



# **Defending Dissent**

**Civil Society and Human Rights  
in the Global Crackdown**

## **Summary of Strategies and Tactics**

**Bernstein Institute Annual Conference, April 13-14, 2017**



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Facing a growing crackdown on dissent around the globe, human rights advocates are engaged in a creative and critical fight to defend fundamental rights. Maina Kiai, the former United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, observes that the world is experiencing a “democratic recession” with states passing restrictive laws governing the operation of NGOs, policing freedom of speech, and engaging in extra-legal forms of harassment and intimidation of human rights defenders. In April 2017, the Robert L. Bernstein Institute for Human Rights at NYU School of Law explored this global assault on human rights and dissent at its annual conference, *Defending Dissent: Civil Society and Human Rights in the Global Crackdown*.

The conference brought together more than 40 human rights activists, lawyers, and scholars from countries including China, Egypt, Ethiopia, India, Kenya, Russia, South Africa, and Turkey to spotlight strategies and tactics to safeguard crucial spaces for dissent. The conference opened with a summary of the trends and tools used by governments to silence dissent, and was followed by four panels highlighting legal strategies and tactics used to resist the crackdown. These strategies encompassed national litigation, legal empowerment, network building, and leveraging the Internet as forms of resistance. The concluding panels served as responses to current challenges, discussing the role of companies in protecting human rights defenders from surveillance and addressing the impending crackdown on dissent in the United States.

With a goal of building a living, interactive space where the lessons and stories shared by panelists and audience members remain open and accessible, the Bernstein Institute created an [interactive conference website](#) that houses panel videos, speaker bios and interviews, and conference program materials. The Institute developed this summary to capture key strategies and tactics raised at the conference with an aim of strengthening solidarity and knowledge across borders.

## About the Robert L. Bernstein Institute for Human Rights

Honoring and extending the legacy of Robert L. Bernstein, the Bernstein Institute for Human Rights at NYU School of Law promotes cutting-edge research, education, and advocacy on human rights issues around the world, with a focus on defending dissent and advancing legal empowerment.

The Institute embraces a holistic approach to human rights, deepening engagement with key stakeholders in the pursuit of justice: law students, human rights defenders, scholars, judges, interdisciplinary allies, and affected communities.

## Panel 1

# Global Crackdown on Dissent

The opening panel provided an introductory analytical framework on the global crackdown on dissent with specific commentary on the state of civil society within the focus countries. Presenters established a common vocabulary on the various tools used by governments to silence dissent, including the justifications used by governments to support restrictions on civil society. The panelists closed by recommending civil society organizations (CSOs) develop common narratives to counter the rationales proffered by governments as a strategy to safeguard open space. These strategies are provided below.

## STRATEGIES

### Government Justification: Counter Money Laundering and Combat Terrorism

- CSO Response:
  - No evidence that terrorist groups are likely to use CSOs to launder money or to engage in terrorism activity.
  - Similar rationale not applied to companies that also receive overseas funding in the form of foreign direct investment.
  - CSOs may be an optimal partner for governments in the fight against terrorism as CSOs partner with vulnerable communities to address the social and economic inequalities that fuel terrorism.



Emerson Sykes - Legal Advisor for Africa, *International Center for Not-for-Profit Law*

### Government Justification: Eliminate Corrupt, Illegitimate, and Non-Transparent NGOs

- CSO Response:
  - CSOs are in favor of transparency and view it as a fundamental component of a functioning civil society.
  - CSOs are required to comply with accounting and disclosure requirements under national laws, and readily disclose such information.
  - CSOs should build public advocacy campaigns and engage with domestic and international media to highlight the positive impacts of their work and the broad constituencies they serve.

### Government Justification: Protect State Sovereignty and "Traditional Values"

- **CSO Response:**
  - Governments only apply this rationale to the civil society sector. States readily accept development aid and direct investment from foreign sources without such protests.
  - Fundamental freedoms associated with an open society such as freedom of speech, assembly, and association are universal human rights.

### Government Justification: Protect National Interest

- **CSO Response:**
  - Civil society has historically played an important, indigenous function in the political and social environment.
  - Civil society is not the opposition party. CSOs should expand the definition of what constitutes "human rights" or "civil society" activities, highlighting the diversified nature of their work.

### Government Justification: Build Long-term Sustainability of NGOs

- **CSO Response:**
  - CSOs recognize the need for a diversified portfolio of revenue and are creating a mixed stream of funds from public and private entities.
  - Rather than building long-term sustainability, the civil society sector has been decimated by the passage of restrictive laws such as those that limit foreign funds.

## SPOTLIGHT ON RESTRICTIVE NGO LAWS

- A signature weapon to crack down on dissent in India has been the suspension or revocation of an organization's Foreign Contribution Regulatory Act (FCRA) status. The FCRA regulates the receipt of foreign funding by Indian NGOs. Since 2010 more than 20,000 NGOs have lost their FCRA status, making them ineligible to receive funds from outside India.
- In 2012, the Russian government passed the "foreign agent" law, which requires NGOs that receive foreign funding and engage in "political activities" to label themselves as "foreign agents." The label carries with it increased government scrutiny and administrative burdens, and brands the organizations as spies. The foreign agent law has led to a narrowing of space within the country by significantly reducing the number of NGOs operating within Russia. Similar laws have been enacted by Eastern European and Central Asian states such as Azerbaijan, Kyrgyzstan, Bosnia, and Tajikistan.
- In 2009 the Ethiopian government passed the Proclamation to Provide for the Registration and Regulation of Charities and Societies (CSP), a law governing the registration and regulation of NGOs. CSP prohibits NGOs that engage in human rights and democratic activities from receiving more than 10% of their funds from foreign sources. The law has crippled the NGO sector, resulting in a substantial closure of organizations.

# Network Building

Panelists offered innovative strategies to build, strengthen, and protect in-country networks of human rights lawyers and activists committed to the protection of fundamental freedoms. Panelists highlighted the power in – and challenges to – creating sustainable networks in light of rising government repression.

## STRATEGIES

- Build intersectional networks, particularly ensuring participation of individuals and organizations from marginalized communities.
- Critique and broaden the terminology used to describe civil society work (e.g. the definition of who constitutes a “human rights defender” should encompass all who work for equality and basic rights).
- Use online platforms to debate legal and political reforms, create informal groups, organize advocacy campaigns, and spur offline collective actions.
- Design projects and policies that protect the safety and security of human rights defenders such as projects that use rotating personnel to reduce vulnerability.
- Collaborate with human rights organizations and associations in research, advocacy, and litigation efforts to build a stronger, collective front against government repression.
- Organize workshops with the academic community to deepen exchange and encourage evidence-based research on effective strategies to resist the closing of space.
- Identify and build relations with international actors such as universities and INGOs that can offer safe harbor for human rights defenders who are under threat in their home countries.



Yara Sallam - Director, Criminal Justice Program, *Egyptian Initiative for Personal Rights*

- Encourage friendly governments to protect in-country networks of CSOs:
  - Assert diplomatic pressure:
    - Governments can pressure states to remove laws that restrict civil society activities by threatening to cut foreign aid and quantifying the impact of the loss of such aid on the local economy.
    - Governments can offer technical and development assistance to ensure that policies regulating the civil society sector meet human rights standards.
  - Utilize convening power:
    - Governments can administer exchange programs that support in-country, regional, and international networks of human rights defenders.
      - For example, the United States has funded the Young African Leaders Initiative (YALI) which brings together hundreds of young leaders for training and network building at American universities. Networks like YALI continue to operate in local and regional chapters and can serve as useful spaces for CSOs to build stronger ties with the community and broaden their membership base. With the U.S. government joining the crackdown, other governments should be encouraged to support similar programs.
  - Provide programmatic support: Governments can provide technical support to CSOs through trainings, grant programs, and creation of virtual and physical hubs that respond to regional needs.
  - Review internal grant making procedures to ensure that policies do not undermine civil society space.
    - Encourage donor governments to relax registration and disclosure requirements to reduce potential for scrutiny and harassment of CSOs.



Jerome A. Cohen - Professor of Law, *NYU School of Law*; Faculty Director, *U.S.-Asia Law Institute, NYU School of Law*

### CHINA: DOCUMENT AUTHENTIC VOICES

With forced confessions on the rise, Chinese human rights defenders are engaging in a practice described by NYU School of Law Professor Jerome Cohen as the creation of a “pre-detention will.” Increasingly, human rights lawyers have begun to record personal statements prior to their arrest to provide a true account of their beliefs and values. These narratives run contrary to the forced confessions recorded and later disseminated by government officials.

## CHINA: BUILDING INFORMAL NETWORKS

- In China, human rights lawyers use online networks via Chinese social media platforms such as micro-blogs (Weibo) and instant messaging systems (WeChat) to debate legal and political issues, organize campaigns, and catalyze offline actions. Two examples include:
  - Weiguen “Surround and Watch” – strategy to mobilize a crowd, either offline or online, to monitor and observe government action.
  - Citizen Banquets – online posts started by lawyers to host dinner gatherings to discuss cases and current socio-legal context, which later evolved into public events where anyone could convene a gathering to debate issues or call for actions.
- Spouses of detained human rights defenders have developed networks to build solidarity, raise awareness, and organize campaigns to rescue their husbands and other similarly situated lawyers and activists.

## RUSSIA: JOINT MOBILE GROUP, RUSSIA

The Committee Against Torture (CAT) in Russia developed an innovative strategy to provide free legal aid to torture victims in the Northern Caucasus that took into consideration the safety and security concerns of the human rights defenders engaged in the work. With increasing violence against human rights lawyers and activists in the Chechnya region, the organization launched the Joint Mobile Group (JMG), a project that sent a team of three advocates (two staff lawyers and one journalist/civil society activist) for a one month period to support local organizations in investigating torture cases. With a team of 45 lawyers, the rotation resulted in one lawyer visiting the Chechen region on a yearly basis. The JMG project was heralded for its innovation and impact in protecting the security of human rights defenders and has won numerous human rights awards including Frontline Defenders and Martin Annals Award. However, with rising violence against CAT including attacks against the first ever press tour organized by CAT in March 2016, the JMG was forced to cease its operations. CAT continues to support local organizations in the North Caucasus, though much of the work is done in an advisory capacity.

Highlighting the resilient nature of Russian human rights community, the 2016 attack on the press tour resulted in the creation of the first independent journalist labor union focused on the protection of journalists.

## Panel 3

# National Litigation

Lawyers and activists have turned to national courts to challenge laws and restrictions limiting civil society space and pushing for expanded human rights protections. This panel examined the success of litigation efforts in democratic countries like India, Kenya, and Botswana. The session also explored strategies undertaken by advocates in China to secure human rights victories in the courts.

## STRATEGIES

- Challenge restrictive laws and provisions such as NGO registration laws, travel bans, and sedition charges on the grounds that such laws violate freedom of speech, assembly, and association rights.
  - Draw on external resources such as the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association's [FOAA online](#) - a repository that provides accessible legal arguments to assist lawyers, activists and judges involved in freedom of peaceful assembly and freedom of association (FOAA) cases.
- When exhausting administrative remedies, pursue rights-affirming arguments.
- Use the national courts to compel government agencies to act in accordance with the law.
  - In Russia, human rights organizations file cases mandating the prosecutors to investigate instances of torture.
  - In Kenya, the CSO Reference group turned to the High Court to compel the government to enact the progressive NGO operation law, Public Benefit Organisation Act. The court found that the 1,000-day delay in enacting the law was unconstitutional and constituted an "abdication and dereliction of duty."
- Explore filing cases before National Human Rights Institutions (NHRIs) to secure advisory opinions on the legality of laws and restrictions limiting civil society space. Also consider encouraging NHRIs to intervene in cases seeking protection of human rights defenders and organizations from government harassment.



Tashwill Esterhuizen - Lawyer, *LGBTI and Sex Workers Rights Programme*, Southern African Litigation Centre

- Couple litigation with advocacy campaigns as courts are not immune to public opinion.
  - In Kenya, the CSO Reference Group held consultations with a wide array of stakeholders including the business sector and commissioned an impact assessment study outlining the adverse economic, health, and development effects associated with the restrictive NGO laws. The CSO Reference Group shared the findings with the court, members of Parliament, and the public.
  - In India, a grassroots network of human rights defenders organizes public tribunals and advocacy campaigns to document violations of freedom of speech, association, and assembly and shares findings with government officials.
- Identify openings for progressive remedies based on a nuanced understanding of the government's position on human rights issues.
  - In China the lack of an independent judiciary limits the ability to directly challenge laws restricting civil society space in the national courts. However, advocates have identified openings for progressive change in areas where issues align with (or do not directly conflict with) the interests of the government. This includes issues such as anti-discrimination in the workplace and wrongful conviction cases where lawyers have been able to secure victories and expand human rights protections.
- Incorporate relevant international human rights laws and standards in legal petitions and advocacy campaigns to underline the universality of human rights.



Nikki Reisch - Legal Director, *Center for Human Rights and Global Justice, NYU School of Law*

## CHALLENGING DISCRIMINATORY LAWS

In 2012, the government of Botswana refused to register an LGBTQ rights organization, LEGABIBO, on the basis that LGBTQ persons are not recognized as persons entitled to protection under the Constitution. Advocates challenged this discriminatory government action by bringing the case, *Attorney General v. Rammoge and 19 others, CACGB-128-14 (2016)*, in the High Court of Gaboron. In a landmark judgment the Botswana Court of Appeals recognized that the government's failure to register LEGABIBO was an unlawful violation of the right of LGBTI activists to freely assemble and associate – a core value of a democratic society. LEGABIBO became the first LGBTQ organization to register in Botswana.

# Legal Empowerment

Legal empowerment puts law in the hands of people. This panel examined legal empowerment strategies and methods used by human rights advocates to strengthen the capacity of affected communities to identify, monitor, and defend their rights against the global crackdown.

## STRATEGIES

- Recognize the transformative power in demystifying the law and work with affected community members to help them understand, use, and shape the law.
- Broaden the base of individuals engaged in the protection and defense of human rights to deepen democracy and challenge consolidations of power.
- Develop and implement legal empowerment projects such as community paralegal programs, in which paralegals are trained to identify, monitor, and claim rights associated with the protection of civil society space.
- Provide legal and skill-based trainings to social movements to help them understand the law and use available grievance mechanisms to defend the rights of their members/constituencies.
- In challenging civil society environments, data on marginalized communities is often non-existent or difficult to access. Design community-led data collection projects where individuals track human rights violations and use the data to demand accountability from the state.
- Develop contingency plans that recognize the potential for affected community members to experience backlash for engaging in resistance efforts.
  - Incorporate criminal justice trainings into legal literacy programs.



Pauline Vata - Executive Director, *Hakijamii*

- Adopt a bottom-up approach. A collective of paralegals on the front lines is a nimble, cost-effective way to amplify the voices of marginalized communities and strengthen claims for systemic change.
- Seek greater flexibility from donors, and urge them to fund social movements and community-based networks, not only formal NGOs.



Mikhail Golichenko - Legal Counsel, *Canadian HIV/AIDS Legal Network*

### GRASSROOTS STORIES OF RESISTANCE

- In Myanmar, Namati, an organization dedicated to building an evidence-based movement for legal empowerment around the world, has trained 60 paralegals on relevant land laws, documentation skills, and use of legal remedies. These community paralegals have provided legal support to 8000 local residents in their quest to reclaim land from government capture. More than 50% of these cases have been successfully resolved.
- In India, Nazdeek, a legal empowerment organization dedicated to bringing access to justice closer to marginalized communities, fuses SMS-based technology with legal literacy trainings to increase access to health and nutrition services for indigenous women tea laborers. Led by a collective of 30 community paralegals, the initiative has resulted in more than 27,000 pregnant and lactating women receiving their nutritional benefits and entitlements.
- In Kenya, Hakijamii, a human rights organization that works with marginalized communities to advocate for their economic and social rights provided legal literacy trainings to Okoa Jahazi, a social movement from Isiolo County. With the support of Hakijamii, Okoa Jahazi filed a petition with the Kenyan Parliamentary Committee to stop land grabs by private developers and the national government under the multi-billion LAPSSET project. For the first time, the Committee held a hearing in Isiolo County to document cases from the affected community members, an action that led to fewer instances of land grabbing.

## Panel 5

# Internet Resistance

Despite upticks in government surveillance and censorship, digital activism remains a powerful tool to mobilize and organize against repressive regimes. This panel weighed the challenges and opportunities in leveraging the Internet to support resistance efforts at local, national, and international levels.

## STRATEGIES

- Use Internet platforms to document the voices of online resistance, such as individuals and organizations that speak out against authoritarian regimes through images, videos, leaks, essays, political satire, and even science fiction novels.
  - In China, online creative expression is a form of resistance. However, the government censors much of this content and makes it difficult to access within the country. An offshore news site, China Digital Times, documents news items blocked, deleted, or suppressed by the government as well online resistance efforts by citizens. The site uses creative methods to make its content accessible in China through the use of email lists, social media, and mirror sites.
- For defenders in exile, explore the power of offshore advocacy to support local and national resistance efforts through the use of the Internet to share and disseminate information to global audiences.
- Examine the politics of Internet platforms, in particular the control and power that CSOs relinquish by engaging with digital technologies owned by large corporations such as Facebook and Twitter.
  - Engage with alternative platforms like Global Voices which provide access to underrepresented stories from marginalized communities largely through a volunteer community of more than 1400 writers, analysts, online media experts, and translators.
- Use the Internet build up public opinion as the digital market can be a powerful tool to advance human rights.



Bilge Yesil - Associate Professor, *College of Staten Island, City University of New York*

- Set up individual or thematic blogs to share ideas, gather information, and build advocacy campaigns. When coupled with media attention, this strategy can elevate salient human rights issues to the forefront of a national debate.
- Engage in online forums, message boards, and chat rooms directly with citizens to promote public debate.
- Use the Internet to fact-check the government's statements, identify and counter state-sponsored trolling, and highlight propaganda efforts targeted at CSOs.



Xiao Qiang - Adjunct Professor, *Berkeley School of Information*; Editor-in-Chief, *China Digital Times*

## ONLINE ACTIVISM EFFORTS

### ZONE 9 BLOGGERS, ETHIOPIA

In Ethiopia, activists have relied on social media tools to share news, opinions and events with other Ethiopians and the broader international community. The rise of Zone 9, an award-winning collective of independent bloggers, emerged from a desire to use online forums to advance a different narrative on the political and social issues plaguing citizens than what was featured on the state-owned media. The collective shared stories about political prisoners and reported incidents to international organizations and media outlets such as HRW, Amnesty, and Article 19. Activists have used social media platforms like Facebook and Twitter to mobilize citizens to engage in protests against the government. In 2014, the Ethiopian authorities arrested and charged six members of the Zone 9 on terrorism and conspiracy grounds, with alleged links to an outlawed political organization. After more than a year in jail, the Federal High Court released four of the members.

### 140 JURNOS, TURKEY

In 2012 Engin Onder, a 21-year old student at Istanbul's Bahçeşehir University co-founded 140 Journos, an organization whose volunteers use mobile phones to provide uncensored news through social media platforms. 140 Journos is named after the 140-character limit on Twitter and is a citizen journalism effort to share stories to the public on social and political issues not covered by mainstream media.

# Technology, Business & Human Rights

This panel opened with a discussion on Internet governance and the responsibilities of technology companies to respect human rights. The presenters explored legal and policy measures to hold the commercial spyware industry accountable for state surveillance of human rights defenders.

## STRATEGIES

- Examine litigation as a strategy to hold the commercial spyware industry accountable for state surveillance of human rights defenders.
  - Work with human rights defenders to understand the threats they face.
  - Strengthen capacity of defenders to identify malware installed on their devices.
  - Connect defenders to technologists to verify, document, and secure evidence associated with intrusions.
  - Conduct comparative legal research to assess the potential of filing strategic litigation in various jurisdictions.
  
- Explore the potential for domestic litigation in the United States using laws such as:
  - Consumer protection laws, which prohibit unfair or deceptive practices.
  - Wiretap Act and Stored Communications Act, which allow for civil suit for damages caused by particular types of digital intrusion activities including unauthorized access to computers.
  - Challenge intellectual property and contract violations as spyware companies often prey on trusted third party platforms to deliver the malware without their consent, an action that may violate service agreements.
  
- Require companies to conduct serious due diligence on governments prior to the supply and sale of malware products to ensure their products will not be used to silence defenders.



Sarah McKune - Senior Legal Advisor, *The Citizen Lab*, Munk School of Global Affairs, University of Toronto

- Craft a regulatory framework for the commercial spyware industry with lessons drawn from the private military and security contractor context.
- Bolster export controls by lobbying for government enforcement of prohibitions on companies exporting spyware to human rights abusing governments.
  - The Wassenaar Arrangement, which is a voluntary arrangement that regulates the export of weapons as well as “dual use” technologies, was amended in 2013 to include internet-based surveillance systems as restricted export technologies. While the purpose of this inclusion is to limit companies from selling their technology to countries known to abuse human rights, many companies have gotten around this restriction by licensing their technology to another company and then selling it to the offending governments.



Michael H. Posner - Professor, *NYU Stern School of Business*; Co-Director, *Stern Center for Business and Human Rights, NYU Stern School of Business*

- Advocate for greater transparency in the commercial spyware industry, which has flourished outside of the public's view.
- Document and shed light on human rights abuses associated with the use of malware through public campaigns.

## PROLIFERATION OF SPYWARE TECHNOLOGIES TO CRACK DOWN ON DISSENT

An increasing number of governments purchase spyware from companies to track, monitor and intimidate human rights defenders, journalists, and political dissidents. Large companies such as NSO Group in Israel, Finfisher in the UK and Germany and Hacking Team in Italy sell digital spy tools to governments. A 2015 hack revealed that Hacking Team had sold spyware to numerous governments with track records of targeting human rights defenders, including Bahrain, Ethiopia, Sudan and Uzbekistan. The spyware is known as a dual-use good, defined as “goods, software and technology that can be used for both civilian and military application.” While governments contend that the software serves legitimate national security and intelligence gathering purposes, growing documentation reveals an overbroad use of the software to target defenders, journalists and dissidents.

## Panel 7

# Lessons to Confront Closure at Home

With democratic institutions like the judiciary and the free press under attack, this panel drew lessons from the strategies and tactics raised in the conference to address the growing crackdown on dissent in the United States.

## STRATEGIES

- Build broad-based intersectional coalitions that resist the divide-and-conquer strategies used by governments to sow division within civil society.
  - Depending on the context, this may mean creating coalitions centered on a specific legislative or policy demand, or intentionally seeking allies from across issue areas to counter attacks on any single constituency.
- Engage in mass mobilization efforts to push for systemic change in legal or political structures.
  - Fighting corruption is a unifying issue that motivates a diverse group of individuals to protest and demand accountability.
- Direct legal resources to communities under attack.
- Increase support for alternative media outlets centered on fact-based journalism.
- Build informal networks through social media to organize protests, share best practices, and deploy activists and resources for urgent causes.
- Focus advocacy on national and local-level politics, especially efforts to curtail the power of democratic institutions, including issues related to gerrymandering and voting rights.



Sarah Kendzior - Journalist

- Couple strategic litigation with organizing and activism efforts. Courts are not immune to the psychological, political and social forces at play in a society.
- Develop and implement strategies to protect the ability of legal activists and advocates to engage in sustainable, resistance initiatives.
- NGOs in the United States need to actively engage with international human rights instruments and mechanisms to demonstrate the value of human rights institutions for the American experience.

## CLOSING SPACE IN THE UNITED STATES

The CIVICUS 2017 monitor included the United States as one of 5 countries on its “Watch list” due to serious and ongoing abuses of the rights to freedom of expression, assembly, and association. Recent events highlighting the narrowing of civic space in the United States include:

- At least 43 bills had been introduced by state legislatures to restrict freedom of assembly and the right to protest.
- Six journalists were arrested and charged with felony rioting during protests on Inauguration Day.
- Protest movements like Occupy and Black Lives Matter are infiltrated by government informants.



The National Litigation panel

