



# Shrinking political space of civil society action

**act**alliance

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June, 2011



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## P R E F A C E



**G**overnments must stop seeing civil society as a threat and allow it to operate more freely. Currently, the political space of civil society organisations is shrinking in many countries across the world by government policies and actions. Most negative attention is given to organisations or actors who work in justice, human rights or natural resources related areas.

Members of the ACT Alliance have in recent years been reporting increasing problems with the authorities, shrinking the space for their work. In response to these concerns, ACT Alliance has conducted an extensive process to analyse the phenomena in 10 countries as well as in general global terms. This report, that I am proud to present, is an outcome of that process, involving academia, consultants, two global Working Groups of ACT and ACT members and Forums in 10 countries (Brazil, Colombia, Guatemala, Honduras, India, Indonesia, Malawi, Paraguay, Peru and Zimbabwe).

The report shows that CSOs are hindered in various ways: through counter-terrorism measures, the war on terror, securitisation of aid and repressive governance in authoritarian states. Such actions comprise negative labelling, administrative restrictions, direct prosecution or physical harassment and intimidation. Although the room for manoeuvre is heavily influenced by the state capacity and regime type, this report shows that even in countries of democratic governments, such as India or Brazil, the civil society actors find it more and more difficult to fulfil their mandate.

The international community has a clear role to play in defending the political space for civil society action. The freedoms of assembly, association and expression are all fundamental human rights. The role of civil society in democracy is clearly recognised by the international community. The role of civil society organisations working in development is endorsed as “actors in their own right” by the Accra Agenda for Action in 2008. Thus, it is also a necessity for the

international community to monitor, safeguard and ensure that these principles are adhered to by individual governments. This report provides clear recommendations for CSOs, for donor governments and organisations in development, for the UN Human Rights system as well as to the follow-up process of the Accra Agenda for Action.

ACT Alliance will do its utmost to ensure these recommendations are heard. It is crucial, that we find ways to stop CSO criminalisation, discussed in this report as a political strategy that abuses the criminal justice system for political purposes or stigmatisation by discrediting a CSO by an attribute that is considered harmful by the society. It is crucial, that there is a pressure to stop arresting and pressing criminal charges on CSO members on the basis of accusations like formation of criminal gangs, obstruction of public roads, creating civil disobedience, threatening state security or protection of health or morals.

It is just as crucial, that administrative processes are not misused for political purposes by governments. Administrative processes that exist in most countries, where CSOs register their presence, provide information about their staff members, projects and donors and have their funding approved or routed through the government. Such procedures help governments coordinate and cooperate with CSOs, but can easily turn into a minefield.

Working with many other civil society organisations and networks, who have raised this trend as an issue of international importance, ACT Alliance is convinced that governments cannot be legitimate without their people, that development cannot be achieved without civil society and respect for human rights and human dignity.

In Geneva, June 2011,



John Nduna  
General Secretary  
ACT Alliance



This policy paper is the result of collaboration between two working groups of the ACT Alliance - the Rights and Development Working Group and the Development Effectiveness Working Group. The ACT working groups initiated an analysis of trends relating to the political space available to Civil Society Organisations (CSOs), in response to the widely held perception amongst ACT member organisations that government policies and action are increasingly inhibiting the ability of CSOs to operate freely. In a number of countries across all continents, political agendas are being pursued that restrict the space in which CSOs operate in a variety of ways: 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 restricting political space can range from negative

labeling and propaganda to administrative restrictions, direct prosecution and even physical harassment and intimidation. There is clear evidence for an alarming increase



in the number of countries employing restrictive actions and policies to curtail the activities of CSOs, although country situations vary greatly

In order to properly analyse the trends, ACT conducted extensive research on the problems and experiences in various countries by developing an outline for country research and compiling case studies from 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 they have all experienced changes in the context of the work of CSOs and Non-Governmental Organisations (NGOs) in recent years. These country case studies are being published in this policy paper. ACT intends to expand the research in the coming months to more countries.

trends related to the political space of civil society groups. It is based on a background paper written for ACT member ICCO by Chris van der Borgh and Carolijn Terwindt, from the University of Utrecht's Centre for Conflict Studies<sup>1</sup>. The findings of their paper 'Political Space for NGOs' have helped ACT to develop a matrix for the country studies and for comparing and interpreting the national findings. German human rights expert, Theodor Rathgeber, was the lead author in summarizing the results of the ACT research. The intention of this report is to ensure the presence of the issue of political space of civil society organisations on the agenda of ACT and in the respective debates of the United Nations and member governments. For the purpose of this study we have chosen to use the following two definitions of human rights defenders

In parallel to the country research, ACT has produced a general policy analysis of

1: Chris van de Borgh and Carolijn Terwindt have also researched four of the ten countries covered here.

and civil society organisations, cognisant of the fact that there is no universal definition of a civil society organisation:

Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. Commonly civil society embraces a diversity of spaces, actors and institutional forms. Civil society organizations are charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, coalitions and advocacy groups<sup>3</sup> The characteristics of Civil Society Organizations are that they are voluntary, diverse, non-partisan, autonomous, non-violent, working and collaborating for change<sup>4</sup>.

The country studies show that civil society organisations are diverse and complex with regard to their areas of work and scope including their international linkage. In some of the country cases presented below the difference between grass-root organisation, community-based organisation, indigenous peoples' organisation or a non-governmental organisation is less important from the point of view of harassment. For the purpose of this text, it will therefore be sufficient to tentatively distinguish between CSOs and NGOs by focusing on the aspect of formal registration with, and being addressed by, the State, which is normally linked with the term NGO (e.g. NGO law).

In the humanitarian, long-term development and advocacy work of ACT Alliance, ACT has to be sensitive to changing political environments under which its members operate nationally or locally. These environments influence both the effectiveness of its actions and the space available for operating freely, as well as present a potential threat to itself or its 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 in their own lives.

In preparing the policy analysis, ACT has considered the findings of different United Nations mechanisms on human rights that have dealt with the issue of political space for civil society; indices on governance, democracy status and implementation of human rights provided, for example, 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 (AAA) of September 2008.

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2. London School of Economics, Centre for Civil Society's working definition of civil society.

3. Open forum for Civil Society Organisations

4. For a more detailed definition, see Special Rapporteur on the situation of Human Rights Defenders, <http://www2.ohchr.org/english/issues/defenders/index.htm> and Amnesty International, <http://www.amnesty.org/en/human-rights-defenders/background>

## 1. General considerations

The 1990s were often referred to 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 numerous action plans. The summits were renowned for high levels of participation by civil society groups which continued to increase rapidly throughout the decade. Some summits were attended by several thousand national and international groups and organisations representing civil society. Another reason for the 90s being an important decade for civil society was the increasing privatisation and economic globalisation, characterised by 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 a part of this trend.

The decade, therefore, saw a rapid growth of NGOs and CSOs in most countries around the world. In development-related literature, there is a proliferation of definitions for NGOs and CSOs, normally differentiating between NGOs as service-providing organisations, particularly in development policies; and civil society organisations as 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.

The reference to civil society actors was broadly positive during the golden decade of the 1990s. Similarly today the positive connotations continue to prevail when the role of these actors is discussed, particular in development policy. It has become conventional wisdom in the debates on development aid, and more specifically in the debate on development effectiveness, that civil society groups play a decisive role or function in helping make aid work. They are self-organised groups of so-called beneficiaries, with the ability to identify, at an early stage, relevant problems and deficiencies in their communities. Therefore, they are in a position to help formulate policies that are oriented towards addressing the needs and problems of the communities in question. Local CSO actors can monitor the action of local or national governments and, in particular, are important partners in the identification of policies, their implementation and evaluation locally, nationally and internationally. Some countries, as for instance Brazil, have demonstrated 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 last two decades, two trends can be observed that clearly show the decline of the 'golden era':

- (1) Partners and members of the ACT Alliance are encountering increasing problems. Many countries have started regulating and controlling non-governmental organisations. While in some countries, it is more a regulation of activities, in others, such regulations go hand in hand with administrative hurdles, the formulation of restrictive laws and, often, the intimidation and criminalisation of civil society actors. In the last decade, strong anti-terrorist laws passed in a number of countries have substantively restricted the scope of activities of civil society actors and often the flow of resources. The number of governments using anti-terrorist arguments or laws and regulation to restrict the operational space of civil society organisations is increasing. During the first decade of the new millennium, and especially after the financial crisis of 2008, a new trend of the re-emergence of the importance of the role of the state can be seen across countries. This was accompanied by governments committing to a greater role for CSOs in deepening democracies in 2008 in Accra (the Accra Agenda for Action).
- (2) At the international level, the United Nations Human Rights Council's (HRC) instruments, such as the Universal Periodic Review by which governments are held publicly accountable, has created a negative response of authoritarian states to the criticism voiced by NGOs/CSOs towards governments. This response often includes a questioning of the overall relevance and legitimacy of CSOs. Such challenges are often in conflict with the promises made in development politics, particularly, 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:

There is, on the one hand, a questioning of the role of CSOs, and on the other, the recognition that progress in many policy fields can only be achieved if decisions are made with the participation, involvement and influence of the people concerned. In short, there is a clear dilemma between the development effectiveness agenda demanding space for, and participation of, civil society, and the practice of limiting the role of civil society actors and questioning their legitimacy. That dilemma needs to be addressed in the agendas 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 state capacity and regime type. The background researchers for our policy context, Chris van der Borgh and Carolijn Terwindt, have elaborated two figures that give a systematic insight into the linkages between civil society and regime type<sup>5</sup>. In general, the more free and strong a state is, the easier the situation is for NGOs and CSOs. In such contexts, there are normally clearly defined civil and political rights based on the rule of law and the capacity of the state to defend these rights. In other words, there is an effective legal framework as well as state protection for the organisations that constitute 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).

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

Political Regime	More Authoritarian	More Democratic
State Capacity		
Stronger States	Strong authoritarian state	Strong democratic state
Weaker States	Weak authoritarian state	Weak democratic state

<sup>5</sup> Section 2 is based on a recent study by Chris van der Borgh & Carolijn Terwindt entitled "Making Claims, Negotiating space, Shrinking Operational Space of NGOs in Partial Democracies; Utrecht 2010, ICCO & CCS. The page references 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 and Terwindt 2010: 3) The situation in partial or dysfunctional democracies is often very difficult, for example in states where democratisation has begun 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 and Terwindt 2011: 6)

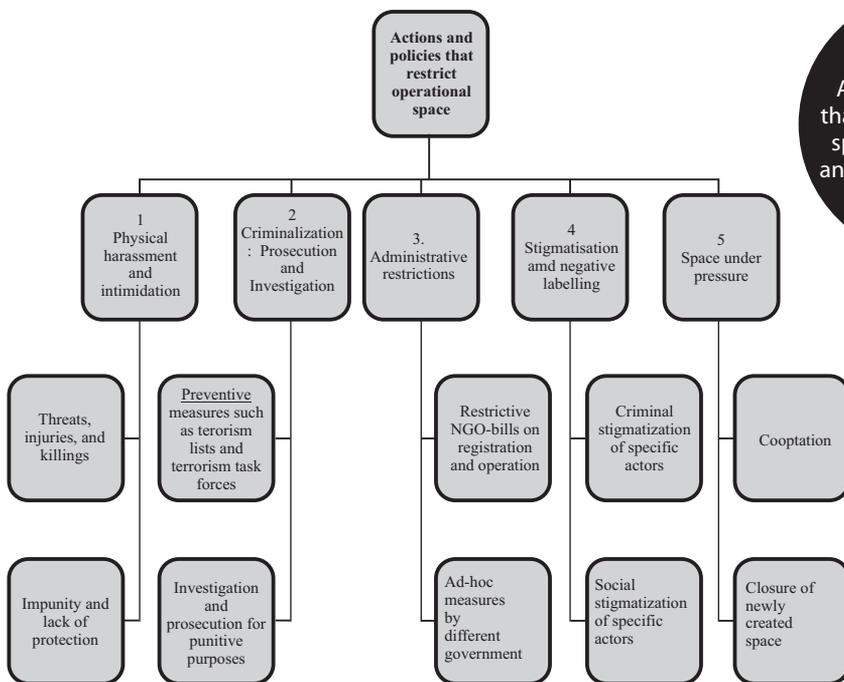


Figure 2: Actions and policies that restrict operational space (van der Borgh and Terwindt 2011: 11)

It is important to note that NGOs and CSOs do not -contribute to more open policy spaces in all cases. In many societies, the realm of civil society itself is 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, such as mafias and paramilitary groups. Civil society groups can become as polarised as societies. Societies themselves might also limit the space of NGOs. Another problem linked to the role of NGOs and CSO is the co-optation of such actors. This is, in many countries, a deeply entrenched practice that has strong links to clientalism that might reach also concrete forms of bribery (van der Borgh and Terwindt: 2010:6).

### **3. Legal instruments, key policy areas**

Before going into detail, it is important to illustrate the pertinent issues of the normative and international framework. In general, there is no international instrument which explicitly guarantees or protects the commitment and work of CSOs and NGOs as such. Since the 1990s, there has rarely 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, or on behalf of, these organisations is entitled to all basic human rights such as the right to life, freedom of expression and association, or 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 fulfill 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 their freedom of association which range from difficulties in or denial of their constitution, registration and de-registration, burdensome and lengthy registration procedure, 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 with reference to, for example, 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 some of the aspects, including a complaints 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 target 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 Assembly Resolution A/RES/53/144) – which charges the State with the 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 of whether or not a State has 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 after the analysis of the country situation. two agreements - the Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008). Both agreements bear duties for developing and donor countries stress the respect for genuine development in each (developing) country and emphasise the country's priorities. However, there are provisions, such as “inclusive partnership, which emphasise the need for the governments of developing counties to hold consultations with donors as well as with CSOs on its development policies. Any arbitrary decision-making process by a government is not supported by these agreements.

The Accra Agenda for Action explicitly 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 for 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 demonstrate a conflict between these objectives and the reality in an increasing number of countries.

#### **4. Political space and criminalisation of NGOs – an overview**

Chris van der Borgh and Carolijn Terwindt of CCS were commissioned to write a paper on political space for NGOs and to question the extent to which there might be a trend towards the criminalisation of the activities of civil society organisations. What does 'criminalisation' signify? The term is used to refer to the practice whereby Government policies and actions obstruct the free operation of CSOs and NGOs by intimidation, harassment, restrictive legislation, repression, threats, executions with impunity using counter-terrorism discourse and measures, or by criminalising their work. In such contexts, CSOs and NGOs are usually engaged in processes that protect or deepen democratic governance, extend political and civil liberties, and ensure the rule of law is working.

The authors understand 'shrinking political space' as reduced opportunities for 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 authors distinguish between three types of political contexts with certain characteristics wherein the operational space of NGOs and CSOs is circumscribed: a) authoritarian states, b) hybrid or relatively developed democracies viewing the CSO-sector as an obstacle related, in particular, to human rights and the exploitation of resources, and c) war zones, where state power is fundamentally contested. Whilst acknowledging the fact that 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 here still require a guarantee that they can operate as humanitarian or as development actors. In the

first two situations, a change is possible if the governments involved alter their attitude vis-à-vis civil society groups. 'Public actions' are defined as 'purposeful 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 countries, CSOs and NGOs have to register with the government, have their funding approved or routed through the government, and provide the government with information about staff members, projects, and donors. At the same time, procedures such as regulation, evaluation, and monitoring can be used to restrict the space and capabilities of NGOs and CSOs if a government feels challenged and perceives CSOs and NGOs as competitors.

CSOs can be made aware of a government's displeasure through a wide variety of ways: 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 the responsiveness of the government. There are gradations of State capacity, freedom and political regime, and States can be weak in certain sectors too, such as being strong in military capacity and weak in 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 van der Borg and Terwindt distinguish between two mechanisms to disqualify the engagement of civil society actors. The first is criminalisation and, within the context of shrinking space, 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 stigmatisation, whereby the stigma discredits an individual or a CSO by an attribute which the society perceives as harmful for itself, i.e. demonisation as western puppets. Van der Borgh and Terwindt place emphasis on the fact that criminalisation and stigmatisation are related to each other and often occur simultaneously. Nonetheless, it is important to distinguish between the two as each element deals with different actors and the impacts on the organisation may substantially differ. The 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.

Political space is restricted in a variety of ways exists. CSOs and NGOs working in service delivery generally experience less pressure and are usually free to operate although 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 these contexts, the practice of stigmatisation is widespread especially in Latin America, e.g. Peru, El Salvador, Brazil, Honduras, and Guatemala, or in Southeast Asian countries such as the Philippines and Indonesia.

Other aggravating factors are war zones and the context of antiterrorism. Van der Borgh and Terwindt point out that when military or United Nations actors take better security measures for themselves, they are making CSOs and NGOs a softer target. Their choice is often between adhering to more security measures and 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 this does not constitute a uniform trend of shrinking political space at the global level attributable solely 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 of criminalizing critical civil society activities. However, there is 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 decreased rather than improved.

### **New laws and regulative policies**

Many countries have developed legislation over the past years, including NGO framework laws, which are increasingly aimed at stifling NGOs. These comprise 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 the intention to control NGO activities and filter out those groups that are critical of 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, especially given the significant amount of financial resources in 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 of NGOs and CSOs can principally 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 tendency to systematically invoke national security and public safety as legitimate reasons 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 service-provision to advocacy, they realise that the political and societal space for such activities is limited. This is particularly relevant when NGOs or social movements enter areas that are closely linked to issues of justice and the rule of law. The country case studies indicate that certain areas of NGO activities are indeed the objects of major concern by governments. Critical areas of work 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, identification of 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 challenge the self-understanding of the mainstream values of society; such as gender relations, women's rights or the rights of lesbian, gay, bisexual, trans- and intersexual people. CSOs working on these issues may face polarised conflicts and a variety of manoeuvres by the States, sometimes sophisticated, sometimes awkward.

These, then, comprise the entire spectrum of issues hampering registration and leading to the 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. Frequently changing documentation requirements, criminal sanctions for unregistered activities or restrictions on access to funding, government supervision or

## **6. Conclusions and recommendations**

The paper has been written to highlight an increase in observable limitations on 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 and variety of functions that civil society organisation perform, the concrete situation in countries is far from reflecting that reality. More importantly, the efficiency and effectiveness of CSOs is not the only argument in defense of the political space of NGOs and CSOs, it is also the observed violation of essential human rights. Unfortunately the antiterrorist measures adopted by a number of countries only serve to exacerbate the limitations on the space or room for manoeuvre for CSOs. It is important to note that country situations vary to a large extent and that there is no single, uniform global trend. Nevertheless, given the increase in the number of countries employing restrictive measures, it is imperative that this issue be brought to the attention of both the human rights and the development community and highlighted in the monitoring procedures of all the countries where it is prevalent.

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

As the studies on Peru and India have 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, by basing their work on a human rights context analysis and by monitoring state performance both in the realisation and implementation of civil and political human rights (freedom 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 that efforts be made to create a network that includes affected people and communities on the ground together with ACT partners and



interference and judicial harassment are ways to restrict the functioning of CSOs. 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 for a case to be admissible.

Employing such measures is also contradictory to the Accra Agenda for Action where state signatories have committed themselves to working with NGOs to provide an enabling environment that maximizes the contributions of CSOs to development. The Accra Plan of action has recognized the role of CSOs as development actors in their own right.

### **Acts challenging the legitimacy of civil society actors**

The increasing resort to civil and criminal defamation suits against NGOs not only impacts the freedom of opinion and expression, the freedom of religion and belief, carrying out activities for free and fair elections but also constitutes discrimination, as for instance, 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, in order to contest the criminalization of the activities of civil society organisations, there needs to be as strong and legal a platform as the human rights standard can provide.

internationally operating NGOs in the human rights sector, thereby building a platform which enables NGOs from different orientations to work together.

People working for CSOs and NGOs may not have in-depth knowledge of the concept of human rights as a platform for protection with real impact on the ground. It would be worthwhile to encourage staff members to undertake training on the subject, for instance 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 enhance knowledge of how courts work, how to do human rights monitoring and documentation, or whom to contact and when.

In each of the countries presented in this paper, open-minded governments should be approached to discuss cases of NGO infringement of the law as well as violations of human rights and the freedom of CSOs to perform. Such discussions should be aimed at developing procedures 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, the abolition of legal or administrative provisions impeding the work and activities of CSOs, and finally to the enhancement of State protection 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 clearly, setting up consistent and simple criteria for registering or incorporating a civil society organisation as a legal entity. 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 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 the previous section, strong links should be forged 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 appropriate international institutions and bodies: 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, the Committee on the Covenant on Economic, Social and Cultural Rights. In parallel, efforts should be made to connect with the regional Special Rapporteur on human rights defenders, namely, 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 an ambitious programme but in view of the trends illustrated and assessed in the country studies, the stigmatisation and criminalisation of CSO activities is likely to increase based on more polarised conflicts around access to productive resources and the realisation of basic needs of the underprivileged around the world in general and ACT members in particular. The programme should start immediately.

### **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, the governments of developing countries 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', must engage in a process of dialogue and cooperation with Governments to secure a share of the finances from the Government for the 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.

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 in 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

PART II:

Case **STUDIES**

# Brazil



The election of a government originating from the popular sectors of society in 2002 gave many Brazilians the hope that inequality would be fought and social participation strengthened. However, after eight years, there is a feeling that much remains to be accomplished. There is a major conflict about land in the country and defenders of the right to land are being 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 socio-economic 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 over agriculture, livestock or biofuel at the expense of preserving the environment and factories are contributing 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 CSOs 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 operate within 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 struggle in Brazil has accomplished great things 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 Law<sup>6</sup> in 2006; in addition to many other institutional and legal changes. Currently, there is an intense



<sup>6</sup> : 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.

struggle for land and urban reform, seeking a share of the wealth that is still concentrated in the hands of a few.

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' 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, namely, federal, state and municipal. New demands on CSOs were created with these institutions because, apart from continuing to struggle for the basics, they began to monitor, supervise and control the State's actions. If, on the one hand, in the last twenty years, the advocacy activities by CSOs helped to steer 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 the popular sectors of society<sup>7</sup> 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 much remains to be accomplished. Yet, many points from the popular agenda have been 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 actions confused the organisations by overloading them. Independent from the government, there is still a movement that articulates against what remains of the neoliberal agenda. At the same time, it must be noticed that conservatism has increased throughout 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 for conservative sectors. They have been furthering the process of the criminalisation of 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 into the activities 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. The report also states that the movements failed to perform typical acts triggered by social demand, but

<sup>7</sup> The election of Brazilians former president Lula da Silva is a case in point.

performed 'criminal' acts instead. 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 of 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 proof of the government's disrespect for 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 issued with an arrest warrant and had to wait months for the habeas corpus writ before it 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 the accusations that they are responsible for the worsening situation in detention facilities have had an impact on the leaders in the struggle for human

rights. Conceição Paganele, coordinator of AMAR<sup>8</sup> 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 criminalisation.

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 on Brazil concluded that "impunity continues to be rule in Brazil"<sup>9</sup>. 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".

<sup>8</sup> Association of Mothers and Friends of Children and Teenagers at Risk  
<sup>9</sup> Document E/CN.4/2004/7/Ass.3, January 28, 2004

## Stigmatisation

Public authorities 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 movements'

struggles through systematic and orchestrated attacks on its image and reputation in order to discredit and demoralize the movement in 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<sup>10</sup>. These Parliamentary Commissions have high visibility in the press, which daily declaim against the movements, attacking their ideological base 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 popular struggles in society and public opinion. The editorial of Zero Hoar, Porto Alegre, of 7 February 2006, is a case in point denouncing the activities of La Via Capeskin. "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".

## 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 meagre resources and has little coverage since it is in place only in a limited number of federal states, and has not been institutionalized.

In the past few years, a significant space for participation was opened,

<sup>10</sup> There have been Parliamentary Commissions of Inquiry of the Land; of NGOs; and of the Landless Movement.

numerous conferences took place, numerous councils were created and others revitalized. However, structural aspects of participation and the results of these forums have not been implemented or realised. 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.

### **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 accomplishing its mission in the state of Para, presented in its report a list of 62 defenders threatened in the state of Para alone. The cases present a concrete view of 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 aim to seek social transformation goes 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 prevalent for over 500 years with the exploitation of Indians, slaves, and rural and urban workers.

### **Agrarian conflict**

In the past few 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 land owners, agribusiness entrepreneurs and several other industries. These sectors rely on the judiciary and some sectors of the executive branch of the government, for the protection of their interests. Proof was presented in the report of 2008, prepared by the Movement of People Affected by Dams (MAB) 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

have had to respond to more than 15 cases each. The records of court cases amount to 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 Conflict<sup>11</sup>, financed by 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 information from the Comissão Pastoral da Terra (CPT), 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.

## Responses

The process of Criminalisation is on the agenda of all political movements and CSOs, and has been assessed by social movements as a common challenge to be faced collectively. However, the challenge has been to make the public authorities aware that such criminalisation is a violation of 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. One such initiative is the Process of Articulation and Dialogue (PAD) and various movements and organisations have joined a working group entitled "Legitimacy of Social Movements", which was organized following the publication of the PAD Dossier. The working group seeks the creation of an alliance within Latin America and has already conducted a national workshop which resulted in the compilation of a Latin American dossier.

Brazilian movements and CSOs are linked to several international coalitions and alliances, such as La Via Campesina, the International Federation of Human Rights (FIDH) FIAN International and the Inter-American Platform for Human Rights, Democracy and Development (PIDHDD)<sup>4</sup>. It is worth highlighting the importance ascribed by EuroPAD to the cases mentioned in PAD Brazil's Dossier. It is fundamentally essential to create and to strengthen the coalitions, which could be boosted by the support of the 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 Organisation of American States (OAS) has been contacted, and the Human Rights Commission of the



<sup>11</sup> Delegacia de Conflitos Agrarias (DECA)

OAS has accepted to analyze several cases of criminalisation presented by Brazilian CSOs.<sup>12</sup> 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<sup>13</sup>

A report of the CIDH<sup>14</sup> 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 and 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, several issues 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 proof of the disrespect for human rights issues (PAD 2008). At the 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 150 and more 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 networks<sup>15</sup> PAD has been active in monitoring Brazil's commitment 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 recommendations made to the Brazilian government.

<sup>12</sup> See [www.cidh.oas.org/casos.esp.htm](http://www.cidh.oas.org/casos.esp.htm)

<sup>13</sup> See [www.corteidh.or.cr/docs/casos/articulos/seriec\\_200\\_por.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_200_por.pdf)

<sup>14</sup> Inter American Commission on Human Rights - Comisión Interamericana de Derechos Humanos

<sup>15</sup> National Movement for Human Rights, Brazilian Platform on Economic, Social, Cultural, Environmental, Human Rights Partners and Misereor

# Colombia



After eight years of 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. The 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 perception of this South American country worldwide. In fact, Colombia is not a poor and under-developed 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.

However, only the elite benefit from this wealth, 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 CSOs, nearly four million people have been displaced, more than 60 per cent of the population lives in poverty, and 27.7 per cent cannot meet their basic needs. Some 40.8 per cent of homes are food insecure, while more than 20 per cent of boys and girls under five suffer from 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 arrests of senior paramilitary leaders have taken place, the dismantling of the economic, command and control

structures of paramilitaries does not appear to have been full and effective. 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.

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 from 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<sup>16</sup> guerrillas, 3.700 ELN<sup>16a</sup> guerrillas, and 12.175 paramilitary from the AUC<sup>16b</sup>, totalling 32.775 illegal armed people.

Since the end of 2008, the armed forces have been questioned and accused of extra-judicial executions when the assassination of 12 youths from the municipality of Soacha, near Bogotá, became public. Their bodies were found in the rural area of Northern Santander, hundreds of kilometres away and declared to be those of guerrillas killed in combat. These killings revealed a common practice of the cold-blooded assassination of civilians in order to produce results in the fight against illegal armed groups and be eligible for promotions, awards and free days. Such statistics are known as "false positives". Over 2.000 members of the Armed Forces are in the process of being investigated, but only 476 had been arrested by the 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 FARC to return to their homes. In addition, 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 Internally Displaced Persons (IDPs) worldwide. Civil society organisations that claim rights and protection against all armed actors are the most affected. The "para-politics" (relations of paramilitary forces with politicians) involving congress deputies and senators, governors, mayors and high-level officials, is currently at an explosive level, threatening state institutions and weakening democracy.



## 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

16 Revolutionary Armed Forces of Colombia  
(Fuerzas Armadas Revolucionarias de Colombia)  
16a ELN (Ejército de Liberación Nacional de Colombia)  
National Liberation Army  
16b AUC (Autodefensas Unidas de Colombia)  
United Self-Defense Forces of Colombia

unionists were killed and 236 rulings passed. According to the CTC<sup>17</sup>, however, 505 trade unionists were reportedly murdered during the same period. While the number of victims has significantly decreased between 2002 and 2009, the total figure remains extremely worrying. According to the ITUC<sup>18</sup>, 49 trade unionists were killed in 2008, indicating that 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 situation of vulnerability similar to those of the indigenous peoples.

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 the 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 the 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, face death threats, direct attacks, and are permanently under pressure by 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 is unlikely to diminish or be solved with the collaboration of civil society actors, including churches.



17 Confederation of Workers of Colombia  
(Confederación de Trabajadores de Colombia)  
18 International Trade Union Confederation

## 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 concluded on 10 December, 2010 is the organized and non-violent response of important sectors of the Colombian civil society, which received support and international solidarity, including from ACT Alliance members. The objective is to place 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 focus will be to: (1) stop impunity in cases involving defenders; (2) stop the misuse of state intelligence against defenders; (3) stop systematic stigmatisation of defenders by government officials; (4) stop unfounded criminal proceedings brought against defenders; and (5)

improve the protection program for defenders at risk.

With an abstention of 55 per cent of the accredited citizens, Colombians elected their new President in June 2010. Manuel Santos accumulated about 63 per cent of the votes against his opponent. The new political scenario has given rise to fresh hope regarding the space for civil society as actors in the construction of peace and in overcoming the current humanitarian crisis.

## Conclusions and 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 transformative 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.

# 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 Grassroots Organisations (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 address conflicts about resources at local level, on the other. 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 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 Photo: ACT/Sean Hawkey 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 GROs, 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 new ascendancy of companies exploiting resources, such as 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 ethnic divisions in Guatemalan society. During the peace negotiations, for example, some Indian

organisations feared to be dominated by ladino organisations<sup>19</sup> (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 19 Mestizo or hispanicised people collected by the NGO Udefegua<sup>20</sup> show a rise of the reported violations over the past 10 years from 59 in 2000 to 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, ICCPG<sup>21</sup> experienced problems in 2006-2007 when they campaigned against the death penalty. In a period of frequent intimidations against woman's organisations the

19 Mestizo or hispanicised people

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

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

premises of Cedepca<sup>22</sup> involved in the public activities against violence against women, were ransacked twice in 2001.

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'. The common element in most cases is that the use of resources (land, raw materials, water) by large land estates or international corporations cause local tensions. A variety of actors, often 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 from mobilising and making 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 the data on these cases is 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 mines, 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<sup>23</sup>. 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, 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 OASIS<sup>24</sup>, who had been charged with involvement in the assault of a sex worker. Eventually, the charges against Lopez were dismissed<sup>25</sup>. Another case of criminalisation was the case against Raul Figueroa, an editor of human rights publications, who was charged for alleged copyright infringement and sentenced to one year in prison<sup>26</sup>.

After lodging an appeal to this decision, in February 2010 Raul

22 Evangelical Centre for Pastoral Studies in Central America -

Centro evangélico de estudios pastorales en Centro América

23 See Community Organizers in San Juan,

Sacatepéquez Accused of Terrorism for Activism Against Cement Mine, in *El Quetzal* # 5, pp.1-2.

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

25 See [www.humanrightsfirst.org](http://www.humanrightsfirst.org)

26 Figueroa's press, F & G Editores, is the leading publisher of books that spark political and social debate in Central America.'

(WOLA Press Release, available online at [http://www.wola.org/index.php?option=com\\_content&task=view&id=976&Itemid=8](http://www.wola.org/index.php?option=com_content&task=view&id=976&Itemid=8))

Figueroa was cleared of these charges<sup>27</sup>

### **Existing space under pressure**

The interaction between representatives of civil society and government agencies received a boost during the peace negotiations. After the peace agreement, the space for dialogue between government and civil society has 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.'<sup>28</sup> Many interviewees reported that criticising the government was still seen as 'risky'.

Representatives of NGOs said that 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 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 the local level is much more complex. The negative

experiences with the state in the past and in 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 of cooperating with the state.

### **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, were 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



<sup>27</sup> See blog of Raul Figueroa at <http://raulfigueroasarti.blogspot.com/>

<sup>28</sup> Authors' interview, Guatemala City, 17 March 2010.

psychological problems. The director of ICCPG said that during the periods when the organisation received threats, staff members were not prepared and reacted either by panicking or being 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 from the mine damage their houses. She resolution of the Inter-American Court for Human Rights directing 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 such as 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<sup>31</sup>.

In the past, 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 CICIG<sup>32</sup>, 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 and 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 allows a multitude of criminal actors to gain effective control over parts of the state apparatus and parts of the national territory.

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

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

At the 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 the 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 possible strategies for dealing with the legitimate demands of local people.

All Guatemalans are affected by the climate of insecurity and impunity. NGOs and GROs need to lobby for measures to reduce the violence. The formation of CICIG is an important example, and it is fair to say that the lobbying and networking of human received many threats, and went 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<sup>29</sup>. After an article in the New York Times in 2007 on the use of child labour in the region, which mentioned CEADEL, staff members reported receiving anonymous threats over the phone (in the office and at home), while telephone lines were intercepted and armoured cars were 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 for and restrictions on 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 confronted with violence and crime. Fourthly, there are examples of drug traffickers building local power bases, 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 reluctantly, such as the Guatemalan branch of the YMCA. In 2008, three of their volunteers were brutally assassinated. Although the case was never solved, 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 to work with practical advice on how to deal with restrictions such as intimidation, spying, and abduction was SEDEM. In 2002, it developed a manual for human rights defenders, journalists and those

29 This summary of CEADELs work is from the website of the International Labor Rights Forum, available online 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.

working on legal advice<sup>30</sup> SEDEM also played an important role in advising other NGOs and GROs in Guatemala and Central America. Over the past few 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 organisations that have experienced restrictions in the past have drawn up plans or guidelines on 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 for developing 'defence strategies'. A prominent example is the 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 in which 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.

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<sup>30</sup> See SEDEM, 2002, "Guía de Protección para Defensores de Derechos Humanos, Periodistas y Operadores de Justicia", available online at <http://www.sedem.org.gt:8080/sedem/publicaciones/libros/guia.pdf>

# HONDURAS



**W**hile Honduras has a history of 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 more importantly - increasing polarisation in Honduran civil society, which has affected the relations among NGOs themselves. Thus, Honduras is a case of a relatively sudden change in national political space, which has severe implications for the operational space of NGOs. Also, the case of Honduras shows that organisations confronted with these changes were not 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 had 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 business people 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 over the organisation of a non-binding referendum to ask the electorate whether to have a binding referendum in November 2009 to decide on a new national constituent assembly to approve a new constitution (Meyer, 2010: 2). The coup resulted in 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 were 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 FNRP.<sup>33</sup> A number of critical NGOs play important roles in the FRNP, providing guidance, as well as resources<sup>34</sup>.

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 is likely to be an extremely complex process in Honduras, which is still highly divided. Victor Meza, director of CEDOH<sup>35</sup> and former minister in Zelaya's cabinet mentions a number of challenges<sup>36</sup>: Human rights violations have continued in the months after the Lobo took power, with one of the most worrisome trends being the re-emergence of death squads activities targeting, in particular, the FNRP. Moreover, a silent re-militarisation of the state is going on. Furthermore, chronic insecurity, growing influence of narcotics 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 and out of these, 72,2 % are below the extreme poverty line.<sup>37</sup>

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

34 Information provided by Carlos Del Cid.

35 Centro de Documentación de Honduras.

36 Authors interview, 25 March 2010, Tegucigalpa.

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



## 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 NGOs that are funded by a number of European NGOs<sup>38</sup> and (Nordic) donors and a group of NGOs and donors taking a more technical rather than a political stance<sup>39</sup>.

Over the past decades, foreign assistance has played an important role in Honduras, both in financial and political terms. The interactions between civil society and the state have multiplied, and led to a diversity of formal and informal spaces for dialogue and cooperation between state and non-state actors, both at national and local levels. 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 in civil society over the past decade (Del Cid I-14). One of the critiques of this cooperation is that the dialogues between civil society and government form part of a strategy of tolerance vis-à-vis NGOs. According to this view, NGOs are a necessity for a state that lacks resources to provide for basic services. However, the cooperation reaches its limits when it comes to key interests such as access to land and mining activities.

The coup had a devastating effect on the NGO sector. For NGOs and GROs, it proved extremely difficult to take a position that did not adhere either to the 'golpistas' or the 'resistencia' and NGOs which protested against

the coup were often misleadingly seen as 'pro-Zelaya'. Within organisations and networks, 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 themselves with the Resistance Front were the target of intimidation, repression and other restrictive measures. The 'technical' NGOs, i.e. those less interested in structural and political change (comprising the majority of NGOs) are less hesitant to cooperate with the new government and have received more support from state institutions since the coup<sup>40</sup>.

The coup also had severe consequences for 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, emotions flare up, and the space for moderate approaches diminishes. Civil society groups themselves become part of these dynamics, and it has 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

38 Aprovech partners, Oxfam Family  
39 Communication with Carlos del Cid.  
40 Comments of ACT Alliance Honduras

groups involved in disputes on resources such as mining and land rights. In many of these cases, the source of the threats, intimidation and harassment is not entirely clear, but suggests the involvement of a combination of non-state and state actors.<sup>41</sup> There are other sectors that have been particularly vulnerable over the past years. Firstly, Ciprodeh<sup>42</sup> has reported over 170 cases of violence against the LGBT<sup>43</sup> community 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 apparently obscured these human right violations and placed the blame on organised crime.<sup>44</sup> Thirdly, the Honduran human rights movements, which were very vulnerable in the 1980s but experienced a widening of space in the past two decades, reported threats and intimidation in the period after the coup.

During the coup, the de facto regime launched a series of 'restricting repressive measures' to counter the protests against the coup, including patrolling by security forces, the periodic implementation of curfews, and the detention or persecution of political and social leaders (Meyer,

2010: 6). The Inter-American Commission on Human Rights reported that security forces conducted thousands of illegal and arbitrary detentions without orders (IACHR, 2009:9).

### **Criminalisation**

Prior to the coup, although there were no documented cases of the criminalisation of NGOs in terms of legal prosecution, there were discussions about new NGO laws that 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<sup>45</sup>, 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 delaying a request for legal personality for up to a period of seven years (ICNL, 2010). 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). Interviews with

41 See Kalyvas (2003) for a description of how local and national actors influence local conflict dynamics.

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

43 Lesbian, Gay, Bisexual and Transgender

44 Comments of ACT Alliance Honduras

45 International Centre for Not-for-Profit Law. See <http://www.icnl.org/knowledge/ngolawmonitor/honduras.htm>

NGO representatives revealed that most NGOs did not experience these kinds of problems.

In the past few 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, which placed 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; and included 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. The media generally plays an important role in stigmatisation strategies, and it is important to note that the national media in Honduras is in the control of the powerful conservative elite. Reportedly, the media played 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 the local media to broadcast their own programmes and 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 almost complete polarisation of the media after the coup<sup>46</sup> 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, labeling 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<sup>47</sup>. However, in a context where corruption flourishes and clientalism is strong, it is not surprising that it gave rise to numerous accusations that politicians were actually buying leaders of trade unions, social movements and NGOs.

In 2010, the fundamental problem for NGOs was whether, when and how to restore working relations with the new Lobo administration. The organisations that supported or endorsed the coup generally did not have any moral dilemmas of working with the new government or not. This is different for the groups that actively

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

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

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 had not been accepted. More radical NGOs reject cooperation with the government at any cost. They referred to the Honduran democracy as an 'oligarchic democracy' that was not able to foster sustainable development. They considered the space for dialogue that had been created over the past decades as ritualised, and not leading to fundamental choices in favour of the poor. Others questioned the ways in which 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 experienced 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

undermined ASONOG's activities. Their own security company followed staff of ASONOG at work. The director of ASONOG had to leave the country and was assisted by several international organisations. The organisation has begun to address institutional safety and has become more careful in its work, preferring to take 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.<sup>48</sup> CNTC, a peasant union, has been confronted with all kinds of restrictions ranging from arrest warrants for local<sup>49</sup> to stigmatisation. Local leaders have been harassed or killed and in March and April 2010, the militarisation of the region was reported.<sup>50</sup> The coup brought 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 the presence of and links with guerrilla armies, and a wave of repression and human rights violations<sup>51</sup>

### **Chronic insecurity**

Working in a context of chronic insecurity, NGOs experience problems that often lead to their withdrawal from a region. NGOs working in zones with narcotics trade can generally only operate if they keep a very low profile. They are frequently distrusted 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

48 Authors' interview Victor Meza, 25 March 2010, Tegucigalpa.  
49 See Fian, 2005, Honduras: Criminalisation of agrarian reform activists in Bajo Aguan, [www.fian.org](http://www.fian.org)  
50 See WOLA, 13 April 2010, WOLA alarmed at militarisation of Bajo Aguan, <http://www.wola.org>  
51 See Muriel Soy, 2010, <http://hondurashumanrights.wordpress.com>

products of its members<sup>52</sup> reported problems in several parts of the country where criminal groups robbed the organisation's supermarket three times in a row and attacked their transport.

In this case, Red Comal chose to suspend its activities in this region. Arte y Acción, an organisation working with youth in marginalized areas of Tegucigalpa, reported that two young members of the organisation were beaten up by police officers who 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 has experienced intimidation. The military carried out training exercises in front of the organisation's premises at night. However, the public was positive about Red Comal's activities. With the (local) government, the organisation kept a low profile, fearing that making complaints might backfire on its relation with the government. COFEMUN<sup>53</sup>, 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 relationship with the political establishment. Since its foundation, COFEMUN has 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.<sup>54</sup> The direct threats in combination with the absence of the rule of law led to an extreme feeling of vulnerability, forcing the director to leave the country for a while. It is feared that groups within the intelligence services, the police and private security agencies will not stop taking repressive measures against NGOs and GROs that renounced 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 the restricted political space, but also how to deal with an extremely polarised political situation. The polarisation sharply contrasts with the practices of dialogue and

<sup>52</sup> See Red Comals website <http://www.redcomal.org.hn/>

<sup>53</sup> See <http://www.cofemun.org/>

<sup>54</sup> Authors' interview COFEMUN, 25 March 2010, Tegucigalpa.

consensus building that had been 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 it difficult to negotiate the polarised situation in Honduras. A number of NGOs reacted cautiously, did not openly renounce 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. This enabled the local branches to keep a low 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.

The new situation in Honduras has implications for the strategies of international NGOs. 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 is also the question of priorities with regard to civil society strengthening.

## **Conclusions and recommendations**

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

Since the coup, all NGOs, GROs and social movements have been experiencing the effects of chronic insecurity, polarisation and restricted political space.

# India



In India, there are certain progressive laws and the government is committed to human rights. However, market interests are being prioritised over provisions in the constitution to safeguard the interest of the society. Economic growth puts the environment at risk and the distribution of its benefits is 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. The 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 is 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 involved in 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 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, namely, between 'secular' NGOs and Faith Based Organisations (FBOs).

The role of CSOs in India was formally inscribed 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 the relationship with CSOs through such initiatives as the Central Social Welfare Board, the National Community Development Programme and the National Extension Service.<sup>55</sup> The government also set up several institutions such as Khadi and Village Industries Cooperatives, the Central Social Welfare Board, the National Wasteland Development Board, and CAPART<sup>56</sup> to promote funding of NGOs.

CSOs, however, have not always collaborated with the state and in several instances they have been opposed to some policies of the state,

especially with regard to industry, labour, environment and trade. On close examination, 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 have been 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 the 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 the 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 PRIA<sup>57</sup> highlighted that 26.5 per cent of these 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

55 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.

56 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.

57 Participatory Research in Asia

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 fighting for economic, social and cultural rights became targets of repression. (FIDH 2007). Members of public interest groups, for instance those demonstrating against the secretive nature of the negotiations on the Free Trade Agreements (FTA) with the European Union, 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, those in Kakinada, Nandigram, Kalinganagar, POSCO, Dadri, Goa, Mangalore and Snagrur were dealt with by 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 the Special Economic Zones, (SEZs). 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 Agragamee, an organisation that was once praised for 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 the NBA<sup>58</sup> surviving the repression of the state is an archetypal example of restricting the space of CSOs in the name of industrialisation and economic growth. Members of the 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 were displaced by the construction of the dam on the Narmada River (FIDH 2006: 358).

In some other instances, the State has gone to the extent of imposing bans on international human rights organisations and human right defenders in India.

For instance, arrest warrants were issued against members of the ICN<sup>59</sup> and the CCC<sup>60</sup> by the Government of India for reporting child labour in a garment factory in Bangalore, which was investigated by a team of Indian labour law experts, to the international

58 Narmada Bachao Andolan (Campaign to save the Narmada river)

59 India Committee of Netherlands

60 Clean Clothes Campaign

forums:<sup>61</sup> The official position of the Government was that it would hamper the export interests and, hence, the growth of the country (FIDH 2007). The government later withdrew the case on the intervention of the European Parliament.

### **Administrative restrictions**

The national policy on the voluntary sector, which came into effect in 2007, though apparently progressive in the sense that it emphasised 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 pertaining to 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 seriously affecting the financial viability of NGOs. It also prohibits CSOs from 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.

Fund transfer under FCRA becomes highly complicated for the organisations that have 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 will 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 will 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 Brinjal<sup>62</sup> could well be held liable under this provision (Coomi Kappor in *The Sunday Express*, February 28, 2010).

61 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]

62 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 space under pressure

Many of the legislation and policy changes brought by Public Interest Litigations<sup>63</sup> or the role of NAC<sup>64</sup> in bringing RTI, NREGA or FRA<sup>65</sup> are praiseworthy. However, efforts are not adequate on matters of internal security and religious fundamentalism.

There are NGOs who are cooperating well with the government. This applies especially to CSOs involved in service delivery. In fact, market friendly NGOs are being 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 zone, 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 established without the contribution of civil society groups and patients' groups, who more accurately reflect the concerns of the people of India."<sup>66</sup>

## War on terror

Recent incidents of targeting human rights activists, journalists and fact-finding committees who

63 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.

64 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.

65 RTI = Right to Information Act; NREGA = National Rural Employment Guarantee Act; FRA = Forest Rights Act.

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

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.<sup>67</sup>

### **Socio cultural norms**

Socio cultural norms are also instrumental, in certain cases, in restricting 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 CBOs<sup>68</sup> working on issues such as caste based discrimination, sexual rights, sexual abuse and atrocities. Evidence shows 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 FBOs supported by minority faiths were targeted while NGOs promoted by right wing fundamentalist parties get due support and encouragement.

There were systemic attempts to fuel passion among poor tribals against such NGOs. Violence in Kandhmahal is a case in point.

### **Rights based struggles**

As CSOs engage 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 papers were in order prior to taking on any government policy issues. Human rights defenders are prime targets of the government's action. Action Aid, a major UK based development agency, it is believed, has had to change its Indian CEO due to covert pressure from Indian government because of his explicit criticism of the Gujarat program against minorities. A Gandhian who was running an NGO in Dantewada had to flee; his place was demolished because he was considered to be close to the radical left extremists. 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 in grass root mobilisation of RBA is seen differently and monitored closely.

### **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 with it a certain handicap due to the propaganda that the Church represents a foreign religion. The

<sup>67</sup>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]

<sup>68</sup> Community Based Organisations

influence of the ACT forum and its members at national level has been limited, as they are numerically weak.

A staff member from CASA<sup>69</sup> has been proving leadership to VANI<sup>70</sup>, a network of civil society in India pleading on behalf of CSOs for greater space and involvement in the policy debate. FMSF,<sup>71</sup> an EED<sup>72</sup> supported organisation with its network members is actively lobbying against the tax implications of the Direct Tax Code and is also serving as watchdog. Recently, the Finance Ministry took serious note of its submission and amended the proposed changes in the tax code.

National forums of CSOs are working towards a wider debate on shrinking space and are determined to take the battle forward. There is need to build bridges with the political parties. A strong mobilisation of the community at the grass root level has ensured that the government is not able to acquire the land of the tribals. Planned campaigns of international agencies have exposed multi-national corporations and their impact on human rights forcing investors to withdraw from such plans. e.g. Vedanta<sup>73</sup>. There is a need for a collective advocacy struggle across nations to expose 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 agencies or donor-supported programs will always be a lame duck in such policy debates. But they have enough of a role to ensure the active involvement of India in UN organisations.

## Conclusions and 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 civil society due to the changes in its political economy. It is also true that several critical issues pertaining to the sovereignty of the state arise when the entire gamut of CSOs is connected to development and the practice of democracy, primarily due to the wrongful inclusion of right wing religious organisations and militant groups within it. Therefore, the regulation and monitoring of the state undeniably assumes paramount importance. However, the restriction of CSOs in addressing such issues as livelihood, customary rights, displacement and atrocity in the name of political and cultural sensitivity, which are of primary concern for citizens, 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 the political and socio-cultural space appear to be limited to some of the self-regulatory and accountability practices. What does emerge from the analysis is that in most of the situations, CSOs are restricted not because of 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; there should also be meaningful negotiations with the state.

69 Church's Auxiliary for Social Action

70 Voluntary Action Network India

71 Financial Management Service Foundation

72 Evangelischer Entwicklungsdienst

73 "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>

# 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 encounter serious limitations when confronted with 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 the dictator Suharto, a process of decentralisation began, increasing regional autonomy.<sup>74</sup> Thus, there are plentiful state actors, and power is in the hands of strong regional elites. Through the regionalisation a shadow state emerged, where governmental





institutions become privatised and private interest become institutionalised (Schulte Nordholt 2008:119). Schulte Nordholt describes Indonesia as a thoroughly corrupt society, where everything and everyone can and is bought (2008:249).<sup>75</sup> 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 to 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).<sup>76</sup>

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 GAM<sup>77</sup> (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) and has changed both quantitatively and qualitatively. In the 90s attention was on employment conflicts and human rights (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).

The relationship between civil society and the state is one of the main issues in the debate on the meaning of civil society. Whereas the Western conceptualisation of civil society is that of an independent force opposing the state, most Indonesian analysts prefer a less confrontational concept. In Indonesia, it is preferred to use the term LSM,<sup>78</sup> 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

74 Defence, foreign policy, fiscal and monetary policy, macro-economic policy, justice, and religion remain with the central government, which retains 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).

75 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.

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

77 Free Aceh Movement

78 Nyman translates LSM as community-self-help organisations

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, the LSM label can still be very attractive. Indeed, NGO representatives were of the opinion 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 the 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 being placed on governance and the 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 and are 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

have received 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 LGBT<sup>79</sup> are most affected by threats. Imparsial reported, for example, that they once received a dead chicken in the mail and people threw stones at the office at night. In 2003, Imparsial experienced public demonstrations in front of their office.<sup>80</sup> 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 alter the way they operate. 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.

Activists in rural areas are more likely to suffer from actual violence, specifically in conflict-ridden and militarized areas such as Papua. AHRC



<sup>79</sup> Lesbian, gay, bisexual and transgender  
<sup>80</sup> Interview with author, 1 April 2010, Jakarta

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 FBR<sup>81</sup> (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 Aceh<sup>82</sup> was charged with “spreading hatred” for 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, 2008:1415). Whereas the CSI Index emphasizes that the law for associations is not being used anymore to stifle NGOs and therefore is no longer effective (2006:50), PSHK is more worried because the law has not been repealed and therefore can be invoked 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)<sup>83</sup>. It has been reported by this organisation that government officials would insinuate that it would

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

82 Legal Aid Aceh

83 Interview with author, 30 March 2010, Jakarta

abuse its access to help separatists and expose the government in international publications.

## **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 perception 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 space for dialogue under pressure**

Many NGOs are positive and hopeful about the possibilities of working 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. There are three limitations on the space for dialogue. Firstly, space for dialogue is only formally given, for instance, when consultation with civil society actors is required by multilateral donors. Secondly, the space for

dialogue is not adequately used by NGOs who do not manage to sustain their institutional capacity and attract good leaders. Thirdly, the space for dialogue is 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 make accountability accusations and GRO leaders engaged in struggles regarding natural resources.

## **On the job trouble**

**Accountability:** NGOs working on corruption and human rights violations and 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 ICW<sup>84</sup> 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 from doing their work, Munir's death and the events surrounding the criminal case are strong reminders of the extremes to which their opponents are willing and able to go.

<sup>84</sup> Indonesia Corruption Watch

## 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 have intervened frequently applying physical harassment and/or arrest. For example, KPA mentions that in 2009, the police shot dead three people in Sumatra. In addition, leaders of communities are often the subject of criminal prosecutions. Various people's organisations have disappeared as a consequence of the harassment or the jailing of leaders.<sup>85</sup> 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 understanding of 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 entry of Flower Aceh, an organisation working with women in rural communities, in 2008, even after the leader had permitted their access.<sup>86</sup>

Women experience specific challenges as NGO representatives and community leaders. A report on "Women Human Rights Defenders" identify ten specific vulnerabilities and the 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 proactive campaigns are sometimes set up, particularly in relation to legal reform, most responses are in reaction to immediate

<sup>85</sup> Interview with author, 8 April 2010, Jakarta  
<sup>86</sup> Interview with author, 6 April 2010, Banda Aceh

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<sup>87</sup> 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 demanding official protection from the government for human rights defenders<sup>88</sup> NGOs affected by stigmatisation place emphasis on a good communication strategy, a low profile for western donors, not publicizing their logo, and changing the 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 the judicial review of 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 closed sessions, there is training on security issues. The TIFA Foundation published a legal review to clarify how, for, the law on the environment can facilitate or impede human rights defenders.<sup>89</sup>

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 was able to stop the violence in one community as a result of their intervention.

Some NGOs are very vocal about the restrictions they face. There are some instances where NGOs practice forms of self-censorship to avoid trouble and to 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 the need to be careful in their choice of strategy in order not to create risk in their work.

## Conclusions and 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 been solved satisfactorily and new tensions already challenge the process of democratisation. Military influence, widespread corruption, and elite

88 Interview with author, 1 April 2010, Jakarta

89 Interview with author, 1 April 2010, Jakarta

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.

Intimidation and threats are common for NGO representatives who 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 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 into a plantation. GRO leaders in Papua have faced charges of sedition and rebellion. All NGOs are subject to 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.

# Malawi



**M**alawi has seen an expanding political space brought about by the new democratic dispensation. The space has allowed civil society and other actors to participate in 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 was 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.<sup>90</sup> Approximately 60 per cent of the national budget is supported by international donors such as the World Bank, the International Monetary Fund (IMF) and bilateral donors.

The HIV and AIDS prevalence rate in Malawi remains high with 12% of adults aged between 15-49 years being infected. According to the NAC,<sup>91</sup> the HIV prevalence rate is high at 13% for females and 10% for sexually active

men. The rates translate into about one million Malawians living with HIV, including 100,000 children under the age of 15. The epidemic has challenged the role of FBOs in terms of doctrines, activities and acceptance of PLWAs.<sup>92</sup> 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, PLWAs shall not be discriminated against in any form but provided with a positive environment

91 National AIDS Commission  
92 People Living With AIDS



that will sustain their life. The Constitution also guarantees the right to personal liberty and the freedom to live. All HIV and AIDS affected people need to be protected from re-infection.

### **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-party system were mostly engaged in service delivery. There was little space for NGOs and civil society actors to operate in the field of politics, 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 about by the new democratic dispensation. The space has been expanding slowly to allow civil society and other actors 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 NGOs are free to operate in Malawi but should adhere to the recommended procedures indicated by the law. 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<sup>93</sup>, that serves as an umbrella organisation for NGOs in Malawi and represents their interests. CONGOMA was created in 1987 under the aegis of 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

93 Council for Non-Governmental Organisations in Malawi

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 their functioning because of the structures in the communities that have been set up 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.

### **Restrictive policies and actions**

Although, there is some infringement of the political space for NGOs and Civil Society by the government, it still allows the enjoyment of most freedoms. 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 has established 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 the capacity to implement, monitor activities and maintain its staff. As a result, there is a lot of staff turnover and need for capacity building given the loss of skilled personnel and experiences. In addition, there is an inadequate management of resources, especially financial resources, 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, there 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 now have confidence in the government and are channelling funds through the government, for instance, through basket funding. As a result, NGOs have a reduced funding base and less room to implement activities.

### **On the job trouble**

In Malawi, the Law Commission has been vested with the power 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 the 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 antidiscrimination, false information and harmful cultural practices, the report provides that all information distributed on HIV be 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 against HIV and harmful cultural practices are dangerous, taking an educative and consultative approach is more likely to help people and traditional leaders in taking the responsibility to explore safe alternative cultural practices. The criminal penalties of imprisonment in addition to civil fines are excessively harsh. The section on the criminalisation of HIV transmission could lead to punishing people who are unaware of their HIV status and those who risk informing their partners. Evidencing this in court may require medical personnel to act as witnesses against their own clients, which is against medical ethics and against patient confidentiality. Another section of the report requires polygamous couples, pregnant sex workers, domestic workers and public employees such as the army and police immigration to undergo compulsory HIV testing. This is a violation of people's rights, and it indirectly discriminates against other

groups, for example, the Moslem custom of 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 an individual's privacy and can lead to stigma and abuse.

## Responses

A group of sex workers in Lilongwe, with the help of the NGO TFAC,<sup>94</sup> marched and presented a petition expressing concerns on existing discrimination, violence against sex workers, and potential implications of the report for their rights.

A number of local NGOs and international NGOs including ACT alliance members, collaborated in submitting issues to be considered in the proposed bill to the Special Law Commission. This was done through a rigorous consultation process with other stakeholders including community members. The ACT alliance members and 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 revealed a number of infringements on peoples rights noted earlier,, members of the ACT alliance members worked with other international and local NGOs to address the issue by organising the following activities: DanChurchAid conducted a stakeholders meeting to identify 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,

<sup>94</sup>Theatre for a Change

MANERELA+ and MANET+ informed the 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;

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 organised where the position paper was discussed by Christian Aid and MANERELA+.

The minister of justice agreed to circulate a memo on the concerns raised among the members of the cabinet committee on legal affairs for consideration. The memo has since been written and presented to the office of the Minister of Justice.



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

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 for the bill. Christian Aid engaged a legal consultant who made changes to the report. The changes were shared with UNAIDS, who invited other stakeholders, led by MANERELA+ and MANET+ for discussion. Once the views

of all concerned have been incorporated, the changes will be presented to the Office of the Minister of Justice.

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 enable them to voice any concerns to 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.



# Paraguay

**A**utonomous 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 Stroesser in 1989, new political liberties were introduced, and political pressure groups emerged. The election of Fernando Lugo triggered hope particularly in those sectors of society that had 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 on the operational space of CSOs are the 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 human rights organisations 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 which was characterized by extensive continuity among the elites in politics and the bureaucracy (public administration, military and judiciary) (Potthast 2008). In 2006, the continued rule 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 PLRA<sup>95</sup>, eight smaller leftist parties and 20 social organisations presented a common

95 Liberal Party (Partido Liberal Radical Auténtico)

front, the APC,<sup>96</sup> 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, 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 ownership of large tracts of land 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<sup>97</sup> 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.<sup>98</sup> Civil Society and NGOs



In the process of democratisation, after the fall of Stroessner, new political liberties in the form of democratic rights were introduced, and resulted in a notable increase in civil society activities and the emergence of new political pressure groups.<sup>99</sup>

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

96 Patriotic Alliance for Change (Alianza Patriótica para el Cambio

97 See [http://news.bbc.co.uk/2/hi/americas/country\\_profiles/1222081.stm](http://news.bbc.co.uk/2/hi/americas/country_profiles/1222081.stm)

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

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

associations continue to be based in traditional institutions, such as religious organisations and the majority of these are organised at community level. The professionalising of CSOs, on the one hand, and a crisis in traditional movements such as labour unions and students' organisations and lack of new citizen movements, on the other, have led to a rising distrust of the population in CSOs.<sup>100</sup>

Landless peasants are well organized. Their main organisation is the MCNOC,<sup>101</sup> 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: CODEHUPY<sup>102</sup> 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 CAPI,<sup>103</sup> advocating, in particular, for the right to consultation. In addition, there is a variety of indigenous organisations at local level. Iterative and CEJIL<sup>104</sup> are two NGOs that offer legal advice to indigenous communities, assisting them to bring their claims to the international level.<sup>105</sup>

## **Restrictive policies and actions Repression and intimidation**

Under the government of Nicanor Duarte Frutos (2003-2008) the police and military reacted to demonstrations by landless families for integral land reform with repression, eviction, imprisonment and torture. Hundreds of families were mutilated, more than 2000 peasant leaders were charged, and 15 peasant leaders were murdered.<sup>106</sup> Although the situation under the present government has improved considerably, 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 the 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 frequently deficient or insufficient actuation of instances such as the Public Prosecutor.<sup>107</sup>

## **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,

100 Mesa de cooperación

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

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

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

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

105 Theo Rathgeber; letzte Seite

106 See [http://www.aseed.net/index.php?option=com\\_content&task=view&id=276&Itemid=107](http://www.aseed.net/index.php?option=com_content&task=view&id=276&Itemid=107)

107 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](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 conservative Colorado party and major parts of the media who try to blame peasant organisations for kidnappings and other criminal actions.

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 ICNL<sup>108</sup> 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). 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 emanating from the authoritarian regime which governed the country until 1989. These laws award discretionary power to the executive authority, for instance, in the termination of the existence of any type of CSO. In addition, there are no clear legal norms which establish the proceedings for CSOs to apply for recognition as a legal entity.

With regard to tributary matters,

the legal framework fosters 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 independence of Paraguayan NGOs. An important legislative omission is the absence of norms that establish objective criteria for acceding to State funds for non-profit organisations of the civil society - a situation which allows the existence of contested and non-transparent practices (Santagada 2009).

In June 2010, the Paraguayan Congress passed an anti-terror law, which the government had rejected earlier.<sup>109</sup> 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".<sup>110</sup>

## Stigmatisation

The media and parts of the Paraguayan government tend to criminalize and stigmatize social movements and organisations for human rights by associating their activities with crimes investigated by the office of the public prosecutor. Declarations made by the Minister of the Interior in the television news, for

108 International Centre for Not-For-Profit Law

109 See <http://www.larepublica.com.uy/mundo/413499-luzverde-a-la-ley-antiterrorista>

110 See <http://upside-downworld.org/main/paraguayarchives-44/845-anti-terrorism-law-criminalizes-protest-inparaguay>

example, represent a threat to the work of organisations and individuals who act in defence of human rights.

Existing space for dialogue under pressure Since 2008, social organisations form a 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, 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 was declared in five Northern provinces in Paraguay on the basis of an alleged guerrilla existence in the region, a situation exaggerated by the press coverage. The existence of the guerrilla group EPP<sup>111</sup> 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 the state is largely absent. It is argued that the presentation of a national threat by the guerrillas 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 pacify 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.<sup>112</sup>

### **Lack of state control**

In the tri-border area with Argentina and Brazil, the Paraguayan state lacks control over the territory. There is growing evidence that the region is a centre for money laundering, counterfeiting and smuggling.<sup>113</sup> 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.<sup>114</sup> However, indigenous peoples cannot assert their rights, which have been

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

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

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

114 See [http://www.iwgia.org/graphics/SynkronLibrary/Documents/publications/Downloadpublications/IndigenousWorld/IW\\_%202010\\_WEB.pdf](http://www.iwgia.org/graphics/SynkronLibrary/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf)

given to them by the Constitution, adequately in practice. They have been displaced from their ancestral lands<sup>115</sup> and their territory is threatened by growing monocultural use of land. The lack of land also contributes to a further decline in economic, social and cultural rights.<sup>116</sup> 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 realise that he could not overcome the disputes between indigenous groups, and decided, without informing indigenous leaders or the public 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.<sup>117</sup>

## Responses

Some NGOs organise and coordinate proactive responses in order to overcome the limitations on the work of civil society. Creas,<sup>118</sup> 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 PCI,<sup>119</sup> for example, helps indigenous communities in the Chaco with an emphasis on strengthening indigenous organisations on several levels. CIPAE<sup>120</sup>, an ecumenical institution which does advocacy work for fundamental human rights, provides legal support to indigenous peoples and organisations of the Paraguayan Chaco and capacitates 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 had been suffering from social exclusion for years. His governing coalition also comprises 20 social organisations and social leaders have assumed some positions in government. For a far-reaching reform programme, the President lacks a parliamentary majority, and is in

115 BTI 2010, p. 5

116 See [http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW\\_%202010\\_WEB.pdf](http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf)

117 See [http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW\\_%202010\\_WEB.pdf](http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf)

118 Centro Regional Ecuménico de Asesoría y Servicio

119 Pro Comunidades Indígenas

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

conflict with opponents. 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. A state of exception was declared in four provinces in June 2010. Protests by landless peasants and small farmers against the expansion of an exploitative and agro-export 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, given to them by the Constitution, adequately in practice. The promises by President Lugo have not materialized yet, and internal disputes impede a joint struggle for their rights.

# Peru



**N**GOs 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. However, human rights organisations, indigenous peoples' movements and environmental organisations are subject to harassment and accusations from the government, companies and the army. Journalists and clergy 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 increased interference of the government in the activities of civil society organisations.

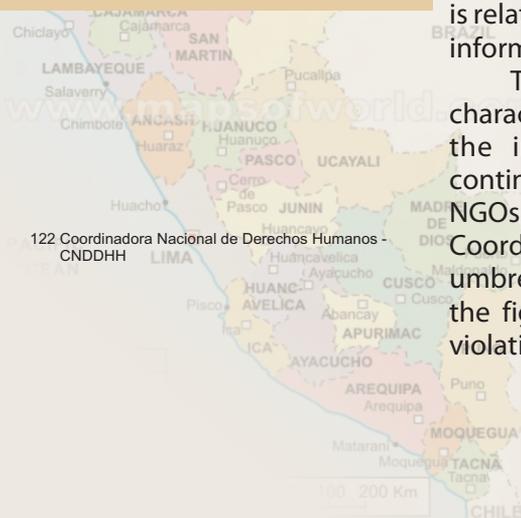
## Political context

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 was 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 the 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 few years, many Peruvians feel excluded from the boom. Deepening social schisms 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 despite 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 democracy. In 1985, human rights NGOs and church organisations formed the National Coordinator for Human Rights.<sup>122</sup> The CNDDHH is an umbrella organisation that combines forces particularly in the fight against impunity with regard to human rights violations committed during the internal armed conflict.



122 Coordinadora Nacional de Derechos Humanos - CNDDHH

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 against in the past.

In the course of the last few years, the human rights movement connected itself with new or strengthened actors such as 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 ILO<sup>124</sup> Indigenous and Tribal Peoples Convention 169. They accuse the government of a lack of political will to address their demands.<sup>125</sup> 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. In 2006, the existing law on the establishment of the Peruvian International Cooperation Agency<sup>127</sup> (APCI) 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 into a political instrument to put pressure on NGOs critical of the government. To this end, the government agency has increased possibilities of interfering in the internal affairs and objectives of NGOs. The APCI can sanction or threaten NGOs with closure for carrying out activities which, in its opinion, "disrupt public order, or to infringe private or public property" (demonstrations, sit-ins, forums). 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 are increasingly under political pressure to rule in favour of the government. IDL,<sup>130</sup> a human rights organisation working on impunity and corruption, was subjected to an integrated audit by APCI three times in two years. The frequent iteration of the inspection – APCI audits a random sample of NGOs once a year – is indicative of constant harassment on the part of the APCI. These developments present a clear difference to the attitude of past governments towards NGOs (HRW 2009). In 2008, a decree signed by the Ministry of Justice removed the CNDDHH, CEAS,<sup>131</sup> and CONEP<sup>132</sup> from the National Human Rights Council,<sup>133</sup> a body promoting and monitoring the defence and guarantee of human

124 International Labour Organisation - ILO

125 Interview with Alberto Pizango, AIDSESP, 6.8.2010

127 Agencia Peruana de Cooperación Internacional

130 Legal Defence Institute (Instituto de Defensa Legal)

131 Episcopal Commission for Social Action

(Comisión Episcopal de Acción Social)

132 National Evangelical Council (Concilio Nacional Evangélico)

133 Consejo Nacional de Derechos Humanos

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 the legal situation, but also the behaviour towards NGOs, has worsened considerably, particularly in two spheres. The first area of tension has been the fight of NGOs against impunity from 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 harm caused by mining companies or agribusiness on the environment and the workers, some companies take their own measures to stop protest or 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).

A third area of concern is the situation of social leaders and independent journalists when fighting against 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 even extend 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 for communicating its declarations. Their support is ensured by the governments' strategy of buying large amounts of advertising space.

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 AIDSESP,<sup>134</sup> charging its president with “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 AIDSESP appear to be politically motivated, as the organisation is defending legal rights and not engaged in any illegal activities (Anaya 2009).

## **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.

Defenders and civil society organisations engaged in the fight against impunity from human rights violations during the internal armed conflict face continuous threats and discrediting statements. Vice-President and congressman Luis Giampetri, for example, accused APRODEH's<sup>136</sup> 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 for 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 recorded a growing number of complaints of systematic harassment and death

134 Inter-ethnic Association for the Development of the Peruvian Forest (Asociación Interétnica de Desarrollo de la Selva Peruana)

threats against journalists. In 2007, a radio journalist was assassinated after he 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 was expelled from the country on the grounds that he expressed concerns over the preservation of the environment and protested against the environmental damage caused by drilling for oil in the Amazon rainforest<sup>137</sup>. Brother Marco Arana, a member of GRUFIDES<sup>138</sup> 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 action 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 in putting the brakes on governmental intentions to restrict their working space.

IDL aims to counteract current trends by strengthening the media. It sponsors a radio programme airing a news programme which is widely listened to in the country and a journalist whose 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.

Fedepaz<sup>141</sup> 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 of human rights among the security forces. CEAS advocates for human rights within the Catholic Church. Many priests, present in remote areas, where the state is absent, are sensitive to the needs of peasants and indigenous people and identify with their legitimate demands.

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 plight of human rights defenders. The Special Rapporteur on Indigenous People

136 Asociación Pro Derechos Humanos (Association for Human Rights)

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

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

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

urged the State authorities to implement those measures that are already in place in order to protect the human rights and fundamental freedoms of indigenous peoples that are affected.

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 AIDSESEP and its leaders has been a success. In addition, Peruvian NGOs consider the possibility of activating a declaration from the EU or the government of the United States or Canada as helpful.<sup>1</sup>

## **Conclusions and recommendations**

The increasing withdrawal of international cooperation from Peru and Latin America has severe consequences for the work of Peruvian NGOs. The rights of indigenous people, social inclusion and other topics are being neglected. 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 require financial resources for their professional work.

Peruvian NGOs from different sectors need to 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 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 hold 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.

# Zimbabwe

Civil society has been defined as an arena of un-coerced 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.<sup>145</sup>

## 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 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 Massacres<sup>146</sup> 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.



<sup>145</sup> What is Civil Society? LSE; [http://www.lse.ac.uk/collections/CCS/what\\_is\\_civil\\_society.htm](http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm)

<sup>146</sup> 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*.

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 organisations<sup>147</sup>. NGOs are required to sign a Memorandum of Understanding with the Government of Zimbabwe or relevant local authorities if they do not have a fully national mandate, 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<sup>148</sup>. Despite the failure to pass the bill, operations of NGOs and many other institutions 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 suspended NGO operations in Zimbabwe with the help of those regulations.

## 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 Notice<sup>149</sup> banned all NGOs including humanitarian organisations from operating. Government officials alleged that NGOs were using the cover of humanitarian initiatives to intervene in politics<sup>150</sup>. 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.<sup>151</sup> After the formation of the Transitional Inclusive Government which brought together Zimbabwe's major political rivals<sup>152</sup> 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

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

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

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

150 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](http://www.newsfromafrica.org/newsfromafrica/articles/art_11404.html)

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

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

tensions between the two major governing coalition partners also witnessed resurgence of attacks on NGOs and the 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 evaluated, among other issues, the implementation of the Inter-Party Agreement which established the Transitional Inclusive Government.

In March 2010, the director of *ZimRights*<sup>153</sup> 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 *WOZA*<sup>154</sup> were arrested for protesting against incessant power-cuts and poor public service delivery.<sup>155</sup>

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.<sup>156</sup> 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<sup>157</sup>. More recently, the Anglican Church in Zimbabwe was 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.<sup>158</sup>

Organisations registered as Trusts have also been reporting threats from state actors and political parties and are operating in fear of being shut down.<sup>159</sup> International NGOs in the process of negotiating Memoranda of Understanding with the government, and/or registration are mainly resorting to laying low and refraining 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

153 Zimbabwe Human Rights Association

154 Women of Zimbabwe Arise

155 *WOZA* arrested for 'yellow-carding' Zesa. 17 April, 2010;

<http://www.thestandard.co.zw/local/24257-woza-arrestedfor-yellow-cardingzesa.html>

156 Harare Mayor Masunda and councillors arrested over land investigation; 21 April 2010;

[http://www.zimbabwejournalists.com/story.php?art\\_id=6596&cat=1](http://www.zimbabwejournalists.com/story.php?art_id=6596&cat=1)

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

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

159 Early Warning System Report: Reporting Period October 2009-February 2010,

National Association of Non-Governmental Organisations (NANGO)

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 ZAO<sup>160</sup> and the WSCF<sup>161</sup> 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.<sup>162</sup>

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 MDC<sup>163</sup> and veteran civil society leaders.<sup>164</sup>

## Conclusions and 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 disrupts 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.

160 Zimbabwe Advocacy Office

161 World Student Christian Federation

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

163 Movement or Democratic Change

164 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](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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