



ANNUAL CIVIC SPACE PROTECTION SUMMIT

Concept Note

Theme:

Taking Stock of Civic Space Achievements and Challenges
Thirteen Years After Promulgation of the Constitution

Dates:

1st and 2nd November 2023

**Venue: Grand Royal Swiss Hotel,
KISUMU COUNTY**

In Partnership with



Introduction

The Third Civic Space protection Summit under the auspices of Civic Freedoms Forum (CFF) will take place on **1st and 2nd in Kisumu County**. The Summit's theme, ***“Taking Stock of Civic Space Achievements and Challenges Thirteen Years After Promulgation of the Constitution”***, is deliberate to provide an opportunity for civil society actors carefully assess the milestones realized on human rights since 2010. This forum will also reflect on the resolutions of 1st and 2nd summits with the aim of assessing the status of implementation. The main sub-themes of the Summit will cover the following broad areas: ***Public order management; Freedom of Association; Digital and Privacy Rights; and Freedom of Expression and the media.***

Rationale

Kenya's civic space is currently categorized as “Obstructed and Partly Free” based on the analysis from the 2023 reports by CIVICUS¹, Freedom House² and the Civic Freedoms Forum Monitor. While CIVICUS declares Kenya Obstructed, Freedom House declares it is Partly Free. This means that the country's civic and democratic spaces are heavily contested by the state, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights. Although civil society organizations exist, state authorities undermine them, including using illegal surveillance, bureaucratic harassment and demeaning public statements. The main threats to Kenya's civic space include legislative and administrative actions on freedom of association, freedom of peaceful assembly, Freedom of expression and digital rights, right to privacy, and free media as described hereunder. Kenyans exercising their freedom to associate have had their fair share of frustrations and threats. Over the past few years, CSOs have suffered threats of deregistration, freezing of bank accounts, deportation of foreign staff, and criminal charges on fraud, money laundering and supporting of terrorist activities in the country.

In 2022, the NGOs Coordination Board reported that over 2,000 had been deregistered for various reasons while over 7,000 risked being deregistered if they would not comply with the law within 90 days. Such directions are in contravention of Article 47 of the Constitution of Kenya that provides for fair administrative action and contravenes the fundamental right to freedom of association protected by Article 36 of the Constitution of Kenya as well as under international treaties to which Kenya is a State Party. While the Supreme Court of Kenya in February 2023, declared discrimination against the LGBTQ community unconstitutional and affirmed their right to association after a 10-year legal battle, many politicians and religious leaders condemned the ruling and promised to push for tougher legislative actions. Member

¹ <https://civicus.org/index.php/what-we-do/innovate/civicus-monitor>

² <https://freedomhouse.org/country/kenya/freedom-world/2023>

of Parliament George Peter Kaluma made true the threat by introducing the Family Protection Bill of 2023 which would jail for life people convicted of homosexuality or the promotion of it. This is not only unconstitutional but also contrary to Resolution 275 of the African Commission on Human and Peoples' Rights passed in 2014 that urges all member states to create favorable conditions for human rights defenders working on LGBT issues and to help prevent the high levels of violence and discrimination such groups experience.

On the other hand, community groups continue to face several challenges related to regulation – most of the groups at community level face threats of deregistration, cancellation of certificate, hike in renewal fees, irregular fines/fees and claims of fraudulent registration by the county social development offices. The Parliament passed the Community Groups Registration Bill, which was assented to by the former President, on July 12, 2022. The law now requires all community groups (including social justice centers) to comply by July 26, 2023, or stand the chance of losing their registrations or hefty fines or jail terms. While this law is the first of its kind in Kenya and will strengthen community groups, the transition period was too short particularly in a situation when the state did not have resources to fast-track its implementation, awareness among registered community groups, awareness and sensitization of the state officers who are expected to enforce the same. As of July, 2023 only 84 out of 500 state officers and a handful of community groups had been sensitized on the law, and a raft of draft regulations and guidelines formulated.

While the Constitution and other laws allow citizens to organize and assemble peacefully, they continue to be vulnerable to frequent use of excessive force by law enforcement agencies, including live bullets, tear gas, water cannons, baton charges and stones. In most instances, the Inspector general of Police and the Cabinet Secretary in charge of internal security have termed protests illegal and denied protestors permission to proceed with peaceful demonstrations. These actions by the Inspector General of Police and the Cabinet Secretary are illegal and unconstitutional as they contravene the Public Order Act, Police Standing Orders as well as Article 37 of the Constitution. In July 2023, Civil Society Organizations (CSOs) reported 27 extrajudicial, summary, and arbitrary executions (EJE) – Fatal police shootings. While President Ruto had promised to end the era of police killer squads, the recent unfolding scenarios reveal that the security agencies have clear intentions to execute protestors. In fact, it has been reported that some of these officers' masquerade as journalists to arrest and execute protestors. The use of non-uniformed officers using unmarked vehicles who bundle protestors into car trunks and speed off to unknown locations is also on the rise. These actions contravene the Criminal Procedures Code and Police Standing Orders. Further, 46 human right defenders and over 300 members of the public were arrested in several parts of the country while others such as Boniface Ogutu were forcefully disappeared after a dramatic abduction by un-uniformed police officers in July. All

the above actions do not only contravene the Constitution, but also regional and international human rights instruments ratified by Kenya, including, Article 11 of the African Charter on Human and Peoples Rights (Banjul Charter), Article 21 of the International Covenant on Civil and Political Rights, African Commission Guidelines on the Freedom of Association and Assembly in Africa, and the UN Human Rights Committee's General Comment No.37 on the right to peaceful assembly (article 21).

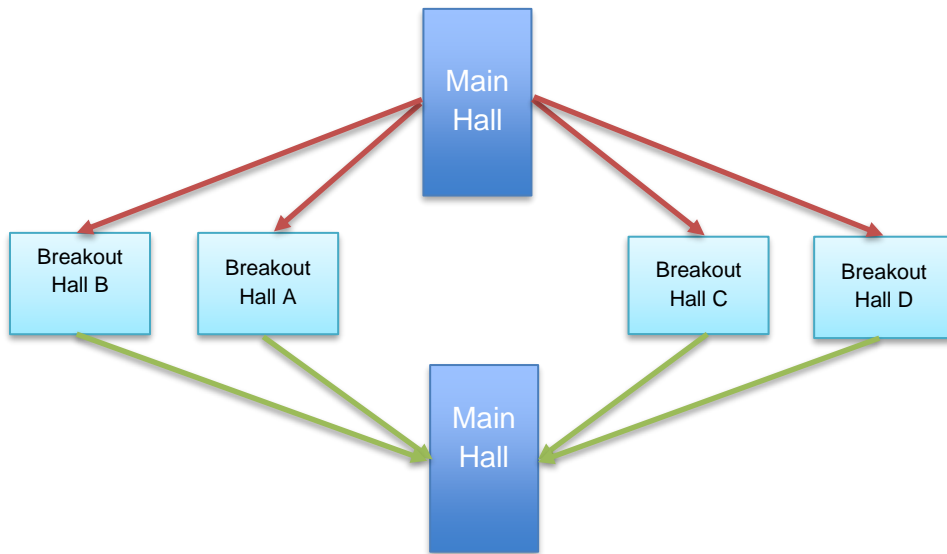
While Kenya has one of the most vibrant media landscapes on the African continent, several laws and administrative actions restrict press freedom. Journalists continue to face the risk of physical attack and harassment by security agencies, political intimidation, and criminal defamation charges, which encourage self-censorship. For instance, on March 23, 2023, the Communications Authority threatened to sanction Citizen TV, NTV, K24, KBC, TV47 and Ebru TV for broadcasting protests claiming the broadcasters had violated the code of coverage. In June 2023, the Cabinet Secretary for Investments, Trade and Industry threatened Nation Media Group after airing an investigative story alleging government officials' involvement in a corrupt scheme to import duty-free cooking oil that cost taxpayers billions of shillings. In March 2023, Media Council of Kenya reported several cases of journalists' harassment during demonstrations. Specifically, it was reported that two Africa Uncensored journalists were arrested by police, and NTV journalists were forced to delete photos taken, and several others shot with tear gas canisters. These acts contravene Article 33 (Freedom of Expression), Article 34 (Freedom of the Media), and Article 35 (Access to information) of the Constitution in addition to all international treaties which Kenya has ratified such as article 19 of the Universal Declaration of Human Rights, Article 9 of the African Charter on Human and People's Rights, and the Declaration of Principles of Freedom of Expression and Access to Information in Africa.

While citizens in Kenya continue to enjoy their right to free expression online, they face constant threats and violations during online communication and interactions. Additionally, the relatively unfettered freedom of private discussion in Kenya has suffered somewhat from state counterterrorism operations, intimidation by security forces, and ethnically affiliated gangs. Despite these threats, over 80 percent of Kenyans access social media sites, and "Kenyans on Twitter" have their own hashtag, #KOT, demonstrating their influence. Likewise, political candidates increased their use of social media to reach younger voters ahead of the 2022 General elections. In 2023, bloggers, human rights activists and journalists experienced a new wave of political harassment, in most cases suspects being charged under the Computer Misuse and Cyber Crimes Act. For instance, in July 2023 Pauline Njoroge was arrested, interrogated, and arraigned in court for her strong position against the state's tax and political reform agenda. However, she was freed, and charges dropped. These moves by the state agencies threaten the freedoms under Article 33 and 34 of the Constitution.

As Kenya enters the third term of devolved governance, CSOs continue to face several challenges related to participation in public affairs, and access to information. While most of the counties have enacted the public participation related laws, there still exist gaps (financial, human resource, and political goodwill) on implementation of these laws. Some counties such as Turkana and Bungoma counties have also ventured into laws and policies that are aimed at regulating civil society organisations. Despite their achievements, Kenyan civil society (particularly CBOs) face several challenges to their role as actors of governance and development at community, regional and national levels. Issues of governance and accountability among CBOs challenge their credibility and can weaken their potential impact due to lack of investments from institutional funders. Most CBOs have limited technical and organisational capacity in fundraising, governance, technical areas of development, leadership and management. Poor networking and coordination are also major challenges causing duplication of efforts and conflicting strategies. Negative competition for resources also undermines the reputation of the sector and the effectiveness of CBO activities. As a result, there is a great deal of suspicion between CBOs, secrecy and lack of transparency. Most CBOs have trouble in finding sufficient, appropriate and continuous funding for their work, as they struggle to engage with donors and deal with their funding conditions.

Methodology

The Forum will adopt the **Open Space Approach** with sub-thematic sessions running concurrently. After the main speeches by the chief guests, the participants will be expected to break out into different conference rooms where session facilitators will lead the discussion by breaking down the sub-theme and thereafter allow the participants to contribute into the subject before finally build consensus on recommendation. The facilitators will be expected to prepare conference papers in advance. The sessions will be expected to take one and a half hours. While the facilitators will be expected to make their presentations for fifteen minutes, the plenary discussions will be expected to take an hour and fifteen minutes. Each Session will have a rapporteur who will help to take notes during the discussions. Participants will be at liberty to join any session that is of interest to them. After the break-out sessions, the session facilitators and the rapporteurs will be expected to report back to the main conference where all participants will be expected to converge. After the Summit, all conference papers will be published as part of the ***Special Civic Space Journal Issue #1***. The Conference will **be held in-person** with an option for those who cannot attend in-person to follow the Conference proceedings **via livestreaming**. Daily sessions of the Conference will take place from **09:00 -17: 00 EAT on day one** and **09:00 -13:00 EAT on day two**.



Flow Chart 1: Conference Model

Objectives

1. To provide a platform for civil society organization to reflect on the status of civic space since the promulgation of the Constitution 2010.
2. The Summit will allow for stakeholders to analyze the status of implementation of state commitments on civic space.
3. To consolidate new commitments from duty bearers and build consensus on new advocacy priorities for the next 12 months.