lent authoritarian regimes a pretext for repression and enticed even democratic governments to impose restrictions – very often disproportionate – on CSOs.

Closing space, at the same time, is not only a matter of governments outright suppressing civil society. Some governments appear to believe – mistakenly – that civil society is an accessory to terrorists or insurgents, and seek to clamp down, out of genuine or professed concern for stability and security, on those demanding greater rights and freedoms. Moreover, governments have created



100+

CASES OF SERIOUS THREATS
TO CIVIC FREEDOMS IN
AT LEAST 96 COUNTRIES
AROUND THE WORLD

60

COUNTRIES HAVE ENACTED
LAWS RESTRICTING THE
FREEDOMS OF ASSOCIATION
OR ASSEMBLY SINCE 2012.

narratives according to which human rights and democratic freedoms have to be traded off against security and stability. In some cases, such narratives might be a smokescreen used by authoritarian governments to suppress dissent; in others, they might be a genuine expression of a particular mind-set that views greater openness with suspicion. But either way, the narrative posits a false opposition between security and stability on the one hand and human rights and political freedoms on the other. Yet other narratives employed by authoritarian regimes depict civil society as being complicit in foreign-inspired plots to overthrow the government; non-governmental organisations are essentially ‘foreign agents’ – a pejorative term, most prominently used in the Russian Federation, to make all foreign support to CSOs appear sinister. Numerous countries have followed the Russian example and recently enacted new regulations on ‘foreign agents’ that have all but closed down avenues for outside funding of domestic civil society, in effect depriving it of vital support.

The urgency of the issue was evident at the **17th EU-NGO HUMAN RIGHTS FORUM** held in Brussels on December 3 - 4, 2015. Human rights defenders and democracy activists from some 40 countries provided ample evidence of closing space and of the inadequacy of current policy approaches at national, regional and international level. Donor representatives highlighted best practices in supporting those who are being persecuted, while EU officials outlined the Union’s response to closing space so far.

The Forum and its three Working Groups discussed the closing space in its various facets. Working Group I focused on building an enabling legal environment; Working Group II discussed creating effective strategies and counter-narratives; and Working Group III considered ways to protect public space and foster meaningful participation. A summary of proceedings of the Working Groups and their specific recommendations is annexed to this report.

There was a general sense of anxiety as participants discussed the varieties of closing space they are confronting in their countries and the need to refine available tools. There was also agreement that the current approaches are inadequate and that new responses should be articulated. *“We’re in a crisis yet we – civil society, donors, diplomats – are doing exactly the same things we did 20 years ago,”* Maina Kiai, the United Nations Special Rapporteur on Freedom of Association, told the Forum. *“Yet it’s not business as usual.”* As many participants stressed, the very essence of civil society is being challenged.



**@kerstymccourt: . @MainaKiai_UNSR we are in a crisis
re #civicspace so we need to do things differently -
sharpen our tools & ensure coherence**



The European Union and its member states acknowledge the problem and recognise its seriousness. Yet the policy response from Brussels and the national capitals has been inconsistent. Among the many unresolved questions confronting policy-makers today is how to utilise the experience from protecting individual defenders – a task for which the EU, and other international donors, have a number of tools available – to craft effective policies and strategic choices to protect civic space by and large, in the form of both established organisations and informal civic groups. *“Dealing with human rights defenders has been successful but we need to move from individuals to organisations, to associations,”* Kiai says. *“We need to support organisations at risk, politically and diplomatically.”*

This is not merely a question of more flexibility, although flexibility is important, as recent changes in the EU’s funding rules suggest. Rather, it involves complex choices. Is civic space protected and prioritised alongside energy or trade? Are groups that are forced to focus on organisational survival, and therefore no longer in a position to fulfil their objectives or deliver services, still supported?

This report summarises the main concerns raised by human rights defenders at the Forum and provides anecdotal, ground-level evidence of a worsening situation across the globe. Based on more than a dozen one-on-one interviews and the proceedings of the Forum and its three Working Groups, it offers recommendations to the EU, its member states, and civil society actors on how to address closing space.

The reality of dramatically closing space, with new repressive instruments being used by autocrats and proliferated internationally, requires new or newly calibrated approaches by the EU and its member states and by other donors to protect civil society activists and groups.



01 CLOSING SPACE: CAUSES & DRIVERS

Over the past decade or so, there has been a marked decline in freedoms around the world that has been well documented in the academic and policy literature and covered by the media. Somewhat authoritarian regimes have become far more repressive; democratic regimes have tightened their surveillance of individuals and organisations and their oversight of media in the name of national security and counter-terrorism; and hybrid regimes – those that were neither outright autocratic nor fully democratic – have tilted toward full-blown authoritarianism.



COUNTER-REVOLUTION & CRIMINALISATION OF DISSENT

Many observers attribute this undeniable closing of global space for civil society to the example set by colour revolutions across the Western Balkans and the post-Soviet space in the early 2000s (Ukraine's Orange Revolution of 2004, and Serbia, Georgia, and Kyrgyzstan), the 'Arab Spring' of 2011, and the Maidan events of 2013-14 in Ukraine, and the fear these events instilled in autocrats around the world. Just as civil resistance and political opposition groups had been learning from previous transitions such as the overthrow of Serbia's regime in 2000, autocrats were now learning how to counteract civic action.

In fact, the Orange Revolution and the Arab Spring touched off waves of counter-revolution and repression as the autocrats who had managed to cling to power panicked. Others saw the warning signs and decided to do anything to stay in power, taking a more strategic approach to regime survival. What before was often a knee-jerk reaction by the authorities, such as closing down pro-democracy groups, now became official policy and enshrined in law, with Russia being an international leader and an inspiration to many autocrats.

Criminalising dissent appears like a winning strategy because there is little domestic or international accountability and leaders know they can get away with it. Moreover, targeting activists sends a strong signal to all of civil society and thus has a chilling effect far beyond its immediate targets.

“

RUSSIA: CLOSED SPACE

[Previously,] we knew that all negative trends in Central Asia and Belarus would be implemented in Russia; now we're the leader. Russia sets trends and others follow. Monitoring of the 2011 elections proved that there was massive fraud, and people took to the streets because the powers that be were disregarding the will of the people. Putin became paranoid. There is no right to free assembly, there is no freedom. We've been turned into outcasts in our own country. There are no legal mechanisms in place to protect us.

OLEG ORLOV, MEMORIAL



@FLDBrussels: #EUHRForum EU official “EU not afraid of working with Gongs as we may change them from inside”: dangerous illusion + EU legitimises them

The ‘legalisation’ of repression – the enactment of repressive practices by governments seeking to uphold a façade of legality and rule of law – has taken unprecedented forms: since 2012, some 60 countries have introduced new legal restrictions on NGOs.

- ◆ In Cambodia, a new law requires the mandatory registration of NGOs without providing a definition of what constitutes an NGO, giving the Ministry of Interior broad discretionary powers to deny registration. For grassroots groups, registration is practically impossible. The law also mandates political neutrality for NGOs, again without defining what this means.
- ◆ The NGO law currently being discussed in Israel uses limitations on foreign funding to specifically target those organisations the government wants to silence. Personal attacks on NGO leaders and the time activists spend addressing onerous legal requirements also limit the ability of organisations to effectively carry out their work.
- ◆ A new NGO bill adopted in Uganda in late 2015 makes it potentially difficult for any NGO to operate. A new body will be established to approve organisations and their activities. An NGO is not allowed to expand the scope of its activities without authorisation; disregarding this provision is ground for closure, as are activities that endanger national security.

Another line of attack against civil society is to crowd civil space with organisations that are fronts for governments, so-called ‘government-organised non-governmental organisations’, or GONGOS. Such groups serve as propaganda instruments, suggesting the existence of a healthy civil society when in fact activists face severe restrictions. They absorb funding that could support independent civil society groups, and they pose a security risk, for example when their representatives are present in private or confidential meetings between civil society and foreign diplomats. These dangers did not appear obvious to some EU officials at the Forum, who seemed to believe that funding GONGOS could be used as a mechanism for engagement. This view struck many participants as naïve and dangerous.

“

AZERBAIJAN

It is sad that in Azerbaijan all independent human rights defenders have been destroyed. This is what happened in the past 18 months. Freedom of speech has also declined dramatically, and there is no independent media [left] in Azerbaijan. Many journalists and human rights defenders have been imprisoned, though myself and some of my friends have managed to flee the country. As we are abroad we can do something but after a while we do not receive much more support anymore. If there are organisations left in Azerbaijan that have bank accounts that have not been frozen it is because they are GONGOS. Funding such organisations means funding the regime.

A FORUM PARTICIPANT

AUTOCRATS WITHOUT BORDERS: THE POWER OF EXAMPLE

Repressive governments have been learning from each others' example and found ever new methods to restrict the ability of civic groups to carry out their activities. Russia's legislation in particular has inspired similar moves elsewhere, notably in the former Soviet Union but beyond as well, to criminalise dissent by choking off civic groups' funding from abroad and branding them as 'foreign agents'. *"We used to worry about sinking to the level of Belarus, but now we're North Korea,"* said a participant from Azerbaijan. *"There's a cancer spreading from Russia to Belarus to Azerbaijan."* But it is not only the power of example that has inspired repressive governments as they find new ways to close civil society space and to counter moves toward democratisation: there is open legislative and operational co-operation between Russia and China and countries seeking to emulate them.

- ◆ Kyrgyzstan is harmonising NGO legislation with Russia; a Russia-inspired draft law on 'foreign agents' is currently in parliamentary procedure and passed a first reading in summer 2015. The law would require organisations involved in undefined political activities and receiving foreign funding to register as 'foreign agents' and hand the Ministry of Justice unprecedented oversight powers.

“

WHY IS SPACE CLOSING?

One issue is the donor-recipient relationship. The government is encouraged to pass good laws in order to secure donor funding, so it passes good laws but with no domestic buy in, they are not implemented. Now, China, India, Russia, Brazil are providing money without strings attached. [As a result,] countries that reformed under western pressure are now backsliding.

GILBERT SENDUGWA, AFRICA FREEDOM OF INFORMATION CENTRE, UGANDA

SOCIETAL PRESSURE, ZERO-SUM POLITICS & BRUTAL REPRESSION

Civil society also faces increasing intolerance from other social groups or segments of the population, who may or may not be linked to the authorities, or encouraged by them. Governments sometimes close space as an act of populism, in a bid to boost their appeal with their constituents, for example by singling out LGBTI groups whose activities are viewed with suspicion by social conservative segments of society. *"Since 2012 we've had six physical attacks against our premises;*

until now the only answer we have received from the Public Prosecutor's Office is that 'the investigation is ongoing', and we are 2016 now," says Kocho Andonovski from the LGBTI Support Centre in Macedonia. "We're sure that some conservative structures from the political parties in the government are behind it but we can't prove it. Government hostility is not ideological but populist, to distract from its own failings." Another example is Egypt, where private media have joined state media in denouncing NGOs and civil society as foreign agents and terrorist sympathisers.

Another dimension of societal pressure on civic action is gender, an issue that often gets short shrift in analyses of closing space. In Egypt, women activists were targeted both by the government's repression of peaceful demonstrations and by fellow protesters. They faced impunity as no one has been held accountable for the violence and there was no adequate response from the authorities.

In the case of Bangladesh, where NGOs "are either working with the government or blacklisted", it's "fine to work on non-political issues; social and economic issues are no problem" for NGOs, according to Adilur Rahman Khan from the Odhikar organisation. Those with broader political demands such as freedom of speech and of assembly, meanwhile, are ruthlessly suppressed. In other countries, organisations addressing local issues are tolerated as long as they remain non-political. Such sectoral or local activity may prove effective in addressing specific issues; but it does by itself advance democracy and human rights overall. This is the reason why some autocratic regimes tolerate it.



MOROCCO: CLOSING SPACE

Since 2014, the situation has changed a great deal. Any civic action that isn't purely local will be banned.
The interior ministry even banned a conference co-organised by the justice ministry.
The EU should really bring this up in its dealings with the government.

A FORUM PARTICIPANT

However, in many other cases, the government views any and all independent action or criticism as a potential threat; those in power believe that civil society by necessity challenges established power structures, and since they view politics and political contestation as a zero-sum game, they rush to shut it down. Demands for more transparency, improved rule of law, or rights for oppressed minorities appear threatening to such regimes, and they will do whatever it takes to close down avenues for dissent. "There is much greater awareness among the people and greater frustration," said one participant. "So the people vent their anger, which in turn provokes a clampdown. More challenging of regimes means more clampdown."



@HRDN_EU: By November this year 130+ #humanrights defenders were killed in the world. Each murder extinguishes civil society space #EUHRForum



At the same time, the Arab Spring also suggested that closing space for legitimate debate drives people to take other – violent – forms of action. Libya and Syria are the most extreme examples where peaceful protests were brutally repressed and repression subsequently provoked armed resistance that resulted in regime change (Libya) or protracted civil war (Syria). A slow-motion descent into large-scale violence currently appears to be underway in Burundi, where scores of people – including many associated with CSOs – have been killed in clashes with the government since the autumn of 2015. Human rights defenders have been killed or forced into exile while new laws forced a vast majority of NGOs to close or go abroad. There is no longer a functioning independent media in the country.

Rather than allowing space for legitimate debate, governments from Algeria to Bahrain have taken the example of Syria and Libya as proof that all dissent must be suppressed ruthlessly, and have subsequently stepped up their repression.

A CHANGING STRATEGIC ENVIRONMENT

The EU's changing strategic environment and events in its immediate neighbourhood have made the protection of human rights, and addressing the issue of closing space, more challenging for the Union but also less of a priority, although this shift has not been fully articulated. Unprecedented refugee movements, notably from Syria, have put migration and security at the top of the Union's external and internal agenda, leading, among other things, to a reinforced alliance with Turkey that is supposed to help stem the migration flow. In other places, illusory promises of stability or measures aimed at countering terrorism are influencing the EU's strategic choices. The challenge for the member states is to respond and protect the human rights of citizens rather than the privileges of the autocrats with whom they have been doing business and whom they see as guarantors of stability. A narrow set of business interests must not be allowed to shape the EU's relations with foreign governments.

Numerous participants at the Forum stressed the short-sightedness of this policy; authoritarian regimes, they said, only provide a semblance of stability as dissent will inevitably grow when suppressed, and eventually burst into the open. A rights-based approach can provide the proper underpinning for security and stability. As Federica Mogherini, the EU's High Representative for Foreign Affairs and Defence Policy, put it in her address to the Forum, *"security is best guaranteed by democracy, human rights, and open spaces"*.

In practice, however, internationally agreed human rights standards are being relegated to a secondary concern. The recently renewed Eastern Neighbourhood Policy, for example, states that the EU will 'refocus relations with partners...on our genuinely shared common interests, in particular economic development, with a major focus on youth employment and skills'.

“

TURKEY: CLOSING SPACE

The EU hasn't acted properly on Turkey. The EU de facto supported [President] Erdogan. The signal was, we don't care about human rights in Turkey. The EU decided not to look at what's going on. Then, the European Commission delayed publication of the annual progress report until after the November elections [in Turkey], and that was a signal of support to Erdogan as well. The EU is motivated by fear of what's going on in Turkey, the refugee issue and ISIS next door. Outsourcing the refugee issue to Turkey is the easy way out for the EU, and that's what it's done.

NIL MUTLUER, HELSINKI CITIZENS ASSEMBLY, ISTANBUL

It is a perilous strategy to disregard the value of a rules-based system with basic safeguards and an element of trust between government and citizens. Accountable, rule-based government is important in itself, but also in terms of genuine stability and security, by serving the interests of the citizens and not only of an elite few. Attacks on civic space are often mounted by politicians wanting to cling to power. We need to safeguard a rights-based, rules-based system. *“The same countries that conquered democracy 25 years ago cannot afford to lose these gains,”* Maria Leissner, the Secretary General of the Community of Democracies, told the Forum.

These comments were timely as the EU is embarking on a review of its Global Strategy on Foreign and Security Policy which is expected to flesh out the EU's positioning on the protection and promotion of human rights in its external action as it relates to stability, democracy and prosperity (the other pillars of the strategy).

The fight against terrorism

Terrorism, including recent attacks inside the Union, has made security of paramount importance for the EU and the member states. Increasingly, security and stability are seen as a top priority in its neighbourhood and beyond, leaving interrelated issues unaddressed.

This strategic imperative affects the one success story to emerge from the Arab Spring. Tunisia enacted a new law on counter-terrorism to replace older provisions that had been used to imprison thousands on charges of supporting terrorism. However, the new law, while improving on the

@jpmarthoz: #EUHRForum @FedericaMog
strongly states freedom of expression
best instrument against radicalization



previous one, does not include a clear definition of terrorism and so allows the judiciary to close down organisations on vague or spurious grounds.

The counter-terrorism narrative is being used by governments in Bangladesh, Guatemala, Venezuela, and Uganda to clamp down on dissent. A draft law being debated in Brazil, for example, would shift the power to decide who is a terrorist from judges to the police. In Bahrain, the government has given itself the power to revoke the citizenship of anyone whom the government considers a threat to national security.



EGYPT: CLOSING SPACE

Egypt has been very good at blackmailing the international community with the threat of terrorism. The international community is making things worse because shrinking space for civil society leaves only closed, underground spaces and inadvertently gives more ground for support to terrorism.

A FORUM PARTICIPANT

The international framework on counter-terrorism puts pressure on governments and encourages over-regulation with minimal understanding of what practices are actually effective.

- ◆ Various governments are using the terrorist threat as a pretext to blacklist critical civil society groups. As part of the UN's counter-terrorism framework (Resolution 1373), civil servants from various democratic countries are training government officials around the globe in implementing Resolution 1373, in effect assisting political repression.
- ◆ The Financial Action Task Force (FATF) is the international standard-setter for combating money laundering and terrorist financing. The FATF standards are being implemented in over 180 countries, and the EU as a regional bloc is a core member. FATF regularly evaluates how countries are implementing its recommendations, including whether domestic regulation of non-profits is adequate. The evaluation ranking does not take into account whether governments overregulate, in effect perpetuating and incentivizing bad practice.
- ◆ Recommendation 8 of the FATF addresses CSOs, stating that 'Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused.' The particular vulnerabilities are not articulated yet the implications of recommendation 8 for civil society have been significant.

Mixed messages and coherence

Among the main concerns from human rights defenders and democracy activists at the Forum were the mixed messages coming from the EU. Different parts of the Union have prioritised different policy areas, and there are considerable ground-level differences of approach between the EU and its member states to questions of human rights and democracy. This problem has various facets.

At the ground level, the EU's human rights policy tends to get delegated to the human rights focal points in the EU delegations. Some highlight the useful role – formal or informal – that the EU delegation has been playing in their country, but many raised concerns that the approach of delegations was overly dependent on individuals. This leads to a lack of coherence in the EU's approach to different countries and a lack of leadership at a senior level. Many voiced scepticism about the motives in engaging in private, rather than public, diplomacy when addressing human rights issues, and notably the detention of civic activists. The consensus was that, following advice from family and civil society, arrests and disappearances should be publicly condemned and monitored. Memorial's Orlov said: *"We need the right balance between pressure and dialogue, but dialogue should always be critical. We need public statements; discreet [diplomacy] doesn't help. The Russian government doesn't listen to anything said behind closed doors."*

Even within countries, however, coherence or consistency are often a challenge. There are countries where an informal, unacknowledged and in many cases unintended division of labour emerges between the EU delegation and its focus on areas such as human rights and democracy, and member states' embassies, whose diplomacy is frequently focused on commercial issues or development aid. As one interviewee put it: *"Ethiopia is one of the most authoritarian states in the world and among the biggest recipients of foreign aid. What kind of signal does that send?"*

Another source of incoherence are the trade or business interests of the EU and its member states. Where there are serious human rights concerns, conclusion of a trade agreement can be interpreted as condoning ongoing violations: a statement from the EU's delegation about an imprisoned human rights defender is likely to carry less weight if an investment contract or trade deal is being negotiated at the same time. EU trade agreements do contain human rights clauses, but they are rarely utilised.

Coherence and consistency suffer not only in implementation but also on the level of policy-making. The EU's particular understanding of the strategic imperatives of security and stability routinely impel it to support authoritarian regimes that present their clamp-down on civil society as a matter of counter-terrorism and national security. This is evident in the EU's position on human rights abuses by close allies such as Egypt, Saudi Arabia, or Bahrain. The lack of coherence makes accusations of double standards more credible, and opens up the EU's criticism of other countries to suspicions of bias. Moreover, stability, prosperity, democracy and human rights go hand in hand: the weakening of one pillar will in the end undermine the others as well.

02 THE SHIFTING RESPONSE

The EU and other institutional actors are acutely aware of the problem of closing space for civil society and of the backsliding that has occurred around the globe on democracy and human rights. In response, they have in recent years launched a number of initiatives, including changes to some of the EU's funding mechanisms. Civic actors at risk have also, as a matter of urgency, adapted their activities and approaches in a bid to continue working.

What these approaches have in common is their reactive nature. Donors, policymakers and CSOs are seeking ways to deal with the latest manifestations of a sustained onslaught from repressive regimes, with civic actors at risk having to firefight on many fronts simultaneously merely in order to survive.

This section highlights some recent examples as a reflection of these responses; it is by no means exhaustive. What emerges from these examples is that while there are many good efforts, they are fragmented; strategic thinking should focus on strategies both for the short and the longer term.



RESPONSES FROM CIVIL SOCIETY

Closing space has prompted a variety of responses from CSOs. They are taking more proactive measures, in part reflecting ongoing work, in part developing and testing new approaches and renewing efforts to deal with the restrictions under which they operate.

Many of the attacks stigmatise individuals and the sector as a whole – sowing doubt in people's minds about CSOs and individual human rights defenders. Activists have responded with renewed efforts to **build cross-sector alliances** and to **develop counternarratives** to the pervasive defamation coming from governments and the media.

Organisations have also sought to expand and coordinate documentation, reporting and advocacy, and have increased efforts to share tools and methodologies. One example is a database developed by UDEFEGUA in Guatemala to systematically record attacks and killings using a standardised typology. Civic Pulse is a new tool being developed by Civicus as a barometer, designed to track and enhance understanding of the key trends in civil society. Organisations are also developing methodologies to monitor and report on rights compliance of security services during protests such as the rapid work done by the International Partnership for Human Rights following the 'Electric Yerevan' protests.

Another approach is to strengthen **protection mechanisms**. This includes investing in personal and institutional risk assessment, security management and enhanced protection (e.g., via security protocols, behaviours and tools, provision of training, resources), and in the framework of integrated security, ensuring it includes families and attends to health care and well-being.

Working to ensure an effective and **enabling legal environment** has been another line of work. CSOs have been tracking and exchanging draft NGO legislation from various countries. The International Center for Not-for-Profit Law (ICNL) documents information from around the globe and has examples of best practice. A number of organisations, for example in Russia and Kenya, have litigated cases before national courts. Within the African Regional Human Rights System organisations are looking at the penal codes and working to declassify and decriminalize outdated and petty offences that are often used to target human rights defenders.²

In response to counter-terrorism provisions and the work of the Financial Action Taskforce, organisations have come together to form a global civil society coalition (FATFPlatform.org) to provide information and advocate changes to the FATF recommendations. National campaigns have also been launched. In Tunisia, for example, organisations combined a legal approach with a public awareness campaign.



@Gilbert Sendugwa: @MainaKiai_UNSR If #CSOs are oxygen of democracy, human rights must be elevated to the same level as trade, investments & security #EUHRForum



INSTITUTIONAL RESPONSES AND POLICY COMMITMENTS

Responses from policy-makers, notably the EU, place a significant focus on making funding more flexible (see below) – a critical element of any comprehensive response to closing space but insufficient as a primary response. More flexible funding is in many cases a precondition for CSOs and individual activists to continue their work, but it alone cannot address the deteriorating conditions in which organisations are forced to operate.

Strengthening and defining the **international legal framework** has been an important focus of the first UN Special Rapporteur on Freedom of Peaceful Assembly and Association. Reports to the Human Rights Council and General Assembly have been important in articulating these rights, and how they function in practice. The Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, is also developing practical recommendations for the proper management of assemblies. Similar efforts are also underway in the African and Inter-American Regional Human Rights Systems.

Professional bodies are also working to develop codes of conduct. For example, the East African Community Police Chiefs Cooperation Organisation (EAPCCO) has been working with the Africa Policing Civilian Oversight Forum (APCOF), a regional CSO, to develop a standard rights-based approach to public order policing and a training manual for public order management.

A modest but significant counter-effort is also underway in a number of countries to enact **national laws on the protection of human rights defenders**. Mexico, Honduras and Côte d'Ivoire have adopted laws in the last three years, and in Burkina Faso a bill is in parliamentary procedure. While all of these laws could be better implemented, and the protection mechanisms they establish better resourced, it is encouraging that states develop and enact such laws.

Building trusted and effective fora for **dialogue between civil society and government** has been an important approach including looking at ways to engage social movements and not only traditional CSOs. In Tunisia the EU piloted a new approach and facilitated a tripartite dialogue between CSOs, the government and the EU that allowed groups to discuss the Association Agreement and its implementation.



In December 2015, the EU launched a Human Rights Defenders Mechanism. With a budget of €15 million through 2018 and managed by a consortium of 12 NGOs, the mechanism provides defenders at risk with support in the short term (for example legal and medical support, trial monitoring, relocation), in the medium term (early warning, security training, advocacy), and in the long term (support to national networks, advocacy, lobbying, and drafting of strategies to counter restrictions).

NEW FUNDING MODALITIES

In general terms, the EU has become more flexible as a donor, taking into account the special circumstances of individuals or organisations in conditions of acute danger. A variety of funding instruments have modified their practices to respond to emergencies.

- ◆ The European Instrument for Democracy and Human Rights (EIDHR) provides up to 10,000 Euros to individual human rights defenders and organisations that are in urgent need of support.
- ◆ The European Commission's Civil Society Facility for the neighbourhood has put in place more flexible requirements, for example making it possible to support endangered organisations through sub-contracting arrangements.
- ◆ The European Endowment for Democracy (EED), which focuses on the EU's neighbourhood, provides fast and flexible emergency funding primarily for individuals or groups that are not eligible for other EU funding.
- ◆ The Dutch government has launched a new facility for funding directed towards human rights advocacy and specifically sought to drop time-intensive tools such as log-frames in order to enable smaller grass-roots organisations to apply. The Swedish government is also in the process of a year-long stakeholder consultation to update
- ◆ A number of private foundations the Open Society Foundations and Sigrid Rausing with the support of Ariadne, European Foundation Centre and International Human Rights Funders Group have set up the Funders Initiative for Civil Society to address collectively challenges of the closing space. Foundations are also seeking ways to ensure flexible funding arrangements, for example funding through trusted intermediaries and supporting organisations that need to change their organisational set-up.

Which funding instruments could support un-registered organisations and organisations in exile, including in the EU, remained a question in need of further clarification.

03 WAYS AHEAD: RECOMMENDATIONS

Despite an improving international response to the challenge of closing space for civil society, a number of issues require a more political, strategic or otherwise improved approach. Essential conditions for individuals and organisations to engage in civic life are being eroded, and the backsliding that is evident across the globe requires an in-depth understanding of the drivers and levers for change. As one participant highlighted, “if you can’t resist then don’t assist and perpetuate the repression”. Maina Kiai, the UN Special Rapporteur on Freedom of Association, called on participants to sharpen their tools and do things differently.

Detailed input from the Forum’s three Working Groups on building an enabling legal environment, creating effective strategies and counter-narratives, and protecting public space and fostering meaningful participation suggested several broad areas where the response to closing space could be strengthened. The discussions also pointed to the need to ensure a multifaceted response, for example, tackling threats both against individuals and against the broader space for peaceful protest and public dialogue. Several participants also stressed that it feels like activists, donors, and policy-makers are playing catch-up and do not have a longer-term vision.



ACTION FOR CIVIL SOCIETY

Participants flagged a number of areas where civil society could further innovate, explore new approaches and give greater strength to various efforts. Many stressed the need for a more vocal and impassioned response. Others highlighted that, whilst efforts are frequently dissipated, due to the need for constant firefighting, a forward-looking approach is also needed. Some key areas for follow-up include:

- ◆ **develop and/or strengthen strategic coalitions** both geographically and thematically, across sectors, and with different types of organisations;
- ◆ **monitor developments** and create/expand information platforms to share information, including on legislative developments, jurisprudence, advocacy and litigation strategies;
- ◆ **develop and publicise** a narrative owned and driven by civil society;
- ◆ **deepen research and analysis**, including on the business case for an enabling environment and on the implementation of trade and investment agreements;
- ◆ **strengthen** country-specific legal and political analysis and, where necessary and feasible, litigate cases to challenge restrictions; and
- ◆ **work with specific sectors of government** where there might be openings, for example, with police associations on standards for peaceful protest or with the judiciary on developments in jurisprudence.

ACTION FOR THE EUROPEAN UNION

Recommendations naturally focused on the role of the EU as a leading voice on human rights and democratic freedoms, seeking to build on EU policy commitments and actions under the 2015-2019 Action Plan on Human Rights and Democracy. They can be clustered in a number of key areas:

STRONG AND GLOBAL LEADERSHIP FROM THE EU

There should be a clear message of support to civil society and the individuals that defend human rights. Public messages from the EU send an important signal of solidarity and inform and influence other actors in a way that can be complemented – but not achieved – through discreet diplomacy. Open messages also ensure transparency and accountability.

- ◆ **EU statements must be precise and specific** in their demands, for example demanding the immediate release of a detained human rights defender rather than simply calling for due process;
- ◆ **use smart diplomacy** based on a case-by-case assessment and on advice and information from civil society;

@MemoryBandera: One of the recommendations from WG2 – EU needs to be more consistent and coherent in its response #EUHRForum



- ◆ **consistently speak up** on killings, imprisonments and other egregious violations and call for accountability in order to end a culture of impunity;
- ◆ **ensure that Heads of Delegations take a leadership role** on the issue by including it in job descriptions and encouraging formal reporting.

LEADERSHIP IN INTERNATIONAL FORA

The EU has a key role to play both through leadership in international fora such as the UN and in regional bodies, and through actions in individual member states.

- ◆ **Take the lead** to review and amend legislation in the member states in accordance with HRC Council Resolution 22/6, which was co-sponsored by the EU. The resolution requires states to review and amend legislation that negatively affects the work of civil society and human rights defenders;
- ◆ **submit and support strong and substantive proposals** at upcoming Human Rights Councils.

COHERENCE AND CONSISTENCY

There were repeated calls at the Forum to ensure that policies and actions on trade, migration, and security do not compromise the work of civil society, for example, through blanket counter-terrorism provisions or the sale of invasive surveillance equipment. Equally, member states should ensure that their own laws do not restrict civil society space.

- ◆ **Human rights and civic space should be a core principle** of the new Global Strategy on Foreign and Security Policy that will be adopted later in 2016. The High Representative's statement that "security is best guaranteed by democracy, human rights, and open spaces" should underpin the development and implementation of the new strategy;
- ◆ **democratic freedoms and the space for civil society should be integrated** as a core component of all EU policies and be regarded as essential for their success;
- ◆ **counter-terrorism policies should not result in measures that limit space for civil society.** In particular at the international level Recommendation 8 of the Financial Action Taskforce should be amended to ensure a proportional and targeted approach if organisations are identified as vulnerable – rather than the current blanket approach.

PARTNERSHIP AND DIALOGUE

As called for by the High Representative during the Forum, "the EU should be a frank, serious and reliable partner for civil society". This partnership is undermined if easily by-passed in favour of other strategic priorities.

- ◆ **CSOs should be consulted early** in the development of EU policies and a monitoring function should be envisioned to ensure effective oversight;
- ◆ **promote tripartite dialogues between government, EU and CSOs**, including on difficult issues such as security and migration.

EXPERTISE AND ANALYSIS

The approaches and tactics being utilised to restrict civic space are continuously evolving and strong analysis, in close partnership with civil society, is required to assess the most strategic entry points and ensure a forward-looking approach. Many participants questioned assistance that inadvertently perpetuates the closure of space, and there was an intense discussion on support to 'GONGOs', centred around security concerns and the erosion of remaining space.

- ◆ **Undertake a review of engagement with 'GONGOs'**, taking into consideration that the current approach in effect gives 'GONGOs' legitimacy;
- ◆ **develop in-house expertise** on the enabling environment for civil society and tools and benchmarks to monitor changes. Include reviews of instances where EU laws and policies restrict civic space.

FOLLOW-UP

Participants and their organisations called for the Forum not to be an isolated event and encouraged specific follow-up and ongoing dialogue. This could include:

- ◆ **Dedicated follow-up** with HRDN including on specific thematic and geographic issues and commitment to develop, in consultation with civil society, a number of actions that lead to a refined approach;
- ◆ **follow-up meetings** in country with heads of delegations, and request the EU High Representative to issue instructions to HoDs to:
 - i. identify and respond to legislation that hinders the work of civil society, ii. meet with and take action on human rights defenders in detention and at risk, and iii. in collaboration with civil society, identify the most strategic country-specific actions;
- ◆ **organise an annual public Foreign Affairs Council (FAC) on human rights and civic space;**
- ◆ **use upcoming international and regional meetings** to reinforce and build on these outcomes and recommendations.

OPERATIONAL RECOMMENDATIONS

Analyse and review funding arrangements; approach to 'GONGOs'; support to organisations in exile and unregistered organisations. Many stressed that approaches to support individuals at risk need to be elaborated and modified to more effectively also include organisations at risk.

- ◆ **Establish priorities** for financial assistance to support varied actors of social change, with a long-term focus, prioritising strategic partnerships and increasing the duration of supported projects beyond a 2-3 year cycle;
- ◆ **develop mechanisms** to support organisations in difficult and evolving circumstances. Organisations may need to establish themselves in multiple locations, in exile, or as a different legal entity;
- ◆ **analyse funding modalities and emergency support** to assess whether they are sufficiently flexible and tailored to the emerging needs. For example, are there sufficient possibilities to provide emergency relocation at a regional level and do protection mechanisms address actual needs;
- ◆ **develop better early warning systems and ways to share information.**

ANNEX I

BUILDING AN ENABLING LEGAL ENVIRONMENT WORKING GROUP I

THE KEY ISSUES

The law is being used to restrict and criminalise civil society through legislation on registration, foreign funding, and counter-terrorism and through the targeted use of national criminal codes and administrative measures:

- ◆ Since 2012 more than 120 specific laws constraining the freedoms of association or assembly have been proposed or enacted in 60 countries.³ Approximately 50% constrain the incorporation, registration or operation (CSOs); approximately 33% constrain international funding of CSOs; and the remainder restrict the freedom of assembly;⁴
- ◆ over 90% of countries have enacted targeted counter-terrorism legislation that often result in limitations to the work of civil society organisations. Particularly problematic are provisions under the Financial Action Task Force (FATF) that state that non-profit organisations are particularly vulnerable for terrorist financing abuse;
- ◆ broad offences such as ‘public disturbance’ are used arbitrarily against human rights defenders, offences such as blasphemy and slander are used to criminalise advocacy efforts and a range of administrative regulations, often tax laws, are regularly used against human rights defenders;
- ◆ laws targeting functioning of NGOs frequently include very general provisions, onerous administrative requirements and discretionary approval processes making it impossible for organisations to comply and difficult to challenge.

CURRENT AND FUTURE STRATEGIES

Organisations are employing varying and multiple strategies which should be refined and supported by the EU and other international and regional organisations. It should be recognised that whilst legal tools are being utilised to limit the space for civil society the impetus is political, and therefore legal strategies need to be combined with political approaches – and a strong analysis of the operating environment:

- ◆ Strengthen existing knowledge and analysis of laws and policies including: legislative and drafting options, litigation strategies and emerging case law. Bring and support test cases, support knowledge sharing platforms and ensure regular monitoring;
- ◆ promote sectoral equity so that civil society and businesses operate within equivalent environments;
- ◆ review and where needed declassify and decriminalise vague and petty offences that are used to target civil society and individual human rights defenders;
- ◆ strengthen the efforts of NGOs and the Civil Society Platform on FATF to challenge the negative impacts of the Financial Action Task Force and specific counter-terrorism legislation;
- ◆ continue to support and strengthen rule of law support and justice sector reform so that there is a legal environment that can be utilised to challenge restrictions to civil space;
- ◆ develop and make the business case for an enabling legal environment for civil society;
- ◆ all states, including EU member states, should review and amend legislation that negatively affects human rights defenders as called for in Human Rights Council Resolution 22/6, co-sponsored by the EU;
- ◆ support the development of a modest counter-trend to adopt national legislation to explicitly recognise and protect human rights defenders, thus incorporating the UN Declaration on Human Rights Defenders into national legislation.

ANNEX II

CREATING EFFECTIVE STRATEGIES AND COUNTER-NARRATIVES WORKING GROUP II

THE KEY ISSUES

Civil society space is shrinking not only because of legal restrictions but also because of killings and physical attacks, intimidation, creation of GONGOs, politicisation, smear campaigns, and the branding of NGOs as 'foreign agents' or 'spies'. Once the legal and moral case for attacking civil society has been made, violence and impunity are more likely. In such contexts, CSOs battle on many fronts; merely surviving becomes a huge achievement. A number of key areas were explored:

- ◆ **INTIMIDATION THROUGH ATTACKS & KILLINGS**
- ◆ **STIGMATISATION BECOMING THE PRE-DOMINANT TOOL OF CHOICE**
- ◆ **TECHNOLOGY AS A TOOL OF REPRESSION**
- ◆ **NEXUS OF NON-LEGAL AND LEGAL MEASURES**

CURRENT AND FUTURE STRATEGIES

In response, CSOs are utilizing multiple strategies to strengthen protection, build alliances, ensure effective documentation, and reporting; mobilise international support and seek new funding sources. Participants recommended to:

- ◆ Build solidarity, early warning systems and strengthen alliance-building with different CSOs and social groups across sectors, geographies and types of organisations;
- ◆ mobilise locally: motivate volunteers, reach out to the community and build strong support bases combined with new communication strategies and ways to frame messages and counter-narratives;
- ◆ provide feedback to international and regional organisations as to whether protection mechanisms and tools are sufficiently tailored to changing realities and identify suitable opportunities for regional relocation.

SPECIFIC SUGGESTIONS TO THE EU INCLUDED:

- ◆ Be more consistent and coherent in addressing the issues in all countries and mainstreaming human rights into other policies (e.g., trade);
- ◆ use smart diplomacy (private or public) in consultation with civil society. EU should always speak out to condemn killings, imprisonments and other egregious violations; but when, based on a case-by-case assessment, it opts to speak with a government behind closed doors, civil society should be consulted on the strategies and impact;

Various concerns were raised concerning the administration of funding. These included bureaucracy, lack of flexibility, and a fetish for logframes, which exclude grassroots groups.

RECOMMENDATIONS TO DONORS INCLUDED:

- ◆ Fund in closed spaces, think long-term, be prepared to take risks and fail;
- ◆ provide core funding, avoid basket funding, and where necessary focus on CSO survival;
- ◆ before exit, think about sustainability (e.g., invest in endowments and networks);
- ◆ think about security: use encrypted email, and support organisations to use new but effective tools;
- ◆ use theory of change and track record instead of project proposals and logframes.

ANNEX III

PROTECTING PUBLIC SPACE AND FOSTERING MEANINGFUL PARTICIPATION WORKING GROUP III

THE KEY ISSUES

There is a global tendency for governments to present freedom of assembly as a privilege, when in fact it is a fundamental right. There are countries where there is no civil society space whatsoever, and countries where freedom of assembly is enshrined in the legislation but not respected in practice. Protesters calling for social/political change face various obstacles, such as administrative inaction or police repression. However, some countries in transition offer cause for optimism: CSOs can play a role as key interlocutor (facilitating dialogue) either on an ad hoc basis or through the development of institutionalised dialogue between the police, the authorities and civil society actors.

CURRENT AND FUTURE STRATEGIES

It's important to preserve the multiple functions that CSOs play in societies: as watchdogs in political and legislative life; as service providers; and as community organisers. While governments often favour the service provision role, the watchdog role of NGO is essential to preserve civic and democratic space. Participants encouraged:

- ◆ Use of social media, technology and freedom of information requests to gather information, organise, and monitor protests and mitigate risks of reprisals. Collaborate across sectors to document and report on rights violations during protests. The recent work of the International Partnership for Human Rights to document protests in Yerevan in 2015 was highlighted;
- ◆ work with national and regional police bodies to develop codes of conduct that are based on international standards and ensure a rights based approach to policing of protests. For example, the work of the African Policing Civilian Oversight Forum with police organisations in East Africa. Include a gender perspective, as women face additional threats during demonstrations in many countries.

The EU has taken different approaches in different situations; in some countries (Tunisia) it is part of tripartite dialogues with government and civil society, while in others (Ukraine) it engages with civil society but without a tripartite dialogue. Overall its financial support should be more flexible; it should promote structural reforms that might bring about long-term changes. It should also take initiatives gathering governments and CSOs, and make commitments, e.g. developing guidelines in parity with civil society, or a permanent dialogue mechanism at national level.

In interaction with governments in partner countries, the EU should insist on accountability in cases of violations of the right to peaceful assembly.

In launching and consolidating dialogue, the EU should engage with dissenting NGOs and limit funding and engaging with GONGOs to the minimum. At the same time the EU should use its best practices to formalise consultations with civil society worldwide and where possible, promote tripartite dialogues between government, EU, and CSOs, including European-based CSOs on the trickiest issues, e.g., migration; and support participative, two-way dialogues, rather than info-sharing consultations.

REFERENCES

- ¹ Civicus Year in Review 2015 and Civicus State of Civil Society Report 2014.
- ² This initiative is being led by the APCOF, the Pan-African Lawyers Union, CSPRI and the Southern Africa Litigation Centre.
- ³ "Authoritarianism Goes Global (II): Civil Society Under Assault", Douglas Rutzen, 2015 in Journal of Democracy.
- ⁴ "Aid Barriers and the Rise of Philanthropic Protectionism" Douglas Rutzen, in International Journal of Non-Profit Law, vol. 17, issue 1 (March 2015).



17th EU-NGO HUMAN RIGHTS FORUM