WORKSHOP REPORT

"Freedom of Assembly under Threat: African Civil Society Responds"

October 21, 2013

Kairaba Beach Hotel
Kololi, The Gambia

Introduction

A one-day workshop on the topic "Freedom of Assembly under Threat: African Civil Society Responds" held at the Kairaba Beach Hotel, Kololi, The Gambia, was attended by representatives of civil society organizations (CSOs) from a wide-range of African countries. This event followed the NGO Forum and 28th NGO Book Fair which preceded the 54th sitting of the African Commission of Human and People's Rights (ACHPR).

In his welcoming and introductory remarks on behalf of the co-organizers, Mr. Emerson J. Sykes of International Center for Not-for-Profit Law (ICNL), outlined the purpose of the convergence enjoining participants to share their experiences regarding violations of freedom of assembly in their respective countries, to reflect on lessons learned, and to identify best practices that could be shared with the wider CSO community in Africa. He emphasized that the workshop is part of an ongoing conversation on the freedom of assembly with the day's discussions envisioned as building towards useful tools for CSOs to better understand and protect the freedom of assembly across the African continent and throughout the world.

He pointed out that a number of international and regional treaties, as well as the constitutions of almost all African states, guarantee the right to peaceful assembly. He noted, however, that in Uganda, Zimbabwe, Central African Republic and other countries, there are laws which infringe people's right to assemble. Even in countries which are recognised as African leaders in respecting rights, such as South Africa, Senegal, and Kenya, there have been recent instances of violent crackdowns on peaceful assemblies.

Mr. Sykes informed the gathering that the workshop is part of the African Civil Society Support Initiative, which is generously funded by the Open Society Foundations. The workshop was intended to specifically address the critical role that civil society organizations (CSOs) play in safeguarding the right to freedom of assembly by bolstering participants' knowledge of the content of the right to assembly and available remedies. The organizers chose the time and place to hold the workshop in recognition of the fact that CSOs can bring pressure to bear on the African Commission of Human and Peoples' Rights when the right to peaceful assembly is violated.

Over the course of the day over fifty representatives of CSOs, government officials, and members of the media participated in the discussions. They represented 23 countries and a wide variety of issue areas including women's, youth, sexual minority, and indigenous rights; economic development; environmental protection; and health.

The workshop took the form of a "talk show-style" panel discussion, including questions and comments from participants, and small group discussions. The small group discussions were focused on three issues:

- Best practices in organizing public assemblies;

- Best practices in advocacy for progressive legislation on assemblies;
- Best practices in seeking redress for violations of the right to assembly.

Finally, there was a plenary discussion of the various issues raised throughout the day and recommendations for future programming.

Panel Discussion

Mr. Sykes, serving as moderator, introduced the panelists, namely, Madam Reine Alapini-Gansou, Commissioner of the ACHPR and Chair of the Study Group on Freedom of Association and Assembly; Mr. Hermann Kekere of the Ministry of Justice of the Republic of Benin; and Pepe Onziema of Sexual Minorities in Uganda (SMUG).

The moderator posed the first question to Commissioner Alapini-Gansou, asking her to expound the role of the ACHPR in protecting the freedom of assembly and update the participants on the work of her Study Group. Commissioner Alapini-Gansou made reference to Articles 10 and 11 of the African Charter which address the freedoms of assembly and association and form the basis for the ACHPR's work in those areas. Commissioner Alapini-Gansou explained that according to those provisions the freedom of assembly may be subject to certain narrow restrictions.

She informed the forum that the Commission has dealt with a number of cases regarding the freedom of assembly, citing Mauritania[1] as an example. The Commission, she assured, was there to promote the rights of all individuals, including members of vulnerable groups. She noted that where there is good governance, people will tend to hold peaceful and orderly assemblies. Where States react to demonstrations in a draconian manner, it is usually a result of fear on the part of officials.

She further explained that the Study Group on Freedoms of Association and Assembly received its mandate from the ACHPR to create a report on the state of those freedoms in Africa. The Study Group is comprised of eight CSOs, representing each sub-region on the continent, and is in the process of finalizing its report for submission to the ACHPR[2].

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[1] 54/91-61/91-96/93-98/93-164/97_196/97-210/98 Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme / Mauritania.

[2] The Study Group's mandate has been extended to October 2014. ACHPR/Res.261(LIV) 13

Commissioner Reine Alapini-Gansou (center) speaks as Emerson Sykes (left)
and an interpreter (right) looks on.

In response to a question on the role of government in protecting the right to freedom of assembly and the particular situation in Benin, Mr. Kekere explained that the 1972 Constitution provided for freedom of assembly and association, but in practice people cannot always assemble freely. He argued that government has the primary responsibility to protect the life and property of citizens and must sometimes restrict assemblies to fulfil this obligation. He refuted the idea that the government has primary responsibility to keep assemblies peaceful, though, arguing that that burden rests with organizers and participants in assemblies. He further noted that governments are generally inclined to perceive demonstrations as threatening and likely to incite violence.

Mr. Kekere later shared that he once worked for a CSO and advised that CSOs in his country should be more responsible in their relationship with government as both parties have their role to play in ensuring that people assemble in a responsible manner. CSOs, he posited, have a frontline role to play in changing laws that are restrictive and infringe on people's fundamental rights to assemble and to express themselves. He lamented that CSOs in Benin have not been proactive in this regard. CSOs, he further stated, have to take the initiative by identifying government officials who will be disposed to support their cause, and try to convince them to be on their side, instead of being confrontational. They should try to change things from within and not by challenging the authorities. Being proactive is not just for a day or two, but should be continuous, systematic and consistent for it to make an impact.

The moderator asked Mr. Onziema to speak about the state of affairs in Uganda in light of the recently passed Public Order Management Bill and the particular experience of sexual minorities with regard to the freedom of assembly. Mr. Onziema noted that the situation in his country was not dramatically different from the situation in many other African countries, except that problems have recently been exacerbated. He lamented the difficulties that people with different sexual orientations were experiencing with regard to demonstrations to assert their rights.

Not only were the authorities averse to gays and lesbians, but the public is also often hostile towards such people.

Mr. Onziema went on to highlight the importance of awareness-raising and civic education. One important role for CSOs is to educate themselves and the public about the content of the rights enshrined in their own constitutions. He lamented that civic education is no longer prioritized in schools, leaving the youth without the understanding to exercise and protect their rights. He advised that CSOs organizing assemblies should take steps to ensure that participants understand their right to assemble peacefully. Also, CSOs should ensure that the general public understands the goals of the assembly to avoid having demonstrators cast as trouble makers.

One participant observed that the political climate of a country determines the extent to which freedom of assemble is allowed. The moderator added that even in the United States, the freedom of assembly is not always respected as permit requirements are often onerous. A few key issues that emerged from the discussions were the importance of cooperation between the law-enforcement agencies, government, and civil society organizations; and awareness-raising and training on all fronts on the rights, roles and responsibilities of all concerned parties on the need to respect people's rights to assemble.

Group Discussions on Best Practices

Participants divided themselves into topical groups on 1) organizing public assemblies, 2) advocating for progressive legislation on assemblies, and 3) seeking redress for violations. The groups were given time to discuss the issues thoroughly and to come up with best practices in dealing with the issues based on their experiences. At the end of the small group deliberations, outcomes of the exercise were shared in plenary.

Group discussions at the workshop.

Organizing assemblies

The Anglophone group discussing organized assemblies was comprised of participants from Sudan, The Gambia and Ghana. The Francophone group included participants from Côte d'Ivoire, Cameroon, Togo, Benin, and Senegal. The two groups compiled the following best practices:

1. As a first step, it may be useful to organise multi-stakeholder meetings express grievances and challenges in a cooperative and collaborative fashion.

2. Whenever possible, organizers should be responsible and start planning well ahead of the scheduled assembly.

3. To the greatest extent practicable, the planning process should involve all key stakeholders, including government officials, potential participants, a range of civil society groups, and others, as appropriate.

4. Organizers should give legal notice of the assembly to the appropriate authorities, when practicable.

5. If a permit is denied on illegitimate grounds, seek expert advice to appeal the decision.

6. Establish a multi-stakeholder framework for planning assemblies

7.   Prior to holding the assembly, it can be particularly useful for the organizers to review the format of the event with police or other security officials. This will afford the police a better opportunity to protect the participants' right to peaceful assembly, especially where there may be counter-protests.

8.   Educate police on content of right to free assembly.

9.   Organizers should take measures to inform people who might take part in the assembly of the logistics of time, date, venue and topic to be addressed. This can help ensure an orderly procession and clarity of purpose for the assembly.

10.   Organizers should make particular efforts to utilize all forms of media, including radio, print, then social media to communicate the goals of the assembly to potential participants and the general public.

Advocating for progressive legislation on assemblies

The group assigned to explore the advocacy of progressive legislation reviewed the situation in the respective countries that comprised the group, namely Burundi, Sierra Leone, Sudan, and The Gambia. The group emphasized that both regional mechanisms and national legal mechanisms provide for the freedom of expression, association and assembly as is recognized. Freedom of association and assembly is provided through Article 11 of the African Charter on Human and Peoples' Rights. Similarly, the national constitutions are supposed to allow for the right to assemble. However, the group gave the example of the Gambia where the Public Order Act restricts the freedom of organizing and holding mass demonstrations, unless prior approval from the Inspector General of Police has been granted[3].

Another example cited was Sudan's restrictive laws which declare a meeting of five people without prior agreement of the competent authorities may constitute grounds for arrest for "organized crime", or threats to national security. In relation to the other countries, the group reported that there are many cases where freedom of assembly and organization of events was denied and repressed by state actors leading to the CSOs being persecuted through arbitrary arrests, detentions and threats.

Sierra Leone was cited as a country where the police favoured associations that supported the government and would readily give them permission and protection to demonstrate to show solidarity with the government, any time they wished to. In order to address the gaps in the national constitutions and to further strengthen the protection of the freedom of assembly, the group came up with the following best practices.

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[3] In The Gambia, Section 5(2) of the Public Order Act (Act No.7 of 1961) provides 'a person desirous of forming any public procession shall first make application for a licence to the Inspector General of Police for permission…'

1. Seek out experts to help examine the conformity of national laws providing for the freedom of organization of demonstrations with regional and international instruments that have been ratified by the State;

2. Emphasis on initiating awareness and educating all CSO members through training workshops on the application and limitation of legal mechanisms and instruments;

3. Build alliances/coalitions with other NGOs and members of civil society, including those in other countries, by setting aside competition for resources and differences of opinion/methodology to make collective action possible for the protection of all of civil society;

4. In the case of refusal of permission to demonstrate peacefully, establish and share a petition lobbying around this refusal to turn the negative event into a catalyst for advocacy;

In conclusion, the way forward for them was education and cooperation of all stakeholders. Countries that have the constitutional protection to demonstrate and assemble need to share their experiences with countries that do not have a right to the freedom of assembly in order to establish detailed progressive legislation.

Seeking Redress for Violations of the Right to Assemble

The final group, which deliberated on best practices in seeking redress for violations of the right to assemble, was comprised of members of civil society from Kenya, Tanzania, Cameroon, Nigeria and The Gambia. Firstly, they provided information about the current processes of redress in each of their countries. They expressed that the legal systems governing their respective countries were different and cited the example of Cameroon, under the control of President Biya for the last 31 years, operates under both common and the civil law system. They also noted that although Cameroon does not refuse people the right to demonstrate, subsequent unlawful arrests are often carried out which can be brought to the Courts. However, they also informed the plenary that there is no Constitutional Court so many of these cases that should be brought forward are made redundant. Meanwhile, in the case of Kenya and Tanzania, their legal systems allow the presentation of such cases to the Courts.

Participants then emphasised that although there are international standards and mechanisms that are protecting the right to freedom of assembly, in practice there is frequent curtailment of the right. Participants offered the following best practices.

1. Use the national legal system and courts as the starting point for seeking redress;

2.   If the matter fails to be addressed by the country's legal system, engage the African Commission on Human and Peoples' Rights.

3.   Create regional guidelines for laws regulating assemblies that will provide clear remedies for when a violation has occurred.

Concluding Remarks

After the presentation of the group reports and recommendations, the moderator invited further comments before bringing the forum to a close. These were the key comments made:

- CSOs should challenge actions of government which are contrary to the enjoyment of basic human rights without fear. The majority of country's constitution provides for the respect of all human rights which include freedom to assemble.
- Further workshops should be organized for CSOs in countries where the denial of the freedom of assembly is endemic.
- If all laws governing human liberties in African countries can be harmonized with international and regional norms and agreements, this can help greatly in ensuring all freedoms enshrined in state constitutions are respected and protected.
- The ideas or suggestions emanating from the workshop should be widely disseminated in the form of guidelines for CSOs in dealing with the issue of freedom of assembly and freedom of expression as the two are inextricably linked.

In his closing statement, the moderator expressed he is looking forward to working with CSOs in the various countries to push the agenda forward. Mr. Andrew Chigovera, Chair of the Governing Council of the ACDHRS, in his closing remarks thanked all participants for their interest in the theme of the workshop and for actively participating in it. He underlined that this was the beginning of addressing the issue and expressed the hope that there will be subsequent workshops in due course.

WORKSHOP EVALUATION

In spite of the technical hitches that were experienced at the start of the workshop, participants generally rated the exercise as opportune and worthwhile, and suggested that it be replicated across the sub-continent, and held more frequently. Forums of this nature are necessary and useful for CSOs as they will equip them with the requisite knowledge and confidence to engage the authorities on the issue of respecting people's rights to assemble.

Special Thanks: Roisin Mangan, Adama Cooper Jah, and Burang Goree Ndiaye