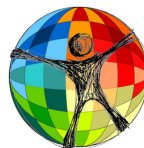


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Civic Space Indicators: Blurred Reflections

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ABSTRACT

Over the past two decades, civic space has shrunk in an unprecedented manner, as governments around the world have imposed restrictions that contradict their obligations under international human rights treaties. This disparity between proclamation and implementation of international standards has prompted the development of countless “indicator” systems, which aim to quantify the actual status of civic space. However, little information exists on whether these human rights indicators live up to this goal.

In this paper, I explore the ways in which civic space has been restricted in several Sub-Saharan African countries. I argue that while indicator systems can provide some insight, they are inherently limited and can even perpetuate harm. After introducing the purpose of human rights indicator systems generally (and civic space indicators in particular), and the ways in which civic space has been restricted, I discuss two primary limitations of indicator systems in this context.

Firstly, I examine methodological limitations, arguing that due to the indivisibility of human rights, indicator systems are incapable of capturing the cumulative effects of restrictions that impact civic space. Secondly, I discuss ethical limitations, arguing that indicator systems necessarily “flatten” information by ignoring historical and regional context, and can perpetuate harm as a result—particularly in the context of Sub-Saharan Africa and the history of civil society’s tie to Western interventionism and colonialism. Finally, I conclude by reflecting on possible solutions and takeaways.

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Part 1: Introduction

*"What about the abuse that has no visible signs?"*¹

Over the past two decades, there have been an unprecedented number of restrictions placed on civil society.² This trend, referred to as the "narrowing" or "shrinking" of civic space, has been recognized by academics,³ civil society members,⁴ and

¹ See House of Commons Canada, Standing Committee on Justice and Human Rights, *Evidence*, 43-2, No 019 (16 February 2021) at 12:05 (Kamal Dhillon).

² Transnational Institute, "On Shrinking Space: A framing paper" (2017) at 3, online (pdf): www.tni.org/files/publication-downloads/on_shrinking_space_2.pdf; Andrew Heiss, "Taking control of regulations: how international advocacy NGOs shape the regulatory environments of their target countries" (2019) 8:3 *Interest Groups & Advocacy* 356 at 357; Naomi Hossain et al, "What Does Closing Civic Space Mean for Development? A Literature Review and Proposed Conceptual Framework" (2018) Institute of Development Studies Working Paper No 2018/515 at 10, online: opendocs.ids.ac.uk/opendocs/ds2/stream/?#/documents/3658747/page/; Julia Kreienkamp, "Responding to the Global Crackdown on Civil Society" (2017) at 1, online (pdf): *Global Governance Institute* www.ucl.ac.uk/global-governance/sites/global-governance/files/policy-brief-civil-society.pdf; Antoine Buyse, "Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights" (2018) 22:8 *Intl JHR* 966 at 969; Carmen Malena, "Improving the Measurement of Civic Space" (2015) at 7, online (pdf): *Transparency & Accountability Initiative* rendircuentas.org/wp-content/uploads/2015/06/TAI-Civic-Space-Study-v13-FINAL.pdf.

³ For example, Heiss, *supra* note 1; Malena, *supra* note 1, Buyse, *supra* note 1 at 967; Karen Ayvazyan, "The Shrinking Space of Civil Society: A Report on Trends, Responses, and the Role of Donors" (2019) Working Paper No 128, online (pdf): www.ssoar.info/ssoar/bitstream/handle/document/62273/ssoar-2019-ayvazyan-The_Shrinking_Space_of_Civil.pdf?sequence=4&isAllowed=y&lnkname=ssoar-2019-ayvazyan-The_Shrinking_Space_of_Civil.pdf; Thomas Carothers & Saskia Brechenmacher, "Closing Space; Democracy and Human Rights Support Under Fire" (2014) at 1, online (pdf): *Carnegie Endowment for International Peace* carnegieendowment.org/files/closing_space.pdf.

⁴ For example, Transnational Institute, *supra* note 1 at 3; Kreienkamp, *supra* note 1 at 1; Amnesty International, "Laws Designed to Silence: The Global Crackdown on Civil Society Organizations" (2019) at 2, online (pdf): www.amnesty.org/download/Documents/ACT3096472019ENGLISH.PDF;

various United Nations Commissioners.⁵ Governments have deployed formal and informal strategies that have severely restricted the abilities of human rights defenders, the media, and NGOs.⁶ While in the past, civic society often faced these limitations in isolated incidents, these restrictions have now grown to something “that goes beyond individual instances” and instead takes place as a structural issue occurring not only in authoritarian and semi-authoritarian regimes, but also in relatively democratic states.⁷ This shrinkage is accelerating according to Amnesty International: “In the last two years alone, almost 40 pieces of legislation have been either put in place or are in the pipeline.”⁸ These restrictions are worrisome for a variety of reasons.

This narrowing of civic space sharply contrasts with the obligations of international human rights treaties, which have been ratified by the vast majority of the states involved in these practices.⁹ As a result of this disparity between “official proclamation” and “actual implementation” of international standards, “indicator” systems have increasingly been used in the realm of international human rights.¹⁰ While the use of indicators in this field was resisted until the 1990s out of concern about the methodological difficulties of flattening qualitative information into

Civicus, “Closing Space, Open Government? Civil society response to restrictions in OGP countries” (2018) at 1, online (pdf): www.opengovpartnership.org/wp-content/uploads/2018/05/OGP-Civicus_Closing-Space-Open-Gov_20180508.pdf [Civicus, Closing Space].

⁵ OHCHR, “Opening Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the 30th session of the Human Rights Council” (2014), online: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414 >; Maina Kiai, “Reclaiming Civic Space Through UN Supported Litigation” (2015) 12:25 International Journal on Human Rights 245, online: sur.conectas.org/en/reclaiming-civic-space-un-supported-litigation/.

⁶ Hossain et al, *supra* note 1 at 10; Kreienkamp, *supra* note 1 at 1.

⁷ Buyse, *supra* note 1 at 967; Carothers & Brechenmacher, *supra* note 2 at 1, 6–7.

⁸ Amnesty International, 2019, *supra* note 3 at 2.

⁹ Todd Landman, “Measuring Human Rights: Principle, Practice, and Policy” (2004) 26 Hum Rts Q 906 at 907. For country-specific status of ratification, see OHCHR, “Status of Ratification Interactive Dashboard,” online: indicators.ohchr.org/.

¹⁰ Landman, *supra* note 8; Sally Engle Merry, “Measuring the World: Indicators, HR, and Global Governance” (2011) 52:3 Current Anthropology 83 at 83.

quantitative measurements,¹¹ various stakeholders have embraced them in recent decades.¹² This growth is explained by Arndt & Oman as being “based on the maxim that you can only manage what you can measure”¹³ and is seen by many as a natural continuation of the “audit explosion” that is characteristic of late modern social organisation.¹⁴

While the phenomenon of shrinking civic space has received extensive attention in the academic literature, little information exists on whether human rights indicators provide valuable insight into this issue. In this paper, I will explore this issue, arguing that while various indicator systems can provide some insight into the current state of civic space, they are inherently limited in this realm, and may even cause harm. To do so, I will narrow the scope of my research and conclusions to countries in Sub-Saharan Africa. Specifically, I will provide a brief summary of restrictions impacting civil society in Madagascar, Congo (Brazzaville), the Democratic Republic of the Congo (DRC), Rwanda, Burundi, Niger, Uganda, Nigeria, and Ethiopia, and will provide more extensive examples involving Madagascar, Congo (Brazzaville), the DRC, and Rwanda.¹⁵

This paper will proceed as follows: Part 2 will introduce the purpose of indicator systems in the realm of human rights generally and civic space specifically and will discuss the plethora of ways civic space has been restricted. Following this introduction, Parts 3 and 4 will discuss two limitations of indicator systems in

¹¹ Engle Merry, *supra* note 9.

¹² *Ibid*; Landman, *supra* note 8 at 910; AnnJanette Rosga & Margaret L Satterthwaite, “The Trust in Indicators: Measuring Human Rights” (2009) 27 Berkeley J Int’l Law 253 at 255.

¹³ Christine Arndt & Charles Oman, “Uses and Abuses of Governance Indicators” (2006), online (pdf): Development Centre Studies (OECD) <www.la.utexas.edu/users/chenry/polec/2006/oecd/AE795835C8392A8111572211048C64BBAF3DA2573E.pdf>.

¹⁴ Rosga & Satterthwaite, *supra* note 11 at 256; Engle Merry, *supra* note 9 at 84.

¹⁵ In solely focusing on Sub-Saharan African countries, I do not mean to fall into the harmful tendency within human rights literature of critiquing only non-Western countries. The trend of suppression of civic space occurs in North American and European countries as well and is worthy of attention. However, I selected this jurisdictional scope as a result of my work this summer at the Centre for Law and Democracy, where my research revealed the ways in which different colonial contexts and histories of foreign aid and attention have impacted how different types of NGOs are treated in different African states.

this realm: Firstly, Part 3 will discuss the inability of indicator systems to portray civil society as a result of the sheer diversity of ways in which civic space can be narrowed, drawing on the universal model. Next, Part 4 will discuss the ways in which indicator systems necessarily flatten information by ignoring historical and regional context, and the potential harmful impacts of this. In particular, I will discuss the history of civil society and its tie to western interventionism in Sub-Saharan Africa. Finally, Part 5 will provide consideration of potential solutions and takeaways.

To ensure clarity, a few definitions are in order. Firstly, I will use “civic space” in this paper to refer to the “place that civil society actors (individuals, formal and informal groups) occupy within society... [encompassing] the conditions that affect the ability of civil society actors to operate and their relationship with stakeholders including the state, the private sector and the general public.”¹⁶ In other words, civic space has been described as “the practical room for action and manoeuvre for citizens and CSOs,”¹⁷ “the freedom and means to speak, access information, associate, organise, and participate in public decision-making”¹⁸ and “the layer between state, business, and family in which citizens organise, debate, and act.”¹⁹

Secondly, in this paper, I will refer to “civil society” as defined by Amnesty International: “the sum of individuals, groups, organizations, and institutions that express and work on behalf of a variety of interests and initiate various activities and debates in society in support of those interests.”²⁰ In this way, civil society has been defined as “a sphere of social interaction between economy and the state.”²¹ The phrase “civil society” has been critiqued by several authors who argue it is an “analytic hat stand” lacking a

¹⁶ Emmanuel Kumi & Rachel Hayman, “Analysing the relationship between domestic resource mobilization and civic space: Results of a scoping study” (2019) at 5, online (pdf): Change the Game Academy <www.changethegameacademy.org/wp-content/uploads/2019/06/INTRAC_Analysing-DRM-and-civic-space_April-2019.pdf>. Described similarly by Malena, *supra* note 1 at 14.

¹⁷ Buyse, *supra* note 1.

¹⁸ Hossain et al, *supra* note 1 at 11.

¹⁹ Buyse, *supra* note 1 at 967.

²⁰ Amnesty International, 2019, *supra* note 3 at 4.

²¹ Hossain et al, *supra* note 1 at 17.

precise definition of which actors are included.²² Related to this, it is important to acknowledge that while civic space has shrunk generally, it has not done so uniformly - activists and organizations are “targeted based on form, focus, and function.”²³

Finally, for the purpose of this paper, “human rights indicators” will be used as defined by Maria Green, as “a piece of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation.”²⁴ According to Green, indicators can be defined in two ways - simply as another word for statistics, or in a “thematic” approach, as “any information relevant to the observance or enjoyment of a specific right.”²⁵ While some authors distinguish between these types of assessment by referring to “indexes” versus “monitoring frameworks” and so on,²⁶ for the purposes of the paper, “indicators” or “indicator systems” will refer to any type of measurement system meant to assess the status of a particular human right or environment.

Part 2: Civic Space Restrictions and the Purpose of Indicators

As stated, indicator systems have been increasingly embraced in relation to human rights, including with respect to civic space. What type of restrictions should be targeted by indicators with respect to civic space? What do stakeholders hope indicators will achieve, and what indicator systems exist in this

²² Alan Fowler, “Civil Society and Aid in Africa: A Case of Mistaken Identity?” in E Obadare, ed, *The Handbook of Civil Society in Africa* (New York: Springer, 2013) at 418.

²³ Civicus, *Closing Space*, *supra* note 3 at 3.

²⁴ Maria Green, “What We Talk about When We Talk about Indicators: Current Approaches to Human Rights Measurement” (2001) 23 Hum Rts Q 1062 at 1065.

²⁵ *Ibid* at 1077.

²⁶ International Centre for Not-for-Profit Law, “Assessment Tools for Measuring Civil Society’s Enabling Environment” (2014) 5:1 Global Trends in NGO Law at 4, [online](https://www.shareweb.ch/site/DDLGN/Documents/NGO%20Laws%20Global%20Trends.pdf) (pdf): www.shareweb.ch/site/DDLGN/Documents/NGO%20Laws%20Global%20Trends.pdf.

realm?

A) What strategies are used to restrict civic space?

In the past, civic space was often described as a function of respect for three fundamental rights - freedom of association, freedom of expression, and freedom of assembly.²⁷ However, more recently, many have recognized that restrictions falling under a much broader range of categories can have large impacts on civil society.²⁸ For example, the Transnational Institute has identified “at least nine, often interrelated trends” that constrain civil society organizations.²⁹ For this paper, I have classified restrictions into eight broad categories, related to: freedom of association, financial freedoms, media regulation, freedom of expression, internet and digital rights, access to information, freedom of assembly, and whistleblower/victim protections. Each of categories encompasses a variety of strategies that run counter to international standards and can restrict civic space.³⁰

Laws and policies restricting the freedom of association have obvious impacts on civic space.³¹ Strategies that violate international standards related to this freedom include unclear NGO registration requirements, accreditation rather than declaration registration schemes, registration schemes requiring an unjustified amount of personal information, requirements that NGOs have specific roles/objectives in order to register or obtain public interest status, requirements that NGOs sign contracts or cooperation agreements with the government in order to register, and onerous reporting/supervision requirements for NGOs.³² These restrictions are often justified through “state security”

²⁷ Ayvazyan, *supra* note 2 at 12.

²⁸ For example, see Hossain et al, *supra* note 1 at 15; Kreienkamp, *supra* note 1 at 7–8; Ayvazyan, *supra* note 2; Buyse, *supra* note 1 at 966, 970, 973; Amnesty International, 2019, *supra* note 3; Malena, *supra* note 1 at 7.

²⁹ Transnational Institute, *supra* note 1 at 3.

³⁰ Of course, countless other types of laws could presumably impact civic space and/or civil society organizations. The categories described here merely reflect the strategies I observed through my work with the Centre for Law and Democracy this summer.

³¹ Transnational Institute, *supra* note 1 at 3; Ayvazyan, *supra* note 2.

³² Kreienkamp, *supra* note 1 at 7; Buyse, *supra* note 1 at 970.

reasoning, but are used to create administrative hurdles for CSOs to reduce their power and narrow the scope of their activities.³³ These strategies are also combined with efforts to delegitimize NGOs in public discourse.³⁴

Financial laws can also narrow civic space.³⁵ Strategies limiting foreign funding for civil society organizations are particularly prevalent and often violate international standards.³⁶ While international law permits states to enforce certain regulations, for example, to avoid “undue influence in domestic political affairs” or to prevent criminal behaviour (including money laundering or tax crimes), many restrictions do not reasonably fit this requirement.³⁷ For example, some states have limited the percentage of a domestic organization’s budget that can come from international funding (regardless of the organization’s mission), and others have created requirements that all foreign funding be channeled through the federal bank.³⁸ In addition, many governments impose strict financial reporting requirements for civil society organizations.³⁹ These restrictions restrict civic society by making it difficult for organizations to sustain themselves.

Media laws also frequently contain provisions that restrict the media in ways that violate international standards and narrow civic space.⁴⁰ Common examples of these strategies include undue

³³ David Kode, “Conflict Trends: Civic Space Restrictions in Africa: How does civil society respond?” (31 May 2018), online: *The African Centre for the Constructive Resolution of Disputes* <www.accord.org.za/conflict-trends/civic-space-restrictions-in-africa/>; Kreienkamp, *supra* note 1 at 8; Buyse, *supra* note 1 at 970.

³⁴ Buyse, *supra* note 1 at 971; Ayvazyan, *supra* note 2 at 11; Kreienkamp, *supra* note 1 at 7; Amnesty International, “Human Rights Defenders Under Threat: A Shrinking Space for Civil Society” (2017) at 14, online (pdf): <www.amnesty.org/download/Documents/ACT3060112017ENGLISH.PDF>.

³⁵ Transnational Institute, *supra* note 1 at 3; Kreienkamp, *supra* note 1 at 7; Buyse, *supra* note 1 at 966; Ayvazyan, *supra* note 2 at 9.

³⁶ Ayvazyan, *supra* note 2 at 9; Buyse, *supra* note 1 at 6.

³⁷ Amnesty International, 2019, *supra* note 3.

³⁸ Kreienkamp, *supra* note 1 at 7.

³⁹ *Ibid.*

⁴⁰ Transnational Institute, *supra* note 1 at 3; Hossain et al, *supra* note 1 at 16; Kreienkamp, *supra* note 1 at 8.

registration/accreditation requirements for journalists and/or media organizations, media regulatory bodies that are controlled by the state, state-controlled broadcast frequency allocations, financial pressures, authorities' ability to shut down media organizations without adequate justifications, lack of media concentration laws, and informal suppression of the media (through violence and corresponding impunity as well as criminalization).⁴¹ These restrictions impact civic space by impacting the accessibility of information, inherently limiting civic participation.⁴²

Another commonly identified category of restrictions that impact civic space encompasses laws that restrict freedom of expression (applying to the media, but also to other citizens, directly impacting civic space).⁴³ Provisions that violate international standards include criminalized reputation-based offences (such as criminal defamation laws), criminalized or broad contempt offences, overly broad "incitation" offences, criminalized false news offences, and offences applying to anyone who publishes information contrary to public order.⁴⁴ These provisions are often created under the guise of counterterrorism, which, in the twenty-first century, has become a powerful mask.⁴⁵ These laws narrow civic space by criminalizing dissent, restricting the scope of advocacy.⁴⁶

In recent years, governments have also restricted civic space by disregarding internationally-recognized internet and digital rights.⁴⁷ This disregard can take the form of surveillance or the suppression of the internet,⁴⁸ and governments often justify their actions by referring to security.⁴⁹ In 2016, the United Nations

⁴¹ Amnesty International, 2017, *supra* note 33.

⁴² Malena, *supra* note 1 at 29.

⁴³ Transnational Institute, *supra* note 1 at 3; Kreienkamp, *supra* note 1 at 8; Ayvazyan, *supra* note 2 at 12.

⁴⁴ *Ibid.*

⁴⁵ Hossain et al, *supra* note 1 at 14; Ayvazyan, *supra* note 2 at 15.

⁴⁶ Carothers & Brechenmacher, *supra* note 2 at 16.

⁴⁷ Transnational Institute, *supra* note 1 at 3; Ayvazyan, *supra* note 2 at 10; Kreienkamp, *supra* note 1 at 8.

⁴⁸ Buyse, *supra* note 1 at 973.

⁴⁹ Kode, *supra* note 33.

Human Rights Council passed a resolution affirming that “measures to intentionally prevent and disrupt access to or dissemination of information” on the internet violates international human rights law.⁵⁰ This is unsurprising, as the internet is a crucial medium for freedom of expression in modern society.⁵¹ In addition, surveillance (or the threat of surveillance) stifles civic space, as it encourages individuals to self-censor, further impacting freedom of expression.⁵²

A sixth category of trends restricting civic space involves inadequate access to information protections.⁵³ Strategies that restrict civic space and violate international standards include harsh state secret laws and non-existent or poorly implemented access to information laws. Without adequate access to information, civil society actors are unable to perform their monitoring and advocacy functions.⁵⁴

Violations of internationally-recognized freedom of assembly rights also impact civic space.⁵⁵ Restrictions in this category include authorization rather than notification schemes for assemblies, laws that fail to recognize spontaneous assemblies as valid, insufficient appeal procedures for assemblies that are refused and/or dispersed, and provisions that establish vicarious liability for organizers of assemblies. These restrictions make it difficult for civil society actors to engage in advocacy.⁵⁶

Finally, inadequate or non-existent witness and victim protection schemes can contribute to narrowed civic engagement. In addition to legal strategies, informal means are used to silence civil society. In particular, civil society actors in an alarming number of countries face physical violence from state and nonstate actors.⁵⁷ Inadequate protection schemes facilitate

⁵⁰ *Ibid.*

⁵¹ Buyse, *supra* note 1 at 973.

⁵² Amnesty International, 2017, *supra* note 34 at 19.

⁵³ Kreienkamp, *supra* note 1 at 8.

⁵⁴ Malena, *supra* note 1 at 28.

⁵⁵ Ayyazyan, *supra* note 2 at 10; Transnational Institute, *supra* note 1 at 3; Hossain et al, *supra* note 1 at 15; Buyse, *supra* note 1 at 966.

⁵⁶ Ayyazyan, *supra* note 2 at 10.

⁵⁷ Hossain et al, *supra* note 1 at 7, 14; Kode, *supra* note 33.

impunity, encouraging individuals and organizations to avoid advocacy related to controversial subjects.⁵⁸

Of course, the freedoms described above are not absolute, and some limits may be justified. However, in order to be valid, restrictions must align with international standards. For example, restrictions on the freedom of expression, assembly, and association are only considered justified where they have a legal basis, pursue a legitimate aim, and are “necessary.”⁵⁹ Indicators related to civic space, then, are interested in limitations that fail to meet these standards.

B) How do indicator systems monitor these strategies?

A wide variety of indicator systems have been developed to monitor civic space through the measurement of the various rights described above.⁶⁰ Since civic space is dependent on the confluence of many different rights, indicator systems related to civic space can be divided into two main types.

The first category encompasses indices that address specific freedoms and issues that impact civic space (such as freedom of speech or the strength of democracy).⁶¹ For example, Freedom House’s “Freedom of the Press” addresses one specific right that impacts civic space, giving each country a numerical score on the basis of 23 questions.⁶² Information is gathered from “field research, professional contacts, reports from local and international nongovernmental organizations (NGOs), reports of governments and multilateral bodies, and domestic and international news media.”⁶³ The Centre for Law and Democracy’s “Right to Information Rating similarly assesses one

⁵⁸ Hossain et al, *supra* note 1 at 7.

⁵⁹ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS; Buyse, *supra* note 1 at 980; Amnesty International, 2019, *supra* note 3 at 6.

⁶⁰ For various examples, see Kreienkamp, *supra* note 1 at 2-3, Malena, *supra* note 1 at 27.

⁶¹ International Centre for Not-for-Profit Law, *supra* note 25.

⁶² Freedom House, “Freedom of the Press 2017 Methodology” (2017) online: <freedomhouse.org/report/freedom-press-2017-methodology>.

⁶³ *Ibidi*.

component of civic space - access to information - through 61 indicators.⁶⁴

Another example of an indicator system under this category is the OHCHR's human rights indicators. However, in contrast with the Freedom of the Press index, this system seeks to measure a variety of human rights (which may all impact civic space in various ways).⁶⁵

The second category of indices consists of those that specifically seek to measure civic space as a whole⁶⁶ - for example, Civicus' civic space monitor.⁶⁷ This monitoring system seeks to triangulate the information available regarding civic space and to provide up-to-date information on the international level.⁶⁸ Rather than assessing individual rights on an annual basis, Civicus issues live updates that can shift countries' scores along the continuum of "open," "narrow," "obstructed," "repressed," and "closed."⁶⁹ Scores are created through a mathematical model that balances a "base" score and a "live adjustment" score.⁷⁰

As seen through these examples, indicator systems related to civic space vary in relation to scope, as well as methodology. The output of some systems are pure numerical scores (such as the ratings from CLD's RTI rating), while others are broader, seemingly more qualitative evaluations (such as the classifications under Civicus' civic space monitor).

C) *Why use indicator systems to monitor civic space?*

As stated above, the narrowing of civic space is

⁶⁴ Centre for Law and Democracy, "The RTI Rating: Global Right to Information Rating Map," online: <www.rti-rating.org/>.

⁶⁵ Rosga & Satterthwaite, *supra* note 11 at 288; OHCHR, "Human Rights Indicators: A Guide to Measurement and Implementation" (2012), online (pdf): <www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf>.

⁶⁶ International Centre for Not-for-Profit Law, *supra* note 25 at 2; Kreienkamp, *supra* note 1 at 2.

⁶⁷ International Centre for Not-for-Profit Law, *supra* note 25 at 2.

⁶⁸ Civicus, "CIVICUS Monitor Methodology Paper" (May 2018), online: <www.civicus.org/documents/civicus-monitor-methodology-paper.pdf>.

⁶⁹ *Ibid* at 2-3.

⁷⁰ *Ibid* at 2.

problematic for a number of reasons.⁷¹ Firstly, adequate citizen engagement (and thus, civic space) is generally seen as a necessary precondition of a healthy and just society and accountable governance.⁷² Civic space is described by Civicus as “the bedrock of any open and democratic society” as it facilitates the participation of citizens and civil society, allowing them to “claim their rights and influence the political and social structures around them.”⁷³ With respect to international CSOs, open civic space enhances the participation of domestic citizens and organizations by allowing them to capitalize on the power of transnational coalitions when domestic pressure is insufficient.⁷⁴

Secondly, restrictions on civic space reflect weakened protections of a variety of human rights (affecting not only NGOs, but citizens generally).⁷⁵ The UN Declaration on Human Rights Defenders states that everyone has a role in promoting the realization of human rights, “by campaigning and advocating for human rights, sharing information, holding those in power to account, and demanding justice, equality, dignity, and freedom.”⁷⁶ In this way, “engagement by civil society is a ‘threshold issue,’ making it more likely that all human rights are more fully guaranteed.”⁷⁷

Finally, restrictions on civic space negatively impact development more broadly. In addition to holding states accountable, many civil society organizations provide humanitarian assistance and contribute to cultivating community

⁷¹ Of course, there are caveats: not all regulation of civic space is problematic. Some restrictions are imposed due to legitimate concerns over the transparency and accountability of CSOs and organizations have, in some cases, failed to comply with these regulations, furthering their own restriction: Kreienkamp, *supra* note 1 at 10; Hossain et al, *supra* note 1 at 7; Buyse, *supra* note 1 at 969; Edrine Wanyama, “Towards a Narrow Bridge: A Critical Overview of the Operating Environment for Civil Society Organizations in Uganda” (2016) 19:2 *Law in Africa* 173 at 188.

⁷² Malena, *supra* note 1 at 17; Ayvazyan, *supra* note 2 at 6.

⁷³ Civicus, *Closing Space*, *supra* note 3 at 24.

⁷⁴ Kreienkamp, *supra* note 1 at 1.

⁷⁵ Hossain et al, *supra* note 1 at 7, 10.

⁷⁶ Amnesty International, 2019, *supra* note 3.

⁷⁷ CECHR, “The Shrinking Space for Human Rights Organisations” (4 April 2017), online: <www.coe.int/commissioner>.

and supporting innovation.⁷⁸ In addition, research shows that when NGOs face financial restrictions, overall aid from donors is reduced (even after controlling for levels of democracy and civil liberties).⁷⁹

Indicators are seen as an important tool in countering this narrowing of civic space, through their various perceived abilities. Among other things, indicators can assist with monitoring compliance with human rights commitments,⁸⁰ measuring the progress of human rights,⁸¹ and comparing the success of different approaches to their pursuit.⁸² Monitoring compliance is seen as crucial in light of the implicit difficulty of holding states accountable for their international human rights obligations, as it facilitates available informal remedies (through the power, for example, of “naming and shaming”).⁸³ In addition, Sally Engle Merry argues that indicators can encourage compliance by removing ambiguity and shifting responsibility: “the indicator itself does the work of critique.”⁸⁴ With respect to measuring the progress of human rights, indicators are seen as powerful because they enable the simplification of data, allowing for the efficient comparison of rights violations across time and geography.⁸⁵ Finally, with respect to comparing success of approaches, indicators are seen as enhancing stakeholders’ ability to find

⁷⁸ Hossain et al, *supra* note 1 at 19; Malena, *supra* note 1 at 14.

⁷⁹ Kendra Oupuy & Aseem Prakash, “Do Donors Reduce Bilateral Aid to Countries with Restrictive NGO Laws? A Panel Study, 1993-2012” (2017) 47:1 *Nonprofit and Voluntary Sector Quarterly* 89 at 93.

⁸⁰ Rosga & Satterthwaite, *supra* note 11 at 257; Nancy Thede, “Human Rights and Statistics: Some reflections on the no-man’s-land between concept and indicator,” (2001) 18:2 *Statistical Journal of the United Nations Economic Commission for Europe* 259 at 259; Elvira Dominguez-Redondo, “Is There Life Beyond Naming and Shaming in Human Rights Implementation?” (2012) 4 *NZLR* 673 at 683; Landman, *supra* note 8 at 909; Engle Merry, *supra* note 9 at 88.

⁸¹ Rosga & Satterthwaite, *supra* note 11 at 257; Thede, *supra* note 80 at 259; Landman, *supra* note 8 at 909.

⁸² Rosga & Satterthwaite, *supra* note 11 at 257; Ayvazyan, *supra* note 2 at 20; Landman, *supra* note 8 at 906-907.

⁸³ Dominguez-Redondo, *supra* note 80 at 683.

⁸⁴ Engle Merry, *supra* note 9 at 88.

⁸⁵ Rosga & Satterthwaite, *supra* note 11 at 255; Malena, *supra* note 1 at 18; Landman, *supra* note 8 at 909.

future solutions to human rights issues.⁸⁶

Considering this range of potential uses, it is not surprising that indicators are of interest to a variety of actors.⁸⁷ Human rights practitioners, of course, are interested in them as tools that can simplify data collection, and, in the case of NGOs, can allow organizations to be aware of current and emerging threats and to strategize accordingly.⁸⁸ Indicators are also useful for donors, who seek clarity about the efficacy of their aid,⁸⁹ and international investors, who wish to ensure the security of their investments.⁹⁰

While indicators are seen as increasing efficiency for all of these stakeholders by reducing the multiplicity of data collection, the fact that they can be used simultaneously for multiple purposes in line with multiple interests can create methodological issues for their creation. Indicators are often seen as objective or apolitical, but many authors highlight that this is an illusion - they are always created for particular purposes⁹¹ and can sometimes support contradictory ends.⁹²

A) Conclusion:

With this background in mind, the rest of this paper will address whether indicators can truly fulfill their purposes in this realm. In particular, I will discuss two inherent limitations that call into question the ability of indicators to promote positive change for civic space and human rights.

⁸⁶ Ayyazyan, *supra* note 2 at 20; Landman, *supra* note 8 at 906-907.

⁸⁷ Malena, *supra* note 1 at 7; Arndt & Oman, *supra* note 12 at 31; Thede, *supra* note 80 at 269.

⁸⁸ Ayyazyan, *supra* note 2 at 20; Malena, *supra* note 1 at 7; Arndt & Oman, *supra* note 12 at 35; Thede, *supra* note 80 at 269.

⁸⁹ Arndt & Oman, *supra* note 12 at 31, Hossain et al, *supra* note 1 at 3; Engle Merry, *supra* note 9 at 85.

⁹⁰ Arndt & Oman, *supra* note 12 at 13; Engle Merry, *supra* note 9 at 85.

⁹¹ For example, see Engle Merry, *supra* note 9 at 85.

⁹² Rosga & Satterthwaite, *supra* note 11 at 255.

Part 3: Methodological Limitations of Civic Space Indicators: The Indivisibility Issue

While research suggests that civic space has narrowed in countless countries worldwide, this narrowing occurs in a variety of ways, through different combinations of the restrictions described above. In this part, I will firstly provide a summary of some of the specific ways civic space has been narrowed in Sub-Saharan Africa and will then discuss the challenges that this diversity of approaches creates for indicator systems. In particular, I will argue that indicator systems are incapable of capturing the cumulative effects that occur when a particular country imposes multiple measures that impact civic society without sacrificing some of their methodological benefits. More generally, I will suggest that under the universal model of human rights, indicator systems are always limited in this way with respect to civic space.

A) What strategies are used to narrow civic space in Sub-Saharan Africa?

Throughout my time at the Centre for Law and Democracy, I conducted research into civic space in Sub-Saharan Africa. In particular, I focused on the countries of Burundi, the Congo (Brazzaville), the DRC, Madagascar, Niger, and Rwanda. For the purpose of this paper, I created the table below, summarizing some of the laws and policies in these countries (as well as others that arose through my research for this paper) that map on to the categories of strategies discussed in Part 2(a) of this paper.⁹³

⁹³ Please note: this table is not comprehensive: there are, undoubtedly, both other forms of suppression in the countries discussed, and trends that exist in other Sub-Saharan African countries that we did not examine. These categories are meant to be mere examples of the impact on civic space of various types of restrictions.

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Category of restriction:	Specific restriction:	International standards:	Countries in violation of standard:
Freedom of association restrictions	Unclear registration requirements	Registration procedures must be understandable. ⁹⁴	Congo ⁹⁵ Madagascar ⁹⁶
	Accreditation instead of declaration scheme	Registration regimes ought to operate on a notification system, whereby registration is not dependent on state approval. ⁹⁷	Burundi ⁹⁸ DRC ⁹⁹ Niger ¹⁰⁰

⁹⁴ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, UNGAOR, 20th Sess, UN Doc A/HRC/20/27 (21 May 2012) at para 95 [A/HRC/20/27].

⁹⁵ The registration process appears to be formally governed by the former colonial French law - however, the law is only available online in resources from France, and these versions reference amendments made (presumably in France, not Congo) after Congo gained independence in 1960: *Law 1 July 1901 and Decree of 16 August 1901*, 1901(Congo), online (pdf): <niort-associations.fr/loi_decret_1901.pdf>. This appears to be the current state of the law.

⁹⁶ “Associations” and “NGOs” are treated separately under Malagasy law, creating a confusing system. In addition, the NGO authorization process is overly complicated: For quick comparisons, see: French Embassy in Madagascar, “Le cadre juridique des associations et ONG a Madagascar,” online: <mg.ambafrance.org/Le-cadre-juridique-des>.

⁹⁷ A/HRC/20/27, *supra* note 94 at para 95.

⁹⁸ Burundi has both a “declaration” and “accreditation” scheme. NGOs who operate in more than one province, are “collective” NGOs” or are international associations are required to seek accreditation: *Law 1/02 of 27 January 2017: Organic Framework for Non-Profit Associations*, 2017 (Burundi) at art 14, online (pdf): <www.presidence.gov.bi/wp-content/uploads/2017/04/loi-02-2017.pdf>.

⁹⁹ Decree-law No 004/2001, 2001 (DRC) at art 60. In addition, article 30 stipulates that international organizations are only permitted to act with authorization of the president.

¹⁰⁰ The Minister of the Interior is responsible for deciding whether or not to grant authorization. The law does not specify the grounds for refusal: *Ordonnance 84-06 of 1 March 1984*, 1984 (Niger) at art 4, online (pdf): <droit-afrique.com/upload/doc/niger/Niger-Ordonnance-1984-06-associations.pdf>.

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	Registration scheme requiring unjustified personal information	Governmental oversight of NGO registration must respect privacy. ¹⁰¹	Burundi ¹⁰² Congo ¹⁰³ DRC ¹⁰⁴ Rwanda ¹⁰⁵ Uganda ¹⁰⁶
	Requirements that NGOs have specific roles/objectives in order to register and/or to obtain public interest status	Civil society organizations have the right to operate freely and autonomously. ¹⁰⁷	Burundi ¹⁰⁸ DRC ¹⁰⁹ Nigeria ¹¹⁰

¹⁰¹ A/HRC/20/27, *supra* note 94 at para 95.

¹⁰² See requirements for NGOs seeking accreditation: *Law 1/02*, *supra* note 98 at art 21.

¹⁰³ *Decree of 16 August 1901*, *supra* note 95 at art 10.

¹⁰⁴ *Decree-law No 004/2001*, *supra* note 99 at art 4.

¹⁰⁵ International Centre for Not-for-Profit Law, “Civic Freedom Monitor: Rwanda” (2019), online: <www.icnl.org/resources/civic-freedom-monitor/rwanda>.

¹⁰⁶ Hannah Smidt, “Shrinking Civic Space in Africa: When Governments Crack Down on Civil Society” (2018) GIGA German Institute of Global and Area Studies 1; Amnesty International, 2019, *supra* note 3.

¹⁰⁷ A/HRC/20/27, *supra* note 94.

¹⁰⁸ For public interest status: *Law 1/02*, *supra* note 98 at art 30.

¹⁰⁹ *Decree-law No 004/2001*, *supra* note 99 at arts 36, 41.

¹¹⁰ The NGO bill requires NGOs to renew their registration every two years, and renewal can be refused if the proposed activities are “not in the national interest”: Victoria Ibezim-Ohaeri, “Confronting Closing Civic Spaces in Nigeria” (2017) 14:26 SUR 129 at 131.

Civic Space Indicators: Blurred Reflections

	Requirements that NGOs sign contracts/cooperation agreements with government in order to register	Civil society organizations have the right to operate freely and autonomously. ¹¹¹	Burundi ¹¹² Niger ¹¹³ Rwanda ¹¹⁴
	Onerous reporting/supervision requirements for NGOs	Reporting requirements may be justified but should respect privacy and not put the independence of associations in jeopardy. ¹¹⁵	Burundi ¹¹⁶ DRC ¹¹⁷ Madagascar ¹¹⁸ Rwanda ¹¹⁹

¹¹¹ A/HRC/20/27, *supra* note 94.

¹¹² See discussion of cooperation agreements required for re-registration for international NGOs: Civicus, “Burundi Bans International NGOs” (8 October 2018), online: <www.civicus.org/index.php/media-resources/news/interviews/3540-burundi-bans-international-ngos>.

¹¹³ NGOs are required to sign a “memorandum of understanding” with the Minister of Finance: Decree No 92-292 of 25 September 1992, 1992 (Niger) at art 19, online (pdf): <droit-afrique.com/upload/doc/niger/Niger-Decret-1992-292-ONG.pdf>.

¹¹⁴ In order to register, an NGO must provide a “collaboration letter” issued by the local district. In addition, the Rwanda Governance Board is mandated to “supervise” national NGOs and this mandate is broadly worded, suggesting that partnerships between NGOs and the government are de facto compulsory: *Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association: Addendum: Mission to Rwanda*, UNGAOR, 26th Sess, UN Doc A/HRC/26/29/Add.2 (16 September 2014) at para 58.

¹¹⁵ A/HRC/20/27, *supra* note 94.

¹¹⁶ NGOs under the declaration regime are required to annually submit a “summary report” of their activities. NGOs under accreditation regime are required to submit even more extensive information. NGOs are supervised by applicable ministries and are subject to monitoring and evaluation. Ministries may require additional documentation/information about their activities at any time: *Law 1/02*, *supra* note 98 at art 12, 25-28.

¹¹⁷ Decree-law No 004/2001, *supra* note 99 at arts 44, 45.

¹¹⁸ Law 96-030 of 14 August 1997, 1997 (Madagascar) at art 17, online (pdf): <www.icnl.org/research/library/files/Madagascar/ngofre.pdf>.

¹¹⁹ A/HRC/26/29/Add.2, *supra* note 114 at para 61.

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			Uganda ¹²⁰
	Overbroad departmental/state powers to dissolve organizations	Civil society organizations have the right to operate freely and autonomously. ¹²¹	Burundi ¹²² Congo ¹²³ DRC ¹²⁴ Niger ¹²⁵ Uganda ¹²⁶ Nigeria ¹²⁷
Financial restrictions	Requirements that all funding go through the federal bank	The ability to receive and utilize resources from international sources is a crucial component of the freedom of association. ¹²⁸	Burundi ¹²⁹

¹²⁰ Per the NGO law, institutions are required to register with the National Bureau for NGOs and must pursue only goals/objectives approved by the Bureau: Wanyama, *supra* note 71 at 179. 9

¹²¹ A/HRC/20/27, *supra* note 94 at para 95.

¹²² Civicus, “Burundi: Joint Submission to the UN Universal Periodic Review” (29 June 2017), online (pdf): <www.civicus.org/images/Burundi.JointUPRSubmission.pdf> [Civicus, Burundi Submission].

¹²³ CSOs who oppose the ruling party are often restricted from operating: Bertelsmann Stiftung, “BTI Rating 2018: Congo, Republic,” online: <www.bti-project.org/en/reports/country-reports/detail/itc/cog/itr/wca/>.

¹²⁴ For example, see discussion about the suspension of LUCHA: International Centre for Not-for-Profit Law, “Civic Freedom Monitor: DRC” (2019), online: <www.icnl.org/resources/civic-freedom-monitor/congo-drc>.

¹²⁵ Associations can be dissolved if they engage in activities not authorized in their statutes: *Ordonnance 84-06*, *supra* note 100 at art 26.

¹²⁶ Amnesty International, 2019, *supra* note 3.

¹²⁷ Frequent renewals of registration, with broad powers to refus: Ibezim-Ohaeri, *supra* note 110 at 132.

¹²⁸ UN Human Rights Council, *Protecting Human Rights Defenders*, UNGAOR, 22nd Sess, UN Doc A/HRC/Res/22/6 at para 9.

¹²⁹ Civicus, Burundi Submission, *supra* note 122; *Law 1/02*, *supra* note 98 at art 74.

Civic Space Indicators: Blurred Reflections

	Financial reporting requirements	Civil society organizations have the right to operate freely and autonomously. ¹³⁰	Burundi ¹³¹ DRC ¹³² Madagascar ¹³³
	Restrictions or stigmatization of foreign funding	The ability to receive and utilize resources from international sources is a crucial component of the freedom of association. ¹³⁴	Rwanda ¹³⁵ Ethiopia ¹³⁶ Uganda ¹³⁷
Media regulation	Journalist registration/accreditation requirements	Individual journalists should not be required to register. ¹³⁸	Burundi ¹⁴⁰

¹³⁰ A/HRC/20/27, *supra* note 94.

¹³¹ Law 1/02, *supra* note 98 at arts 27, 28, 33, 34.

¹³² Decree-law No 004/2001, *supra* note 99 at art 44.

¹³³ Law 96-030, *supra* note 118 at art 17.

¹³⁴ A/HRC/Res/22/6, *supra* note 128.

¹³⁵ A/HRC/26/29/Add.2, *supra* note 114 at para 70.

¹³⁶ National CSOs focused on democratic rights are prohibited from receiving more than 10% of their funding from foreign sources: Kode, *supra* note 33, Transnational Institute, *supra* note 1 at 3; Kreienkamp, *supra* note 1 at 7; Smidt, *supra* note 106; Kumi & Hayman, *supra* note 15 at 10; Buyse, *supra* note 1 at 966.

¹³⁷ Smidt, *supra* note 106.

¹³⁸ OSCE, "Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression" (2003), online: <www.osce.org/fom/99558?download=true>.

¹⁴⁰ Journalists are required to register and receive accreditation from a state-controlled body (see following footnote): Law 1/19 of 14 September 2018 on the Amendment of Law 1/15 of 9 May 2015 (Press Law), 2018 (Burundi) at arts 11, 19, 77, online (pdf): <cnc-burundi.bi/wp-content/uploads/2018/10/loi-2018.pdf>.

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		Accreditation regimes to regulate privileged access to certain places are legitimate, but only where they are implemented by an independent body. ¹³⁹	Rwanda ¹⁴¹
	Media organization registration requirements	Media organization registration requirements may be valid but may violate the freedom of expression if they are not implemented by an independent body. ¹⁴²	Burundi ¹⁴³ Congo ¹⁴⁴ DRC ¹⁴⁵ Madagascar ¹⁴⁶

¹³⁹ *Ibid.*

¹⁴¹ Journalists are not technically required to register but must do so to obtain a press card. It is difficult to operate without a press card. These press cards are issued by the Rwanda Media Commission (RMC), which is “independent” in theory but whose operational freedom has been heavily questioned: Committee to Protect Journalists, “Legacy of Rwanda Genocide Includes Media Restrictions, Self-Censorship” (2014), online (pdf): <cpj.org/reports/NEWrwanda2014-english.pdf>.

¹⁴² OSCE, *supra* note 138.

¹⁴³ Newspapers are required to register with a state-controlled body: *Law 1/19 of 14 September 2018*, *supra* note 140 at art 23.

¹⁴⁴ Media outlets of all types are required to register with the CSLC, a regulatory authority that lacks independence (members are appointed by Parliament, the Supreme Court, and the executive, while the director is selected by the president): Freedom House, “Freedom of the Press 2016: Congo (Brazzaville),” online: <freedomhouse.org/report/freedom-press/2016/congo-republic-brazzaville>; OECD, “Global Forum on Competition, Competition Issues in Television and Broadcasting, Contribution from Congo” (2013) at 2, online: <[www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF/WD\(2013\)14&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF/WD(2013)14&docLanguage=En)>.

¹⁴⁵ All media organizations are required to register with the Higher Audio-Visual and Communication Council (CSAC), which does not have institutional independence: *Organic Law No 11/001 of 10 January 2011*, 2011 (DRC) at arts 17, 24.

¹⁴⁶ Publications and press agencies are required to register with ANRCM, but this body exists only on paper. Because of this, the previous “provisional authority” (CSCA) is still practically in control of this: EEAS Europa, “EU EOM Madagascar 2018: Preliminary Statement on the Electoral Process of 7 November 2018,” online: <eeas.europa.eu/election-observation-missions/eom-madagascar-2018/53499/moe-ue-madagascar-2018-d%C3%A9claration-pr%C3%A9liminaire-sur-le-processus-%C3%A9lectoral-du-7-novembre-2018_fr>; PIDC, “Étude sur le développement des medias a Madagascar” (2017) at 34, online: <www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Nairobi/Etudededeveloppementmedia_01.pdf>.

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	State-controlled media regulatory bodies	States should not interfere with freedom of the press. ¹⁴⁷	Burundi ¹⁴⁸
	State-controlled broadcast frequency allocations	Broadcast frequency allocation should be based on “democratic” criteria and should be insulated from political interference. ¹⁴⁹	Burundi ¹⁵⁰ Congo ¹⁵¹ Madagascar ¹⁵² Niger ¹⁵³
	Financial factors	States should not utilize advertising to influence media content. ¹⁵⁴	Congo ¹⁵⁵

¹⁴⁷ OSCE, 2003, *supra* note 138.

¹⁴⁸ The National Communications Council is an “independent” body in theory, but all members of the council are directly appointed by the president: Article 19, *supra* note 148 at 5-6; Civicus, Burundi Submission, *supra* note 122 at 8.

¹⁴⁹ OSCE, *supra* note 138.

¹⁵⁰ The National Communications Council (members appointed by the president) distributes broadcast frequencies: Law 1/19, *supra* note 140 at art 31.

¹⁵¹ Broadcast frequencies are distributed by the state-controlled regulatory body, which allocates most licenses to pro-government outlets: IREX, “Media Sustainability Index 2012: Republic of Congo” (2012) at 87–88, online: <www.irex.org/sites/default/files/pdf/media-sustainability-index-africa-2012-republic-of-congo.pdf>.

¹⁵² Licenses are granted by CSCA in coordination with the Malagasy Office for Communication Studies and Regulation (OMERT) - the system is not transparent or independent: PIDC, *supra* note 146 at 63.

¹⁵³ The CNRTP is responsible for granting broadcast licenses. All its members are appointed by government officials: Law No 2018-47 of 12 July 2018, 2018 (Niger) at art 18, 23, online: <www.arcep.ne/textes-de-l-arcep-lois-et-ordonnances.php?sid=99>.

¹⁵⁴ OSCE, “Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression” (2002), online: <www.osce.org/fom/99558?download=true>.

¹⁵⁵ The vast majority of state funding goes to pro-government newspapers. Broadcast media also tends to only broadcast official information, as public institutions pay media more for airing their content than other sources: IREX, *supra* note 151 at 90, 91.

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			Madagascar ¹⁵⁶ Rwanda ¹⁵⁷
	State ability to shut down media organizations	States should not interfere with freedom of the press. ¹⁵⁸	Burundi ¹⁵⁹ Congo ¹⁶⁰ DRC ¹⁶¹
	Lack of media concentration laws	States have an obligation to adopt measures to prevent undue media concentration. ¹⁶²	Burundi ¹⁶³ Congo ¹⁶⁴

¹⁵⁶ No laws regulating state funding for media/advertising. State media publications receive almost all state advertising: PIDC, *supra* note 146 at 168.

¹⁵⁷ Approximately 90% of advertising revenue comes from the public sector: Shamlal Puri, “For Rwanda’s media, the state plays a dominant role” (8 April 2014), online: *International Press Institute* <ipi.media/for-rwandas-media-the-state-plays-a-dominant-role/>.

¹⁵⁸ OSCE, 2003, *supra* note 138.

¹⁵⁹ Many independent news organizations have been shut down. At least one was only permitted to resume operation after signing an agreement with the government, promising to appoint a director with pro-government views: Civicus, Burundi Submission, *supra* note 122 at 8.

¹⁶⁰ Freedom House, 2016, *supra* note 62.

¹⁶¹ The CSAC can temporarily suspend media organisations and/or suspend/suppress particular programs, stations, and portions of news programs. The legislation does not specify what constitutes grounds for suspension, and in practice, the CSAC is more lenient towards faults committed by the public media: *Organic Law 11/001*, *supra* note 145 at art 59.

¹⁶² OSCE, “Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression” (2004), online: <www.osce.org/fom/99558?download=true>.

¹⁶³ No media concentration laws. RTNB is Burundi’s only national radio and TV broadcaster, and is state run: “Burundi’s Imbonerakure Leader Named Head of RTNB”, BBC (14 July 2019), online: <www.bbc.com/news/world-africa-48980959>.

¹⁶⁴ No comprehensive legal restrictions. One law was passed to increase “plurality” of the broadcast media, but no implementing regulations were passed. Another law, passed in 2011, bans concentration of ownership in the media, but only targets publications criticizing the government: IREX, *supra* note 151.

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			Madagascar ¹⁶⁵
	Informal suppression of the media	States should not interfere with freedom of the press. ¹⁶⁶	Congo ¹⁶⁷ DRC ¹⁶⁸ Niger ¹⁶⁹ Nigeria ¹⁷⁰
Freedom of expression restrictions	Criminalized reputation-based offences	Reputation-based provisions such as defamation should not be found in the criminal law. ¹⁷¹	Burundi ¹⁷⁴

¹⁶⁵ No natural or legal person is permitted to hold more than 25% of the capital/voting rights of a media company, but this provision is not enforced. There is little transparency about ownership structures, and concentration appears to be high: *Ordinance No 92-039 of 14 September 1992, 1992 (Madagascar)* at art 28, online (pdf): <droit-afrique.com/upload/doc/madagascar/Madagascar-Ordonnance-1992-39-communication-audiovisuelle.pdf>; PIDC, *supra* note 146 at 54, 56.

¹⁶⁶ OSCE, 2003, *supra* note 138.

¹⁶⁷ Congolese journalists often face political pressure, threats, intimidation, physical attacks, and detentions: IREX, *supra* note 149; US State Department, “Republic of the Congo 2018 Human Rights Report: Executive Summary,” online (pdf): <www.state.gov/wp-content/uploads/2019/03/Republic-of-the-Congo-2018.pdf> [US State Department, Rwanda].

¹⁶⁸ Journalists covering demonstrations have been detained/beaten, security forces have attacked numerous media organizations, and the government has restricted the movement of international journalists: Freedom House, “Freedom of the World 2018: Congo (DRC),” online: <freedomhouse.org/report/freedom-world/2018/congo-democratic-republic-kinshasa>.

¹⁶⁹ Journalists have been physically assaulted, arrested, and press offices have been raided: Freedom House, “Freedom of the Press 2016: Niger,” online: <freedomhouse.org/report/freedom-press/2016/niger> [Freedom House, Niger].

¹⁷⁰ Ibezim-Ohaeri, *supra* note 110 at 130, 133

¹⁷¹ *General Comment No 34: Article 19: Freedoms of opinion and expression*, UNICCPROR, 102nd Sess, Un Doc CCPR/C/GC/34 at para 47.

¹⁷⁴ *Law 1/05 of 22 April 2009 on the Revision of the Penal Code*, 2009 (Burundi) at art 251, 252, 255, online (pdf): <[ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/cb9d300d8db9fc37c125707300338af2/\\$FILE/Code%20P%20c3%20a9nal%20du%20Burundi%20.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/cb9d300d8db9fc37c125707300338af2/$FILE/Code%20P%20c3%20a9nal%20du%20Burundi%20.pdf)>.

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		Where these provisions do occur in the criminal law, truth should always be a defence. ¹⁷² Where reputation-based offences exist, offences against public officials should not have higher penalties, as public officials must withstand higher degrees of criticism. ¹⁷³	Congo ¹⁷⁵ DRC ¹⁷⁶ Madagascar ¹⁷⁷ Niger ¹⁷⁸ Rwanda ¹⁷⁹
	Criminalized/broad contempt offences	Mere insult of public authorities or symbols cannot ground legitimate criminal law provisions. ¹⁸⁰	Burundi ¹⁸¹ Congo ¹⁸²

¹⁷² General Comment No 34, *supra* note 171 at para 47.

¹⁷³ *Ibid* at para 38.

¹⁷⁵ Defamation was decriminalized in 2001, but public insult appears to still be prohibited under the penal code: IREX, *supra* note 151.

¹⁷⁶ Decree of 30 January 1940 on the Penal Code, 1940 (DRC) at art 74, 199, online (pdf): <www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>; Law No 96-001 of 22 June 1996, 1996 (DRC) at art 76.

¹⁷⁷ The Press Law states that it is based on decriminalization. However, it contains reputation-based offences that can be prosecuted by the public prosecutor in certain cases, converting it into a criminal proceeding: Law No 2016-029, 2016 (Madagascar) at art 36, online (pdf): <www.mcri-gov.mg/wp-content/uploads/2017/10/Loi-n%C2%B02016-029_fr.pdf>.

¹⁷⁸ Criminal defamation and insult offences were repealed in 2011, but journalists continue to be tried under the Penal Code: Reporters Without Borders, “Niger: Press Freedom in Decline” (2019), online: <rsf.org/en/niger> [Reporters Without Borders, Niger].

¹⁷⁹ Defamation was decriminalized in the 2018 Press Code, but various other reputation-based offences remain: Law No 68/2018, 2018 (Rwanda) at art 161, 236.

¹⁸⁰ General Comment No 34, *supra* note 171 at para 34, 38.

¹⁸¹ Law 1/05, *supra* note 174 at art 367, 376.

¹⁸² Penal Code is not available online, but this appears to still be criminalized: Gilles Alain Diamouangana, “Vie et mort des medias au Congo-Brazzaville (1989-2006): contribution de La Semaine Africaine a l’émergence d’un espace public,” (2013) Sciences de l’information et de la communication, Université Michel de Montaigne at 359, online: <tel.archives-ouvertes.fr/tel-00988028/document>.

Civic Space Indicators: Blurred Reflections

			Madagascar ¹⁸³ Rwanda ¹⁸⁴
	Overly broad “incitation” offences	Incitement to genocide should be criminalized, but only where it is “direct and public.” ¹⁸⁵ Other forms of incitement may be criminalized, but only where they involve “direct” incitement and an intention to actually incite violence. ¹⁸⁶	Burundi ¹⁸⁷ Madagascar ¹⁸⁸ Rwanda ¹⁸⁹
	False news offences	False news offences violate freedom of expression by granting control of the media to the government. ¹⁹⁰	Burundi ¹⁹¹ Congo ¹⁹²

¹⁸³ *Code Penal*, 28 February 2017 (Madagascar) at art 223, 224, 226, online: <www.justice.mg/penal/>.

¹⁸⁴ *Law No 68/2018*, *supra* note 179 at art 223.

¹⁸⁵ A/HRC/26/29/Add.2, *supra* note 114.

¹⁸⁶ OSCE, “Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression” (2010), online: <www.osce.org/fom/99558?download=true>.

¹⁸⁷ This provision requires intent but is overly broad: *Law 1/05*, *supra* note 174 at art 602.

¹⁸⁸ Overly broad definition: *Law No 2016-029*, *supra* note 177 at art 30.

¹⁸⁹ The Penal Code prohibits “indirect incitement” which is broader than international standards permit: *Law No 68/2018*, *supra* note 179 at art 93.

¹⁹⁰ OSCE, 2010, *supra* note 186.

¹⁹¹ *Law 1/05*, *supra* note 174 at art 602.

¹⁹² Appears to still be criminalized, but the Penal Code is not available online: *Diamouangana*, *supra* note 182 at 359.

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			Madagascar ¹⁹³ Rwanda ¹⁹⁴
	Overly broad restrictions on publishing information contrary to public order	Restrictions on the freedom of expression are only justified if provided for by law and where they are necessary and proportionate. Public order is a legitimate ground for restrictions but must be clearly defined. ¹⁹⁵	Congo ¹⁹⁶
Internet/digital rights	Surveillance	Surveillance of citizens is only acceptable where it is necessary and proportionate. ¹⁹⁷	Burundi ¹⁹⁸ Congo ¹⁹⁹ DRC ²⁰⁰

¹⁹³ Vague provision, potentially permitting journalists to be fined for making mistakes: Reporters Without Borders, “Madagascar: Easily Influenced Media,” online: <rsf.org/en/madagascar>.

¹⁹⁴ Genocide laws prohibit denial of the genocide, but also applies to those who “affirm that there was a double genocide,” which may allow it to be used against those who acknowledge the crimes committed by the current government at the time of the genocide: *Law No 59/2018*, 2018 (Rwanda) at art 5

¹⁹⁵ *Promotion and Protection of the Right to Freedom of Opinion and Expression*, UNGAOR, 66th Sess, UN Doc A/66/290 (10 August 2011) at para 6-7.

¹⁹⁶ Penal Code is not available online, but it appears to still be criminalized: Diamouangana, *supra* note 180 at 359.

¹⁹⁷ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, art 19(3).

¹⁹⁸ SIM card registration is mandatory and ISPs are required to provide a secured web application to the public regulator, allowing access to the users’ register: Article 19, *supra* note 148 at 6. In addition, government agencies can intercept electronic communications and seize computer data in order to carry out a broad range of investigations: *Law 1/09 of 11 May 2018*, 2018 (Burundi) at art 47, online (pdf): <www.assemblee.bi/IMG/pdf/9%20du%2011%20mai%202018.pdf>.

¹⁹⁹ Network operators and electronic communications operators are required to store the data of electronic communications “for the purposes of defence and security, the fight against paedophilia and terrorism.” There is no independent regulator responsible for monitoring this use of personal data: Global Information Society Watch, “2014: Communications Surveillance in the Digital Age, Congo” at 11, online (pdf): <giswatch.org/sites/default/files/civil_society_and_cyber_surveillance_in_the_republic_of_congo.pdf>.

²⁰⁰ Surveillance of telecommunications is permitted when “grounded in public interest.” “Public interest” is not defined: *Framework Law 013/2002 on Telecommunications*, 2002 (DRC) at art 52.

Civic Space Indicators: Blurred Reflections

			Rwanda ²⁰¹
	Suppression of internet/digital access	<p>Mass disruptions of communications violate the freedom of expression and access to information.²⁰²</p> <p>Restrictions on freedom of expression on the internet are held to the same standards as those applying to non-internet content.²⁰³</p>	<p>Burundi²⁰⁴</p> <p>Congo²⁰⁵</p> <p>DRC²⁰⁶</p> <p>Niger²⁰⁷</p> <p>Rwanda²⁰⁸</p> <p>Ethiopia²⁰⁹</p>

²⁰¹ Communication service providers are required to “ensure that systems are technically capable of supporting interceptions at all times,” ensuring that authorities are able to hack into telecommunications without the provider’s knowledge/assistance: *Law No 60/2013*, 2013 (Rwanda), at art 7. Surveillance appears pervasive: Freedom House, “Freedom of the Net 2018: Rwanda,” online: <freedomhouse.org/report/freedom-net/2018/rwanda> [Freedom House, Rwanda].

²⁰² General Comment No 34, *supra* note 171.

²⁰³ A/66/290, *supra* note 195 at para 6-7.

²⁰⁴ Article 19, *supra* note 148 at 6.

²⁰⁵ Freedom House, “Freedom of the World 2018: Congo-Brazzaville,” online: <freedomhouse.org/report/freedom-world/2018/congo-republic-brazzaville>.

²⁰⁶ The suppression of telecommunications is permitted for “national security” or “any other reason”: *Framework Law 013/2002*, *supra* note 200 at art 46. This has been utilized during election periods: OHCHR, “UN expert urges DRC to restore internet services” (7 Jan 2019), online: <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24057&LangID=E>.

²⁰⁷ Freedom House, Niger, *supra* note 178; Reporters Without Borders, Niger, *supra* note 178.

²⁰⁸ Freedom House, Rwanda, *supra* note 201.

²⁰⁹ Kode, *supra* note 33.

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Access to information	Harsh state secret laws	State secret laws must be narrowly constrained to protect only national security, public order, or public health and morals. ²¹⁰	Burundi ²¹¹ DRC ²¹² Rwanda ²¹³
	Lack of an access to information law	Access to information held by public authorities is a human right and states have an obligation to facilitate this access. ²¹⁴	Burundi Congo DRC Madagascar
	Poorly implemented access to information law	Procedures regulating the right to information should be simple, and states have an obligation to facilitate access. ²¹⁵	Niger ²¹⁶ Rwanda ²¹⁷

²¹⁰ General Comment No 34, *supra* note 171 at para 30.

²¹¹ Anyone who reveals state or professional secrets is penalized. There is no public interest defence: *Law 1/05*, *supra* note 174 at art 250.

²¹² No public interest defence: *Decree of 30 January 1940 on the Penal Code*, *supra* note 176 at art 187.

²¹³ No public interest defence: *Law No 68/2018*, *supra* note 179 at art 192.

²¹⁴ OSCE, 2004, *supra* note 162.

²¹⁵ *Ibid.*

²¹⁶ Niger's ATI law has weak appeal provisions, a weak recognition of the right to access all government documents, and a poor promotional regime: Centre for Law and Democracy, "Global Right to Information Rating: Niger," online: <www.rti-rating.org/country-data/Niger/>.

²¹⁷ Rwanda's ATI law excludes several types of information and lacks means of redress: Centre for Law and Democracy, "Global Right to Information Rating: Rwanda," online: <www.rti-rating.org/country-data/Rwanda/>.

Civic Space Indicators: Blurred Reflections

Freedom of assembly restrictions	Authorization rather than notification schemes	Freedom of assembly is not respected where authorization, rather than mere notification schemes are in place. ²¹⁸ While “public order” is a legitimate ground to refuse an assembly, further precision must be included in the law, requiring authorities to demonstrate the precise nature of the threat. ²¹⁹	Burundi ²²⁰ Congo ²²¹ DRC ²²² Madagascar ²²³ Niger ²²⁴ Rwanda ²²⁵ Uganda ²²⁶
	Lack of recognition of the validity of spontaneous assemblies	Spontaneous assemblies must be recognized as legitimate and presumed lawful. ²²⁷	Burundi ²²⁸ Congo ²²⁹

²¹⁸ Joint report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UNGAOR, 31st Sess, UN Doc A/HRC/31/66 (4 February 2016) at para 21.

²¹⁹ *Ibid* at para 31.

²²⁰ Article 19, *supra* note 148 at 6.

²²¹ US State Department, Congo, *supra* note 167 at 14.

²²² Decree-Law 196 of January 19, 1999, 1999 (DRC) at art 3.

²²³ US State Department, “Madagascar 2018 Human Rights Report: Executive Summary,” online: <www.ecoi.net/en/document/2004168.html>.

²²⁴ Freedom House, “Freedom of the World 2018: Niger,” online: <[_](#)>

²²⁵ Law 33/1991, 1991 (Rwanda) at art 5

²²⁶ Wanyama, *supra* note 71 at 182.

²²⁷ A/HRC/20/27, *supra* note 94 at para 95.

²²⁸ International Centre for Not-for-Profit Law, “Freedom of Assembly in Burundi,” (2018), online (pdf): <www.icnl.org/research/resources/assembly/FoA%20in%20Burundi.pdf>.

²²⁹ US State Department, Congo, *supra* note 167 at 14.

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			DRC Rwanda ²³⁰
	Insufficient appeal procedures for assemblies that are refused and/or dispersed	Where authorization schemes are in place, there should be a right of appeal. ²³¹	Burundi ²³² DRC ²³³
	Vicarious liability for organizers of assemblies	Organizers of assemblies should not be held criminally responsible for the actions of other participants. ²³⁴	Burundi ²³⁵ DRC ²³⁶
Lack of whistleblower/victim protection schemes	Lack of whistleblower protection scheme	Whistleblowers who act in good faith should be legally protected. ²³⁷	Burundi ²³⁸ Congo DRC

²³⁰ International Centre for Not-for-Profit Law, Rwanda, *supra* note 105.

²³¹ A/HRC/26/29/Add.2, *supra* note 114 at para 19.

²³² Assembly organizers have the right to appeal, but there is no timeframe specified in which the court must address the complaint: Article 19, *supra* note 148 at 6.

²³³ The government is required to respond to authorization requests within 3-5 days, but the law provides no recourse for organizers who are denied: Decree-Law 196 of January 29, 1999, *supra* note 222 at art 6.

²³⁴ A/HRC/20/27, *supra* note 94 at para 31.

²³⁵ Article 19, *supra* note 148 at 7.

²³⁶ Decree-Law 196 of January 29, 1999, *supra* note 222 at art 10.

²³⁷ OSCE, 2004, *supra* note 162.

²³⁸ The only protection exists under the Anti-Corruption Law - whistleblowers who fall outside of this scope are not protected: Law 1/12 of 18 April 2006, 2006 (Burundi) at art 12, online (pdf): <www.assemblee.bi/IMG/pdf/n%C2%B01_12_18_avril_2006.pdf>.

Civic Space Indicators: Blurred Reflections

			Niger Rwanda ²³⁹
	Lack of victim protection schemes	Victims have the right to protection through the state. ²⁴⁰	Burundi ²⁴¹ Congo DRC Niger

²³⁹ Rwanda has a whistle-blower protection Act, but it fails to distinguish between public and private sector whistle-blowers: *Law No 44/2017 of 06/09/2017, 2017* (Rwanda). At the same time, the 2018 Penal Code criminalizes the disclosure, intention to disclose, or the sharing of state secrets, and no public interest defence is provided: *Law No 68/2018, supra* note 177 at art 192. This leaves doubt as to whether public sector whistleblowers are protected.

²⁴⁰ UNODC, "Victim Assistance and Witness Protection," online: <www.unodc.org/unodc/en/organized-crime/witness-protection.html>.

²⁴¹ A law does exist but the government does not abide by its requirements: US State Department, "2018 Trafficking in Persons Report—Burundi" (28 June 2018), online: <www.refworld.org/docid/5b3e0b883.html>.

B) How are indicator systems limited in reflecting these strategies?

Unsurprisingly, indicator systems are limited in their abilities to reflect the wide range of strategies discussed above. On the most superficial level, this can arise from the differences between legislation and policy - in many cases, applicable laws look acceptable on their faces, but practices on the ground drastically differ.²⁴² For example, in Madagascar, media is, in theory, regulated by an independent administrative authority established by a 2016 law.²⁴³ However, this body exists only on paper,²⁴⁴ and its predecessor (established in law in 1992) was never operational.²⁴⁵ Instead, media regulation since 1994 has been governed by a "provisional authority."²⁴⁶ However, disparities of this sort are not fatal for the effectiveness of indicator systems - they may require broader indicators and may make collecting information more costly, but policies can be evaluated. The much more pressing problem is the issue of cumulative effects of restrictions in the context of rights that are considered interdependent and indivisible.

The 1948 Universal Declaration of Human Rights was instrumental in shaping the conception of various human rights that have since gained widespread international consensus.²⁴⁷ Since the First World Conference on Human Rights, the rights enumerated in the Universal Declaration (and later, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural

²⁴² Buyse, *supra* note 1 at 971.

²⁴³ Law No 2016-029, *supra* note 177 at art 82, 83.

²⁴⁴ EEAS Europa, *supra* note 146.

²⁴⁵ The CSCA was established by Decree No.94-133 of 22 February 1994 (unavailable online). Information obtained from PIDC, *supra* note 146 at 34.

²⁴⁶ *Ibid.*

²⁴⁷ Jack Donnelly, "The Universal Declaration Model" in *Universal Human Rights in Theory and Practice*, 3rd ed (Ithaca: Cornell University Press, 2013) 23 at 24; Antônio Augusto Cançado Trindade, "Universal Declaration of Human Rights," (2008) United Nations Audiovisual Library of International Law at 513, online (pdf): <legal.un.org/avl/pdf/ha/udhr/udhr_e.pdf>; Makau W Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42:1 Harv Intl LJ at 10.

Rights (ICESCR)) have widely been held to be “interdependent” and “indivisible.”²⁴⁸ This conception of human rights reflected the discussions that led to the Universal Declaration,²⁴⁹ was explicitly included in the Proclamation of Tehran,²⁵⁰ and has been reaffirmed by several later resolutions of the General Assembly and various UN proclamations and declarations.²⁵¹

While the UN has, in this way, repeatedly reaffirmed the interdependent and indivisible nature of human rights, it has never explicitly defined what this means.²⁵² However, various understandings have arisen in the academic literature - with indivisibility seen as reflecting a stronger dependent relationship between rights. For example, one author suggests that interdependence can be interpreted as “related” or “organic” interdependence.²⁵³ If human rights are “organically interdependent,” he holds, they are “inseparable or indissoluble in the sense that one right (the core right) justifies the other (the derivative right),” meaning that the protection of any particular right requirements the protection of all other rights.²⁵⁴ In contrast, if human rights are interdependent in a merely “related” sense, they are complementary but separate - protection of one right may indirectly protect others.²⁵⁵ In this way, there is no consensus about whether interdependence means that particular rights absolutely cannot be enjoyed in the absence of the attainment of other rights. However, within the literature, “indivisibility” has been interpreted as describing a stronger relationship between rights.²⁵⁶ According to Soitter and Rowlands, there is consensus that “indivisibility” thus “implies that the achievement of one

²⁴⁸ Trindade, *supra* note 247 at 513.

²⁴⁹ Stephanie Soiffer & Dane Rowlands, “Examining the indivisibility of human rights: A statistical analysis” (2017) 17:1 JHR 89 at 90.

²⁵⁰ *Ibid.*

²⁵¹ Trindade, *supra* note 247 at 514; Soiffer & Rowlands, *supra* note 249 at 89.

²⁵² Soiffer & Rowlands, *supra* note 249 at 89.

²⁵³ Craig Scott, “Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights” (1989) 27:3 Osgoode Hall LJ 770 at 779.

²⁵⁴ *Ibid* at 779–80.

²⁵⁵ *Ibid* at 783.

²⁵⁶ Soitter & Rowlands, *supra* note 249 at 89.

human right is necessary for the fulfillment of other human rights.”²⁵⁷

In the context of indicator systems generally, the interdependence of rights, then, causes little issue, as some interpretations of “interdependence” suggest that the enjoyment of particular rights is enhanced by the enjoyment of others, but not that enjoyment of all is necessary for the enjoyment of one. However, “indivisibility,” as defined in the literature, calls into question the way indicator systems break rights into discrete components, isolated from other rights. With respect to civic space, this methodological limitation of indicator systems generally is heightened, as civic space, by definition, is a function of the interaction of a plethora of rights.

This limitation can be illustrated by referring back to the table in Part 2(a). As demonstrated in this table, most countries restrict civic space through many simultaneous ways. These strategies interact, making it difficult to reflect these environments through discrete indicators. For example, in Madagascar, individuals with criminal records for certain offences (including common law content-related offences) are excluded from performing administrative or management roles for registered NGOs.²⁵⁸ In isolation, this provision appears innocuous, and is not addressed in various civic space-related monitors.²⁵⁹ However, when considered in light of Madagascar’s overly broad content offences (including contempt,²⁶⁰ incitation,²⁶¹ and “false news”²⁶² criminal offences) and history of arbitrary arrests and

²⁵⁷ *Ibid.*

²⁵⁸ Law 96-030, *supra* note 118 at art 14.

²⁵⁹ Note that there are very few “freedom of association” specific indicator systems. In addition, some monitors that assess civic space more generally do not monitor Madagascar (for example, ICNL’s projects do not include Madagascar: <www.icnl.org/our-work/monitoring-assessment>). However, even monitors like CIVICUS’ civic space monitor does not address this issue: (<monitor.civicus.org/updates/?country=163&subregion=&status=&category=2&date_0=&date_1=>>).

²⁶⁰ *Code Penal*, *supra* note 183 at arts 223, 224, 226.

²⁶¹ Law No 2016-029, *supra* note 177 at art 30.

²⁶² Vague provision, potentially permitting journalists to be fined for making mistakes: Reporters Without Borders, Madagascar, *supra* note 193.

detentions,²⁶³ the criminal record provision could evidently provide cover for state interference with the operation of NGOs. The absence of information on this issue in various monitors is unfortunate, as it diminishes their accuracy, but is hardly surprising: how would this issue be categorized or reflected in an indicator?

In situations such as this, indicator systems are not just limited on a theoretical level by the fact that the international community has agreed that rights are inseparable. Instead, this theoretical issue has practical manifestations - as civic space is inherently made up of interacting rights.

C) Conclusion: Why do these methodological limitations matter?

Proponents of the use of indicators to measure civic space do not hope solely to gather information. Rather, the information that is translated and measured through these systems is seen as valuable for its potential to affect change.²⁶⁴ However, as demonstrated in this Part, indicators in this area are limited, as human rights are widely seen as indivisible, and civic space further complicates this.

Of course, creators of indicator systems are not blind to this issue, and many attempt to address it through the assessment of the attainability of rights in practice, rather than merely in law.²⁶⁵ An example of an indicator system attempting to measure in this holistic way can be seen in the Irex Media Sustainability Index (MSI)'s report on media laws in the Congo (Brazzaville). In the Congo, the media counsel is known to primarily allocate broadcast licenses to pro-government outlets.²⁶⁶ Media outlets, however, have a right of appeal to the courts,²⁶⁷ which, in isolation, would mitigate the detrimental effect that the lack of

²⁶³ Amnesty International, "Report 2017/18 - Madagascar" (2018), online: <www.refworld.org/country,,,MDG,,5a9938c0a,0.html>.

²⁶⁴ Ayvazyan, *supra* note 2 at 20; Landman, *supra* note 8 at 906-907, Malena, *supra* note 1 at 17.

²⁶⁵ This approach has been promoted by the OHCHR, see Rosga & Satterthwaite, *supra* note 11 at 298.

²⁶⁶ IREX, *supra* note 151.

²⁶⁷ *Ibid.*

independence of the counsel would have on ratings of media freedom. However, in practice, many Congolese rightfully distrust the judicial system, and choose not to appeal the denial of a license.²⁶⁸ This is discussed in the 2012 MSI report on the Congo, as the report assessed not only the current state of the law, but also the realities of that law.²⁶⁹

However, at very least, this issue creates methodological problems for indicator systems. If civic space cannot be broken into discrete components, but is rather a multi-dimensional function of countless interactions, how can indicators ever adequately create objective and comparable measurements? In the case of Congo, should the combined effects of poor rule of law and government control of the media affect indicators related to only one of these categories, or both? While more holistically oriented monitoring/indicator systems may mitigate this issue to some extent, they simultaneously sacrifice two of their supposed benefits - the ability to measure and compare progress and the ability to enhance abilities to find solutions.²⁷⁰ These strengths arise from the way that indicators separate issues into parts, which can be compared over time and geography - something that is much more difficult when dealing with overlapping and interacting factors.

Part 4: Ethical Limitations of Civic Space Indicators: The Contextual Void

According to some authors, in some cases, narrowed civic space is a result of concerted state efforts to push back against human rights and democracy, in favour of authoritarianism.²⁷¹ While this may certainly be the case in many situations, the political reasons for imposing these restrictions are, according to others, often much more complicated - based in concerns about

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ Ayvazyan, *supra* note 2 at 20; Landman, *supra* note 8 at 906-907.

²⁷¹ Civicus, *Closing Space*, *supra* note 3 at 5; Dhananjayan Sriskandarajah & Mandeep Tiwana, "Reclaiming Civic Space: Global Challenges, Local Responses" (2017) 26 *Intl JHR* 161 at 164.

Western intervention and its impacts on sovereignty, the changing nature of civil society itself, and modern forms of terrorism and technology. Indicator systems that aim to measure civic space are limited due to this complexity - indices flatten information and struggle to reflect historical and political context.

In this section, I will argue that indicator systems are unable to be responsive to the causes of narrowed civic space and are thus limited in their ability to affect change in the complex historical and political context of Sub-Saharan Africa. I will argue that in some contexts, this can perpetuate deeply problematic cycles. I will first highlight the historical development of civic society in Sub-Saharan Africa and the related development of foreign aid and intervention, and how the shape of this development has led to global circumstances encouraging resistance. I will then discuss what this means for indicators, looking at Sub-Saharan Africa more specifically, using examples from the DRC and Rwanda.

A) What caused the shrinkage of civic space in Sub-Saharan Africa?

As narrowing civic space is a global phenomenon, it is hardly surprising that it arose from global historical and political transitions. In this way, many of the causes of this trend in Sub-Saharan Africa are not specific to the region. However, the specific history of colonialism in many African countries has exacerbated these causes in some cases. As such, this section will address both global and regional factors. The following section will include more substantial country-specific analysis.

Following World War II, the recognition of “universal” human rights became widespread, culminating in, for example, the 1948 Universal Declaration.²⁷² The political consequences of this ideology conflicted in some ways with the simultaneous growth of the conception of state sovereignty, but despite this tension, resulted in the substantial expansion of foreign aid and international assistance.²⁷³ In countries with a history of

²⁷² Donnelly, *supra* note 247 at 24; Trindade, *supra* note 247 at 513.

²⁷³ Oupuy & Prakash, *supra* note 79 at 94; Richard Drayton, “Beyond Humanitarian Imperialism: The Dubious Origins of ‘Humanitarian Intervention’ and Some Rules for its Future,” in Bronwen Everill & Josiah Kaplan, eds, *The*

colonialism (such as many in Sub-Saharan Africa), this assistance was met with skepticism about aid providers' motivations.²⁷⁴ As will be discussed in more depth in the following section, western actors had already been using the notion of humanitarianism to legitimize colonialism and imperialism in Africa and to mask their economic and political interests for decades.²⁷⁵ Due to these factors, as well as the era's emphasis on the principle of non-interventionism, international organizations and actors were typically only permitted to operate if their assistance was targeted towards humanitarian or socioeconomic development, rather than political change.²⁷⁶

Skepticism about western actors' motivations was well-founded. The new human rights corpus provided a further veneer of legitimacy for western involvement in other countries, allowing them to pursue their business and political interests through the United Nations, which falsely appeared to be a neutral actor.²⁷⁷ Various Sub-Saharan African countries were "granted" independence by colonial powers, but this, too, resulted from economic motivations, not humanitarian ones.²⁷⁸ According to many authors, human rights interventions during this period were still rooted in the western colonial notion of "civilizing the other" and perpetuated the savages, victims, and saviors construct that had been used to justify colonialism.²⁷⁹ In this way, the development of a conception of international human rights, and the creation of non-state bodies to monitor the status of these rights "played a key role in preserving the global order that the West dominates."²⁸⁰

History and Practice of Humanitarian Intervention and Aid in Africa (London, UK: Palgrave Macmillan, 2013) at 220.

²⁷⁴ Carothers & Brechenmacher, *supra* note 2 at 22.

²⁷⁵ Claude Kabemba, "DRC: The Land of Humanitarian Intervention," in Bronwen Everill & Josiah Kaplan, eds, *The History and Practice of Humanitarian Intervention and Aid in Africa* (London, UK: Palgrave Macmillan, 2013) at 141.

²⁷⁶ Carothers & Brechenmacher, *supra* note 2 at 22.

²⁷⁷ Kabemba, *supra* note 275 at 146; Mutua, *supra* note 247 at 214; Oupuy & Prakash, *supra* note 79 at 95.

²⁷⁸ Kabemba, *supra* note 276 at 145.

²⁷⁹ Mutua, *supra* note 247 at 212.

²⁸⁰ *Ibid* at 214, 236

In addition to creating space for international intervention through the UN, the new emphasis on universal rights also led to the expansion of civil society throughout the world.²⁸¹ While governments may have harboured concern about the increasingly political influence of many of these organizations, they were relatively permissive, for a variety of reasons.²⁸² Internationally, the ideology of “democracy” surged in the 1990s, as “a remarkable number and range of countries in the developing and post-communist worlds [attempted] transitions away from authoritarian rule.”²⁸³ As a result, the involvement of external actors to support this type of change appeared benign.²⁸⁴ In addition, donor funding to civil society members was “unfocused” and NGO activities appeared to mostly be “a scattering of small-scale initiatives, which meant that governments did not see them as a threat.”²⁸⁵

However, in the 2000s, the perception of international NGOs began to shift. In the wake of the war on terror and the “dramatic wave of political unrest that swept the Arab world,” the extent of the influence that both the United States and civil society organizations wield became more and more clear.²⁸⁶ As international organizations increasingly based their missions explicitly around democratic values and civil society’s role in international development became more explicit, the separation between western political involvement and international civil society involvement became less opaque.²⁸⁷ As a result, non-Western governments came to see both domestic and international CSOs as associated with political opposition.²⁸⁸

In this context, it is not difficult to see why some states may have legitimate concerns about the ways in which civil society organizations (and particularly those centred around the

²⁸¹ Kreienkamp, *supra* note 2 at 19.

²⁸² Carothers & Brechenmacher, *supra* note 3 at 22.

²⁸³ *Ibid*; Buyse, *supra* note 2 at 974.

²⁸⁴ Carothers & Brechenmacher, *supra* note 3 at 22; Buyse, *supra* note 2 at 974.

²⁸⁵ Carothers & Brechenmacher, *supra* note 3 at 23.

²⁸⁶ *Ibid* at 26; Srisankarajah & Tiwana, *supra* note 271 at 162.

²⁸⁷ Carothers & Brechenmacher, *supra* note 3 at 24; Hossain et al, *supra* note 2 at 23; Kreienkamp, *supra* note 2 at 1; Oupuy & Prakash, *supra* note 79 at 90.

²⁸⁸ Oupuy & Prakash, *supra* note 79 at 97; Kreienkamp, *supra* note 2 at 6.

ideology of human rights) may facilitate western intervention. After all, humanitarianism, universal human rights, and democratic values have all been used to legitimize interventions motivated by other interests. While little information exists on whether these concerns are truly the basis for the widespread narrowing of civic space, data shows that restrictions are most prominent when regimes are particularly vulnerable (during, for example, election periods, when western intervention may be most likely).²⁸⁹ This suggests that fear of intervention may be the driving force in some scenarios.

B) What does this mean for indicators?

Of course, regardless of underlying cause, restrictions on civic space can have widespread detrimental effects on human rights, as discussed in Part 2(c). In theory, then, indicators can assist with the promotion of human rights if they are capable of reflecting their current status in a given country. However, as can be seen in the following examples, indicator systems are not equipped to provide objective evaluations of policies that have deep historical roots.

Over the past 150 years, the DRC has been subjected to virtually every form of western intervention described in the previous section.²⁹⁰ From 1884 until 1960, the country was under Belgian rule, first as the “personal property” of King Leopold the II, and then under colonial rule.²⁹¹ King Leopold II’s rule began after he intervened with the supposed intention of ending the slave trade, but with the real motivation of accessing the Congo’s natural resources.²⁹² When stories of the atrocities under his rule finally reached western media, Belgium stepped in, largely due to economic interests.²⁹³ Any true “humanitarian” goals were guided

²⁸⁹ Kode, *supra* note 33; Kreienkamp, *supra* note 2 at 5.

²⁹⁰ Kai Koddenbrock, *The Practice of Humanitarian Intervention: Aid workers, agencies and institutions in the Democratic Republic of the Congo* (London, UK: Routledge, 2017) at 1.

²⁹¹ *Ibid* at 1; Anna N Smith, “Foreign Aid and Development in the Democratic Republic of the Congo: An Analysis of International Barriers to Development” (2018) 4:2 *Without Bounds* at 4.

²⁹² Kabemba, *supra* note 275 at 145; Smith, *supra* note 292.

²⁹³ *Ibid* at 143.

by colonial attitudes that considered the Congolese to be savages needing saving.²⁹⁴

Even DRC's decolonization was largely a result of western economic and political interests, which were now pursuable through the avenue of the UN. During Belgium's colonization of the DRC, British and Belgian actors thrived by exploiting the country's resources, while the US had no access. In the summer of 1960, using the discourse of human rights, the US voted for a UN resolution calling for the removal of Belgian military from the DRC.²⁹⁵ This was merely the beginning of the United States' use of the UN to pursue their own economic interests in the DRC under the guise of the humanitarian framework.²⁹⁶ In the years following DRC's new "independence," the US largely controlled the DRC's heads of state through a variety of means.²⁹⁷

The US's involvement, along with the UN's "humanitarian" intervention, heavily contributed to the turmoil that the DRC has faced for decades. Western competition over Congolese resources in the early 1960s perpetuated domestic conflict,²⁹⁸ the first elected Prime Minister, Patrice Lumumba, was killed, with the assistance of the US and Belgium after the UN refused to back his legitimate government²⁹⁹ and the country was invaded by Rwanda in 1996 after the international community forced the DRC to accept Rwandan refugees.³⁰⁰

Despite the cyclical pattern of western intervention and conflict, international "humanitarian" involvement has been constant, often against the wishes of the Congolese state, and news of fighting in the DRC always results in widespread mobilization of the UN and western NGOs.³⁰¹ In this way, the constant monitoring of the country has perpetuated a self-fulfilling cycle.

²⁹⁴ *Ibid* at 140.

²⁹⁵ *Ibid* at 145.

²⁹⁶ *Ibid* at 146.

²⁹⁷ *Ibid*.

²⁹⁸ *Ibid* at 145.

²⁹⁹ Koddenbrock, *supra* note 291 at 4; Smith, *supra* note 20 at 5.

³⁰⁰ Kabemba, *supra* note 273 at 145.

³⁰¹ *Ibid* at 150.

In this context, various legal restrictions affecting civic space in the DRC make sense. For example, while the NGO registration requirement that at least half of the administrators of each organization must be Congolese³⁰² would likely be unjustifiable in a country that did not have the DRC's history, it could be aimed at pursuing a legitimate goal in this case - to prevent western intervention through civil society. Similarly, given the history of international actors using the guise of humanitarianism to gain access to the DRC's wealth of natural resources,³⁰³ the significant financial oversight that NGOs face makes historical sense. However, accounting for this context is difficult, if not impossible, through indicators.

The impact of historical events on current laws is also clear in Rwanda. In 1994, hundreds of thousands of Tutsis were killed in the Rwandan Genocide, which was encouraged through domestic media.³⁰⁴ Today, the media's role in the genocide is used to justify harsh restrictions on freedom of expression.³⁰⁵ While some of these provisions (including, for example, the provision that prohibits denial of the genocide, but also applies to those who acknowledge that there was a double genocide³⁰⁶) are used to stifle criticism of the current government's actions at the time of the genocide, it is plausible that others are based in legitimate fear.

In situations with restrictions that are so deep-rooted historical underpinnings, indicator systems necessarily flatten this context. This can be seen, for example, in Freedom House's assessment of media freedom in Rwanda and Civicus' assessment of civic space in the DRC—both of which criticize the applicable countries for their laws that fall short of international standards but fail to contextualize them.³⁰⁷

³⁰² Decree-law No 004/2001, *supra* note 99 at art 62(3).

³⁰³ Kabemba, *supra* note 275 at 140.

³⁰⁴ Roméo Dallaire, "The Media Dichotomy" in Allan Thompson, ed, *The Media and the Rwandan Genocide*, (London, UK: Pluto Press, 2007) at 12.

³⁰⁵ *Ibid.*

³⁰⁶ Law No 59/2018, *supra* note 194.

³⁰⁷ See Freedom House, "Freedom of the Press 2017: Rwanda," (2017), online: <freedomhouse.org/report/freedom-press/2017/rwanda>; Civicus, "Country

C) Conclusion: What are the harmful impacts of indicators' contextual limitations?

Of course, regardless of underlying cause, restrictions on civic space can have widespread detrimental effects on human rights, as discussed in Part 2(c). Why, then, do the causes matter? The inability of indicators to capture the historical and political context of civic space restrictions is harmful for two reasons.

Firstly, as can be seen through the example of the DRC, continual involvement begets continual involvement. In the DRC, this cycle is so strong that according to some authors, intervenors are barely expected to justify their involvement anymore.³⁰⁸ If this involvement is not successful in advancing human rights (as it has been in the DRC), then it only serves to perpetuate the historical pattern of western states seeing themselves as responsible for “saving” non-western peoples. In this way, if indicators are unable to reflect the causes behind repression of civic space, they merely serve to encourage the continuation of western intervention—exacerbating the concerns that lead to the restrictions in the first place.

In addition, indicators' inability to accurately capture the context of restrictions limits their ability to encourage positive change as a result of the perverse incentives they create. This is true for two reasons. Firstly, if the applicable state is open to pursuing change, an emphasis on indicators will encourage action targeted towards those specific issues—since those measurable changes are most politically beneficial. However, in countries such as the DRC, if the concerns underpinning the restrictions are not addressed, the forms of suppression will merely shift to methods not currently measured by indicators. The state will not become less anxious about potential western influence through INGOs by simply modifying their foreign funding restrictions; it will merely find a new way to temper that anxiety.

On the other hand, if the relevant state is not interested in pursuing democratic values, then the ability of indicators to facilitate the ‘naming and shaming’ upon which the enforcement

Monitor: Democratic Republic of the Congo,” (updated November 2019), online: <monitor.civicus.org/country/democratic-republic-congo/>.

³⁰⁸ Koddenbrock, *supra* note 291 at 1.

of international norms depends may have counterintuitive effects. For example, one study has shown that the incentive to suppress freedom of information and expression is highest when states face more international pressure to live up to international human rights norms.³⁰⁹ This makes political sense - as we know, when a country is internationally criticized for its failure to meet international standards, aid to that country is reduced.³¹⁰ In light of this, indicators may do more harm than good when used to “name and shame,” as states may have to choose between suppressing civic space further in order to obscure their violations, and jeopardizing aid. Since aid is predicated on the belief that it can assist with development and the pursuit of human rights, this decision is a catch 22.

Part 5: Conclusion: Solutions and Takeaways?

It may be tempting to believe that if we could only create the perfect indicators to measure civic space, we could greatly expand our ability to enforce human rights. However, as illustrated throughout this paper, the assumptions underpinning indicator systems in this realm are flawed, at least with respect to their purpose of promoting human rights enjoyment. On a methodological level, indicator systems must either neglect to measure the ways that presumed indivisible rights impact each other, or they must sacrifice their methodological tidiness that allows for comparison of states over time and geography. On an ethical level, their emphasis on current, measurable laws and policies obscures the historical and political contexts that led to those practices, incentivizing states to either prioritize specific symptoms of their underlying issues rather than the root causes, to further suppress civic space in order to avoid international scrutiny, or to jeopardize their aid. What, then, is the solution?

Firstly, it is important to recognize an important caveat to my conclusion: While I have highlighted the limitations and harms of indicators when used by the international community to protect civic space, this is not to say that indicators do not have some value. As identified in Part 2, a wide range of actors are interested

³⁰⁹ Smidt, *supra* note 3; Kreienkamp, *supra* note 1 at 6.

³¹⁰ Dominquez-Redondo, *supra* note 89 at 690; Hossain et al, *supra* note 1 at 16.

in civic space indicators for a wide range of purposes, and these purposes are not necessarily impacted by the limitations identified here. It is worth recognizing that even if indicators were entirely abandoned for the political purposes discussed in this paper, (which, itself, would be unlikely), they could still serve other purposes.

Specifically in relation to their limitations with respect to civic space, however, the correct solution to address the problem with indicator systems depends on countless assumptions. For example, if we are entirely committed to the notion that human rights are entirely indivisible, then eliminating indicators may seem impossible, and the answer may be to create better monitoring systems that approach civic space not just as an interaction of the of various rights, but also as a function of this interaction historically. In other words, the solution may be to simply change what we measure, since if all rights depend on each other, we cannot afford to forget to assess even one. However, if we can settle with the possibility of pursuing one goal at a time, the right solution may be for western states to step back, to stop viewing themselves as responsible for monitoring and 'naming and shaming' other less powerful countries, and to instead focus on providing aid to domestic NGOs, for example, to use as they see fit.

The fact that different assumptions can lead to such widely different approaches is unsurprising—as we have seen through this paper, the context of each country is wildly different, and the effectiveness of different approaches will depend on those contexts. To suggest a one-size-fits-all solution would go against the grain of the rest of this argument.

While no solutions are evident to me, the importance of recognizing that indicators, as well as “universal” conceptions of human rights, are not truly objective arises as a takeaway. Dropping the façade of neutrality would reduce the harms identified in this paper. Even beyond this, if we truly believe that the liberalist values underpinning the rights enumerated in the UDHR and subsequent treaties are the best guiding foundations of human rights, then surely we ought to be willing to let them stand in the marketplace of ideas. If freedom of expression and civic engagement are core components of a healthy society, why pretend that our values cannot benefit from being debated?

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