



The Role of Kenyan Civil Society in Democratic Governance

By Ndung'u Wainaina



In defense of democracy, human rights and the rule of law is the motto of conscientious human rights defenders. A human rights defender is any person fighting for a cause to improve the well-being of human beings or to correct a violation to human dignity or breach of law for remedy. Human rights are rights that belong to everyone simply because they are human beings. By belonging to everyone it means that every person is a holder of these rights and they may not be taken away or denied because of a person's social or economic status. Human rights are universal. They belong to everyone. They are interrelated, interdependent and indivisible. No right is greater than the other.

The primary obligation to promote and protect human rights rests with the State. However, every individual, and other non-State actors also have the responsibility and duty to respect the rights of his or her fellow human being. It is vital that in the establishment of a human rights culture that no one is excluded and that the most vulnerable are included. For democracy to prevail, it is imperative that it reaches every citizen. It is often said that it is easier to struggle for democracy but more difficult to sustain it.

This is critical especially in situations where people have limited respect for and trust in the government. The world is facing the greatest test - the COVID-19 pandemic. It is my personal

experience that pandemics or upheavals in countries and societies have always had serious consequences to human rights, democracy and rule of law. In most cases, such occurrences exacerbate existing human rights violations. It is the moment when human rights defenders in their active and vibrant civil society are necessary to hold the State accountable, especially because the State capitalises on such calamities to grab more power and cause egregious violations.

A new United Nations report on the global response to COVID-19 has noted the central role of a human rights-based approach to the pandemic. "This is not a time to neglect human rights; it is a time when, more than ever, human rights are needed to navigate this crisis in a way that will allow us, as soon as possible, to focus again on achieving equitable sustainable development and sustaining peace," stated the report. This is a time when, more than ever, government needs to be open and transparent, responsive and accountable to the people they are seeking to protect. Civil society organisations, particularly grassroots community-based organisations, are better placed to reach exposed populations quickly and in ways that factor in the specific sensitivities of each community and that ensure that critical information reaches diverse segments of the society.

Perhaps the biggest challenge that human rights defenders and civil society in general have faced during this pandemic is the State taking advantage of the pandemic to grab and consolidate more power. States have turned COVID-19 into a security matter, giving themselves enormous powers to curtail crucial freedoms and rights while remaining covertly opaque in their decision-making processes. This poses a dilemma for civil society on how to respond while being sensitive to the public's concerns.

Who constitutes civil society?

In my own understanding, civil society is not what many Kenyans see as particular individuals and/or the organisations they work for. No! Civil society should be seen in the context of the heterogeneity of an entire range of organised groups, individuals, and institutions that are independent of the state, voluntary, and at least to some extent self-generating and self-reliant. This includes those individuals and organisations that the majority of Kenyans see as being the civil society, as well as independent media, think tanks, universities, and social and religious groups.

To be part of civil society, such individuals and groups, formally or informally, must have respect for the rule of law, for the rights of individuals, and for the rights of other groups to express their interests and opinions, and must also exercise tolerance and the accommodation of pluralism and diversity of ideas and formations.

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There is consensus that civil society in all its different formations and characters needs to ensure its own legitimacy, openness and transparency. Legitimacy stems from several sources:

Firstly, from a strong moral conviction, through acting on the basis of universally-recognised rights and freedoms of speech, assembly and association to articulate public concerns that are inadequately addressed by the government.

Secondly, from a political and civic legitimacy or credibility, through approval of the community or constituency represented by the voluntary association, asserting people's sovereignty and community control.

Thirdly, from competence or performance legitimacy, by delivering results through being closer to local reality than governmental institutions, helping to bridge a government-community gap and promoting social cohesion.

Fourthly, from legal recognition, although laws may prevent truly independent civil society from functioning, or formal registration may undermine rather than enhance their reputation.

And finally, and most importantly, from the legitimacy that comes from accountability and transparency in its work.

A strong civil society is one in which voluntary formations are effective and strategic organisations that work cohesively in influential networks or coalitions in an environment governed by civil norms, such as respect, reciprocity, tolerance and inclusion. Such norms promote open discourse and citizens' engagement in informed dialogue.

A narrow view of civil society results in a failure to develop civil society organisations that keep the government in check and nurture democratic practices and values as a multi-generational effort. A broader view of civil society requires cultural and attitudinal changes to help people understand, support, and protect civil society organisations as representatives of their interests. Yet governments are able to keep replenishing and tapping good ideas and brains to help them overcome citizens' pressure. Civil society, which is facing very turbulent times on many fronts, will have to become more innovative in enabling collaboration and improving practices in order to remain relevant and effective in influencing public policy. It cannot remain conventional with the same traditional approaches.

In my view, there are several important principles to follow in seeking to strengthen civil society. Firstly, it is critical to start where civil society is: measures to strengthen its capacities need to be based on local needs, assets and institutional ecosystems. Civil society organisations need to know their own strengths. Outsiders cannot necessarily connect with local society.

Secondly, decision-making needs to be in the hands of those undertaking the strengthening measures, so it is informed by indigenous values, concerns and environment. Thirdly, action must be based on well documented and analysed data and evidence and sustainable resources to inform local engagement across sectors and levels. A people-oriented participatory approach is key. It creates constituency and legitimacy. Fourthly, action should support and reinforce existing compatible interventions. This will need to have a combination of multidimensional tools for execution. For instance, how do online actions combine and reinforce offline actions? Fifth, there should be realistic time horizons since institutional development does not occur instantaneously.

Finally, building alliances within a sector or domain will support individual sector members or issue-based communities. This leads to improved information through sharing best practices and avoiding duplication. Through collaborative action in alliances there can be a greater impact at the policy level, and a means to set standards in accountability. Alliances and networking create solidarity. Bridge-building across sector boundaries strengthen both by generating a larger body of interest and also new resources, for example, through cooperation with the public or private sector. Transnational or international engagement enhances civil society roles in different spheres of public discourses.

In my experience with civil society, I see have seen it playing pivotal roles of advocacy, watchdog and service provider of public goods. The roles are intertwined. Perhaps what have been different are approaches, which has created unnecessary frictions and misunderstanding. As dynamic and multidimensional entities, civil society moves from one role to another and/or assumes several roles.

This can be illustrated by an organisation whose initial role is service delivery; it turns to advocacy to overcome problems it meets in fulfilling its service provision role; and it subsequently becomes a watchdog in trying to prevent the recurrence or worsening of the problems while continuing to provide its original services. The role of service delivery is regarded, at least by governments, as the least controversial function of civil society. However, many people express concern that while civil society is performing a crucial activity, the government can take advantage of this service provider role and fail to assume its own responsibilities and obligations.

Most agree that Kenyan civil society has contributed enormously towards both the substance and process of democracy and human rights. Civil society has been an important driver of the State's democratisation process by providing a vital link between citizens and the State as well as by mobilising communities for collective actions. It also provides an environment that can be used to enhance community cohesion and decision-making. Information is vital to civic participation and also encourages inclusive development and participatory democracy. When people get better informed, they are more likely to participate in policy discussions and communicate their ideas and concerns freely.

Achievements of Kenyan civil society

The following is a summary on the role civil society played in Kenya in advancing human rights, democracy and the rule of law in different contexts. (The list is not exhaustive.)

First, civil society has been an incubator and supplier of ideas on content and strategies on State transformation and building an open pluralistic society. Perhaps the struggle for multipartyism and a new constitutional order culminating in the progressive Constitution of Kenya 2010 amplifies this critical role of civil society. Today, there is a growing movement of civil society on the implementation of the constitution and championing of devolution of powers and resources under the banner of Tekeleza Katiba Movement. Further, civil society has not shied away from working and organising political parties into a formidable socio-political movement. This capacity was demonstrated in 1997 and 2002.

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Secondly, civil society has been a strong deterrent and catalyst in defanging the power of the State. A true democracy needs a well-functioning and legitimate State. Kenyan civil society has been highly successful in deploying different methods to ensure that the State is tamed through checking, monitoring, and taking actions to restrain the power of political leaders and State officials. Civil society actors have been aggressive watchdogs on how State officials and agencies use their powers through raising public concern and awareness about any abuse of power and robustly taking advocacy actions ranging from public demonstrations to picketing and litigation.

Thirdly, research and documentation to expose the corrupt conduct of public officials and demands for accountability and improved governance have been a great success. This is also very important in collection and preservation of evidence. Civil society in its different formations has been a leading light in tackling corruption, especially through push for public access to information, whistle blowing and public campaigns. This is upon realising that even where anti-corruption laws and bodies exist, they cannot function effectively without the active support and participation of civil society. Civil

society have come up with transparency and accountability tools as some potential solutions to some of the corruption problems in that they allow communities to identify breakdowns and hold responsible agents or decision makers to account. A fourth function of civil society is to promote political and public participation. Civic education on citizens' rights and obligations has been a bulwark in developing citizens' skills to work with one another to solve common problems, to debate public issues, and express their views.

Fifth, civil society has been a major player in conflict mitigation efforts and propagating values of democratic life, such as tolerance, moderation, compromise, and respect for opposing points of view. Without this deeper culture of accommodation, democracy cannot be stable. Civil society understands that these values cannot simply be taught; they must also be experienced through practice and interlocutors. Civil society has developed formal programmes and training of trainers to relieve political and ethnic conflict and teach groups to solve their disputes through bargaining and accommodation. This brings the crucial connection between policy and practice in civil society work.

Sixth, civil society has been an arena for the expression of diverse interests. One role of civil society organisations has been to push for the needs and concerns of their members, as women, students, farmers, environmentalists, trade unionists, lawyers, doctors, and so on. Civil societies, in all their diversity, have been presenting their views and those of different constituencies they represent to different State institutions for redress. They also establish a dialogue with relevant government ministries and agencies to lobby for their interests and concerns. And it is not only the resourceful and well-organised whose voices have been heard. Over time, groups that have historically been oppressed and confined to the margins of society have organised to assert their rights and defend their interests.

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Seventh, different civil society platforms have been vital focal points for strengthening democracy in actions by providing new diverse forms of interests and solidarity. For civil society, democracy cannot be stable if people only associate with others of the same social, political or status identity orientation. When people of different religions, ethnic identities, professional backgrounds and sectors come together on the basis of their common interests as women, artists, doctors, students, workers, farmers, lawyers, human rights activists, environmentalists, and so on, civic life becomes richer, more complex, and more tolerant. Civil society has very efficiently provided this platform. Historically, groups and individuals never saw themselves as part of civil society; today they find crucial space for civic engagement.

Eighth, civil society provides a training ground for political, civic and private leaders. Civil society has helped to identify and train new types of leaders who have dealt with important public issues and are recruited to run for political office at all levels and to serve in local and national positions, both in politics and private/professional sectors. Evidence shows that civil society has been a particularly important arena from which to recruit and train women leaders in different fields.

Ninth, civil society has helped to inform the public about important public policy issues. This is not only the role of the mass media, which is also part of civil society, but individuals or groups of organisations coming together to provide fora for debating public policies and disseminating information about issues that affect the interests of different groups, or of society at large, using different methods. Civil society leads in taking action that safeguards public interest like litigating

and drafting petitions and policy papers and presenting those policy positions to the relevant State institutions.

Tenth, civil society organisations have played vital role in monitoring electoral processes and management. This has seen a broad coalition of organisations unconnected to political parties or candidates deploying neutral monitors at all the different polling stations to ensure that voting and vote-counting is entirely free, fair, peaceful, and transparent. It is very hard to have credible and fair elections in a democracy unless civil society groups play this role. The outcomes of such vital civil society processes have been useful as evidence in electoral disputes.

Twelfth, civil society has been very instrumental in advocating for fair rules in the digital world and influence at the policy level. This has been important in establishing spaces for civil society to engage and bring social change through digital activism.

Finally, it is important to stress that civil society is not simply in tension with the State. Because civil society is independent of the State does not mean that it must always criticise and oppose the state. In fact, by making the State at all levels more accountable, responsive, inclusive, and effective, and hence more legitimate, a vigorous civil society strengthens citizens' respect for the State and promotes their positive democratic engagement with the State. However, Kenyan civil society is in the state of fluid transition as global dynamics shift.

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