

Changing **political spaces** of Civil Society Organisations

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Executive summary

After the decade of the 1990s – frequently quoted as decade of Civil Society Organisations (CSOs) due to the rapid growth of Non Governmental Organisations (NGOs) and CSOs in many countries – members of ACT Alliance now report increasing problems with shrinking political space for non-state actors. Thus, ACT Alliance has produced a policy paper analysing the phenomena – based on 14 country case studies – which indicate that the political space available for CSOs to freely operating are increasingly thwarted by government policies and actions. CSOs are hindered in various ways: through counter-terrorism measures, war on terror, the securitisation of aid as well as repressive governance in authoritarian states. Such actions comprise negative labelling and propaganda, administrative restrictions, direct prosecution or physical harassment and intimidation.

The studies have been done by partners from ACT Alliance in the following countries: Brazil, Colombia, Guatemala, Honduras, India, Indonesia, Malawi, Paraguay, Peru and Zimbabwe. The policy paper further considers findings from United Nations mechanisms on human rights – eg UN Treaty Bodies or safeguards for human rights defenders – as well as indices on governance, democracy status, and implementation of human rights provided by Freedom House Ranking, Bertelsmann Transformation Index and CIVICUS' Civil Society Index as well as the Paris Declaration on Aid Effectiveness of March 2005 and the Accra Agenda for Action of September 2008. The latter ones speak, for example, of an 'inclusive partnership' relating to CSOs, research institutes, media and private sector in shaping development policies.

The policy paper indicates the term 'criminalisation' which comprises on one hand a political strategy in a political conflict which is based on a normative judgement abusing the criminal justice system for political purposes. On the other hand, it is used as stigmatisation in order to discredit a CSO by an attribute which the society perceives as harmful. Stigmatisation often precedes criminalisation. Members of CSOs and NGOs face arrests and criminal proceedings for charges of forming criminal gangs, obstructing public roads, inciting crime, creating civil disobedience or threatening the State security, public safety or the protection of health or morals.

'Shrinking political space' is presented as the diminishing possibilities of CSOs and NGOs to undertake a wide range of public actions with different phenomena in different contexts, such as authoritarian states, hybrid or relatively developed democracies, or war zones. In most of the countries, CSOs and NGOs have to register their presence, have their funding approved or routed through the government, and provide the government with information about staff members, projects, and donors. Such procedures can easily turn into a nasty burden. The examples are also showing that the kind of measure chosen by governments depends for example on the capacity of NGOs and CSOs to negotiate with the state. So, it is important to distinguish different actors and impacts on the organisations.

The country case studies call for a careful systematisation of findings. The studies do not show a global uniform trend to criminalise active and critical civil society actors. However, there is only a thin line between criminalisation and administrative/legal hurdles or prevention of financial support. Administrative and/or legislative regulation in an increasingly significant number of countries is impacting negatively on the freedom and effective work of civil society actors. Such changes can be also observed in states with different background conditions, eg both in authoritarian states as well as in formal democracies. In summary, the studies show there is evidence to suggest that the political, legal and operational space for NGOs and CSOs has been shrinking in the recent years and that the recognition of the role of NGOs and CSOs by states has rather decreased then improved. Additionally, administrative or legislative endeavours in a number of countries are impacting on the freedom and effective work of civil society actors eg by NGO framework laws which are increasingly aimed at stifling NGOs. The same studies also reveal successful protest or resistance towards such intentions relying frequently on internal as well as on external (international) advocacy and support.

The conclusions and recommendations relate to human rights as one major platform for protection with real impact on the ground. One recommendation is to conduct training on the subject - in so-called 'paralegal training' on basic human rights and other appropriate legal standards. Strong links should be established with pertinent UN Special Procedures and UN Treaty Bodies as well as to regional institutions such as the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, or the Council of Europe. It is further recommended to approach open-minded government staff in order to discuss cases of NGO infringement with the law as well as violations of human rights and the free performance of CSOs. In a similar way, the Accra Agenda for Action also provides tools for making CSOs and NGOs recognised as development actors as well as transparency and accountability being a must for any government action.

Finally, church or faith-based organisations with their high level of credibility in society should engage in a process of dialogue and cooperation with governments in order to enable real policy dialogues and to develop legal frameworks and mechanisms that provide for freedom of association, access to information, the right of citizens to organise and participate in national and international decision-making processes and to maintain a free and open media. In addition, donors should contribute to developing accountability concepts and practices in developing countries by strengthening national accountability mechanisms based on human rights standards as well as generating institutional and coordination capacities among CSOs and NGOs.

In parallel, there is the need to pursue a new international development architecture that is inclusive, rights-based and democratic. This framework should specifically emphasise the recognition of CSOs as full members in the formal structures of a new development architecture, along with governments and other stakeholders. It should further generate a rights-based international standard-setting system and focus on human rights, the centrality of poverty reduction, gender equality, social justice, decent work and environmental sustainability. It should be the duty of all states to respect, protect and fulfil human rights obligations, including women's rights, and this requires that governments create the conditions necessary for all to be able to fully exercise and progressively realise these rights.



Photo: ACT/Sean Hawkey

Global Trends

Introduction

Two working groups of ACT Alliance have joined forces to produce this policy paper - the Rights and Development Working Group and the Development Effectiveness Working Group. The ACT working groups started out with an analysis of trends concerning the political space of Civil Society Organisations (CSOs). Widespread feeling exists among member organisations of ACT that the possibility to operate freely is increasingly thwarted as a result of government policies and action. In a number of countries across all continents, CSOs are facing a political environment in which it is increasingly difficult to operate. A variety of ways exists in which political space is restricted - through counter-terrorism measures, war on terror, the securitisation of aid as well as all forms of repressive governance in authoritarian states. The actions and policies that restrict political space can start with negative labeling and propaganda, before moving to administrative restrictions, direct prosecution and ultimately, physical harassment and intimidation. While there is no uniform global trend in reduced political space due to the fact that country backgrounds vary greatly, the number of countries with restrictive actions and policies is increasing - a trend that is alarming CSOs.

In order to properly analyse the trends, ACT started extensive research on the problems and experiences in various countries by outlining the country research and developing case studies in a number of countries. The published country profiles have been produced by ACT partners and/or members in Brazil, Colombia, Guatemala, India, Indonesia, Malawi, Paraguay, Peru, and Zimbabwe. These countries were selected because all have faced changes in the context of the work of CSOs and Non Governmental Organisations (NGOs) in recent years. These first analyses are published parallel to this policy paper. ACT intends to expand the research in the coming months to more countries.

Parallel to the country research ACT has produced an policy analysis of trends related to the political space of civil society groups. It is based on a background paper that researchers, Chris van der Borgh and Carolijn Terwindt, from the University of Utrecht's Centre for Conflict Studies have written for ACT member ICCO. Their paper, Political Space for NGOs is a background analysis which helped us to develop a matrix for the country studies and for comparing and interpreting the national findings. German human rights expert Theodor Rathgeber was lead author in summarizing the results of the ACT research. The intention of this report is to get the issue of political space of civil society organisations high on the agenda of ACT and in the respective debates at the United Nations and member governments.

In the work of ACT Alliance we have to become sensitive to changing political environments under which we operate nationally or locally. These environments are influencing both the effectiveness of our actions and also the space for us to act freely, as well as present potential threats to us or our partners. At the international level ACT would like to influence political debate, standards and trends that favour people organising themselves, formulating their interests and working as agents of change of their own lives.



Photo: ACT/Sean Hawkey

While writing the policy analysis, we have considered findings from different United Nations mechanisms on human rights that have dealt with the issue of political space for civil society, as well as indices on governance, democracy status and implementation of human rights provided by eg Freedom House Ranking, Bertelsmann Transformation Index and CIVICUS' Civil Society Index, as well as the Paris Declaration on Aid Effectiveness of March 2005 and the Accra Agenda for Action of September 2008.

1. General considerations

The 1990s were often quoted in literature as the decade of civil society organisations. In international politics, the 90s were dominated by UN summits. Starting with the Childrens' Summit in 1990, the Rio Summit on Environment in 1992 and the Vienna Conference on Human Rights 1993, the United Nations organised a series of summits which took up central development themes and developed an ample number of action plans. The summits also became famous because of the high number of civil society groups which participated. This increased rapidly during the decade. Some summits were attended by several thousand national and international groups and organisations representing civil society. Another reason the 1990s were an important decade for civil society is that it was the decade of privatisation and economic globalisation, with a general trend of failing belief in the role of the state and increasing belief in the role of the market and the private sector. For many development policy makers, civil society was part of this trend.

The decade, therefore, saw a rapid growth of NGOs and CSOs in most countries around the world. In literature, a proliferation of definitions for NGOs and CSOs sprung up, normally differentiating between NGOs as service-providing organisations, particularly in development policies, and civil society organisations being a broader category describing society groups of self-organised grass-roots or community-based organisations or sectoral interest groups, such as farmers or indigenous organisations, existing in the space between the state and the private sector.

We know that in every country, civil society organisation is diverse and complex regarding its areas of work and scope including its international linkage, as the country studies have confirmed. In some country cases presented below, the subject of criminalisation and stigmatisation directly relates to these features while the differences between grass-root organisation, community-based organisation, indigenous peoples' organisation or a non-governmental organisation in a more strict sense is rather less important against the background of harassment. For the purpose of this text, it will therefore be sufficient to tentatively distinguish CSOs and NGOs by focusing on the aspect of formal registration with the State and being addressed by the State, which normally is linked with the term NGO (eg NGO law).



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The reference to civil society actors was broadly positive during the golden decade of the 1990s. Similarly today the positive connotations are dominant when the role of these actors is discussed, particular in development policy. It has become conventional wisdom in the debates about development aid and more specifically in the debate on development effectiveness that civil society groups do play a decisive role or function in helping make aid work. They are self-organised groups of the so called beneficiaries, which themselves identify early on relevant problems and deficiencies in the communities. Therefore they can help formulate policies and make them oriented to address the needs and problems of the communities in question. . Local CSO actors can monitor the action of local or national governments and are particularly important partners in the identification of policies, their implementation and evaluation locally, nationally and internationally. Some countries such as Brazil demonstrate internationally how sensitive and well-informed their policy formulation has become due to the proactive involvement of civil society groups in national councils, such as the national council for food and nutritional security.

In the recent two decades, however, it is clear this “golden era” has ended. Two trends can be observed that show this clearly:

(1) Partners and members of ACT Alliance face increasing problems with shrinking political space for non-state actors in quite a number of countries. After the rapid increase of number of civil society organisations during the 1980s and 1990s, many countries have started regulating and controlling non-governmental organisations. While in some countries it is more a regulation of activities, in other countries such regulations go hand in hand with administrative hurdles, the formulation of restrictive laws including the intimidation and criminalisation of civil society actors. In quite a number of countries, strong anti-terrorist laws passed in the last decade have restricted substantively the scope of activities of civil society actors and often also the flow of resources. ACT has started this research in order to find out if there is a dominant trend of regulation and control of civil society groups or if national context varies too much to be usefully compared. While there is no uniform trend across all countries, the number of governments using anti-terrorist arguments or laws and regulation to restrict the space of civil society organisations is increasing. Another important change in trend is that through the first decade of the new millennium and especially after the financial crisis of 2008 , the world saw a re-emergence of the importance of the role of the state. With this, a turn in less belief in the role of private actors took place also. At the same time governments committed to a greater role for CSOs in deepening democracies in 2008 in Accra (the Accra Agenda for Action) .

(2) At the international level, CSOs are increasingly being challenged by authoritarian states in international fora such as, for example, in the United Nations human rights council (HRC). The HRC is a very sensitive body for such challenges because it has instruments such as the Universal Periodic Review in which governments are held publicly accountable and the voice of CSOs in such a monitoring mechanism bites. The criticism of NGOs/CSOs towards governments is often responded to by questioning the overall relevance and legitimacy of CSOs. Such challenges are often in conflict with the promises made in development politics, particular in the Paris Declaration on Aid Effectiveness and its follow-up, the Accra Agenda for Action. Currently two themes can be found in international politics:



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On the one hand a questioning of the role of CSOs, and on the other hand, the recognition that progress in many policy fields can only be achieved if decisions are made with participation, involvement and influence of people concerned. In short, there is a clear dilemma between the development effectiveness agenda demanding space and participation of civil society and the practice of limiting the role and partially also the legitimacy of civil society actors. That dilemma needs to be put on the agenda of both the human rights protection instruments and the Accra follow-up debates during 2011.

2. Operational space of NGOs / CSOs and regime type

The room for manoeuvre for NGOs and CSOs is influenced heavily by the state capacity and regime type. The background researcher for our policy context elaborated two figures that give a systematic insight in the linkages.¹ In general the more free and strong a state is, the easier is the situation for NGOs and CSOs. In such contexts there are normally clearly defined civil and political rights based on the rule of law and a capacity of the state to defend these rights. In this context there is often an effective legal framework as well as state protection for these organisations forming civil society. The opposite can be observed in more authoritarian states.

“Figure 1 depicts four ideal typical categories: strong democratic states, weak democratic states, strong authoritarian states and weak authoritarian states. Obviously, there are different gradations of state capacity and freedom and countries can for instance have a limited state capacity and a more hybrid political regime. Moreover, states can be weak in different sectors, some being strong on military capacity and weak on service delivery, while others are weak on both. Thus, the two axes should be seen as continua and states can be positioned anywhere in the field that is formed, their position in this field is always subject to change. As we will discuss below there are also marked differences within in countries and there can be different realities of state power and political and civil freedoms”. (van der Borgh / Terwindt: 2010: 2)².

Political regime	More Authoritarian	More Democratic
State capacity		
Stronger States	Strong authoritarian state	Strong democratic state
Weaker States	Weak authoritarian state	Weak democratic state

Figure 1: State strength and political & civil liberties (van der Brogh / Terwindt (2010:)

1 The policy paper is based on background research of Chris van de Borgh and Carolijn Terwindt from the Centre for Conflict Studies, University of Utrecht, Netherlands, who have done the background research paper “Political space of NGOs” and who have done also the research in our of the countries covered here.

2 Chapter 2 is based on chapter 1 of the recent study from Chris van der Borgh & Carolijn Terwindt “Making Claims, Negotiating space, Shrinking Operational Space of NGOs in Partial Democracies; Utrecht 2010, ICCO & CCS. The page preferences relate to the draft of chapter 1.

An important influencing factor is also the state capacity to act. While “in relatively strong and authoritarian states, like China, Belarus or Iran, governments have a clear willingness and capacity to control the public sphere and to restrict NGOs in their work – using different measures. However, in weak states (both authoritarian and democratising ones), the state capacity to make rules, to control the public sphere or to defend NGOs is limited. In these cases, other actors like traditional authorities, warlords, social or religious movements and (international) corporations can be important factors in the ‘de facto’ local political orders and thus influence the room for manoeuvre of NGOs”. (van der Borgh / Terwindt 2010: 3) The situation in partial or defect democracies is often very difficult, for example in states where democratisation has started but might also be reduced after some time.

In figure 2, van der Borgh and Terwindt provide a very interesting table “to organize the variety of policies, laws and measures that can restrict or influence the operational space of CSOs and NGOs. They distinguish between five sets of actions and policies. In many cases these measures are linked and one can identify specific instances where they occur in a certain order or a certain cycle of escalation. Each of the actions and restrictions can be viewed on a continuum where they can either enable and facilitate NGOs or (at the other end of the continuum) pose obstacles”. (van der Borgh / Terwindt 201: 6)

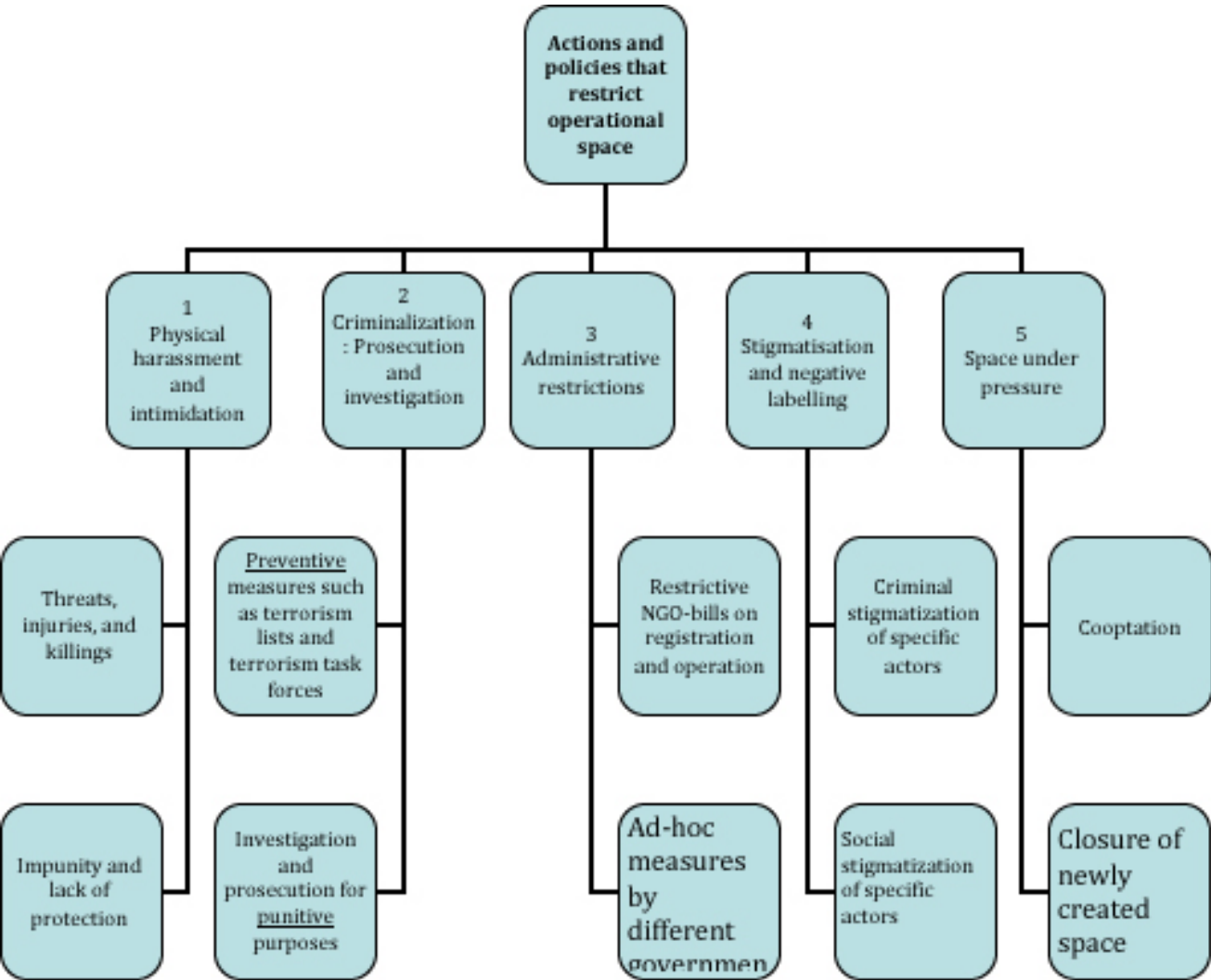


Figure 2: Actions and policies that restrict operational space (van der Borgh / Terwindt 2011: 11)

It is important to note, that not in all cases NGOs and CSOs are contributors to more open policy spaces. In many societies, the realm of civil society itself is also fractionalised, fragmented, and not in all cases 'civil'. In this regard a distinction can be made between civil society groups that explicitly recognise the importance of respecting human rights and promoting compromise, dialogue and economic and social integration, and groups that do not adhere to these rules, like mafias and paramilitary groups. Civil society groups themselves can become as polarised as societies themselves. Societies themselves might also limit the space of NGOs. One other problem linked to the role of NGOs and CSOs is the co-optation of such actors. This is in many countries a deeply embedded practice that has strong links to clientalism that might reach also concrete forms of bribery. (van der Borgh / Terwindt: 2010: 6)

3. Legal instruments, key policy areas

Before going into details of the subject, we may illustrate the most pertinent issues of the normative and international framework. In general, there is no international instrument to explicitly guarantee or protect the commitment and work of CSOs and NGOs as such. Since the 1990s, there has barely been any UN document of major importance that does not promote the State's engagement with civil society organisations. This does not constitute a legally binding obligation in international law but is a de facto and accepted standard of behaviour, particularly in the context of democracy, good governance and rule of law. Beyond this general appeal to the political wisdom of States, the individual person acting in these organisations is entitled to all basic human rights as the right to life, freedom of expression and association, or in choosing a profession, to name a few. The human rights principles of non-discrimination, participation and transparency are general principles for the implementation of all human rights and are relevant for everybody.

All States are obliged to respect, protect and fulfil these standards. In some of the country cases researched and presented below, it is obvious that there is a large variety of governmental interventions into the affairs of CSOs and NGOs and for example, their freedoms of association which range from difficulties or the denial of their constitution, registration and de-registration, to a burdensome and lengthy registration procedure, a biased supervision and monitoring, restrictions on accessing funding, to criminal sanctions for unregistered activities and administrative and judicial harassment. Making use of the monitoring system of the UN conventions on human rights (i.e. UN Treaty Bodies), the performance of the State towards CSOs and NGOs could be scrutinised, e.g. with reference to Article 22, Paragraph 2 (freedom of association) of the International Covenant on Civil and Political Rights (1976) currently ratified by 166 UN Member States (out of 192). In addition, in labour affairs, there are also a number of conventions by the International Labour Organisation that can be consulted on part of the aspects, including a complaint procedure.

Special emphasis should be placed on safeguards for human rights defenders and their organisations acting to promote and protect the human rights of individuals or groups everywhere. Human rights defenders are the targets of repression, restrictions and abuse in weak or emerging democracies as well as in States with long-established democratic traditions. Human rights defenders are explicitly protected by an international agreement – the UN Declaration on Human Rights Defenders 1998 (UN General



Photo: ACT/Sean Hawkey

Assembly Resolution A/RES/53/144) – which bear the State responsibility for ensuring that acts of intimidation and violence against human rights advocates and victims are punished. States are obliged to investigate violations and prosecute perpetrators as well as to carry out necessary reforms to improve access to justice for victims and their defenders, apply the rule of law and ensure the independence of judges and lawyers. The UN Human Rights Council has a special monitoring mechanism, the UN Special Rapporteur on the situation of Human Rights Defenders (currently Ms. Margaret Sekaggya), mandated to review the security and protection of human rights defenders everywhere in the world, irrespective whether a State declared its submission to the Declaration. How such a mechanism may play a role within the context of political space of CSOs will be elaborated below, after analysing the country situations.

A special framework is established in the context of development policy by the Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008). Both agreements stress the respect for the genuine development in each (developing) country and emphasise the country's priorities – which bears duties for the partnership between developing and donor countries. However, there are provisions which link up the leadership by the developing country to consultations with donors as well as with CSOs on its development policies, for example an 'inclusive partnership'. Any arbitrary decision-making process by a government is not supported by these agreements.

Explicitly, the Accra Agenda for Action emphasises the engagement of the State with its parliament and citizens in shaping its development policies. The AAA recognizes CSOs as actors in development in their own right and the necessity of the governments to provide an enabling environment for them.

Donors should support efforts to increase the capacity of all development actors, as for example parliaments, CSOs, research institutes, media and the private sector. Furthermore, the AAA postulates that development policies and programmes are designed and implemented in ways consistent with agreed international commitments on gender equality, human rights, disability and environmental sustainability. The engagement with CSOs as independent development actors should be deepened and maximised and their full contribution ensured. Obviously, this substantially differs from the main findings of the research, identifying the shrinking political space of NGOs and in the country studies, which shows a conflict between these objectives and the reality in an increasing number of countries.



Photo: ACT/Sean Hawkey

4. Political space and criminalisation of NGOs – an overview

Chris van der Borgh and Carolijn Terwindt of CCS were commissioned to work out a paper on political space for NGOs and to question to what extent there might be a trend towards criminalisation of civil society organisations' activities. What does 'criminalisation' signify? Government policies and actions hamper the free operation of CSOs and NGOs by intimidation, harassment, restrictive legislation, repression, threats, executions and impunity using counter-terrorism discourse and measures, or by criminalising their work. Whereas CSOs and NGOs often are engaged in such a context with processes to protect or deepen democratic governance, to enlarge the political and civil liberties, and to ensure the rule of law is working.

The researchers understand 'shrinking political space' as diminishing possibilities of CSOs and NGOs to undertake a wide range of public actions. Specifically this can mean different things in different contexts corresponding to the nature of the state and the political regime, the policies and actions of different state and non-state actors, and the characteristics of CSOs and NGOs. The two authors distinguish between three types of political contexts with certain characteristics in which the space is increasingly often restricted: a) authoritarian states, b) hybrid or relatively developed democracies viewing the CSO-sector as an obstacle in particular related to human rights and the exploitation of resources, and c) war zones, where state power is fundamentally contested. While in war zones it is often very difficult to improve the operational space of NGOs and CSOs without overcoming the underlying conflict, NGOs or CSOs needs here a guarantee that they can operation as humanitarian or as development actors. In the first two situations, a change is possible when governments involved alter their attitude vis-à-vis civil society groups. 'Public actions' are defined as 'purposive collective action whether for collective private end or for public ends in terms of access, operational activity, speech and advocacy, communication and contact, resources, and State protection'.

In principle, government activities can be understood as claiming the state's authority and responsibility to coordinate and control the CSO sector, and particularly those that receive foreign funding. In most of the countries, CSOs and NGOs have to register - their funding approved or routed through the government, and provide the government with information about staff members, projects, and donors. At the same time, such procedures in terms of regulation, evaluation, and monitoring can turn into a nasty burden for CSOs and NGOs when a government feels challenged and CSOs and NGOs become competitors in various ways and such instruments are used to restrict the space and capabilities of NGOs and CSOs.

There is a wide range of ways of making CSOs clear government's displeasure through bureaucratic administrative obstacles, harassment, stigmatisation and criminalisation; i.e. prosecution and investigation for punitive purposes. According to Chris van der Borgh and Carolijn Terwindt, the kind of measure chosen depends among others on the capacity of local NGOs and CSOs to negotiate with the state, and how responsive the government might be. There are gradations of State capacity, freedom



Photo: ACT/Sean Hawkey

and political regime, and States can be weak in certain sectors too, such as being strong on military capacity and weak on service delivery. Laws, regulations, and executive decrees may have a different impact in hybrid democracies and in authoritarian states.

In relation to the focus on criminalisation and stigmatisation, the researches distinguish between two mechanisms to disqualify the engagement of civil society actors. The first is that within the context of shrinking space, criminalisation is described as a political strategy in a political conflict that is based on a normative judgement abusing the criminal justice system for political purposes. The second is that in relation to stigmatisation, the two authors stress the aspect that the stigma discredits an individual or a CSO by an attribute, which the society perceives as harmful for itself, i.e. the demonisation as western puppets.

Van der Borgh and Terwindt underline that criminalisation and stigmatisation are related to each other and often simultaneously occurring. Nonetheless, it is important to distinguish as each segment deals with different actors and the impacts on the organisation may substantially differ. The two authors describe the stigmatisation of political opponents in speeches, documents, and the media while criminalisation may imply detention, investigation, and trials when the criminal law and the criminal justice system are applied. Stigmatisation frequently precedes criminalisation.

A variety of ways exists in which political space is restricted. CSOs and NGOs working on service delivery generally experience less pressure and are generally free to operate while there are restrictions on speech, communication, resource management and allocation. In contrast, the political space of CSOs and NGOs working on and claiming land rights, local community rights, human rights, natural resources and minerals (e.g. extractive industries, privatisation of water), or environmental issues can easily become contested. This can occur in particular regions of the country, during certain periods of a government's decision-making process or while being confronted with protests. In this contexts, stigmatisation is widespread in Latin America, e.g. in Peru, El Salvador, Brazil, Honduras, and Guatemala, or in Asian countries like the Philippines and Indonesia.

As aggravating factors, one can observe war zones and the context of anti-terrorism. Researchers point out that when military actors or United Nations actors take better security measures for themselves, they are making CSOs and NGOs a softer target. Their choice often is between adhering to more security measures or leaving the area. In war zones, the distrust, both of governments and rebel groups towards NGOs and CSOs is considerable, hampering access, communication, resource allocation and protection. In a similar way, governments justify longstanding problems and policies by using the War-on-Terror-discourse, although it must be noted that there is not a uniform trend of shrinking political space at the global level solely due to counter-terrorism measures and the securitisation of aid. Traditional authorities, warlords, political movements and international enterprises are also important factors limiting the de facto room for manoeuvre of CSOs and NGOs in these countries. These actors are of importance even in stronger States since they can play important roles in State-led patrimonial practices, or in grey zones where the State has lost influence.

5. Lessons learnt from Case studies

Both the background study by Chris van der Borgh and Carolijn Terwindt and our own interpretation of the results of the country case studies call for a careful systematisation of findings. The studies do not show a global uniform trend to criminalize active and critical civil society actors. However, there is only a thin line between criminalisation and administrative/legal hurdles or prevention of financial support. Administrative and/or legislative regulation in an increasingly significant number of countries is impacting negatively on the freedom and effective work of civil society actors. Such changes can be also observed in states with different background conditions, e.g. both in authoritarian states as well as in formal democracies. In summary the studies show there is evidence to suggest that the political, legal and operational space for NGOs and CSOs has been shrinking in the recent years and the recognition of the role of NGOs and CSOs by states has rather decreased than improved.



Photo: ACT/Sean Hawkey

New laws and regulative policies

Many countries have developed legislation over the past years, including NGO framework laws that are increasingly aimed at stifling NGOs. This comprises the insistence by governments that all groups must register, however small or informal they may be. These measures are defended from a tax-perspective but reflect also the intention to control NGO activities and filter those groups that are critical to government policies. Often, activities carried out by unregistered groups become criminalised and outlawed.

Phrased in positive terms, most of the case studies illustrate the governments' efforts to effectively manage the civil society contributions in accordance with the State's priorities for developing the society, sometimes given the significant amount of financial resources of that sector. Obviously, the State's priorities are the challenging aspect as they are seldom based on the outcomes of a transparent and participatory consultation process. In the majority of the cases, they are simply imposed. Although the regulation on NGOs and CSOs can principally also be understood from the viewpoint of good governance in terms of stability and efficiency of State institutions and management, it can also easily be turned into an instrument to harass or to silence dissenting voices. Similar ambiguity relates to the trend to systematically invoke national security and public safety to restrict the scope of activities. The concrete outcome of new laws and regulations for NGOs and CSOs will therefore depend on the country specific situation, but in an increasing number of countries such changes are used to control at least certain areas of work of civil society actors.

Justice and anti-discrimination issues are most sensitive

As more NGOs take up additional roles, for example by expanding a service-delivery work to advocacy, they realise the political and societal space for such a role is more limited. This is particularly relevant when NGOs or social movements enter areas that are closely linked to justice issues and the rule of law. There is an overall indication in the country studies that certain areas of NGO activities are indeed the objects of major concerns by governments. Critical elements which entail a firm stand by the governments irrespective of their ideological conviction include access to productive resources such as land rights, access to natural resources,

identifying special areas for unhindered economic activities, construction of infrastructure and industrial plants, labour regulations and laws, and energy generation in accordance with the ruling development paradigm

In some cases, cultural elements have to be added, challenging the self-understanding of the mainstream values of society; as gender relation, women's status and the inclusion of LGBTI (lesbian, gay, bisexual, trans- and intersexual) people. In these contexts, we face polarised conflicts and a variety of manoeuvres by the States, sometimes sophisticated, sometimes rather awkward, in order to not allow doubts in public on the ruling paradigms.

Here we experience the entire spectrum hampering registration up to stigmatisation and criminalisation of social protest, civil society groups and social movements. Trade unionists, members of NGOs and social movements face arrests and criminal proceedings on charges of forming criminal gangs, obstructing public roads, inciting crime, creating civil disobedience or threatening the State security, public safety or the protection of health or morals. Defence lawyers, providing legal assistance to NGOs, human rights defenders or victims of human rights violations, are threatened, denied access to courts and their clients, and arrested and charged under various criminal provisions. Participation in conferences, workshops and meetings, and travel to and from these events provide occasions for targeting members of NGOs. They are often subjected to humiliating body searches and excessive luggage screening.

Problem area: Formation and registration of associations

Irrespective of how the political space is limited, the problems caused in the formation and registration of the associations or the denial or restriction of registration or re-registration of associations, because of burdensome, expensive and artificially prolonged registration procedures are common. Often changing documentation requirements, , criminal sanctions for unregistered activities or restrictions on access to funding are ways to do the same. Government supervision or interference and judicial harassment are also used. All of these actions should be subject to scrutiny under the right to freedom of association. Article 22, Paragraph 2, of the International Covenant on Civil and Political Rights sets a high threshold in order to be admissible.

Those problems for associations are also contradictory to the Accra Agenda for Action where the state signatories have committed themselves to working with NGOs to provide an enabling environment that maximizes their contributions to development. The Accra Plan of action has recognized the role of CSOs as development actors in their own right. CSOs were asked to improve their own effectiveness, Governments committed to a multi-stakeholder dialogue with civil society to develop more effective ways of cooperation and to create a development environment, which will enable CSOs to contribute to development more effectively.

Acts challenging the legitimacy of civil society actors

The increasing resort to civil and criminal defamation suits against NGOs also impacts the freedom of opinion and expression, the freedom of religion and belief, carrying out activities for free and fair elections or constitute

discrimination e.g. against indigenous peoples or minority communities. All rights are enshrined in the core UN human rights conventions. In the case of human rights defenders, there are additional and specific State obligations outlined in Articles 2, 9, 12, 14 and 15 of the Declaration on Human Rights Defenders. In particular, pursuant to article 12 of the Declaration, States have the obligation to protect human rights defenders: “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”. Irrespective of the substance in each of the cases presented, criminalisation needs a strong and legal platform for contesting as the human rights standards are providing.

6. Conclusions and Recommendations

The paper has been written to highlight a trend of the increase in observable limitations to the policy space of NGOs and CSOs in a growing number of countries. This trend concerns the members of ACT Alliance because the work of national member and partner organisations of ACT are affected. This study emphasises that, while the process of development effectiveness, the so-called Paris process, promotes the importance of and the variety of functions that civil society organisation play, the concrete situations in countries are far from reflecting that incite. More important, it is not only an efficiency and effectiveness argument that is striking to defend the political space of NGOs and CSOs, it is violation of essential human rights that can be observed. Unfortunately the antiterrorist measures that have been taken by a number of countries contribute to the more general trend to limit the space or room for manoeuvre for CSOs. It is important to know that country situations vary to a large extent and that there is no single, uniform global trend. Nevertheless, the trends observed are striking enough and the number of countries is increasing, so it is time to bring the issue to the agenda of both the human rights community and the development community to become more sensitive to the problem and to highlight such trend in monitoring procedures for all countries where it is obvious.

What NGOs and CSOs can do: applying a human rights based approach

As the studies on Peru and India revealed, the NGO sector in cooperation with international support successfully managed to have a proposed NGO bill declared unconstitutional. In the same way, more than 150 organisations in Brazil agreed to show the social, environmental, economic and political costs of the current development paradigm to the national and international public. This was done through internal and external advocacy, linked with media and pertinent UN Special Procedures. In this sense, NGOs themselves need to develop monitoring systems and assessment facilities, presenting parallel or shadow reports. Such a monitoring system includes fact-finding missions. This particularly relates, in the given context, to Colombia. NGOs, CSOs and social movements should systematically use a human rights based approach in their activities, in basing their work on a human rights context analysis and in monitoring state performance both in the realisation and implementation of civil and political human rights (freedom



Photo: ACT/Sean Hawkey

of speech and association) as well as to economic, social and cultural rights (rights to food, water, housing, health, education etc). It is further recommended to seek the organisation of a network including affected people and communities on the ground not only with ACT partners but also with pertinent internationally operating NGOs of the human rights sector, thus organising a platform on which NGOs from different orientations are enabled to work together.

People working for CSOs and NGOs may not have strong knowledge of the concept of human rights as a platform for protection with real impact on the ground. It would be worthwhile to encourage some to take an interest in training on the subject, e.g. in the so-called 'para-legal training' on basic human rights, the UN Declaration, the Bill of Rights emphasising economic, social and cultural rights, as well as other appropriate standards. Advanced training will increase skills in gathering documents, writing affidavits, and increasing knowledge on how courts work, as well as how to do human rights monitoring and documentation, or information on whom to contact and when.

In each of the countries presented in this text, open-minded governments should be approached in order to discuss cases of NGO infringement with the law as well as violations of human rights and the freedom of CSOs to performance. Such discussions should be aimed at developing procedures in order to make State authorities harmonise their domestic laws with human rights standards and the Declaration on Human Rights Defenders. It could also lead to a review of national laws, to abolish legal or administrative provisions impeding the work and activities of CSOs, and finally to enhance the protection and to ensure that the rights and freedoms referred to in the standards are guaranteed. For instance, laws governing the creation, registration and functioning of civil society organisations should be written and should set up clear, consistent and simple criteria to register or to incorporate a civil society organisation as a legal person. NGOs that meet all prescribed administrative criteria should be immediately able to register as legal entities. Such an advocacy role could well be taken up together by members of the national ACT Forums as well as by national churches.

What can be done by using the United Nations human rights system?

As mentioned in a previous paragraph, strong links should be established with pertinent UN Special Procedures. The UN Human Rights Council adopted in September 2010 a resolution to establish a new Special Procedures mandate on the rights to freedom of peaceful assembly and of association. This mandate is potentially one of the most relevant to human rights defenders, trade unionists, or NGO activists. Indonesia, India and Brazil were among the co-sponsors of the resolution. Notably, China, Cuba, Pakistan and Libya announced their disassociation from the resolution and therefore did not commit to the mandate.

Beyond the UN Special Procedures, further links might be established with several international institutions and bodies that are appropriate to the subject. First, the UN Treaty Bodies which also provide for interim measures as the Human Rights Committee, the Committee against Torture, and as far as the Optional Protocol enters into force, also the Committee on the Covenant on Economic, Social and Cultural Rights. Second and parallel,

further links should be established to the regional Special Rapporteur on human rights defenders, i.e. in Africa, of the African Commission on Human and Peoples' Rights, the Human Rights Defenders Unit within the secretariat of the Inter-American Commission on Human Rights, the Office of the Commissioner for Human Rights, the Commissioner for Human Rights of the Council of Europe, the European Court of Human Rights, the focal point for human rights defenders within the OSCE Office for Democratic Institutions and Human Rights, the European Commission, and the Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations.

This is a very ambitious programme but facing the trends illustrated and assessed in the country studies, the stigmatisation and criminalisation of CSO activities will rather increase based on more polarised conflicts around access to productive resources and the realisation of basic needs of the underprivileged people around the world in general and ACT members in particular. The programme should start immediately.



Photo: ACT/Sean Hawkey

Using the Accra Agenda for Action

The Accra Agenda for Action plans for more aid to be provided directly through the sector or general budgets of developing country governments systems. This may affect the direct financial allocation for CSO programmes by the donors. Moreover, developing country governments are not expected to more readily consult, plan, implement and monitor development activities with and through CSOs just because of growing aid allocations in their budgets. However, this would be neglecting the recognition of CSOs as effective development actors (as stated explicitly in the Accra document) that demonstrate a sustained organisational commitment to transparency and to ensuring multiple accountability.

CSOs, not least the church or faith-based organisations with their high level of credibility in society vis-à-vis the Governments' credibility, must engage in a process of dialogue and cooperation with Governments to secure a sharing of finances from the Government for CSOs own programmes and for enabling/organising real policy dialogues.

Tasks for CSOs:

- » CSOs should be committed to maximizing their contributions to development by, in the first instance, adhering to the Istanbul CSO Principles of effective development.
- » The development effectiveness of CSOs requires legal frameworks and mechanisms that provide for freedom of association, access to information, the right of citizens to organize and participate in national and international decision-making processes and a free and open media.

Task for Donors:

Donors should contribute to the development of accountability concepts and practices in developing countries by supporting:

- » the development or strengthening of national accountability mechanisms based on human rights standards (including the capacities of statistical agencies to gather sex-disaggregated data);

- » CSO platforms, women's networks and social partners' organisations to strengthen their institutional and coordination capacities to engage with other ministries and broader national policies;
- » capacity development and the watchdog role of CSOs on local and national development policies and projects funded by the international community;
- » the ratification, implementation and monitoring of the UN Convention against Corruption, whose articles outline the adoption of national legal frameworks to ensure accountability and participation.

CSOs should be recognised as important development actors in the aid architecture – playing a key role in promoting human rights, social justice, people's empowerment, democratic ownership, transparency and accountability. There is a need to pursue a new international development architecture that is inclusive, rights-based and democratic. This new framework should specifically emphasise:

- » the recognition of civil society organisations as full members in the formal structures of a new development architecture, along with governments and other defined development stakeholders.
- » a rights-based international standard setting system with mechanisms to ensure signatories follow through on commitments made in related international agreements and conventions.
- » a focus on human rights, recognising the centrality of poverty reduction, gender equality, social justice, decent work and environmental sustainability.

It should be the duty of all states to respect, protect and fulfil human rights obligations, including women's rights, and this requires that governments create the conditions necessary for all to be able to fully exercise and progressively realise these rights.

Case studies



Photo: ACT/Sean Hawkey

Brazil

The election of a government originating from popular sectors of society in 2002 forced among many Brazilians the hope that inequality would be fought and social participation strengthened. However, after eight years, there is a feeling that many transformations remain to be accomplished. There is a major conflict about land in the country and defenders of the right to land are increasingly criminalised and stigmatised by the government and conservative sectors of society. Brazil has a vibrant and diverse civil society with social movements playing an important role. However, the criminalisation of movements and particularly their leaders has become accentuated in the last two decades.

Political context

When Luis Inacio Lula da Silva was elected president in 2002, it was the first time in Brazilian history that the presidency had been filled by a representative of those classes that had previously been largely excluded from positions of political or economic power. Thus Lula's presidency was linked to the hopes of many Brazilians that reforms to fight poverty and inequality would be implemented (BTI 2010: 2).

Brazil continues to be characterised by large socioeconomic inequalities. The owners of large estates control nearly 60 percent of the country's arable land, while the poorest 30 percent of the population hold less than 2 percent. There were an estimated two million landless rural families in 2009. The da Silva administration had promised to implement land reform, but progress has been slow (Freedom House 2010).

In addition to the conflict about land, Brazil is facing great environmental problems. Powerful lobbies are privileging exploitation for agriculture, livestock or biofuel at the expense of preserving the environment and factories indeed contributed to its degradation through deforestation and pollution of rivers (FIDH 2009).

A weak judiciary and an often violent police apparatus, both plagued by corruption, are contributing to a climate of lawlessness in certain remote parts of the country (BTI 2010: 5). Corruption has also been seen as a major characteristic of the legislature in the last years (Freedom House 2010).

The press is privately owned. There are dozens of daily newspapers and a variety of television and radio stations across the country (Freedom House 2010).

Civil society and NGOs

Brazil has social movements or CSOs³ that are active in many spaces. There are movements that articulate themselves based on agendas such as the environmental movement or cultural movements. There are community based organisations and professional organisations. There are social movements that, through integrated actions, gather political force and unify social intervention. Social movements in Brazil embrace an incredibly complex, diverse and plural field of civil society. The main actors include the landless people, peasants, traditional black communities, women, indigenous people, homeless, unemployed, prisoners, poor, black teenagers and homosexuals.

The social movement struggle in Brazil has helped creating great accomplishments in the last twenty years. Among them are the victory against the military dictatorship and the new Constitution in 1988; the Statute of Children and Adolescents in 1990 and, more recently, Maria da Penha's Law⁴ in 2006; apart from many others institutional and legal changes. Currently, there is an intense struggle towards land and urban reform, seeking a share of the wealth that is still too much concentrated.

As a result of strong proposals by CSOs, the Constitution of 1988 incorporated a number of mechanisms of direct participation and social control of the governments'

³ Civil Society Organisations

⁴ The law aims at reducing domestic violence. The name of the law is a tribute to Maria da Penha Maia, a woman whose ex-husband attempted to murder her twice, causing her to become paraplegic.

policies and actions, particularly the so-called Councils and Conferences of Rights and Politics. The process of creation of these institutions significantly involved CSOs at all levels of government, that is to say federal, state and municipal level.). New demands to CSOs were created with these institutions because, apart from continuing to struggle at the basis, they began to monitoring, supervising and controlling State's actions. If, on the one hand, in the last twenty years, the advocacy activities by CSOs helped steering public interest in policies, on the other hand it also helped to create institutionalised demands that contrast with the typical dynamics of CSOs. Still, the struggle for society and state democratisation persists as a major field of activity.

The election of a government originating from popular sectors of society⁵ fostered the belief that it was time to prioritize the historically neglected popular agendas and the hope that social participation and control would be strengthened. However, after eight years of Lula's government, there is a feeling that there remain many transformations to be accomplished. Yet many points from the popular agenda were addressed and have become public policies.

In addition, civil society actors have learned that the actions by the government have not significantly altered the unequal structures of society even though they have led to poverty reduction. Many of these government's actions confused the organisations by overloading them. Independent from the government, there is still a movement that permanently articulates against what still remains from the neoliberal agenda. At the same time, it must be noticed that conservatism has increased throughout the society and in many public institutions, particularly the Public Prosecution and the Judicial Power. Both institutions have been shown to be the main areas of resonance of conservative sectors. They have been furthering the process of criminalisation of the social struggle.

Restrictive policies and actions

Repression and intimidation

In their struggle for land, the Landless Movement as well as other members of La Via Campesina have been heavily persecuted. In a joint action of the Military Police and the Federal Public Prosecution of the state Rio Grande do Sul, investigations were carried out on

the actions of these two institutions. In this period, numerous illegal wiretaps were discovered, illegal seizures of documents occurred, agents of the Secret Service of the Military Brigade infiltrated protests as agitators, staff and the offices of the organisations were monitored. According to a confidential report, the action of La Via Campesina, particularly the Landless Movement, affront public and legal order. According to the report the movements failed to perform typical acts of social demands, but performed criminal acts. This perception treats the movements' actions as if they were a tactically organized paramilitary operation.

Criminalisation

The criminalisation of movements has become accentuated in the last two decades when, apart from killing and threats, its leadership became a target to illegal criminal causes. The process of discrimination is characterised by a set of acts and omissions that result in the incorrect charging of crimes or illegal conduct to human rights defenders and/or their organisations by means of administrative, judicial or police procedures. The attitude of the judiciary, the public prosecution (federal or state) and segments of the legislative branch of government are proves of the government's disrespect to human rights issues and the Brazilian Constitution (PAD 2008).

The dispatch of warrants of arrest and the denial of injunctions, even in cases where all formal requirements for such action are fulfilled, is common. One of the most emblematic examples of that is Gege, a leader in the struggle for housing, who was charged with an arrest warrant and had to wait for the habeas corpus for months, which was finally granted by the Superior Court of Justice. The opening of lawsuits against social leaders, the imposition of social and educational measures on them and accusations that they would be responsible for the worsening situation in detention facilities have impacted on the leaders in the struggle for human rights. Conceição Paganele, coordinator of AMAR⁶ in São Paulo, is a case in point.

Administrative measures

The Brazilian Constitution protects the freedom of association for lawful purposes and guarantees the freedom of professional and union association. However, some aspects of the National Security Law that emanates from the military regime are still effective. They have been used to legalize the criminalisation.

⁵ The election of Brazilians former president Lula da Silva is a case in point.

⁶ Association of Mothers and Friends of Children and Teenagers at Risk

The civil society has been witnessing a process of criminalisation of the leaders of social movements, qualifying their collective action as conspiracy and charging them with crimes provided for in the penal code.

The United Nations Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions, Asma Jahangir, in her report about Brazil⁷ concluded that “impunity continues to be rule in Brazil”. The Special Rapporteur is concerned that this situation enables perpetrators to continue with human rights violations in the belief that their crimes would not result in investigation or criminal prosecution. She argues that in instances where the perpetrators of serious human rights violations acquire influence or power, the search for justice becomes difficult and at times even dangerous. “It is sad that in reality neither the return to democracy, with a solid legal framework for human rights defence, nor the active presence of the civil society have provided enough protection for the defenders of human rights”.

Stigmatisation

The public power together with the media and conservative business sectors are explicitly or implicitly responsible for the process of stigmatisation. The media plays an important role in this process. Conservative sectors seek to repeal the movement's struggles through systematic and orchestrated attacks on its image and reputation in order to discredit and demoralize the movement before the society. To this end, they utilise methods of repression and intimidation, such as the installation of Parliamentary Commissions of Inquiry in the Chamber of Deputies.⁸ These Parliamentary Commissions have high visibility in the press, which daily states against the movements, attacking the ideological issues of the movements and the methods used in their struggles.

In addition, the major media outlets have also been engaged in a defamatory campaign against the social movements. Marked by features such as innovation, drama, simplification and speed, articles and features help to reinforce a negative view of society and public opinion of popular struggles. The editorial of Zero Hoar, Porto Alegre, of 7 February 2006, is an example of how the media treats the subject with different weights and measures. On the one hand, the position on La Via Capeskin is displayed as “The environmental radicalism

revealed in the invasion and predations of Aracruz nursery in February is one facet of an intolerant and reprehensible environmental fight. The evil that this action produced for the debate is that it took away the serenity with which it must be conducted”. On the other hand, companies are portrayed as following: “With such large investments, there is no doubt that companies will have a huge interest in preventing issues such as the environment to become obstacles and they will deploy best technologies and environmental practices in the air and liquid emissions, energy use and sustainability of forestry, as they have compromised in the protocol of intentions”.



Photo: ACT/Sean Hawkey

Existing spaces under pressure

The government, through the Human Rights Secretariat under the auspices of the Presidency, maintains a Program for Advocates of Human Rights. The program is equipped with few resources and has little coverage since it is in place in only a number of federal states. It furthermore lacks definite institutionalisation.

In the last years, a significant space for participation has been opened, numerous conferences were carried out, numerous councils were created and others revitalized. However, structural aspects of participation and the results of these forums have not gained concreteness. A recent example is the process that culminated in the Third National Plan for Human Rights published in December 2009. The document was the result of a broad participatory process and was publicly defended by virtually all CSOs. It was virulently attacked by conservative groups in a broad public debate. At the end of the process, the government capitulated to pressures of the conservative sectors.

⁷ Document E/CN.4/2004/7/Ass.3, January 28, 2004

⁸ There have been Parliamentary Commissions of Inquiry of the Land; of NGOs; and of the Landless Movement.

On the job trouble

The report on the state of the defenders of human rights in Brazil for the years 2002 to 2005, published by the NGOs Justiça Global and Terra de Direitos presents 51 emblematic cases of violations against defenders of human rights. The International Federation of Human Rights, after mission accomplished in the state of Para, presented in its report a list of 62 defenders threatened only in the state of Para. The cases present a concrete view on the types of obstacles and attacks that men and women who collectively and individually strive for promoting, protecting and enforcing rights in Brazil are subjected to. Their actions seek social transformation, but with this objective they go against the interests of many big companies, landlords and conservative sectors of civil society that, generally, prefer to maintain the unjust and discriminatory structures of society, something that have been happening for over 500 years with the exploitation of Indians, slaves and rural and urban workers.

Agrarian conflict

In the last years there has been an increase in the number of obstacles against land rights activities, such as investigations and judicial proceedings and prohibition of marches and demonstrations (FIDH 2009). A study of the Brazilian Institute of Criminal Sciences in 2005 found that the application of legal measures in cases of land conflicts were uneven. According to one of the study's authors, Juvelino Strozake, "the diversity of positions, the search for criminal legal formalism in the treatment and valuation of property rights seem to confirm a simulacrum of justice, that is, compliance with formal requirements for the determination of prisons motivated by agrarian conflicts and, at the same time, the everyday use of such prisons as a mechanism of social control". These judicial strategies can be observed in cases of leaders of social movements that harass great landowners, agribusiness entrepreneurs and several other industries. These sectors rely on the judiciary branch of the government, and some sectors of the executive branch, to see their interests protected. A proof of that was presented in the report of 2008, prepared by the MAB⁹ which states that the Office of Institutional Security of the Presidency of the Republic created Technical Groups of Critical Security Infrastructure to monitor, control and contain the actions of social movements, supposedly to prevent damage to the economy of the country and protests in priority areas such as dams, roads and railroads. In the Uruguay River Basin for instance, the main leaders

of the MAB respond to more than 15 cases each. The records of court cases sum more than 30.000 pages (Rede Social de Justiça e Direitos Humanos).

In the case of Para, there is a Special Police Service on Agrarian Conflict¹⁰, outfitted with funds from the Federal Government and subordinated to the Ministry of Security of the State of Para, to research, map and identify the main leaders of the Landless Movement and of the Rural Labour Movement fighting for the right to land. According to CPT¹¹ information, the Special Police Service was involved in the repression and criminalisation of the peasant movement, arresting 76 peasants. The high number of criminal proceedings against protestors is striking considering that no one has ever been charged for violence against peasants.



Photo: ACT/Sean Hawkey

Responses

Criminalisation is on the agenda of all political movements and CSOs and the process has been assessed by social movements as a common challenge to be faced collectively. However, the challenge has been to make the public power aware that such criminalisation is a violation to human rights and a threat to democracy. Numerous actions and reactions are taking place within the Brazilian civil society in order to mitigate the attacks against social movements. Around the PAD various movements and organisations have joined¹² a working group with the title "Legitimacy of Social Movements", which was organized following the publication of the PAD Dossier. The working group

9 Movement of People Affected by Dams

10 Delegacia de Conflitos Agrários (DECA)

11 Comissão Pastoral da Terra

12 Process of Articulation and Dialogue

seeks the creation of an alliance within Latin America; a national workshop from which resulted a Latin-American dossier was already carried out.

Brazilian movements and CSOs are linked with several international coalitions and alliances, such as La Via Campesina, FIDH¹³ FIAN International, PIDHDD¹⁴. It is worth highlighting the importance given by EuroPAD to the cases mentioned in PAD Brazil's Dossier. It is, then, fundamental to create and to strengthen the coalitions, which could be boosted by the actions with ACT Alliance.

The UN itself has condemned the violations of human rights in Brazil, which continue to happen against social movements and their leaders as the UN Special Rapporteur on the situation of human rights defenders stated in her report following her visit to Brazil in 2005. The CSOs maintain close contact to international organisms and permanently report to them. The OAS¹⁵ has been contacted, and the Human Rights Commission of the OAS has accepted to analyze several cases of criminalisation presented by Brazilian CSOs.¹⁶ The only case that was forwarded to the Inter-American Court of Human Rights refers to a petition denouncing the interception of telephone lines of social organisations of Paraná in 2006. The Court issued a sentence deciding unanimously that the Brazilian government violated the right to privacy, honour and reputation and the right to free association of five leaders.¹⁷

A report of the CIDH¹⁸ presents "the systematic and repeated practice of attacks on the lives, physical integrity and liberty of the defenders of human rights". In the same report, the Commission recommends that "according to Inter-American parameters, the defenders of human rights must enjoy adequate protection ensuring that they will not be victims of undue interference in exercising their rights of movement and residence, both in deeds related to their work activities as those issues relating to privacy. Such guarantees should include that the state authorities must refrain from limiting, by any means, displacement

of human rights defenders in the areas of interest to their work, where they can gather field information and directly confirm the situations denounced. Moreover, the State is also obliged to ensure that a third person will not prevent human rights organisations to verify the situation where the people who require their presence actually are".

Conclusions & Recommendations

Lula's election in 2002 was linked to the hopes of many Brazilians that reforms to fight poverty and inequality would be implemented. After eight years of Lula's government, many transformations are still to be accomplished. Yet many points from the popular agenda were addressed and have become public policies. However, defenders acting in favour of a more equitable distribution of land, and thereby alienating large landowners and agricultural producers are regularly subjected to threats and acts of intimidation. Social movements and their leaders also increasingly face the criminalisation of their protest. The attitude of the judiciary, the public prosecution and segments of the legislative branch of government are proves of the disrespect to human rights issues (PAD 2008).

At international level, Brazil has a very positive external image, a country with a promising economy, a country that advances in democracy and social inclusion, i.e., a country that is "working out". The more than 150 organisations that constitute PAD Brazil have agreed that it is necessary to present the social, environmental, economic and political costs that the current development process has caused. They hope to do this through a strong process of internal and external advocacy. Furthermore, together with other networks¹⁹ PAD has been active in monitoring Brazilian's commitments to human rights, and in presenting Counter Reports. The latest Counter Report on the accomplishment of the International Covenant on Economic, Social and Cultural Rights was presented in 2009 to international organisations. The topic of criminalisation was described and emphasized in the report and has created recommendations to the Brazilian government.

13 International Federation of Human Rights

14 Inter-American Platform for Human Rights, Democracy and Development

15 Organisation of American States

16 See www.cidh.oas.org/casos.esp.htm

17 See www.corteidh.or.cr/docs/casos/articulos/seriec_200_por.pdf

18 Inter American Commission on Human Rights - Comisión Interamericana de Derechos Humanos

19 National Movement for Human Rights, Brazilian Platform on Economic, Social, Cultural, Environmental, Human Rights Partners and Misereor



Photo: ACT/Sean Hawkey

Colombia

Abstract

After eight years implementing the 2002 Democratic Security Policy, which prioritises military control of territory, Colombia has still not achieved peace for its people. For over 50 years, civilians have been victimized by an internal armed conflict that has left at least 10 percent of its population (about 4 million people) internally displaced. Several illegal and legal armed groups continually contravene human rights and International Humanitarian Law. At the heart of the conflict is control of land and territory. Worst affected are the indigenous people, the afro-Colombians and the peasant communities whose collective territories are rich in minerals and forests. Their rights are protected in the Constitution. Civil Society Organisations have an important role in this context: they denounce atrocities, create spaces for dialogue and respect for the rights of the population, and contribute toward a political solution to the armed conflict.

Political context

Colombia has a total area of 2.078.408 square kilometres and a population of 44 million inhabitants. 3.4 per cent of the population define themselves as indigenous and 10.6 per cent as afro-descendants. It is a country of contrasts. Drugs, civil war and violence: this is the way this South American country is labelled and known worldwide. In fact, Colombia is not a poor and underdeveloped country. Economically, it is known for its unique coffee, bananas and flowers, mining products such as carbon and other minerals, and recently as a palm oil producer for bio fuel.

Only a few elites are taking profit of this richness, while hundreds of thousands of people are being displaced and forced to leave their communities due to the armed conflict involving several actors: guerrilla groups, paramilitaries, drug traffickers, the military and the police. The cumulative effect of more than fifty years of internal armed conflict has been devastating for the citizens and civil structures that should protect and sustain daily life. Illegal armed groups are responsible for serious human rights' abuses. Corruption is widespread at governmental level and in the legal systems. According to CSOs²⁰, nearly four million people have been displaced, more than 60 per cent of the population lives in poverty, and 27.7 per cent suffer unsatisfied basic needs. Some 40.8 per cent of homes suffer food insecurity, while more than 20 per cent of boys and girls under five suffer malnutrition. Colombia has the highest number of crimes against union members in the world. In the last 22 years, some 2.667 union activists have been murdered. And 74 human rights defenders were assassinated between August 2002 and December 2008.

In 2003, the Colombian government started a process of collective demobilisation of paramilitary groups, which led to the adoption of Act No. 975 of 2005, commonly referred to as the Justice and Peace Act, under which thousands of members of paramilitary groups were reportedly demobilized. According to the government, all paramilitary groups have been dismantled. However, according to NGOs and the People's Defence Office, paramilitary groups continue to operate in the country; the UN Special Rapporteur on extrajudicial executions concluded at the end of his visit to Colombia in 2009 that "although senior paramilitary leaders have been arrested, the economic, command and control structures of paramilitaries do not appear to have been fully and effectively dismantled". The main targets of paramilitary activities are civil society organisations struggling for their rights.

In 2006, on the basis of the testimonies of demobilized paramilitaries, the Penal Cassation Chamber of the Supreme Court of Justice initiated various legal proceedings against congressmen, local politicians and state officials for their links with paramilitaries. All of the defendants, many of whom have pleaded guilty, are supporters of the government's policies. The so-called Para-politics process has generated considerable tension between the executive and judiciary branches. The government has harshly criticized these proceedings.

20 Civil Society Organisations

With respect to the overall human rights situation in the country, “Colombia continues to be involved in a complex and multifaceted internal armed conflict, which represents a persistent human rights challenge for the State and for its population”, states the report of the UN Special Rapporteur on the human rights situation in Colombia, after her visit to the country in September 2009.

The Democratic Security policy of the government has not resulted in an improvement in the quality of life for the majority of the population and, instead, has prioritized the strengthening of the armed forces that continue to increase the conflict. In response, all the armed actors (legal and illegal) have increased the voluntary and forced recruitment of young people. The Plan Colombia, with massive financial injections of the US for increasing the military force in Colombia supposedly for fighting drug traffic and guerrillas, is resulting in an unbalanced relation between the state and civil society. Most recent updated figures state that 459.687 out of 566.084 positions on public services in the national budget are assigned to people working with military defence, security and police. In 2002, 160.000 soldiers were fighting 16.900 FARC guerrillas, 3.700 ELN guerrillas, and 12.175 paramilitary from the AUC, totalizing 32.775 illegal armed people.

Since the end of 2008, the armed forces have been questioned and accused of extra-judicial executions when it became public the assassination of 12 youth from the municipality of Soacha, near to Bogotá, whose bodies were found in the rural area of Northern Santander, hundreds of kilometres away and declared as guerrillas killed in combat. This fact revealed a common practice of cold blood assassination of civilians in order to present results in the fight against illegal armed groups and thus reaching promotions, awards and free days. They are known as “false positives”. Over 2.000 members of the Armed Forces are being investigated, but only 476 have been arrested by end of 2009.

The humanitarian crisis has worsened to such a degree that several Latin American and European countries have expressed their consternation and offered their services to try to achieve a humanitarian accord that would enable the people held captive by the guerrilla FARC²¹ to return to their homes. In addition, the internal displacement continues to increase, with over four million people living away from their communities and homes. After Sudan, Colombia has the second highest

number of IDPs²² worldwide. Very much affected are civil society organisations that claim for rights and protection against all armed actors. The “para-politics” (relations of paramilitary forces with politicians) involving congress deputies and senators, governors, mayors and high-level officials, is currently reaching an expressive level, threatening the state institutions and weakening the democracy.



Photo: ACT/Sean Hawkey

Civil society and NGOs

Restrictive policies and actions

Much affected by restrictive policies and actions are trade unionists. According to governmental figures, between 2002 and 2009, 423 trade unionists were killed and 236 rulings passed. According to CTC²³, between August 2002 and August 2009, 505 trade unionists were reportedly murdered. While the number of victims has significantly decreased between 2002 and 2009, the total figure remains extremely worrying. According to the ITUC²⁴, 49 trade unionists were killed in 2008, meaning more than half of the assassinations of trade unionists in the world happened in Colombia.

Indigenous leaders have become the most vulnerable group of defenders, because the internal conflict has moved to their areas. In July 2009, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stated that “the situation of indigenous people in Colombia is grave, critical and very concerning”. Afro-Colombian leaders are in a similar situation of vulnerability like the indigenous peoples.

21 Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)

22 Internally Displaced Persons

23 Confederation of Workers of Colombia (Confederación de Trabajadores de Colombia)

24 International Trade Union Confederation

The list is completed by women human rights defenders, journalists, magistrates, lawyers, students and youth activists. Church workers involved in human rights activities, and in particular those assisting internally displaced persons to claim their lands, have been repeatedly harassed and threatened by unknown persons. As a result, church workers are scared to speak about human rights issues.

A prime reason for insecurity faced by human rights defenders in Colombia lies in the systematic stigmatisation and branding of defenders by government officials and non-state actors. The President himself made public statements in which human rights defenders were portrayed as colluding with terrorists or guerrilla members. In some instances, when human rights defenders raised concerns about their situation at international level, newspapers and public officials reportedly stated that these defenders tarnished the reputation of Colombia, weakened the democratic process and stripped the government of its prestige. In fact, stigmatisation sometimes prevents defenders from travelling abroad and reporting to international human rights mechanisms.

On the job trouble

The victims of the conflict, mostly civilians, suffer death threats, direct attacks, and are permanently under pressure of the armed actors, who additionally practice children and youth recruitment. Poverty, lack of schools and teachers and basic health services can be understood as consequences or even strategies of the armed conflict and continue to impose a form of forced displacement in which fear, terror and hunger are combined. Thus, the polarisation between the government and illegal armed actors has very few perspective of diminishing or being solved with the collaboration of civil society actors, including churches.



Photo: ACT/Sean Hawkey

Responses

Between April and May 2009, the government, four human rights and peace coalitions and 16 social sectors agreed to a procedure to discuss the guarantees that should be offered to human rights defenders in the fulfilment of their activities. The National Guarantee Round Table was established, along with regional round tables in 14 departments. The objectives of the round table include: Firstly, to establish a dialogue on the need to provide guarantees for social and human rights organisations, with the purpose of adopting pertinent decisions at the national and regional levels; Secondly, to increase levels of trust between civil society and state authorities; and thirdly, to monitor the commitments made on guarantees at the national and regional levels.

In this context, the National and International Campaign for the Right to Defend Human Rights, launched in 2009 and to be concluded on December 10, 2010 is the organized and non-violent response of important sectors of the Colombian civil society, which receive support and international solidarity, including from ACT Alliance members. The objective is to create a sustained and coordinated pressure on the Colombian government in order to achieve a positive, lasting and significant change for the country's human rights defenders. The following areas are to be focused: (1) To stop impunity in cases involving defenders; (2) To stop the misuse of state intelligence against defenders; (3) To stop systematic stigmatisation of defenders by government officials; (4) To stop unfounded criminal proceedings brought against defenders; (5) To improve the protection program for defenders at risk.

With an abstention of 55 per cent of the accredited citizens to vote, Colombians elected their new President in June 2010. Manuel Santos accumulated about 63 per cent of the votes against the opponent candidate. New hopes arise in the political scenario regarding spaces for civil society as actors in the construction of peace and overcoming the current humanitarian crisis.

Conclusions & Recommendations

The case of Colombia will find similarities in other countries in the Latin American and the Caribbean region and worldwide, where CSOs are treated and seen as criminals by governments and some national and transnational economic elites. Thus, when discussing and taking action on sustainable and transforming development, the human rights dimension and the Rights Based Approach are essential and need our attention and committed participation, because they defend and promote the dignity of vulnerable human beings.



Photo: ACT/Sean Hawkey

Guatemala

After two decades of democratisation and almost fifteen years of post-settlement transition, the operational space for civil society organisations in Guatemala has increased, but is at the same time under pressure. Many groups can operate relatively freely, but impunity, corruption, insecurity and high indices of violence have an extremely negative impact on the operational space of NGOs and GROs. Groups touching issues that include vested interests can additionally experience severe problems. The most vulnerable sectors are groups working with human rights, justice and security on the one hand, and groups that enter into conflicts about resources at local level on the other hand. The security situation of both groups has deteriorated over the past decade.

Political context

In 1996 the Guatemalan peace accords brought an end to one of the longest and bloodiest armed conflicts in Latin America. It was known for its extremely high death toll and human rights violations that particularly had affected the marginalized indigenous population (Azpura, 1999:97; CEH, 1999). Civil society organisations played an important role in the long-lasting peace process. The process ran parallel to a fragile process of democratisation, that had already started in the 1980s, and which included the introduction of electoral democracy, but only partly affected the power of the military and its influence over political life (Azpura, 1999: 97).

The post-settlement transition in Guatemala is extremely problematic. Economic growth rates have been rather low over the past decades. A key challenge is the continuing socio-economic inequalities and the question of how to address these (UNDP 2008). Guatemala has become the centre of a drugs trans-shipment belt from the Andes to North America that has led to extremely high levels of organised crime and

crime-related violence (Gavigan, 2009: 72) affecting Guatemalan society and politics. Illicit power structures (Human Rights Watch 2009:184) and political-criminal networks (Gavigan, 2009:62) are gaining effective control over the state. The political establishment itself is extremely fragmented, reflected in 'an astonishing series of fractures within the elites' (Briscoe, 2009:9). Presidential candidates were generally well-known persons around which a number of political factions coalesced (Briscoe, 2009: 5), that were generally unstable and characterised by infighting. The Freedom House Report 2009 mentions corruption and impunity as important problems in Guatemala. Although it argues that some progress has been made in terms of anti-corruption activities, it states that the judiciary is still plagued by corruption and extremely ineffective. The widespread insecurity and impunity have led to waning confidence in the state.

Civil society and NGOs

In the 1960s and 1970s the number of social organisations increased both in urban and rural areas (Garcia, 2010:3). In the countryside indigenous communities started to organise, with a marked influence of liberation theology (Biekart, 1999: 254). It was, however, the popular organisations of civil society that were heavily repressed by government forces that established a 'machinery of control, repression and murder' during the late 1970s and early 1980s (Kruijt, 2008: 21). New spaces for participation emerged in the second half of the 1980s and a number of human rights, indigenous and independent Maya organisations or 'radical-cultural' groups were created (Peace & Howell, 2001:148-9). Most of the newly established organisations were supported in their struggle for an equitable peace by international NGOs involved in solidarity work (Howell and Pearce, 2001: 152). After the peace agreements, bilateral and multilateral donors, that in the post-war years increased their budgets for Guatemala, also became interested in funding Guatemalan civil society.

With an estimated number of 2.500 NGOs and some 23.000 GROs²⁵, Falisse and Saenz-Corella (2009:11) call Guatemalan civil society 'vibrant and complex'. A number of sectors of civil society such as the syndicates and peasant movements are rather weak, while other sectors have shown a remarkable strength and resilience. The indigenous movements have grown over the past decades, but it seems that after its successful mobilisation in the 1990s, the movement has lost some cohesion and force. This is not to say that their self-organisation and struggles, such as the struggle for indigenous rights and territory, has ceased. With the

25 Grassroots Organisations

new ascendancy of companies exploiting resources, like mining companies, hydroelectric firms and palm oil plantations, conflicts have led in a number of regions to severe polarisation and escalation, including the persecution and criminalisation of indigenous leaders.

NGOs working in the field of human rights, security sector reform and justice are generally seen as rather successful and proactive (Garcia, 2010:5; Falisse and Saenz-Corella, 2009:11). They are involved in research, lobby, and policy debates, while others have become actively involved in processes of formulation and implementation of government policies. Most of these organisations have long-standing relationships with international NGOs and many of them have participated in dialogues with government agencies. However, they are not a cohesive group in terms of objectives and strategies, and there are serious discussions about how far one should go in the relations with the government. At the same time, Falisse and Saenz-Corella (2009:11) argue that civil society is fragile in terms of their capacity to influence policy and the promotion of values. Other problems relate to the transformation of popular movements into NGOs, the crossover of NGO staff to government agencies, and a lack of cooperation between NGOs (Falisse & Saenz-Corella, 2009:12-3. 36-7; Civicus).

The issue of representation of NGOs is important and linked to the historical ethnical divisions in Guatemalan society. During the peace negotiations for example some Indian organisations feared to be dominated by ladino organisations²⁶ (Biekart, 1999:256). NGOs working in the field of human rights and justice are mostly urban-based; their representation of non-ladino groups is not very strong.

Restrictive policies and actions

Repression and intimidation

There is a worrisome trend in Guatemala of increasing violations of members of NGOs and GROs. In 2009, the Special Representative of the Secretary-General on the situation of human rights defenders reported her deep concern about 'the deterioration in the environment in which human rights defenders operate, characterised by endemic impunity for crimes and violations committed against them' (UN, 2009a:2). Information

collected by the NGO Udefegua²⁷ show a rise of the reported violations over the past 10 years from 59 in 2000 till 353 in 2009 (Udefegua, 2010: 7, 14).

Partners of ACT Alliance members working in the field of human rights, justice, security and truth reported anonymous telephone calls, e-mails, interception of telephones, and shadowing by armoured cars of offices and houses of staff. Restrictions can mainly be attributed to groups with relations to the (former) military. For instance, ICCPG28 experienced problems in 2006-2007 when they campaigned against the death penalty. In a period of frequent intimidations against woman's organisations the premises of Cedepca29, involved in the public activities against violence against women, were ransacked twice in 2001.



Photo: ACT/ Mike Kollöffel

An increase in the number of violations of human rights defenders at local level is reported in a recent analysis by Udefegua (2010:24). Paradigmatic cases include local conflicts about land and palm oil plantations in El Petén, and conflicts around mining companies in Izabal (ibid, 2010:24-40). FIAN (Fian et al, 2010:38) reports that 'human rights defenders, members of the communities, persons attached to the church and researchers who oppose the Marlin Mine project in San Marcos have been repeatedly threatened, attacked, harassed and intimidated'. Most cases have in common that the use of resources (land, raw materials, water) by large land estates or international corporations

27 Unit for the Protection of Human Rights Defenders in Guatemala (Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala)

28 Institute of Comparative Studies in Penal Science (Instituto de Estudios Comparados de en Ciencias Penales de Guatemala)

29 Evangelical Centre for Pastoral Studies in Central America - Centro evangélico de estudios pastorales en Centro América

26 Mestizo or hispanicised people

cause local tensions. A variety of actors, oftentimes combinations of non-state actors, such as criminals, drug traffickers, or international corporations with some support of local government agencies use violent means, or employ gunmen, to safeguard access to resources and to prevent individuals and organisations to mobilise and make claims.

Criminalisation

Cases of criminalisation are particularly linked to individuals involved in conflicts around resources. The UN High Commissioner for Human Rights in Guatemala received reports of 'the arbitrary use of criminal proceedings against defenders upholding collective, environmental, economic, social and cultural rights' (UN, 2010:8). Although data about these cases are not systematized, there are indications that the criminalisation of members of GROs and social movements is on the rise (Fian et al, 2010:54). In San Juan Sacatepéque, a community leader reported of 32 accusations against him, including that of terrorism. After the murder of a local resident in favour of the mine, president Colum declared a fortnight's state of emergency, in which 43 community members were reportedly arrested for six weeks and released for a fine of \$ 14.500,-.³⁰ Conflicts about mining can lead to high levels of local polarisation and escalation and create deep fissures in communities. Protestors sometimes do break the law and might even use violence themselves, such as in the case of the Marlin Mine, where residents burned machinery. However, the high number of criminal proceedings against protestors is striking considering that the state is not able or willing to stop corruption and violence of criminal gangs.

Other cases of criminalisation of NGO staff include the case of LGBT activist Jorge Lopez, director of OASIS³¹, who had been charged with involvement in the assault of a sex worker. Eventually, the charges against Lopez were dismissed.³² Another case of criminalisation was the charge against Raul Figueroa, an editor of human rights publications who was charged for alleged copyright infringement and sentenced to one year

in prison.³³ After lodging an appeal to this decision, in February 2010 Raul Figueroa was cleared of these charges.³⁴

Existing spaces under pressure

The interaction between representatives of civil society and government agencies received an impulse during the peace negotiations. After the peace agreement the spaces of dialogue between government and civil society have multiplied (Calvaruso et al, 2007). But there is also critique on these practices. One director of a NGO network experienced a lack of political will to implement the plans that were discussed. Another NGO staff member explained: 'the frustrating thing is that we are reaching consensus about things that cannot be implemented. The negotiations with the 'real powers' never takes place.'³⁵ Many interviewees reported that criticising the government was still seen as 'risky'.

Representatives of NGOs told they had become more selective about their participation in such initiatives. This may actually be a sign of a more mature use of the existing spaces, and a greater propensity to think strategically about given opportunities. Between NGOs, there is an ample discussion about the kind of relationship to build with government agencies. A closer working relation was related with a weakening of the NGOs 'autonomy and willingness to speak out' (Pearce 2006: 38) while more confrontational organisations were criticised for 'still living in the past' and even of cultivating the image of 'being persecuted and attacked'.

The situation at local level is much more complex. The negative experiences with the state from the past and the present, as well as the weakness of the state and the existence of perverse networks of power lead to a continued lack of trust and confidence in the possibilities to cooperate with the state.

30 See Community Organizers in San Juan, Sacatepéquez Accused of Terrorism for Activism Against Cement Mine, in El Quetzal # 5, pp.1-2.

31 Oasis works on human rights related to the sexual orientation, gender and HIV/AIDS

32 See www.humanrightsfirst.org

33 'Figueroa's press, F & G Editores, is the leading publisher of books that spark political and social debate in Central America.' (WOLA Press Release, online available on http://www.wola.org/index.php?option=com_content&task=view&id=976&Itemid=8)

34 See blog of Raul Figueroa at <http://raulfigueroasarti.blogspot.com/>

35 Authors interview, Guatemala City, 17 March 2010.



Photo: ACT/ Mike Kollhoffel

On the job trouble

Truth, human rights, security and justice

With regard to the crimes committed during the war years, civil groups such as victim's organisations are confronted with serious limitations in their efforts to know the truth and to claim their rights of justice and reparation. Truth finding and justice are extremely sensitive in Guatemala. Groups working in this field run the risk of being harassed, persecuted or killed (Impunity Watch 2008: 40). These threats come together with stigmatisation in the press and psychological problems. The director of ICCPG told that in the periods when the organisation received threats staff members were not prepared and either reacted panicking, or were in denial. When treating psychological problems of staff in a professional way, additional costs for the organisation incur. Organisations addressing contemporary deficient reforms in the fields of justice and security and the problem of impunity deal with similar restrictive policies and actions.

Resource conflicts

Local NGOs and GROs involved in conflicts around the use of resources such as land and water and the fulfilment of labour rights generally have to deal with more complex problems, while the restrictions for individuals and organisations are less visible. Gregoria Crisanta Perez, a local leader, protested against the activities of the Marlin Mine, arguing that the mine harms the environment, uses all the water, and that the explosions of the mine damage their houses. She received many threats, which led her going into hiding with the help of the Catholic Church. CEADEL is an organisation that has developed a special focus on child labour, adolescent labour, and women workers in the formal sector, both in non-traditional agricultural

sectors and in the maquilas.³⁶ After an article in the NY Times in 2007 on the use of child labour in the region, which mentioned CEADEL, staff members reported of receiving anonymous threats over the phone (in the office and at home), while telephone lines were intercepted and armoured cars parked in front of the office to follow staff leaving the office.

Chronic insecurity

Central America is currently one of the most insecure and violent regions in the world, which is reflected in staggering homicide rates and high levels of crime (UNDP, 2009). This chronic insecurity creates different kinds of problems and restrictions to NGOs and GROs. Firstly, they have to deal with material and financial losses. Security measures to protect the organisation are cost-intensive. Secondly, the insecurity also puts the cooperation with foreign volunteers at risk. Thirdly, the atmosphere of insecurity leads to emotional problems and stress for NGO staff that is confronted with violence and crime. Fourthly, there are examples of drug traffickers building up local power positions, buying off local politicians and church leaders so as to establish a form of local control. Most NGOs and GROs say that it is not possible to deal with these groups. Some organisations get involved without willing, such as the Guatemalan branch of the YMCA. In 2008, three of their volunteers were brutally assassinated. Although the case was never resolved, it became clear that one of the victims had had links with a local criminal gang before.

Responses

One of the first groups in Guatemala that started to work with practical advice about how to deal with restrictions like intimidation, spying, and abduction was SEDEM. In 2002, it developed a manual for human rights defenders, journalists and those working on legal advice.³⁷ SEDEM also played an important role in advising other NGOs and GROs in Guatemala and Central America. Over the past years Udefegua also started to play a very important role in this field. In general, there is a growing knowledge and capacity among NGOs to deal with different kinds of restrictions. However, the response capacity is mostly reactive although

36 This summary of CEADEL's work is from the website of the International Labor Rights Forum, online available at <http://www.laborrights.org/rights-for-working-women/partner-spotlight/ceadel-in-guatemala>. The organisation also works with youth and addresses problems of youth gangs.

37 See SEDEM, 2002, "Guía de Protección para Defensores de Derechos Humanos, Periodistas y Operadores de Justicia", online available at <http://www.sedem.org.gt:8080/sedem/publicaciones/libros/guia.pdf>

organisations that have experienced restrictions in the past have drawn up plans or guidelines about how to deal with it in the future.

According to the interviewees urban-based organisations are better positioned to protect themselves. Some staff members of these organisations receive threats on a regular basis; however, they are relatively visible, both at national and international level. These NGOs have also become more proactive in using and, where possible, creating spaces. International contacts are extremely important to develop 'defence strategies'. A prominent example is the resolution of the Inter-American Court for Human Rights imposing on the government of Guatemala to protect the Myrna Mack foundation and some of its staff. However, international actors, especially bilateral donors are generally more willing to support groups working against impunity and in favour of human rights than around sensitive topics like conflicts on mining projects. Persons and organisations working at a local level deal in more pragmatic and ad-hoc ways with the tensions they experience. The need to intensify the work in favour of human rights defenders at grassroots level is increasingly recognized, among others by Udefegua. Many local organisations increasingly identify with the label 'human rights defenders', however, it has been shown that a discussion on how and when to use these terms may be necessary.³⁸

Over the past years Guatemalan NGOs have pressed for the creation of national institutions that deal in a proactive way with the issue of impunity and human rights violations. Because of their innovative character two of these merit particular attention. The first example is the CICIG³⁹, a hybrid institution, operating within the Guatemalan legal system, and tasked 'to support, strengthen and assist Guatemalan institutions in identifying, prosecuting and ultimately identifying domestic illegal security apparatuses and clandestine security organisations' (Hudson & Taylor, 2010: 54). The second example is the 'Instancia', a forum where representatives from civil society and different government agencies meet in order to discuss cases of human rights violations. International funding and pressure have been important contributions to these initiatives by civil society.

Conclusions & Recommendations

Although all sorts of restrictive policies and actions are present in the case of Guatemala, the main problems are repression, intimidation and criminalisation. At the core of the problem is the weakness of the state and the rule of law. This gives space to a multitude of criminal actors that are also gaining effective control over parts of the state apparatus and parts of the national territory.

At local level, the positions of protestors can easily harden in the face of limited possibilities to claim rights. Groups working on conflicts around natural resources face the most serious challenges and often have least possibilities to counter these. The ways in which their operational space is restricted differs from place to place. A further systematisation of these local problems, restrictions and conflict dynamics is needed. In particular, there is a need to systematise the evidence on the growing problem of criminalisation. The systematisation should also include an analysis of local power relations so as to make assessments about the possible strategies of how to deal with the legitimate demands of local people.

All Guatemalans are affected by the situation of insecurity and impunity. In order to diminish the violence, measures are needed that NGOs and GROs can lobby for. The formation of CICIG is an important example, and it is fair to say that the lobbying and networking of human rights organisations at national and international level contributed to its formation. The challenge for urban-based NGOs working in the field of security sector reform and justice is how to further contribute to a strengthening of the state and the rule of law in Guatemala. In this regard a discussion is needed about the ways NGOs might be able to contribute to different reforms.

There is a need to critically assess the use of the term human rights defenders. In itself a rights based approach is an important and valid starting point for NGOs. The question is whether local organisations should be given this label vis-à-vis their local members or be encouraged to do so. The active use of this label might create additional problems and a strategy to keep a lower profile might better serve to protect them, which is of utmost importance.

38 See "Ensuring protection – European Union Guidelines on Human Rights Defenders". Online available at <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

39 International Commission Against Impunity in Guatemala (Comisión Internacional Contra la Impunidad)



Photo: ACT/Sean Hawkey

Honduras

While Honduras has had a relative tolerance vis-à-vis the work of NGOs, the coup d'état of 28 June 2009 led to a change in the operational space of a number of NGOs, as well as - and may be more importantly - increasing polarisation in Honduran civil society, which affected the relations between NGOs themselves. Thus, Honduras is a case of a relatively sudden change of the national political space, which had severe consequences on the operational space of NGOs. Also, the case of Honduras shows that organisations confronted with these changes were not really prepared and developed a diversity of response strategies.

Political context

Although the constitution of 1982 is generally seen as the start of Honduras' process of democratisation, the military held a firm grip on power during the 1980s. The Honduran military attained political hegemony in the 1960s and for a long period had high levels of influence on elected officials (Ruhl, 2004:138). Demilitarisation of the Honduran political system received new impetus in the 1990s, pursued by a coalition of a wide range of civil society organisations. However, consolidation of democracy still seemed far away. According to Ismael Moreno (2009c) one of the fundamental problems of the Honduran political system is that 'law is subordinated to politics' and that a handful of politicians and big businesspeople have a patrimonial conception of the state.

The Zelaya government took office in January 2006 and was ousted from office by the president of Congress, Roberto Micheletti during a coup d'état on 28 June 2009. The ouster was the result of a deepening conflict between the government and the opposition about the organisation of a non-binding referendum to ask

the electorate whether to have a binding referendum in November 2009 to decide about a new national constituent assembly to approve a new constitution (Meyer, 2010: 2). The coup led to extremely high levels of polarisation in Honduran society, state institutions and political parties. Internationally the coup was almost immediately rejected (Meyer, 2010:7).

President Zelaya was successful in linking up with parts of civil society (mainly popular movements), whereas he entered into conflict with others sectors (among these also a number of NGOs). Syndicates of workers and teachers, leaders from left-wing political parties, and a number of grass-root organisations that heavily protested against the coup coalesced in the FNRP⁴⁰. A number of more critical NGOs play important roles in the FRNP, providing guidance, as well as resources.⁴¹

The elections of 29 November 2009 that brought Pepe Lobo to power were rejected and boycotted by the FNRP. The Lobo administration aims to build a national government and to work towards reconciliation. This proves extremely complex in Honduras, which is still highly divided. Victor Meza, director of CEDOH⁴² and former minister in Zelaya's cabinet mentions a number of challenges⁴³: Human rights violations have continued in the months after the Lobo took power, with one of the most worrisome trends the re-emergence of death squads activities particularly targeting the FNRP. Moreover, a silent re-militarisation of the state is going on. Furthermore, chronic insecurity, growing influence of narcos in the economy and the political sphere, as well as the ongoing corruption make the 'post-coup' situation in Honduras extremely volatile. Honduras is one of the poorest countries in Latin America, with an extremely skewed distribution of income. Over 71.2% of Hondurans remain below the poverty line out of these 72,2 % below the extreme poverty line⁴⁴.

The NGO sector

The NGO sector in Honduras has grown in the past two decades (Del Cid 2010a). Although the NGO sector is very diverse, the sector partly reflects the stances of social forces in Honduran society and in the donor community. Roughly, a division can be made between

40 FRNP = Frente Nacional de Resistencia Popular (Honduran Front for National Resistance)

41 Information provided by Carlos Del Cid.

42 Centro de Documentación de Honduras.

43 Authors interview, 25 March 2010, Tegucigalpa.

44 Instituto Nacional de Estadísticas y Censos (INEC) 2005.

more critical NGOs that are funded by a number of European NGOs⁴⁵ and (Nordic) donors and a group of NGOs and donors taking a more technical stance while being less pronounced in political terms.⁴⁶

Over the past decades, foreign assistance has played an important role in Honduras, both in financial and in political terms. The interactions between civil society and the state have multiplied, and led to a diversity of formal and informal spaces of dialogue and cooperation between state and non-state actors, both at national and at local level. Overall, the increased ambition and capacity of sectors of civil society, and of NGOs in particular to lobby the government (both locally and nationally) is seen as one of the main changes of civil society over the past decades (Del Cid I-14). One of the criticisms is that the dialogues between civil society and government form part of a strategy of tolerance vis-à-vis NGOs. In this view NGOs are a necessity for a state that lacks resources to provide for basic services. However, the cooperation reaches its limits when key interests such as access to land and mining activities are touched.

The coup had a devastating effect on the NGO sector. For NGOs and GROs it proved extremely difficult to take a position that does not either adhere to the 'golpistas' or the 'resistencia' and NGOs that pronounced against the coup were often misleadingly seen as 'pro-Zelaya'. Within organisations or network organisations the legality of the removal of president Zelaya was a point of heavy debate. Although the majority of the Honduran NGOs and GROs were not directly targeted by the government of Micheletti, those NGOs and GROs that publicly declared themselves against the coup and in particular those that aligned with the Resistance Front were target of intimidation, repression and other restrictive measures. The rather technical NGOs that are less interested in structural and political change (who belong to the majority of NGOs) are less hesitant to cooperate with the new government and are often enjoying even greater support of state institutions since the coup⁴⁷.

The coup also had severe consequences on the nature of the social and political space that NGOs and GROs granted each other. Polarisation leads to an atmosphere where positions become more radical, with emotions flaring up, and where the space for more moderate

positions diminishes. Civil society groups themselves became part of these dynamics, and it proved extremely difficult to bridge these divisions.

Restrictive policies and actions

Physical harassment and intimidation

Before the coup a number of groups and sectors were particularly vulnerable and experienced different kinds of threats and harassments. The groups with most problems were local groups involved in disputes about resources such as mining and land rights. In many of these cases the responsibility for threats, intimidation and harassment is not entirely clear, but there seems to be a combination of non-state and state actors involved.⁴⁸ There are other sectors that have been particularly vulnerable over the past years. Firstly, for the LGBT⁴⁹ community Ciprodeh⁵⁰ has reported over 170 cases of violence since 2004. In the period after the coup nine persons were killed. Secondly, youth living in marginalized neighbourhoods were affected by an unprecedented increase in the number of murders and extrajudicial executions at the end of the 1990s (Amnesty International 2003). There are strong indications that 'members of the security forces and others acting with the implicit consent of the authorities' play a role in an alarming number of cases. However the state report submitted for the ninth session of the Universal Periodic Review at the Human Rights Council seems to obscure these human right violations and blames on the countries organised crime.⁵¹ Thirdly, the Honduran human rights movement was very vulnerable in the 1980s, but its space widened considerably in the past two decades. However, in the period after the coup human rights organisations in Honduras reported threats, and intimidations of different types.

In the period during the coup, the de facto regime launched a series of 'restricting repressive measures' to counter the protests against the coup, including the patrolling of security forces, the periodical implementation of curfews, and the detention or persecution of political and social leaders (Meyer, 2010: 6). The Inter-American Commission on Human Rights

45 Aprodev partners, Oxfam Family

46 Communication with Carlos del Cid.

47 Comments of ACT Alliance Honduras

48 See for a description of how local and national actors influence local conflict dynamics Kalyvas (2003). See for examples of how this has influenced local anti-mining struggles in Cabañas, El Salvador El Faro.

49 LGBT = Lesbian, Gay, Bisexual and Transgender

50 Derechos Humanos, Centro de Investigación y Promoción de los derechos Humanos

51 Comments of the ACT Alliance Honduras

reports that security forces conducted thousands of illegal and arbitrary detentions without order (IACHR, 2009:9).

Criminalisation

We heard of no cases of criminalisation of NGOs in the sense that they were legally prosecuted, although the discussions prior to the coup about new NGO laws included elements of criminalisation. However, there is ample evidence that in the period during and after the coup, members of social movements were increasingly confronted with criminal charges. These charges were based on decrees that restricted civil and political liberties, but more important and frequent, however, were charges of the crime of sedition.

Administrative measures

According to ICNL Honduras lacks a 'framework' law that provides the basic conditions for establishing an NGO or a GRO. In the absence of a framework, the Ministry of Governance and Justice has 'unfettered authority over the granting of a legal personality', resulting in frequent abuses. for instance by upholding the request for legal personality up to a period of seven years (ICNL, 2010).⁵² ICNL also reports that the lack of a legal framework 'leaves NGOs vulnerable to multiple and ad-hoc requests for information from various government entities and/or to charges of a lack of transparency by the public' (ICNL, 2010). In interviews with NGO representatives most NGOs didn't experience these kinds of problems.

In the past years there have been several efforts to draft a comprehensive law regulating different kinds of civil society organisations, in which both national and international NGOs have been involved. The Honduran Assembly issued a highly restrictive draft NGO law in early 2009, including significant restrictions on the freedom of association such as an extremely high minimum number of members for an NGO to obtain and retain legal personality; plus restrictions on the freedom of non-Honduran citizens to associate (ICNL, 2010). In the month before the coup, a broad based coalition of national and international NGOs heavily criticized and lobbied against this concept law.

Stigmatisation

The most vulnerable sectors in Honduras with regard to stigmatisation are those groups that question norms that are deeply embedded and widely shared

in Honduran society, such as the LGBT community, human rights groups and women organisations. Media generally play an important role in stigmatisation strategies. In this regard the control of national media in Honduras by a few powerful conservative elites is of utmost importance. Reportedly, media increasingly play a role in forging alliances in local conflicts about mining. The experience of the resistance against a local mine by the Association Civica para la Democracia in Santa Rosa de Copan shows that mining companies used local media, including broadcasting their own programmes, to spread their message.



The last years of the Zelaya regime were characterised by a growing division in the Honduran political establishment and society. There was an almost complete polarisation of the media after the coup⁵³ and the provision of objective information was extremely problematic. Thus, in a situation of extreme division and polarisation, stigmatisation increasingly became an important tactic for all parties. In this context labelling and stigmatisation also became a strategy of civil society groups vis-à-vis each other.

Existing spaces under pressure

Approaching leaders from civil society has been a normal practice for Honduran governments that seek to build or to broaden their constituency. President Lobo for example appointed Alejandro Ventura, a prominent leader of the teachers' union that plays a prominent role in the Resistance Front.⁵⁴ However, in

⁵² See <http://www.icnl.org/knowledge/ngolawmonitor/honduras.htm>

⁵³ However, there was a number of smaller regional broadcasting stations and newspapers that took a more critical stance.

⁵⁴ See El Heraldo 28 January 2010, online available at <http://www.elheraldo.hn/Ediciones/2010/01/28/Noticias/Toma-forma-el-gabinete-del-gobierno-de-unidad>

a context where corruption flourishes and clientalism is strong, it is not surprising that numerous accusations were pronounced that politicians were actually buying leaders of trade unions, social movements and NGOs.

In 2010, the more fundamental problem for NGOs is whether, when and how to restore working relations with the new Lobo administration. The organisations that supported or endorsed the coup generally do not have any moral dilemmas of working with the new government or not. This is different for the groups that actively oppose the coup and do not accept the legitimacy of the new Lobo administration. A representative of a human rights NGO said that president Lobo had invited members of a new platform of human rights organisations for a conversation, but this was not accepted. More radical NGOs reject cooperation with the government at all cost. They refer to the Honduran democracy as an 'oligarchic democracy' that wasn't able to foster sustainable development. They consider the spaces of dialogue that had been created over the past decades as ritualised, and did not lead to fundamental choices in favour of the poor. Others questioned how to use their political space and wondered whether changes in their strategies would be necessary.

On the job trouble

Resource conflicts

NGOs and GROs fighting for access to resources such as land or raw materials experience severe problems. ASONOG is an organisation that focuses on the protection of the environment and of human rights and seeks to strengthen the lobby capacity of local governments and civil society. It has been involved in protests against mining companies since July 1999, particularly in Santa Rosa de Copan. The local mining activities led to a struggle for the 'hearts and minds' of local inhabitants. With a strategy of cooperating with local radio stations and funding local governments' activities, the mining company undermines ASONOG's activities. Their own security company follows staff of ASONOG at work. The director of ASONOG had to leave the country and was assisted by several international organisations. The organisation started to work on plans of institutional safety, and has become more careful in its work, preferably taking action in coordination with other organisations.

Of particular concern is the region of Bajo Aguan where protracted conflicts about land tenure have created an explosive situation.⁵⁵ CNTC, a peasant union has been confronted with all kinds of restrictions ranging from arrest warrants of local leaders⁵⁶ to stigmatisation. Local leaders have been harassed or killed while in March and April 2010 militarisation of the region was reported.⁵⁷ The coup made an end to this process. The following occupation of farms to which peasants claim to hold legal rights has led to a new and intense campaign of stigmatisation such as accusations of presence and links with guerrilla armies and a wave of repression and human rights violations.⁵⁸



Photo: ACT/Sean Hawkey

Chronic insecurity

Working in a context of chronic insecurity, NGOs experience problems that oftentimes lead to the withdrawal of the organisation in the region. NGOs working in zones with narco trade can generally only operate when they keep a very low profile. More frequently they are not trusted by criminal networks and have been asked or forced to leave the area. Red Comal, an association of small producers working for the commercialisation of products of its members,⁵⁹ reports problems in several parts of the country where criminal groups robbed the organisation's supermarket three times in a row and attacked transports of the

55 Authors interview Victor Meza, 25 March 2010, Tegucigalpa.

56 See Fian, 2005, Honduras: Criminalisation of agrarian reform activists in Bajo Aguan, www.fian.org

57 See WOLA, 13 April 2010, WOLA alarmed at militarisation of Bajo Aguan, <http://www.wola.org>

58 See Muriel Soy, 2010, <http://hondurashumanrights.wordpress.com>

59 See Red Comals website <http://www.redcomal.org.hn/>

organisation. In this case Red Comal chose to stall its activities in this region. Arte y Acción, an organisation working with youth in marginalized areas of Tegucigalpa reports that two young members of the organisation were beaten up by police officers that assumed that they were criminals.

Problems related with the coup

Red Comal became part of the Resistance Front and provided assistance to the movement. As a result, Red Comal experiences intimidations. The military trained in front of the organisation's premises during night time. However, the public was positive about Red Comal's activities. With the (local) government, the organisation took a low profile, because complaints might backfire on its relation with the government

COFEMUN⁶⁰, a feminist organisation promoting the rights of women, was more heavily affected by the coup. It is a typical claim-making organisation that traditionally has had a rather tense relationship with the political establishment. Since its foundation COFEMUN had to deal with different kinds of stigmatisation and criminalisation. Staff had experiences of armoured cars following or watching them and of anonymous threats by telephone and mail. The threats and patrols intensified in the period after the coup.⁶¹ The direct threats in combination with the absence of the rule of law led to an extreme feeling of vulnerability. The director left the country for a while. It is feared that groups within the intelligence services, the police and private security agencies will not stop with repressive activities against NGOs and GROs that pronounced against the coup. This might lead to the militarisation and escalation of local conflicts.

Responses

With the coup, the national political context in Honduras changed in such a way that local level conflicts became part of national processes of polarisation. The question for NGOs and GROs in Honduras, is not only how to respond to restricting political space, but also of how to deal with an extremely polarised political situation. The polarisation sharply contrasts with the practices of dialogue and consensus building that are promoted and sought by international donors and local organisations in the past decades.

As mentioned, in general GROs and NGOs in Honduras are seen as relatively free to undertake their activities. With the coup, many NGOs and GROs were taken by surprise by the new wave of repression and reacted in an ad-hoc manner to the new threats. Staff developed protocols of how to deal with the situation. Discussions started about staying or leaving, and about how and to what extent supporting persons that decided to ask for political asylum elsewhere. Several organisations started initiatives to provide training and advice. Human rights organisations from Guatemala have offered training sessions for counterparts in Honduras. Human rights organisations from Guatemala also decided to organise a fact-finding mission to Honduras.

Local organisations have started to take more proactive action. Six human rights organisations in the country started conversations about a common platform. In the face of a failing judicial system in Honduras and the politicisation of the government's tasks to monitor human rights offences, there is a need for a non-governmental, coordinated and structured monitoring system of human rights violations, that combines the expertise of different organisations.

International NGOs found themselves in a rather difficult situation and had problems to escape the polarised situation in Honduras. A number of NGOs reacted cautiously; did not openly pronounce against the coup and suspended their work. Other international NGOs criticised the coup and the human rights violations. In a number of cases it was the international headquarters that criticised the coup, as was the case with DanChurchAid and the Mennonite Church. The fact that the international branches of organisations responded enabled local organisations to keep a lower profile. ICCO staff at the headquarters in Utrecht for example played an important role in lobbying for arrested or disappeared members of their partner organisations.

For international NGOs the new situation in Honduras should have consequences on their strategy. Political space in Honduras has narrowed and human rights violations have increased. Apart from the need to support initiatives to monitor human rights violations, there also is the question of priorities with regard to civil society strengthening.

Conclusions & Recommendations

In Honduras there has historically been a relative tolerance vis-à-vis the work of NGOs. In the period until the coup d'état NGOs that experienced most problems in their operational space were those working on natural resources. Women's groups and the LGBT community

60 See <http://www.cofemun.org/>

61 Authors interview COFEMUN, 25 March 2010, Tegucigalpa..

have traditionally experienced problems. All NGOs, GROs and social movements experience problems that are the result of the security situation.

The increasing polarisation that took place as a result of the political reforms and alliances of the Zelaya administration deeply affected the work and operational space of NGOs who are striving for social change. However, despite the turbulence and restrictions that many NGOs and grassroots organisations experienced in the aftermath of the coup, they were still able to work. It was especially those NGOs that pronounced themselves against the coup that faced repression and intimidation. Parallel to the process of growing political polarisation, civil society itself has become more divided and polarised. Trust towards and between NGOs has diminished, and many groups are still hesitant to the possibilities to cooperate with the new government.

Two topics are particularly important in the period after the coup. Firstly, there seems to be a need to further improve the capacity to monitor the human rights situation. As of March 2010 Honduran NGOs were in the process of discussing the possibilities and options to cooperate. However a number of critical NGOs are hesitant to cooperate since they doubt that the needs and desires of vulnerable populations groups are the main target. Secondly, there is the question of what can and should be learned from almost two decades of civil society strengthening in Honduras. Which strategies were successful, which failed? And what are the lessons for the new situation in Honduras?



Photo: ACT/Sean Hawkey

India

In India, there are certain progressive laws and the government is committed to human rights. Still the market interests are getting priority over provisions in the constitution to safeguard the interest of the society. Economic growth puts the environment at risk and its benefits are distributed highly unequal. Those who are fighting for the economic, social and cultural rights of minorities and unprivileged become targets of repression. In some cases, the State places restrictions on NGOs when their interventions are 'politically sensitive' and against the interest of 'industrialisation'.

Political context

India's rapid economic transformation has had considerable impact on the country and its growth. In the 1990s, the government initiated a shift toward market-oriented policies and India has now become the second fastest growing economy worldwide (Freedom House 2010). However, the distribution of economic growth is not equal, and there is still considerable discrimination against the poorest and most marginalised groups (FIDH 2007: 191). The economic growth also has its impact on the environment. Environmental problems are considerable mainly with regard to unsafe water, air pollution and soil degradation. Main victims are the poor. Comprehensive laws to keep the environment safe and regulatory institutions are missing (BTI 2010: 14).

India is a consolidated representative democracy. The media are vigorous and diverse, and through their investigations and scrutiny of politicians contribute to India's democracy. However, "government effectiveness

and accountability are undermined by criminality in politics, decrepit state institutions, and corruption” (Freedom House 2010).

In a large developing country like India, there are numerous gaps left by the government in the development process. NGOs and social movements have taken on an active role as guardians in areas, such as the environment and civil and minority rights. And the government does not want them to get into some areas – such as fighting discrimination on the basis of caste (Chatterjee 2001).

Civil society and NGOs

Civil society organisation (CSO) in India is a diverse category. One set of division of CSOs, for the purpose of analysis, could be drawn on the basis of its areas of intervention and scope. Firstly, there are International Non-Governmental Organisations (INGOs) which have their presence all over the world and work with several partners; secondly, research and advocacy based organisations, which receive funds from INGOs, bilateral agencies and private foundations; thirdly, programme implementing organisations, which receive grants from the government and fourthly, international donors and organisations that operate at community level such as Self Help Groups, training centres, cultural groups etc. Another division can be made according to the nature of the organisation, between ‘secular’ NGOs and Faith Based Organisations (FBOs).

The role of CSOs in India was formally laid down after independence in the milieu of the increasing need for addressing social welfare. The government of India in the first five-year plan stated “any plan for social and economic regeneration should take into account the services rendered by civil society agencies and the state should give them maximum cooperation in strengthening their efforts.” During the initial three decades of independence, the government made concerted efforts to strengthen relationship with CSOs through initiatives like the Central Social Welfare Board, the National Community Development Programme and the National Extension Service.⁶² The government also set up several institutions such as Khadi and Village

Industries Cooperatives, the Central Social Welfare Board, the National Wasteland Development Board, CAPART⁶³ to promote funding of NGOs.

CSOs, however, have not always been collaborative to the state and in several instances they have been oppositional to some policies of the state, especially with regard to industry, labour, environment and trade. While examining closely, the critical voice of CSOs appears to be emanating largely from the discontent generated by the process of globalisation and resultant sector reforms in India, which was backed by the neo-liberal agenda. Yet, it should also be mentioned that some spheres, for instance, local governance, service delivery, private public partnership and risk assessment are further opened up for CSOs in the post reform period in India; arguably to pursue the agenda of structural adjustment. In several instances, CSOs have come to replace other well-established political organisations such as trade unions, welfare associations, religious organisations and trade associations that traditionally represented the interests of various constituencies of society (Kamat 2004). The argument is that the period subsequent to economic reforms in India redefined the scope of CSOs as ‘collaborators’ to reforms on one hand and ‘oppositional’ to reform on the other. This paper identifies this feature as a crucial turning point for restricting the political space of civil society in India.

As per a recent estimation, about 1.5 million NGOs work in India, including temples, Churches, Mosques, Gurudwaras, sports associations, hospitals, educational institutions, etc. The survey conducted by the CSO PRIA⁶⁴ highlighted that out of it, 26.5 per cent are engaged in religious activities; 21.3 per cent work in the area of community and/or social service; 17.9 per cent are active in the fields of sports and culture and around 6.6 per cent in the field of health and education (PRIA 2002).

Restrictive policies and actions

Repression and intimidation

In a country characterised by unrestrained economic growth and its consequences, and by the marginalisation of whole sections of the population those who are

62 The Central Social Welfare Board was established in 1953 to promote social welfare activities and support people's participation programs through NGOs. The establishment of the National Community Development Program and the National Extension Service were to decentralise development activities with the collaboration of NGOs.

63 CAPART is an autonomous body under the aegis of the Ministry of Rural Development. The agency promotes rural development in India, assisting over 12,000 voluntary organisations across the country in implementing a wide range of development initiatives.

64 Participatory Research in Asia

fighting for economic, social and cultural rights became targets of repression. (FIDH 2007). Members of public interest groups or instance who were demonstrating against the secretive nature of the negotiations on the FTA with the European Union⁶⁵, which includes contentious issues such as agriculture, investment, fisheries, intellectual property and government procurement, were detained by the police.

Protests by anti-displacement movements such as in Kakinada, Nandigram, Kalinganagar, POSCO, Dadri, Goa, Mangalore and Snagrur were dealt with police and paramilitary forces. Together with CSOs, trade unions and people's organisations, they were demonstrating against the violations of rights in and due to SEZs.⁶⁶ The establishment of the SEZ raised several issues pertaining to displacement, food security, and wide spread violations of land and labour rights as well as human rights with regard to habitation, housing and environment.

In certain cases, the State tends to place restrictions on NGOs, especially when their interventions are 'politically sensitive' and against the interest of 'industrialisation'. For instance, the government cancelled the licence of Agramamee, an organisation that was once praised by their interventions in watershed management and livelihood in the poorest tribal dominated parts of Orissa, when they mobilised people against the exploitation of minerals by large companies in 1998. "While the organisation's licence was restored in the next year, for government officials the organisation and the incident continue to illustrate that NGOs can be anti-developmental" (Haan 2010: 54). The historic struggle of NBA⁶⁷ surviving the repression of the state is also archetypal example of restricting the space of CSO in the name of industrialisation and economic growth. Members of NBA, a coalition of local organisations hostile to dams in India, had been subjected to numerous reprisals after fighting for the rights of the poor peasants who have been displaced by the construction of the dam on the Narmada River (FIDH 2006: 358).

In some other instances, the State acted to an extent that it imposed bans on international human rights organisations and human right defenders in India. For

instance, against members of the ICN68 and the CCC69 were issued arrest warrants by the Government of India for reporting child labour in a garment factory in Bangalore, which were investigated by a team of Indian labour law experts, to the international forums.⁷⁰ The official position of the Government was that it would hamper the export interests and hence growth of the country (FIDH 2007). The government later on withdrew the case due to the intervention of the European Parliament.



Photo: ACT/Sean Hawkey

Administrative restrictions

The national policy on voluntary sector, which came into effect in 2007, though apparently progressive in the sense that it emphasised on transparency and accountability in the sector, undermined the diversity of the civil society sector by implementing uniform regulations and a single regulatory body. The Direct Tax Code Bill of 2009 on the voluntary sector is another recent development that concerns the governance of CSOs in India. For instance, the bill calls for treating all receipts as income for NGOs that seriously affects their financial viability. It also prohibits CSOs investing in financial assets and cuts tax incentives for donors.

Similarly, the Foreign Contribution (Regulation) Act (FCRA) from 1976, which aims to regulate the acceptance and utilisation of foreign contribution by associations, raises certain concerns with regard to difficult procedures of registration and transfer of funds from the designated bank to a local bank. The problem of

65 Free Trade Agreement

66 Special Economic Zones

67 Narmada Bachao Andolan

68 India Committee of Netherlands

69 Clean Clothes Campaign

70 For more details, see <http://www.sweatsoap.com/news/clean-clothes-campaign-ccc-and-india-committee-of-the-netherlands-icn-falsely-accused/95>, [accessed 8 June 2010]

fund transfer under FCRA becomes highly complicated for the organisations, having several projects at different locations. On August 19, 2010, the parliament passed the Foreign Contribution (Regulation) Bill (FCR), which will replace the FCRA from 1976 (ICNL 2010). If enacted, the Bill will prohibit the acceptance and use of foreign contributions for “any activity prejudicial to national interests”. Through the FCR, the Government would be able to control an organisation’s foreign contributions. Whereas registration was free of charge and permanent under the FCRA, now a costly registration renewal requirement would be applicable every five years for NGOs receiving foreign contributions (FIDH 2006).

Criminalisation

A draft Bill, pending for two years, which has not been made public so far, calls for setting up an authority with regulatory power on agriculture, forests, fisheries, human and veterinary health, and industrial and environmental applications. One of the draconian provisions of the Bill, which was drafted in March 2008, states, “whoever, without any evidence or scientific record, misleads the public against the safety of the organisms and products specified in [...] shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to one year with fine, which may extend to two lakhs rupees, or with both.” The agitators against the Bt Brinjal⁷¹ could well be held liable under this provision (Coomi Kappor in The Sunday Express, February 28, 2010).



Photo: ACT/Sean Hawkey

71 BT brinjal is a genetically modified food that was approved for commercialisation in India in 2009, but after a public outcry the Indian government applied a moratorium on its release.

Existing spaces under pressure

Many of the legislation and policy changes brought by Public Interest Litigations⁷² or the role of NAC⁷³ in brining RTI, NREGA or FRA⁷⁴ are praiseworthy. However, efforts are not adequate on matters of internal security and religious fundamentalism.

There are NGOs who are well cooperating with the government. This applies especially to CSOs involved in service. In fact, market friendly NGOs are created to disseminate and propagate the required agenda.

On the job trouble

Right to consultation

The determination of policy issues should be carried out in a transparent manner after consulting with relevant stakeholders. However, when it comes to questions of investment, industrialisation and export, the government tends to strictly restrict people and civil society groups from participation. The recent case of the Coastal Zone Management Notification, which takes away the customary rights of traditional fish workers by setting up an exclusive economic zones, is yet another example. Organisations of fish workers and other civil society organisations were not allowed to participate in any of the consultations that drafted the policy, despite their demand.

Trade negotiation is another area, which has tremendous political and economic sensitivity as well as implications where the Government of India imposes restrictions on CSOs. For instance, despite the demand for consultations on the EU-India FTA and other ongoing FTA negotiations by various CSOs, the Government refused to invite them. The negotiating text was also not accessible to civil society. The government also rejected the demand that “India’s position regarding intellectual property, especially patents, and related issues that affect access to medicines should not be

72 In Indian law, it is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party in the public interest.

73 The National Advisory Council has been set up by the Indian government as an interface with civil society. The NAC is designed to provide policy and legislative inputs to the government with special focus on social policy and the rights of the disadvantaged groups.

74 RTI = Right to Information Act; NREGA = national rural employment guarantee act; FRA = Forest Rights Act.

established without the contribution of civil society groups and patients' groups, who more accurately reflect the concerns of the people of India".⁷⁵

War on terror

Recent incidents of targeting human rights activists, journalists and fact-finding committees who condemned the state's ostensible "war on terror", which had eventually become a 'war' against tribals exemplify the shrinking political space of civil society in India. People who expressed sympathy with human rights activists or exposed and criticised government actions for instance were accused of being front organisations of the Maoists. People from various walks of life, including Rajinder Sachar, a lawyer, activist and a former Chief Justice of Delhi High Court and noted writer Arundhati Roy criticised the way in which the state dealt with the incident.⁷⁶

Socio cultural norms

Socio cultural norms are also instrumental in certain cases to restrict the space of civil society interventions in India. The experience of some NGOs reveals a gradual shrinking of space for rights-related work and any form of protest against mainstream cultural and social norms (Das 2001). These have been a serious issue for CBOs⁷⁷ working on issues such as caste based discrimination, sexual rights, sexual abuse and atrocities. Evidences show that these organisations were threatened and attacked by police, mainstream political parties and leaders, media, majority communities and other big NGOs (Ibid: 3433-43). Moreover, these organisations become vulnerable to funding arbitrariness, which stops them from continuing their work.

It has been observed that FBO supported by minority faiths were targeted while NGOs promoted by rights wing fundamentalist party get due support and encouragement. There were systemic attempts to fuel passion among poor tribal against such NGOs. Violence in Kandmahal is a case in point.

75 Letter written to Minister of Commerce and Industry, Govt. of India by Forum on FTAs in March 2010.

76 For details see, "Rights activists get Maoist tag", The Hindu online, available at <http://www.thehindu.com/2010/03/01/stories/2010030155351800.htm> [accessed 14 June 2010]

77 Community Based Organisations

Rights based struggles

As CSOs are getting engaged with rights based struggles they are being checked and controlled by the government. Novelist Arundhati Roy had written that her friends had advised her to ensure all her tax etc papers are in order prior to taking on any government policy issues. Human rights defenders are prime targets of government's action. Action Aid, a major UK based development agency as it believed has had to change its Indian CEO due to covert pressure from Indian government due to his explicit criticism on Gujarat program against minorities. A Gandhian who was running an NGO in Dantewada had to flee; his place was demolished as he was considered as close to radical left extremist. Dr Binayak Sen spent more than two years in prison due to his concerns for civil liberty and violation of human rights. Any activity involved with grass root mobilisation with RBA is seen differently and are closely monitored.

Responses

The ACT forum in India is part of the larger civil society working towards ensuring rights and entitlements of the marginalized. However, there are two serious hurdles. An identity as a religious organisation or related to the church brings certain handicap, due to propaganda the Church is seen as foreign religion. The influence of ACT forum and its members at national level has been limited, as they are numerically weak.

A staff member from CASA⁷⁸ is proving leadership to VANI⁷⁹, a network of civil society in India who is pleading on behalf of CSOs for larger space and involvement in the policy debate. FMSF⁸⁰, an EED supported organisation with its network members is actively lobbying for tax implications due to Direct Tax Code and is also serving as watchdog. Recently, Finance Ministry has taken serious note of its submission and has amended the proposed changes in tax code.

National forums of CSOs are working to have wider debate on shrinking space and have determined to take the battle forward. There is need to build bridges among political party. A strong mobilisation of community at grass root level has ensured that the government is not able to acquire land of tribal. Planned campaigns of international agencies have exposed multi-national corporations and their impact on human rights forcing

78 Church's Auxiliary for Social Action

79 Voluntary Action Network India

80 Financial Management Service Foundation

investors to withdraw from such plans. e.g. Vedanta⁸¹. There is a need for collective advocacy struggle across the nations exposing the Bretton woods system and multinational corporations and their impact on human rights. There can be tremendous support for such initiatives in the form of mass mobilisation, research and study.

International agency or donor-supported program would always be a lame duck in such policy debates. But they have enough role to ensure active involvement of India in UN organisations.

Conclusions & Recommendations

In India, debates subsequent to the 1990s have shed light on the fact that the state has become increasingly unable to protect the democratic space of the civil society due to the changes in its political economy. It is also true that several critical issues pertaining to sovereignty of the state arise when one tends to connect the entire gamut of CSOs to development and practice of democracy, primarily due to the wrong inclusion of right wing religious organisations and militant groups in it. Therefore, regulation and monitoring of state undeniably assume paramount importance. However, the restriction of CSOs in addressing issues, which are the highest concerns for citizens such as livelihood, customary rights, displacement and atrocity in the name of political and cultural sensitivity, is also an equally disturbing trend. Several instances proved that political and cultural spaces of CSOs are deliberately curtailed in India. The efforts of CSOs in negotiating for the political and socio cultural space appear to be limited to some of the self-regulatory and accountability practices. What is emerging from the analysis is that in most of the situations, CSOs are restricted not because for their 'bad practices', but for claiming the political and socio cultural spaces which are ostensibly sensitive. Therefore, self-regulation or good governance alone cannot ensure them the space that they are demanding for; conversely there should be meaningful negotiations with the state.

81 "India has rejected controversial plans by mining group Vedanta to extract bauxite in the eastern state of Orissa", see BBC, 24 August 2010, available at <http://www.bbc.co.uk/news/world-south-asia-11067678>



Photo: ACT/CWS/ Lasvi Rosellim

Indonesia

Operational space for NGOs has indeed increased in the years after the fall of Suharto in 1998. Actual violence is not commonly experienced by representatives of professional NGOs, grassroots community leaders are much more likely to experience actual violence in confrontation with the police, military or non-state actors. The specific use of criminal offences such as criminal defamation against accountability advocates restricts NGOs in their operations. GRO leaders in land disputes often face criminal charges. GRO leaders in Papua have faced charges of sedition and rebellion. Intimidating threats and stigmatisation as western puppets is an issue for almost all Indonesian NGOs. NGOs working on issues of gender, LGBT or pluralism can face serious limitations when they face religious organisations or some community leaders. The findings presented in this study do not necessarily apply to the other regions in Indonesia that were not explicitly included in this research.

Political context

Indonesia is a secular state and has the world's largest Muslim population (PRS, 2008:16). In 1998, just after the Asian monetary crisis and the fall of dictator Suharto, a process of decentralisation started, creating a high level of regional autonomy.⁸² Thus, there are plentiful state actors, and power is in the hands of strong regional elites. Through the regionalisation a shadow state emerged,

82 Defence, foreign policy, fiscal and monetary policy, macro-economic policy, justice, and religion stay with the central government, which would keep 75% of the national income. The regions take care for infrastructure, trade, industry, investments, environment, education, and culture. Regions were allowed to gain their own income with local resources (Schulte Nordholt 2008:115).

where governmental institutions become privatised and private interest become institutionalised (Schulte Nordholt 2008:119). Schulte Nordholt (2008:249) describes Indonesia as a thoroughly corrupt society, where everything and everyone can and is bought.⁸³ Impunity is a returning issue and the courts are rated as the worst institution in the country.

In 2002, a law was adopted officially ending the military's presence in the parliament (Nyman, 2006:2). Although military dominance still is a severe issue, the business transfers and the appointment of non-military officials for high-level government positions indicate progress. The military in Indonesia is thought to be responsible for many human rights violations, such as in Aceh and East Timor, as well as the instigator of communal violence, such as in Maluku (Schulte Nordholt, 2008:100). The military has been involved in various businesses, for example as recipients of concessions for natural resource extractions (HRW, 2009:10).⁸⁴

The political context in Aceh differs considerably from the rest of Indonesia. After 1998, Aceh faced military occupation and martial law as a response to a strong return of the GAM⁸⁵ (Braithwaite, 2010:11). After the tsunami in December 2004, the Helsinki Peace Agreement gave Aceh more autonomy and considerable control over its natural resources. Still, violence continued in Aceh with specific conflicts centred on land disputes, unemployment, and construction projects (Freedom House 2009).

Civil society and NGOs

The NGO sector has been growing enormously since the 1970s (Schulte Nordholt, 2008:37). Not only quantitatively but also qualitatively the NGO sector changed. In the 90s attention to employment conflicts and human rights emerged (Schulte Nordholt, 2008:37, CSI Index, 2006:19). After 1998 there has been a further multiplication of NGOs. Nomura notes that a new trend in the post-Suharto era is the emergence of research-advocacy NGOs (2007:509).

⁸³ Political parties for instance are abused by party elites to gain access to financial sources. Only people who possess or have access to capital have a chance to be elected.

⁸⁴ For a detailed report on military financing and specifically the detrimental effects in terms of human rights violations, see HRW 2006.

⁸⁵ Free Aceh Movement

The relation between civil society and the state is one of the main issues in the debate about the meaning of civil society. Whereas the Western conceptualisation presents civil society as an independent force opposing the state, most Indonesian analysts prefer a less confrontational concept. In Indonesia, it is preferred to use the term LSM⁸⁶, because the term NGO can be seen as anti-government (2006:50-51).

The increase in NGOs after 1998 and in Aceh after the tsunami has also generated NGOs that are founded by the government and serve to gain access to donor money as well as NGOs that are founded by corporations as part of an attempt to engage in window-dressing or to receive funding. It is an interesting paradox that even though the NGO sector as such has a bad name in Indonesia and NGOs are generally viewed as western agents, still the LSM label can be very attractive. Indeed, NGO representatives told that those NGOs that specifically put LSM in front of their name are most likely not to be authentic NGOs.

A major current issue for NGOs is their own sustainability. They are painfully dependent on foreign funding (CSI Index, 2006:38), because of a lack of a philanthropic tradition in Indonesia, no tax-deductibility for donations and a small middle class (Aspinall, 2010:14). Donors are retreating from Indonesia, and emphasis is now placed upon governance and strengthening of government institutions instead of focusing on civil society organisations and advocacy.

Restrictive policies and actions

Repression and intimidation

In general, threats, injuries, and killings are widespread in Indonesian society commonly used by the military, politicians, the police, and criminal organisations. The violence is rooted in the premanism in the New Order area. A preman is a small criminal who in exchange for a payment resolves the dirty business of political leaders (Schulte Nordholt, 2008:44 and 110). Some NGOs mentioned the role of preman in local land issues but also in relation to labour issues.

Threats are common and various NGO staff members reported that they receive intimidating phone calls. NGOs in the urban areas, the very vocal human rights NGO such as Imparsial and Kontras, and NGOs who work on very sensitive issues such as LGBT⁸⁷ are most

⁸⁶ Nyman translates LSM as community-self-help organisations

⁸⁷ Lesbian, gay, bisexual and transgender

affected by threats. Imparsial reported for example that they once received a dead chicken in the mail and people came to the office during the night and threw stones. In 2003, Imparsial experienced public demonstrations in front of their office.⁸⁸ Most NGOs argue that the threats do not have much impact on their work. In other instances, however, threats have caused NGOs to leave an area, or significantly altered the way an NGO operates. Police inaction in the investigation of threats is common. Notable exceptions exist, such as the murder in 2004 of human rights activist Munir, the director of Imparsial. Courts are highly ineffective in Indonesia. While this is a general problem, in the case of human rights violations, there might be a specific unwillingness to prosecute.



Photo: ACT/LMR

Activists in rural areas are more likely to suffer from actual violence, specifically in conflict-ridden and militarized areas such as Papua. AHRC reports that incidents tend to happen in remote provinces where the military protects mining activities and other natural resource activities (2009:3-4). However, activists were more worried about the impact of non-state actors, such as preman, but also some ethnic groups, such as FPI and FBR⁸⁹ (CSI Index 2006:66).

Criminalisation

Recent new anti-terrorism legislation has sparked a lively debate about the broadness of the definition of terrorism and the possible abuses against a wide variety of protest actions. To date there have been, with exceptions, hardly any problems for NGO members

with counter terrorism measures. A more significant hurdle is the law on criminal defamation, which has been frequently used against activists, although few defamation cases are actually brought to court or lead to a conviction (AHRC, 2009:18). The problem seems to be more serious for peasants and GRO leaders in the process of claiming land. In 2007, LBH Aceh⁹⁰ was charged with “spreading hatred” because of assisting farmers in a lawsuit against a palm oil plantation, with a publication summarizing the chronology of the land-issue and the demands of the farmers. In areas where separatist groups are active, NGOs and non-violent activists can face criminal charges because of an alleged relation with separatist activities.

Restrictive administrative measures

Two laws create the legal framework for NGOs: a 1985 law on associations (membership-based) and a 2004 law on foundations (non-membership based). It is also possible to operate without any registration (CSI Index, 2006:49-50). The 1985 law on associations has strict provisions, enabling the government to dissolve an NGO when it “conducts any activities that disrupt security and public order, receives assistance from foreign parties without Government’s approval, and provides assistance to foreign parties that are damaging to the interests of the State and the Nation” (PSHK, 2008:14-15). Whereas the CSI Index emphasizes that the law for associations has not been used anymore to stifle NGOs and therefore is no longer effective (2006:50), PSHK is more worried because the law is still on the books and therefore can be used if that is deemed necessary.

Freedom House reports that foreign funding agencies and NGOs experienced difficulties in terms of their legal status in Aceh and Papua (2006). One of the few international organisations still present in Papua had to change their legal status to a national foundation in order to register. The problems with registration may be related to the prohibition on international NGOs to conduct political activities in Indonesia (PSHK, 2008:12).⁹¹ It has been reported by this organisation that government officials would insinuate that it would abuse its access to help separatists and expose the government in international publications.

88 Interview with author, 1 April 2010, Jakarta

89 FPI = Islamic Defenders Front, FBR = Forum Betawi Rempug

90 Legal Aid Aceh

91 Interview with author, 30 March 2010, Jakarta

Stigmatisation

Without exception, NGO leaders reported of suspicion that is directed towards the NGO sector as a whole. The stigma of being western puppets is common, affecting those NGOs that work on religious issues, programs related to pluralism, and NGOs that work closely with Muslim communities. For example, NGOs in Aceh working with women and on gender issues reported that they struggle against the widespread image that gender is a western concept. The communist label is another stigma still used, particularly against labour activists as well as advocates of land reform (Aditjondro, 2007). In the (former) conflict areas of Aceh and Papua, there is the specific risk for NGOs to be associated with the rebels.

Existing spaces of dialogue under pressure

Many NGOs are positive and hopeful about the possibilities to work together with the government, especially NGOs in Jakarta. NGOs reported that they felt they had a genuine influence, however, that cooperating they were doing the work that the government should do. Three limitations on the spaces of dialogue have opened up. Firstly, spaces of dialogue are only formally given, for instance when consultation with civil society actors is required by multilateral donors. Secondly, spaces of dialogue are not adequately used by NGOs who do not manage to sustain their institutional capacity and attract good leaders. Thirdly, spaces of dialogue are abused when counterparts of NGOs use violence or bribes. Points of concern are the combination of negotiation, bribery and intimidation, which seems especially prevalent with respect to NGOs who pronounce accountability accusations and GRO leaders engaged in struggles regarding natural resources.

On the job trouble

Accountability: corruption and human rights violations NGO representatives demanding accountability from high government officials or powerful economic actors frequently report that they receive offers of bribes or negotiation about the charges, sometimes combined with intimidation, threats, and/or criminal defamation charges. Anti-corruption NGOs Gerak Aceh and ICW⁹² have faced charges of criminal defamation. It should be noted that the media are important in supporting NGO claims for government accountability. Even though most activists reported that threats are not followed by action, and that neither threats nor charges of criminal

defamation will impede them to do their work, Munir's death and the events surrounding the criminal case are strong reminders of the extremes to which their opponents could be willing and able to go.

Land conflicts

Indonesia's valuable resources such as minerals, forests, land, water, and oil are subject to various, often local conflicts about ownership, distribution, and exploitation. NGOs and GROs play important roles in representing and assisting communities, making claims, and providing legal, informational, material or psychological assistance. In this struggle they face conflicts with local elites, the military, the police, criminal organisations, preman, militias and private security services because of the interests of the state as an important landowner and legislator, of the agency responsible for permits and concessions; and the interests of national and international corporations.

Land conflicts between communities and corporations had previously been defined as private conflicts in which the police could not intervene. This changed in March 2007 and since then the police has intervened frequently applying physical harassment and/or arrest. For example, KPA tells that in 2009 three people were shot dead in Sumatra by the police. In addition, leaders of communities are often subject of criminal prosecutions. Various people's organisations disappeared as a consequence of the harassment or the jailing of leaders.⁹³ However, it should be noted that not all organisations involved in land rights reported physical harassment.

Sensitive issues in relation to religion: gender, LGBT, and pluralism

NGOs working on issues of gender, freedom of religion, pluralism, LGBT and HIV/AIDS reported restrictions due to fundamentalist religious organisations and the religious beliefs held by communities. Religious intolerance is listed as one of the five major dangers to Indonesian social movement activists (Aditjondro 2007:129). The TIFA Foundation reported that the stigma as a western NGO with a moderate interpretation of the Islam and work on interfaith dialogue can mean that people refuse to attend meetings or that the community leader asks the NGO to leave. In Greater Aceh for example, a community forcefully resisted the

92 Indonesia Corruption Watch

93 Interview with author, 8 April 2010, Jakarta

entry of Flower Aceh, an organisation working with women in rural communities, in 2008, even after the leader had permitted their access.⁹⁴

Women experience specific challenges as NGO representatives and community leaders. A report on “Women Human Rights Defenders” identify ten specific vulnerabilities and types of violence that they face because they are women: “rape; [...] marginalisation and rejection based on morality, religion, custom, culture, and family reputation; [...] and exploitation of women’s identity” (UN Special Representative 2007: 18).

Responses

Whereas sometimes proactive campaigns are set up, particularly in relation to legal reform, most responses are in reaction to immediate physical threats or criminal charges. In response to the criminal charges that community leaders in land conflicts suffer, various professional NGOs offer some form of legal counsel or representation. The NGOs Imparsial, LBH and KPA provide trainings to capacitate peasants in documenting their land claims as well as violent events or criminal cases.⁹⁵ In response to serious threats, Imparsial reported that they often assisted NGO representatives and activists from Aceh to evacuate to Jakarta to provide protection. Recently, Imparsial decided to focus on a proposal to demand official protection from the government for human rights defenders.⁹⁶ NGOs affected by stigmatisation emphasize a good communication strategy, a low profile of western donors, not publicizing their logo, and the changing of names of their programs.

In general, NGO response strategies in Indonesia can be characterized as highly coordinated. In 2002, several NGOs established an umbrella organisation and a code of ethics that was signed by 252 NGOs (CSI Index, 2006:35). NGOs coordinate proactive responses on specific issues in various networks. For example, there is a “Security Sector Reform Network” that works on police reform and on judicial review on the law on criminal defamation. In Jakarta, there is a pro-pluralism coalition constituted by Muslims, Catholics and others, who report to the public, pressure the government, and take legal actions, such as advocating a judicial review. There is an annual meeting of human rights defenders to exchange information about cases and share mechanisms of protection. In a closed session there is a training on security issues. TIFA Foundation published

a legal review to clarify how for example the law on the environment facilitate or impede human rights defenders.⁹⁷

In order to assist communities in agrarian reform, a network of organisations has opened an agrarian desk where communities can come with their problems. Another good practice is conflict desks, consisting of communities, NGOs, government and scholars. In one case, a conflict desk sent a letter to the local government and could stop the violence in one community as a result of their intervention.

Some NGOs are very vocal about restrictions they face. There are some instances where NGOs practice forms of self-censorship to avoid trouble and be able to continue doing their work. Activists in Aceh specifically report that they moved from more accommodating styles during martial law to more confrontational strategies in the current democratic framework. However, they emphasize to be careful about their strategy in order not to create risk in their work.

Conclusions & Recommendations

The process of democratisation has opened up new spaces for NGOs for advocacy and claim-making. The results of this research show that whereas most NGOs benefit from the expansion of space, some old conflicts have not satisfactorily been solved and new tensions already challenge the process of democratisation. Military influence, widespread corruption, and elite competition because of decentralisation are important elements limiting operational space for NGOs. Non-state actors such as the military, religious groups and business elites play an important role in determining the operational space of NGOs. Points of concern are the combination of negotiation, bribery and intimidation, which seems especially prevalent with respect to NGOs who level accountability accusations and GRO leaders engaged in struggles regarding natural resources.

Intimidating threats are common for NGO representatives that work in the field of accountability (anti-corruption and human rights violations), for local communities, peasants and rural GROs that struggle for land and NGOs working on sensitive issues in relation to religion, such as gender, LGBT, and pluralism. Actual violence is not commonly experienced by representatives of professional NGOs. GRO leaders are much more likely to experience actual violence in confrontation with the police, military or non-state actors. The specific

94 interview with author, 6 April 2010, Banda Aceh

95 Interview with author, 31 March 2010, Jakarta

96 Interview with author, 1 April 2010, Jakarta

97 Interview with author, 1 April 2010, Jakarta

use of criminal offenses, however, such as 'criminal defamation' against accountability advocates, restricts NGOs in their operations. GRO leaders in land disputes often face criminal charges, such as theft and illegal entrance of a plantation. GRO leaders in Papua have faced charges of sedition and rebellion. All NGOs face the negative label of executing a western agenda. In general, optimism about the benefits of collaboration with the government far exceeds negative experiences regarding cooperation.



Photo: ACT/Sean Hawkey

Malawi

Abstract

Malawi has seen an expanding political space brought by the new democratic dispensation. The space keeps on expanding slowly to allow civil society actors and others to participate and develop human rights issues further. However, in some cases the government hinders the operations of some NGOs if the mandate is contrary to the government's agenda or popular opinion. For example, issues of sexual orientation are still sensitive in Malawi. Recently, a draft report on HIV by a Special Law Commission has been produced where some sections greatly violate social and cultural rights of people living with HIV, women, commercial sex workers, domestic workers and people who seek employment in sectors such as the police and the army. In order to amend the proposed bill by the Law Commission, before it is passed by Parliament - a number of local NGOs and international NGOs including ACT alliance members have participated in submitting issues to be considered in the proposed bill.

Political context

Malawi is located in the Southern part of Africa and borders Tanzania, Mozambique and Zambia. Administratively, the country is divided into three regions and further devolves into 28 districts. The national population is estimated at 13,1 million, with an annual growth rate of about 3 per cent in 2008.⁹⁸

⁹⁸ See National Statistical Office of Malawi, available at <http://www.nso.malawi.net/>

Approximately 60 per cent of the national budget is supported by international donors such as the World Bank, the IMF⁹⁹ and bilateral donors.

The HIV and AIDS prevalence rate in Malawi remains high at 12 per cent of adults aged 15-49 years being infected. According to the NAC¹⁰⁰ HIV prevalence rate is high at 13 per cent among females and 10 per cent among sexual active men. The rates translate into about one million Malawians living with HIV, including 100,000 children under the age of 15 years. The epidemic has challenged the role of FBOs¹⁰¹ in terms of doctrines, activities and acceptance of PLWAs¹⁰². It is clear that HIV and AIDS is a human rights issue and thus affects a number of areas in terms of the shrinking political space. The Malawi constitution indicates that every person has a right to life and no person shall be arbitrarily deprived of his or her life. Regarding the issue of HIV and AIDS, the right to life means that people who are infected need to have access to health services, treatment and drugs for them to be healthy and live long. According to the prohibition of discrimination PLWA shall not be discriminated in any form but provided with a positive environment that will sustain their life. The Constitution also guarantees the right to personal liberty and the freedom to live. All infected and affected people by HIV and AIDS need to be protected from reinfection and not deliberately infect other people otherwise they will deny others the right to live.

Civil society and NGOs

Malawi was under a one-party system before 1993. In 1994, Malawi became a multi-party system which saw the emergence of civil society actors and NGOs. The NGOs that were present before multi-partyism were mostly engaged in service delivery. There was little space for NGOs and civil society actors to operate in the field of political, advocacy and governance issues.

After 1994, Malawi has seen an increase in the number of CSOs. This is a result of the expanding political space brought by the new democratic dispensation. The space keeps on expanding albeit slowly to allow civil society actors and others to participate and develop human rights issues further. The increase in the political space can be observed in different areas. In the Constitutional Framework it is established that

all legal and political authority of the State derives from the people of Malawi and shall be exercised in accordance with the Constitution solely to serve and protect the peoples interests. This implies that in Malawi NGOs are free to operate but should also follow the recommended procedures as indicated by the laws. With regard to the legal framework for NGOs, an NGO law was introduced in 2000 to address issues of registration and requirements for NGOs operating in Malawi. The law serves the purpose of ensuring equitable sectoral and geographical distribution of NGOs activities, accountability and transparency of NGOs in their activities, coordination and consultation with the government in the implementation of NGOs activities and uniformity in the interpretation of policies. This would assist NGOs to contribute to development through the provision of social services and the creation of employment. In addition, there is a national institution, CONGOMA, that serves as an umbrella for NGOs in Malawi to represent their interests. CONGOMA¹⁰³ was created in 1987 descending from the Council for Social Welfare of Malawi. Its objective is firstly, to enhance and improve operational environments within which NGOs function; secondly, to promote and facilitate co-ordination, collaboration and co-operation within the NGO community and between the NGO community, the government of Malawi, the donor community and the public sector; thirdly, to further the understanding of NGOs as competent, professional and suitable agents of development; and fourthly, to support member NGOs to build and strengthen their institutional capacity. CONGOMA advocates on behalf of NGOs, provides information about the NGO community, organizes workshops, seminars and conferences on issues such as poverty alleviation and institutional development and has special activity networks, for example on HIV/AIDS, and offers support, advice and information to NGOs. The registration for an NGO requires membership with CONGOMA. A total of over 350 NGOs were registered members in 2009.

FBOs have not experienced any hurdles to function because of the structures in the communities that have been set by Churches and Mosques. NGOs have therefore been welcome. People have embraced organisations and are ready to assist in terms of self help, volunteerism and community leadership. In most cases it has been easy to mobilize the communities using available structures.

99 International Monetary Fund

100 National AIDS Commission

101 Faith Based Organisations

102 People Living With AIDS

103 Council for Nongovernmental Organisations in Malawi



Photo: ACT/Sean Hawkey

On the job trouble

In Malawi, the Law Commission has been vested with the powers to review and make recommendations relating to the repeal and amendment of laws by the Constitution. The draft report on HIV by the Special Law Commission has some sections which, if left unamended, and passed by the parliament, would greatly violate social and cultural rights of people living with HIV, women, commercial sex workers, domestic workers and people who seek employment in sectors such as the police and the army. The disputable sections refer to anti-discrimination, false information and harmful cultural practices, criminalisation of HIV transmission, compulsory HIV testing, forced disclosure of the HIV status.

With regard to anti-discrimination, false information and harmful cultural practices the report provides that all information distributed on HIV is correct, penalizing anyone who gives or publishes false or inaccurate information concerning HIV. It also prohibits several identified cultural practices that contribute to the spread of HIV. While giving correct information on HIV is crucial in the fight of HIV and while harmful cultural practices are dangerous, taking a more educative and consultative approach would help people and traditional leaders in taking more responsibility to explore safe alternative cultural practices. The criminal penalties of imprisonment in addition to civil fines provide excessive harsh punishment. Relating to the section on the criminalisation of HIV transmission, it could lead to punishing people who were unaware of their HIV status, those who may take the risk of informing their partner. Evidencing this in court may require medical personnel to act as witnesses against their own clients, which is against medical ethics, and against people's privacy. In another section of the report polygamous couples, pregnant sex workers, domestic workers and public employees such as the army and police immigration are supposed to undergo compulsory HIV testing. This is a violation of people's rights, and it indirectly discriminates against other groups, e.g. Moslems allowing polygamy. Another disputed section refers to the forced disclosure of the HIV status without considering the individual's willingness and ability to cope with the disclosure. This section infringes upon one's privacy and can lead to stigma and abuse.

Restrictive policies and actions

In some respect there still exists infringement of the political space for NGOs and Civil Society by the government, but its nature differs from the dictatorship regime as most freedoms are now enjoyed. In some cases the government may hinder the operations of some NGOs if the mandate is contrary to the government's agenda or popular opinion. For example, issues of sexual orientation are still sensitive in Malawi. Although the Constitution establishes a secular state, the state is rooted in Christian values.

The limitations are felt at the level of CONGOMA as an organisation that is supposed to coordinate NGOs. Most NGOs lack capacities to implement, monitor activities and maintain its staff. As a result there is a lot of staff turnover and there is a great need for capacity building because of loss of skilled personnel and experiences. In addition, there is an inadequate management of resources, especially with regard to finances and the failure to account for funds from donors. This hampers the implementation of many activities and loss of donor support becomes an issue. Finally, it is the issue of networking with others. Due to competition and limited funds, not much networking occurs.

Most local NGOs have their own priorities and agendas, but are sometimes forced to change them due to donor pressure and priority areas. Most donors have now confidence in the government and are channelling funds through the government, for instance through basket funding. The result is that NGOs have a more narrow base to request for funds, because they have less room to implement other activities that the government cannot manage or reach out especially in remote areas.

Responses

So far a group of sex workers in Lilongwe with the help of the NGO TFAC¹⁰⁴ marched and presented a petition expressing concerns on existing discrimination, violence against sex workers, and potential implications of the report to their rights.

In the first place a number of local NGOs and international NGOs including ACT alliance members participated in submitting issues to be considered in the proposed bill to the Special Law Commission. This was done through rigorous consultation process with other stakeholders including community members. ACT alliance members plus other local NGOs also participated in the national consultation processes organized by the Special Law Commission. When the HIV and AIDS report was drafted and a number of areas appeared that infringe on peoples rights as noted above, members of ACT alliance members worked with other international and local NGOs in the following activities: DanChurchAid conducted a platform and stakeholders meeting to isolate areas in the bill that infringe on peoples rights; both DanChurchAid and Christian Aid hired legal experts to draft a position paper of issues noted in the proposed draft bill; Christian Aid, MANERELA+ and MANET+ oriented parliamentary committee on HIV and AIDS on areas of concern in the current HIV and AIDS bill; Christian Aid, DanChurchAid, Norwegian Church Aid, MANET+, COWLHA, MANERELA+ conducted a briefing meeting with the Vice President of the Republic of Malawi on the issues noted in the draft HIV and AIDS bill; UNAIDS, MANET+, DanChurchAid, Christian Aid organized a working dinner with members of the legal affairs committee of the parliament, and the parliamentary committee of HIV and AIDS; MANERELA+, VSO, Action Aid, Christian Aid, Norwegian Church Aid organized another meeting with the parliamentary committee on HIV and AIDS, the legal affairs committee of parliament and other stakeholder where a joint position paper of the bill was discussed; ACT alliance members together with other NGOs also discussed the position paper at the international NGOs forum where all INGOs working on HIV/AIDS collaborate and share issues of common interests; a briefing meeting with the Minister of Justice and Constitutional Affairs in Malawi was conducted where the position paper was discussed by Christian Aid and MANERELA+.

The minister of justice suggested during a meeting which he had with Christian Aid and MANERELA+ to write a memo on the issues which he would circulate to

the members of cabinet committee on legal affairs for consideration. The memo has since been written and presented to the office of the Minister of Justice.

Following the request by different stakeholders, especially the Principal Secretary in Office of the President and Cabinet on HIV and nutrition and also by the Vice President, civil society should provide alternative language to the bill. Christian Aid thus engaged a legal consultant who made the track changes to the report. The changes were shared with UNAIDS, who invited other stakeholders, led by MANERELA+ and MANET+ for discussion. The changes are yet to be presented to the Office of the Minister of Justice, when incorporation of other people's views is finished.

An alliance of partners such as DanChurchAid, Norwegian Church Aid, ICCO, VSO under the leadership of Christian Aid and MANERELA+ are also working on building a media campaign which will target several districts, local people, students, government officials, NGOS and opinion leaders with the aim of increasing awareness among the masses on the bill and also to enable them to voice up any concerns to the bill directly to the government. Currently, partners are embarking on resource mobilisation for this work from different partners, which is planned to start at the end of July 2010.



Photo: ACT/Sean Hawkey

104 Theatre for a Change



Photo: ACT/Sean Hawkey

Paraguay

Autonomous organisation in civil society is uneven and suffers from a lack of civic culture. Politics have long been based on patronage networks, subverting civil society. In the process of democratisation after the fall of Stroessner in 1989, new political liberties were introduced, and political pressure groups were emerging. The election of Fernando Lugo triggered hope particularly in those sectors of society that have been suffering from social exclusion for years. He supports a far-reaching and ambitious reform programme including land reform, poverty reduction and sustainable growth, but lacks the majorities to implement. Restrictions to the operational space of CSOs are most severe with regard to land tenure. Large landowners, the conservative Colorado party and major parts of the media tend to criminalize and stigmatize social movements and organisations for human rights by associating them with criminal activities.

Political context

Paraguay's transition to democracy was initiated in 1989, after 35 years of dictatorship under General Alfredo Stroessner. The political opposition and civil society initially played no role in the transition process; a process which was characterized by extensive continuity among the elites in politics and the bureaucracy (public administration, military and judiciary) (Potthast 2008). In 2006, the remaining in power of the Colorado Party, the governing party since 1947, and its internal power struggles stimulated political opposition and civil society organisations, which staged a massive demonstration in Asunción. For the 2008 elections, the centre-right PLRA¹⁰⁵, eight smaller leftist parties

and 20 social organisations presented a common front, the APC¹⁰⁶, with Fernando Lugo, an emeritus bishop, as presidential candidate (BTI 2010).

Lugo supports a far-reaching and ambitious reform programme, which includes land reform, poverty reduction and sustainable growth and efforts to introduce greater transparency. Lugo started his political career in a civil society movement, and is more open to civil society participation in politics than his predecessors. He actually needs the support of civil society organisations to implement his political agenda, because he lacks a parliamentary majority, is in conflict with the Vice President, a member of the Liberal Party, and holds a minority position even within his own party.

In Paraguay, the dictatorship lasted longer than in its neighbouring countries and the responsible military leaders and politicians were never brought to trial. The process of reconciliation has been slow. The Commission of Truth and Justice started its work in 2004, however, underfunded and dependent on international assistance. Four years later a concluding report with recommendations was presented, which President Lugo promised to implement.

Paraguay's economy is based on agriculture, agribusiness and cattle ranching. The land distribution is highly unequal and the possession of large tracts of land owned by foreigners, mainly from Brazil, intensifies the conflict over land. The expansion of an agro-export model based on the intensive use of natural resources with the concentration of land for intensive soya cropping in the country's Eastern Region and livestock raising in the Chaco have led to a further increase in the number of landless families.¹⁰⁷ The exploitation of forest resources, the widespread use of pesticides and the invasion of indigenous lands have also accelerated environmental and social erosion. Rural poverty, widespread violence and the cultivation of and trafficking in drugs, are among the consequences of these developments.¹⁰⁸

105 Liberal Party (Partido Liberal Radical Auténtico)

106 Patriotic Alliance for Change (Alianza Patriótica para el Cambio)

107 See http://news.bbc.co.uk/2/hi/americas/country_profiles/1222081.stm

108 <http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW%202006/IW2006%28573pages%29.pdf>

Civil Society and NGOs

In the process of democratisation after the fall of Stroessner, new political liberties in form of democratic rights were introduced, and resulted in a notable increase in civil society activities and new political pressure groups emerging.¹⁰⁹

Civil society groups are generally allowed to form freely. However, autonomous organisation in civil society is uneven and suffers from a lack of civic culture. Politics have long been based on patronage networks, subverting civil society. The major associations continue to be based in traditional institutions, such as religious organisations and the majority is organised at community level. The professionalising of CSOs¹¹⁰ on the one hand and a crisis of traditional movements such as labour unions and students' organisations and lack of new citizen movements on the other hand have led to a rising distrust of the population in CSOs.¹¹¹

Landless peasants are well organized. Their main organisation is the MCNOC¹¹², which is part of the governing APC. The labour movement is weak and fragmented. There are legal and bureaucratic barriers to union organisation, due to a high minimum membership requirement. There is a strong human rights movement: CODEHUPY¹¹³ is made up of 37 organisations; in total there are around 50 domestic and international human rights groups in Paraguay. For the representation of indigenous people a number of conferences took place in the 1990s in the aftermath of the Stroessner regime. Loose organisational structures emerged from these gatherings. One of them is CAPI¹¹⁴, advocating in particular for the right to consultation. In addition, there is a variety of indigenous organisations at local

level. Iterative and CEJIL¹¹⁵ are two NGOs that offer legal advice to indigenous communities, assisting them to bring their claims to the international level.¹¹⁶

Restrictive policies and actions

Repression and intimidation

Under the government of Nicanor Duarte Frutos (2003-2008) the police and military reacted to landless families' demonstrations for integral land reform with repression, eviction, imprisonment and torture. Hundreds of families were mutilated, more than 2000 peasant leaders got charged, and 15 peasant leaders were murdered.¹¹⁷ Although the situation under the present government considerably improved, peasants' mobilisation for land reform is still sometimes suppressed violently by the state or by private actors. The government has positioned army units in the regions where peasant protest movements have been strongest.

According to CODEHUPY, the repression and criminalisation of social protest is reflected in a great number of cases of homicides, disappearances, detentions and imputations as well as the frequent deficient or insufficient actuation of instances such as the Public Prosecutor.¹¹⁸

Criminalisation

The expansion of an exploitative and agro export-oriented model based mainly on large-scale soy cultivation and the use of pesticides on genetically modified monocultures in Paraguay has triggered significant mobilisation from landless peasants and small farmers. Their struggle for the right of life is criminalized by large landowners, the conservative Colorado party and major parts of the media who try to blame peasant organisations for kidnappings and other criminal actions.

109 Marió, Silva-Leander and Carter 2004: 20.

110 Civil Society Organisations

111 Mesa de cooperación

112 National Coordinating Committee of Campesino Organisations (Mesa Coordinadora nacional de Organizaciones Campesinas)

113 Human Rights Coordination of Paraguay (Coordinadora de Derechos Humanos del Paraguay)

114 Coordinator for the Self-Determination Indigenous Peoples (Comisión por la Autodeterminación de los Pueblos Indígenas)

115 Center for Justice and International Law (Centro por la Justicia y el Derecho Internacional)

116 Theo Rathgeber; letzte Seite

117 See http://www.aseed.net/index.php?option=com_content&task=view&id=276&Itemid=107

118 See http://www.codehupy.org/index.php?option=com_content&view=article&id=51:comunicado-de-la-codehupy-del-29-de-enero-de-2010&catid=9:pronunciamientos&Itemid=9

The highly corrupt judiciary contributes significantly to the problem. Courts are inefficient and political interference in the judiciary is a serious problem, with politicians routinely pressuring judges and blocking investigations (Freedom House 2010).



Restrictive administrative measures

A study on the legal framework for non-profit civil society organisations by ICNL¹¹⁹ concludes that the Paraguayan constitutional framework does not offer any objection to the work of CSOs and is in line with international standards in this matter (Santagada 2009). Precisely, it does not establish any unreasonable limitation to the execution of the right to freedom of association, such as the need to create or constitute a formal entity to execute the right to freedom of association or the rights more widely associated with it.

However, within the legal framework applicable to CSOs there are still some juridical norms emanated from the authoritarian regime which governed the country until 1989. These laws award discretionary power to the executive authority, for instance in the case of terminating the existence of any type of CSO. In addition, there are no clear legal norms which establish the proceedings for CSOs to apply for the recognition of legal personality.

With regard to tributary matters, the legal framework fosters the dependency of Paraguayan NGOs on donations and contributions from foreign governments and entities of the international cooperation and does not establish major incentives to develop economic activities that facilitate the sustainability and economic

independency of Paraguayan NGOs. An important legislative vacancy is the absence of norms that establish objective criteria how to accede funds which the state annually aims at non-profit organisations of the civil society; this situation allows for the existence of contested and little transparent practices (Santagada 2009).

In June 2010, the Paraguayan Congress passed an anti-terror law, which the government had rejected earlier¹²⁰. The law is very short and comprises only three articles. It does not include a clear definition of what exactly constitutes the crime of terrorism, leaving it to an arbitrary decision by a judge. “The law is so lax that anyone could be considered a terrorist”, says Juan Martens, a lawyer from CODEHUPY, “it could allow a social protest or blocking off a street to qualify as a terrorist act”.¹²¹

Stigmatisation

The media and parts of the Paraguayan government tend to criminalize and stigmatize social movements and organisations for human rights by associating them with crimes investigated by the office of the public prosecutor. Declarations made by the Minister of the Interior in the television news for example represent a threat to the work of organisations and individuals who act in defence of human rights.

Existing spaces of dialogue under pressure

Since 2008, social organisations form part of the government and social leaders occupy positions in the government. President Lugo himself comes from a civil society movement, and is more open to civil society participation in politics than his predecessors. However, he lacks a parliamentary majority, and opponents within his governing coalition pose serious obstacles to his politics.

On the job trouble

Agrarian reform

The promised agrarian reform by President Lugo is highly contested and lacks support from his coalition partner, the Liberal Party, the biggest government party and party of Vice President Franco. In addition,

¹²⁰ See <http://www.larepublica.com.uy/mundo/413499-luz-verde-a-la-ley-antiterrorista>

¹²¹ See <http://upsidedownworld.org/main/paraguay-archives-44/845-anti-terrorism-law-criminalizes-protest-in-paraguay>

¹¹⁹ International Center for Not-For-Profit Law

the progressive sectors of the government are experiencing pressures from landowners, the industry and social movements. Conflicts intensify, because the social sectors that long suffered from the clientelistic relationships in the state now think the moment for dramatic changes has come (von Bremen 2010).

In April 2010, a state of emergency has been declared in five Northern provinces in Paraguay on the basis of an alleged guerrilla existence in the region, a situation exaggerated in terms of press coverage. The existence of the guerrilla group EPP¹²² that exceeds 15 members has never been proven; however, activities by smuggling and drug-trafficking mafias in the region do take place – the same region which has traditionally been the centre of the campesino struggle for land and agrarian reforms and where there the state is largely absent. It is argued that the presentation of a national threat by the guerrilla is an attempt to destabilize the Lugo government. Lugo's decision to impose the state of emergency can, from this point of view, be seen as an attempt to bring peace to the opposition. Although the president invited human rights organisations and campesino leaders to explain the declaration of the state for emergency, both groups expressed their resistance to the measure. The state of emergency would facilitate violations on the part of security forces and tend to criminalize social protest.¹²³

Lack of state control

In the tri-border area with Argentina and Brazil, the Paraguayan state is lacking control over the territory. There is growing evidence that the region is a centre for money laundering, counterfeiting and smuggling.¹²⁴ Under this insecurity, it is extremely difficult for CSOs to operate.

Indigenous people

Paraguay has a favourable legislative framework for the recognition of indigenous rights, having transposed ILO Convention 169 into its domestic legislation in 1993. However, they cannot assert their rights, which

are given to them by the Constitution, adequately in practice. They have been displaced from their ancestral lands¹²⁶ and their territory is threatened by growing monocultural use of land. The lack of land also contributes to a further decline of economic, social and cultural rights.¹²⁷

President Lugo undertook to improve the misery and humiliation of those who had been suffering from social exclusion for years, precluded from any possibility of development and deprived of their lands. However, in the process of dialogue with indigenous communities, he appeared to notice that he would not overcome the disputes between indigenous groups, and decided, however without informing indigenous leaders or the public opinion in general, to ignore the decisions of some indigenous leaders. Despite the warnings of civil society specialists and many indigenous organisations that they would not accept this treatment, the situation did not even provide lessons on how to do better in the future.¹²⁸

Responses

Some NGOs organise and coordinate proactive responses in order to overcome the limitations to the work of civil society. Creas¹²⁹ for example is a network that seeks to strengthen the capacity of the ecumenical movement, churches and social organisations to promote civil, political, economic, social, cultural and environmental human rights. To this end, the organisation provides advisory, coordination, communication and training activities.

Other Paraguayan human rights organisations are active in strengthening the response capacity of indigenous peoples and organisations. The NGO PCI¹³⁰ for example helps indigenous communities in the Chaco with an emphasis on strengthening indigenous organisations on several levels. CIPAE¹³¹, an ecumenical institution who does advocacy work for fundamental human rights, provides legal support to indigenous peoples and organisations of the Paraguayan Chaco and capacitates

122 Paraguayan People's Army (Ejército del Pueblo Paraguayo)

123 See http://www.codehupy.org/index.php?option=com_content&view=article&id=61:comunicado-sobre-el-estado-de-excepcion&catid=9:pronunciamientos&Itemid=9

124 See <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/south-america/paraguay>

125 See http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf

126 BTI 2010, p. 5

127 See http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf

128 See http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf

129 Centro Regional Ecuménico de Asesoría y Servicio

130 Pro Comunidades Indígenas

131 Committee of Churches for Emergency Aid (Comité de Iglesias para Ayudas de Emergencia)

indigenous leaders in legal and environmental aspects. The organisation also provides support and advice for strengthening the leadership of indigenous women in order to defend their socio-economic and cultural rights and gender issues.

Conclusion and Recommendations

In the process of democratisation after the fall of Stroessner, new political liberties in form of democratic rights were introduced, and new political pressure groups emerged. The election of Fernando Lugo in 2008 triggered hope particularly in those sectors of society that have been suffering from social exclusion for years. His governing coalition also comprises 20 social organisations and social leaders assumed some positions in government. For a far-reaching reform programme, the President lacks a parliamentary majority, and is in conflict with opponents in the on ranks. Autonomous organisation in civil society is uneven and suffers from a lack of civic culture. Politics have long been based on patronage networks, subverting civil society.

Land distribution is highly unequal in Paraguay, and a great number of peasant families are landless. Questions of land tenure sometimes provoke violent repression from the state or private actors. In four provinces a state of exception has been declared in June 2010. Protests by landless peasants and small farmers against the expansion of an exploitative and agroexport-oriented model are criminalized by large landowners, the conservative Colorado party and major parts of the media who try to blame peasant organisations for kidnappings and other criminal actions.

Indigenous peoples in Paraguay have been suffering from social exclusion for years, precluded from any possibility of development and deprived of their ancestral lands. Today, they cannot assert the rights, which are given to them by the Constitution, adequately in practice. The promises by President Lugo have not materialized yet, and internal disputes impede a joined struggle for their rights.



Photo: ACT/Sean Hawkey

Peru

NGOs in Peru have had an important role to play because of the country's history of military rule and democratic instability. Today a great number of NGOs exist in Peru, ranging from grassroots initiatives to nationwide organisations. There is also a wide range in terms of the types of work they undertake. Particularly human rights organisations, indigenous peoples' movements and environmental organisations are subject to harassment and accusations from governmental levels, companies and the army. Journalists and clergy people also face problems in pursuing their work. A law regulating the work of non-governmental organisations creates obstacles to external funding for NGOs and allows for an increased interference of the government with the activities of civil society organisations.

Political Context

After the collapse of the Fujimori regime in 2000, Peru returned to the starting point of the democratic consolidation it had begun in 1980. However, the process is marked by stagnation. "Peru's main problems include its weakened stateness, the precarious structure of political representation, lack of adequate checks and balances, and above all a weak judiciary" (BTI 2010: 2).

Economic transformation has been promoted by the current government of Alan García on the basis of an increase in exports of natural resources. With new legislation, the government facilitates big infrastructure projects or large scale landed property for monocultural production of soy and biofuels. At the same time, a free trade agreement has been negotiated with the United States. Transnational corporations enjoy favourable

conditions in Peru, as evidenced by bills benefiting extractive industries, as well as by the government's defence and promotion of disputed mining and oil projects. Despite high economic growth rates for the last years, many Peruvians feel excluded from the boom. Deepening social cleavages characterize contemporary Peru (BTI 2010: 2).

Civil society and NGOs

NGOs in Peru first appeared in great number in the early 1980s when the country emerged from twelve years of military rule. The ability of Peruvian society to organize itself is relatively high. This is partly despite and partly because of the ongoing poverty and the large informal sector in Peru.

The work of the Peruvian human rights movement is characterised by two important features: their unity during the internal armed conflict (1980-2000) and their continuous fight for democracy¹³². In 1985, human rights NGOs and church organisations formed the National Coordinator for Human Rights.¹³³ The CNDDHH is an umbrella organisation that combines forces particularly in the fight against impunity regarding human rights violations committed during the internal armed conflict. The condemnation of former president Fujimori in 2009 has been a big success for the CNDDHH. On the upcoming agenda of Peruvian human rights NGOs is the topic of social inclusion associated with an appeal to respect the economic, social and cultural rights of sectors that were discriminated in the past.¹³⁴

In the course of the last few years the human rights movement connected itself with new or strengthened actors like the indigenous peoples' movement. Their current protest concentrates on policies relating to the privatisation and exploitation of lands and natural resources. Indigenous movements perceive these policies as threatening to the right over their lands and resources and incompatible with the provisions of the ILO¹³⁵ Indigenous and Tribal Peoples Convention 169. They accuse the government of a lack of political will to address their demands.¹³⁶

Restrictive policies and actions

The current Peruvian government has taken a confrontational position towards civil society organisations and has adopted a series of measures to restrict the space of NGOs.

Administrative restrictions

In the course of the last four years the political motivation to pass a legal framework to control and constrain the working space for NGOs materialized.¹³⁷ In 2006, the existing law on the establishment of the Peruvian International Cooperation Agency¹³⁸ was reinforced. This body operating under the auspices of the Ministry of Foreign Affairs was initially created to coordinate the donor forum and the work of Peruvian NGOs in order to bring together international cooperation interventions with national policies. The current government converted the APCI to a political instrument to put pressure on NGOs critical to the government.¹³⁹ To this end, the government agency disposes of increased possibilities to interfere with NGOs internal affairs and objectives. For NGOs carrying out activities considered to "disrupt public order, or to infringe private or public property" (demonstrations, sit-ins, forums) the APCI can put sanctions on them or threat with closure. The Constitutional Tribunal partially struck down several provisions of the law in 2007 on the grounds that the government did not have the authority to demand private information (ICNL 2009). However, the right of the APCI to demand registration, prioritize and monitor NGO activities was upheld. Furthermore, judges increasingly perceive political pressure to pronounce in this regard.¹⁴⁰ IDL¹⁴¹, a human rights organisation working especially on impunity and corruption, was subject to an integrated audit by APCI for three times in two years. The frequent iteration of the inspection - APCI audits a random sample of NGOs once a year - indicates the constant harassment on the part of the APCI. These developments present a clear difference to the attitude of past governments towards NGOs (HRW 2009).

132 Interview with David Lovatón Palacios, IDL, 5.8.2010

133 Coordinadora Nacional de Derechos Humanos - CNDDHH

134 Interview with David Lovatón Palacios, IDL, 5.8.2010

135 International Labour Organisation - ILO

136 Interview with Alberto Pizango, AIDSEP, 6.8.2010

137 Interview with David Lovatón Palacios, IDL, 5.8.2010

138 Agencia Peruana de Cooperación Internacional

139 Interview with David Lovatón Palacios, IDL, 5.8.2010

140 Interview with David Lovatón Palacios, IDL, 5.8.2010

141 Legal Defence Institute (Instituto de Defensa Legal)

In 2008, a decree signed by the Ministry of Justice removed the CNDDHH, CEAS¹⁴², and CONEP¹⁴³ from the National Human Rights Council¹⁴⁴, a body promoting and monitoring the defence and guarantee of human rights. The exclusion of the CNDDHH and the Churches prevents them from participating in the national human rights debate (ICNL 2009).

Physical harassment and intimidation

Not only did the legal situation, but also the behaviour towards NGOs considerably worsen, particularly in two spheres. The first area of tension has been the fight of NGOs against impunity of human rights violations committed during the internal armed conflict. The condemnation of Mr. Fujimori has been an important advance in this matter. Nevertheless, witnesses, lawyers and human rights organisations were subjected to numerous acts of harassment and threats by former president Fujimori's supporters as well as top government officials. The situation of human rights defenders is also affected by the inefficient protection programme the State provides for witnesses, victims and defenders (FIDH 2009: 237).

The second area of tension concerns NGOs involved in protests against natural resource development projects, especially in the mining sector. Where farmers and social movements protest against the harmful consequences caused by mining companies or agribusiness on the environment and the workers, some companies take own measures to stop protest or to silence social leaders. The Observatory for the Protection of Human Rights Defenders reports that in 2006, Mr. Edmundo Becerra Palomino, a member of the farmers' organisation Rondas Campesinas and secretary of the Environment Defence Front in Yanacanchilla, was assassinated a day before he was to travel to Lima. There was a meeting planned with representatives of the Ministry of Energy and Mines, where he wanted to express his concerns about the planned exploitation of the San Cirilo hill by the Yanacocha mining company. The weapons used for the murder were reported to have been similar to those provided to a security company, hired by the Yanacocha mining company (FIDH 2006).

142 Episcopal Commission for Social Action (Comisión Episcopal de Acción Social)

143 National Evangelical Council (Concilio Nacional Evangélico)

144 Consejo Nacional de Derechos Humanos

A third area of concern is the situation of social leaders and independent journalists when fighting or reporting on drug trafficking, illegal timber trade, or trafficking in human beings. The situation is particularly bad in regions where the State lacks control over the territory, as is the case in the district VRAE.

Stigmatisation

NGOs have been accused of a range of offences: standing in the way of national development objectives, being irresponsible, unaccountable and lacking in transparency; and acting autocratically towards those with whom they work in civil society. The charges can extend even to involvement in terrorist activities. The government and its allies in the Fujimorismo, among the conservative sectors of the church, big industrialists and the army are reported to be responsible for the accusations. The media is used as a channel of communicating its declarations. Their support is ensured by the governments' strategy of buying large amounts of advertising spaces.

Social movements demonstrating for the conservation of the ecological system and social standards have been subject to a defamation campaign led by the authorities. The president himself labelled the social movements "perros del hortelano" (dogs in the manger) (BTI 2010:3).

Criminalisation

The UN Special Rapporteur on the rights of indigenous peoples noted that criminal charges seemingly continue to be laid against social leaders for alleged offences relating to their participation in social protests (Anaya 2009). Mr. Neptalí Quispe Sánchez, a lawyer specialising in defending peasant communities affected by mining operations, was condemned to 30 months of imprisonment (FIDH 2007: 164).

In 2009, the government through the public prosecutor of the Ministry of Justice requested the dissolution of AIDASEP¹⁴⁵, charging its president for "rebellion, sedition and conspiracy against the state and the constitutional order", as well as with "apology of crimes against public order". Amnesty International states that the charges against AIDASEP appear to be politically motivated, as the organisation is defending legal rights and not engaged in any illegal activities (Anaya 2009).

145 Interethnic Association for the Development of the Peruvian Forest (Asociación Interétnica de Desarrollo de la Selva Peruana)

On the job trouble

Human rights defenders

There are three main groups particularly affected by actions and policies to restrict their working space. The first group are human rights defenders, including traditional human rights organisations as well as indigenous' movements, environmental movements, activists engaged in the fight for sexual minorities, leaders of social movements.¹⁴⁶

Defenders and civil society organisations engaged in the fight against impunity of human rights violations during the internal armed conflict face continuous threats and discrediting statements. Vice-President and congressman Luis Giampettri for example accused APRODEH's¹⁴⁷ director, Francisco Soberón, of justifying terrorism and called him a "conspicuous agitator of the masses whom the state will have to hold to account" (HRW 2009: 199)

The context for human rights defenders and organisations working in favour of the protection of the environment is generally adverse. According to the CNDDHH, 44 cases of harassment against defenders of the environment were recorded in 2008. The government accused and stigmatised defenders who opposed extraction projects by mining companies affecting the environment as well as local communities of farmers and indigenous peoples by calling them terrorists and troublemakers (CNDDHH 2009).

Journalists

Offences against journalists are frequent at the local level where authorities feel free to take action against their critics. Human rights watch reports intimidation, threats and even assassination of journalists who publicize abuses by local government officials (HRW 2010). The UN Universal Periodic Review also notifies a growing number of complaints of systematic harassment and death threats against journalists. In 2007, a radio journalist was assassinated after he had declared that he was going to disclose the names of police officers who had ties with drug traffickers. Another radio journalist who had denounced acts of embezzlement involving municipal personnel received death threats (FIDH 2007: 162).

Members of the church

Catholic priests that support indigenous movements have been blamed of having ties to terrorist groups or inciting unrest among indigenous people. Brother Paul McAuley, a British catholic priest has been expelled from the country on the grounds that he expressed concerns on the preservation of the environment and protested over the environmental damage caused by oil drilling in the Amazon rainforest.¹⁴⁸ Brother Marco Arana, a member of GRUFIDES¹⁴⁹ received phone calls insulting him and threatening him with death. In December 2006 he was accused in a regional newspaper of having encouraged social protest in Celedín, where the Minera Yanacocha company has new projects (FIDH 2006: 330).

Responses

Peruvian NGOs consider legal actions as a way to hold the government and its allies accountable. They bring human rights violations to trial and have had some success in the past putting the brakes on governmental intentions to restrict their working space.¹⁵⁰

IDL aims to counteract current trends by strengthening the media. There is a radio programme whose news programme is widely listened to in the country and a journal who's mission is to report, investigate, discover, and publish cases and topics that affect people's rights, property, or destiny. The organisation also provides a platform for the union of journalists and for the network of radios. With these measures the organisation intends to break the information circle hold by the government.¹⁵¹

Fedepaz¹⁵² which works together with different churches in Peru seeks to collaborate with courts, the armed forces and the police. Through trainings the organisation aims to raise awareness for human rights among the security forces. CEAS¹⁵³ advocates for human rights within the Catholic Church. Many priests, present

146 Interview with David Lovatón Palacios, IDL, 5.8.2010

147 Asociación Pro Derechos Humanos (Association for Human Rights)

148 See <http://www.guardian.co.uk/world/2010/jul/02/peru-evicts-british-missionary-paul-mcauley>

149 Training and Intervention Group for Sustainable Development (Grupo de Formación e Intervención para el Desarrollo Sostenible)

150 Interview with David Lovatón Palacios, IDL, 5.8.2010

151 Interview with David Lovatón Palacios, IDL, 5.8.2010

152 The Ecumenical Foundation for Peace and Development (Fundación Ecueménica para el Desarrollo y la Paz)

153 The Episcopal Commission of Social Action (Comisión Episcopal de Acción Social)

in remote areas, where the state is absent, are sensitive for the needs of peasants and indigenous people and identify with their legitimate demands.¹⁵⁴

At the international level, different mechanisms under the UN system have on several occasions highlighted the worrying situation of human rights defenders in Peru and called on the Peruvian government to ensure their protection. The Special Representative of the UN Secretary General on Human Rights Defenders in 2006 and the Member States during the UN Universal Periodic Review in Peru in 2008 emphasized amongst others the need for the Peruvian government to address the worrying situation of human rights defenders. The Special Rapporteur on Indigenous People urged the State authorities “to implement measures already in place to protect the human rights and fundamental freedoms of the affected indigenous peoples”.

The Committee Against Torture, a body under the review of the United Nations, also urged the Peruvian government to adopt effective measures to protect human rights defenders from intimidation and threats.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in San José called on the Peruvian government to adopt precautionary measures and expressed concerns on the new Law on the establishment of the Peruvian International Cooperation Agency. The petition issued to withdraw the charges against AIDSEP and its leaders has been a success. In addition, Peruvian NGOs consider the possibility to activate a declaration from the EU or the government of the United States or Canada as helpful.¹⁵⁵

Conclusions and recommendations

The increasing withdrawal of international cooperation from Peru and Latin America is having severe consequences on the work of Peruvian NGOs. The rights of indigenous people, social inclusion and other topics are suffering from the debilitation. Advances in democratisation and economic development in Peru unfortunately do not ensure that human rights are respected and that there is social inclusion. Peruvian NGOs working in favour of economic, social and cultural rights do need financial resources for their professional work.

Peruvian NGOs from different sectors may cooperate to better resist intimidation and harassment. There is a need to jointly express and explain the objectives of their work to the public to avoid that there is confusion with radical or illegal groups.

In the aftermath of the violent clashes in the Amazonian town of Bagua in 2009, the Government has taken steps to set up a dialogue with the affected indigenous peoples. There is a need to deepen this consultation process and put it on a regular base. The development of a consultation process with the indigenous peoples in conformity with international standards is seen as an important reference point. Owing to the divergence of views between the Government and the indigenous peoples affected, the consultation process would benefit from the participation of international technical advisers with experience in this field.

When national spaces are closed, international spaces have to be opened up. Peruvian NGOs can largely benefit from the support of the international community. The secondment of a BftW/EED volunteer to the Peruvian NGO IDL to illustrate cases of human rights violations for the German public is seen as a good proposal in this vein. In particular European development agencies may pave the way for NGOs from the south to present their cases before the UN in Geneva.¹⁵⁶



Photo: PREDES

¹⁵⁴ Interview with David Lovatón Palacios, IDL, 5.8.2010

¹⁵⁵ Interview with David Lovatón Palacios, IDL, 5.8.2010

¹⁵⁶ Interview with David Lovatón Palacios, IDL, 5.8.2010



Photo: ACT/Paul Jeffrey

discriminatory policies and human rights violations. After independence in April 1980, the ZANU PF-led government did not repeal this law but made a few amendments. During the Gukurahundi Massacres¹⁵⁸ in Matebeleland and Midlands in 1983 to 1987, the government of Zimbabwe used colonial legislation to suppress operations of NGOs such as the Zimbabwe Project and the Catholic Commission on Justice and Peace as these organisations were seeking to draw attention to crimes committed by the state.

Zimbabwe's laws provide for three types of non-governmental organisations, namely Private Voluntary Organisations, Trusts and Universities. In 1995, the Government of Zimbabwe replaced the Welfare Organisations Act with the Private Voluntary Organisations Act, and this Act, with some amendments, continues to provide the main regulatory framework for NGOs. Trusts and Universities are regulated by a less restrictive legal regime which puts more powers on the trustees or members of the organisations¹⁵⁹. International NGOs are required to sign a Memorandum of Understanding with the Government of Zimbabwe outlining their scope of work before they can be registered.

In 2004, a draconian NGO Bill which sought to bring NGOs under even stricter government control was passed by Parliament but the President declined to sign it into law.¹⁶⁰ Despite its failure to pass the bill, NGO operations are still hampered by the selective application of a web of laws including the Public Order and Security Act and Access to Information and Protection of Privacy Act and random government policy declarations. The minister responsible for NGOs and social welfare has power to pass regulations governing NGO operations. In 2008, the minister banned NGO operations in Zimbabwe with the help of those regulations.

Zimbabwe

Civil society has been defined as an arena of uncorked collective action around shared interests, purposes and values whose institutional forms are distinct from those of the state, family and market. Civil society organisations (CSOs) are often populated by organisations such as registered charities, development non-governmental organisations (NGOs), community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy group. For the purposes of this paper, the term CSOs and NGOs will be used interchangeably.¹⁵⁷

Political context

Civil society and NGOs

Generally speaking, relations between the State and civil society in Zimbabwe have been strained since colonial times. The Ian Smith regime promulgated the Welfare Organisations Act of 1967 in a bid to control and neutralise NGOs which mainly supported the cause for majority rule and opposed the racist regime's

158 Gukurahundi is a Shona word meaning 'the rain that blows away the chaff before the spring rains'. An estimated 20,000 civilians mainly from the Ndebele minority were massacred in a military operation led by Zimbabwe's ZANU PF government under the guise of putting down an insurrection by dissidents from the rival Zimbabwe African People's Union (ZAPU). See Legal Resources Foundation and the Catholic Commission on Justice and Peace, 2008, *Gukurahundi in Zimbabwe: A Report on the Disturbances in Matebeleland and Midlands - 1980-1988*.

159 See more details in Saki, Otto (2010) *Sub-Saharan Africa Country Reports*, *International Journal of Not-for-Profit-Law* 12;2 2010.

160 Mugabe refuses to sign NGOs Bill, <http://www.icnl.org/KNOWLEDGE/news/2005/04-15.htm>

157 What is Civil Society? LSE; http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm

Restrictive policies and actions

The period from June to September 2008 saw the worst crisis in state and civil society relations when the ZANU PF government through a Ministerial Notice¹⁶¹ banned all NGOs including humanitarian organisations from operating. Government officials alleged that NGOs were using the cover of humanitarian initiatives to intervene in politics.¹⁶² For the duration of the NGO ban virtually all humanitarian NGOs including ACT Alliance members could not carry out their emergency aid programmes in vulnerable communities. War veterans and militias were allowed to block NGO operations in provinces regarded as ZANU-PF strongholds. According to Oxfam, the ban affected food distribution to two million Zimbabweans in urgent need.¹⁶³ After the formation of the Transitional Inclusive Government which brought together Zimbabwe's major political rivals¹⁶⁴ in February 2009, there was a brief period of easing of tensions and restrictions on NGO work. Many NGOs were able to work in provinces previously regarded as 'No-go areas' for them and opposition parties. NGOs could then also organise meetings and street marches without being arrested or harassed by security forces. International NGOs, including church agencies started to return to open or re-open offices in Zimbabwe. These include Swedish Diakonia, Cordaid, Tearfund and others. However, from October 2009, the rising tensions between the two major governing coalition partners also witnessed resurgence of attacks on NGOs and shrinking of democratic space.

On the job trouble

Besides using a battery of restrictive legislation, war veterans and youth militia have also been used to block NGO work, particularly those with a focus on governance, civic education and transitional justice.

In October 2009, Dadirayi Chikwengo, chairperson of the National Association of NGOs and a member of the Ecumenical Zimbabwe Network and her colleague Cleopas Zinhumwe were arrested for organising a retreat for NGO leaders. The retreat among other issues evaluated the implementation of the Inter-Party Agreement which established the Transitional Inclusive Government.

In March 2010, the director of ZimRights¹⁶⁵, Okay Machisa, was detained and materials from his organisations seized by police. ZimRights was preparing to launch a photo exhibition entitled 'Reflections' which focuses on the question of Political Violence and National Healing in Zimbabwe. A month later seventy-four members of the NGO WOZA¹⁶⁶ were arrested for protesting against incessant power-cuts and poor public service delivery.¹⁶⁷

In April 2010, four independent journalists, the Mayor of Harare and eight councillors were arrested after exposing corrupt land deals involving senior ZANU PF officials and a relative of President Mugabe.¹⁶⁸ Despite the formation of the new Zimbabwe Media Commission, journalists in Zimbabwe continue to face severe repression and hostility from security forces.

Church organisations have also not been spared victimisation. In June 2008, the Ecumenical Centre in Harare which houses the Ecumenical Support Services, Student Christian Movement of Zimbabwe and the Zimbabwe National Pastors' Conference was raided by armed police who arrested staff and Christian leaders who were working in the premises.¹⁶⁹ More recently the Anglican Church in Zimbabwe has been torn apart by partisan elements associated with ZANU PF who, with the support of the police, have been persecuting believers and preventing them from worshipping in their churches.¹⁷⁰

161 See more details in Saki, Otto (2010) Sub-Saharan Africa Country Reports, International Journal of Not-for-Profit-Law 12;2 2010.

162 Information Minister, Dr Sikhanyiso Ndlovu "We have organisations which call themselves 'Crisis in Zimbabwe'. What crisis are they talking about? They are the ones who are encouraging the crisis, and as a government we cannot accept that." http://www.newsfromafrica.org/newsfromafrica/articles/art_11404.html

163 Zimbabwe: Ban on NGOs Lifted; 29 August 2008; <http://allafrica.com/stories/200808290964.html>

164 ZANU PF, the Movement for Democratic Change-Tsvangirai, Movement for Democratic Change-Mutambara

165 Zimbabwe Human Rights Association

166 Women of Zimbabwe Arise

167 WOZA arrested for 'yellow-carding' Zesa. 17 April, 2010; <http://www.thestandard.co.zw/local/24257-woza-arrested-for-yellow-cardingzesa.html>

168 Harare Mayor Masunda and councillors arrested over land investigation; 21 April 2010; http://www.zimbabwejournalists.com/story.php?art_id=6596&cat=1

169 Zimbabwe police raid Christian groups in Harare; 13 June 2008, <http://www.ekklesia.co.uk/node/7283>

170 Archbishops condemn treatment of Anglicans in Zimbabwe; <http://www.ekklesia.co.uk/node/10923>

Organisations registered as Trusts have also been reporting threats from state actors and political parties and are operating in fear of being shut down.¹⁷¹ International NGOs in the process of negotiating Memoranda of Understanding with the government, and/or registration are mainly resorting to laying low and refrain from engaging in governance discourse so that they can get registered.

The Zimbabwean government and ZANU PF have also been accused of creating pseudo-NGOs to dilute the impact of genuine non-state actors. For instance, ZANU PF militants formed the Zimbabwe Federation of Trade Union in an attempt to counter the Zimbabwe Congress of Trade Unions, the Zimbabwe Congress of Students Unions to counter the Zimbabwe National Students' Union and the Zimbabwe Lawyers for Justice to counter the Zimbabwe Lawyers for Human Rights.

Responses

In March 2010, the ZAO¹⁷² and the WSCF¹⁷³ released a statement urging the government of Zimbabwe to stop attacks on trade union leaders and human rights defenders after a leader of a farm workers' union was hounded out of the country by security forces.¹⁷⁴

Zimbabwean NGOs besides governmental restrictions also have to confront internal struggles and a failure to disagree amicably on approaches to particular national processes to militate against a conducive and progressive environment. Recent examples of this include a split in the national student movement over loyalties to leading (former) opposition forces in the MDC¹⁷⁵ and veteran civil society leaders.¹⁷⁶

Conclusions & Recommendations

One year after the formation of the Transitional Inclusive Government the operating environment for NGOs in Zimbabwe is being strangled by state forces. Earlier optimism brought about by the signing of the Inter-Party Agreement and the presence of former NGO leaders in the new coalition government is dissipating. Human Rights Defenders are facing harassment, arbitrary arrests and intimidation which hampers their work and disturbs the earlier progress made in providing essential community services. In contrast, it has been observed that Zimbabwean communities benefitted significantly in terms of health services, water, food, legal services, education, rights knowledge and civic participation during the period from February to October 2009, when the operating environment was more conducive.

All evidence has demonstrated that NGO operations have characteristically been restricted during the political high season, and as Zimbabwe faces a constitutional referendum and a likely violent election, NGOs will continue to encounter harassment and state repression.

171 Early Warning System Report: Reporting Period October 2009-February 2010, National Association of Non-Governmental Organisations (NANGO)

172 Zimbabwe Advocacy Office

173 World Student Christian Federation

174 Zimbabwe trade union leader forced to flee, say Christian students; 5 March, 2010, <http://www.eni.ch/featured/article.php?id=3861>

175 Movement for Democratic Change

176 Tussle for Control of Zimbabwe Student Movement; 17 January 2010, http://changezimbabwe.com/index.php?option=com_content&task=view&id=2635&Itemid=2&utm_medium=newZimSituation&utm_source=newzimsituation.com

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Annex I: format for case studies

Country profiles should have around 4 pages. Main objective is to get a substantive overview about the current situation in the country regarding the political space of civil society actors in the country. The profile should give an overview about latest trends, changes in the legislation and examples of shrinking political space. Ideally the paper is written by somebody from the country. At the minimum the Country profiles need to be checked by partner organisations.

Proposed format

Current trends regarding the Political Space of civil society organisations:

de jure: current situation and recent changes

de facto o: the actual situation,

define the current status of political space following the matrix of van der Borgh / Terwindt, page 9

Examples of shrinking political case (short characteristic of recent cases)

Main groups affected by de jure / de facto trends (social movements, support NGOs, Human Rights defenders?)

Who is responsible: Role of the national governments, of intergovernmental agencies or donor countries?

What is done at the national and international level by civil society organisations to address the situation?

What is currently done by national civil society organisations?

What is done by international partners to address the situation? (This should include the activities of partners from the ACT Alliance background, but also action done by international human rights organisations)

Proposals (incl. advocacy proposals) by national and international actors how to address the situation? What is the local support for such proposals

Imprint

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