Strengthening Civil Society: Ensuring Compliance with African and International Standards on Human Rights and Good Governance

Banjul, Gambia 26-28 June 2006

Workshop report

The Institute for Human Rights and Development in Africa in Banjul, the Open Society Institute’s Africa Governance Monitoring and Advocacy Project (AfriMAP), Partnership Africa Canada and the Open Society Justice Initiative organized a three day workshop prior to the July 2006 African Union Summit, to provide an opportunity for African stakeholders involved in monitoring governments’ compliance with commitments made under AU treaties and other instruments to share information and lessons learned. The workshop brought together African civil society representatives from 19 countries, from organisations involved with the Africa Peer Review Mechanism (APRM), those carrying out independent assessments of compliance (such as the AfriMAP research currently ongoing in 5 African countries) and the Open Society Justice Initiative’s multi-country Africa Citizenship Audit.

Day 1: Monday 26 June – Focus on the APRM

The first day of the workshop focused on discussion of the APRM as a tool for monitoring government performance and compliance, and in particular on opportunities and barriers to civil society interaction with the APRM. Dr. Bernard Kouassi, CEO of the APRM Secretariat, opened the workshop with a presentation introducing the APRM, its structures, objectives, the process, and progress individual countries are making (to date, 25 countries have acceded). Participants posed a number of questions to Dr. Kouassi, including on efforts that are being made by the APRM Secretariat to provide more information to civil society organisations on the APRM and entry-points for interaction. His presentation provided a valuable context for the day’s discussion and Ozias Tungwarara, chair of the opening session, undertook that conclusions and recommendations from the day’s discussion would be reported back to Dr. Kouassi.

In the first panel, chaired by Dereje Balcha of the Christian Relief and Development Association (CRDA), Engudai Bekele of Partnership Africa Canada (PAC) began by providing a brief summary of the civil society APRM workshop held in Addis Ababa in January 2006 at which PAC presented its report Between Hope and Scepticism: Civil Society and the African Peer Review Mechanism. Engudai reported on follow-up that had taken place since the meeting, including the publication of the APRM Monitor, a periodic newsletter on the APRM, which has rapidly been gathering circulation. Civil society representatives from the Congo (Eugène André Ossete, CLONG) and Mali (Sekou Traoré, ASSAFE) then presented a summary of the follow-up to the January meeting that had since taken place in their countries, with the organisation of national civil society workshops around the APRM. The panellists highlighted the importance of building up a national network around the APRM, including not only civil society organisations, but also the private sector, parliamentarians and the media. Participants then provided information on civil society activities taking place around the APRM in their own countries.

The second panel focused on the APRM as a tool for assessing compliance with the Declaration on Democracy, Political, Economic and Corporate Governance. The panel was chaired by Charles Mutasa of AFRODAD and featured speakers from Kenya (Steve Ouma, KHRC) and Ghana (Emmanual Akwetey, IDEG). The panellists spoke

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of their experiences with the APRM in their countries, both of which were amongst the first four pilot countries to undergo peer review. The floor agreed on the utility of the APRM as a tool for assessing compliance in this regard, although it was felt that certain critical areas were missing from the questionnaire, notably freedom of expression and of the media. The third panel, chaired by Eugene André Ossete (CLONG), focused on a similar theme; civil society participation in the APRM, and featured Ousmane Déme (PAC) Francine Rutazana (LDGL, Rwanda), and Bronwen Manby (AfriMAP, presenting written notes on behalf of Sheila Bunwaree, Mauritius). The panelists spoke of the processes underway in their countries, and described the structures in place to allow civil society interaction. Although structures and processes exist to allow civil society participation in the APRM, these are often dominated by government and the quality of interaction is usually poor. In the discussion that followed, participants put forward a number of recommendations on strengthening civil society participation, including that government officials responsible for APRM should ensure that national governing councils represent the broadest spectrum of civil society; that draft APRM reports should be available for public comment as soon as they are completed (before their adoption by the heads of state APR forum); opportunities for involvement of journalists and grass-roots organizations should be improved; civil society shadow reporting should be encouraged.

Bernard Taylor (PAC) chaired the final session of the day, bringing together conclusions and recommendations with regards to strengthening civil society interaction with the APRM. Recommendations were put forward to both governments and civil society organisations. Whilst government officials in charge at the national level need to provide civil society organisations with better information and more avenues for interaction with the APRM, civil society organisations need to assess their own performance, and tackle their weaknesses.

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**AfriMAP: Do African Civil Society Organizations have the Skills and Capacity to Monitor Compliance with commitments made under African Union treaties?**

Ozias Tungwarara, Deputy Director of AfriMAP, acted as chair of the session on AfriMAP. Ozias introduced the purpose of the session as allowing an opportunity for researchers working on AfriMAP to share with participants their practical experiences and lessons learned in monitoring compliance of national governments with standards to which they are a party in the three thematic areas where AfriMAP works; the justice sector and rule of law, political participation, and delivery of public services. The two panels; on availability of and access to public information, and on domestic law and compliance with international treaties, aimed to engender discussion on the challenges civil society organisations face in monitoring compliance, and the skills and capacity they require to successfully do so. Ozias also briefly provided an introduction to the work of AfriMAP, its objectives, methodology and the status of research underway.

The first panel discussion focused on access to and availability of public information. Information (government strategies, policies, and budget allocations) is a form of power as it enables citizens to monitor government performance and demand their rights; in this context, governments make deliberate choices about the information they make available. The three panellists: Naomi Ngwiri (Ministry of Finance, Malawi), Cheryl Hendricks (Institute for Security Studies, South Africa), and Emmanuel Akwetey (Institute for Democratic Governance, Ghana), have been reporting for AfriMAP on the delivery of public services (health and/or education) and spoke of the problems they had faced in accessing information from government ministries during the course of their research. All three researchers said that even when legislation exists regarding public access to information, enforcement of such legislation, including through recourse to courts, remains elusive. Particularly in Ghana and Malawi, further legislation is also needed, foremost a freedom of information bill. In practice, rather than institutionalised mechanisms, often it is social relationships that determine who successfully obtains information. Capacity problems were highlighted on all sides; government ministries often lack adequate capacity to process and publish information, and civil society organisations to access and then use that information. It was noted that civil society organisations should not be conceptualised as one category; research institutions and think-tanks often have better access to information than activists at the grassroots level. In the discussion that followed, questions were raised on what is needed to institutionalise access to information, and moreover, to ensure that this access is not ‘class-based.’ Questions were also raised on the availability of information at the continental level, and the availability of information for journalists. The panellists agreed that these were critical questions that needed to be addressed.

The topic of the second panel discussion was domestic law and compliance with international treaties, featuring Fidelis Kanyongolo (University of Malawi, Malawi), Philip Machon (Mozambique), and Kwadwo Appiagyei-Atua (University of Ghana, Ghana). The panel examined to what extent in their countries, the treaty system is taken
seriously at the national level; whether ministers domesticate treaties and meet reporting requirements, giving substance to standards that have been agreed to at the African Union level. Several similarities were highlighted across the three countries, suggesting that problems in giving effect to the treaty system run across the continent. All the panellists found it challenging to obtain basic information from government on which treaties had been ratified. Governments across the continent tend to have a very poor record in meeting their reporting obligations, suggesting that this is not a priority. The AU and international bodies should also examine whether the burden on governments could be eased by greater rationalisation of reporting requirements. The discussion then moved from identification of the problems, to conceptualisation of points of action in addressing these issues. Several discussion points were raised including: how governments could be ‘incentivised’ to adopt and enforce treaty law; how the African Union could strengthen mechanisms to ensure consequences if states do not meet their obligations (for example, by adopting similar requirements to the Copenhagen criteria which define whether a state is eligible for membership of the European Union); the benefits and costs of civil society engaging in shadow reporting exercises; and how civil society organisations should be brought together to cooperate on a united platform.

At the close of the session, AfriMAP agreed to keep participants informed of developments in its work, and of new publications (the AfriMAP South Africa Justice Sector report was distributed to participants and is available on the AfriMAP website, www.afrimap.org).

– Day 3: Wednesday 28 June –

OSJI Citizenship Audit: Protecting political participation through equal rights to citizenship

Dismas Nkunda of the International Refugee Rights Initiative (IRRI) served as chair of the first panel, on marginalization and political participation. It was noted that political participation is a key theme of the APRM, but that even in countries that provide for it in law, discrimination and marginalization deny participation to minority groups in practice. Hussien Barre (Truth Be Told Network, Kenya), Dr Ojiji (Peace and Reconciliation Committee, Nigeria), Achieng Akena (Dishtwanelo, Botswana), and Takele Saboka (Institute for Human Rights and Development, The Gambia) presented case studies of how marginalization of specific groups lead directly to their political disenfranchisement. In Kenya, which has signed up for the APRM, individuals of Somali ethnicity who reside in the north of the country are both economically and politically marginalized by the difficulties they experience in getting national identity cards, which requires that they go through a ‘vetting’ process that can take years. In Nigeria, everyone deemed ‘non-indigenous’ to the state in which they live is barred from being a local government councilor or a state governor, and may also be barred from benefits such as state-sponsored higher education. Many violent conflicts have been fueled by discrimination on the basis of indigeneity and constitutional reform appears to be the only solution. In Botswana, the San indigenous people have been deprived of their land rights and livelihoods. Although their claim to use rights in the Kalahari Game Reserve is still before the national courts, the legal procedure actually represents the sad breakdown of a far more participatory process of negotiation over the problem that the government walked away from. In Ethiopia, the development of ‘ethnic federalism’ has resulted in nine ethnically defined states; courts and schools in a state are allowed to use only a single language and at the state level, certain ethnic groups are allowed to vote but not permitted to stand for election. An individual’s ethnicity is noted on the national identity card and the focus on ethnicity is entrenching the exclusion of certain groups. The participants recognized that they common theme of all the case studies was exclusion, and that citizenship, including the differentiation of citizenship on the basis of ethnicity, was being employed as a legal instrument to implement exclusion.

Sami Modiba of OSIWA chaired the second panel, which focused on legal and political strategies for overcoming marginalization and discrimination. Several obstacles to employing legal strategies were identified: the nature of discrimination, which affects entire groups, means that class actions are the most appropriate from of legal action, but many legal systems do not provide for class actions; legal action can be greatly protracted, requiring years to reach a conclusion, and be very costly in the process. Also, many lawyers do not have the skills necessary to bring discrimination cases to court. Korir Singoie (Centre for Minority Rights and Development, Kenya), Jacob Mafume (Zimbabwe Lawyers for Human Rights, Zimbabwe), and Mireille Affa’a Mindzie (Institute for Human Rights and Development, The Gambia) gave examples of litigation that had been undertaken on behalf of discriminated against groups. In citizenship cases, such as that of the Kenyan Nubians, the state can block national level litigation by placing the plaintiffs presumptively outside the legal system. In such cases, going before the African Commission, which permits group actions, can be empowering. In Zimbabwe, the 17th amendment to the constitution gave the government the right to withdraw passports, and citizenship came to be seen as a privilege, not a right. Before the 2002 elections in Zimbabwe, thousands of individuals, most from specific ethnic groups, were denied the right to vote on the grounds that they were not citizens. Many of these cases were appealed to the national courts which instructed the government to disseminate information to individuals about how to maintain their citizenship, but in the face of
government resistance to implementing the decision, the case is being prepared for the African Commission. The case of thousands of black Mauritanians who were denationalised and expelled in 1989 was decided by the African Commission in favor of the expellees in 2000, but the government is resisting implementing even the decision of this international tribunal. The general conclusion of the panel was that, while unwieldy national level procedures may encourage victims to take their cases to international tribunals, these tribunals are as political as much legal. Litigation can be part of a multi-pronged approach that includes intervening in constitutional reforms to ensure non-discriminatory citizenship laws, and educating the judiciary.

Summary of results

The discussions that took place during the three days of the workshop were extremely rich, with excellent engagement and involvement of participants. The workshop proved to be a valuable forum in allowing cross-country experiences and best practices to be shared. In addition, participants drafted a communiqué of conclusions reached during the workshop that was passed onto the AU Heads of State. Feedback received from participants suggested that they very much valued the opportunity to network with other civil society groups working on similar issues, as there is a lack of institutionalised, continental civil society networks.

We however underestimated the value participants placed on being provided with an opportunity to network, share experiences and lessons learned. In terms of improvements, the next time a workshop is held during an AU Summit, it would be useful to strategise in more detail on how the AU Heads of State should be directly engaged; what channels could be utilised to feed findings and conclusions to them (beyond submitting a communiqué).

Sustainability of results achieved

The process of monitoring government compliance with AU standards, and of building up the capacity of civil society to do so is a continuous process, and hence, requires sustained efforts. Participants agreed to remain in contact after the workshop, through a common mailing list, and to explore whether in the future; it may be useful to convene a follow-up workshop. Participants agreed to send in material to PAC’s APRM Monitor, regarding developments in their country. In addition, participants agreed that they would explore holding follow-up / report-back workshops in their own countries, as representatives from Congo-Brazzaville and Mali had done after the PAC workshop in Addis. Finally, Ozias Tungwarara (Deputy Director, AfriMAP) and Tawanda Mutasah (Executive Director, OSISA) will meet with Dr. Bernard Kouassi, to report back on conclusions and findings from the workshop.

Lessons learned

As noted above, more focus is needed on engaging with the AU Heads of States, to feed them conclusions and findings from the workshop. There is also a need for greater NGO coordination in relation to activities at AU summits. For instance, Ozias Tungwarara presented findings from the workshop at a summit press conference, but this was organised in an ad hoc manner at the time, rather than in advance.
LIST OF PARTICIPANTS

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