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# LETTER TO THE READERS

JUANA KWEITEL

*Executive Director, Conectas Human Rights*

JAMES SAVAGE

*Program Officer, The Fund for Global Human Rights*

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*Editor, Sur Journal*

## RECLAIMING CIVIC SPACE

Since beginning to prepare the 26<sup>th</sup> edition of the Sur International Journal on Human Rights, which Conectas is grateful to have collaborated on with the Fund for Global Human Rights (The Fund), we have witnessed continued crackdowns on civil society around the world.

As shown by both the geographic reach of the contributions (authors from 16 countries) and the **infographics** to this edition, the issue is clearly of global concern. The first section of the journal seeks to address why this crackdown is happening, who is driving it and whether there is cross-fertilisation of ideas between actors.

The edition then focuses on the strategies that activists are implementing to combat the crackdown. A summary of these strategies can be seen in **a video** which captures a number of the author activists' perspectives, shared when they gathered in São Paulo in October 2017 for a writers' retreat.

In deciding to produce this special edition of Sur, Conectas and The Fund aimed to address the imbalance in material currently available, the majority of which focuses on the diagnostics, rather than the responses to the crackdowns that we are witnessing. The contributions to this edition provide a wealth of strategies that the activist authors are implementing in

their local contexts, which might be adapted and replicated in other countries or regions. The authors offer a self-critical examination, helping readers to understand what strategies are successful but also where the challenges lie in each.

This edition also includes contributions that address the financial resilience, sustainability and well-being of human rights organisations in the context of the restrictions on cross-border philanthropy and the insecurity and fear created by the current wave of repression being seen across the globe.

Despite the difficult scenarios in which many of the authors featured in this edition operate, the overwhelming message is not of a hopeless battle against ever powerful forces. Instead, the activists in this edition describe a vibrant civil society that is adapting to the current challenges with creativity, resilience and hope. Furthermore, the contributions stress the importance and effectiveness of coordination and alliances between civil society movements, moving beyond the narrow silos we often occupy. When this creativity, resilience and hope come together with a renewed sense of community and common purpose, cutting across traditional lines, we begin to see a force that can resist the crackdown and reclaim civic space.

## **1 • ROOT CAUSES OF THE CRACKDOWN ON CIVIL SOCIETY**

In helping to understand why we are witnessing this crackdown, **Ana Cernov, Victoria Ohaeri, Olga Guzman and Zoya Rehman** refer to the negative perception of rights activists in many contexts and the questions surrounding the legitimacy and accountability of NGOs – often fostered by repressive authorities to facilitate their attempts to restrict civil society and which blunts civil society's ability to fight back as it then lacks wider public support. **Maina Kiai, Danny Sriskandarajah and Mandeep Tiwana and Denise Dora, Ravindran**

**Daniel** and **Barbara Klugman** highlight the role of the private sector and its convergence of interests – even outright collusion – with repressive governments as being another important driver in the crackdown. With the majority of companies focussed on maximising profits, these authors question whether the sector can truly be seen as an ally in promoting and protecting human rights.

Multiple contributions point to the Global North whose role in causing the crackdown has not been examined sufficiently. **Ana Cernov**, **Maina Kiai**, **Danny Sriskandarajah** and **Mandeep Tiwana** all conclude that the increasingly populist and nationalistic tendencies that the Global North is witnessing is emboldening repressive governments to more brazenly justify restrictions from the viewpoint of “if they can get away with that, then so can we” (**Maina Kiai**). In addition, these tendencies also result in less money flowing to the Global South to support critical work that protects and enables civil society – either because aid budgets are dwindling or because populations are becoming more selective in their personal donations (**Ana Cernov**). The North’s role must not be forgotten in relation to the Financial Action Task Force (discussed by **Ana Cernov**, **Victoria Ohaeri** and **Miguel de la Vega**) – being founded after all by a group of northern countries, the G7, in 1989 – whose legitimate aim to counter terrorist financing and prevent money-laundering has unwittingly strengthened the hand of repressive states.

Crucially, underpinning all this is the fact that the global crackdown is a “gendered phenomenon” (**Bondita Acharya**, **Helen Kezie-Nwoha**, **Sondos Shabayek**, **Shalini Eddens** and **Susan Jessop**). Not only do women and the LGBTI community experience repression because of the gendered nature of their work, but in countries where civil society is particularly under attack, traditional gender roles and patriarchal values are used as a further means of repression, compounded by other forms of discrimination based on sexual orientation, class and race.



## 2 • STRATEGIES THE ACTIVIST AUTHORS USE TO RESPOND TO THE CRACKDOWN

### Coalition and alliance building

The importance of coalition and alliance building was referenced most often by the authors as a key strategy in resisting restrictions against civil society (Ana Cernov, Stefánia Kapronczay, Adrian Jjuuko and Linette du Toit, Danny Sriskandarajah and Mandeep Tiwana, Miguel de la Vega, Olga Guzman, Raull Santiago, Zoya Rehman, Jonas Bagas, Valerie Msoka and Denise Dora, Ravindran Daniel and Barbara Klugman). Authors describe how coalition and alliance building helps breakdown the traditional silos in which human rights organisations often operate. Working in coalitions and alliances provides a stronger collective voice and action that can contribute to knowledge sharing and capacity building around strategies and tactics for compliance and pushback. In addition, this strategy reduces the likelihood, or impact, of one organisation being targeted by authorities. That said, the process is not without its challenges. Deciding on what the common goals are and ensuring all organisations have an equal voice – regardless of size and resources – can be difficult at the best of times, and is even more so in a context of sustained repression where the stakes are higher. And at times the views of members can differ resulting in fractions or even collapse of the alliance.

### Protests

Protest also remains an important strategy, with Maina Kiai describing it as what is “most effective” to highlight the excessive use of state power against civil society. Sara Alsherif describes how No Military Trials for Civilians has used protest as a strategy to campaign against military trials for civilians in Egypt. She examines the dangers that protest can bring to

life and limb – particularly pronounced in countries that have repressive governments - and the importance of evaluating the strategy against these threats. Consequently, the group has adapted how and when they use protest as a result of the authorities' increasing brutality towards protestors.

### Research and advocacy

**Victoria Ohaeri** and **Miguel de la Vega** describe how their respective organisations consider monitoring, understanding and recording restrictive measures as the first step in effective resistance to the closing of civic spaces. It is critical to be aware of every law that is being discussed by parliament, given that attempts to restrict civil society can be hidden in the most innocuous sounding bills. In addition, by building this expertise, the organisations become a reference on the subject thus strengthening their advocacy on the matter both nationally and internationally within the media and parliamentary hearings on draft legislation. **Denise Dora**, **Ravindran Daniel** and **Barbara Klugman** also highlight knowledge production as an important tool – particularly from a Global South perspective – as this helps inform the global understanding of the forces at work locally and guide the responses of international NGOs and donors.

### Engagement with the legislative and judicial system

Despite the significant challenges and restrictions that many authorities are placing on civil society, **Miguel de la Vega**, **Sara Alsherif** and **Jonas Bagas** report that it is never the less important, in certain contexts, to maintain dialogue with government and find more understanding points of view or even allies within what otherwise may appear to be a very closed political system. Such individuals can prove a useful foot in the door in order to begin dialogue, deliver proposals or even find alternative means of funding.

Where political allies are not possible, the justice system remains an important tool, with many successes, as noted by **Victoria Ohaeri, Adrian Jjuuko and Linette du Toit**. As well as bringing cases to national courts, the importance of operating at a regional level was also emphasised by **Denise Dora, Ravindran Daniel and Barbara Klugman and Adrian Jjuuko and Linette du Toit**. Such action helps dispel the narrative that the values of civil society are derived from the Global North – a strategy often employed by repressive governments to discredit the work of NGOs.

## New media and online spaces

The role of new media and online spaces in combatting the crackdown is prevalent in the contributions. The ease and speed with which information can be passed on platforms such as Facebook, Twitter, WhatsApp and Telegram was cited as being important in mobilising support rapidly as well as helping reach previously untapped constituents (**Sara Alsherif, Zoya Rehman, Raul Santiago, Victoria Ohaeri, Valerie Msoka and Denise Dora, Ravindran Daniel and Barbara Klugman**). Despite the opportunities, **Bondita Acharya, Helen Kezie-Nwoha, Sondos Shabayek, Shalini Eddens and Susan Jessop, Sara Alsherif and Zoya Rehman** all note the challenges that digital tools present. Harassment of activists online is becoming increasingly common, particularly towards women. In addition, authorities are constantly developing new ways of monitoring these platforms. To combat this, **Sara Alsherif** describes how developing relationships with tech companies can help activists stay one step ahead of the curve.

The use of video is explored by **Hagai El-Ad and Raul Santiago**, both of whom describe how the medium is an important tool in capturing the restrictions being inflicted on civil society in their respective contexts. Moreover, **Raul Santiago** describes how his collective is trying to use these video images, captured by members of his community, in legal processes against the police force.

## Resilience and self-care

**Carlos Patiño** discusses the importance of developing and maintaining resilience amongst activists. Self-care is just one method that he discusses and which is explored in more detail by **Adrian Jjuuko** and **Linette du Toit** and **Ana Hernández** and **Nallely Tello**. Both articles emphasise that the self-care of activists must play a central role in sustaining the movement – and both individuals and organisations share a responsibility in guaranteeing this well-being. The role of donors in ensuring that funds are available for this kind of self-care is also discussed by **Bondita Acharya**, **Helen Kezie-Nwoha**, **Sondos Shabayek**, **Shalini Eddens** and **Susan Jessop**.

### 3 • SUSTAINING THE MOVEMENT AND ITS ACTIVISTS IN THIS CONTEXT

**Danny Sriskandarajah** and **Mandeep Tiwana**, **Maina Kiai** and **Bondita Acharya**, **Helen Kezie-Nwoha**, **Sondos Shabayek**, **Shalini Eddens** and **Susan Jessop** all emphasise that donors must focus more on funding grassroots organisations and provide more flexible means of funding to enable quick response actions from organisations who are otherwise constrained by project funding. Burdensome reporting requirements and funding calls, which create competition amongst organisations, are also highlighted as areas that funders need to improve their policies on to allow activists to act with agility and focus not only on their mission but the defence of their space to operate at all.

**Jonas Bagas** offers a critical perspective on the way in which funders withdraw from certain countries and regions, the effects of which are exacerbated in the context of shrinking civic space. He suggests how the process can best be managed by both the funder and civil society to better guarantee the sustainability of

the organisations involved. Inevitably this requires adaptability on the part of civil society. The question of adaptability in the context of restrictions on civil society is also addressed by **Shannon Green**. She presents alternative organisational and financing models that might help activists circumvent crackdowns aimed at NGOs. **G. Ananthapadmanabhan** and **Shambhavi Madhan** note that activists must also adapt their language and the way in which they communicate with funders in order to narrow the gap between human rights and development funding.

...

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The communication teams from Conectas and The Fund for Global Human Rights deserve great credit for their dedication to this issue.



# ESSAYS: RECLAIMING CIVIC SPACE



## **STANDING FIRM**

Bondita Acharya, Helen Kezie-Nwoha, Sondos Shabayek,  
Shalini Eddens & Susan Jessop

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Sara Alsherif

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Jonas Bagas

## **CIVIL SOCIETY IS NOT THE ENEMY**

Ana Cernov

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Ana María Hernández Cárdenas

& Nallely Guadalupe Tello Méndez

## **SUBTLE RESTRICTIONS ON THE FREEDOM OF ASSOCIATION**

Miguel de la Vega





# STANDING FIRM<sup>1</sup>

**Bondita Acharya, Helen Kezie-Nwoha,  
Sondos Shabayek, Shalini Eddens  
& Susan Jessop**

• *Sustaining women – and trans –*  
*led organisations in the context of closing space* •

## ABSTRACT

*In 2016, Mama Cash and Urgent Action Fund, two feminist funders, commissioned research to increase understanding of how closing space for civil society affects feminist organisations. Fifteen women's and trans rights organisations in China, Egypt, India, Russian Federation, Turkey and Uganda were interviewed and later met to review and validate the findings. The research clearly shows that closing space is a gendered phenomenon, with all activists reporting that their work and political voice are restricted or repressed because of their gender and/or the gender-focused nature of their work. The exclusion and repression that women and trans people experience has also built their political analysis and skills – assets that equip them to creatively resist closing space. The activists collaborated to create a series of recommendations for funders about how to support and sustain their work in challenging political contexts.*

## KEYWORDS

Feminism | Women's rights activism | Women's human rights | Trans human rights | Women human rights defenders | Gender-based violence | Closing space for civil society | Intersectionality

## 1 • Introduction

As feminist activists and funders, we know that collective action by women, girls and trans people can change – *is changing* – the world, even as we write. Yet, at the same time, the global political and social landscape is increasingly repressive, xenophobic, patriarchal and extremist. In contexts of closing space for civil society, it is urgent to sustain progressive and feminist movements led by people and communities that are most marginalised and affected in repressive contexts.

Feminist-led organisations very often experience challenges regarding their “acceptability” due to the nature of the issues they address; this becomes even more challenging as the space for activism shrinks. In the discourse on closing space,<sup>2</sup> we have observed that analyses and discussions do not consistently incorporate a gendered perspective.<sup>3</sup> This article, authored by a group of feminist activists engaged in social change advocacy and funders who support their work, is prompted by a desire to begin to address this gap.

The phenomenon of closing space has accelerated in recent years in societies around the world, but repressive and violent reactions to feminist change agendas are not new. Indeed, it is by speaking out and challenging the *status quo* that women, girls and trans people attract the repression of conservative forces. It is also by speaking out that we have developed the tactics and strategies to resist. This is particularly true for activists working on contested issues and advocating for fundamental rights that are criminalised – for example, advocating for sex workers’ rights where sex work is illegal. As activists, we have critical expertise and recommendations to share with other activists and funders; as funders, we have learning to share about supporting this work.

## 2 • Methodology

In 2016, Mama Cash and Urgent Action Fund commissioned research with activists to explore the gendered nature of closing space. The objective of the research is for it to become a tool for activists as they navigate restricted landscapes and also for it to contribute to philanthropic conversations on this issue. In-depth interviews were conducted with fifteen feminist activist groups led by women and trans people working in six countries where closing space is an unrelenting reality: China, Egypt, India, Russian Federation, Turkey and Uganda. All of the groups are grantee-partners of Mama Cash, Urgent Action Fund or Urgent Action Fund-Africa. Following individual interviews, the activists convened in February 2017 to review and validate the findings and develop shared analysis and recommendations. The research resulted in the report *Standing Firm: Women – and Trans – Led Organisations Respond to Closing Space for Civil Society*. This article presents a summary of the report’s key findings and recommendations for sustaining human rights, and particularly feminist, movements in the face of threats to civil society freedoms.

### 3 • Three key findings on the gendered dimensions of closing space

The phenomenon of closing space increasingly restricts civil society's ability to act and dissent freely in countries around the world. Closing space is characterised by state-sponsored restrictions on the fundamental rights to freedom of expression, association and peaceful assembly. It further includes actions that curtail democracy and human rights activism, such as restricted access to foreign funding for human rights and advocacy organisations (India's restrictive Foreign Contributions Regulation Act, 2010, is but one of many examples of a law used to criminalise dissent). Countries throughout the world have introduced measures intended to restrict activism, such as requiring annual renewal of organisational registration. As feminist activists, we experience these restrictions impeding the work of movement building. Moreover, a repressive, hostile climate changes the inherently interactive narrative of activism by isolating activists and organisations from each other. In Egypt, for example, in the context of a relentless crackdown on homosexuality, government police track down and arrest people associated with LGBT projects and organisations. This drives activism underground, making organising in public virtually impossible.

To date, there has been much discussion of the trend of closing space, but efforts to understand the drivers, enablers, and impact of this global trend have not consistently applied a gendered analysis. Our research identified three important findings regarding the gendered nature of closing space.

**First, closing space for civil society is a gendered phenomenon.** As activists, we have experienced restrictions and repression related to our gender and/or because of the gendered-focus of our work. Significantly, the ways in which we are targeted are also gendered. The cumulative impact of formal and informal state interventions to control civil society, as well as lack of state action to defend activists and protect rights, is having a disproportionate impact on the political voice of women and trans people. Existing discrimination within society sharpens our experience of civil society restrictions and also makes us easy targets for repression and crackdowns. Internet freedom continues to decline, and online activism is targeted by the state and extremist groups using threats, intimidation and sexual abuse. The application of legislation and policy makes clear that laws and policy are not neutral bureaucratic tools, but mechanisms used by the state to silence critical voices and reinforce the social status quo, in which women and trans people are politically marginalised. We have all seen women's and trans organisations shrink and even close down.

Very significantly for women activists and human rights defenders, the use of sexualised violence to silence or intimidate is a virtually universal experience. In highly patriarchal contexts, gendered attacks and gender-based violence are effective in silencing women and trans activists. Gender-based repression reinforces women's inferior social status and restrictive norms related to gender behaviour and roles. Gender-based violence is a powerful

silencer because of the fear it instills but also because it can undermine the support of activists' families and communities for the public role they are playing.

**Second, societies with restricted civil society space actively promote patriarchal values and traditional gender identities and roles as part of conservative, nationalist rhetoric.**

Conservative political forces often associate women's rights and LGBTQI (lesbian, gay, bisexual, trans, queer and intersex) rights with "Western interference". In August 2017, LGBTI activists were outraged when the Ugandan government cancelled a week of gay pride celebrations in Kampala, a clear example of state power targeting activists who challenge patriarchal and heteronormative social structures and values. Traditional notions of binary gender identity and roles are promoted as part of nationalist rhetoric, and women's bodies and behaviours are expected to function as repositories of conservative ideas about society's culture and morality. This political framing is not new, but we see it intensifying. In our experience, closing civil society space is increasingly being supported by state-sponsored rhetoric that prescribes narrow patriarchal and heteronormative gendered behaviour and sexual identity, and maintains and enforces them through violence, threats and stigma. In contexts of extreme stigmatisation, such as in Egypt, the arrest of LGBT activists may not even be seen by the general public as a human rights violation.

**Third, the history of exclusion and repression that we as women and trans people have experienced has built our political analysis and savvy, thereby equipping us to resist closing space with creativity.** As women and trans activists, we have deep experiences of being pushed to the margins in our communities. This history has allowed us to develop expertise in navigating restrictions and political marginalisation.

In the current challenging context, feminist activists are developing creative solutions to new challenges, and honing our strategies to mitigate risks. As one Russian activist who took part in the research commented: "When they shut the door, we come in the window." We are making strategic choices about whether to target our advocacy locally or nationally, depending on circumstances. When avenues for local and national advocacy are closed, we are also taking issues to international human rights bodies, such as the United Nations (UN) General Assembly and the UN Human Rights Council. We are engaging in strategic advocacy, national and international collaboration and networking, targeted use of international legal norms and frameworks, and strategic use of the media. In many repressive contexts, social media provides an alternative channel to remain vocal on contentious issues and to stream events that otherwise would not be covered. Activists have filed complaints and lawsuits in local courts to expose office raids or the use of defamation campaigns and sexual assault by law enforcement personnel. Protective strategies include coalition-building, solidarity networks, financial planning, physical and digital security measures, and self-care and mutual support.

In consideration of the depth of the challenges that we face as feminist activists (and as donors supporting feminist activism), we felt it was urgent that we articulated our

recommendations on how best to support and sustain our movements, particularly in this global context of shrinking space.

## 4 • Activists' recommendations

The activists involved in this research met in February 2017 to share experiences about how to sustain feminist movements in the face of closing space. The research findings and meeting discussions resulted in eight recommendations for the donor community.

### 4.1 - Fund self-led groups – women's and trans people's own collective initiatives – to claim our rights and make positive changes in our communities

Self-led organisations are founded, led and staffed by people who have been historically silenced and are now speaking for ourselves. The active presence of groups led by women and trans people brings diversity and vibrancy, and is essential to ensuring a healthy civil society. In contexts of shrinking space, we need authentic narratives created by the people most affected to contest growing discrimination against women and trans people. Donor commitment to supporting the survival and sustainability of self-led groups in hostile environments is urgently needed.

### 4.2 - Support local priorities and agendas

We encourage funders to consult and dialogue with us to better understand what type of funding is most needed. Engaging in this way contributes to ensuring that grant funding supports local expertise, knowledge and priorities. Responding to local needs is crucial to keeping civil society alive. It can literally make the difference between groups surviving or shutting down. We also find that local community- and constituency-building is increasingly important in repressive contexts. This work helps us to lay the foundations for explicit political campaigning in the future when political environments become more hospitable.

### 4.3 - Fund flexibly

In contexts of closing space, flexible funding recognises the expertise of local activists and allows us to respond to relevant and pressing needs. With flexible grant support, we can set our own agendas and decide which tools or channels to use – for example, whether to go out on the streets or to advocate online. Flexibility also allows local activists to react to sudden security threats, or respond to unexpected opportunities. Flexibility includes “safe” money – i.e., money that avoids state scrutiny by either coming in regular small amounts, or into personal accounts (rather than NGO accounts), through intermediary organisations, or even via enterprise counterparts. For smaller groups, funding accessibility is an issue; we urge donors to make grant application processes simpler and proportionate to grant and organisation size. Making funding available to unregistered organisations is also very meaningful in contexts of closing space.

#### 4.4 - Fund core costs and provide long-term grants

Core funding is particularly valuable in negotiating closing space because it contributes to our longer-term survival. Core funding supports staff and operating costs, and provides a strong foundation for organisations to respond to changing realities. Hardest hit by the lack of core funding are small groups led by women- and trans people. Core funding supports institutional development, professionalisation and staff capacity strengthening, and also contributes to organisations' credibility and their ability to stay connected with others in civil society. Core funding can also enable organisations to comply with stricter administrative and bureaucratic regulations, which contributes to organisational survival. Donors interested in sustaining activists should also provide funding that takes into account organisational and personal security, and the personal care needs of staff.

#### 4.5 - Follow a partnership funding model

In contexts of closing space, genuine partnerships with funders are more urgent than ever. We are looking for respect, trust and open communication with our funders. Donors can leverage their access to a variety of spaces – bringing our voices to wider audiences, linking us with media, and inviting us and funding our attendance at international conferences. Models of reporting should also reflect a commitment to partnership; for example, reporting requirements should match the size of the organisation and scale of the grant.

#### 4.6 - Increase funding for feminist organising

It is important to maintain and increase funding for feminist organising in contexts where space is closing. This includes going beyond supporting larger organisations that are considered safer from state interference. Smaller feminist organisations are frequently the groups raising issues of marginalisation and intersectionality (i.e., the way that different forms of oppression, like gender, sexual orientation, gender identity and expression, race, religion, ability and class, overlap and interact). In practice, intersectional feminism recognises that gendered discrimination has many dimensions and that all these dimensions need to be taken into account in order to ensure access to full rights and justice. Funders interested in supporting sustainable and healthy feminist movements need to make funding accessible to a larger number and greater diversity of organisations, including smaller groups that have a harder time accessing funding.

#### 4.7 - Fund convenings, networking and alliance building

For activists working in challenging contexts, opportunities to meet, share and network with other activists across movements and regions are extremely important. Sharing and exchange are crucial to our ability to continue to function in difficult situations. Supporting national networking and activist convenings provides crucial support to movement building and broadening public engagement with citizen-led initiatives. Convening and networking

are important tools to counteract the division and fragmentation of civil society that is fostered by states applying a “divide and rule” strategy.

#### 4.8 - Support individual activists

Supporting individuals to stay safe through funding personal and organisational security measures, building international support and visibility for our work, and supporting us to build local alliances with other groups for mutual support, can help us to keep organising in the face of intimidation.

### 5 • Feminist donors affirm activists’ recommendations

Mama Cash and Urgent Action Fund know that collective action by women, girls and trans people is making the world more inclusive and just. The aim of restricting foreign funding and imposing other legal hurdles is to shut down civil society and impede its work to secure social justice. In the face of increasingly repressive landscapes, it is urgent to support progressive and feminist movements led by those most excluded and impacted.

Activists involved in the research highlighted the urgency not only of increasing funding to autonomous feminist organising, but also of making sure that this funding meets their needs and enables their survival in threatening contexts. Core, long-term and flexible funding allows them to determine their own agendas and respond to ever-shifting realities. As funders, we need to recognise activists’ needs and respond by funding flexibly, accepting increased risk, and being willing to fund unconventional arrangements so that funding reaches people organising “at the margins”. At Mama Cash and Urgent Action Fund, we are responding to activists’ requests by providing core grants (Mama Cash) and rapid response grants to respond to unanticipated opportunities or threats (Urgent Action Fund). This approach to funding allows activists to adapt to rapidly changing contexts, strengthen their organisations and movements to respond to and survive crackdowns, invest in security, well-being and resilience, and strategise for future struggles.

The above recommendations from activists also focus on the need to adapt funding approaches and mechanisms to better support marginalised sections of civil society, whose voices are increasingly being targeted and silenced. The need for genuine partnerships with groups led by women and trans people to support locally-driven change emerges as a key priority.

### 6 • Conclusion

As activists, we seek dialogue and are calling on funders to think beyond the immediate goal of proving the impact of their funding and, rather, to partner with us in sharing risks.



States are actively working to fragment civil society in order to silence civil society voices. As a result, intentional support for movement building and constituency building are urgently needed. This is deep, long-term work, but it is crucial for building sustainable, resilient movements for change. At the same time, we also call on funders to recognise the danger that activists face and to support the safety of individuals by funding personal and organisational security measures, raising international awareness of and support for their activist work, and respecting activists' requests for anonymity.

As donors, we see that resourcing feminist organising is arguably more important now than ever. Mama Cash and Urgent Action Fund see increasing numbers of our grantee-partners confronting state repression and being targeted for their advocacy of women's rights and gender justice. This research, which also supported a convening of activists, has contributed to our growing understanding of how to better support activists working in challenging circumstances. We need to keep listening and to use our access to donor spaces to influence our peers to step up to provide strategic and effective support that responds to the needs of local feminist groups and activists, supporting their work and contributing to their safety in the challenging years ahead.

The *Standing Firm* research was an important initial step in opening up a discussion on the gendered nature and implications of shrinking space. As activists and donors, we recognise the importance of sharing our reflections and continuing to engage with others in donor and activist spaces to ensure that we amplify the voices of the most marginalised and most impacted women and trans human rights defenders and move toward the ultimate goal of safer and more open space for feminist activism around the world.

## NOTES

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1 • This article has been adapted from a longer report to which many activists contributed: *Standing Firm: women- and Trans-Led Organisations Respond to Closing Space for Civil Society*. For security reasons, many of them remain anonymous. The full report is available at: [https://www.mamacash.org/media/publications/mc\\_closing\\_space\\_report\\_def.pdf](https://www.mamacash.org/media/publications/mc_closing_space_report_def.pdf).

2 • CIVICUS, Carnegie Endowment for International Peace, Fund for Global Human Rights, and the Ariadne European Funders for Social Change and Human Rights, among others, have made

considerable contributions to this conversation and to understanding the nature of closing space.

3 • There are a few exceptions. See Meg Davis, for the Global Philanthropy Project, "The Perfect Storm: The closing space for LGBT civil society in Kyrgyzstan, Indonesia, Kenya and Hungary," April 2016. See also Duke Law International Human Rights Clinic and Women Peacemakers Program, "Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security," 2017.



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# EGYPT: SPACES UNDER ATTACK

**Sara Alsherif**

- *Increasing brutality in Egypt requires changing tactics in response* •

## ABSTRACT

*Egyptian civil society is under increasing attack by the state. Activist Sara Alsherif considers the actions taken by the informal group No Military Trials for Civilians and its partners to this crackdown. She notes how these strategies have been adapted over the course of the last seven years to respond to the constantly changing political reality of two parliamentary elections, two presidential elections, one massacre and one military coup. As police brutality and state surveillance increases, Sara notes how flexibility and creativity both on and offline is key to keep one step ahead of the authorities.*

## KEYWORDS

Military Trials | Repression | Human Rights | el-Sisi | Coup | Protests | NGOs

## 1 • The Siege

Despite hopes of a reprieve after the Egyptian Revolution in 2011, the crackdown on Egyptian civil society has been relentless. In late 2011, Egyptian authorities raided 17 non-governmental organisations (NGOs) working on democracy and rights issues. Then, in June 2013, 43 foreign and Egyptian NGO workers were sentenced to prison terms of between one and five years.<sup>1</sup> In 2014 the Ministry of Social Solidarity issued a deadline requiring all civil society organisations to register with the government or face legal action.<sup>2</sup> And in 2015, investigative judges ramped up pressure on Egyptian human rights groups, using arbitrary travel bans and arrests.<sup>3</sup>

Most recently, in 2017 President Abdel Fattah el-Sisi approved the Law 70 of 2017 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work (the NGO law). This law prohibits NGOs from conducting activities that “harm national security, public order, public morality, or public health.”<sup>4</sup> It creates a National Authority for the Regulation of Foreign Non-governmental Organisations,<sup>5</sup> which has representatives from Egypt’s top national security bodies – the General Intelligence Directorate and the Defence and Interior Ministries – as well as representatives from the Foreign Affairs Ministry and the Central Bank of Egypt. The authority will oversee the work of NGOs, including any funding or cooperation between Egyptian associations and any foreign entity.<sup>6</sup> In addition, the law prohibits any Egyptian government body from making agreements with NGOs without the authority’s approval, thereby controlling the funding of NGOs. The law also gives the government the authority to monitor NGOs’ day-to-day activities, from their choices for leadership to the scheduling of internal meetings. Relocating an NGO’s headquarters to another building without informing the authorities is punishable under the law.<sup>7</sup>

And as I write this paper I am trying to look for the NGO law online.<sup>8</sup> Many results appear in the search engine from news websites and NGO websites but when I try to open the links they do not open. Despite the legislative restrictions outlined above, the online sphere has always been an area where we have celebrated victories, where we have mocked and objected to politicians. And in 2010-2011 the virtual world helped move events in the real world. Khaled Saeid’s story and the online campaign that followed helped fuel the Egyptian revolution.<sup>9</sup>

But in mid-May 2017, the government blocked access to at least 21 news sites because they were “spreading lies” and “supporting terrorism”.<sup>10</sup> This was swiftly followed by the blocking of many VPN websites, some online publishing platforms and blogs. According to an AFTE report<sup>11</sup> the number of blocked websites has risen to at least 434. So we activists are being blocked from operating both online and offline.

But we refuse to be blocked.

The history of this crackdown is our history and through various methods we have resisted it, adapting ourselves and our tactics to ensure we stay one step ahead of the authorities.

This contribution will examine how we have done that in the hope that others can learn from our methods – in the spite of adverse conditions, there is always room to react.

## 2 • The responses

### Organisational Structure

During the January 25 Revolution 2011, army forces began to be deployed throughout the country. Between January and August 2011 the number of civilians who faced military trials reached 12,000.<sup>12</sup> Since then, the military's jurisdiction has been expanded, largely under the guise of anti-terror rhetoric. In 2014, the current President el-Sisi passed law 136/2014, which enables military trial of crimes committed at public buildings, including roads and universities.<sup>13</sup>

No Military Trials for Civilians (NMTC)<sup>14</sup> is an informal group, comprised of volunteers, that was founded in Egypt in April 2011 to resist this method to silence Egyptian civil society. The group works as a platform through which families of civilians facing military tribunals can get legal aid from human rights lawyers, plan and execute a campaign for their cases and receive aid to buy provisions for their detained loved ones. We also lobby for legal and constitutional amendments aiming to protect civilians from unjust trials and for the re-trial of those who have already been sentenced in military courts in addition to compensation for them.

The fact that our organisation is informal is, in itself, a strategy that has contributed to our success, although this was not a conscious strategy when we founded the group in 2011. At that time, we did not see a need to register the group – we depended on volunteer activists and lawyers. In order not to stigmatise ourselves, we did not want to use foreign funding. Instead, partner NGOs support the legal costs of defending the victims and we rely on in-kind assistance to help the victims' families. Consequently, we remain unregistered, and have no fixed headquarters or offices. We are able to operate off the radar of the authorities who would probably like to see us shut down. Instead, we work from each other's houses, from restaurants and cafes. Prior to the clampdown on NGOs we would meet in the offices of NGOs that were part of our group. Anyone who has the same objective of ending military for trials for civilians can join us – and in that sense we are very open. A lot of our discussions take place online, allowing everyone in the group to participate, although a core group eventually takes the decisions. Although this informality brings many benefits, we must also deal with the challenges that this brings, such as the inevitable impact on the stability of the group and effectiveness of the work we do.

### Protest

In 2011, we had relative freedom, because the revolution had just happened. We used the streets and government offices as locations for protesting and expressing our views. Protest

has been a key tool for the group including in Tahrir Square and in front of the military court in Cairo. We launched “Unjust Saturdays”<sup>15</sup> for mothers of civilians sent to military trials. The group protested weekly in front of the Ministry of Defence headquarters. As a result of the use of demonstrations as a tool of pressure, many activists have been released following their referral to the military court, including, for example, Amr El Behairy.<sup>16</sup>

Protest as a method of resistance was not much affected by Mohamed Morsi’s regime. NMTC was able to highlight, with considerable success, the plight of civilians facing military trial. The most significant event for us during his regime was in November 2012 when military forces landed on one of the inhabited islands in the middle of the Nile (Al Qursaya) to capture it. When the people living there tried to resist, one was murdered and 22 were sent to military trials.<sup>17</sup>

There was zero media coverage for the case until the NMTC started to work on it by going to the island, and organising protests with families of the detainees in front of the supreme court. We also organised an event where we spent a whole day with the families and children of the detainees in their homes, while the military forces were on the opposite side on one of the captured lands.

The pressure we created contributed to the administrative court ruling in favour of the people’s right to their land and homes, and to the release of the 22 detainees. They were either cleared of any charges or convicted with a 6 months prison sentence, which was how long they had already served since their initial arrest.

### Changing tactics

The August 2013 Rabaa massacre,<sup>18</sup> in which the military killed more than 1,000 people opposing Morsi’s removal by a military coup in July 2013, was a turning point in how the Egyptian government dealt with public protests. Further reflecting this increasingly brutal attitude was the protest law,<sup>19</sup> passed in November 2013. It essentially enables the government to cancel or postpone protests – one of the biggest threats to the victory of the January 25 Revolution. Consequently, we have been forced to alter our traditional protest strategy for fear of sustaining loss of life or injury to our supporters. We decided it was only safe to call smaller, discrete protests with a set time limit and which had no intention to confront the authorities.

In 2013 the Committee of Fifty (referring to the number of members) was established to prepare a new constitution. We saw this as an opportunity to pressure this committee to adopt an article in the new constitution prohibiting referring civilians to military courts.

In cooperation with other revolutionary groups and parties, NMTC lobbied the committee using social media to create a tweet storm in order to pressure the Committee of Fifty to hold a hearing for the NMTC. We worked on several levels.

The first level was to pressure the members of the committee individually and through their social circles, as well as through professional groups they belong to such as unions or syndicates of journalists, artists, engineers, representatives of people with special needs, workers, etc. We also conducted one on one sessions with some members of the Committee of Fifty, whom we saw had moderate opinions regarding the issue. We also cooperated closely with human rights lawyers and activists to draft articles to be added to the constitution regarding military trials, which were sent to the committee members through registered mail.

The campaign pressure succeeded in obtaining a committee hearing. Three members of NMTC attended the hearing along with one of the victim's family members. During the hearing, the entire military trials issue was discussed and we presented the draft constitution articles. Unfortunately, the Committee of Fifty's representative of the Armed Forces declined to attend the hearing only two days prior to the scheduled date.

In addition to direct dialogue with the Committee of Fifty, on 26 November 2013, the day the committee voted on the article about military trials for civilians, we decided to apply further pressure by protesting in front of the parliament. Coincidentally, it was also the first day for the protest law to be enforced. The authorities reacted brutally – we protested for less than 20 minutes after which, most of us were beaten, harassed and arrested by the police.

The police brutality and the intense media coverage on both mainstream and social media, resulted in significant pressure to release us. This pressure was exacerbated due to the participation of members of the NMTC, who were mostly female, well-known, activists and who had met with most of the Committee of Fifty members before. Due to the pressure the police released NMTC members the following day in the middle of the desert. The lawyers and reporters, and some of the other protesters, were released a few days later. Others were not so lucky. The activist Alaa Abdel Fattah was arrested and accused of calling for the protest and attacking policemen, which is not true. He was sentenced to 5 years in prison. Since his arrest, we have campaigned for his release online, using the hashtag #freealaa, as well as in front of the Presidential Palace following el-Sisi's inauguration.

Having already adapted the way we used protest, focusing on smaller, sudden protests, the police brutality during this November 2013 protest forced NMTC to stop using protest altogether as a strategy. The stakes were getting higher. The aggression by the authorities against any hint of a protest of, even if small with little impact meant that there was no guarantee that we were taking the risk alone and that no one else would pay for it.

### An exception

However, following a particularly brutal police reaction, which resulted in the death of Shaimaa Al-Sabbagh, it was impossible not to react. Shaimaa was a leading member of the



Socialist Popular Alliance Party. She was shot and killed by police, in broad daylight, in Cairo on Saturday when officers opened fire on a socialist rally near the capital's Tahrir Square. She was participating with her colleagues in a symbolic protest where everyone held flowers.<sup>20</sup>

This act of aggression by the police motivated many angry people to go back to the streets a few days later, to the same spot where she was murdered. Despite the threats from security forces and an extensive police presence, a large number responded to the call to protest.

The technique used to call for protesting might be the reason. The call was only for women who then put flowers where Al-Sabbagh was murdered. Despite the high police presence they did not attack the women, although instructed some civilians to clash with the protesters.<sup>21</sup>

### Other tools

Despite this crackdown on protesting, through creative thinking, activists groups are still able to seize some public places. In 2014, for example, and after a wave of arrests of several activists from demonstrations under the protest Law, Egyptians woke up on the first day of *Eid al-Fitr* (one of the Muslim religious holidays where people feast) to find that a number of billboards had been replaced by photos of young men and women smiling and under each of them the words "Their Eid [Feast] inside jail". Despite the supportive climate in Egypt at that time to the Authority, these banners aroused great sympathy towards those young people in prison.<sup>22</sup>



Billboards with photos of the prisoners with words "Their Eid (feast) in the jail"

NMTC and its partners also look internationally to help build solidarity for its cause.

We are still able to create noise that can draw attention to human rights cases and achieve international news coverage. As a result of the campaign following the death of Shaimaa El-Sabbagh, Egyptian police were forced to open an investigation into her death. And despite of attempts to charge others, the officer responsible for killing her was finally tried for 10 years.<sup>23</sup> Other cases are less successful. For example, Mohammad Shawkan is a photojournalist who was covering the Rabaa massacre when he was arrested. He has not been released despite all the international pressure and clear case of innocence. Similarly, Alaa Abdel Fattah, who has been arrested under every president and who is currently unjustifiably in jail, while new cases are being filed against him, despite the international pressure to release him.

### 3 • Where we are now?

Unlike in the early years of the revolution, you will not find us activists on television, in newspaper interviews, in the corridors of the People's Council, or in front of it demonstrating. And even if by chance official media talks about us it will be in the context of talking about the judicial rulings against us. We have been hidden by official state institutions! But we have not yet evaporated.

Together we work on creating new tools to overcome the narrowing of real and virtual spaces. In real spaces, this involves adapting our methods, changing the nature of protest and becoming cleverer. Online, we must stay one step ahead. Recently the government blocked the encrypted messaging app Signal.<sup>24</sup> This is an important tool for us – it guarantees secure communications without third parties being able to interfere. We developed our relationship with its parent company Open Whisper Systems and before long it was up and running again.<sup>25</sup> And in order to write this article I am now opening two different browsers, one of them for normal browsing and the other to access the blocked websites.

This creative thinking and adaptability that we must practise online is reflective of my reality offline. We will not be blocked online. And we will not be blocked offline. There is always a way and we must stay one step ahead.

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# DUTERTE AND DONOR WITHDRAWAL

**Jonas Bagas**

- *Populist politicians and funding cuts in South East Asia* •  
*require immediate action*

## ABSTRACT

*Duterte's war on drugs is representative of the wider crackdown on civil society, especially against marginalised communities and the political opposition in Indonesia, Philippines and Thailand. It points to the fragility of democratic spaces in the region, which risk being further weakened by international donor transition and withdrawal. This paper explores the reasons behind the withdrawals before setting out how civil society and donors must respond in order to help build resilient community groups and push back against the decline in democratic spaces.*

## KEYWORDS

Duterte | Donor withdrawal | War on drugs | South East Asia | LGBT

Philippine President Rodrigo Duterte won the presidency in 2016 through a platform of fear and violence. As presidential candidate, he ignored official government data on drug use and conveniently exaggerated the number of drug addicts to a fictional 3-4 million.<sup>1</sup> He insisted that drug users have addled brains, and that they rape babies, openly promising that once he became president he would kill thousands of drug criminals.<sup>2</sup> A promise his government is delivering: a year into his administration, thousands have been killed extrajudicially, either in anti-drug police operations or by vigilante killings, with estimates ranging from 7,000 to 13,000.<sup>3</sup> Duterte's war on drugs is plunging the Philippines into an unprecedented human rights crisis, the impact of which goes beyond the drug issue. His presidency can be seen as part of the wider crackdown on civil society.

Reported killings under Duterte are taking place mostly in urban poor communities, already exceeding the number of extrajudicial killings during the brutal Marcos dictatorship.<sup>4</sup> In addition, police impunity is rampant, as seen in its role in drug-related killings, including those involving infants and minors. The Duterte government has also openly targeted political institutions to impair constitutional check-and-balance mechanisms. In one year, his "supermajority" in Congress has undermined legislative inquiries on the war on drugs, junked an impeachment complaint, and put a staunch opposition senator in jail on trumped up drug charges. He has dismissed the importance of due process and human rights, of United Nations (UN) institutions and the international community, and his allies attempted to defund<sup>5</sup> the national Commission on Human Rights (CHR). Duterte's government officials and political allies work closely with rabid online "Duterte Die-hard Supporters", or DDS, a play on his reported Davao Death Squad, which operates in the city of Davao where he was mayor.<sup>6</sup> They spread fake stories against the opposition and independent media, tagging journalists and political leaders alike who are critical of the war on drugs as suspected drug criminals or coddlers of druglords, creating a chilling effect on those who are raising legitimate concerns about government abuses.<sup>7</sup>

State-led abuses are not new to the Philippines, a country that suffered from authoritarian rule under the Marcos dictatorship. But while human rights abuses persisted even in the succeeding regimes, the post-Marcos political norms on democratisation, transparency, and on sustaining a vibrant civil society have always made it difficult for large-scale violations to take place.

But Duterte's war on drugs can easily reverse gains from decades-long efforts from social movements to build public institutions that are democratic and accountable to human rights standards. As an HIV and LGBT rights advocate, I have witnessed police impunity in the form of police raids in gay establishments that result in physical abuse, extortion and stigmatisation. While documenting those instances and while trying to facilitate legal aid to those arrested, it was normal to encounter the police restricting access to those arrested, profiling human rights advocates for surveillance purposes, or knowingly committing illegal detention. Unbridled and illegitimate use of

power, even when exercised on a limited scale, can already demonstrate its layered but straightforward effects: how powerlessness leads to dehumanisation, and how the use of fear and the threat of violence enable other abuses.

Previously perceived to be a bastion of human rights and democracy in Southeast Asia because of its bloodless “1986 People Power revolution” and the extensive incorporation of human rights in its Constitution,<sup>8</sup> the Philippines is now in a competitive race to the bottom with its neighbours in terms of human rights violations. It is therefore critical to examine the broader implications of the Philippines’ state-led attacks on civil society, including Duterte’s “war on drugs”, its immediate effects on the fragile democracies of Southeast Asia – and how civil society can survive in this deteriorating landscape.

## 1 • A regional trend

Duterte’s brutal war on drugs has gained traction among political leaders in the region. Cambodia started its anti-drug campaign early 2017,<sup>9</sup> stoking fears that the new campaign will also lead to human rights abuses. In Vietnam, where community-based interventions on drug use have been established by civil society organisations, advocates have noted an increase in arrest and detention of people who use drugs. The most worrisome of all is Indonesian President Joko “Jokowi” Widodo’s new stance on drugs, which mimics Duterte’s violent rhetoric. “Kill them, show no mercy,” Jokowi reportedly ordered law enforcers.<sup>10</sup>

Sexual and gender minorities have also been facing new threats from Indonesian authorities and conservative groups. An increase in anti-LGBT pronouncements from politicians aligned with conservative Islamic groups in 2016 was followed by attacks against gay men in 2017 – a caning incident involving two men in Aceh, the only place in Indonesia that has an anti-sodomy policy, and a highly sensationalised raid of a gay sauna in Jakarta.<sup>11</sup> The raid led to the detention of dozens, the majority of whom were eventually released precisely due to the absence of any law prohibiting gay sex; the few who remained in detention were charged with drug-related offenses. The situation in Indonesia is still unraveling, with conservative groups petitioning the Constitutional Court to criminalise gay sex, among other so-called un-Islamic sexual behaviors.<sup>12</sup>

Equally concerning is that governments across the region are cherry-picking human rights issues that do not challenge their power base and champion them in order to improve their human rights credentials. Thailand, for example, is promoting a harm reduction approach to drugs, even decriminalisation. Such drug policy reform, while welcome, must also be read in the context of Thailand’s short-lived but bloody war on drugs in 2003, which led to “some 2,800 extrajudicial killings”.<sup>13</sup> The military-appointed legislative body has also approved a gender equality law which, according to the government, provides protection to transgender people against discrimination. There is also a pending proposal from the Justice Ministry that aims to grant domestic



partnership for LGBT people.<sup>14</sup> However, these reforms are happening without any broad engagement with the Thai LGBT community and wider civil society, fueling questions that the military government is “pinkwashing” its dismal human rights credentials. As one activist points out, the suppression of democracy by the military junta is a “stain” on Thailand’s rainbow flag.<sup>15</sup>

The Duterte government is no different. He has managed to build a reputation for being pro-women and pro-LGBT after championing local laws in his city that protect the rights of these groups.<sup>16</sup> His allies in Congress also recently filed a bill to introduce a SOGIE-inclusive civil union bill. This agenda, however, is moving forward without any consultation with civil society.

These developments show the volatility of the human rights situation in Southeast Asia. Populist politicians are using hysteria – over drugs, or sex, or both – to shore up support for undemocratic regimes, leading to curtailment of civil rights and constricting of civic spaces. They are also employing a strategy where they promote the rights of particular communities to cover up their dismal human rights violations.

## 2 • Donor funding: Critical but under threat

Threats against vulnerable communities including LGBT people and people who use drugs, whether in conjunction with declining democratic spaces or not, are not new. However, for countries such as Indonesia, the Philippines and Thailand, these communities have previously been able to organise and respond to these threats with the help of development aid, especially international grants on health, HIV, and reproductive rights.

Donors, development partners and international financing institutions, such as UN agencies<sup>17</sup> and the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund),<sup>18</sup> have restructured norms on how countries receiving development aid should implement programmes that aim to reach vulnerable communities.<sup>19</sup> Conditions attached to grants often require the implementation of safe spaces for criminalised communities<sup>20</sup> and space for community engagements, such as governance and oversight roles or financing community groups directly as programme implementers.

The Global Fund, for example, has one of the most prescriptive approaches on how communities and populations disproportionately affected by HIV, TB, and malaria epidemics are included in its initiatives in each country. It requires the participation of civil society and communities affected by the disease in country coordinating mechanisms (CCMs – the main governance and oversight platforms of Global Fund-eligible countries) to determine priority disease programmes. It also has its own human rights and gender policies to ensure that the country and multi-country programmes that it is financing are human rights-based and gender inclusive.<sup>21</sup>

This approach to development aid is often criticised for being imperialistic and for tying the availability of aid money to the question of human rights.<sup>22</sup> However, these conditions have set standards for participation and engagement for civil society that is otherwise excluded from civic spaces and decision-making processes. Where civil society spaces are suppressed or where certain communities are criminalised, these conditions have given communities a stage to organise and advocate for reforms, or to access financial support to implement their own programmes. For example, in Thailand, following Thaksin's war on drugs that killed thousands of suspected drug criminals, international aid was instrumental in the establishment of community-led harm reduction services. This contributed to community organising for people who use drugs. It also served as a leverage to support policy advocacy to change Thailand's approach on drugs.<sup>23</sup>

But the political and economic landscape that determine the shape of development aid is changing. As democratic spaces constrict in countries like the Philippines, Indonesia, and Thailand, the role of development aid in providing shelter for vulnerable communities is also being undermined. There are several factors that are affecting these changes.

First, the development priorities of donor countries are shifting. The multiple goals and sub-goals under the new Sustainable Development Goals are providing countries with more opt outs to prioritise a few and ignore other development imperatives. For the Global North, we can see a focus on issues closer to their constituents' priorities, such as climate change and the refugee crisis.<sup>24</sup>

Second, the election of populist, right-wing governments in donor countries has cast uncertainty over the Global North's commitment to finance international development aid, either through bilateral agreements or through multilateral platforms.<sup>25</sup> Furthermore, as donor countries like the United States of America and the United Kingdom become more insular, they are also less likely to champion human rights as a prerequisite for international aid or global trade.

Finally, as income levels rise in countries like Indonesia, Philippines and Thailand, donor withdrawals or donors transitioning out of developing countries becomes inevitable. The expectation is that countries, as they become richer, are able to fund development programmes that have previously been financed by external donors. It is also assumed that countries will own donor-driven community-inclusive approaches such as the Global Fund's consultative and inclusive processes in the development and oversight of health programmes and integrate them into their own systems, a serious challenge in contexts where structural barriers to human rights and democracy persist.

When implemented haphazardly, donor withdrawal and transition can exacerbate the effects of ongoing crackdowns against civil society, in which vulnerable communities are particularly at risk. Aside from possible funding cuts for inclusive health and development programmes needed by these communities, donor withdrawal could also

lead to the dissolution of mechanisms that have forced government actors to engage with civil society. Furthermore, this process might weaken community-initiated interventions that have been created in response to development gaps that governments refuse to address. Donor withdrawal and transition are inevitable, but this eventuality should not be shaped by income classification and epidemiological or biomedical indicators alone. Amidst growing threats to democracy and human rights, equal consideration should be given to the very survival of civil society post-transition.

### 3 • How must civil society and donors respond?

Firstly, civil society must look towards openings within domestic spaces that can be explored for funding. For example, devolution and decentralisation in Indonesia, Philippines and Thailand has made it easier, in some instances, to receive financing from local governments for grassroots programmes. Local governments often have their own revenue sources and their own mechanisms to finance non-governmental groups that are delivering services for the government. In decentralised settings, local governance engagements can be tedious, as they often entail dealing with “multiple kingdoms” within the country, but they provide spaces that must be explored. This author is aware that in the Philippines, as the national government wages its war on drugs, some local governments are working with civil society groups to implement an alternative approach to counter the killings and to established community-based harm reduction programmes. Similarly, in Indonesia, as sectarian attacks against LGBTs increase, some district governments have opened doors to support HIV and health programmes for gay men and trans people.

The “weak states”<sup>26</sup> of the region also present other opportunities for engagement. The disorganised nature of politics in this region means that national governments should not be seen as monolithic institutions. Civil society groups must periodically scan the national political landscape for potential champions or allies within the government. This can result in new spaces for engagement within national structures. In the Philippines, for example, the Duterte government has allocated a huge amount of funding for drug rehabilitation programmes to national government agencies.<sup>27</sup> However, they have no clear ideas on what interventions they should develop. Some have resorted to organising zumba sessions for suspected drug criminals, fun runs, or bible studies.<sup>28</sup> This presents opportunities for partnerships for better approaches to the drug issue.

Civil society must challenge donors to improve their transition policies and to look beyond economic and disease-focused metrics that trigger transition and donor withdrawal. First, the availability of democratic spaces that can sustain participation of stigmatised communities need to be part of transition preparedness assessment, as they are key to help stigmatised communities engage in country processes, secure domestic funding, and ultimately, build community responses to structural problems that lead to their exclusion. Responding to challenges posed by constricting civic spaces should be part of a country’s transition plan.

Donors should closely monitor transition processes to ensure the inclusion of communities and civil society. Some communities are deeply stigmatised and criminalised, and increasingly so in context of shrinking civic space. Donors need to be prescriptive to guarantee the inclusion of these marginalised groups in transition processes and to provide safe spaces for their participation. This should also include ensuring that countries do not have restrictive policies that bar funding for civil society.

Transitions should not be done haphazardly that result in additional harm to communities that are already stigmatised and criminalised, most of whom rely heavily on donors to sustain their organisations and to maintain community responses on health and human rights. Thus, even after a country has been determined to be ineligible for donor support, donors should still have mechanisms to fund on-the-ground community groups that could be harmed by transition, in terms of debilitating funding cuts or sudden hostile country situations.

#### 4 • Beyond funding: Resilience and movement-building

As threats to democratic spaces continue to escalate in South East Asia, and with the changing financing landscape for development aid, strategies for resilience, solidarity, and movement-building also need to undergo rethinking to guarantee the survival of civil society.

Attacks against specific communities are intractably linked to a democratic deficit common in many Southeast Asian countries. There is an absence of resilient, representative and accountable public institutions that can defend and promote human rights and civic spaces despite pressure from populist, authoritarian, or sectarian tendencies. So-called “representative democracies” in the region continue to operate at the exclusion of vulnerable groups, with politicians easily subverting existing constitutional protective mechanisms to consolidate their power by fanning fear and hysteria, by persecuting minorities or their political foes, and by restricting civic spaces.

To address this democratic deficit, civil society must develop coalitions that respond to the emergencies faced by the communities that are directly being attacked but that also maintain medium-term and long-term democratisation objectives. Single-issue objectives are inadequate and unsustainable in light of the complex roots of the current human rights crises in these countries. For community groups that have relied on donor support, such as people who use drugs or the LGBT community, this means stepping outside the silos created by international development aid. They must collaborate with other “excluded” movements and communities to push for broader democratic reforms. This means framing their struggles from a political perspective.

Inter-movement collaborations will be beneficial for different stakeholders that are directly and indirectly affected by the human rights crises in the region. In the Philippines, where the war on drugs remains popular,<sup>29</sup> these collaborations will enable the creation of a broader

front that can tackle different problems linked to the war on drugs – from highlighting the misinformation being spread to sustaining its support against police abuses. HIV and harm reduction advocates, who have the expertise to develop a health and human rights-based alternative to the war on drugs, can work with urban poor communities that are now terrorised by extrajudicial killings but who also have access to constituencies that can mobilise demand for change. The latter can also facilitate the organising of people who use drugs, necessary to sustain initiatives on harm reduction, legal redress and strategic litigation in relation to police abuses, and long-term policy reforms.

The ties between pro-democratisation movements and stigmatised communities such as LGBT people and people who use drugs also need to be strengthened. Broad coalitions can provide political shelter to persecuted community groups and give them space to organise and push back when state forces use them to rationalise repressive actions. Similarly, political engagements can provide stigmatised communities with political legitimacy, an important tool to secure reforms that will endure regime changes.

## 5 • Conclusion

The war on drugs in the Philippines provides a glimpse on the fragility of democratic spaces in many Southeast Asian countries. State-led assaults against specific populations, from people who use drugs and the LGBT community to the political opposition, reflect the wider trend of the undermining of democratic political institutions and the closing of civic space in the region.

This situation is aggravated by the eventual withdrawal of international funds. Many community groups rely on international donors as their financial lifeline. This donor support has, to a certain extent, given stigmatised or criminalised communities a platform to organise, resist and engage government actors because of the various conditions tied to aid. However, this platform is slowly disappearing.

Consequently, donor-reliant community groups must develop new strategies to respond to this reality. To address the immediate threats and the long-term survival of stigmatised and criminalised communities (such as LGBT people and people who use drugs), they must avoid framing their struggles in a single issue way and facilitate broader coalitional engagements that can provide the space for robust organising and the political legitimacy needed to sustain deeper democratic reforms. Community groups also need to be agile in their engagements with the government to find funding opportunities at the national and local levels.

Meanwhile, donors must reexamine their framework for transition and withdrawal to ensure this process does not inflict additional harm on already marginalised communities. Transition should lead to sustaining communities and their contribution to civil society. Donors should therefore expand their tools to determine the triggers and the pace of donor withdrawal to include threats to democratic spaces. They should also develop mechanisms

to continue supporting stigmatised and criminalised communities even after a country has already transitioned out of eligibility for donor support due to existing structural barriers to inclusion within existing country processes.

The combination of populist politicians like Duterte and the challenge of donor withdrawal from middle income countries where severe human rights abuses are taking place presents a complex set of challenges for civil society, especially marginalised community groups. But this also presents opportunities to ensure the resilience of communities that are under attack and to remedy the deficits in Southeast Asian democracies.

## NOTES

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proposed amount after it sparked widespread condemnation; Maila Ager, “CHR Budget Restored: ‘People Power in Age of Social Media’.” *Inquirer*, September 21, 2017, accessed December 11, 2017, <http://newsinfo.inquirer.net/932255/news-liberal-party-chr-people-power-social-media-house-of-representatives-chito-gascon-budget>.

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and the Law," UNAIDS, 2014, accessed December 11, 2017, [http://www.unaids.org/sites/default/files/media\\_asset/2014unaidsguidancenote\\_humanrightsandthelaw\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/2014unaidsguidancenote_humanrightsandthelaw_en.pdf)). The Global Fund, meanwhile, has incorporated "community, rights, and gender" or CRG into its strategy and operationalised this in its work. Read about the Global Fund's CRG report here: "Community, Rights and Gender Report 2016," The Global Fund, 2016, accessed December 11, 2017, [https://www.theglobalfund.org/media/4239/bm35\\_15-communityrightsgender\\_report\\_en.pdf](https://www.theglobalfund.org/media/4239/bm35_15-communityrightsgender_report_en.pdf).

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# CIVIL SOCIETY IS NOT THE ENEMY

**Ana Cernov**

- *How attacks on the North and South are pushing activism to respond* •

## ABSTRACT

*Restrictions to civil society that were first identified as part of the Global South landscape are increasingly present in the Global North, impacting organisations and social movements in both hemispheres. Besides the more direct impact on funding, the closing of democratic spaces in the North removes important positive symbolic references for the South and unveils a new normal for democracy, in which the public interest is not at the centre. How can activism in the North and South respond to that and mobilise public opinion to support the defence and expansion of a rights-based agenda and maintain dissent, crucial for democracy?*

## KEYWORDS

Global South | Activism | Civil Society | Movement-Building | Solidarity | Dissent

## 1 • Introduction

I have been working with civil society groups since 2003 but it was only in mid-2015 that I came across the term, “closing or shrinking of civic space”, for a phenomenon that I had experienced while accompanying groups all over Brazil and Latin America. At first, I heard the term almost exclusively in reference to role of the state in designing and enacting legislation and controls for civil society.

But increasingly the definition encompasses restrictions that trample on the possibility of civil society to influence the defence of the public interest and to voice dissent, led by state and non-state actors, nationally and internationally. And whereas the issue of shrinking civic space was initially considered a Global South problem, increasingly we see negative news coming from the North in regard to the promotion of democratic values and human rights and which undoubtedly fit within the definition of “shrinking”. Unthinkable episodes of repression of protests, surprising election results and restrictive legislation - that seem out of place in established democracies – are starting to pile up. Be it the concerning approval of anti-protest laws in the United States of America (US),<sup>1</sup> or the continued lack of guarantees for freedom of association for trade unions in South Korea.<sup>2</sup> In the European Union (EU) alone, a closer analysis shows that “only 13 of 28 EU member states now have ‘open’ civic space, an uncomfortable statistic for the leaders of a union founded on the values of democracy and human rights.”<sup>3</sup>

This article will examine how these restrictions on civil society in the Global North extend to and have an impact on civic space in the Global South before offering suggestions as to how civil society can best respond to this concerning trend.

## 2 • The domino effect

Perhaps the most obvious way in which the Global North is influencing restrictions currently seen in the South is through “copycat” restrictive legislation, in particular the question of antiterrorism legislation. The Financial Action Task Force (FATF) – an independent international body comprised of member governments and often described as the most powerful organisation you have never heard of – was established during a G-7 meeting in 1989 to generate recommendations to prevent money laundering from drug trafficking. But after 9/11, the Global North originated group took upon itself to also recommend measures to prevent terrorism financing. It is currently housed, administratively, at the Organisation for Economic Co-operation and Development (OECD).

As much as counterterrorism measures are needed and welcome, they need to be designed proportionally to the risks posed. For a long time, these risks were not factored into the evaluation of a country’s attention to their counterterrorism architecture. One of FATF’s recommendations, Recommendation 8, was amended in mid-2016 after intense

lobbying from civil society under the Global NPO Coalition on FATF, to acknowledge that “not all NPOs are at risk and directs countries to undertake a risk based approach when considering terrorism financing measures”.<sup>4</sup> Recommendation 8, as originally drafted, stated that non-profit organisations were “particularly vulnerable” to be used as channels for terrorism financing. This careless recommendation caused many countries – both in the South and North – to, alongside creating and renewing antiterrorism laws, create and increase obstacles for registration of civil society organisations or for the receipt of foreign funds, with a huge impact on banking regulations for non-profits.<sup>5</sup> One concrete example is the implementation of the counterterrorism standards in India. Alongside financial regulations, the standards included a set of measures that did not apply to funding of terrorist organisations. Combined with other restrictive laws in place, these measures helped to justify the revocation of operation licences for more than 13,000 NGOs, especially those that were political in nature or that received foreign funding and were presented as a risk to the national interest.<sup>6</sup>

In addition, it is not uncommon for antiterrorism laws to have a never-ending cycle of reforms and add-ons, such as what has happened in the Turkey or in Chile.<sup>7</sup> In the case of Chile, the first law was approved in 1984. Since then it has received four amendments: in 1991, 2003 and 2011 (with two different bills approved), not to mention the required adjustments to the Criminal Code in 2002 and 2005. In Turkey the same logic was applied. The law was first approved in 1991 (Act 3713) and then adjusted in 1995, 1999, 2003, 2006, 2010 and 2013. In both cases, there is ample evidence of the misuse of those laws to target dissent. In Chile there is the well-known case of the accusation of terrorism against Mapuche indigenous groups<sup>8</sup> for which the country was condemned at the Inter-American Court of Human Rights.<sup>9</sup> In Turkey, numerous politicians, reporters and activists were prosecuted through its wide-reaching terrorism legislation.<sup>10</sup>

The understanding of this *modus operandi* in which governments increasingly use antiterrorism laws to target dissent helped to shape the organising, advocacy and policy work taken forward by Brazilian groups to oppose the approval of one such law in the country. In order for Brazilian organisations and social movements to understand the enormity of the threat brought by a new and unnecessary piece of antiterrorism legislation,<sup>11</sup> fast tracked in early 2016, it was crucial to understand what impact similar laws had brought to Chile, Turkey, the US, the UK and others.<sup>12</sup> Although the obvious motivation for the law was the impending Olympic Games of Rio 2016, the pressure that FATF exerted itself was considerable. FATF’s influence on the approval of the antiterrorism law in Brazil was tracked to the first draft of the legislation.<sup>13</sup> It was drafted jointly by the Justice Minister and the Finance Minister, who had attended the World Economic Forum in Davos and returned to Brazil convinced that being part of FATF’s dirty list for not attending fully its recommendations would damage the country’s ability to attract Foreign Direct Investments (FDI). Although the law ended up being approved, the efforts undertaken by civil society developed a greater understanding of the threats of criminal laws against politically motivated movements and generated an informal coalition attentive to these risks.

There is also another element to consider in the domino effect that restrictions have around the globe: what happens when the funders are the ones, if not leading, but at least feeding the restrictive measures? The US government, one of the world's largest donors,<sup>14</sup> has strongly pushed for antiterrorism measures after 9/11 and the security framework it has put in place puts activism at risk. One of those measures is the well-documented negative impact of the case *Holder v Humanitarian Law Project*, in which the Supreme Court decided against the Humanitarian Law Project. The court relied on the prohibition in the Patriot Act on providing material support to foreign terrorist organisations to declare that any assistance given to a group considered terrorist by the government could legitimise it and therefore, is prohibited. The case is considered a major blow to freedom of speech and association.<sup>15</sup> Other episodes include the last election results in the US,<sup>16</sup> the inhumane reaction of European countries to refugees and migrants, the UK's efforts to break the link between its human rights framework and the European Court of Human Rights<sup>17</sup> or the punishment of organisations for political stances (such as ATTAC<sup>18</sup> in Germany<sup>19</sup>). These episodes, as others alike in both hemispheres, are too often defended by politicians and the commercial media as the only way forward to guarantee growth and progress, while human rights are increasingly presented as just an added cost.

These kinds of setback in the Global North are stripping the South of positive examples. Not only that, but it is creating an environment in which taking restrictive measures against civil society is seen by governments everywhere to be acceptable – because the US and other Northern governments are doing it. Consequently, Northern governments have reduced legitimacy to criticise Southern governments on the issue.

### 3 • Funding and solidarity

As well as the issue of the Global North driving restrictions in the South based on northern governments' legislative and policy agendas, there is also a concerning trend in the North that is seeing funding for civil society come under pressure – both from individuals and government agencies.

The UK-based Charities Aid Foundation produces a yearly survey on global giving by individuals. The most recent survey shows that all the developed countries that were ranked in the top 20 most generous nations experienced a decrease in fundraising in 2016.<sup>20</sup> While this may be due to poor economic indicators, it can also be interpreted to reflect the increased anti-European sentiment felt across EU countries. This sentiment, aligned with the rise of populism, could be making Europeans more reluctant to donate to civil society groups that do not follow nationalistic worldviews or that are not acting locally.

Similarly, at the level of national government, an analysis by the European Parliament shows that its member states are puzzled by the current context and that they are choosing to support “uncontroversial, development CSOs as it has become harder to engage with more

political organisations. In some cases this has helped keep some link to civil society open; in many cases, however, critics say it has inadvertently helped regimes isolate outspoken civil society opponents under the guise of partnering with the EU on development policy. In its high level diplomacy the EU can still be strikingly cautious in confronting regimes engaged in brutal civil society crackdowns. The general direction of EU security policy often undercuts efforts to hold the shrinking space problem at bay.”<sup>21</sup>

Since the concept of philanthropy and government aid is still being developed in many countries of the South, especially the kind that supports independent political work that aims to guarantee an open civil society, this non-controversial approach of the EU and its member states and many other donors is deeply concerning.

Even more immediate than limiting the development of a culture of philanthropy in the Global South, when funding is cut in the North this can only mean that funding will be cut in the South, too.<sup>22</sup> A direct example is President Donald Trump’s decision to increase restrictions to abortions provided with US funding, known as the global gag rule. This measure was re-introduced by Trump to please his supporters and the more conservative sector of the Republican party. It will mean that USD 8.8 billion will not be used in sexual reproductive rights programmes around the world.<sup>23</sup> This decision will impact globally how organisations and movements focusing on women’s health shape their work.

#### 4 • Reputation in peril

About a year ago, a quick conversation with a human rights defender from the Northeast of Brazil provided another angle to this debate on the closing of civic spaces. Sipping unpretentiously on his coffee, he reminded me that the biggest threat to his work was not funding cuts or restrictive regulations on non-profits, but the defamation of his character and his work, which impacted him, his family, their safety and the validity of causes he defended. It did not help that, around the same time, a primetime Brazilian soap opera featured a villain presenting himself as a human rights lawyer, linked to none other than Amnesty International,<sup>24</sup> as a disguise for his criminal activities. In addition to the law, society’s perception of those working on behalf of civil society is a critical battleground for the preservation of civic space. Discrediting the courage and the motivation of activists is an age old tactic, as history shows; being the use of the Red Scare discourse to discredit the labour movement is the early 1920s in the US, or in South Africa, during the apartheid regime, to discredit the African National Congress (ANC) and the anti-apartheid movement. As far back as the 1790s, supporters of slavery tried to link abolitionism to Jacobinism, a pejorative expression for radicalism.

While I was working for the Brazil office of a British development organisation, I was able to observe firsthand the restrictive effect of distrust on civil society actors. Often I needed to intervene with a local bank branch, to guarantee the disbursement of funds to small

organisations such as a local women's social movement. The bank manager would enjoy exercising his power and ask for an enormity of documents and references to clear the transfer. His excuse? That he was simply following strict banking regulations, which both he and I knew had little to do with financial responsibility and money laundering risks, but more to do with his judgment of the rural activists, their social class and their work in impoverished regions in the south of Brazil.

Naively, at one point in life I believed activists and social movements from the North were insulated from this kind of harassment and criminalisation that defenders and groups suffer in the South,<sup>25</sup> where colonialism, neo-colonialism, authoritarianism and clientelism all play a part in trying to erase dissent. To a generation of activists from the South, the North, especially Europe, had been the *locus* for the institutionalisation of rights-based frameworks and a model to be reached.

However, this struggle for the reputation of civil society is not endemic to the Global South. Despite its stronger democratic heritage, the North is not immune to the undermining of activism<sup>26</sup> and the human rights framework. The attacks on the Hungarian civil society<sup>27</sup> perpetrated by the current government of Prime Minister Viktor Órban shows this clearly, with constant defamation of organisations, a history of harassment that included an episode of police raidings in 2014 and the adoption of a new and terrible NGO law.<sup>28</sup> In Poland, Ukraine, and beyond Eastern Europe, organisations are being discredited in the official discourse as if they were not an integral and crucial part of democracy. And once those discourses are in motion, with restrictive regulations that follow them, it is harder for civil society in the South to point to alternative models of participation and social control when Northern arrangements are eroding fast.

Attacking reputations and delegitimising the role of civil society in the promotion and defense of rights is not unplanned. It is built as a strategic goal for both state and non-state actors that intend to channel efforts and gather public support to focus the agenda on growth, profits and consequently, protecting the interests of a bureaucratic or corporate elite.

Placed between these increasingly colluding sectors of society – the state and business – civil society has a crucial role that was well defined by the then United Nations Special Rapporteur Maina Kiai, “Civil society occupies the space between state and the market, often playing a countervailing as well as a complementary role against the two forces that are increasingly finding common ground and excluding the majority of people.”<sup>29</sup>

To guarantee that restrictive policies are not met with protests, states – by their own initiative or under pressure from corporations, churches and criminal organisations – are increasingly putting in place mechanisms to silence dissonant voices either by force or by persuasion. It can be the arrest of activists such as the young people protesting the impeachment of Brazilian president Dilma Rousseff, framed by an undercover soldier<sup>30</sup> and responding to criminal charges for the intention to commit

violent acts during a march. Or measures that go against a rights-based approach but have popular appeal, such as anti-immigration policies.

There is a battle for narratives that generates an environment in which civil society is viewed with distrust and its demands are not seen as universal, but as claims based on privilege and favour. The just protection of human rights defenders likewise is seen as special treatment.<sup>31</sup>

## 5 • Dissent is powerful

In order to deal with these increasingly powerful forces, which are less and less worried about the appearance of their intentions and clearly pushing a negative view of civil society, activists need to strengthen themselves and their groups and look to new ways of working.

Historically excluded communities and groups – from the North and South – are demonstrating their power and learning from each other. The indigenous activism against the Dakota Access Pipeline in the US, for example, builds on the resistance of Unist’ot’en in Canada that since 2009 was able to cancel five of the seven pipelines planned for their territory.<sup>32</sup> Or the Mesoamerican women like Berta Cáceres,<sup>33</sup> fighting the commodification of nature and natural resources, and inspiring support to their causes and activism in new groups. And the incorporation of new tools for activism, such as the use of internet, to gather support for groups such as the activist Black Lives Matter that has used a strong digital presence and a very recognised *hashtag* to spark public debate and complement its offline organising work for racial justice. Voices that do not find a channel in traditional corporate media are able to find ways to speak and talk about their struggles using the internet.

However, it is building alliances that is critical in this fight to protect civil society, between different movements and also between local, national, regional and international spheres. During my time at the UK development organisation in Brazil, I lost count of how many petitions we were called to sign. It still mattered that an international organisation agreed with the objective of the petition and it did not matter if its funds were involved or not. The Brazilian environmental movement is a good example. It has a history of international engagement, through funding but mostly through political engagement, which has helped to bring legitimacy to its cause. This engagement also helped to provide the rhetoric to criticise the movement, by claiming its international backing is a threat and an interference in the national sovereignty with the foreign interest wanting to control the Amazon. But with these broader alliances, forest protection eventually became seen by the Brazilian public opinion as something important to safeguard, which was never the case with environmental rights defenders. Consequently, Greenpeace is easily able to fundraise for forest protection with individual, Brazilian donors. While fundraising for protection of indigenous groups still requires sources from abroad. This international solidarity helps to influence how public opinion sees their own issues and can still give another layer of legitimacy and validity for the demands raised by local groups.



In this moment of fierce dispute of narratives around the role of the state and the role of civil society, any extra weight is appreciated to help make the case for the protection of civil liberties as a pillar for democracy. International engagement between civil society in the two hemispheres has therefore never been so important. And learning from others carries a renewed importance in such challenging times.<sup>34</sup> Groups in the North can benefit greatly from combining their own expertise in carrying out work in more “normal” times together with the enormous experience Southern groups have of dealing with the double burden of not only building strategies for their issues but also for the particular environment in which they operate. Partnerships and solidarity are the nucleus of any response to the threats to civil society. Building bridges with new allies and renewing ties with old ones can provide opportunities to generate knowledge and build narratives that resonate with the public opinion and bring support to holding governments and corporations accountable for their actions when they disrespect rights. Having others support and participate in your struggle will provide a sense of comfort and safety, much needed for activists and defenders dealing with destruction and violence on a daily basis.

## NOTES

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1 • For more information, read ICNL’s compilation updated on Sep 29, 2017 and available at: “U.S. Protest Law Tracker,” ICNL, 2017, accessed October 26, 2017, [http://www.icnl.org/US\\_protest\\_law\\_tracker.pdf](http://www.icnl.org/US_protest_law_tracker.pdf).

2 • Despite being part of ILO since 1991, South Korea has not ratified the International Labour Organization’s (ILO) Convention No. 87 (Freedom of Association and Protection of the Right to Organise) and No. 98 (Right to Organise and Collective Bargaining), which the UN Committee on Economic, Social and Cultural Rights (CESCR) has called Seoul to do in October 2017, after a first unanswered request from 2009. Recommendations available at: “E/C.12/KOR/CO/4,” OHCHR, 2017, accessed October 25, 2017, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/)

<Download.aspx?symbolNo=E%2fC.12%2fKOR%2fCO%2f4&Lang=en>.

3 • “Ratings Update October 2017,” Civicus, Monitor, 2017, accessed October 20, 2017, <https://monitor.civicus.org/Ratingsupdatesept17/>.

4 • For more detailed analysis on the amendments of the FATF Recommendation 8, please refer to the Press Release produced by the Global NPO Coalition on FATF, available at: “NPOs Applaud Important Changes in Financial Action Task Force (FATF) Policy – NPOs No Longer Considered “Particularly” Vulnerable,” FATF Platform, June 29, 2016, accessed November 2, 2017, <http://fatfplatform.org/wp-content/uploads/2016/06/Press-Release.pdf>.

5 • Concerns around FATF recommendations

and their impacts for civil society can be found at the website for the Global NPO Coalition on FATF, available at: "Concerns," FATF Platform, May 13, 2015, accessed November 17, 2017, <http://fatfplatform.org/civil-society-concerns/>.

6 · To understand more of the impact FATF recommendations had on Indian civil society, please read: Seema Nair, "Can Indian NGOs Bank on Banks?" FATF Platform, 2016, accessed November 06, 2017, [http://fatfplatform.org/wp-content/uploads/2016/03/FATF\\_India\\_Final.pdf](http://fatfplatform.org/wp-content/uploads/2016/03/FATF_India_Final.pdf).

7 · Antiterrorism Laws in Chile: Law 18.314 <http://www.leychile.cl/Navegar?idNorma=29731> (1984); Amendment, (1991) <https://www.leychile.cl/Navegar?idNorma=19027&idVersion=1991-01-24> (1991); Changes to include financing of terrorism in accordance to International Standards, <http://www.leychile.cl/Navegar?idNorma=217096&idVersion=2003-11-13> (2003); 2 amendments, <http://www.leychile.cl/Navegar?idNorma=1017644&idVersion=2011-06-21> and <http://www.leychile.cl/Navegar?idNorma=1026712&idVersion=2011-06-21> (2011).

8 · "Chile Must Stop Using Anti-terrorism Law Against Mapuche Indigenous Group – UN Expert," UN News Centre, July 31, 2013, accessed November 6, 2017, <http://www.un.org/apps/news/story.asp?NewsID=45538#.WgO0S6uQy2w>.

9 · "The Inter-American Court of Human Rights Condemns the State of Chile for Having Used its Antiterrorist Legislation Against Members of the Mapuche People," FIDH, July 30, 2014, accessed November 6, 2017, <https://www.fidh.org/en/region/americas/chile/the-inter-american-court-of-human-rights-condemns-the-state-of-chile>.

10 · "Turkey Jails More Journalists Than Any Other Nation. Those in Detention Are All Terrorists, Erdogan Says," Public Radio International, June 28, 2017, accessed on November 6, 2017, <https://www.pri.org/stories/2017-06-28/turkey-jails-more-journalists-any-other-nation-those-detention-are-all-terrorists>.

11 · Conectas Human Rights was active in documenting the Antiterrorism law approval and arguments against it. It is available on their website

for consultation. Refer to Conectas Human Rights, Homepage, 2017, accessed November 17, 2017, [www.conectas.org](http://www.conectas.org); and Conectas Human Rights, Search page, 2017, accessed November 17, <http://www.conectas.org/en/search?q=antiterrorism>.

12 · Beyond country examples, there are numerous studies that provide evidence of the impact of counterterrorism measures on civil society. The Global NPO Coalition on FATF has several resources available on FATF Platform, Homepage, 2017, accessed November 17, 2017, <http://fatfplatform.org/>. Also, a good reference is this recent study published in April 2017 that details the specific impact of those laws and practices on women's rights: "Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security," Duke Law International Human Rights Clinic and Women Peacemakers Program, 2017, accessed November 17, 2017, <https://www.womenpeacemakersprogram.org/assets/TTPS-DUKE-FINAL-PRINT-AP-WEB.pdf>.

13 · At first, this assumption was raised by Open Society Foundations' Director in Latin America in the blog post: Pedro Abramovay, "Projeto de Lei Sobre Terrorismo: A Culpa é do Levy." Facebook post, August 19, 2015, accessed November 6, 2017, <https://www.facebook.com/quebrandootabu/posts/942594352463619>. Then, the tracking of the legislative procedures linked to the law led to an active participation of the Finance Ministry throughout the entire approval process. Conectas Human Rights is currently producing a comprehensive study on the matter to register all steps and map the main actors.

14 · ODA official data shows the US being the world's largest donor in terms of volume, with USD 33.59 billion in 2016. Source: OECD Tool: "Official Development Assistance 2016 - ODA Overview," Compare Your Country, 2016, accessed November 17, 2017, <http://www2.compareyourcountry.org/oda?cr=ocd&lg=en>.

15 · This case is well documented by the Charity &

Security Network in the Know Your Rights series, especially the webinar and factsheet for “Webinar - Are My Peacebuilding Activities Permissible?,” Charity and Security Network, October 17, 2017, accessed October 25, 2017, <https://www.charityandsecurity.org/know-your-rights/permisible-activities>.

16 • In the US, the reaction to the election was immediate. People felt they had to resist what the new administration represented and national and local organisations are seeing their membership spike. One example is the Democratic Socialist Party that in less than a year went from 8,000 members to 25,000, many of them young people that are using tactics from the civil rights movement and combining them with digital organising and promotion tools to grow.

17 • For a deeper analysis of the impacts of this measure, please refer to: Shami Chakrabarti, “The Knives Are Out”, SUR 12, no. 22 (2015): 269-272, accessed November 8, 2017, <http://sur.conectas.org/en/the-knives-are-out/>.

18 • ATTAC, initials for the French founded activist group *Association pour la Taxation des Transactions financières et pour l'Action Citoyenne* or Association for the Taxation of Financial Transactions and Citizen's Action, gained prominence in the late 1990s and early 2000s for defending the implementation of the Tobin tax on financial transactions and very active in the creation of the World Social Forum movement.

19 • In Germany, in 2014, Frankfurt's tax authorities revoked the public-benefit status of ATTAC retroactively to 2010. The justification was its political stances that did not meet the public-benefit criteria. In 2016, a ruling in favour of the organisation confirmed its status, but the Finance Ministry intervened – even with the case closed, requesting that the Frankfurt office make a complaint that can take another 3 years. During this time, the public interest status would be suspended, as it was during the period of 2014-16 and hurting the organisation financially rendering it unable to issue receipts to individual donors. Read more at: Annika Elena Poppe

and Jonas Wolff, “Germany Sets a Poor Example: The Case of ATTAC in Light of Globally Closing Civic Spaces,” Peace Research Institute Frankfurt, July 27, 2017, accessed September 21, 2017, <https://blog.prif.org/2017/07/27/germany-sets-a-poor-example-the-case-of-attac-in-light-of-globally-closing-civic-spaces/>.

20 • “CAF World Giving Index 2017 – A Global View of Giving Trends,” Charities Aid Foundation, September 2017, accessed on October 26, 2017, [https://www.cafonline.org/docs/default-source/about-us-publications/cafworldgivingindex2017\\_2167a\\_web\\_210917.pdf?sfvrsn=ed1dac40\\_10](https://www.cafonline.org/docs/default-source/about-us-publications/cafworldgivingindex2017_2167a_web_210917.pdf?sfvrsn=ed1dac40_10).

21 • “Shrinking Space for Civil Society: The EU Response,” European Parliament's Subcommittee on Human Rights, April 2017, accessed October 25, 2017, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578039/EXPO\\_STU\(2017\)578039\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578039/EXPO_STU(2017)578039_EN.pdf).

22 • For further information see “Trump's ‘Mexico City Policy’ or ‘Global Gag Rule,’” Human Rights Watch, June 22, 2017, accessed September 21, 2017, <https://www.hrw.org/news/2017/06/22/trumps-mexico-city-policy-or-global-gag-rule>.

23 • Ariana Eunjung Cha and Carol Morello, “Trump Expansion of Abortion ‘Gag Rule’ Will Restrict \$8.8 Billion in U.S. Aid.” The Washington Post, May 15, 2017, accessed September 21, 2017, [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/15/trump-expansion-of-abortion-gag-rule-will-restrict-8-8-billion-in-u-s-aid/?utm\\_term=.c46af8467caa](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/15/trump-expansion-of-abortion-gag-rule-will-restrict-8-8-billion-in-u-s-aid/?utm_term=.c46af8467caa).

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# THE SOUTH IN TRANSITION<sup>1</sup>

**Denise Dora  
Ravindran Daniel  
& Barbara Klugman**

- *Towards a new ecology of the human rights movement* •  
*in the context of closing civic space*

## ABSTRACT

*Human rights defenders across the world continue to face repression. Despite the rise of democratic regimes, in many contexts restrictions on civic space are increasing including the growing power of business over the state. These trends have in many ways curtailed “people power”. Within this context, the human rights movement has had to find new ways of organising, notably by strengthening the power and voice of human rights organisations in the Global South, so that human rights as an approach and way of working are evident in the way the movement itself operates. This article, based on the review of The Ford Foundation’s Strengthening Human Rights Worldwide global initiative, offers examples of how a number of Global South actors are responding to this new reality.*

## KEYWORDS

International NGO | Advocacy | Power | Global South | Movements

Tuesday 1 August 2017 - the last time that Santiago Maldonado, a 28-year-old Argentinian activist was seen alive. He had been participating in a protest with the Mapuches, an indigenous group fighting to protect their ancestral land in Patagonia after it was bought by the global fashion brand Benetton, when, according to witnesses, he was arrested by the Argentine National Gendarmerie – a security force that operates under the direct command of the National Security Minister. Whilst the Gendarmerie denied this charge, his disappearance sparked nation-wide protests demanding the national government adopt measures to bring back Maldonado alive and find who is responsible for the disappearance. “They took him alive, alive we want him back”, protestors chanted, a rallying call that had sinister echoes.<sup>2</sup> Years earlier, during the reign of Argentina’s military regime (1976 - 1983), responsible for the disappearance and death of more than 30,000 mostly young people, human rights organisations in the country had made the same plea.<sup>3</sup> Sadly, Maldonado’s body was found in a river in southern Argentina on 19 October 2017.<sup>4</sup>

The kidnapping and killing of human rights activists is not a new trend, neither in Latin America, nor in the rest of the world. So when the question of *closing* of civic spaces arises, it begs another question – were they ever open? What is different today is that, on the very day of Santiago’s disappearance, human rights defenders in Singapore, London and Mexico were already aware of it. The protests were not only local, but global, thanks to online campaigns, and the case received widespread condemnation. The Inter-American Commission on Human Rights suggested that the case be investigated as a forced disappearance and as a result, the Gendarmerie was removed from taking an active role in the investigation.<sup>5</sup> Furthermore, the United Nations (UN) Committee on Enforced Disappearances requested to oversee the investigation, which was accepted by Argentina. Amnesty International launched an Urgent Action calling for a thorough investigation whilst Human Rights Watch helped amplify the case through its own public channels.

## 1 • New Players, New Ecology

The Santiago Maldonado case exemplifies how, even though abuses continue to take place, often times in the context of clampdowns on civic society, the response by human rights organisations is changing, produced by shifts in the ecology of the human rights movement, most notably in the relationship between so-called Global North and Global South players.

There are positive trends emerging, including new and legitimate voices to deal with these restrictions. The Mapuches case is an example of battles to protect land rights against transnational corporations carried out by their own indigenous leaders. There is a transition within the human rights movement where traditional subaltern groups are now self-representing their interests. The traditional, and vertical model of local organisations collecting information to be analysed and disseminated by international non-governmental organisations (INGOs) is now becoming a more horizontal and collaborative way of defending human rights.

In the last few years there have been attempts by Southern-based human rights non-governmental organisations (NGOs) and Northern-based INGOs to further change the ecology of the human rights movement. They are more explicitly trying to identify how to maximise the value of all players, from local to international levels, recognising that effectiveness requires spaces in which organisations and individuals can bring issues, evidence, and experience into the broader movement. The review of The Ford's Foundation Strengthening Human Rights Worldwide (SHRW) global initiative, upon which this article is based, showed how groups in diverse countries are better able to build evidence of trends in abuses through collaborations. For example, whilst local, national and regional NGOs in the Global South are increasingly turning their attention to abuses by the private sector, they often struggle to find the leverage points for a multinational company that is committing abuses. Meanwhile, the experience and expertise from the very places where these abuses are taking place is critical to ensure human rights organisations adequately respond to the issues on the ground in terms that are appropriate for those impacted by the abuses.

Donors too are contributing to these efforts. The Ford Foundation's SHRW global initiative, which was launched in 2012, was a response to the shifting geo-political context, in which "the international human rights movement needed to adjust to this new global order to make human rights a reality for millions around the globe...to have an impact at the global level by focusing on a sort of 'enforcement from below' through a more multipolar approach."<sup>8</sup> Through a five-year \$54 million investment, the initiative supported a cohort of Global South groups, and another cohort of international NGOs headquartered in the Global North<sup>9</sup> but exploring new relationships, approaches and forms of regional or global organising.<sup>10</sup> This paper presents key insights generated by the Review of the SRHW global initiative, which are particularly pertinent when considering specifically how organisations can respond to shrinking civic space.

## 1 - Knowledge is Power

One of the key elements of a new and more representative human rights movement is generating knowledge from concrete experience and supporting transnational learning between groups from the Global South.

Southern NGOs are challenging the pattern in which knowledge production and validation is done predominantly by human rights NGOs and academics in the Global North. For example, Dejusticia, in Colombia, runs a programme promoting "action-research" where it hosts human rights defenders from countries in Africa, Asia and Latin America, offering training and support in research methods, writing and advocacy.<sup>11</sup> A comparison of first authors in the last three editions of this publication, *The Sur International Journal on Human Rights*, published by Conectas, one of the grantees in the SHRW, relative to two other international journals, *Human Rights Practice* published by Oxford University Press and *Human Rights Quarterly*, published by The Johns Hopkins University Press, shows that SUR had contributions from 37 authors from the Global South and 16 Global North first



authors. In comparison, *Human Rights Practice* had 4 from the Global South and 25 from the Global North and *Human Rights Quarterly* had 2 from the Global South and 43 from the Global North.<sup>12</sup>

According to Rodrigo Uprimny, a member of the United Nations (UN) Committee on Economic, Social and Cultural Rights, “Northern groups have global perspectives. Southern groups are normally involved in collecting information and their analyses tend to be contextual rather than substantive. When Northern groups set the agenda, they are often insensitive to the context and miss crucial points.”<sup>13</sup> Moreover, in context of closing civic spaces, the specificity of local experience has to inform not only local strategies, but global understanding of the forces at work and how to address them.

## 2 - Creating a Mosaic of Actors

More and more, the international human rights movement is better understood and operationalised as a mosaic of diverse groups with diverse contributions rather than a ladder in which abuses happen at local level and are fed “upwards” to be address by international NGOs. This horizontality is illustrated by the International Network of Civil Liberties Organization (INCLO), which built a global evidence-base and campaign on the use of “non-lethal weapons” to control protests culminating in a report in partnership with Physicians for Human Rights, *Lethal in Disguise: The health consequences of crowd-control weapons*.<sup>14</sup> This report is being used both to build a wider base of support to challenge the use of dangerous weapons against protesters and also to advocate - at national and international levels - for government and private sector accountability for the use of ostensibly non-lethal weapons in their efforts to close civic space. INCLO’s members, in turn, have done this research through deep engagement with local groups involved in and affected by the use of such weapons, thus validating the power of alliance building between groups working at local and national levels.

National-based groups in the Global South are increasingly finding ways to influence the human rights system through collaborations with groups working on similar issues and by targeting various international and regional forums. The Center for Legal and Social Studies (CELS), in Argentina, led a joint initiative with 16 other organisations to request the first regional hearing on drug policies at the Inter-American Commission on Human Rights in March 2014, explicitly linking drug regulation and related militarisation to the machinery of oppression, denying citizens rights. The report, *The Impact of Drug Policy on Human Rights*, was presented to universities, social organisations, UN agencies, and regional and sub-regional mechanisms in 10 cities.<sup>15</sup> CELS strengthened existing collaborations, including with researchers analysing militarisation in the “war on drugs”, and added new ones with universities in Europe and Latin America. In addition, the organisation undertook advocacy work at the Human Rights Council, which passed its first resolution on drug policy in 2015, and also at the Office of the High Commissioner for Human Rights (OHCHR), which drew

on the expertise of CELS and its partners to draft a study on the world drug problem's impact on human rights. These in turn fed into a Special Session of the UN General Assembly in April 2016 on "the world drug problem". CELS also participated in the Commission on Narcotic Drugs (CND). They alerted CEDAW and the UN Working Group on Discrimination against Women to the dramatic ways in which women's rights are being affected by drug trafficking and drug policies. As a member of the Human Rights Council Network (HRC-Net) CELS made a presentation to the UN Secretary-General. Through this work, CELS forged alliances with and inserted a human rights perspective into the work of the international drug policy reform movement, joining the International Drug Policy Consortium and becoming an active participant in the Vienna NGO Committee on Drugs and the New York NGO Committee on Drugs, which enabled it to influence conversations with UN Agencies.<sup>16</sup>

In the traditional human rights ecology, national groups advocate to their own governments whereas INGOs advocate to *other* governments. However, in the emerging more equitable ecology of the human rights movement, national and regional human rights groups are challenging the system in other countries without the aid of INGO intermediaries. For example, collaborations between national members of the regional network Forum-Asia and human rights groups in Mongolia enabled them to influence the Mongolian government's motivations for its candidacy to the UN Human Rights Council. They used the moment of its candidacy to put pressure against the way Mongolia was closing civil spaces internally and succeeded in influencing the government to commit itself to move away from its regressive positions, which undermined freedom of expression, assembly and association.

### 3 - Regional Institutions: A Key Part of the Equation

Often states accuse the international human rights system of having a Western bias and failing to understand the local context. And when activists criticise them, their governments often delegitimise the activists' claims by accusing them of being the puppets of Western forces or worse, shut them down. For example, the Kenya Human Rights Council is facing deregistration from the NGO board, a move that they say is political because of their support of the opposition party.<sup>17</sup> Therefore, regional intergovernmental institutions continue to gain geo-political importance. Human rights groups based in the Global South are increasingly focusing work at the regional level to bring greater pressure on their governments. The Inter-American Commission on Human Rights' rapid intervention in the Santiago Maldonado case and their ability to lobby the Argentinian government is a clear indication of their relevance. Further afield and by way of illustration, the landmark ruling in 2010<sup>18</sup> by the African Commission on Human and People's Rights (ACHPR) condemning the expulsion of the *Endorois* people from their land in Kenya was heralded as a major victory for indigenous peoples across Africa. But seven years on, the Kenyan government had still not implemented the decisions of the court, a common occurrence as governments fail to recognise the rights of citizens to organise and ignore decisions made by legal bodies – all part of the

dynamics of shrinking civic closing spaces. The Kenyan Human Rights Commission (KHRC), in partnership with the lead litigants, Minority Rights Group International (MRG), as well as the Economic Social and Cultural Rights Network (ESCR-Net) Strategic Litigation Working Group, joined hands with the community representatives, the *Endorois* Welfare Council (EWC), to keep up the pressure. In September 2014, the government finally heeded their calls and President Uhuru Kenyatta established a Taskforce to work on the implementation of the ACHPR ruling.<sup>19</sup> Through joint strategic planning, workshops to share comparative experience and expertise from the Global South, and sustained advocacy both domestically and at ACHPR, they continue to fight to convert the court's decision into tangible justice for the *Endorois*.

#### 4 - Fighting a New Enemy

Civil society organisations and social movements are increasingly taking action against the illegal acquisition or use of land, often belonging to indigenous communities, by private mining or other corporate interests, such as the Mapuche case. Civil society protests are however often met by egregious human rights abuses by government and private security forces, undercutting local communities' rights to protest. Local, national and regional NGOs, as well as INGOs are finding that joint work maximises each of their contributions. Across borders, NGOs have been supporting the frontline defenders and at the same time building up transnational data and implementing strategies to influence transnational corporations. For example, working with researchers on the ground in every region of the world, the Business and Human Rights Resource Centre (BHRRC) tracks and publicises companies' human rights impacts. Its report on the coal industry in India, Colombia, South Africa, and Egypt, *Digging Deeper: The Human Rights Impacts of Coal in the Global South*,<sup>20</sup> co-written with Dejusticia from Colombia, was instrumental in giving a Global South perspective of the sometimes-devastating consequences of extractive industries. The report was produced in time for the participating groups to use it for advocacy at the Conference of the Parties on Climate Change in 2015.<sup>21</sup> These groups are also using the findings in diverse forums including in a Constitutional Court Case in Colombia taken by Wayuu indigenous groups and Afro descendant leaders, where the court ruled that *Cerrejon* coal cannot continue its works to divert the Bruno stream which residents in this desert zone alleged would impact their water sources.<sup>22</sup>

#### 5 - New Platforms for New Voices

Social media has had a tremendous impact in enabling national NGOs to amplify their own voice without being dependent on big international NGOs to represent them in the media. In the context of shrinking civic space, the use of social media is particularly relevant since traditional media is increasingly influenced by states or big business with ties to government. The use of this new medium has challenged the conventional wisdom that only INGOs are a legitimate voice for speaking about issues across the globe due to their social capital and media links. Today, "Netizens" are changing the

ecology of the movement. The categorisation – “Global North” and “Global South” – has less value when any group, effectively skilled and resourced, can influence global narratives through social media. Nevertheless, it is important to note that the findings of the SHRW Learning Review show that because of the high level of investment by some INGOs in communications, their platforms can significantly increase the global attention to and perceived legitimacy of claims made in the work of national NGOs. The key is to jointly strategise on messaging and audiences.

## 6 - Show Me the Money!

Despite the huge strides that have been made by both national and international NGOs to create a more equitable and effective human rights movement, changing the ecology of the movement would require deeper changes in the manner in which southern human rights organisations are funded and sustained. The funding terrain for human rights activism is fundamentally inequitable and is increasingly threatened by restrictions on, for example, cross border philanthropy. The majority of funds come from the West and go to the West, even for use elsewhere in the world.<sup>23</sup> There has been an increase in funders supporting social movements and human rights NGOs in the Global South. However, the Foundation Center and International Human Rights Funders’ Group data also shows that whereas human rights groups in North America and Europe are funded to work in their countries, large proportions of funds for work elsewhere go to organisations based outside the regions concerned. It is possible that groups receiving these funds give substantial emphasis to partnerships, but the approach is usually that it is they who decide where to focus their energy, while those living with human rights abuses seldom have the resources to shape the global strategies that may be needed to address their issues. There is a substantive difference between work *on* violations in some place and *experiencing* that violation. In seeking solutions to the closing of civil spaces, local groups need to be able to share their experiences with others, learn from others’ strategies, mobilise regionally and globally to put pressure not only on their own governments but governments anywhere that are closing civic spaces, but ultimately shape their own local interventions. Related to this, the Review also found that a barrier to effective participation of Global South groups in the international human rights movement is the continued provision of project funds and a managerial approach, which frequently requires human rights groups to predict their results in an unpredictable world. This is particularly problematic for human rights groups whose purpose is to address human rights abuses which are frequently unpredictable. In the current context of closing spaces, groups may need urgent funds to support human rights defenders who are being threatened, detained or killed, or to mobilise protests about legislation that closes space for public assemblies, or to prevent or address police from endangering protesters. Without doubt, the SHRW demonstrated that long term core funding provides national groups with the autonomy, flexibility and stability to shape their own strategies and make significant impacts on the human rights movement and on the system nationally, regionally and internationally, in order to address their own issues, build an international understanding of the dynamics at play, and stand in solidarity with others.

As regards funders establishing global “big bets”, the Review found that the best way to operationalise a funding strategy in one part of the world might not resonate with another because of different levels of capacity and diverse cultures of organising. Hence, irrespective of the location of the funder, substantial energy needs to go into the build up towards the funding initiative, with local consultations and as far as possible, co-creation of the theory of change with the groups that become grantees, and are really the local voices.

## 2 • Conclusion

The current clampdown on civic space is an attempt from economic and political powers to reduce the local capacity for reaction, protest and organisation. As the review of the SHRW global initiative has shown, a wide range of innovative processes have emerged, which other actors in the movement can learn from, both in relation to how they can respond to reclaiming civic space but also in how they must adapt more generally to succeed in this new reality. Guaranteeing local knowledge production, working in a mosaic-like way, validating the experiences and understandings of local communities and NGOs while leveraging these experiences to influence regional and international policy and practice – through collaborations between national, regional and international groups – are all critical methodologies in this undertaking. Despite the clampdowns, the human rights movement, it seems, is better positioned than ever, to keep fighting back.

## NOTES

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# SEIZING THE MOMENT<sup>1</sup>

**Shannon N. Green**

- *Examining sustainable operating models  
for civil society* •

## ABSTRACT

*Around the world, civil society is at a crossroads. Buffeted on one side by questions about their relevance, legitimacy, and accountability from governments and their beneficiaries, civil society organisations (CSOs) face pressure to demonstrate their value to and connection with local communities. On the other side, civil society is having to adjust to a rapidly deteriorating legal and operational environment, as countless governments pursue regulatory, administrative, and extra-legal strategies to impede their work. Non-state actors also pose a threat to the sector, attacking human rights defenders, bloggers and journalists, environmentalists, and labor unionists in unprecedented numbers. Simultaneously, CSOs are encountering major disruptions to their revenue streams because of changing donor priorities and government restrictions on foreign funding, and to their business model from emerging forms of civic activism.*

*At this pivotal moment, CSOs can either adapt or hunker down, hoping that the tide of change will crest and dissipate. For those organisations intent on survival, there is an urgent need to find alternative models and approaches – even as they fight for their right to exist and receive funding. The crisis confronting the civil society sector creates an impetus for donors and civil society to jointly reexamine traditional approaches and reimagine what healthier, more sustainable operating models would look like. This article seeks to contribute to this conversation by assessing the strengths and weaknesses of various organisational forms on civil society's sustainability and resilience.*

## KEYWORDS

Civil Society | Innovation | Adaptation | Business models

## 1 • The case for adaptation and innovation

Around the world, civil society organisations (CSOs) are under assault, as governments and non-state actors erect countless barriers to their work. For those groups intent on survival, business as usual will not suffice. The crisis facing the civil society sector creates an urgent need for CSOs and their partners to find alternative models and approaches, even while fighting for their right to operate freely and independently.

For the past three decades, civil society has proliferated all over the world. The expansion of human rights and free flow of global capital gave rise to a new universe of CSOs working in a variety of sectors.<sup>2</sup> These organisations offered novel opportunities to affect social change at a grassroots level and fill gaps in service delivery – and as a result, donors invested heavily in them.<sup>3</sup> During this period of rapid growth, most organisations adopted a traditional business model in which they received resources from donors to implement projects, deliver services, conduct research, or execute advocacy campaigns.<sup>4</sup>

While this funding model has served civil society well for 30 years, it is proving to be brittle when confronted with closing space. Increasingly, professional CSOs compete with new and emerging forms of civic activism. Advocacy organisations are often outflanked by social movements, which have proven more adept at mobilising broad cross-sections of society in highly fluid environments.

In addition, the grant-driven business model has been criticised for creating legions of elite, capital-based CSOs more connected to their donors than to the populations they serve. To be sure, CSOs have made heroic contributions to expanding human rights and holding governments, international organisations, and transnational corporations accountable for adhering to those norms. Yet, civil society's reliance on foreign donors and lack of accountability to beneficiaries have made the sector susceptible to governments' and extremists' self-serving attacks.<sup>5</sup> These actors charge that CSOs are malign actors serving a foreign agenda, to the detriment of economic development or security in their own country. Another problem arises when funders' foreign policy priorities change, leaving their local partners to fend for themselves.

For all of these reasons, scholars and practitioners have begun exploring alternative operating models to reduce CSOs' dependence on foreign donors and weather the storm of closing civic space.<sup>6</sup> This article seeks to contribute to this conversation by evaluating the attributes of different CSO business models and their relationship to sustainability and resilience. To do so, the author will use a holistic definition that looks at the ability of organisations to “continuously respond to national and international public policy variations, governance deficits, and legal and regulatory policies through coherent and deliberate strategies of mobilising and effectively utilising diversified resources, strengthening operations and leadership, promoting transparency and accountability, and fostering the scalability and replicability of initiatives and interventions.”<sup>7</sup>

## 2 • Membership-based organisations

Membership-based organisations (MBOs) have inherent traits that foster local buy-in, bolster their ability to adapt to shifting circumstances, contribute to transformative change, and influence government policy.<sup>8</sup> Thus, they are well-positioned to withstand the current crisis of closing civic space.

Key to the legitimacy and sustainability of MBOs is their grassroots membership. MBOs form around the common interests, needs, and priorities of members and seek to leverage the size, diversity, and influence of their membership base to advance shared policy objectives. Because they are accountable both inward (as leaders are often elected or designated) and outward (as leaders represent their constituencies), MBOs can more easily respond to the needs and aspirations of their members.<sup>9</sup> This flexibility is critical in closed, closing, or shifting environments. In such contexts, governments cannot apply the same tactics used against formalised CSOs, such as cutting off foreign funding, threatening deregistration, or exposing the organisation to a lengthy, politicised audit.

Due to the benefits of this model, activists from Brazil to Egypt, India to Kenya are adopting looser, more organic, and less hierarchical forms of association and activism.<sup>10</sup> These approaches include online and offline activities, such as large-scale digital campaigns for social justice in Brazil, closed Facebook groups of women supporting each other to lead more independent lives in Egypt, student protests in India, and the formation of new umbrella groups comprising faith groups, trade unions, and academic bodies in Kenya.<sup>11</sup>

This approach is not without risks. Governments are increasingly alarmed by the prospects of mass mobilisation and are resorting to draconian measures to curtail it. Particularly in settings in which space is closed or closing, even MBOs are constrained in their ability to overtly lobby for transformational change.

Despite these challenges, developing constituencies for civil society and mobilising the public are essential to protecting individual organisations and to defending democratic values more broadly. MBOs, including social movements, provide important avenues to reclaim the rights of association, assembly, and expression and to build more inclusive societies.

## 3 • Community-funded organisations

The barriers to foreign funding, decrease in donor support for human rights, and drawbacks of relying on foreign donors have led many CSOs to explore domestic revenue streams. This examination is long overdue. Beyond providing a financial lifeline, local funding can augment the sustainability of CSOs by building local constituencies and raising awareness of and support for their work.

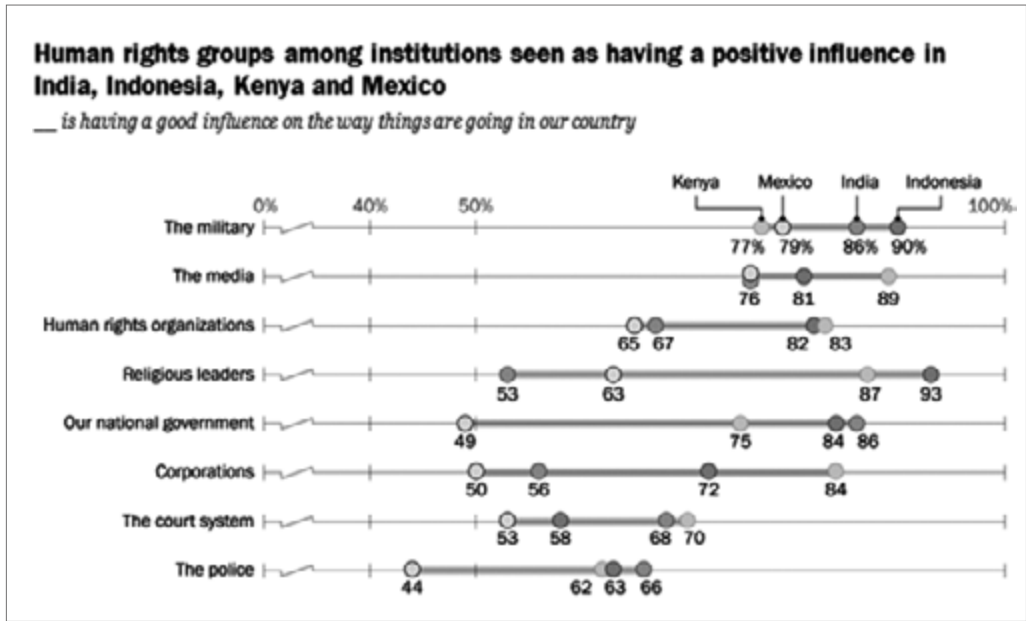
Local funding – alternatively referred to as domestic philanthropy, community philanthropy, or domestic fundraising – takes many different forms. In some environments, a growing family of community philanthropy organisations, including community foundations, pool and distribute local resources for grantmaking, while in others, CSOs are acting alone to increase individual donations from ordinary citizens. However, underlying the diversity of these approaches are three shared elements: developing local assets, strengthening local capacities, and building local trust.<sup>12</sup>

With the expansion of the middle class in developed and developing countries, there is a broader pool of domestic resources for CSOs to tap into. Local philanthropic sectors are emerging in many parts of the world that were traditionally considered purely “aid recipient” countries, such as Serbia and South Africa.<sup>13</sup> This evolution has prompted a movement to grow domestic philanthropy, both as a strategy to shift grantmaking closer to the ground and as a way to encourage local giving.

One notable indicator of this mindset is the expansion of community foundations. These are grantmaking public charities that aim to solve discrete challenges within a defined local geographic area, pool financial contributions from individuals, families, businesses, and traditional donors to support effective nonprofits in their communities.<sup>14</sup> Over the past decade, the number of community foundations has grown to 1,500 in more than 50 countries.<sup>15</sup> While each foundation might look different depending on the local context, what unifies this model is the core belief that development will be stronger and more lasting when community members themselves are driving and investing their own resources in solutions.

Another approach is to generate revenue from small, individual donations. Several cross-national surveys have shown the potential for CSOs to tap into broad public support and trust in local human rights organisations.<sup>16</sup> In a survey conducted by the Pew Research Center, a majority of citizens in India, Indonesia, Kenya, and Mexico said that human rights organisations have “very good” or “somewhat good” influence on the way things are going in their country.<sup>17</sup> This sentiment puts favourability for human rights organisations below the military and religious leaders but above or on par with corporations and police. Survey experiments conducted by James Ron, José Kaire, and David Crow also prove that “many people are in fact willing, if asked in the right way, to make small donations” to human rights organisations.<sup>18</sup> These findings indicate that there is untapped potential for CSOs to replace or supplement their funding with contributions from individual donors.

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Source, Spring 2017 Global Attitudes Survey. Q98a-h

Pew Research Center

Despite these promising signs, local funding is unlikely to replace foreign funding entirely. Substantial funding, primarily from northern sources, remains necessary to carry out much of civil society's work.<sup>19</sup> The Arab Human Rights Fund, for instance, was created with the intention of fostering local giving for rights work. More than a decade later, external funding remains the principal source of support for the fund and community foundations like it.<sup>20</sup>

There are other constraints to applying this model across the board. Citizens may fear retribution from repressive governments for making contributions to CSOs, or legal constraints to local fundraising may make this strategy impossible. In Morocco and Oman, for example, soliciting for funding is illegal and could lead to charges of terrorism. Moreover, in these environments, wealthy individuals voluntarily avoid links with CSOs either "due to a mutually beneficial relationship between them and the dictatorship, or out of fear of repercussions against their economic interests."<sup>21</sup> Organisations that want to attract funding from local elites may have to bend to their priorities and preferences, giving them even less autonomy than if they received funding from a distant foreign donor.

CSOs – especially those working on sensitive issues like human rights – will have a hard time overcoming the structural and legal barriers in these highly repressive settings. Yet, overall, the rapid growth of community philanthropy and enduring public support for human rights ideas and organisations show that the potential for domestic fundraising has not even begun to be realised.

## 4 • Market-driven organisations

Given challenges with funding and sustainability, and a desire to end their reliance on donors, some organisations are experimenting with self-sustaining models based on a private sector mentality and approach. The essential attribute of these market-driven organisations is that they generate all or part of the resources they need to operate and contribute to social change out of their own activities.<sup>22</sup>

There are many permutations of market-driven organisations, including those that are set up as commercial ventures but advance a social good (i.e., social enterprises), those that are registered as non-profit organisations but have income-generating activities, and everything in between. Social enterprises have grown in number and scale as a response to basic unmet needs or social problems that public sector or civil society strategies have failed to resolve. These ventures seek to apply business concepts – market analysis, business planning, raising capital, scaling up, and return on investment – to complex social challenges.

One of the best-known examples of the investment model – Grameen Bank – provides microcredit to the poorest of the poor to start their own small, income-generating ventures, with no requirement for collateral. With a total disbursement of US\$18 billion in loans to 9 million borrowers, and a 95 per cent rate of repayment, Grameen is able to use the interest on loans to continue investing in lifting people out of poverty.

Pioneering CSOs are also creating business arms or offering fee-based services to subsidise or replace other revenue streams. Business activities can either be separate or integrated into the CSO. For example, Oxfam's shops generate proceeds that are then funneled into the organisation's poverty eradication efforts. Other CSOs leverage their expertise – in legal matters, organisational development and management, monitoring and evaluation, survey design and implementation, social media campaigning, etc. – and offer for-profit services to government agencies, corporations, and non-governmental organisations to subsidise their non-profit activity.

Finally, commission-based organisations collect nominal fees to link donors or service providers to beneficiaries. World Vision has long used this model – appealing to donors to sponsor a child for a fixed amount every month – to support its poverty alleviation efforts.<sup>23</sup> Donations are pooled with other sponsors to fund programmes that benefit the sponsored child and his or her community. In return, donors get to build a relationship with their sponsored child and the broader community. GlobalGiving has taken this approach into the 21<sup>st</sup> century, using an online platform to directly connect donors to vetted local organisations in 165 countries.<sup>24</sup> For a 15 per cent fee on donations, GlobalGiving sustains its operations and helps grow philanthropy around the world.

These models possess several attributes that make them more resilient to closing space. For one, all or part of their revenue is generated from customers or clients for whom

they are providing a desired product or service. It is far more difficult to jeopardise this source of funding than it is for governments to cut off foreign grants. Market-driven organisations are also less vulnerable to fluctuations in foreign policy and donors' preferences. Because they do not primarily rely on external support, they are not subject to the whims of changing administrations.

Despite these strengths, a market-driven model is not suitable for every organisation in every environment. Human rights and social justice organisations have missions and expertise that do not always lend themselves to marketable products or revenue-generating services. Furthermore, such a model does not help organisations cultivate domestic trust and support. Market-driven organisations do not have incentives to create broad-based constituencies, as the model is dependent on having customers and clients, not partners and champions. Without a strong and vocal constituency for their work, civil society is unlikely to be able to withstand the deluge of government restrictions and repression in this era of closed, closing, and shifting space.

Governments will find a way to shut down activity that they do not like, regardless of what form the sponsoring organisation takes. Registering and operating as a commercial enterprise does not provide full protection against government interference and intimidation. Egyptian organisations tried to avoid restrictions on civil society during the Mubarak era by registering as civil companies under commercial law. For a time, this allowed these organisations to circumvent stringent reporting requirements that traditional CSOs were subjected to. However, the Sisi government has sought to close this loophole and require all public benefit organisations to register as NGOs or risk closure or prosecution.<sup>25</sup>

Market-driven models are also not proven vehicles for meaningful social change. They can effectively address service gaps, but their ability to transform the legal, regulatory, and enabling environment for civil society is unclear. These approaches, by their very nature, may not be equipped to tackle deep social problems like inequality, discrimination, and injustice that CSOs exist to address.

## 5 • Conclusion

As this paper illustrates, there are different models available for CSOs to test in order to build their resilience to government repression and position the sector for the future. MBOs have intrinsic features that allow them to adapt to shifting circumstances, continue to generate revenue, and survive even as foreign donors' priorities shift and the legal and regulatory environment deteriorates. With broad and committed constituencies, MBOs can influence policy and engage in collective action to keep civic space open. Likewise, community-funded organisations have greater legitimacy and ability to advance structural reform given their deep community roots. Research and public opinion polls show the unrealised potential for CSOs to solicit donations from the population, thus making up for



the loss of revenue from foreign donors. Finally, CSOs could look to the market for answers to the challenge of closing space. Market-oriented approaches provide opportunities to diversify revenue, tap into new sources of funding, think strategically about the demand for civil society services and products, and demonstrate impact with quantifiable measures. These traits are all beneficial for enhancing civil society's sustainability and resilience.

In spite of these advantages, each model has limitations and downsides. There is no ideal organisational model that will allow civil society to persist in the face of closed, closing, and shifting space – and in many cases, organisations will continue to require external support. To withstand the onslaught of restrictions and survive a period of significant disruption, civil society and their funders will have to experiment with different models and pick and choose the attributes most relevant to their particular circumstances.

We are living through a perilous time for civil society. However, if CSOs and their partners are willing to take risks and exercise foresight, the global crackdown on civil society could engender much-needed innovation and renewal for the sector.

## NOTES

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# MEXICO AND ITS FOREIGN POLICY OF DENIAL

**Olga Guzmán Vergara**

- *Defending human rights* •  
*in the context of setbacks*

## ABSTRACT

*In recent years, there has been a gradual denial in Mexican foreign policy both about the human rights violations that are taking place within the country and also about the role of human rights organizations and international bodies that denounce the violations. This confrontational and regressive foreign policy has serious consequences for the defense of human rights in Mexico, making it increasingly difficult for human rights defenders to work safely and legitimately. Consequently, Mexican civil society organisations are seeking strategies to highlight abroad the serious situation and to generate alliances with national and international actors in order to protect themselves when they denounce and attempt to reverse Mexican policy on the matter.*

## KEYWORDS

Foreign policy | Citizen diplomacy | Setbacks | Civil society organisations

## Introduction

After the change in government in the early 2000s Mexico's foreign policy in the area of human rights was marked, for over a decade, by its commitment to promote the human rights agenda and strengthen international mechanisms for the protection and defence of human rights at the multilateral level.

This commitment was reflected not only in the dynamic efforts of its diplomatic teams to further the development of international human rights law in multilateral forums, but also its decision to open the country to the international scrutiny of international observers, ratify international human rights treaties<sup>1</sup> and lift reservations on the treaties that it had already ratified. It could also be seen in its acceptance of the competence of human rights bodies to receive individual complaints.

However, while Mexico's good efforts abroad consolidated its image in the multilateral sphere as a state that promotes and guarantees respect for human rights, inside the country, a gruelling war against drug trafficking was unfolding. Initiated in 2006 by Felipe Calderón, the war turned into one of the most severe human rights crises in the country's history.

### I • The reversal of Mexico's foreign policy on human rights since 2012

The change, in 2012, of administration and political party put at the centre of the debates of analysts, security and media specialists, activists and human rights defenders the need to change the country's security policy and institutional narrative to go beyond Calderón's warmongering and to ensure they are based on the respect for human rights. However, with only one year left in the current presidential term, more and more voices from civil society (organised and unorganised), international human rights bodies, the academic world and the media (mainly independent channels) agree that a human rights crisis exists in Mexico and that there is no political will to end it.

Despite this increasingly common view and the substantiated empirical evidence of bodies and institutions dedicated to the promotion and defence of human rights, the Enrique Peña Nieto administration has maintained a policy of denial and even confrontation with those who have confirmed the severity of the human rights situation in the country.

This clear turnaround in foreign policy has had impacts inside the country. Not only has it led to the failure to give priority to far-reaching political policies to ensure respect for, guarantee and promote human rights, but it has also turned the defence of human rights in the country into a questionable and even illegitimate task.

Over the past two years, since the state's policy of questioning and denying the claims of international human rights organisations has become evident, women and men

human rights defenders in Mexico have been harshly defamed and criminalised and highly exposed to serious threats to their security and personal integrity. To add to this, citizens are fed up with the serious security crisis and high levels of violence and impunity currently plaguing the country, which is the result of the failing security and justice institutions. These frustrations serve to fuel the state's punitive and populist narrative that, paradoxically, portrays respect for human rights as the main problem.

In sum, the current administration's reversal of foreign policy on human rights has created a situation in which the work to defend and promote human rights within the country has become increasingly risky, discredited and criticised.

We analyse below several elements that shine light on the setbacks in the country's foreign policy on human rights and the lack of guarantees for the safety of those who defend human rights and the legitimacy of their work.

## II • Indicators of the setbacks

### 1 - Relations with the UN system for the protection of human rights

In February 2015, the state of Mexico rejected the final observations of the United Nations Committee on Enforced Disappearances, arguing that they “did not correspond to reality”.<sup>2</sup> In March 2015, after United Nations Special Rapporteur on torture Juan Méndez presented the report from his mission to Mexico between 21 April and 2 May 2014, during the 28<sup>th</sup> session of the United Nations Human Rights Council, the Ministry of Foreign Affairs denied that torture was widespread in Mexico, as the rapporteur had stated in his report.<sup>3</sup> What was even more alarming was the Mexican government's position at the 31<sup>st</sup> session of the Human Rights Council, where it questioned the veracity, rigor, professionalism, objectiveness, credibility and adherence to international law of the observations and recommendations issued by the United Nations human rights mechanisms.

In the words of the Under-Secretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs:<sup>4</sup>

*[...] considering the high impact that the observations and recommendations of human rights mechanisms have, we believe it is fundamental that these mechanisms thoroughly verify the information under examination and analyse it in strict adherence to international law. Consequently, they must issue observations that are soundly justified, impartial and based on professionalism in order to facilitate states' task of implementing them [...] We are concerned with the impact of this type of statement on the credibility of the system as a whole, especially in relation to its effectiveness.<sup>5</sup>*

Furthermore, the Mexican government has indicated its intention to silence critical and expert voices in the United Nations by nominating candidates who have always served its interests to positions in the United Nations and Inter-American human rights systems.

## 2 - Relations with the Inter-American human rights system

The Inter-American Commission on Human Rights (IACHR) conducted an on-site visit to Mexico from 28 September to 2 October 2015. During the visit, it interviewed officials from all three branches of government and the different levels of government, representatives of civil society, autonomous bodies, international bodies, scholars and journalists. It also gathered the testimonies of the victims of human rights violations and their family members in Mexico City, Coahuila, Guerrero, Nuevo León, Tabasco and Veracruz. Based on the evidence found, the IACHR confirmed, on the ground, the existence of a grave human rights crisis in Mexico, critical levels of impunity, and inadequate and insufficient attention for the victims of human rights violations and their family members.

In the Mexican government's opinion, the observations presented by the IACHR were insufficient to confirm that the human rights situation in Mexico is serious and, on the contrary, the commission's observations were the result of isolated considerations on "extraordinary" cases.<sup>6</sup> The Ministry of Foreign Affairs once again discredited the methodology that the IACHR used to elaborate the "Human Rights Situation in Mexico" report.<sup>7</sup>

According to the document submitted by Mexico with its observations on the IACHR's report on the human rights situation in the country (No. OEA-03636),<sup>8</sup> the IACHR's work during its visit to the country was biased, as it sought to prove the existence of human rights violations in the country. The Mexican government said that this prevented the Commission from "properly evaluating its sources of information and even using them impartially".<sup>9</sup>

This questioning of the IACHR's reliability and impartiality by the Mexican government came at a time when the IACHR announced it was going through a financial crisis in May 2016. During the Ordinary Session of the OAS Permanent Council held on 25 May 2016, the Mexican government argued that the Commission's "selectivity" in dealing with certain cases or denunciations, its politicisation and partiality on certain issues and countries, and its lack of "uniform criteria" constitute sufficient grounds to no longer trust the IACHR and therefore, to stop supporting it financially.<sup>10</sup>

Similarly, its relationship with the Group of Experts appointed by the Inter-American Commission on Human Rights (IACHR) to provide technical assistance for the investigation of the case of the 43 missing students was visibly difficult. When the Group of Experts invalidated the Mexican government's official version on the students' disappearances, its members became the target of media campaigns that sought to discredit both them and their previous work. These attempts at defamation continued

until the group presented its final report, revealing a pattern of intimidating and criminalising anyone who attempted to discover the truth about the case.

### 3 - Its policy of denying the human rights crisis in the country

The current administration has been characterised by its lack of recognition of and the absence of a reliable national assessment on the real situation in the country and the human rights challenges it is facing. This has been made evident by the growing tendency of the state to ignore the observations of international human rights mechanisms.

In September and October 2015, the United Nations High Commissioner on Human Rights and the Inter-American Commission on Human Rights carried out visits to the country. Both international bodies observed that there is a serious human rights crisis in Mexico. They also agreed that the extreme levels of insecurity, violence and impunity and the alarming number of people who have been assassinated, disappeared, displaced and tortured are shocking, especially for a country that is not in the midst of an armed conflict recognised as such. Even so, the Mexican government has refused to assume its responsibility for the situation.

The Mexican government's unwillingness to recognise the crisis in the country and the consequences of the militarisation of public security on human rights became obvious during the thematic hearing on "Human Rights and Drug Policy" held during the 156<sup>th</sup> period of sessions of the Inter-American Commission on Human Rights in October 2015. During the hearing, the Under-Secretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs affirmed that even though civil society organisations question the participation of armed forces in the fight against organised crime, the Mexican army and air force are seen as the institutions that citizens trust the most.

He also noted that according to public polls, nearly 70 per cent of the population believes that the Mexican armed forces are highly respectful of human rights. He went on to state that some of the civil society organisations that criticise the work of the armed forces in some cases request that they be more present in others to protect people from the criminal acts committed by organised crime. "Therefore, the state is called on to take action against criminal groups and when it does, it is questioned for the way it fights organised crime". He firmly denied that the armed forces were responsible for human rights violations, especially torture, murders and disappearances, and stated that while they might have committed some excesses, these are already being investigated and prosecuted.

Similarly, in its response to the IACHR's report on the human rights situation in Mexico (No. OEA-03636), the Mexican government affirmed that:

*In Mexico's view, it is inconsistent to indicate, as the IACHR did, that the country is experiencing a "serious human rights crisis" when*



*only certain violations – and not rights – were analysed without conducting an assessment of the enjoyment of all or the majority of rights contained in the American Convention on Human Rights and other international instruments and with a scope of special application that is particular to a federal state such as Mexico.*

*[...] the IACHR's draft report comes to conclusions that it appears to have made lightly due to the lack of seriousness of its methodology, sources and use of the information to which it undoubtedly has had access over several years.<sup>11</sup>*

#### 4 - The policy of refusing to recognise the work of women and men human rights defenders

The Mexican government's efforts to discredit the international human rights bodies analysed above have been accompanied by a smear campaign against human rights defenders and organisations, especially human rights defenders who provide support to victims and survivors of torture. This campaign was launched mainly by non-state actors and covered up by high-ranking federal government officials.

In an article entitled "UN rapporteur makes the work of corruption networks to free criminals easier"<sup>12</sup> published on the webpage of a major national radio programme, renowned activists with a long history of defending and promoting human rights while occupying government or civil society positions with high public exposure were deliberately labelled as members of a "network of corruption". This claim was made by someone close to Mexico's political elite, who is the founder of the organisation *Alto al Secuestro* (Stop Kidnapping), a close ally of the government.

Using arbitrary and untenable arguments, the article claimed that these human rights defenders helped free criminals to obtain millions from the *Fondo de Ayuda, Asistencia y Reparación Integral de Víctimas de la Comisión Ejecutiva de Atención a Víctimas* (Fund for Relief, Assistance and Comprehensive Redress for Victims of the Executive Commission on Attention to Victims). It also alleged that the United Nations Special Rapporteur on torture was facilitating the work of the "network of corruption" by "using torture to make money".

The smear campaign against human rights defenders influenced public opinion by classifying them as members of criminal organisations and creating the idea that the defence of human rights serves "criminals and not the victims". Moreover, it criminalised the victims and especially the survivors of torture that the defamed organisations accompany and defend.

Parallel to this, various press releases and opinion columns have been used to spread messages to delegitimise those who demand justice and respect for human rights. *People from the Secretaría de Defensa Nacional* (SEDENA, the Defence Ministry)<sup>13</sup> have alleged that there

are lawyers and organisations that file complaints against military personnel for committing supposed human rights violations in order to taint criminal proceedings and obtain release.<sup>14</sup> They have even warned in national newspapers that there are complaints filed by human rights bodies and defenders that aim to put a halt to the actions that the armed forces carry out for the good of society and thus undermine public trust in Mexico's armed forces.

The narrative claiming that complaints of torture are being filed as a way to taint criminal proceedings is gaining momentum in public opinion in Mexico. Media outlets and civil society organisations with close ties to the country's political elite and whose discourse aims to undermine and criminalise the defence of human rights have promoted and reinforced the idea that torture is not a serious problem in Mexico and that, on the contrary, it is being denounced in order to free "criminals". This argument has even been used repeatedly and strengthened by President Enrique Peña Nieto himself.<sup>15</sup>

Among the high-level public officials who joined and supported the smear campaign against human rights defenders and victims of torture is the former head of the Executive Commission on Attention to Victims.<sup>16</sup> In an interview with a Mexican newspaper,<sup>17</sup> the former head inferred that the civil society organisations that support victims of torture were signing contracts directly with them to receive part of the reparation paid to the victims.<sup>18</sup>

In light of this atmosphere of distrust created and tolerated by the Mexican government towards the defence of human rights, Mexican civil society human rights organisations asked members of Congress, international organisations and UN human rights bodies to demand that the federal government publicly recognise the work on and the legitimacy of the defence of human rights in Mexico. Despite the point of agreement<sup>19</sup> promoted by the Congress and the public declarations of international organisations<sup>20</sup> that joined forces with Mexican civil society human rights groups to urge the federal government to explicitly recognise the work of human rights defenders and guarantee their safety, the federal government responded by refusing to recognise the existence of the smear campaign, thus allowing it to continue.

An example of this was seen during the thematic hearings held in April 2016 during the 157<sup>th</sup> period of sessions of the Inter-American Commission on Human Rights, where the Under-Secretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs<sup>21</sup> indicated that:

*On the issue of the supposed smear campaign, I want to simply say, in all sincerity and frankness, that no one from the Government of Mexico is involved in any smear campaign against CSOs, the IACHR, the Executive Secretary of this Commission or the GIEI. Mexico is a complex and democratic society and there is freedom of expression and it is a fundamental human right. This freedom of expression means we must respect everyone's opinion.*

### III • The actions of Mexican civil society to counter stigmatisation

In the atmosphere of growing distrust, promoted by high-level officials and non-state actors close to and allied with the federal government, civil society human rights organisations launched a series of actions to reverse the attacks and prevent new ones from happening. Some of these actions are:

#### a - Invitation to the United Nations Special Rapporteur on the situation of human rights defenders

In May 2015, a group of Mexican civil society organisations sent a letter to United Nations Special Rapporteur Michel Forst to inform him of the situation of women and men human rights defenders and to request that he make an official visit to Mexico during his mandate as rapporteur. The Rapporteur submitted a request for a visit to the Government of Mexico. After Mexican organisations' lobbying efforts at the Human Rights Council in Geneva, on 27 February 2015, the Mexican government agreed to his visit.

Despite the government's consent to the Rapporteur's visit, no date was set and it soon became obvious that Mexican authorities intended to delay and even prevent the visit from happening. This is why Mexican organisations invited him for an unofficial visit, with the support of the Office of the United Nations High Commissioner on Human Rights in Mexico, which he accepted. During this visit, he had the opportunity to meet with over 100 human rights defenders from several Mexican states in May 2016. Even though Mr. Forst was there unofficially, he also met with high-ranking officials from the Ministry of Foreign Affairs and the Ministry of the Interior, with whom he finally managed to set the dates for his official visit, which took place from 16 to 24 January 2017.

During the meetings we held with the Rapporteur prior to his official visit, we informed him of our concern with the attempts by the Government of Mexico and non-state actors close to government officials to undermine the legitimacy of individuals and civil society organisations to discredit them and create a hostile environment towards human rights defenders by using rhetoric that treats the defence of human rights as a criminal activity. We asked for his cooperation in calling on the Government of Mexico to counter such attacks and take the necessary measures to guarantee a safe environment for individuals and civil society, free from all forms of stigmatisation and aggression.

During his visit to the country, a public event was held on 13 January 2017 to recognise the importance of the defence of human rights in Mexico. High-level federal government officials were present at the event organised by the *Comisión Nacional de los Derechos Humanos* (CNDH, National Human Rights Commission) and the Office of the United Nations High Commissioner for Human Rights in Mexico.<sup>22</sup>

Until now, this has been the only action taken by the federal government to underline the importance of the role of human rights defenders in Mexico, promote a safe environment for the defence of human rights and eliminate open hostility towards this work.<sup>23</sup>

## **b - Communications sent to United Nations Special Procedures and other mechanisms for the protection of human rights defenders**

The UN Special Rapporteurs on the promotion and protection of the freedom of opinion and expression and on the right to freedom of peaceful assembly and association also came together to issue a public statement to urge the Mexican government to counter the smear campaign and support rights defenders.<sup>24</sup> This statement strengthened civil society's demand that the federal government publicly support human rights defenders and protect them from the smear campaigns they were victims of.

Furthermore, to give visibility to the growing levels of harassment and intimidation to which women and men human rights defenders are exposed in Mexico for reporting abuses and violations of human rights to regional and international human rights mechanisms, the CMDPDH sent a communication to the UN Secretary-General responsible for receiving reports on government retaliation against individuals and civil society organisations for cooperating with the UN, Andrew Gilmour. As a result, in his report, Andrew Gilmore regretted that in countries such as Mexico – one of the 29 countries mentioned in the report – victims and survivors of torture were criminalised and smear campaigns were undertaken to criminalise the organisations and rights defenders that support victims as well.<sup>25</sup>

## **c - Alliances with international organisations**

To increase pressure on the federal government to publicly recognise the fundamental work done to defend human rights in Mexico, various international organisations joined in solidarity with their Mexican counterparts to express their strong objection to the delegitimation and criminalisation of numerous individuals and human rights organisations.<sup>26</sup> In letters to the public, press statements and opinion articles published in Mexican newspapers,<sup>27</sup> they demanded that the Government of Mexico implement measures to guarantee a safe environment for individuals and civil society organisations and end the smear and defamation campaign against them.

## **d - Coordinated action with the National Human Rights Commission to promote the defence of human rights in Mexico**

In view of the federal government's indifference towards the growing wave of stigmatisation and defamation of human rights defenders, a broad group of civil society organisations engaged in active dialogue with the National Human Rights Commission (CNDH) to request that it take action to recognise the defence of human rights in the country. After months of dialogue with the institution, in October 2017, the National Ombudsman presented the "The CNDH and Human Rights Defenders" campaign.<sup>28</sup> The goal of the campaign is to give visibility, via radio and television, to the legitimate work done by human rights defenders and end the campaigns that seek to criminalise this kind of work.

## Conclusions

The reversals in foreign policy on human rights by the current administration have been based on its rejection and denial of the observations and reports of international human rights mechanisms and its questioning and discrediting of the methodologies and sources used by the international bodies' members to elaborate their reports.

The federal government's main argument is that the international mechanisms' reports do not give the same importance to the advances that the Mexican government has made on the national human rights agenda. This interpretation reflects the government's self-indulgent expectations *vis-à-vis* the cooperation of international human rights bodies and does not contribute in any way to the construction of a sustainable human rights agenda. Similarly, its questioning of the impartiality and professionalism of the human right mechanisms and its suggestion that the observations they issued were not thoroughly verified or soundly justified is an affront to the United Nations and Inter-American systems for the protection of human rights.

What is also concerning is the negative impacts of the turnaround in foreign policy on human rights on the work to defend human rights in the country. The government's dismissal of the existence of a human rights crisis in Mexico and its challenging of the international human rights bodies' reports also discredits the work of civil society organisations and human rights defenders who document human rights violations first hand and who – in view of national bodies' incapacity to protect, respect, punish and remedy – decide to appeal to international bodies in search of justice.

Furthermore, the federal government persistently uses a narrative to evade its international obligations to respect, protect and guarantee rights and then to link the atrocious crimes to organised crime groups.

This policy puts human rights defenders, who contribute to the development of international human rights law on a daily basis, at risk. The government's confrontation and questioning of international human rights bodies is also an affront to women and men human rights defenders who turn to these bodies in search of justice because of the indifference of the state. This has generated an unfavourable environment for the defence of human rights that places the legitimate work carried out by human rights defenders at the federal and state level increasingly in danger. Even so, human rights defenders and civil society organisations are developing increasingly innovative ways to legitimise their work abroad and defuse the hostility towards them.

More and more, Mexican civil society organisations are coordinating their work and strategies to give greater international visibility to the serious human rights situation in the country and to build alliances with a diverse range of national and international actors. This helps to shield their work to denounce the situation and to reverse the setbacks in Mexico's current policy on human rights.

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# “IF WE JUST KEEP WORKING, HOW CAN THEY WIN?”

**Adrian Jjuuko & Linette du Toit**

- *Strategies to resist shrinking civic space* •
- *from a Ugandan minority rights organisation*

## ABSTRACT

*Human Rights Awareness and Promotion Forum (HRAPF) is a human rights advocacy organisation based in Kampala, Uganda. The organisation faces opposition from some sections of the state and the public due to its advocacy and legal work on behalf of marginalised minority groups including Lesbian, Gay, Bisexual and Intersex (LGBTI) persons, sex workers and People Who Use Drugs (PWUDs). Furthermore, it operates within an environment that is becoming increasingly hostile toward civil society, with the introduction of new and more restrictive legislation, and organisations facing attacks. This short institutional reflection shares strategies that HRAPF has employed in order to continue operations despite the many challenges faced. These strategies include: registering under alternative laws to avoid restrictions in the NGO laws; joining forces with organisations fighting for similar issues; and simply continuing to work despite the challenges faced.*

## KEYWORDS

Civil Society | Uganda | LGBTI | Strategic Litigation | Non-governmental Organisations Act | 2016-Anti-Homosexuality Bill 2014 | Attacks | Resilience

## Introduction

The Ugandan state largely sees civil society organisations (CSOs), especially those involved in advocacy, research and direct engagement with the people, as threats, rather than as partners.<sup>1</sup> Organisations working on politically sensitive issues such as: constitutionalism, oil and gas, land justice, and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, are particularly at risk.<sup>2</sup> Such organisations are targeted by restrictive laws,<sup>3</sup> are threatened with closure,<sup>4</sup> have their activities stopped,<sup>5</sup> and a number have even had their offices broken into without a single case being resolved by the police.<sup>6</sup> In addition, they can expect little or no support from the public as the majority of Ugandans oppose homosexuality and believe that these organisations promote it.<sup>7</sup>

Throughout the nine years of its existence, Human Rights Awareness and Promotion Forum (HRAPF) has faced these challenges and has had to persevere and strive to sustain the work that it believes in. This institutional reflection offers insight into the strategies employed by HRAPF in its day-to-day struggle to keep its vision and mission alive. The strategies that HRAPF has adopted to respond to the difficult environment in which it operates can be categorised under three broad headings: 1) registering under multiple laws to avoid restrictions within Uganda's NGO laws; 2) working with coalitions to advocate against restrictive bills and to challenge existing laws; 3) facilitating a culture of resilience in the face of hardship. These strategies are discussed in more detail below.

### 1 • Registering under multiple laws to avoid the restrictions within Uganda's NGO laws

HRAPF has learnt to take advantage of the multiplicity of laws in the country to continue operating in a repressive context. In 2006, Uganda amended the 1989 Non-governmental Organisations Registration Act Chapter 113 of the Laws of Uganda (2006 NGO Act).<sup>8</sup> It also passed the Non-governmental Organisations Registration Regulations in 2009,<sup>9</sup> which operationalised the 2006 amendment. The amendment introduced restrictions for NGOs including mandatory registration of NGOs; dual liability of the NGO and its directors for committing an offence under the Act;<sup>10</sup> the need for recommendations from security agencies when applying for registration as an NGO; restrictions against making direct contact with the people;<sup>11</sup> and compulsory cooperation with local authorities.

There was, however, an avenue for escaping some of these restrictions. Section 2(1)(a) of the Non-Governmental Organisations Registration (Amendment) Act, 2006 stated that the requirement to be registered by the NGO Board and to have a permit issued by the NGO Board did not apply to organisations that elected to register under the Companies Act or the Trustees Incorporation Act.<sup>12</sup> Consequently, HRAPF, just like many other organisations, also incorporated under the Companies Act as a company limited by guarantee. HRAPF also helped close to 30 LGBTI organisations incorporate in the same way.

Unfortunately, however, this option is no longer available. The Non-governmental Organisations Act 2016 (discussed further below) requires all organisations, even those incorporated under the Companies Act or the Trustees Incorporation Act, to register with the NGO Bureau and obtain an NGO permit.<sup>13</sup> CSOs now have no option but to comply with all the stringent registration and operational requirements introduced by the 2016 NGO Act. This change in the law presents an obstacle for organisations working on unpopular issues. While the previous avenue for registration allowed organisations a measure of freedom in their operation, all organisations will now be subjected to the scrutiny of the authorities overseeing civil society. Consequently, we must use other strategies to resist the attempts being made to restrict our operations – including those listed below. However, we will continue to look for legislative loopholes from which we might be able to benefit.

## 2 • Building coalitions to oppose bills and laws

As an organisation that advocates for the rights of LGBTI persons, HRAPF has often been at the forefront of fighting restrictive legislation by joining other likeminded groups in coalitions. The biggest struggles were against the Anti Homosexuality Bill (AHB) and the Non-Governmental Organisations Bill 2015 (NGO Bill) respectively.

### 2.1 - Coalition success against the Anti-Homosexuality Bill

The AHB was introduced in 2009 and besides expanding the criminal law on homosexuality, it also criminalised “aiding and abetting” and “the promotion of” homosexuality. These concepts were widely defined and could affect all aspects of HRAPF’s work, including legal aid service provision, advocacy, research and awareness campaigns. HRAPF thus joined the Civil Society Coalition on Human Rights and Constitutional Law (The Coalition), a 50 member civil society coalition established to oppose the Bill.<sup>14</sup> HRAPF’s Executive Director, Adrian Jjuuko became the second coordinator of the Coalition (2010-2012), HRAPF chaired the Legal Committee of the Coalition and also sat on the Steering Committee.

Working with other civil society organisations to oppose the law served two purposes. Firstly, it helped to shield HRAPF from being singled out and attacked for opposing the law, since all members were working in tandem. Secondly, it helped to galvanise international support for the cause, and thus enabled HRAPF and other organisations to gain political capital, which further protected the organisations from attack. The Coalition’s efforts prevented the passing of the hugely popular bill – from the perspective of the majority of Ugandan society – for four years. It was only passed in December 2013. However, by August 2014, the Constitutional Court repealed the Act for having been passed unconstitutionally.<sup>15</sup>

Despite the success, the actions of the coalition did not go unopposed by the state, due to the divisive nature of LGBTI rights in Uganda. Consequently, we learnt important lessons about how to deal with this reaction. CSOs within the Coalition were threatened

with deregistration by the Minister of Ethics and Integrity, including HRAFP. Soon after the Anti-Homosexuality Act came into force, the Coalition's then host organisation, the Refugee Law Project of the School of Law at Makerere University was ordered to suspend its activities in refugee camps and later at its Kampala office because of claims that it was promoting homosexuality. The Coalition responded to this opposition by deliberately avoiding having a single identifiable host organisation which could be targeted. This strategy proved successful – no other member of the Coalition suffered such direct threats to their continued operation while the case was before the Constitutional Court.

The Coalition brought together the wisdom of seasoned activists as well as the energy and enthusiasm of a younger generation. Its strength lay in the varied contributions made in the form of legal expertise, advocacy experience and proper representation of the LGBTI community itself. This allowed for a balanced and carefully crafted strategy to be developed. Decisions made first and foremost aimed to represent the views of the LGBTI community and furthermore raised awareness of the situation created by the adoption of the Act while treading carefully to avoid direct attacks on the authorities. The Coalition operated through various committees, such as the legal committee, the media committee, the security committee, and the steering committee. The entire Coalition met every month, while the groundwork was effectively carried out by the coordinators. A well-coordinated and dedicated team ensured that the Bill's passing was greatly delayed, was passed without the most severe provisions originally proposed and that the resultant Act was eventually repealed through a constitutional challenge. Through its involvement in this case, HRAFP learnt that the strength of momentum built up within a coalition can resist even the most popular laws within society, and that working in numbers brings huge strength and safety.

HRAFP continued the struggle against the Anti-Homosexuality Act to the regional East African Court of Justice (EACJ).<sup>16</sup> It was argued that the merits of the case ought to be heard by the EACJ, despite the nullification of the Act by the Constitutional Court of Uganda, since it raises a matter of considerable public importance. The Court held that the matter was moot and that the public interest exception (that allows a court to hear a case which is otherwise moot) did not apply since the issues raised did not concern "a sufficiently large segment of the public". It is regrettable that the Court did not consider the plight of an ostracised community of great importance to a society based on the principles of democracy and human rights. Although ultimately the case was dismissed, this was the first time that issues of restriction of civic space through laws ostensibly targeting homosexuals had been taken to the regional courts in Africa. The petition to the EACJ was also supported by affidavits from human rights activists in Rwanda, Kenya and Tanzania, recognising the effect of the Act on the rights of LGBT people across the region. Also four organisations, operating in Kenya,<sup>17</sup> Rwanda,<sup>18</sup> South Africa<sup>19</sup> and at the United Nations level,<sup>20</sup> applied to join the case as *amici curiae*. Approaching the EACJ was an important step in opening the way for the regional machinery to be used in the fight against restrictive legislation. Furthermore, the collaboration strengthened cohesion across borders between the CSOs involved.

The strength of operating within a coalition could also be seen in the wake of the August 2016 police raid of a club where a gay pride beauty pageant was being held. During the course of the raid, some LGBTI persons found at the venue were groped and beaten by the police, the organisers of the event were arrested and all of the guests in the club were detained for over an hour.<sup>21</sup> Drawing from lessons learnt in the later stages of the legal challenge to the Anti-Homosexuality Act, the various members of the Coalition ensured that they shared information with each other about the raid including the treatment of those injured, the release of arrested activists and the outcomes of meetings with the Minister of Ethics and Integrity. The centralisation of this information advised subsequent responses and helped the members decide whether or not further Pride activities should be held in protest. The Coalition decided to release a joint press statement<sup>22</sup> in which the actions of the police were condemned and furthermore challenged these actions before the Uganda Human Rights Commission. An attempt was made to hold further celebrations on 24 September 2016, although the legal committee of the Coalition advised against it. Participants were prevented from entering the resort where the celebrations were to be held and were escorted back to the vehicles in which they had arrived by the Police. Members of the Coalition were on standby in order to handle any arrests or security threats during the course of the day.

Even though the coalition was not nearly as strong as it had been during the fight against the Anti-Homosexuality Bill, it was capable of reconvening when a direct attack was made on the freedom of association of LGBTI persons and was able to respond in a way which did not compromise the safety or longevity of any individual organisation.

## 2.2 - Coalition challenges against the NGO Bill

The Non-Governmental Organisations Bill 2015 (NGO Bill), eventually the Non-governmental Organisations Act 2016, was introduced to replace the 1989 Non-governmental Organisations Registration Act. The NGO Bill was aimed at addressing “subversive” work-methods and activities within the growing NGO sector.<sup>23</sup> The NGO Bill had various provisions which were of major concern to civil society as a whole.<sup>24</sup> For example, it proposed to criminalise the contravention of *any* provision of the Act and granted over-broad powers to the National NGO Board<sup>25</sup> to revoke the permit of an NGO if it was considered “in the public interest” to do so.<sup>26</sup>

The attempts at coalition building which surrounded the adoption of the Act and the Regulations demonstrate the complex position of an organisation dealing with unpopular issues within the context of civil society as a whole, such as HRAPE. Although coalitions can bring huge gains, at times it is also important to know when this strategy is not necessarily the right one.

In this case, mainstream civil society, under the leadership of the Uganda National NGO Forum, decided to undertake consultation processes with various stakeholders

across the country in order to make a considered input into the NGO Bill, which the Minister of Internal Affairs intended to adopt.<sup>27</sup> However, HRAPF perceived that the NGO Forum and other mainstream CSO leaders prioritised collaboration with the Ministry of Internal Affairs over the unpopular task of ensuring that the issues which posed threats to minority groups in particular were raised and dealt with head-on. Rather than joining the mainstream coalition, we instead formed a loose coalition, consulting widely with the different groups that we serve, including LGBTI groups, sex work groups, and drug users, to gain their input into the proposed NGO Bill. We shared our position paper with mainstream organisations and supportive embassies and groups.<sup>28</sup> However, we received lukewarm reception from the mainstream organisations and it was clear they did not share the same level of concern as our constituents. Ultimately, and despite HRAPF's efforts, the NGO Bill was passed and contained many provisions which we had raised in our position paper as problematic.

Despite this set back, HRAPF continued to consult widely with the different groups that it served and which are most impacted by the Act in order to gain their input into a set of proposed regulations,<sup>29</sup> which we hoped might address the most restrictive parts of the Act. We produced another position paper and made submissions to the National NGO Forum.<sup>30</sup>

One of the key lessons learnt from this experience is that organisations working on marginalised people's rights also remain largely marginalised themselves and their issues are rarely heard by mainstream organisations, sometimes preventing them from joining formal coalitions. There is thus a need to devise alternative ways of engagement, including building looser coalitions, rather than working with more traditional coalition partners.

One example of this kind of collaboration is when HRAPF's Executive Director, Adrian Jjuuko worked with Sexual Minorities Uganda to challenge Section 15(6)(d) of the Equal Opportunities Commission Act.<sup>31</sup> The provision that was challenged prevented the Equal Opportunities Commission from investigating matters regarded as "immoral" or "socially unacceptable" by the majority of the cultural groupings in Uganda. This provision also limited the work of organisations like HRAPF and prevented the organisation from bringing complaints to the Commission. Although the case took eight years in the Constitutional Court, it was eventually found that the provision was against the right to a fair trial as it excluded groups from accessing the Commission.<sup>32</sup>

Overall, HRAPF's work as part of various coalitions has taught us that collaboration with other organisations is most effective if the organisations involved in the particular advocacy effort have the same objectives and expected outcomes. It is challenging to work with other organisations in influencing the content of laws and policies where the organisations involved have differing priorities and do not share the same concerns. As an organisation representing minority groups, HRAPF is very aware that the organisation itself can easily be marginalised within broader civil society advocacy efforts and instead requires the support and collaboration of like-minded organisations who are not necessarily the "usual suspects".

### 3 • Resilience despite the restrictions: The crackdown on civil society directly hits HRAPF

On the morning of 22 May 2016, HRAPF's offices were attacked by at least four assailants who did little to cover their faces despite the obvious presence of CCTV cameras. They murdered the security guard on duty, Emmanuel Arituha, disabled part of the alarm system and the CCTV system and gained access to the main office building. They entered and ransacked the office of the Executive Director and that of the Deputy Executive Director of Programmes. The huge claw-bar used to break in was left lying on the Executive Director's chair. Nothing was taken except a TV and a DVD player. The four-hour ordeal was captured on CCTV cameras. The police initially blamed the attack on HRAPF management and dismissed the case as an ordinary break-in. The police did not use the evidence to conduct a thorough investigation. The case remains unresolved despite the clear evidence.<sup>33</sup>

The impact of the attack on HRAPF was immense. It could not have been “just another break-in” since it had been preceded by break-ins at the homes of the Deputy Executive Director, Programmes as well as the Head of the Research and Advocacy Unit, and the theft of phones from the Executive Director, and laptops from the Deputy Executive Director, Finance and Administration and the Executive Officer. However, if the break in was intended to break HRAPF, it failed. HRAPF convened a press conference the next day; none of its activities was cancelled, including a skills training workshop for LGBTI persons. Immediately continuing with our work after the attack was the greatest act of resistance and resilience that we could muster.

HRAPF has also employed various strategies and methods in order to support the staff in processing the shock and the trauma and enabling them to continue with their work and lives following the incident. All staff members were given the opportunity to receive individual counselling. On two occasions, a group psycho-social support session was held which allowed staff members to share and reflect on their experiences of the events. A security training was also held in order to enable staff to have a greater level of awareness about risks and steps that can be taken to ensure greater security in their every day lives. The security at office, which had already been stringent prior to the attack, was further improved.

While the support of our partner organisations, development partners and security networks was truly valuable, alone it was not enough to pull us through the depths. As well as implementing the measures outlined above, each member of the HRAPF team has had to make the decision to resist fear and discouragement in their own minds and to honour the memory of the man who lost his life for the cause for which we fight.<sup>34</sup> We have learnt that resilience as an activist means flouting the enemy in his sphere of emotional control over your mind continuing after the physical attack. We have learnt that resilience means doing what you would have done if you were not afraid...it means going back to work. Immediately.



## 4 • Conclusion

In this short reflection, we have shared the tactics we use to face fierce opposition to the exercise of the freedom of association in Uganda. Firstly ambiguities in restrictive laws can and should be exploited for the sake of continued operations. Secondly, the nuanced battle that LGBTI organisations fight for have much better prospects of success when approached by a coalition rather than a single organisation. There is immense strength in opposing restrictive laws, even on politically and socially sensitive issues, through an alliance of organisations – provided that those other organisations have the same objectives. Our final and most important lesson is simple: no matter what happens, no matter the level of opposition and terror intended to derail the cause that you fight for, just keep going to work. Every day. If you keep going to work, how can they win?

## NOTES

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1 • One of the motivations for introducing a new NGO Act in Parliament in 2015 was to guard against “subversive methods of work and activities” resulting from “the rapid growth of Non-governmental organisations”. See “Memorandum to the Non-governmental Organisations Bill,” HRAFP, 2015, accessed October 27, 2017, [http://hrapf.org/wp-content/uploads/2017/10/NGO-Bill\\_2015.pdf](http://hrapf.org/wp-content/uploads/2017/10/NGO-Bill_2015.pdf). See also “A Position Paper and Clause by Clause Analysis of the NGO Bill,” Uganda National NGO Forum, May 2015, accessed October 25, 2017, <http://ngoforum.or.ug/wp-content/uploads/downloads/2015/05/FinalCSO-Position-Paper-on-the-NGO-Bill-2015.pdf>.

2 • See for example “Curtailling Criticism: Intimidation and Obstruction of Civil Society in Uganda,” Human Rights Watch, August 21, 2012, accessed October 27, 2017, <https://www.hrw.org/report/2012/08/21/curtailling-criticism/intimidation-and-obstruction-civil-society-uganda>.

3 • For example, the Parliament of Uganda adopted the now annulled Anti-Homosexuality Act in 2014 which, in Section 2 of the Act created the offence

of “homosexuality” and made it punishable with imprisonment for life – a clear reflection of the opposition to homosexuality expressed by 93 per cent of Ugandans. See “Global Views on Morality,” Pew Research Centre, April 15, 2014, October 25, 2017, <http://www.pewglobal.org/2014/04/15/global-morality/country/uganda/>.

4 • Certain provisions of both the Non-governmental Organisations Act, 2016 are viewed as draconian and detrimental to the operations of organisations, see “Position Paper on the Non-Governmental Organisations Act, 2016,” HRAFP, March 20, 2016, accessed October 28, 2017, <http://hrapf.org/wp-content/uploads/2017/06/160320hrapfpositionpaperonthengoact2016.pdf>.

5 • David Smith, “Ugandan Minister Shuts Down Gay Rights Conference.” The Guardian, June 20, 2012, accessed October 28, 2017, <https://www.theguardian.com/world/2012/feb/15/ugandan-minister-gay-rights-conference>.

6 • Emmanuel Ainebyoona, “Police on the Spot as NGO Break-ins Remain Unresolved.” Daily Monitor,

March 11, 2017, accessed October 28, 2017, <http://www.monitor.co.ug/SpecialReports/Police-spot-break-ins-NGO-offices-remain-uninvestigated-ACCU/688342-3843648-11dydsi/index.html>.

7 · According to research conducted in 2013, 93 per cent of Ugandans believe that homosexuality is morally unacceptable. See Pew Research Centre, n 3 above.

8 · “The Amendment Act,” ULII, 2006, accessed October 25, 2017, <https://www.ulii.org/ug/legislation/act/2006/2006/N.G.O%20registration%20ammendment%20Act%202003.pdf>.

9 · “Statutory Instrument,” ULII, 2009, accessed October 25, 2017, <https://www.ulii.org/ug/legislation/statutory-instrument/19/si-19.pdf>.

10 · Section 2(5) of the Act was amended to provide that an offence is committed where an organisation contravenes any provision of the Act; operates contrary to the conditions of its permit or carries out any activity without a valid permit or certificate of incorporation.

11 · Regulation 13(1) provided that an organisation shall not make any direct contact with people as it carries out its operations unless it has given 7 days written notice of its intention to make such contact to the local council of the area.

12 · Section 2(1)(a) as amended by the 2006 NGO Act.

13 · Section 29 and 31 of the NGO Act, 2016.

14 · The details of this struggle are contained in A Jjuuko, “The Incremental Approach: Uganda’s Struggle for the Decriminalisation of Homosexuality,” in *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change*, eds. C. Lennox and M. Waites (London: Institute of Commonwealth Studies: School of Advanced Study, 2013): 381–408.

15 · The constitutionality of the Act was considered in the case of *Prof. J Oloka Onyango & 9 Others v Attorney General*, Constitutional Petition No. 8 of 2014. The petitioners argued the case on a number of issues including the absence of the constitutionally mandated quorum in Parliament on the day the Act was passed. The Constitutional

Court decided the case only on the quorum ground, and thus nullified the entire Act.

16 · *Human Rights Awareness and Promotion Forum (HRAPF) v Attorney General Uganda and The Secretariat of the Joint United Nations Programme on HIV/AIDS*, Reference No. 6 of 2014 (2014).

17 · UHA-The East African Sexual and Health Rights Initiative.

18 · Health Development Initiative.

19 · The Centre for Human Rights, University of Pretoria.

20 · Secretariat of the Joint United Nations Programme on HIV/AIDS (UNAIDS).

21 · “Uganda: Police Attack LGBTI Pride Event,” Human Rights Watch, August 5, 2017, accessed October 25, 2017, <https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbti-pride-event>.

22 · “Civil Society, Human Rights Activists Condemn Ugandan Police Attack on Lawful LGBTI Pride Celebration,” Chapter Four Uganda, August 5, 2016, accessed October 25, 2017, <http://chapterfouruganda.com/sites/default/files/downloads/Civil-Society-Human-Rights-Activists-Condemn-Ugandan-Police-Attack-On-Lawful-LGBTI-Pride-Celebrations.pdf>.

23 · The Memorandum to the NGO Bill, 2015 described the purpose of its introduction as addressing ‘subversive’ practices of civil society organisations, see n 1 above. The Non-Governmental Organisations Act, Cap 113 was adopted in 1989 and amended in 2006.

24 · “A Position Paper and Clause by Clause Analysis of the NGO Bill 2015,” Uganda National NGO Forum, 2015, accessed December 4, 2017, <http://ngoforum.or.ug/wp-content/uploads/downloads/2015/05/FinalCSO-Position-Paper-on-the-NGO-Bill-2015.pdf>.

25 · The NGO Bill, 2015 in Clause 5 provided for the establishment of a National NGO Board tasked with registering organisations, issuing permits and advising the Minister of Internal Affairs on policy guiding the operation of organisations. The NGO

Act which was adopted in 2016 made provision for an NGO Bureau to carry out these functions, rather than a Board.

26 • Non-governmental Organisations Bill, cl. 31(10) and cl. 33 (2015).

27 • "A Position Paper and Clause by Clause Analysis of the NGO Bill 2015," 2015.

28 • "The NGO Bill 2015 and its Practical and Human Rights Implications on Organisations Working on the Rights of Marginalised Persons," HRAPF, May 15, 2015, accessed December 4, 2017, <http://hrapf.org/?mdocs-file=1584&mdocs-url=false>.

29 • The Regulations which were eventually adopted did not address the key concerns raised by HRAPF and the consulted groups, available at: "The Non-governmental Organisations Regulation," HRAPF, May 5, 2017, accessed November 17, 2017, <http://hrapf.org/wp-content/uploads/2017/06/Regulations-to-the-NGO-Act-2016.pdf>.

30 • See HRAPF's Draft Regulations to the NGO Act, 2016 available at: "Proposals for Regulations to the Non-Governmental Organisations Act, 2016 to Address the Concerns of Minority and Marginalised Groups," HRAPF, September 16, 2016, accessed

October 25, 2017, <http://hrapf.org/wp-content/uploads/2017/06/HRAPF-Draft-Regulations-to-NGO-Act.pdf>.

31 • *Jjuuko Adrian v Attorney General, Constitutional Petition No. 1 of 2009*.

32 • The judgment in the case of *Jjuuko Adrian v Attorney General* was handed down on 10 November 2016 and is available at: "Constitutional Petition No. 1 of 2009," The Republic of Uganda, November 10, 2016, accessed November 17, 2017, <http://hrapf.org/?mdocs-file=9290&mdocs-url=false>.

33 • See Jalira Namyalo, "NGOs Petition IGP on Office Break-ins." Daily Monitor, June 6, 2016, accessed October 25, 2017, <http://mobile.monitor.co.ug/News/NGOs-petition-IGP-on-office-break-ins/2466686-3251454-format-xhtml-bnsws1z/index.html>.

34 • A small measure of solace was found for the family of Emmanuel Arituha in monetary support by HRAPF, and our partners Defend Defenders, Fund for Global Human Rights (FGHR) and American Jewish World Service (AJWS). DefendDefenders, the East and Horn of African Human Rights Defenders Project honoured Emmanuel as a human rights defender.

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# WAR ON NGOS IN EASTERN EUROPE

**Stefánia Kapronczay**

- *Coalition building* •  
*as a possible answer*

## ABSTRACT

*Eastern Europe recently came to the interest of the global human rights community when Hungary introduced a Russia-style foreign agent regulation. The regulation however, is not a standalone act, but part of a wider process of silencing independent voices, especially independent human rights, anti-corruption and democratic organisations. The trend is spreading within the European Union, with Poland following in the footsteps of the Hungarian government. After discussing the characteristics of Eastern European civil society, the article describes coalition building as one form of countering the closing civic space phenomenon. The author builds on her own experience and focuses on two dilemmas that emerged during the coalition building in Hungary: goal-setting and participation.*

## KEYWORDS

Civil society | Coalitions | Eastern Europe | Hungary | Visegrad Four

## 1 • Introduction

“Really? That is a surprise for me.” This is one of the usual reactions by people, even from the global human rights movement, when I tell them about the illiberal state flourishing in the heart of Europe. Eastern European countries, like Poland and Hungary, are members of the European Union (EU) and are thus considered solid democracies. Countries where there are regular, free and fair elections without violent clashes. States that generally respect human rights and maintain institutions to protect them. Places where alternative voices can be heard and criticism of government policies are mostly dealt with on the substance. This picture is increasingly false. Even though the changes are mostly legislative and the attacks legal, a war is starting on dissent in Eastern Europe.

In this article, I will discuss the way in which the global phenomenon of shrinking space for civil society plays out in Eastern Europe. In order to explain why the increasingly hostile government policies towards civil society can be successful, I will explain some of the main characteristics of Eastern European civil society. The understanding of these characteristics is also important to understand why coalition building in Hungary is a possible response to the phenomenon. Finally, the article will consider the main challenges of coalition building and the lessons learnt.

## 2 • What is happening in Eastern Europe?

Hungary adopted a Russian-style foreign agent non-governmental organisation (NGO) law in June 2017.<sup>1</sup> This piece of news has probably reached most in the human rights community; however, this legislation is only one and not the most important episode of the Eastern European NGO crackdown story.

Eastern Europe is a diverse region with smaller and economically less well-off countries and a turbulent history. Despite similarities, there are many factors that divide these countries. Some have already joined the EU, some were at war with each other only 20 years ago. Because of all the differences, I will focus on the so-called Visegrad Four countries, Poland, Slovakia, Czech Republic and Hungary. Although these four countries experienced communist rule for forty years, civil society started to re-emerge well before the authoritarian regimes collapsed. Furthermore, civil society organisations (CSOs) and trade unions played an important role in changing the system. In Hungary, the current prime minister, Viktor Orban, was part of that process and is therefore aware of the power of active citizenship. All four of the countries joined the EU in 2004, thus making the following events relevant for the whole EU.

In Hungary, the story started in August 2013 with the governing party’s spokesperson alleging that leading Hungarian NGOs “are kept for millions of dollars” by the billionaire George Soros and that they are serving foreign interests when “in exchange for the

American money” they are “attacking the Hungarian government”.<sup>2</sup> In the past four years, this rhetoric has changed very little: independent CSOs are regularly portrayed as being unpatriotic, working against the interests of Hungary and Hungarians, receiving payments for attacking Hungary. According to government rhetoric, the interests of the country and its citizens are casually blurred together with the interests of the government. Thus, organisations criticising the anti-democratic measures of the government are labelled as unpatriotic. This rhetoric is easily spread since the majority of the media outlets have become government-friendly. The governing party and its close business allies have taken control over the public media, the second largest commercial TV channel and most of regional newspapers. They founded or have bought weekly magazines, online and daily newspapers. While there are still some media outlets independent from the government, many media outlets have simply become the mouthpieces of the government.<sup>3</sup>

When the migration crisis in Europe started, the rhetoric extended to allege that organisations receiving funding from the Open Society Foundations are participating in the so-called “Soros plan”. The main goal of the alleged plan is to resettle at least one million immigrants in Europe.<sup>4</sup> According to Tárki research institute, the level of xenophobia reached record height in Hungary in 2016. Furthermore, Zavech Research found that Roma are no longer the most rejected minority in Hungary, but Arabs are.<sup>5</sup> Consequently, the allegations about CSOs participating in the “plan to resettle one million immigrants” in Europe resonate well with a significant portion of society. The Hungarian government is not the only one in the region engaging in an anti-Soros campaign<sup>6</sup> and taking strong stance against immigration. In Romania, for instance, anti-corruption protesters were also labelled as being George Soros’s paid protesters. The current government of Poland also shares anti-immigrant sentiments, which has shifted the formerly positive attitudes of Poles towards immigration.<sup>7</sup>

Besides this kind of rhetoric, other measures affecting the independence of civil society can be seen across the region. Restricting access to independent funding for CSOs is one of the recurring themes of the shrinking civic space phenomenon. Both governments in Poland and Hungary are attempting to take control over funding for CSOs. First, Hungary has changed the way in which public funds are administered to NGOs, granting control to the highly-politicised National Cooperation Fund.<sup>8</sup> As a result of this move, organisations working on women’s rights and other human rights issues have reported losing core funding.<sup>9</sup> According to my own discussion with civil society actors, these funds were primarily used for providing free legal aid. In October 2017 Poland established a National Freedom Institute, which took over the responsibility for administering EU cohesion funds and national funds for NGOs.<sup>10</sup> The body’s president, who enjoys broad discretion over how funds are distributed, is appointed by a member of the government. Such moves enable the government to provide funding only to organisations that are more loyal to the government than to their cause, thereby shrinking the space for independent, dissenting voices.

Both governments expressly aim to gain control of the distribution of the Norwegian NGO Fund grants,<sup>11</sup> which are essential for civil society in Hungary and Poland. These funds



are distributed by a consortium of NGOs without governmental oversight. The first-time Hungary made the headlines in relation to the crackdown on NGOs was in 2014 when the government<sup>12</sup> launched a series of Governmental Control Office (GCO) audits against the distributors of the Norwegian NGO Fund and its grantees. The audits were widely criticised for the GCO's lack of jurisdiction. Also in 2014, government officials targeted many NGOs in the media, alleging that they had misused funding. On one occasion two of the distributor organisations' offices were raided and all of the four distributor organisations' tax numbers were temporarily suspended.<sup>13</sup> The investigations did not uncover any misconduct requiring further audits or investigations. Both governments would like to assert veto power over which organisations distribute the Norwegian NGO Fund and are consequently at breaking point with the Norwegian government.

Meanwhile, anti-terrorism and anti-money laundering regulations in Poland and in Slovakia are effectively making it difficult for NGOs to receive funding.<sup>14</sup> The Hungarian government has also cited arguments about anti-money laundering when it introduced the Act on the Transparency of Organisations Receiving Foreign Funds (the so called "anti-NGO Law"). The Act is described by CSOs<sup>15</sup> as being the carbon copy of the infamous Russian foreign agent law prescribing that organisations which receive foreign funding above a certain threshold must register themselves as foreign funded organisations and display the label on their publications. Organisations failing to fulfil the requirements can be sanctioned, including with dissolution. The European Commission launched an infringement procedure because the Act breaches EU law.<sup>16</sup>

Thankfully, organisations in Poland and Slovakia have not yet reported physical attacks on their staff or volunteers. However, there have been reports<sup>17</sup> in both countries about NGOs believing that they are the subject of electronic surveillance by national authorities. Furthermore, Polish women's rights organisations offices were raided<sup>18</sup> and we are aware that Hungarian CSOs received very extensive freedom of information requests by a pro-government journalist. All this shows that life for CSOs in these countries is becoming increasingly more complex.

### 3 • What are the main characteristics of civil society in Eastern Europe?<sup>19</sup>

Aside from the current legal developments in Eastern Europe, the characteristics of civil society must be considered in order to understand what strategies can be taken to fight back. Even though Eastern European countries are members of the EU, their democracies are relatively young. Little more than twenty-five years ago, until the end of the communist rule, participation in public affairs and exercising freedom of expression was seen by governments as undesired meddling in public affairs. Those who engaged in such activities could expect surveillance, questioning and even arrest. Thus, public participation was not seen as an inherent part of its citizens' lives. The heritage of this era is still represented in

the attitudes towards active citizenship and involvement in public affairs. There is also a generally low level of trust in institutions. According to data from 2008, the trust in state institutions and large corporations is low compared to Western European countries. National governments in the region are often deemed corrupt and authoritarian. However, this is not seen as something to change, but rather as something to accept. These attitudes play an important role in explaining the efficacy of the narrative about NGO workers simply carrying out the plan of their “procurer” for significant salaries.

Besides trust, it is a characteristic of Eastern European societies that there is a lower level of participation in civil society than in Western countries. An average of 40.5 per cent of the population reported in 2008<sup>20</sup> that they are members of a CSO and 23.5 per cent said that they carry out volunteer work. These numbers are lower in Hungary and Poland and higher in Slovakia and the Czech Republic. The most common activities carried out by CSOs are education, sport and social services. These activities are related to service provision, which requires strong cooperation with state institutions. They provide direct assistance to citizens and often receive some sort of state funds in exchange. Such organisations are rarely engaged in advocacy activities or narratives about the need to change the establishment. This results in citizens having little knowledge about civil society and that knowledge being mostly related to this one type of organisation. Consequently, the goals and the contributions of other types of NGOs such as watchdog or environmental advocacy organisations, are less familiar to them.

After accession to the EU, state funding gained increased importance for civil society in the Visegrad Four countries, which has proved problematic. This is because the availability of international funding for CSOs (including from the EU itself) tends to reduce once a state accedes to the Union, with the belief that less funding is needed to promote human rights and democracy once it is a member state.<sup>21</sup> With self-sustaining models being weak, many organisations were and are dependent on state funding. This is concerning when in both in Hungary and Poland there is a trend of decreasing public funding and increasing government control over EU funding.<sup>22</sup> In 2010 in Hungary, 43 per cent of available funding for CSOs was public funding. By 2014 this had reduced to only 10 per cent. Dependence on state funding and the increasing state control over EU funding therefore makes organisations vulnerable to political influence. It should be noted however, that there appears to be a slow but steady increase in donations by local individuals and corporations. This claim is supported by my own observations. Despite this new trend, relatively few organisations are capable of maintaining permanent staff as well as project staff influencing their ability to engage with longer term projects such as coalition building.

#### 4 • A possible response from Hungary: coalition forming

As set out above, CSOs in Hungary are facing the crackdown on civic space with limited resources and limited public support. However, two recent attempts at coordination among

a number of Hungarian CSOs provide rich lessons in how to respond to this situation. The final part of this article will examine these lessons, which are relevant to readers who might be considering building a coalition in other contexts.

#### 4.1 - Coalition 1.0 and coalition 2.0

Before 2014, cooperation between CSOs in Hungary was mostly sectorial: human rights organisations acting together on human rights issues, green organisations on environmental issues and so on. However, when the audits of CSOs were launched in 2014, CSOs started to organise across sectors for the first time. After the first few meetings, during the summer of 2014, some Budapest-based organisations with paid staff and a significant track record, brought together a coalition of similar organisations. This became known as civil coalition 1.0, with meetings taking place until the summer of 2015. However, the audits ended during the fall of 2014 and it seemed that CSOs were no longer being targeted. Therefore, by the time the organisations started to meet regularly and had agreed on a plan of action, the urgency was gone. Eventually, the meetings stopped and the coalition disintegrated. However, when more legislative changes for CSOs became apparent in 2017, coalition 2.0 started to formulate. This civil coalition 2.0 has built on the experience of coalition 1.0 and is currently holding regular meetings. Both coalitions grappled with two dilemmas, which, through our experience, can be identified as key to ensuring a successful coalition: goal-setting and participation.

#### 4.2 - Goal setting

Coalition 1.0 struggled with setting its goals since once the audits had happened, there was no longer an urgent crackdown to address. The coalition started to engage in an inward-looking, organisational development process, the necessity of which was acknowledged, yet few organisations had the spare capacity to engage in a long-term process. Another difficulty was that without events and actions, the work associated with the coalition brought few rewards. The lack of common actions also hindered the organisational development process as there was no shared experience based on which values and organisational structures could have been built. The organisational development process was neither a motivating enough goal, nor did we share similar enough language and experience. This lack of a concrete goal was a huge explanation in why the first coalition disintegrated. Consequently, conscious of this important element in coalition building, goal-setting has been on the agenda since the inception of Coalition 2.0.

However, the issue of goal setting remains contentious. For some members of Coalition 2.0, the only issue we had the mandate to address together was the crackdown on CSOs, specifically the proposed law on foreign funding. Meanwhile, other members of the coalition wanted to use this opportunity to address the underlying problems that had led to the government's actions, i.e. our lack of connection with local communities. Despite the debates, it was key that we had a concrete and pressing overarching goal: preventing

the adoption of the law. Even though the law was eventually adopted in June 2017, the legislative process provided the opportunity for organising many actions together. These were important in binding the coalition together. The coalition issued two statements joined by approximately 300 organisations, organised a mass demonstration with about twelve thousand participants, silently occupied a parliamentary committee meeting and also organised a number of smaller street actions.<sup>23</sup> During the intensive first seven months of 2017, organisations met regularly and formulated mutual strategies. This deliberation was a unique experience as the various civil society groups previously had limited contact with each other. During this process, we learnt about other organisations' strategies, tactics and their reasoning and we started to develop a shared language. After the law was adopted, the coalition decided only to work on issues related to shrinking civic space, and to serve as a hub where groups can share their ideas and plan projects together to respond to the phenomenon.

### 4.3 - Participation

The experience of Coalition 1.0 and 2.0 has shown that participation is the other key issue that explains why a coalition is successful or not. For a coalition to work it must be seen as a legitimate representative of civil society and the wider the coalition is, the more citizens can be mobilised. Consequently, the member organisations of both coalitions were concerned from the outset that they could be criticised for only representing a small fraction of like-minded organisations. One element of the participation dilemma is whether organisations are in the position to fully participate and whether their voices will be sufficiently heard. Similarly, coalition membership is a resource-intensive task, as one has to attend meetings, follow the flow of information and answer to the initiatives on the mailing lists, which requires making decisions quickly. While, most highly professionalised organisations can manage these demands, this can be more complicated for smaller organisations. Achieving balanced geographical representation within the coalition is also important. Most of the participating organisations are based in the capital and are aware of the importance of including groups outside of the capital. While coalition 1.0 was operational attending meetings was the only way to participate in the work of coalition and take part in actions. As these were held in Budapest on a weekly and then bi-weekly basis, this coalition provided no tangible way of participation for organisations lacking the capacity or being based outside of the capital.

These difficulties have not been completely resolved, however Coalition 2.0 addressed the issues by offering two-tier participation. The groups based in the capital and with bigger capacity meet weekly to form activities and define goals – this is the strategic committee, comprised of approximately 25 organisations. These organisations are all engaged in actively recruiting smaller organisations to sign joint statements and attend actions. Once these smaller organisations join, they are constantly informed electronically about the process and next activities. Consequently, the first and second statements by Coalition 2.0 were signed by over 230, and over 180 organisations respectively. The mass demonstration was

supported by 100 CSOs. Furthermore, this format enabled 25 organisations with different backgrounds to file a joint complaint to the Constitutional Court demonstrating that the crackdown is a sector-wide concern. The coalition continues to address the participation dilemma and plans civil society meetings in five bigger cities across the country and adopting a process which would allow more organisations to join the strategic committee.

## 5 • Conclusion

This article has shown that the restrictions being placed on civic space in Eastern Europe clearly demand a response. The coalition building that CSOs in Hungary have undertaken is a concrete example of a strategy that has been implemented by activists. Three main lessons can be drawn from our successes and failures, for others to remember when attempting to do the same. Firstly, the strengths and the weaknesses of civil society will be replicated in a coalition building process. Cooperation is key to find and test solutions, including involving and listening to a broad range of groups. Although organisations with bigger capacity are in the power position, they must be aware of their privilege when setting the agenda and organisational rules. Secondly, coalitions work better when there is an urgency, more precisely a pressing external goal. Finally, due to the need for shared experience in formulating values and operational methods, it is critical that an action-oriented approach is taken with shared activities undertaken by members of the coalition.

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# STORIES OF STRUGGLE AND INSPIRATION

**Valerie Msoka**

- *How Africans are rising for justice, peace and dignity in the context of shrinking civic space*

## ABSTRACT

*This article gives an overview of activists of the Africans Rising movement who participated in a pilot retreat for a month in Arusha, northern Tanzania. It gave them the opportunity to examine and share the strategies that they employ to deal with the restrictions on civil society seen across Africa. Africans Rising is a nascent, rapidly growing, self-identifying collective of social movements, non-governmental organisations (NGOs), artists, sports people, cultural activists and others. The retreat was a meeting of east, west, south and north Africa and showcased the diversity and richness of the people of Africa with activists from Benin, Burundi, Democratic Republic of Congo, Kenya, Liberia, Morocco, Senegal, Somalia, Tanzania and Uganda.*

## KEYWORDS

African Activists in Residence | Africans Rising | Strategies | Shrinking | Civic Space



“Those who are on good terms with the government work freely but those against the government are harassed, jailed, beaten and sometimes even killed. But even in this repressive environment there are now many youth movements. [At times] it is difficult to collaborate because we are suspicious of each other, that some might be working on behalf of the government, the opposition or a foreign country, but I believe that because we are fighting for the same cause for a better country, we will be able to collaborate in the future,” said Sylva Mbikayi when describing how difficult it is working in the Democratic Republic of Congo (DRC) at the beginning of the Activists-in-Residence (AiR) programme.<sup>1</sup>

Sylva Mbikayi, or as he told the group, “I am affectionately called Legrand”, was part of a group of African activists who had converged in Arusha, northern Tanzania, to see how they can advance social justice in a continent where the space to do so is shrinking. The AiR programme is a practical response to the multiple struggles and demands in the activists’ day-to-day lives as human rights defenders. Through their interactions, the programme aimed to strengthen the infrastructure for societal transformation as well as to provide time and space for reflection, especially for those who face repression or those who might be on the verge of burnout.

AiR was an initiative of Africans Rising, a Pan-African movement of people and formations, working for peace, justice and dignity.<sup>2</sup> The movement is determined to foster an Africa-wide solidarity and unity of purpose to build the future Africans want – a right to peace, social inclusion and shared prosperity. Ezra Mbogori of Kenya and Kumi Naidoo of South Africa have both been involved in the development of the movement. They agree that African unity, reflected by greater social, political and economic integration, is critical for Africa and its peoples, nations and nationalities. A united civil society should be the vanguard of such a movement for justice, peace and dignity. The AiR was advancing Ezra’s and Kumi’s narratives.

The initiative was timely given the reality in various African countries where elections have been annulled and constitutions are not being respected or are being changed to accommodate personal wishes. Such scenarios are being resisted by those who met in Arusha, who believe in human rights and in building peaceful, just and tolerant societies. However, because each operated in a different context and had different strategies to respond to the restrictions on their civic spaces, the AiR programme gave them the opportunity to merge these strategies and leave the retreat stronger.

“For my entire education, from primary school to university, I had to move from my desk to the blackboard because I could not see and no one cared that being a person with Albinism, I could not see small fonts,” said Franck Houètèhou C. Hounsa as he told the group what motivated him to fight for the rights of people with Albinism.

Speaking about civil society in Benin, Franck says that, “while I have no definition of civil society in Benin, I know that we have trade unions, faith based organisations - made up of Christian, Muslim and the traditional religion, Vudoun - and NGOs. These three bodies

are very vibrant and strong in Benin. They work separately but sometimes unite against government directives. For example, when the government said that Muslims should not worship on the streets on the Friday, it was the Catholics that came out first to protest against the directive and the government retracted.” This was an example, one of many that were discussed during the course of the retreat, of how alliances between different groups and social movements make a real difference when faced with repressive legislation.

Legrand, who was released from military detention a week before attending AiR, spoke of the situation in his country, “In DR Congo there is the government and the opposition. There are [very] few non-partisan civil society formations because the organisations in the civil society are either with the government or with the opposition and they aspire to be in one of those two camps, they don’t really care for the people, they think about themselves first.”

Legrand, whose release came about thanks to international and national pressure as well as lobbying from family members and friends, denied accusations of being in a movement that was planning a *coup*, insisting “we just want democracy, real democracy that is all.” In 2013 it was that need for democracy that led the youth movement in the DRC to form the Fourth Way. Legrand explains the name, “the first path is the regime, the second path is the opposition and the third path is the civil society. But because the civil society in DRC does not adequately represent the aspirations of the people, we are the Fourth Path, which represents the youth. The movement came into being when President Kabila started talking about organising a dialogue for the elections. We were opposed to this dialogue because we knew he was preparing a way to extend his tenure in office beyond 2016 when his second term would end,” he says. And so we see another tactic being used to resist the shrinking of society – movement building.

Legrand explains that, in order to make the movement closer to the people, they take part in community activities such as cleaning the streets, providing free access to justice, assisting market women with materials and equipment, working with the handicapped and offering university scholarships to eligible youth. In addition, the movement has meetings and consultations with the opposition. The decision to maintain communication with opposition groups proved successful when, in 2014, some leaders of the opposition joined the movement and refused to enter into the dialogue that President Joseph Kabila was demanding. But this did not deter the president and he again made the call for a dialogue in 2015 “so we sent letters to [the United Nations and the European Union] and said ‘No, this is not what the Congolese people want’. But they did not take our letters seriously, so we became radical and sent out messages on social media saying we will create ‘chaos’ on the streets to stop people attending the dialogue. We were finally taken seriously,” he says.

Mbongo Ali, a lawyer activist from Burundi who heads a human rights NGO, *Via-Volonté*, meaning “where there is a will there is a way”, says that before 2015 civil society in his country was vibrant. “In fact Burundi was among the top five African countries in which the civil society had the space to work freely. But since the April

2015 demonstrations against the third term of President Pierre Nkurunziza, things have gone from bad to worse. Apart from the demonstrations there was a failed *coup* and President Nkurunziza said that civil society was part of the *coup* attempt so all civil society organisations were banned and all activists were put on a list of enemies of the state. According to the constitution, civil society is allowed to operate but [in practice] the government has decided to close the civic space” says Mbongo.<sup>3</sup>

In April this year, Mbongo was arrested in Tanzania after he had gone to there to demonstrate for the rights of Burundian ethnic minorities. Mbongo Ali says that the situation in Burundi makes it hard to work. “We are in a sort of civil war – when you say or do anything against the government you are an enemy of the state; if you say or do anything that the opposition does not like you also become their enemy and if you work with people outside Burundi you are deemed to be working with the enemy. You are always in danger.”

In such circumstances, he explains that the best way for his organisation and others to resist is to have discussions with some leaders and to strengthen the capacity of CSOs to show that freedom of expression and association is a constitutional right. “It is important to speak about human rights and democracy as well as peace which my country has a problem achieving.”

Just as Ali sees dealing with discrimination as his call to human rights activism, Julie Weah from Liberia has a passion “to see the condition of women change, for them to speak out and to be seen as people who can make a contribution in a society that is very patriarchal.”

Julie, or *Madame Presidente* as she was called in honour of Ellen Johnson Sirleaf, the first woman president in Africa who is Liberian, heads the Foundation for Community Initiative FCI. It works mostly with women to increase their participation in natural resource governance and management. She explains that civil society in Liberia is based around thematic areas such as natural resources, transparency and accountability, service provision like health, water, sanitation, and trade unions. The various Liberian civil society organisations benefit from an umbrella organisation, the National Civil Society Council of Liberia, which seeks to “coordinate the activities of civil society organizations in Liberia”.<sup>4</sup>

She says that generally there are no restrictions on civil society. However, this is not always the case, for example if an issue is deemed morally or socially unacceptable, such as LGBTI rights or if the issue is likely to generate much opposition to the government’s position. “There was a reform in the forestry sector to produce a new law and civil society organisations dealing with land issues were able to participate fully but those opposed to the way it is being handled were not listened to and are thus excluded from a democratic process. Another example being the referendum process currently underway on whether Liberia should be declared a Christian country. Some civil society organisations will be allowed participate while others will not depending on whether they agree or disagree with the government position. To deal with such situations we dialogue and have continuous engagement with relevant stakeholders.”

The time at the AiR was also for reflection and to energise for the next hurdle – itself a strategy to guarantee that activists have sufficient energy to focus on their work. Otieno Ombok who when speaking about the situation in Kenya said, “CSOs are vigilant on constitution and other legislation protecting human, civil and socio-economic rights. We have trained about 2,000 community human rights defenders directly [on these issues]. When we observe violations we report them to constitutional bodies like the Kenya National Commission on Human Rights, Independent Police Oversight Authority, the National Gender Commission, and the Ombudsman. These bodies have summoned the various executives including the police for questioning.”

The *Wise One* as Otieno Ombok was known, said that Kenyan CSOs also petition the presidency and the parliament through the majority leader and encourage the general public to petition and go to court to seek redress. These strategies have resulted in favourable rulings in the past, especially after the constitution was reformed to have an independent judiciary, demonstrating that mass mobilisation including protests still have the ability to influence parliaments in certain contexts.

Amina Terras from Morocco is a member of the Union of Students for the Change of the Educational System. This movement was formed by students who were unhappy with the existing education system, “this is because people were having difficulty accessing the disciplines they wanted to follow because of the selective nature of the education system as well as the privatisation of the education system. The system of education in both the private and public sectors has brought segregation as it made education accessible [only] to the upper middle class. Education should bring about emancipation and not social progression of those who are already privileged,” she says with the passion that makes her take to the streets for what she calls “popular university”.

She explains that her movement, which started in 2012, and which has now changed its name to *Tilila*, meaning liberty or light from the indigenous Amazigh language, followed the Arab Spring. “Following [the Arab Spring uprisings in Morocco] there was more space for civil society because the government was obliged [to be more open] due to the political situation; it was that or more demonstrations. But we have not been able to register the organization because in an indirect way the government does not want us to have a legal status. We took this matter to the Administrative Court and in 2015 we won our case against the government. But the government appealed and in 2016 it won against us. So we changed the name of the organisation and the leaders’ names but we are still not permitted to register, so we continue without legal status,” she shrugs, smiling. Organising groups informally – and thereby flying under the radar of repressive governments – is an increasingly cited strategy in fighting back against civil society restrictions.

In the environment that Amina finds herself, it is hard to survive. But she has found allies who, because they are no longer permitted to hold street gatherings, give them space in their compounds. And she is optimistic, “I am hopeful, not in the change of the regime but in social

change, that people will look at the root of the problem and gather and find their own solutions. This is what the state does not want, but when the people become affirmative and demand change that will be the end of the legitimacy of the current regime,” she ends with a nod.

Another informal movement that is making headway in reclaiming civic space is the Senegalese social movement, the *Y'en a Marre*, which means Fed Up. It consists of a group of Senegalese rappers and journalists – music and the power of social media are popular communication tools that are being used to appeal to the Senegalese youth in their quest for democracy and to reclaim civic space. The movement was started in 2011 to protest against an ineffective government, mobilise youth to register to vote and to embrace a new type of thinking and living termed “The New Type of Senegalese” or NTS following President Wade’s attempt to have a third term and to put in place mechanisms for his son to succeed him. “So when the president was due to present his proposal to government we were there in front of the parliament on 23 June protesting so his proposal did not pass,” says Ngone Ngom of Senegal.

Ngone says the 2011 protest led to the wider recognition of *Y'en a Marre*. She explains that, “in Senegal there are two types of civil societies. One like *Y'en A Marre*, which is always hostile to the government because it stands for the rights of the people and raises awareness on issues that people need to take into account. And the other that is pro-government and with which the government wants to work.”

Despite these differences, Ngone, who also works for the Women in Law and Development in Africa (WiLDAF), explains that there are times when all civil society comes together. She gives an example of the elections earlier this year. Many areas were unable to vote due to lack of materials and disorganisation as well as a blackout during the announcement of the results and soldiers coming in to take the ballot boxes. “We made a statement and together called for ‘the hold up of elections’. Though the elections were not nullified we made our point,” says Ngone.

Pepe, a smartly dressed gentleman of a quiet disposition explains the kind of space in which the LGBTIQ community in Uganda must operate. Individuals must endure forced sex to make them become what is considered normal; they are coerced into marriage while others are raped by family members or other men to teach them a “lesson”. Others are expelled from school because their parents refuse to pay school fees and some are disowned for refusing to conform to what society wants. Some are fired from their jobs, and kicked out of churches as you are not considered to belong. Many face violence from community and police when, for example, upon entering a shop, the shopkeeper shouts and people come and beat up the individual. Usually when the police arrive it is the victim and not the perpetrators who is charged. Pepe himself was arrested and beaten unconscious last year. He was later released through his tweets on social media, which encouraged interventions by friends and colleagues.

In terms of reclaiming the space for the LGBTIQ community to operate, Pepe explains that as well as using social media “we get into coalitions and networks because we share

the burden of being oppressed and together we can reclaim our constitutional guaranteed rights. And specifically for the LGBTIQ community we also collaborate with other issues in the society such as those working on the Right to Education and the Right to Parenting, because these are issues that relate to young people. Through such collaborations we are creating acceptance and slowly gaining ground.”

Africans Rising also sees many of its followers living abroad, which explains Abdi Muse’s presence at the retreat. From Somaliland but living in the United Kingdom (UK), he is an active member of the Somaliland diaspora and assists in the integration of refugees from Somalia, Sudan, Ethiopia and Eritrea in the UK. Of his homeland he says, “I am extremely concerned about the election delays and the shrinking civic space taking place in Somaliland. So far the government has twice delayed the elections that were originally set to take place on June 2015. Questions on the legality of these delays have been met with continuous restrictions of any public criticism of the government or policies, by regularly detaining journalists, human right defenders or any dissenting voices, with some resulting in criminal charges. The government has also restricted public assemblies under the pretext of keeping public order and when demonstrations do take place security forces have in the past used excessive force against demonstrators. The restrictions by the Somaliland government on freedoms of speech, press, assembly and association, has made it difficult for citizens to organise themselves and create strong civil movements that can hold the government accountable.”

Abdi says that aside from the restrictions he sees in Somaliland, he also sees many challenges facing civil society groups in London due to the shrinking resources, “successive UK governments have implemented funding cuts on public services and for organisations that work with refugees. This has created a huge impact on how we as community activists support and help refugees. The hostile media and the public opinion on migration, has also created a challenging environment to operate.”

He says he constantly has to try to find ways to help refugees, by engaging and working collaboratively with other voluntary, community and social enterprise organisations. “Through this ability to create a collective stand we have campaigned and advocated to raise awareness about the effect the government funding cuts have had on the lives of refugees. Through these partnerships I have successfully been able to signpost refugees to access services of partner organisations.”

And so the participants of AiR were different but the same. They were from different countries but all are facing the same challenge of operating in an ever shrinking civic space. These activists who at one time or other have been harassed or imprisoned had time, through the different lectures and their interactions with each other at the retreat, to acknowledge and understand the power of building coalitions, collaborations, alliances and movements as well as making themselves relevant right from the grassroots all the way to national level. It was with these strategies in mind that they left the retreat.

There will be challenges in working together, but unity of purpose is their strength and the power to succeed. With the network they have also built, these Ambassadors of Africans Rising return to their countries to aptly apply the African proverb that says, “If you want to walk fast, walk alone, if you want to walk far, walk with others”. Together they will now be walking stronger in the quest of Africans Rising for Justice, Peace and Dignity and protect and reclaim civic space in their respective countries.

## NOTES

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1 • Co-sponsored by the Fund for Global Human Rights and hosted by the Danish Training Center for Development Cooperation (MS- TCDC).

2 • For more information, see: Africans Rising, Homepage, accessed November 14, 2017, <http://www.africans-rising.org/www/>.

3 • Civil society organisations are considered the enemies of the democracy by the government. This recent statement made on 13 May 2017 can be read on the official website of the Presidency: “Message du Gouvernement du Burundi À L’occasion de La Commémoration de

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4 • For further information see: “About NCSCL,” The National Civil Society Council of Liberia, January 11, 2017, accessed November 14, 2017, <http://ncscliberia.org/%22about%20us%22>.

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# CONFRONTING CLOSING CIVIC SPACES IN NIGERIA

**Victoria Ibezim-Ohaeri**

- *How activists are using a strategic combination of research action, social media mobilisation and cross-border networks*

## ABSTRACT

*The growing restrictions on free speech, association and assembly rights, including the tide of restrictive legislation, have engendered a climate of fear in Nigeria, shrinking the spaces for civic engagement. Despite this persistent and growing official intimidation, a web of actors, comprising active citizens, informal and organised groups from civil society are trudging on under great difficulties, deploying a variety of strategies to reclaim civic space and demanding greater respect for human rights and fundamental freedoms. Have these local responses and initiatives been effective? What strategies have worked for local activists and organisations? This article discusses the ways local responses can inform future strategies by human rights activists and other actors operating in the regional and international spheres.*

## KEYWORDS

Restrictive legislation | NGO Bill | Civil society | Civic spaces | Nigeria

## 1 • Introduction

Since 2015, Nigeria has witnessed a vicious crackdown on social critics, bloggers, and activists challenging impunity, official corruption and human rights abuses. A Nigerian non-governmental organisation, SPACES FOR CHANGE (S4C), has tracked 103 incidents of governmental restrictions on free speech, association, religious and assembly rights that occurred between May 2015 – May 2017.<sup>1</sup> This crackdown, especially targeted towards bloggers, activists and leaders of religious and indigenous movements, adds to the growing list of documented restrictions and human rights violations resulting from official behaviour. In addition, there is a tide of restrictive legislation, including the current Bill to Establish Non-Governmental Organisation (NGO) Regulatory Commission (the NGO Bill).<sup>2</sup>

These developments have engendered a climate of fear in the country, shrinking the spaces for civic engagement. Despite this persistent and growing official intimidation, a web of actors, comprising active citizens, informal and organised groups from civil society are trudging on despite considerable challenges, deploying a variety of strategies to reclaim civic space and demanding greater respect for human rights and fundamental freedoms. Have these local responses and initiatives been effective? What strategies have worked for local activists and organisations? What still needs to be done to sustain the human rights movement in the face of these threats and atmosphere of uncertainty? This article examines and analyses the strategies that have been deployed to confront the shrinking space for civic engagements in Nigeria, highlighting the different roles various actors play at different levels.

## 2 • Monitoring the Closing Spaces in Nigeria

Are civic spaces in Nigeria free or closed? What happens when civic spaces and civil society are closed? How are they closed? Is there a model that measures and monitors this closure? S4C searched for the answers to these questions in a recent study.<sup>3</sup> S4C is adamant that a key strategy in fighting these restrictions is to monitor, understand and record them. This information can then be used by S4C and its partners in conjunction with other strategies that are discussed below. In developing a methodology for monitoring closing spaces for civil society in Nigeria, S4C relied on CIVICUS's five-pronged classification of civic space freedoms into open, narrowed, obstructed, repressed and closed.<sup>4</sup>

S4C developed the database of closing spaces in Nigeria, tracking 103 incidents. The database revealed that those targeted with excessive governmental power are usually vocal critics of the government, political opponents, leaders of religious and indigenous movements, and private actors actively using social media to expose corruption or challenge gaps in governance. On the strength of these findings, S4C's study concluded that the Nigerian civic space oscillates within CIVICUS' categories of closed, repressed and obstructed. Obstructions of this nature are reminiscent of the tactics traditionally employed by military regimes that held sway before the country returned to civilian rule

in 1999. Civilian administrations are, more and more, resorting to these tactics to crush dissent, and coerce associational and non-associational life into submission.

### 3 • Categories of restrictions

The tools or methods state actors often deploy to advance their clampdown operations can be grouped into three categories. The first is restrictive legislation. The second is through the overbroad application of existing laws by state agents, and the third relates to non-legal forms of restrictions, such as the deliberate use of negative rhetoric that stigmatises and smears sections of civil society.

#### 3.1 - The Tide of Restrictive Legislation

One such restrictive legislative proposal is the NGO Bill. Replete with vague phrases framed around the objective of “national security and national interest”, the NGO Bill proposes to establish a regulatory body, the Non-Governmental Organisations Regulatory Commission of Nigeria (NGORCN). It also criminalises operating an NGO in Nigeria without registration and certification. Any certificate issued upon registration will last for a period of two years, and thereafter, subject to renewal. If the certificate is not renewed, the operations of such organisation shall be terminated and its name deleted from the register. Application to renew registration could be refused if the registering body is satisfied that the proposed activities or procedures of the applying organisation are not in the national interest.

Consistent with the NGO Bill’s fixation on national security, the lead argument in support of the Bill emphasises the need “to regulate [Civil Society Organisations (CSOs)] on matters relating to their funding, foreign affiliation and national security, and...to check any likelihood of CSOs being illegally sponsored against the interest of Nigeria.”<sup>5</sup> What constitutes national security threats against the interest of Nigeria was not defined, just as the criteria for making such determinations were not stipulated. In a context where state actors have scant respect for the rule of law and democratic institutions, vague and overly-broad representations in rule books often leave ample opportunities for state misuse of power. From that vagueness springs legal uncertainty and wide discretionary power often exercised without accountability.

NGOs argue that the provisions of the NGO Bill are already covered under existing law.<sup>6</sup> The functions of the NGORCN would include facilitating and coordinating the work of all national and international NGOs, maintaining a register of NGOs, receiving annual reports of NGOs, and advising the government on the activities of NGOs. The Corporate Affairs Commission and the National Planning Commission currently undertake all of these stipulated functions, including registration. For purposes of national security, the Special Control Unit Against Money Laundering (SCUML) regulates Designated Non-Financial Institutions in Nigeria, including NGOs, in line with the country’s anti-money

laundering and countering financing of terrorism regimes. Both empirical and anecdotal evidence fuel fears that another piece of legislation enacted for the regulation of NGOs in Nigeria could be hijacked and used to legitimise the tightening environment for civil society action, including the restrictions on basic freedoms of expression and assembly, persecution of political dissent, and increased surveillance of citizens.

Measures designed to counter money laundering and the financing of terrorism often provide an omnibus cover for dissembling initiatives designed to shrink civic spaces. Although unsupported by evidence, these measures tend to re-echo sentiments suggesting that NGOs are “vulnerable to terrorist abuse”<sup>7</sup> or are “enablers for funding terrorist groups.” As a result, the legal regimes designed to curb anti-money laundering or for combating financing of terrorism in Nigeria, have been revised in ways that extend restrictions to NGOs.<sup>8</sup>

### 3.2 - Overbroad Application of Existing Laws

Our research has shown that constitutional provisions or distinct federal and state legislations are increasingly being interpreted so broadly and applied beyond their scope in order to justify crackdowns on civil society, including targeted attacks on activists, bloggers, and CSOs.

On 8 August 2016, Nigeria’s Economic and Financial Crimes Commission (EFCC) arrested Abubakar Sidiq Usman, a prominent blogger based on allegations of cyberstalking.<sup>9</sup> Another blogger and journalist, Musa Babale Azare, was arrested on 20 August 2016, on the orders of the Bauchi Governor, Mohammed Abdullahi Abubakar.<sup>10</sup>

To justify the Abubakar Sidiq Usman and Musa Babale Azare arrests, the Cybercrime Law on cyberstalking was cited. Usman was the third blogger to be arrested since the Cybercrime Act came into force in 2015,<sup>11</sup> fuelling suspicion of a deliberate social media witch-hunt. Under the 2015 Law, cyberstalking includes the use of the internet or other electronic means to stalk or harass an individual, a group of individuals or an organisation – none of which either Usman or Azare were doing.<sup>12</sup> The original intention of the Cybercrime Act is to create a legal, regulatory and institutional framework for improving cybersecurity and to ensure the protection of the critical national information infrastructure. As Abubakar Sidiq Usman and Musa Babale Azare arrests demonstrate, security agencies have capitalised on this legislation to torment social critics and activists who criticise the government on social media.<sup>13</sup>

Apart from the 2015 Cybercrime Law, a plethora of existing laws have been excessively overstretched, threatening free speech and charging individuals with grievous offences such as terrorism, criminal defamation, treason instead of simple misdemeanours.<sup>14</sup>

Two systematic patterns of state behaviour have been observed in relation to this category. First, activists, bloggers, or group leaders affected by the state’s overbearing power often approach the courts for remedy. When John Dan Fulani, Aku Obidinma, Audu Maikori, Sheik Ibrahim El-Zakzaky, Nnamdi Kanu, to name but a few, were arrested, the court

ordered their release, and granted the reliefs sought. The second observation however, is that state actors more often than not, flagrantly flout court orders, deepening the climate of fear and repression in the country. In almost all the named cases, court orders were ignored.

Refusing to obey the orders of a properly constituted court of law has been described as a deliberate sabotage of the judiciary.<sup>15</sup> For example, on 2 December 2016, a trial court ordered the Department of State Security (DSS)<sup>16</sup> to release El-Zakzaky and his wife within 45 days. The court also ordered the DSS to pay a fine of NGN 25 million (around USD 70,000) each to El-Zakzaky and his wife. Seven months later, they are still in detention without a formal charge. Similarly, a 17 December 2015 court ruling that faulted the action of the State Security Service (SSS) in detaining Nnamdi Kanu for over two months, without trial, was ignored.

The fear of harassment by security agencies has ushered a new dawn of silence. Whether through arrests and prosecutions, verbal threats or arbitrary transfers of journalists, it is clear that the clampdown on social critics and activists has reached concerning levels, resulting in declining participation and engagement in media activity. Unlike the period before the 2015 general elections when the vibrancy of internet-based activism peaked, activists and bloggers are increasingly silent, and not speaking up as they used to. S4C's study established that active citizens and other civil society actors keep quiet for fear of harassments by security agencies. In addition, the mainstream media, reliant on government patronage, "looks the other way so as to operationally remain in business."<sup>17</sup> For journalists, speaking up comes with other costs such as arbitrary transfers from one station to the other, especially to remote locations.

### 3.3 - Non-legal restrictions

Non-legal restrictions, including shaming activists, or labelling them in a way that increases their vulnerability to public ridicule, isolation or stigma is quite commonplace. A political support group loyal to the government labelled the activities of a social movement campaigning for the immediate rescue and safe return of Nigeria's abducted schools girls as "socio-advocacy terrorism."<sup>18</sup> The Nigerian government labelled the Indigenous People of Biafra (IPOB) campaigning against the marginalisation and structural injustices against the people of South-Eastern region of Nigeria, and also pushing for secession of the South-East from Nigeria, as a terrorist organisation.<sup>19</sup>

Linking NGOs to acts of corruption is another strategy used to discredit activists and NGOs. Speaking recently at a high-level function, Nigeria's former finance minister Okonjo-Iweala reportedly stated that corrupt people use NGOs as a front. In a warning to global financial institutions, she noted: "You really need to identify the institutions, the people and those who are willing to work on this reform and support them. But you need to ensure you are working with the right CSOs and NGOs. We have a joke in my country that you can have NGIs [Non-governmental individuals] instead of NGOs."<sup>20</sup> Linking NGOs to corrupt activities is one of the principal reasons advanced by the proponents of the NGO Bill.

The deliberate use of negative rhetoric often stigmatises activists, and smears sections of civil society. The consequence is the declining public trust and confidence in that person so labelled, and by implication, the civil society as a whole.

#### 4 • Reclaiming civic space in Nigeria: What has worked?

Wary about the persisting climate of fear and the potential harm to campaigners, activists and practitioners are innovating in terms of strategy, building new constituencies of stakeholders while forging alliances with a variety of actors, locally and internationally.

**Digital Activism: Blogger-NGO Collaborations:** Thanks to the advancements in digital technology, messages now travel faster, across greater distances, especially through the use of social networks, such as Facebook, Twitter, and YouTube. With the speed of dissemination that these social networks offer, public pressure may be activated and amplified with limited resources. Thanks to their strong online presence and huge following, bloggers typically command the traffic needed to disseminate information to wider audiences. They can sensationalise any topic or make any issue go viral within minutes. Leveraging these advances in technology, collaborations between bloggers and NGOs are popular in Nigeria. In May 2016, this sort of collaborative action made it possible for NGOs, bloggers and other active citizens to successfully block the Bill Prohibiting Frivolous Petitions (popularly known as the anti-Social Media Bill).<sup>21</sup> The Bill was designed to regulate communications and use of the social media. Had it been passed, the bill would have required citizens to depose affidavits in law courts<sup>22</sup> before posting any statement on social media regarding the activities of the government or its officials.

S4C regularly collaborates with bloggers to humanise difficult research questions around the threats to civic spaces and crowdsource responses from a wide spectrum of stakeholders. Sometimes, a staff member of the organisation with a large following on social media leads the debate on their personal timeline. Sometimes, they identify other popular bloggers or social media personalities who can do so. One significant outcome of the NGO-blogger collaboration is that such campaigns generate the intense social pressure needed to counter official narratives and spur public resistance. Whether it is the NGO expert analysing the restrictive provisions of a legislative proposal, or the blogger tweeting about the salient findings in the NGO report, different actors play uniquely-disparate roles, but sharing creative responsibility and working together towards a common goal.

This relationship between NGOs and bloggers is mutually-beneficial. When bloggers or activists get into trouble as result of their activities in cyberspace, NGOs undertake advocacy, including litigation campaigns, to mount pressure on authorities in order to secure their freedom. Activists, including religious leaders, have also benefitted from the legal representation offered by NGOs. Gloria Ballason, an activist from Kaduna state, was represented by 36 prominent lawyers mainly drawn the civil society, in a lawsuit challenging

the Kaduna State Governor, Nasir El Rufai, for violating her right to free speech. Similarly, when another blogger was arrested and detained on the basis of a Twitter post, an activist provided legal services and secured judicial victory on his behalf.<sup>23</sup>

**Constant vigilance of policy and legislative proposals:** NGOs like S4C also lead research and policy interrogation initiatives in Nigeria. This must be combined with media and community advocacy strategies aimed at communicating, as early as possible, legislative proposals that would threaten civic space. It is important to note that legislative proposals designed to shrink the civic space are not always explicitly evident. The titles may be confusing or the hurtful provisions surreptitiously inserted in obscure sections of the bill. They may also be framed in agreeable semantic language. For instance, the Bill to Prohibit Frivolous Petitions was the full title of the regulatory framework designed to control dissent on social media. The restrictive nature of the bill is only detectable through constant vigilance and policy analysis. When restrictions are embodied in legal frameworks, it is always easier to detect, challenge and possibly defeat. This is because the legislative process requires lawmakers to conduct public hearings and stakeholder engagements before parliamentary assent can be secured. Civil society actors can take advantage of the public hearing stage to make inputs and mobilise joint action against offensive legislative proposals. In March 2016, Nigeria's Senate Committee on Judiciary, Human Rights and Legal Matters conducted a public hearing on the Anti-Social Media Bill with a view to soliciting stakeholders' views of the propriety of regulating social media use in Nigeria. Activists maximised that window of opportunity to mobilise resistance against the Bill, which led to its withdrawal.<sup>24</sup>

Other forms of legal and non-legal restrictions are more difficult to notice and counter. For instance, restrictive regulations could manifest in a variety of forms, including ministerial regulations, codes of corporate governance or internal policy directives, all of which have the possibility of obstructing civic engagement. The public usually becomes aware only once the directives or regulations have become operative. The only recourse available to affected groups is either social pressure, or a judicial review to try and invalidate the regulations or directives. In November 2016, the Nigerian Communication Commission directed telecommunications operators to hike data tariffs by 200 percent.<sup>25</sup> Although the government claimed the hike was designed to protect the smaller telecommunications operators, there were speculations that the directive was a subtle ploy to limit access to the internet and effectively reduce the level of criticism against the government on online platforms. Following considerable social pressure, the directive was suspended.

**Research Advocacy & Partnerships:** Restrictive legislation can provide a rallying point for revolutionary sentiments and for concerned or potentially affected stakeholders to initiate joint action for confronting the crackdowns head on. Organisations with strong research capabilities like S4C have conducted research that examined the link between the Financial Action Task Force (FATF) Recommendation 8 and restrictions on civic freedoms in Nigeria.<sup>26</sup> The research presented the evidence needed to counter the official



justifications for the restrictions on civic spaces. Research findings must be disseminated in a targeted fashion to diverse stakeholders. For example, S4C's research findings have been published in national newspapers, reaching the wider public.<sup>27</sup> In recognition of its strong research base on closing spaces, S4C is regularly invited to speak at high-level panels or to present expert commentary on issues affecting the civic space in both the national electronic and print media.<sup>28</sup> S4C research data and reports have also been presented at local and international events, including national outreaches to decision-makers. For example, in August 2017 USAID's Strengthening Advocacy and Civic Engagement programme supported Nigeria's federal legislative committee on Civil Societies and Development to convene an Interactive Technical Session on the NGO Bill. S4C staff were among the expert panel invited to engage the federal lawmakers and make specific policy recommendations on effective strategies for better regulation of the NGO sector.

With each group playing different roles according to their areas of strength, this allows for the complementarity of skills, and for deepening the bonds of solidarity among local stakeholders as they maximise the use of existing spaces to organise and collectively respond to threats. Accordingly, while S4C conducts the research, other organisations have either used, or relied on S4C's research information in their public outreach in order to inform their constituencies and empower members of their networks. Drawing from S4C's research, the Catholic Justice, Development and Peace Commission, in October 2017, convened a seminar to understand how Nigeria's anti-money laundering and combatting the financing of terrorism regimes impact religious groups and activities. In sum, some NGOs have stronger ties with decision-makers. Some others have stronger presence on the social media, just as many other have the capacity to engage harder-to-reach groups and communities. All of these roles are different, but important in actualising the shared goal of reclaiming the civic space.

**Cross-border Coordination:** Coordination between actors across countries is another strategy that has helped to facilitate a cross-issue learning exchange between organisations in the Global North and the Global South. The Fund for Global Human Rights supported the European Center for Non-Profit Law (ECNL) to deliver technical assistance to S4C. This support enabled S4C to strengthen its expertise in non-profit legal research and advocacy, and to develop skills, relationships and synergies needed to address issues around resisting the closing spaces more effectively in the local and regional context. In addition, this cross-border coordination provided the leverage for local and regional actors to contribute meaningfully in global discourse and agenda-setting for reversing the trend of closing civil society space. Through this exchange, S4C has gained deep insights into the successful strategies that have worked in other contexts.

## 5 • Conclusion

Spaces for civic engagement are crucial to democracy and civil society operations. Whether these spaces exist online or offline, they are increasingly transforming into catalysts for social

and political change. With corresponding pace, governments are proposing or adopting measures designed to restrict these spaces, with implications on fundamental freedoms, particularly the rights of free expression, public assembly, conscience and thought. Civic spaces have as a result, come under serious scrutiny and harassment by government authorities, making it difficult for civil society groups to carry out their advocacy or charitable operations. However, civil society actors, including active citizens, are pushing back, responding to these threats in diverse ways. While efforts aimed at challenging civic space restrictions have recorded significant successes, huge gaps remain. We must continue to be active and contribute to an ever vigilant civic community that is always ready to ask questions, demand answers and hold the government accountable at all times.

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the country dominated by the Igbo ethnic group. His radio broadcasts champion the campaign for an independent state of Biafra. Before he was released on April 28, 2017, Kanu spent close to two years in detention, and was slammed with a six-count charge, containing allegations of treasonable felony, maintaining an unlawful society and illegal possession of items, among others. The IPOB has no record of violence, and has never resorted to armed conflict or rebellion. Other Biafra activists detained together with Nnamdi Kanu continue to languish in prison custody.

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# RESILIENCE IN TIMES OF REPRESSION

**Carlos Patiño Pereda**

- *“The basic motive of the resistance was indignation.”* •  
Stéphane Hessel

## ABSTRACT

*From April to July 2017, Venezuela was the stage for ongoing street demonstrations as a result of a resistance movement known as the first Venezuelan popular rebellion of the 21<sup>st</sup> century. The government defeated this peaceful protest movement through the use of repression and the imposition of a fraudulent National Constituent Assembly. In such a hostile environment, civil society organisations faced, and still face, the challenge of continuing their work to promote and defend human rights without succumbing to individual and collective despair. To do this, the concept of resilience and putting it into practice have been key.*

## KEYWORDS

Resilience | Democracy | Adversity | Hope | Civil society | Networks

## 1 • The human rights situation and human rights organisations in Venezuela

The Venezuelan human rights movement is currently facing enormous challenges due to a sort of social anomie where repression and severe restrictions on those who disagree with or criticise the government persist. Shaken by an unprecedented economic and social crisis generated by its own public policies, in 2016, the Nicolás Maduro administration chose to shift from a democracy with limited freedoms to a modern dictatorship,<sup>1</sup> adopting a model similar to the one used by Alberto Fujimori in Peru in the 1990s.

In March 2017, Attorney General of the Republic Luisa Ortega Díaz publicly denounced “violations of the constitutional order and disregard for the state model enshrined in the Constitution of the Bolivarian Republic of Venezuela, which constitutes a breach of constitutional order”.<sup>2</sup> This sparked a series of street protests that lasted over 100 days, which Provea<sup>3</sup> described as the first Venezuelan popular rebellion of the 21<sup>st</sup> century and the most important peaceful protest movement in Latin America in recent years.

However, even with the crisis worsening and conflict escalating, the government responded by criminalising protest, adopting the systematic use of force in demonstrations and applying the military jurisdiction to civilians. According to the *Observatorio Venezolano de Conflictividad Social* (Venezuelan Observatory of Social Conflict), between 1 April and 30 July 2017, a total of 6,729 protests were registered in an average of 56 days.<sup>4</sup> Furthermore, according to data of the Office of the United Nations High Commissioner on Human Rights,<sup>5</sup> 124 people were assassinated during the protests and 1,958 were injured. 5,000 arbitrary arrests were made, of which at least 609 individuals were forced to appear before military tribunals. To this, one must add denunciations of homes being attacked by teargas, searches conducted without warrants, robberies committed by police and military personnel, harassment at work and dismissals for political reasons, as well as attacks by armed civilians acting in coordination with security forces (paramilitary groups).

The popular rebellion ended with the imposition of a fraudulent National Constituent Assembly<sup>6</sup> as a move to abolish the Constitution promoted by Hugo Chavez in 1999, impose the constituent assembly’s authority over other government offices and criminalise dissent using instruments such as the *Ley Contra el Odio* (Anti-Hate law)<sup>7</sup> and the *Comisión de la Verdad, la Justicia, la Paz y la Tranquilidad Pública* (Commission of Truth, Justice, Peace and Public Tranquillity).<sup>8</sup> This did not resolve the issues that sparked the protests; on the contrary, it made them worse.

The 30 August 2017 report of the Office of the United Nations High Commissioner concluded that grave and systemic violations of human rights had been committed in Venezuela and pointed to “the existence of a policy to repress political dissent and instil fear in the population.”<sup>9</sup> The shift towards a modern dictatorship has led to a change in focus for certain non-governmental organisations (NGOs), as they gradually incorporate in their

work the defence of democratic freedoms affected by authoritarian decisions. The result of this has been threats against and the criminalisation of the NGOs<sup>10</sup> by the dictatorship's high-ranking authorities and institutions and the public media network.

## 2 • Defenders in the face of adversity: resilience and human rights

The work of men and women human rights defenders entails confronting situations of adversity – both their own and those of the victims of human rights violations they defend – and resolving them in the best way possible. This is directly related to the concept of resilience – that is, overcoming traumatic events or situations of distress in a positive way.

After the defeat of the popular rebellion, there was a general feeling of frustration and discouragement in the struggle to save democracy and the justiciability of rights in Venezuela. In light of this, organisations such as *Civilis Derechos Humanos*<sup>11</sup> (Civilis Human Rights) have highlighted the importance of using resilience as a tool for overcoming adversity and trauma through the strengthening of defensive capacities.

For Civilis Executive Director Jo D' Elia,<sup>12</sup>

*Reflection and decision-making on the development of capacities to respond to and overcome potentially highly negative threat patterns enable organisations to continue fulfilling their mission and guarantee the integrity of each of their members and the people they help.*

The public nature of these threats increases the potential for harm. D'Elia adds that:

*Situations of political oppression create this type of adversity. As they are intentional and planned, the intimidations, violence, cruelty, censorship, social and economic deprivation and closing of civic space, among other things, generate a complex set of threats that create the constant risk that people's human rights will be violated. There is a high probability of this becoming widespread as a consequence of the logic that non-democratic systems use to maintain themselves in power, which exceeds societies' capacities to protect themselves in the absence of the rule of law, independent judicial institutions and other mitigating contextual factors.*

Another human rights defender and former executive director of Provea,<sup>13</sup> Marino Alvarado, believes that the work to defend human rights always involves risk and is full of adversity. "It is a constant struggle against the arbitrariness of power and a struggle to obtain justice in countries that place their bets on impunity", he affirms.



Even though organisations and activists often underestimate their victories and impacts, resilience implies having a greater understanding of the positive effects generated by both individual and collective action. According to Alvarado, “daily life, which is often intense and where what is urgent takes priority over what is important, robs the moments we have for reflecting calmly on successes and errors, triumphs and failures and for analysing the opportunities that exist in the midst of difficulties.” This is why resilience obliges us to reflect with an open and tolerant mind on how far we have come and design the path to follow.

According to research carried out by Civilis, in situations of oppression, efforts to provide international protection would not be enough if, at the time, the population was not engaged in the struggle for liberation and protection and willing to rise again from defeat when up against forces of opposition that are stronger than their own. However, the defeat of the popular rebellion that lasted four months on the street demobilised the Venezuelan population, which now appears to be passive towards the government’s growing arbitrariness and the lack of coherent strategies among an opposition that is now divided and weak.

Hence, the necessity to develop the population’s capacity for resilience. A resilient civil society is needed – one that is actively committed to the defence of human rights, democracy, the rule of law and justice<sup>14</sup> and shows solidarity with this struggle, and acts out of its own convictions and callings until it is able to re-establish safe and favourable conditions for the achievement of free and democratic societies. Thus, in the adversity approach, resilience is a form of protection that consists of preparing oneself to overcome threats and trauma.

Accordingly, Civilis proposes the following strategies of resilience:

- a • Providing people physical protection;
- b • Acting rapidly to respond to arbitrary acts;
- c • People providing mutual protection for one another;
- d • Restoring social memory;
- e • Combined justice by alternating various strategies in and out of court.

And to complement the strategies, it proposes the following tactics:

- f • Defuse intimidation;
- g • Eliminate or avoid opportunities for abuse and violence;
- h • Unblock access to help;
- i • Unmask lies and censorship;
- j • Win allies;
- k • Take original and innovative actions.

Organisations such as Provea, for example, have implemented self-care measures for their human rights defenders as part of their strategies of resilience. These measures include recreational activities held out of town,<sup>15</sup> lunches for the whole staff or by

working group, regular coffee breaks at the office, celebrations of the goals achieved by the organisation, self-help workshops, group and individual therapy accompanied by professionals, bi-annual evaluation and planning meetings held outside the workplace, and the development and discussion of security plans with the entire team. For these discussions, the team uses the manuals for human rights defenders at risk by Front Line Defenders as a guide.<sup>16</sup>

### 3 • Civil society networking

In light of the current situation, civil society organisations in Venezuela have adopted resilient measures, which include coordination, collective action and catharses. Examples range from joint efforts to document and denounce incidents to international protection agencies – such as IACHR hearings,<sup>17</sup> UN UPRs<sup>18</sup> and various commissions and rapporteurs – to public statements condemning human rights violations elaborated, signed and disseminated by dozens of organisations.<sup>19</sup> Similarly, it is worth highlighting the Third Meeting of Men and Women Human Rights Defenders<sup>20</sup> held in November 2017. During the event, more than 160 activists from all over the country met in Caracas with the goal of giving visibility to the work of human rights organisations in the current context and to discuss the various challenges they will face in the future. This networking minimises individual vulnerabilities, allows organisations to channel emotions collectively and strengthens the human rights movement as a whole.

Another concrete example is the support networks that have been created, such as the social networks of NGOs focused on the search for, exchange and donation of medicine and medical supplies for the current humanitarian crisis in Venezuela.<sup>21</sup> This is what the organisation *Acción Solidaria* (Action for Solidarity), for example, has been coordinating.<sup>22</sup>

### 4 • The right to hope

In this context, resilience can be considered a mechanism for fighting despair and overcoming adversity. Philosopher Laín Entraldo<sup>23</sup> defines hope as the expectation that a given future will emerge under certain circumstances, which comes with the belief or confidence that there will be a response to this individual or collective expectation, regardless of whether it is positive or not. Not receiving a response can block hope and turn it into despair.

Marino Alvarado argues and insists that after the defeat of the popular rebellion of April-July 2017, resilience in Venezuela began to analyse the causes of the defeat, identify the lessons learned and highlight what was won. The four objectives the rebellion had outlined were: 1) a humanitarian channel for medical supplies; 2) freedom for political prisoners; 3) elections in adequate conditions; and 4) recognition and respect for the work of the National Assembly and elected deputies. Although these objectives were not

met, other important goals were achieved that will have positive impacts in the years to come. One example is the increase in international pressure from organisations such as the Organization of American States and the Office of the UN High Commissioner for Human Rights on the Nicolás Maduro dictatorship and its high ranking officials. Therefore, for Marino Alvarado, the resilient message must be honest, yet encouraging: “While the popular rebellion was defeated, it could appeal to the International Criminal Court in relation to the human rights violators.”

A hopeful discourse can free the population in general, and of human rights defenders and the victims in particular, from discouragement. It is important to strengthen the capacity to fight that was demonstrated during the four months of popular rebellion and highlight the lessons learned for future struggles. It should also be recognised that although the government is weak, it did manage to re-establish a certain level of political stability. Even so, it is currently on the offensive, which could mean greater adversity for activists and organisations. This situation obliges us to take measures calmly and in due time, while recognising the progress made.

For D’Elia, the protection approach based on adversity offers other ways to address situations of threat when they do not depend on vulnerability and do not exceed capacities to protect. He says that in particularly hostile situations, it is necessary to have both an international community that is actively assuming its responsibility to protect and a resilient population and civil society capable of challenging the threats by defending human rights, democracy, the rule of law and justice.

According to Civilis, one key and promising strategy is to strengthen the human rights movement by incorporating more people, groups, organisations, communities and networks of volunteers in the activities of advocacy and promotion<sup>24</sup> with the goal of reaffirming rights and using them as the basis of legitimate efforts to put an end to the abuses, seek justice and fully restore the rule of law and democracy.

In his work *Time for Outrage*,<sup>25</sup> Stéphane Hessel, co-author of the Universal Declaration of Human Rights, stated that peaceful insurrection and the will to commit to history are born from indignation: “the yeast that makes the bread rise”. If we resign ourselves to accepting rights violations, we will be overwhelmed by indifference, or, equally as bad, the loss of the ability to feel outrage and the commitment that goes with it. Exasperation is not a good guide either, as it usually leads to violence and violence is not always efficient. Violence tends to be less motivating and unifying than peaceful protest.

In situations of oppression, as in the case of Venezuela, where undemocratic regimes promote despair as a mechanism for domination, where the message the government repeats over and over is “the revolution is here to stay”,<sup>26</sup> opposition factions “will not return”<sup>27</sup> and what cannot be achieved through votes, “we will do through arms”,<sup>28</sup> citizens’ indignation must urgently be challenged into a source of hope and change.

## 5 • Conclusion

The severe repression in Venezuela during the first half of 2017, which was the Nicolás Maduro government's response to the popular resistance movement, left deep scars on Venezuelan society. The cycle of protests was defeated through grave and systematic violations of human rights and the imposition of a fraudulent National Constituent Assembly.

The goals that the resistance movement set out to achieve were not met. However, a mobilisation process must not be evaluated only on the basis of whether or not it achieved its objectives, but also on the advances in organisation it generated and any unexpected positive results. In this hostile environment, civil society organisations have had to carry out their work to promote and defend human rights, remember their positive outcomes and not succumb to individual and collective despair.

In light of the tendency towards resignation in Venezuelan society in general, and especially to prevent civil society from retreating, the human rights movement has strengthened its coordination and networking. It has done so by assuming its defeats and highlighting its victories, as organisations lend each other support, explore collective strategies and promote the self-care of women and men human rights defenders.

Civil society's strength lies in its collective energy, which affects the use of social resilience as a mechanism for overcoming adversity and enforcing rights in order to put an end to abuses of power. In contexts marked by oppression, as is the case in Venezuela, resilience can be learned and must be actively practiced in order to contribute to the rebuilding of the country's institutions and the attainment of justice and a life with dignity. This enormous challenge calls for unity of action and on Venezuelan women and men who are committed to democracy to join in the efforts.

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# ONLINE FEMINIST RESISTANCE IN PAKISTAN

**Zoya Rehman**

- *How online spaces help the feminist movement in Pakistan reclaim civic space* •

## ABSTRACT

*This article examines women's access to civic space in Pakistan, particularly with the help of digital media in recent times. Despite the emergence of an overtly feminist consciousness in Pakistan in response to the discriminatory laws that began to be passed during Zia-ul-Haq's Islamisation regime, the movement remained unknown to many in the country. Now, with the internet on its side, Pakistan's feminist movement is more visible than ever, with numerous collectives and activists using online spaces to highlight their work. Online spaces have undoubtedly made organising easier, but have also introduced serious challenges for the movement, including attacks of hate speech online and charges of elitism. This article examines this reality and also how the Digital Rights Foundation has launched the Hamara Internet programme to support the work of Pakistani feminists in online spaces, by envisioning the possibility of a feminist internet in Pakistan.*

## KEYWORDS

Feminism | Human Rights Movement | Strategies | Pakistan | Digital Rights Foundation | Online Space



## 1 • Introduction

Feminists in Pakistan have struggled persistently to fight for women's access to an open and free civic space across the country. Women have been making political demands in relation to their freedom of expression, assembly and association since the country's inception in 1947, with a "feminist consciousness" emerging more prominently in the 1980s.<sup>1</sup>

The internet has recently become an important tool for the feminist movement to renovate itself and to counter the paternalistic rhetoric of "security" that is used to silence women and narrow the spaces in which they can operate.

This article explains how the feminist movement is responding to Pakistan's challenging political environment with the help of digital technology. It examines how the use of the internet is accelerating traditional forms of grassroots activism and resistance. The article then addresses the unique challenges that the internet presents for Pakistani feminists. Women and non-binary individuals are offered no respite from violence and the male gaze in online spaces, given the gendered use of technology,<sup>2</sup> with the larger structural issues being replicated online.<sup>3</sup> The article ends by exploring how the Hamara Internet Project, an initiative of the Digital Rights Foundation, is being used to respond to these challenges.

## 2 • Feminist resistance going online

The Women's Action Forum (WAF) – a feminist conscious-raising group known for enabling Pakistani women to fight for their rights – was formed during 1980s.<sup>4</sup> Its formation was a response to the repressive legislation introduced under General Zia-ul-Haq's Islamisation agenda, which placed excessive focus on women as the guardians of state, family and religious "honour".<sup>5</sup> Dress codes and conservative social practices – many of which continue to this day – were strictly enforced to restrict women's freedoms and confine them to the *chaadar and chaar dewari*.<sup>6</sup>

Until recently, the feminist movement used traditional strategies – such as demonstrations, correspondence campaigns and petitions – to oppose the draconian measures established by the state in the 1980s. Eyewitness accounts of the protests in 1983 recall the illegitimate force of the government used against the female protesters at the Mall in Lahore. Methods such as teargas and *lathi* (baton) charges were used against the 200 to 250 women,<sup>7</sup> much like the reaction of state forces towards legitimate protests that we see today in Pakistan and beyond.

Despite its efforts, until recently WAF was largely unknown to the general public in Pakistan. However, by taking ownership of online spaces the group has gained increasing recognition. Social media presence and email threads help the members of the forum issue strongly worded statements regarding relevant feminist and social issues in the country.

In addition, WAF's increasing online presence<sup>8</sup> has helped it publicise its work as a lobby and pressure group on legislation regarding violence against women in the country.

Moreover, younger people are joining WAF, which also owes its success to the online presence of the group. WAF is considered by many to be a symbol of feminist resistance across Pakistan, and remains united against repressive Islamic and state laws that continue to restrict the spaces in which women can operate. The forum represents the thriving feminist movement in the country that has succeeded in placing women's issues on the national agenda.

WAF's online presence is an indicator of how the feminist movement is utilising the opportunities that digital spaces provide. For many groups and collectives in Pakistan, the internet has become an important strategic tool to organise protests and to mobilise people rapidly. Activists are coordinating themselves online more and more, for example through Facebook, Whatsapp, Signal and Twitter. Such platforms and messaging apps allow instant, free communication and profiles that help in dissemination of information.

The growing presence of feminist collectives online proves that online spaces have become important, and sometimes challenging, sites of political resistance themselves. They lend support to communities and causes that not only receive little traction in offline spaces but which are actively being restricted. Such online spaces have the potential to produce and celebrate a range of politics and identities, and for individuals to become more visible to shun the marginality they experience offline.

Girls at Dhabas is one of Pakistan's most well-known feminist collectives that owes its popularity primarily to online spaces. The collective focuses on the reclamation of public spaces by women and non-binary individuals.<sup>9</sup> What started as a picture posted of one of the members sipping tea at a *dhaba* (roadside café)<sup>10</sup> soon became a movement that began to define the right of women and non-binary individuals to enjoy Pakistan's public spaces. This is done through various creative public space interventions, such as cricket matches, bike rallies, mural painting, and meetups in parks and *dhabas*, all of which the collective promotes through its online presence. Feminists from all over Pakistan are increasingly sharing their experiences anonymously through the collective's online pages to shed light on the patriarchy Pakistani women experience in their day-to-day lives.

The collective recently launched bilingual podcasts that highlight issues of feminist concern, in order to make a widespread impact in a more creative way.<sup>11</sup> It is also using its online space to reach out to parallel movements such as 'Why Loiter?' in India in order to strengthen its feminist ethos and raise new questions regarding movement building for local audiences.<sup>12</sup> This is key for the collective to bring feminists based in urban contexts together through sharing examples from across South Asia, to sensitise them and make them an active part of the feminist advocacy movement in the country.

Another collective that owes its membership to online spaces is the Feminist Collective (TFC),<sup>13</sup> which was created as a response to sexism in the left.<sup>14</sup> The collective emphasises women's negative experiences of working with men in the left, and envisions the creation of a powerful socialist feminist movement in the country. The members of the collective routinely discuss ways for feminists and queer activists to organise across Pakistan with the help of digital media. TFC is an important tool to enable feminists to collaborate whenever an issue of concern arises, particularly that of the shrinking of leftist spaces for women. Additionally, the group also provides a support system and a safe space for feminist activists who cannot express themselves freely in public given Pakistan's restrictive political environment.

### 3 • Key Challenges in Online Spaces

Despite the clear benefits that the use of online space brings, feminists with an online presence have become increasingly vulnerable to online attacks and worse – disappearance or death.<sup>15</sup> Such attacks represent another way in which civic – albeit online – space for feminists is being restricted. For example, the events leading up to the murder of Qandeel Baloch,<sup>16</sup> a social media celebrity and provocateur known for her bold videos, are indicative of the backlash women experience as result of partaking in online spaces on their own terms. Such stigmatisation also results in women and non-binary individuals falling under increased state control and scrutiny,<sup>17</sup> both on and offline. The monitoring and policing that used to take place in offline spaces is now happening online, with the government shaping the narrative of who the public should rally against and call anti-state. This rhetoric often results in feminists being stalked online, receiving threatening messages or having their mobile phone numbers culled from their profiles. These feminists are then re-victimised when they challenge their online abusers, which can be seen by the backlash against them in the online spaces where they voice their grievances.

It must also be noted that while online spaces have made a plethora of voices available through feminist commentary and activism, this often takes place at the expense of larger, more intersectional issues, which is a challenge we must overcome.<sup>18</sup> The movement is often accused of being elitist and exclusionary with many online initiatives being predominantly in English and catering to urban classes, particularly the call to protests online. These calls only reach a certain section of society and result in the same few activists showing up to protest. Both WAF and Girls at Dhabas, for example, have been criticised constantly over these issues and are often labelled as 'Western' initiatives by the state as an attempt to discredit and silence them.<sup>19</sup>

Not only is this a typical rallying cry by powers that seek to restrict civil society by discrediting it as representing foreign values, but for the feminist movement such a label is akin to being accused of propagating "white feminism".<sup>20</sup> This results in the movement being seen as neither culturally relevant nor accessible for women from working class or rural backgrounds.<sup>21</sup> To overcome these criticisms, the movement is now trying to ensure that more content in Urdu

is created to improve online outreach, especially with the help of podcasts and bilingual study circles initiated by Girls at Dhabas and the Awami Workers Party<sup>22</sup> to sensitise Pakistani audiences and resist being discredited by the state and their own constituency.

Class representation can also be achieved through online collaborations with labour and peasant movements across Pakistan, particularly those led by women. The social media “boycott” campaign targeting Khaadi, a local clothing franchise, is a good example to learn from in this regard. The boycott, initiated by the National Trade Union Federation,<sup>23</sup> occurred because of the company’s exploitative labour practices<sup>24</sup> and which underscored the routine structural violence that factory workers – including female ones – experience at the hands of the local fashion industry. Feminists could initiate similar campaigns in order to help the movement gain legitimacy and counter the discourse that it is elitist and representing western values.<sup>25</sup>

#### 4 • The Response : Hamara<sup>26</sup> Internet – A Feminist Internet?

Recognising on the one hand how important the internet has become for the feminist movement in Pakistan in its efforts to fight back restrictions on civic space for women, yet on the other the severe challenges that the medium presents, the Digital Rights Foundation established the Hamara Internet (which translates as “Our Internet”) project to “build a movement to promote a free and secure digital environment for women”.<sup>27</sup>

The Hamara Internet project was conceptualised as a platform for reaching out to young women in colleges across Pakistan, to inform them as to how the internet can be used against them by their oppressors, be it the state, their families or men in their midst. The project teaches feminist activists how to utilise digital tools for security, such as privacy and encryption features available to them for secure communications, and conducts workshops on holistic security,<sup>28</sup> thus enabling online dissent to continue in a safe manner. Activists in DRF also work with various stakeholders – lawyers, journalists, and human rights activists – to highlight how national security policies, including the National Action Plan,<sup>29</sup> can clash with civic freedoms, and what can be done to circumvent this.

In addition, the project is mapping how Pakistan’s online spaces can potentially encapsulate a feminist ethos, in order to bring such movements together in feminists’ collective fight against patriarchy. In this sense, it is using online spaces to facilitate alliance building in order to combat restrictions of civic space. The project encourages collaboration with feminists by organising protests, advocacy efforts, fundraising, legislative advancements, and drafting joint statements. Such efforts help determine effective ways of bringing intersecting voices and activism together to work on issues that should be of concern for all feminists.

Under the project, the Digital Rights Foundation launched a toll-free helpline<sup>30</sup> in late 2016, responding to the realisation that women and non-binary individuals in Pakistan were not comfortable taking their complaints to law enforcement agencies. This is the first

helpline in the region that specifically caters to cases dealing with online harassment and abuse, and relies on a referral system<sup>31</sup> to ensure that cases are forwarded in a nuanced, gender sensitive way. The helpline seeks to highlight problems women experience while forwarding their complaints to government agencies by providing a safe space and ensuring confidentiality for those experiencing any form of abuse online.

A feminist Internet manifesto was drafted recently under the Hamara Internet initiative, with significant contributions from feminist activists across Pakistan. The manifesto is a statement on how the country's online spaces must work towards building a feminist ethos in relation to movement building, data protection, accessibility and inclusivity, freedom of expression, and economy. The purpose of the manifesto is to merge the work of feminist activists with the digital rights discourse, to begin conceiving the possibility of a feminist internet in the country that can be a truly safe and free place for feminists to operate.<sup>32</sup> It is important for feminists in Pakistan to frame this conversation on their own terms, given the unique political context they operate in, in order to consciously change the landscape of internet politics in Pakistan. Ultimately, Hamara Internet aims to highlight how online activism in Pakistan – with the help of feminist politics and resistance – shapes our experience of being citizens on the internet.

Feminist perspectives are incredibly positive forces that should be a prominent part of the internet rights debate. Narratives on digital rights – especially now that we are seeing the offline civic space moving online – cannot exist without recognition of feminism, social justice and the activist communities that form around them.

## 5 • Conclusion

These observations show how feminist activism in Pakistan is responding to the restrictions on civic space – which have long been present in the country – with the help of digital media. However, online spaces have their own risks and challenges. Internet security narratives are predominantly male-dominated, and in many cases, led by the government. It is this narrative which defines online space in Pakistan and generates a backlash from the Pakistani population due to religious and nationalist rhetoric pushed by the state. Despite our collective achievements, the threats we face offline are increasingly present online. Moreover, it must be acknowledged that feminist online activism is just not inclusive enough, thereby allowing negative rhetoric by the government to gain traction. The language barrier is a real problem with the movement that is seen more visibly in Pakistan's online spaces, all too often being considered inaccessible, 'western' and elitist.

These challenges need to be countered by feminist collectives. We must better maintain online spaces and develop more content that caters to all Pakistanis, in different languages, and from diverse contexts to ensure that social hierarchies are not replicated online, particularly to overcome conservative social discourses. We must truly harness the power of the internet in Pakistan, and resist attempts to silence voices of women online.

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# GLOBAL CHALLENGES, LOCAL RESPONSES

**Dhananjayan Sriskandarajah & Mandeep Tiwana**

- *While recognising the interconnected nature of attacks on civic space, it remains critical to amplify local civil society voices and support local responses*

## ABSTRACT

*We are facing a global emergency of civic space. This is now a universal phenomenon, no longer restricted to autocracies and fragile democracies. While there is growing interest in the nature and impact of these restrictions, there is limited analysis of the deeper drivers of the phenomenon, and even less about how to support local responses. We argue that it is critical to recognise the global and interconnected nature of what is driving attacks on civic space, but that it is even more important to find ways of supporting local responses including through an examination of civil society practices. Moreover, civic space cannot be “saved” from outside; we need to build a resilient and independent civil society, that is ready and willing to respond – together, where possible – to the challenges it faces. The over-arching challenge is not a technical, short-term one of pushing back on attacks on civic space, but a longer-term political one of re-imagining a more participatory landscape where the contributions of civil society are celebrated and substantive democracy thrives.*

## KEYWORDS

Civil Society | Populism | Democracy | Civic Space

## Introduction: a multitude of contributing factors

While the early 2010s were characterised by large scale people's uprisings – whether against dictators or against neo-liberal economic policies – it seems that the second half of the decade will be defined by the rise of the strong man and a general degradation of constitutional democracy.<sup>1</sup> This shift represents a major blow for human rights activists and civil society organisations pursuing social justice, already challenged by routine manipulation of the global security discourse to crush dissent at the national level. Yet, if we situate this shift within a context of cause and effect, where uprisings lead to crackdowns, and crackdowns lead to uprisings, then we in civil society have reasons for hope. The narrowing of civic space and democratic principles – even in places we once believed were established democracies – is a matter of enduring concern as attested by the CIVICUS Monitor which uses a participatory methodology to evaluate the state of civic freedoms around the world.<sup>2</sup> But these trends are also mobilising civil society globally. The shift towards authoritarianism is already leading to strong counter-reactions. The women's march on Washington and associated sister marches around the world following United States (US) President Donald Trump's inauguration in November 2016 perhaps attracted the greatest attention in the media, yet several new and large movements of resistance are emerging in response to neo-fascist, xenophobic and sexist political discourses.<sup>3</sup>

Many of the contemporary restrictions on civil society are knee-jerk responses, sometimes pre-emptive, to successful popular mobilisations, a sad and unexpected result of the initial hope of the so-called Arab Spring. Of course, this cause and effect pattern is not the only root cause of the growing constraints on civic freedoms. A combination of divisive political leaders and the continued occurrence of terrorist attacks have emboldened religious and ideological extremists of all types to undermine civil society's ability to advance the rights of LGBTI communities, ethnic and religious minorities and refugee populations. Entrenchment of market fundamentalism has also contributed to an environment of increasing intolerance among political and economic elites towards civil society engaged in exposing high level corruption and environmental destruction.

Moreover, those who seek to restrict civil society are increasingly coordinating their efforts across borders to undermine the international human rights framework. Restrictions on international funding for civil society, undermining of multilateral institutions, and retreat from international agreements using flimsy arguments of state sovereignty or the alleged threat of terrorism are all ways that powerful vested interests are seeking to undo cooperation and progress achieved in advancing the human rights discourse. These factors have led to several, often globally observable, drivers of restrictions on civic freedoms. We think three are worth paying attention to.

### 1 - The business of civil society repression

Although there is rising interest among development bodies and large international non-governmental organisations (NGOs) to involve business in solving the world's problems,

including in implementing Agenda 2030, there is lesser appreciation of the impact of mega-corporations and market fundamentalism in undermining civic freedoms.<sup>4</sup> In fact there is an inherent tension between the headlong embrace of neo-liberal economic policies at the highest levels of national and international decision making and their rejection by ordinary people at the local level often pitting civil society actors working in local communities against powerful politically well-connected businesses.

Private sector influences on civil society borne out of collusion between political and economic elites are particularly clear in the area of natural resource exploitation by extractive industries and mega agri-businesses. Local, often indigenous, environmental defenders face retaliation for protecting natural resources from outside exploitation. For example, in Argentina, the disappearance of activist Santiago Maldonado has sparked accusations that government security forces are cracking down on citizens in order to protect corporate interests.<sup>5</sup> Maldonado was found dead in October 2017 following a clash between government security forces and indigenous people's rights activists protesting fashion company Benetton's exploitation of ancestral lands of the Mapuche community. The assassination of award winning Honduran activist Berta Caceres who opposed a mega hydro-project is emblematic of the challenges which transcend global North-South boundaries.<sup>6</sup> In the US, indigenous protestors opposing the controversial Dakota Access Pipeline believing it would destroy ancestral burial grounds and poison their water supply have faced a slew of restrictions prompting the American Civil Liberties Union to come out in their support.<sup>7</sup>

## 2 - A toxic mix of extremist ideologies

As evident above, states are not the only constrictors of civic space. In conflict prone as well as other environments, proponents of extremist ideologies see civil society with its emphasis on diversity and social cohesion as a key stumbling block in achieving their aims. Terrorists and extremist political forces share a common aim to divide societies around narrow interpretations of ethnicity or religion. They blame contemporary problems on excluded groups. Civil society that pushes back against their divisiveness is variously branded as antithetical to allegedly shared religious, national or cultural values. In Europe, civil society groups working on the rights of refugee and migrant populations are facing a backlash.<sup>8</sup> In many parts of West Asia, women's rights defenders have been attacked by armed groups seeking to impose puritanical religious doctrines on populations by force dubbing the quest for gender equality to be a Western construct. For example, in Afghanistan, the Taliban has murdered several women's rights activists and forced others to flee their homes for safety.<sup>9</sup>

In South Asia, the assassination of Indian journalist, Gauri Lankesh, a prominent critic of Hindu right wing extremists' actions, is evocative of the challenges faced in the region by bloggers and journalists for standing up against the imposition of narrow minded religious and cultural mores.<sup>10</sup> In Africa, religious evangelists with cross-continental links have spurred homophobia and attacks on organisations and activists promoting the rights of LGBTI people.<sup>11</sup>

### 3 - Retreat from democracy and multilateralism

While global media and civil society attention has been focused on the degradation of civic freedoms through the emergence of “neo-fascist” politics in democracies (eg. Brazil, Hungary, India, Philippines, Poland, US etc.) “strong men” and despotic regimes in several countries have been emboldened in the current climate of retreat from internationalism to consolidate their power by manipulating electoral processes and constitutional term limits (eg. Angola, Burundi, Cambodia, Democratic Republic of Congo, Rwanda, Turkey, Uganda, Zimbabwe etc). From Russia to Turkey to Venezuela, a battle is underway to silence those who speak “truth to power” wherein repression against those who speak the language of human rights is becoming the norm rather than the exception. Notably, soon after US President Donald Trump, a visceral opponent of the independent media, visited Saudi Arabia the aligned quartet of Bahrain, Egypt, Saudi Arabia and the United Arab Emirates blockaded Qatar to silence the Al Jazeera news network among other things.<sup>12</sup> The Qatari-supported English segment of Al Jazeera often provides a platform for civil society to highlight human rights abuses and promote alternative discourses.

The above developments, coinciding with the rise and rise of global superpower China, are contributing to a spectacular retreat from the international human rights framework. China’s development model with its emphasis on economic growth and suppression of civil and political freedoms has provided both a blue print and an aid cum trade lifeline to many an authoritarian regime that would not otherwise have been tolerated by the international community. While the lack of transparency surrounding China’s foreign policy makes it difficult to pin point its impact, official Chinese government documents have indicated a lack of commitment to democratic values and human rights, which outside observers have noted as being characteristic of China’s development forays thus far. For example, a 2016 Chinese government foreign policy “white paper” mentioned development but made no mention of “democracy, personal freedom and human rights.”<sup>13</sup> Arguably, China’s economic dominance is a compounding factor in reducing democratic governments’ and West’s impact in general on advancing civil society rights and participation in the Global South. However, it should also be noted that while Western donors are outwardly much more supportive of human rights and democratic freedoms, blind spots based on their strategic geo-political priorities remain. For example, Human Rights Watch has reported that the European Union has failed to monitor Ethiopia’s misuse of European Union development assistance which it says has increased the “government’s repressive capacity.”<sup>14</sup>

All this risks undermining several key victories achieved by civil society at the international level, including United Nations (UN) resolutions on the protection of human rights defenders and the establishment of a UN special representative to report on reprisals against civil society members who engage with multilateral forums. Many in civil society are questioning the value of engagement with international mechanisms when so little is being positively impacted on the ground. Nevertheless, a withdrawal from the international arena would be tantamount to abandoning the gains – even if imperfect – on civic freedoms

and civil society participation. Despite their challenges, processes like the UN's universal periodic review or procedures to register complaints with the UN's special experts offer important pathways to realising rights and highlighting abuses.

## Putting Local Responses at the Heart of the Fight Back

As we wrote in *Sur Journal's* 20<sup>th</sup> anniversary edition in 2014,<sup>15</sup> there was (and remains) a need for civil society voices from the Global South to be amplified and listened to in global discourses on human rights. Discussions of civic space are no different and, indeed, it is even more important to come up with ways to strengthen local actors. Here too, we see three issues worth paying attention to.

### 1 - Resourcing resilience, close to the ground

In an era of growing linkages between rights oriented civil society organisations (CSOs) and the donor/philanthropic community, finances have become a key area of contestation. CIVICUS' 2015 State of Civil Society Report<sup>16</sup> highlighted that only a tiny proportion of development aid actually goes directly to civil society in the Global South. Meanwhile, countless governments have sought to limit or interfere with international funding of civil society through a raft of well-documented restrictive laws and practices. Yet even when these factors are not fully in play, fickle donor priorities and excessive deference to governmental whims has created a situation whereby several smaller organisations are folding up while bigger ones, more adept at marketing and meeting sophisticated accounting and financial requirements of donors, are expanding. For example, an organisation run by Syrian refugees in Turkey says they have experienced difficulties accessing international funding despite having much more relevant local knowledge than the international organisations that attract global donors.<sup>17</sup> The 2016 High-Level Panel on Humanitarian Financing Report to the UN Secretary-General<sup>18</sup> reported in 2016 that just 0.2 per cent of humanitarian financing went to local organisations.

International CSOs often Hoover up resources that could have been routed to smaller but equally-effective organisations. Sadly, if this trend continues the organised civil society firmament will start resembling the market with big franchises edging out locally owned and rooted businesses. International donors need to be mindful of how their red tape can exclude organisations that are grounded in communities, possess local expertise and have significantly lower overheads than bigger organisations with sophisticated supply chains.

### 2 - Beyond accounts-ability

Across the world, the legitimacy of many organised civil society formations is being challenged on several fronts, from politicians demonising them as disconnected special interest groups to social movements that see traditional CSOs as arcane at best and co-opted at worst.

Meanwhile, the usual ways in which CSOs demonstrate their accountability – through compliance with regulatory requirements and donor reporting – are unlikely to be sufficient to convince skeptical politicians or publics. “Accounts-ability should not be confused with accountability” as one Indian activist puts it. “Accounts-ability” refers to accountability for the sake of checking a box. It can also be understood as externally enforced accountability. While this has its place especially in relation to issues of compliance, it will only be by building better, more responsive connections with the communities they claim to serve that CSOs will be able to establish a robust defence against political attacks on them.

Moving “beyond accounts-ability” is about reaching a deeper understanding of the rationale behind what we do as civil society. It involves openness and transparency not for the sake of checking a box but because they are key to making meaningful change. This could include things like people-centred decision-making, real-time adaptation to stakeholder needs, and nurturing the next generation of social change-makers. This form of accountability is not only about financial reporting and transparency to donors but about meaningful dialogue with affected communities and stakeholders, and keeping an eye on big picture outcomes to drive organisational decision-making process.

### 3 - Standing together

An energetic, civil society-led, global response is needed to counter attacks on civic freedoms. Many of us have done a good job of ensuring that the reality of closing civic space is on the international community’s radar but efforts to push back against restrictions are often duplicative and uncoordinated, and very rarely do they seem to be making a positive impact in national-level political debates about the role of civil society. In too many countries, those who oppose civil society are able to get away by mischievously dismissing those who challenge their power as traitors, disconnected, corrupt and in the pocket of foreign funders. Moreover, civil society must explore new ways of speaking about its own value and make the case for protection of civic freedoms to global publics. We must make clear that the enabling of civil society rights is an essential part of the defence of democracy. To do this, we need to form and work in progressive alliances, bringing together substantial masses of citizens and connecting classic CSOs, protest movements, journalists, trade unions, youth groups, social enterprises, artistic platforms and many other parts of the civil society universe. We need to provide the platforms and leadership necessary to bring together such a diverse range of civil society stakeholders at the regional level and from across the globe to secure crucial short and long-term victories to regain civic space at the national level and incubate new forms of resistance and organising.

### Conclusion:

#### “saving” civic space versus reimagining democracy

A robust civic space can only exist within a functioning democracy, and thus safeguarding civil society also involves re-imagining more participatory models of democracy, with people

at their heart. Seen in this way, the over-arching challenge is not a technical, short-term one of pushing back on attacks on civic space, but a longer-term political one of re-imagining a more participatory landscape where substantive democracy thrives.

In doing so, we in civil society need to challenge the “winner takes all” divisive impulse of electoral democracy and reinforce it with the inclusive anchor of constitutional democracy. Electoral democracy essentially splits people along party lines on the basis of ideology and demands. Populists around the world interpret their electoral mandates as signals to override the opinions of those who didn’t vote for them or don’t agree with them. Constitutionalism on the other hand imposes responsibilities on elected leaders to respect minority opinions and pursue inclusive policies of the kind civil society supports. Much needs to be done to shore up democratic institutions with their inherent checks and balances to protect subaltern groups from the “tyranny” of right wing populism.

As we speak, multiple struggles are being waged through public mobilisations in many parts of the world to create better societies. In Romania, hundreds of thousands of people taking to the streets in early 2017 to protest government corruption forced the Prime Minister to rescind emergency orders that would have reduced the punishments for politicians convicted of corruption.<sup>19</sup> In Poland, women’s rights advocates were able to stop a regressive anti-abortion bill that would have prevented women from having any agency over their sexual and reproductive rights.<sup>20</sup> In South Korea, mass protests contributed to the impeachment of the conservative President Park Geun-hye who had been a firm proponent of weakening labour rights.<sup>21</sup> In The Gambia, civil society successfully mobilised the regional and international community to pressure dictatorial leader Yahyeh Jammeh – who had once promised to hang human rights defenders – to respect the popular verdict and demit office.<sup>22</sup>

Moreover, gains made at the international level through the adoption of Agenda 2030 commitments on protecting fundamental freedoms and promoting civil society partnerships are opportunities for organised civil society to report on states’ performance on civic space at the international level and to engage in dialogue on civil society participation in decision making at the national level.

Thus, not all of the root causes of the current global democratic crisis point to signs that civil society is in decline or accepts a narrative of disempowerment. There’s plenty of us struggling for a just, inclusive and sustainable world, taking the fight to the streets, newsrooms and the courts.



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# SELF-CARE AS A POLITICAL STRATEGY

**Ana María Hernández Cárdenas  
& Nallely Guadalupe Tello Méndez**

- *Sustainability and well-being for women human rights defenders* •

## ABSTRACT

*This article contains reflections on the experience of the Mesoamerican Initiative of Women Human Rights Defenders (IM-Defensoras) and Consortium for Parliamentary Dialogue and Equity Oaxaca, AC (Consortio para el Diálogo Parlamentario y la Equidad Oaxaca) – a member of the IM-Defensoras’ Steering Committee – around the work they have been doing on self-care since 2010. Adopting a self-care approach not only ensures the sustainability of social movements, but also constitutes an ethical-political viewpoint that looks at the practices and relations established at work at the personal and collective level. This article also discusses the experience of Casa La Serena, a place of rest and healing for women human rights defenders.*

## KEYWORDS

Self-care | Well-being | Casa La Serena | Social movements | Comprehensive protection | Women human rights defenders

## 1 • Introduction

The Mesoamerican Initiative of Women Human Rights Defenders (IM-Defensoras) was created in 2010 with the goal of generating alternatives for the protection, self-care and safety of women in Honduras, Guatemala, El Salvador, Mexico and Nicaragua. Women in these countries are facing an increase in feminicides, a diversification of the forms of violence in society, transnational corporations' advances in land and territory grabbing, growing job insecurity and unemployment, impunity and the absence of justice, as well as the authoritarianism that prevails in governments.

IM-Defensoras accurately predicted that human rights violations would intensify in the coming years and, with this, the demand on human rights defenders would increase. Women human rights defenders were already attending to multiple needs, which often exceeded their energy levels and generated perceptions and feelings of anger, impotence, concern, fear, terror, despair and loneliness. That is not to mention the physical discomfort derived from such emotions and the neglect of their own selves, as they give priority to responding to other people's calls for help.

Data from the “Diagnóstico 2012. Violencia contra Defensoras de Derechos Humanos en Mesoamérica”<sup>1</sup> illustrate this:

- From 2010 to 2012, eight out of every ten human rights defenders suffered from illness.
- Five out of every ten defenders were not satisfied with the time they spent with their partner and their children – that is, when they existed.

We read this data as an indication of how many women human rights defenders strongly neglect their daily lives as a result of their commitment to the causes they defend. Based on a self-care approach, we are trying to develop reflection-action capable of establishing balance and that allows us to think of ourselves too, without any guilt.

## 2 • The principles of self-care

The IM-Defensoras' Steering Committee was initially composed of: Just Associates (JASS), the Association for Women's Rights in Development (AWID), *Consortio para el Diálogo Parlamentario y la Equidad Oaxaca, AC* (Consortio Oaxaca, or Consortium for Parliamentary Dialogue and Equity Oaxaca, AC), *Colectiva Feminista para el Desarrollo Local de El Salvador* (Feminist Collective for Local Development of El Salvador), *Fondo Centroamericano de Mujeres* (FCAM, or the Central American Women's Fund) and *Unidad de Protección a Defensoras y Defensores de Derechos Humanos* (UDEFEQUA, or the Unit for the Protection of Human Rights Defenders).<sup>2</sup> The committee decided to strengthen

the self-care strategy as an indispensable element for providing full protection to women human rights defenders from a feminist perspective.

To achieve this, we, at Consorcio Oaxaca, the organisation responsible for the IM-Defensoras' self-care strategy, adopted two fundamental ideas from the feminist movement:

**1. The personal is political.** This motto guides our reflections on the importance of seeing ourselves as political subjects who do for ourselves what we want for others. Thus, following the self-care approach, we do a personal assessment and reflect on the way we are developing the defence of human rights or activism. Would we like the people we support to have the workloads we have now? Does the way we relate to our women and men comrades in struggle contribute to social change? It is through these kinds of reflections that we attempt to concretise in our daily lives our discourses in favour of people's lives.

**2. What is the sense of a revolution if we cannot dance?**<sup>3</sup> The authorship of this sentence, which is the title of one of the books that inspired the development of IM-Defensoras' self-care strategy, is attributed to anarchist activist Emma Goldman who responded to criticism from one of her comrades for dancing "inappropriately" by saying, "If I can't dance, I don't want to be part of your revolution."<sup>4</sup> We use this sentence to defend women human rights defenders' right to pleasure and to enjoy their own bodies.

After more than seven years of existence, IM-Defensoras continues to affirm that the self-care concept is more valid than ever, as the situation in our countries and the conditions in which women human rights defenders carry out their work are still alarming. For example, in Mexico:

*"[...] the constant threats, attacks, sexual harassment and smear campaigns against activists cause increasingly high levels of stress, fatigue, depression, anxiety, migraines and even diagnoses of cancer."<sup>5</sup>*

These threats affect the health and wellbeing of the people who fight for human rights. In fact, in Mexico, 91 per cent of women human rights defenders experience stress on a daily basis.

This stress is generated by not only the risks we face within the social movement or the attacks or threats from the state, corporations, drug traffickers or other actors, but also the precarious conditions in which we work to defend human rights. Eighty per cent of women human rights defenders in our country do not receive a salary for the work they dedicate more than eight hours a day to. Because of this, they must look for other jobs to cover their day-to-day expenses, which increases both their workloads and the wear on their physical, mental, emotional and psychological health and energy.

Therefore, for IM-Defensoras and Consorcio Oaxaca, self-care and collective care are part of a comprehensive protection strategy to promote well-being, support and mutual

respect for our bodies, our sisters and other organisations. This undoubtedly ensures the sustainability of the social movements we belong to, as speaking about self-care means assuming an ethical commitment and a political stance based on the following principles:

**1. Spaces for the defence of human rights and activism are not idyllic.** It is important to realise that our spaces for work are often permeated by a sexist, patriarchal culture of exploitation or self-exploitation. We need to constantly revise and deconstruct what we have learned over our lives, which is continually being reproduced, even though our discourses defend the opposite. Therefore, it is vital that we do not idealise or demonise our organisations and/or movements, but rather continuously reflect on them so we may succeed in making them the spaces we imagine them to be.

Personal assessments are also fundamental. In his book *Psicopolítica*,<sup>6</sup> Byung-Chul Han talks about the capitalist system's current characteristic of not needing an external oppressor; instead, we build our own tyrant within each one of us that demands us to do more and more. This effective way of functioning makes it difficult to fight against capital, as it obscures who the oppressor is or what the oppressive situation to be transformed is. Thus, questioning the patriarchal or capitalist commands within ourselves, such as “live for others” or “work a bit more, but always more”, is fundamental from the self-care perspective.

**2. Defending human rights or activism is not a sacrifice.** Due to the violent contexts we live in, it is common to think that it is very important to “go the extra mile” in activism, as it can change the course of events. However, with the self-care principle, we invite people to reflect on whether it is true that what we have to do cannot wait for us to eat, sleep, rest and enjoy ourselves for a while. It is important to note that productivity is not the same as creativity or effectiveness. Often, in our quest to do more, we end up physically and emotionally exhausted, which inhibits both our capacity to respond and our attention span.

**3. Well-being is not a privilege; it is a right.** For many activists and women human rights defenders, having a moment of rest is a privilege in the situations they have to deal with. This is why we suggest they reflect on how necessary it is to take time to relax, let off steam, renew their energy and regain strength. In the comprehensive protection framework, which is where we situate the self-care approach for women human rights defenders, we have reflected on experiences where comrades have not noticed various incidents affecting their safety or have exposed themselves more than they needed to due to their level of fatigue and exhaustion. This is common, as is the point mentioned above: the pace of our work leads us to constantly feel stressed and sometimes angry, because of the tensions we face, or sad, because of the cases we have to support. These emotional states affect the dynamics of affectivity and relationships within the organisations we work with and sometimes generate conflicts with people close to us. It is important to ensure that the work we do contributes to social change, but not at the expense of our ability to live or work together.

**4. Neither money nor time is a limitation.** Often, the women human rights defenders and activists to whom we discuss the idea of self-care believe it requires spending a considerable amount of money. In opposition to this, we focus on valuing local knowledge, contact with nature, moments of reflection, breathing exercises, the appropriation and enjoyment of the body, etc. – elements that in some cases have to do more with willingness than economic resources. However, this does not free organisations and/or funders from their responsibility to provide funds for the development of reflections and joint actions on this issue in all spaces dedicated to the defence of human rights.

**5. Every individual knows what she or he needs.** In relation to self-care, it is impossible to know what helps another person feel good. While it is necessary to discuss the issue, each one of us – every person, organisation or group – must to define what we need based on an honest assessment of our own needs. This is not simple to achieve. As human rights defenders, we are very accustomed to engaging in analysis and reflection while we neglect our bodies, which disconnects us from ourselves and others.

**6. Self-care is personal and collective.** It is important for our organisations – when we have one – to lay the basis for reflections on self-care and generate institutional policies that help create a culture that is conducive to it: for example, respect work hours and days, establish periods of rest, put conflict resolution mechanisms into place, etc. The principle of self-care is linked to the idea that we feel emotions, not only because we are human, but also because we live in a community and are constantly relating to other people.

Based on IM-Defensoras and Consorcio Oaxaca’s experience with women who are victims of violence and women human rights defenders at risk and suffering from chronic burnout, we believe it is necessary to look at women defenders and human rights organisations from a comprehensive perspective. For us, such a perspective includes a personal and collective level, and has physical, psychological, mental, energy-related and spiritual dimensions:

DIMENSION	ON A PERSONAL LEVEL	ON AN ORGANISATIONAL LEVEL
Physical	This can be understood as the state of health and what we do to meet our bodies’ demands: food, sleep, rest, medical check-up, etc.	This refers to having facilities and workplaces that are adequate for and friendly to the people for whom we work: conditions of the furniture, security, among other elements.



**SELF-CARE AS A POLITICAL STRATEGY**

DIMENSION	ON A PERSONAL LEVEL	ON AN ORGANISATIONAL LEVEL
Psychological	This has to do with how the work being done affects people's self-concept: how safe they feel, how capable they believe they are to do the work.	This refers to how we evaluate the collective work being done and its scope, and can lead to thoughts such as: the organisation is not doing enough; my colleagues are not giving everything they should; there is not enough commitment to our cause.
Mental	This refers to what motivates us to learn and acquire knowledge and allows us to feel fulfilled professionally in our work as women human rights defenders.	This is in reference to the courses, workshops, seminars, etc. that an organisation holds or participates in to strengthen its work.
Energy	We often suffer from a loss of energy, which makes us feel tired even after sleeping several hours, or sad or dissatisfied for apparently no reason.	This dimension can be understood in organisational terms as the "work environment": tension between members of the organisation, or recklessness among them, etc.
Spiritual	This has to do with the beliefs of each individual, not only in religious terms, but also in relation to the meaning of life.	This refers to the values and beliefs that govern the organisation's actions.

Personal and collective self-care do not eliminate stress or rivalries definitively, nor do they improve our workplaces permanently. Even so, we are convinced that they offer tools for dealing with, talking about and reflecting on conflict, and looking differently at the tensions and obstacles that emerge in the defence of human rights, without condemning others who do the same, understanding instead why they do it and being aware of the impact of their actions on us. We do not aim to idealise self-care. We know that even with this approach, things that we do not like will continue to happen, but the way we deal with them will be different. We also do not want self-care to turn into a burden or guilt for not having done enough, as we are convinced that human relations are complex and always impose challenges on us. The more tools we have to get through them, the better. We believe in taking breaks and finding breathing space so we can look compassionately at our setbacks and keep going.

### 3 • Casa La Serena: a space for self-care, care and well-being for women human rights defenders

After several years of reflecting on self-care, constantly reaffirming its importance and seeing the changes that come about when this approach is adopted, in August 2016, IM-Defensoras and Consorcio Oaxaca created Casa La Serena.<sup>7</sup> This project offers temporary stays to women belonging to one of the national networks of human rights defenders in Honduras, Guatemala, El Salvador, Nicaragua and Mexico in Oaxaca, Mexico. The goal of these 10-day stays is to create a space for women human rights defenders who are experiencing extreme fatigue, emotional or physical exhaustion, personal crises, mourning, losses or other impacts derived from the context of violence and patriarchal cultural that obstructs their work of defending human rights to recuperate, heal, rest and reflect.

Casa La Serena functions according to the comprehensive approach described earlier. One defender from each member country of IM-Defensoras has the opportunity to stay at the house, where they will take part in:

**Healing therapies:** Psychological therapy, thanatology, yoga, anti gymnastics,<sup>8</sup> energy management and chakra alignment, breathing techniques, neuromuscular massage, nutritional programmes, Bach flower therapy, reflexology, herbal medicine, cleansing and temazcal, and medical and gynaecological care with allopathy, homeopathy and Chinese medicine.

**Social activities and reflection.** Walks in the country, preparing and sharing collective meals, discussions on their work as women human rights defenders, comprehensive protection and healthy activism.

**Creative workshops.** Clay, pottery, narrative therapy, gardening and circular dances.

These three areas combine to form a care programme put together based on a diagnostic interview with the human rights defenders who stay at the Casa La Serena. This allows us to better meet their needs.

Consortio Oaxaca's team, together with a network of approximately 15 therapists who are experts in their fields, are responsible for accompanying the women during their stay. Consortio Oaxaca has shared with these therapists what the feminist approach to protection for women human rights defenders consists of and the importance of the work to defend human rights.

The stay at Casa La Serena involves very intense personal work since all of the therapies, activities and workshops focus on taking a good look at ourselves. This is undoubtedly both a pleasurable and painful process, as it implies "taking note" and imagining other ways of being and relating.

For us, it is extremely important that, in addition to identifying certain elements that must be worked on at a personal or collective level, women human rights defenders leave Casa La Serena with a self-care plan. We later follow up on the plan to guarantee that their stay brings concrete changes for them in accordance with their context and real possibilities. What can happen is that while the actions suggested based on their experience could be highly beneficial for them, they do not have enough resources to implement them. Therefore, we elaborate a series of questions that help identify what effective self-care actions or paths they can take and how.

#### 4 • By way of conclusion

We believe the self-care approach strengthens our social movements' sustainability, creativity and well-being. It invites us to establish new relations with ourselves, others and nature. We know that it is not a "fad", but rather a defiant political, feminist strategy that helps us move forward in a loving and collective way in today's turbulent times.

This is not easy, of course, and it involves recognising our own vulnerabilities and not only those of the people we support. And it is a challenge, especially considering the value given to strength and even heroism within our social movements. In this context, we believe that it is important to question these characteristics, not because they are bad *a priori*, but rather because they lead us to make very strong demands of ourselves, which often put us at greater risk. We are convinced that new forms of engaging in activism and defending human rights are being developed all over the world, which will be even stronger provided that we regain trust in our colleagues, build networks and are aware that many women are creating new ways of being in the world.

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# SUBTLE RESTRICTIONS ON THE FREEDOM OF ASSOCIATION

**Miguel de la Vega**

- *Responses from organised civil society in Mexico* •

## ABSTRACT

*There is a trend towards imposing restrictions on freedom of association in several Latin American countries. Some of these restrictions constitute open and highly visible attacks on civil society organisations (CSOs) by different governments. There are, however, other types of restrictions that are less noticeable to the public, some of which are related to states' international obligations in the area of transparency.*

*Some governments have established additional restrictions on the funding of CSOs based on the argument that such donations are vulnerable activities. Civil society in Mexico has responded by employing various strategies that combine coordinated actions and advocacy with proposals to contribute to the state's fulfilment of its duties while safeguarding the rights of civil society.*

## KEYWORDS

Financial restrictions | Freedom of expression | CSO | Civil organisations | Lobbying

## 1 • Introduction

For decades, civil society organisations (CSOs) have been one of the expressions of the human right to the freedom of association established by the Universal Declaration of Human Rights.<sup>1</sup> They have enabled common citizens to play an active role in the sphere of public interest.

In the western hemisphere, after the fall of the Berlin Wall and after various dictatorships in Latin America gave way to fragile democracies, CSOs finally had a favourable environment to work in – one that allowed them to increase their numbers, as more and more citizens decided to join or form new organisations and as governments built relationships of trust with the organisations.<sup>2</sup> The immediate task – for which several issues remain pending in the case of Mexico – was the construction of a regulatory framework that offered the best possible conditions for setting up CSOs without the need for government authorisation or mandatory registries. In parallel, optimal conditions had to be established so that organisations could access different funding sources to execute their plans and programmes freely and, for those that see fit, exercise their right to participate in public policymaking, as well as other areas of work relevant to civil society. Several of these rights were established by the *Ley de fomento a las actividades de la sociedad civil* (Law for the Promotion of the Activities of Civil Society, herein referred to as the CSO Promotion Law),<sup>3</sup> which recognised the rights of CSOs and established criteria for their recognition.<sup>4</sup>

However, the national and even regional trend in policies and regulations began to swing in the opposite direction, following the same lines as the international trend to limit spaces for exercising the freedom of association. One of the negative indicators that allows us to confirm this trend is the decrease in the amount of new international foundations created. This number went from 700 new foundations in 1990 to nearly zero growth in 2016.<sup>5</sup> A specialist on the issue, former UN Special rapporteur on the freedom to association Maina Kiai<sup>6</sup> has highlighted on several occasions the formal or *de facto* establishment of restrictions on civil society. Some of the subtle, yet effective, limitations are the financial and banking restrictions. While their main purpose is to combat terrorism and money laundering – an aspect that is particularly important in certain countries of the world – unfortunately, it has also become an instrument for controlling and restraining CSOs.

The Financial Action Task Force (FATF) was created in 1989 and was in charge of elaborating 40 recommendations for states around the world to combat money laundering and various situations of risk related to terrorism funding. In practice, these guidelines were turned into different types of obligations that governments must adapt to their national contexts. Unfortunately, donations to civil society organisations in general were included among the various financial activities classified as “risky”, without taking into consideration differences in national contexts, risk levels, types of donations or the existing controls used by both states and foundations or donor agencies in general.

While the FATF’s recommendations naturally affected the international flow of funds to civil society indirectly by promoting strict controls, some governments took advantage of

the opportunity to deliberately adopt stifling control measures, arguing that they had to in order to meet their obligations. This proved very convenient, as it allowed them indirectly to restrict CSOs' freedom of association.

In light of these events, a group of CSOs created the Global NPO Coalition on FATF, which works to identify the impacts of the measures in different regions and proposals on how to improve the task force's recommendations. The first plenary meeting with CSOs was held in Vienna in April 2017.

## 2 • Financial restrictions in the case of Mexico

In 2012, the Congress approved the “Federal Law for the Prevention and Identification of Operations with Illegally Acquired Funds”<sup>7</sup> (known as the Anti-Money Laundering Law) as part of the country's international commitments to fight money laundering and terrorism funding and, obviously, a response to the recommendations of the FATF.<sup>8</sup> Mexico has been a full member of the task force since the year 2000.

The measures included in the Anti-Money Laundering Law allowed Mexico to finally be taken off the list of countries that require annual monitoring. However, its success involved the adoption of certain restrictions on the flow of national and international funds, including donations to civil society organisations (listed in Art. 17 of the said law as one of the vulnerable activities), as well as follow up in the form of less frequent assessments. These measures created complications for transfers between donors and recipients – and in some cases, prevented them from being completed – especially when international foundations were involved. It also conveniently served as an obstacle to the sustainability of organisations working on issues that were sensitive for the government, such as human rights. This happened at a time when the Mexican government was being strongly questioned and denounced for its failure to take action to protect human rights and for the deliberate violations committed by federal, state and even municipal law enforcement agencies, primarily in the fight against drug trafficking.

The restriction to CSO funding is based on the demand for information on the origin of the financial resources, namely on donations and grant makers. Two types of obligations exist: the obligation to recompile information and the one to submit it, depending on the size of the donation. One of the problems is that the information demanded may be confidential. Part of the request for information runs counter to the practices of access to information and the right to privacy. It also generates pressure on CSOs to comply with the rules of the *Unidad de Inteligencia Financiera* (UIF, or Financial Intelligence Unit),<sup>9</sup> the department of the Ministry of Finance and Public Credit responsible for enforcing the law.

The UIF determined that in cases where recipients do not have adequate information on the donor, they must refuse the donation. If they fail to do so, the Unit has the authority to impose sizeable fines.



Table 1: Financial restrictions on civil society

UIF actions and reporting thresholds
<ul style="list-style-type: none"> <li>• Identification and compilation of donor information                             <ul style="list-style-type: none"> <li>- Reporting amount: if a donation exceeds the equivalent of 1,605 days of the minimum wage in effect (approximately US\$7,000 as of August 2017)</li> </ul> </li> <li>• Mandatory submission to the Ministry of Finance’s Financial Intelligence Unit                             <ul style="list-style-type: none"> <li>- Amount for submitting information: if a donation exceeds the equivalent of 3,210 days (approximately US\$14,000 as of August 2017)</li> </ul> </li> </ul>
Information of interest to the UIF
<ul style="list-style-type: none"> <li>• Identification of the donor and recipient                             <ul style="list-style-type: none"> <li>- “... based on credentials or official documentation, as well as gathering a copy of the documentation”</li> </ul> </li> <li>• Information on respective activities and occupations</li> <li>• Description of “vulnerable activity”</li> </ul>

Source: Elaborated by the author based on the UIF’s list of obligations<sup>10</sup>

The Anti-Money Laundering Law is, then, a legal tool for exerting government pressure on organisations, as it subjects them to stricter information requirements than other laws do. Therefore, the underlying logic is that these provisions can be used indirectly to attempt to block activities considered dangerous for cases where governments are involved in corruption, human rights violations and antidemocratic practices.

### 3 • Restrictions from the private sector: the banks

In addition to the restrictions imposed by public entities, certain banks in the country have recently established other types of restrictions. Again, this trend exists at the international level.

In 2012, the US Justice Department accused HSBC Bank of laundering money from illegal acts committed in Mexico. The bank was forced to pay a historical fine and make changes to part of its operations and internal policies in the country and abroad.<sup>11</sup> This scandal sparked public interest in who the clients involved in illegal actions might be. Even though it has not been proven that civil society organisations were involved, the classification of donations as vulnerable activities and donors as “subjects at risk” led certain banks to establish requirements that make it very difficult for CSOs to open accounts or they simply refuse to provide them services.

In the case of the said bank, even though it has not publicly expressed rejection of organisations and has kept existing CSO accounts open, there have been reports of applications being

declined and delays making it impossible to open accounts. This was the case of organisations we interviewed, such as Appleseed Mexico and the *Consejo mexicano de silvicultura sostenible* (Mexican Council of Sustainable Forestry), which reported that this banking institution has repeatedly declined their account applications, as well as those from other organisations.

The requests for interviews with other banking institutions, such as BBVA Bancomer and Scotiabank Mexico (there are also reports from CSOs of the latter turning down their applications), were refused for no specific reason, even when made by people close to civil society, personnel of the banks' own foundations or of their social responsibility programmes. These practices constitute *de facto* – but not *de jure* – exclusion from the financial system.

The specific origin of these policies lies in what is known as “de-risking”.<sup>12</sup> This is when institutions from the financial system take measures to reduce risks for reasons related to the market approach, concerns with reputation or the type of clients or financial transactions. Regulatory burdens that include sanctions also come into consideration here, as in the case of HSBC mentioned above.

The work of civil society at the international level, such as the Global NPO Coalition on FATEF, has helped get the task force to take into the account the risks that its own recommendations pose. In 2015, it concluded that:

*[T]here is currently no evidence that de-risking is adversely impacting global financial stability [...] This is a serious concern for FATF and the FATF-style regional bodies to the extent that de-risking may drive financial transactions underground which creates financial exclusion and reduces transparency, thereby increasing [the possibility of] money laundering and terrorist financing risks.*<sup>13</sup>

Two years after this statement, we can observe in several countries, especially in the case of Mexico, that the measures adopted to reduce financial risks continue to affect CSOs and that the risk of their exclusion from the financial system grows. Furthermore, the measures have become a tool for limiting their activities, even when the Government of Mexico's own risk assessment in 2016 concluded that the risk of financing terrorism in the country is zero and the risk of money being laundered through CSOs is low.<sup>14</sup>

#### 4 • The actions of organised civil society

Civil society usually organises to respond to threats to human rights. However, the kind of case we are dealing with here does not usually have the same visibility in the media as others do; sometimes, they are not even given enough attention to generate a broad coalition to contest this type of restrictive policies. Hence, their identification as subtle restrictions, which does not mean, however, that they are less efficient.

The global trend of altering regulations and practices or generating new ones to restrict the actions of organised civil society gave rise to various analyses on some of these restrictions.<sup>15</sup> These assessments then served to launch processes of coordination aimed at taking direct action on the issue. This was the intention behind the creation of UnidOSC, a coalition of organisations formed in late 2015. With the support of academic institutions, UnidOSC seeks to foster coordination among CSOs on the defence of the rights inherent to the freedom of association and the construction of a favourable framework.

The coalition initiated processes that led to the adoption of two different strategies. The first was to draft a proposal on the harmonisation of three legal frameworks with the goal of eliminating aspects that violate the rights of CSOs. The themes were the creation of a trust to elaborate a special plan on strengthening CSOs, the elimination of discretion in the distribution of state subsidies and the attribution of responsibility to all government bodies to carry out actions to promote organisations. The strategy was not only to carry out a technical analysis of the legislation, but mainly to ensure that the legislation is in line with international principles of freedom of association. Legislation is seen not as an end, but rather a means to guarantee the right to freedom of association.

The second strategy focused on contesting tax changes that created new restrictions announced in early 2017. Joint action was again directed at drafting proposals to reject or, in this case, lessen the impact of provisions that introduced very aggressive measures, such as: forced liquidation of assets not used for an entity's social purpose in cases where it loses and does not recover its authorisation to operate as a funding agency within a certain period of time; voluntary certification of social impact carried out by private agents, which could potentially generate inequalities in the distribution of private resources; and finally, the obligation to adopt a form of governance, which infringes on the autonomy enshrined in the CSO Promotion Law. However, in view of the government's lack of receptivity to the proposals, the coalition had to undertake actions to make its position known to the public to influence the political agenda. Statements of rejection signed by more than 500 CSOs were published in the main national newspapers in the form of petitions demanding that the changes be revoked. As UnidOSC has always remained open to dialogue, this pressure led to the opening of spaces for dialogue with high-level tax authorities – in this case, with the Ministry of Finance.

In parallel to this, in the legal arena, collective lawsuits were filed so that 45 CSOs, if they so decide, could defend themselves against the new measures. Unfortunately, this strategy was suspended by the courts.

As in the case of the Ministry of Finance and Public Credit (*Secretaria de Hacienda y Crédito Público*, SHCP), UnidOSC initiated a separate dialogue with the Financial Intelligence Unit (UIF). This opened the door to discussions and the construction of proposals for improving the general framework, collaborating with authorities while, at the same time, protecting CSOs' rights, particularly the right to receive financial resources, as established

by the CSO Promotion Law. There are possibilities on two dimensions to consider: the first includes recommendations on the functioning of the website, formats and, in general, aspects that are not subject to any modification of the law itself; the second, on aspects where regulations must be subject to improvements.

The likelihood of successful change will depend on the quality of the dialogue the coalition can build and the receptivity of the UIF to the obstacles CSOs face. The possibility of introducing modifications to the legislation, if any, will also depend on the political situation. Presidential elections will be held in 2018. Therefore, it will be more feasible to obtain changes that do not depend on alterations to the Anti-Money Laundering Law in the short term, whereas reforms themselves will have to wait to be introduced to the new Congress. However, the agenda must be built beforehand and it would be desirable to share it with presidential and congressional candidates.

## 5 • Strategies and results of the UnidOSC's actions

The proposals presented by UnidOSC were developed through a mixed process that involved civil society organisations and academic representatives in the elaboration of a first draft. This process took into account a survey of over 100 civil organisations, which was part of the study carried out by Sustenta Ciudadanía and the International Center for Not-for-Profit Law (ICNL) mentioned earlier. The first group of proposals was submitted to a group of experts who met with a technical advisory group to consolidate aspects related to viability. These proposals include improvements to tax legislation and public policies on sustainability, as well as administrative simplification.<sup>16</sup> They were then submitted again to the plenary of UnidOSC, which presented them to tax authorities.

In retrospect, UnidOSC's actions produced several results, from which lessons for similar processes can be drawn:

- **Coordination:** Combining participants from different sectors proved to be very effective. The integration of academics and especially experts from private firms, working on a pro bono basis, into an advisory group was of great value for ensuring the technical soundness of UnidOSC's proposals.
- **Working with teams of legislators:** There are legislators who are interested in CSOs' work and who realise that supporting civil participation and democratic development can increase their political capital. Regardless of their reason for supporting citizen initiatives, it is useful to have teams of policymakers contribute to the process's presentation (form) and diagnosis (analysis), and to driving the process (until the final decision is made). Effective to a certain extent, this path would have been successful had other actors not intervened.

- **Strategies that combine lobbying and dialogue:** While networks of organisations usually opt for one strategy or the other, the combination of the two proved useful for opening up space for influencing decision-making.
- **International support:** The exchange of knowledge made it possible to learn more about other national and regional practices, as well as a significant contribution to the design of proposals and the implementation of strategies. The workshop given by the Human Security Collective in Mexico on the issue and the participation of the Global NPO Coalition on FATF were particularly useful. These different forms of coordination fostered collective learning, contributed various kinds of resources and strengthened knowledge transfer from one advocacy process to another.
- **Public commitment reflected in political costs.** During an initial meeting with the Ministry of Finance, we succeeded in getting the ministry to commit to having its advisory team revise and respond to our proposals. The ministry's advisors must send their response in writing by the end of 2017. Failure to do so will generate high political costs and therefore, although not all of the proposals will be reflected in specific changes, an important portion of the agenda will be.

The most significant results until now have been the development of broad proposals that contribute to the construction of comprehensive frameworks on promotion. More specifically, two initial proposals were drafted: a harmonisation framework that sought to reaffirm the rights of CSOs recognised in the different legal frameworks, and the taxation framework that opposition to the miscellaneous tax resolution for 2017 used to recompile and draft proposals for a just tax treaty that both allows organisations to develop and promotes transparency.

Another important outcome was the opportunity to have periodic spaces for dialogue that vary in frequency and effectiveness, but have not stopped functioning and that incorporate actors with power to make decisions.

Finally, the priority of intervening on these issues has spread to several regions of the country, despite the fact that the majority of CSOs do not have extensive knowledge of these issues. Even so, the dissemination and the discontent caused by the most recent tax provisions has generated an increase in civil society's participation and expectations in general.

## 6 • Conclusions

Information requirements related to the prevention of money laundering have taken an enormous toll on the administration of CSOs. They also threaten to weaken CSOs' relationships with donors, as they force them to request excessively detailed information that does not necessarily bring greater transparency.

The process of lobbying for the easing of financial and banking restrictions on CSOs has different stages and requires analysing one's strategies. The experience in Mexico demonstrated that when one seeks to obtain changes through the legislative power and then dialogue with the executive branch, proposals are met almost immediately with opposition and attempts to discredit them.

UnidOSC has opted for a different strategy – one that seeks, together with tax authorities, to present, in the future, proposals for change that could be submitted to the Congress for approval. While the search for consensus with tax authorities means taking a much longer path, this effort is necessary, as part of changing the framework on CSOs necessarily involves making improvements to the legal framework.

Finally, there is a much vaguer and subtler area that is linked to the punitive practices employed by the government in the form of discretionary notices related especially to provisions that limit spending on administrative expenses to 5 per cent. It is no coincidence that several CSOs that have participated in lobbying processes and are critical of the government have received requests for information; failure to comply with the requests could lead to the cancellation of their authorisation to receive donations. This is partly due to the lack of definition for certain compliance criteria for the said spending. Yet, it may also be used as a political strategy to repress and silence civil society. This aspect remains to be addressed in an agenda for the media to shine light on undesirable and anti-democratic practices that infringe the right to the freedom to express criticism, which is one of the international principles of the freedom of association. Limitations on this right have been denounced in both Mexico and other countries as one of the causes of the closing of space for civil society.

## NOTES

- 1 • Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association. "Universal Declaration of Human Rights", Article 20, United Nations General Assembly, December 10, 1948, accessed November 28, 2017, [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/spn.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/spn.pdf).
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- 3 • "Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil," Chamber of Deputies of the Congress of the Union, February 9, 2004, accessed November 28, 2017, <http://www.diputados.gob.mx/LeyesBiblio/pdf/266.pdf>.
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- 11 • The case has been widely documented partly because of the historical US\$1.9 billion fine imposed by the United States Justice Department. Mayra Zepeda, "El Lavado de Dinero en HSBC, Explicado por Analistas." *Animal Politico*, July 18, 2012, accessed November 28, 2017, <http://www.animalpolitico.com/2012/07/el-caso-hsbc-lavado-de-dinero-bajo-la-lupa-de-los-analistas/>.
- 12 • An analysis of this issue by members of the Global NPO Coalition on FATF can be found at: Ben Hayes, Lia Van Broekhoven and Vanja Skoric, "De-risking and Non-profits: How Do You Solve a Problem that No-one Wants to Take Responsibility For, Open Democracy, July 11, 2017, accessed November 28, 2017, <https://www.opendemocracy.net/ben-hayes-lia-van-broekhoven-vanja-skoric/de-risking-and-non-profits-how-do-you-solve-problem-that-n>.
- 13 • FATF website: Financial Action Task Force (FATF), Homepage, 2017, accessed November 28, 2017, [www.fatf-gafi.org/](http://www.fatf-gafi.org/).
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- 15 • Studies carried out by Sustenta Ciudadanía and Observatorio Mexicano de la Crisis (the Mexican Observatory on Crisis), Applesed Mexico and the Mora Institute, to name of few examples.
- 16 • United for the rights of civil society, *Puntos de Mejora Para Una Agenda Fiscal Favorable a las OSC* (Mexico: UnidOSC, 2017).

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# INFOGRAPHICS



## **INFOGRAPHICS: CIVIC SPACE EXPLAINED**

Design · Letícia Coelho

..... **What is civic space and civil society?**

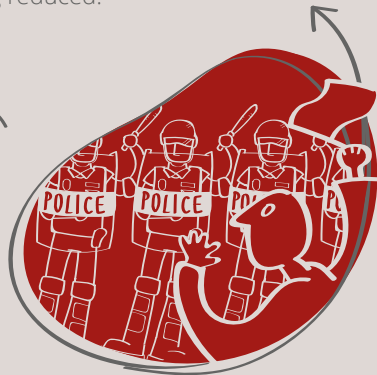
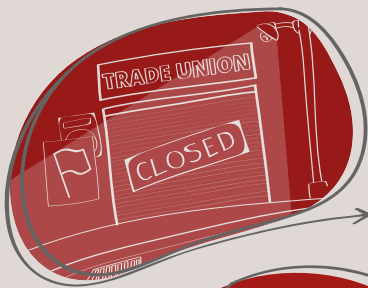
A healthy or open **civic space** implies that civil society and individuals are able to organise, participate and communicate without hindrance, and in doing so, claim their rights and influence the political and social structures around them. Three fundamental freedoms – of association, assembly and expression – define the boundaries of civic space. (Source: CIVICUS)

**Civil society** is the arena – outside of the family, the state, and the market – which is created by individual and collective actions, organisations and institutions to advance shared interests. This includes non-governmental organisations, private voluntary organisations, people's movements, community-based organisations, trade unions, charities, social and sports clubs, cooperatives, environmental groups, professional associations, consumer organisations, faith-based organisations and the not-for-profit media. (Source: CIVICUS)



**Is civic space under threat?** .....

Governments around the world are putting restrictions on the freedom of assembly, expression and association. Access to civic space is therefore being reduced.



## ..... How are governments doing this?

By placing restrictions (often hidden) within the following types of legislation (not an exhaustive list):



Laws regulating assembly, association and expression



Laws governing NGOs



Anti-terrorism laws



Legislation restricting foreign donations



Cyber security and telecommunications laws



Tax laws



Anti-money laundering laws

Aside from restrictive legislation, civil society is also under attack via:

- the stigmatisation, detention and criminalisation of activists and groups
- increasingly securitised environments and counter-terrorism measures
- surveillance and cyber attacks
- raids on offices, workshops and meetings
- threats, physical violence and killings
- travel bans
- asset freezes and having funding blocked

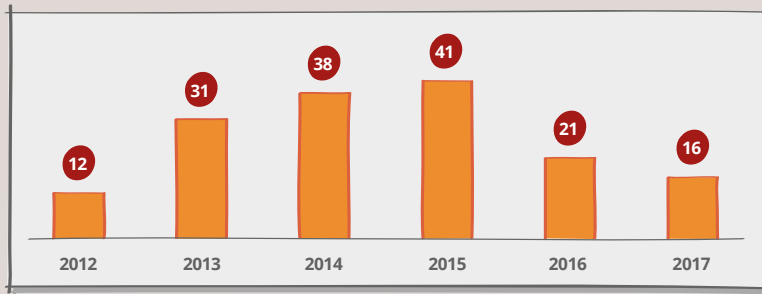
Some parts of civil society experience specific and additional risk and threats, including defenders of the rights of women, lesbian, gay, bisexual, transgender, intersex (LGBTI), and indigenous peoples.

Often states and private actors (corporations, organised crime, religious extremists) collude in the backlash against progress in human rights and civic participation.

## ..... Why is this issue being discussed now?

Restrictions on freedom of assembly, expression and association by governments is not new. However, the rapid geographic spread and variety of ways governments are using the law has presented a significant additional challenge to civil society.

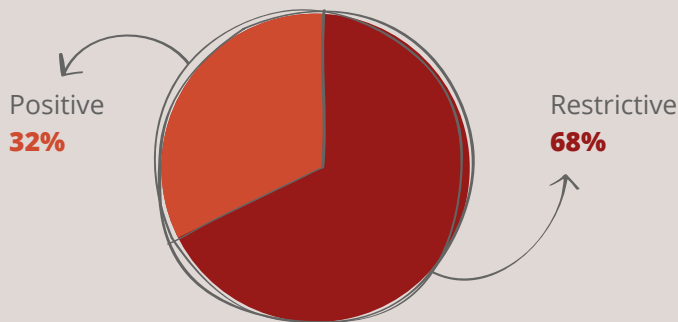
### RESTRICTIVE INITIATIVES\* ENACTED GLOBALLY SINCE 2012



Source: The International Center for Not-for-Profit Law (ICNL)

Since 2012, governments around the world have proposed or enacted more than double the number of initiatives that restrict civil society than initiatives that protect civil society.

### TOTAL PROPOSED AND ENACTED INITIATIVES\*



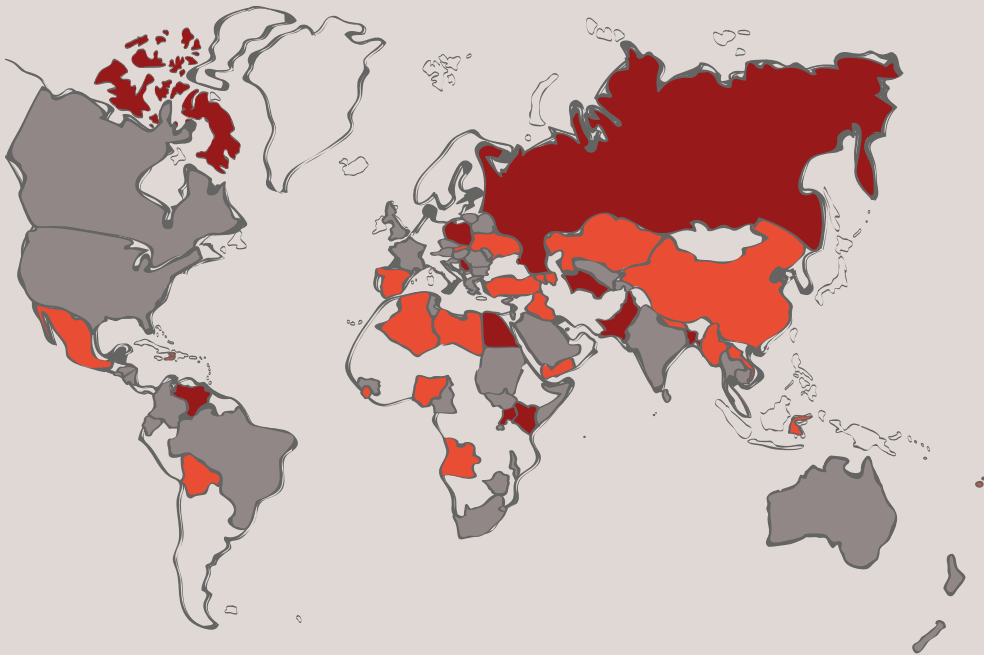
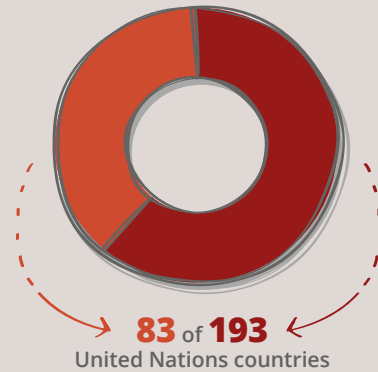
Source: The International Center for Not-for-Profit Law (ICNL)

\* Data for these infographics has been kindly provided by ICNL. "Initiatives" means proposed or enacted laws and regulations that affect civil society organizations (CSOs) and the rights to freedom of association and assembly.

..... **Is this the case around the world?**

Governments across the globe – in the North and South – are enacting or proposing legislation that restricts civic space.

Since 2012, 83 (of 193 United Nations countries) countries have enacted or proposed restrictive initiatives affecting lifecycle, foreign funding, and assembly legislation.



Country has enacted or proposed:

- One category of restrictive initiatives\*
- Two categories of restrictive initiatives\*
- Three categories of restrictive initiatives\*
- No initiatives proposed on lifecycle, assembly or foreign funding

Source: The International Center for Not-for-Profit Law (ICNL)

\* Data for these infographics has been kindly provided by ICNL. "Initiatives" means: proposed or enacted laws and regulations that affect civil society organizations (CSOs) and the rights to freedom of association and assembly. ICNL organises these initiatives according to the following categories: "Lifecycle": Initiatives affecting the establishment, registration, activities, supervision and dissolution of civil society organizations. "Foreign funding": initiatives that affect the ability of CSOs to receive funding from non-domestic sources. And "Assembly": Initiatives that affect the right to peaceful assembly.



# VIDEO ESSAY



## STRATEGIES TO RESIST

The power of civil society through the voice of activists

Gabriela Bernd • Direction, photography and editing

Marcos Vilas Boas • Photography

*Through support from The Fund for Global Human Rights, Conectas brought together a dozen of the author-activists from this edition at a writers' retreat in São Paulo. This opportunity helped the author-activists examine global and regional trends in closing space, discuss and share their strategies, review and provide feedback on each other's texts, and reflect together on the importance of writing and documentation. The retreat enhanced and helped shape the final texts of Sur 26 while also providing a valuable space for frontline human rights defenders to collaborate on their work. The screen shots that follow are taken from a video (available at <http://sur.conectas.org/en/strategies-to-resist/>) which captures the event and the strategies that were shared to resist closing civic space.*





# CONVERSATIONS



**MAINA KIAI:  
“WE’VE GOT TO GO BACK TO BASICS”**

Interview with Maina Kiai



# “WE’VE GOT TO GO BACK TO BASICS”

• *Interview with Maina Kiai* •

By Oliver Hudson

*Maina Kiai forged a career as a human rights lawyer and activist in his native Kenya, from where he spoke to the Sur International Journal on Human Rights about the global crackdown on civic space. The interview took place shortly after the rerun of the Kenyan presidential elections in October 2017. Kiai has been working relentlessly to ensure international attention has been focussed on the delicate situation in the country, including the challenges that Kenyan civil society has been facing during the period.*

*There are few people – if anyone – more qualified to speak on how this global phenomenon has taken hold. An activist first and foremost, Kiai spent more than 20 years advocating for human rights in Kenya, founding the unofficial Kenya Human Rights Commission, and then serving as Chairman of Kenya’s National Human Rights Commission (2003-2008).*

*He went on to hold various international positions, including at the International Human Rights Law Group, Amnesty International and the International Council on Human Rights Policy before serving as the United Nations (UN) Special Rapporteur on the rights to freedom of peaceful assembly and of association from 2011 to April 2017. As Special Rapporteur he was committed to facilitating activist access to the UN, including through his [freeassembly.net](http://freeassembly.net) website.*

*His experience has given him a unique insight about the phenomenon of closing civic space, both from the local and global perspective. Here he talks about the root causes of the phenomenon, including the role of the private sector, the strategies which actors are using to counter both state and non-state forces and how, by going back to basics, we can guarantee the survival of civil society.*

**Conectas Human Rights** • During your time as Special Rapporteur, what did you observe to be some of the key drivers fuelling this global crackdown? Did you see any cross-fertilisation of ideas, coordination and collusion between countries or actors that are shrinking civic space?

**Maina Kiai** • Firstly, I prefer the term “closing” civic space, as opposed to “shrinking” because “closing” is a conscious act. In the mandate we used “closing civic spaces”.

The key driver, firstly, is that leadership does not like dissent. States and authorities do not want people to dissent. When states can't answer the questions, reports, advocacy and campaigns that civil society raises, they think the best bet is to close down or reduce the impact of civil society.

Secondly, over the last 40 years, civil society has become very strong and has become a location for activity, for people to engage and organise against the worst excesses of the state. Before this, attacks were focussed on individuals, or attacks on political opposition. But now, many political authorities have realised that civil society is the great organiser. This crackdown is a reaction to the success of civil society of being a great organiser, which has created movements that are able to cut across different sectors.

A third driver is that over the last 10-15 years – since 9/11 – things that were previously unspeakable, things that were shameful, things that were hidden, came out and became normalised, such as torture in the US, for example. Other countries began to think, “ok, so if they can do that, we can do other things”. The weakening of the US and the West as beacons for democratic values has resulted in further closing of civic space.

Is there cross-fertilisation? Absolutely. You see governments learning from each other, “if they can get away with that, then so can we”. The most significant example of this is states using restrictions on foreign funding as a tool to close down civic space. That started off in Ethiopia, went on to Russia and is now present in many parts of the world, including Hungary, Poland, Israel, and beckoning in the UK, USA and Australia. What states don't understand is that with or without foreign funding, true activists, true believers in democratic values will still find a way to work.

Is there coordination? I think that's a bit harder. In the former Soviet countries, yes, you find coordination – in former Soviet spaces, Kyrgyzstan literally copied Russian laws but they were defeated, and Cambodia seems to be copying Chinese laws to restrict civic space. In Africa, Ethiopia's neighbours – with Kenya and South Sudan as the best examples - are trying to do the same thing as Ethiopia has done because Ethiopia has got away with it. Roughly half of Ethiopia's budget comes from foreign donors – but whatever Ethiopia's government does to human rights, civic space, democratic values, it gets away with, yet donors still come in. Foreign investment is also coming in to the country at very high levels. So countries are beginning to learn that as long as you can

look as though you care about investment, as long as you can play a role in the global war on terror, then you will get away with closing civic space.

**Conectas** • You briefly mentioned the US and the West, but how is the discussion of the Global North and Global South relevant in relation to the crackdown on civil society?

**M.K.** • I think it is massively relevant. What goes on in the Global North certainly affects countries in the South in this debate. The Global North is now so inward looking; Trump’s “America First” foreign policy is just one example of that. The South sees that the Global North no longer has any commitment to the values they espouse – and in some cases they aren’t even espousing them anymore. Countries in the North don’t want refugees. Countries in the North are in alliance with corporates to extract as much as possible, as cheaply as possible, without protections for workers, to the benefit of a few elites, even inside their own countries. The South – including certain countries in the North such as Poland, Hungary and others - are seeing that these countries are just hypocrites, whose entreaties about human rights are more rhetorical than real. Because these countries want to legitimise torture as the US did; they attack peaceful protests harshly and using excessive force; and they want to spy on everyone everywhere as in the UK and USA.

**Conectas** • Certain movements, for example the LGBTI movement, would argue that for their constituents, civic space has never been fully open. Why then, has this issue become so hotly discussed in the past few years?

**M.K.** • Because the issue of closing civic space has now spread so widely and so rapidly. The number of people that are affected, interested and raising concerns about the trend has increased. It is no longer a one-issue matter. It’s not “just” about LGBTI. It’s no longer “just” about unions or environmental groups, both of which could make the same argument as the LGBTI movement. It’s now cross cutting.

I hope that the LGBTI community doesn’t see that this recent interest delegitimises their issue. If anything, it legitimises and shows that they were right in raising this issue and trying to counter it a long time ago. The LGBTI movement is one of the most successful movements in the last 15 years. Even though there continue to be restraints and restrictions on the LGBTI community, even the most conservative regions are now talking about LGBTI issues. We are now seeing Uruguay, Argentina and Chile pushing for LGBTI rights at the international level – something that was absolutely unforeseeable in the 1990s. Today, at least 60 per cent of populations in the Global North support gay marriage – something that was unthinkable just five years ago. Wider civil society needs to learn from the LGBTI movement how it was able to successfully change the narrative. We should celebrate and learn from these successes.

**Conectas** • The private sector is increasingly involved in crackdowns on activists. What specific challenges does this pose for activists when resisting this corporate crackdown

(as opposed to resistance to state driven crackdowns) and how do you see the role of the private sector developing around the issue of closing civic space?

**M.K.** • One of the most important issues for us in the next five, ten, fifteen years is dealing with the private sector and its abuses.

The vast numbers of environmental defenders being disappeared or killed these days shows how bad things are. So much so that the Guardian newspaper has devoted a special section on this issue.<sup>1</sup> Most of these crimes aren't solved, likely because the private actors are acting in collusion with the state.

Then there's the whole "why" of state-business collusion. Sometimes it's raw corruption and kickbacks, sometimes it's the state wanting to promote the economy at all costs and sometimes it's a certain sector owning politicians through "softer" corruption (campaign donations). And even in less visibly corrupt places, you're still going to face the apparatus of the state (police, maybe military, legal system stacked in their favour, etc.) defending business interests.

The challenge is that from a human rights paradigm, the private sector does not carry the same level of responsibility as the state does in terms of protection for human rights. Nevertheless, what you are increasingly seeing is that state and the private sector are one and the same thing. One can argue that Donald Trump's rise to power in the US epitomises the marriage between the private sector and the state.

This is why I am very much in favour of a binding treaty at the international level that will bind the corporate sector into respecting rights – because it is the most powerful sector in the world. We have to find a way in which we can manage and control the big corporates - and one way is an international binding treaty.

There also has to be work highlighting the negative role of the private sector in the area of human rights. This is very difficult because every country in the world has opened its doors to the private sector. I did a report where I looked at enabling environments for corporate versus civil society and it's like night and day.<sup>2</sup> The state is open and it is almost as though they want the private sector to run the state. So we're in a difficult situation where the work to be done – and it's got to be done bottom up and top down – has to be a critical assessment of the private sector.

Although there are some companies that take their responsibilities seriously, the vast majority are driven by the profit motivation – what I call "market fundamentalism". The whole illusion of market fundamentalism is making things so difficult that there really has to be change.<sup>3</sup> And change won't happen from polite discussions between people and the private sector. The same level of pressure put on states to protect rights and protect human dignity has to be put on the private sector. Including making them hurt where it counts – in the pocket – maybe then we'll start seeing changes.

**Conectas** • The complexity of factors and actors driving or enabling the crackdown (including organised crime, religious fundamentalists, the neoliberal market model, and so on) has exposed the shortcomings of our established strategies in the current climate. What do we need to do to understand power and use that for more effective strategies?

**M.K.** • These new non-state actors are powerful – it is really an issue of concern for all of us if we want to resolve some of the shortcomings and weaknesses of our established order, as I set out in my report to the thirty-second session of the Human Rights Council.<sup>4</sup>

We have deal with these power elements for what they are, as opposed to being a potential ally. Part of the weaknesses of the business and human rights paradigm is that it treats business as a potential ally.

And the inequality issue has to be tackled. We need to examine the issues of workers' rights, fair pay, good conditions and then work with labour unions and workers – and understand how we can organise against this power. We have to ask ourselves “how do we harness the power of the powerless for them to be able to combat and stand up against this power”. Unless we come together with all those people who are suffering from organised crime, survivors of religious fundamentalists, survivors of market fundamentalism we can't make any serious changes.

**Conectas** • What are the most effective strategies that you have seen activists use in responding to the closing down of civic space?

**M.K.** • I am a big fan of freedom of assembly and the role of protests and demonstrations as a way forward. That is what is most effective. For example, in Kenya with the attempts to restrict civic space legally was a coalition emerging between all sorts of different civil society organisations to fight it. Briefly, the state wanted to enact laws that would essentially starve off critical CSOs by limiting foreign funding, and also creating a state body that would determine which CSO could work where and with what resources. But because the draft law was very broad, the human rights NGOs that were the targets got the development CSOs to take the lead and show how much damage the law would create for humanitarian work and for development work.

I'm also a big fan of alliances, coalitions and reaching outside your comfort zone. The South Koreans are really good at this, bringing trade unions, student movements, NGOs, teachers and other sectors to work together for common goals. Malaysia is also doing well on this, linking up students, NGOs, lawyers, opposition politicians and some religious groups to fight for electoral reforms. The silos that we have in our work are wrong and this is weakening us. We need to move very quickly from seeing human rights as projects that compete against each other to get funding and seeing it more holistically as a struggle. We've got to start cooperating better.



**Conectas** • On the international level, what is the most strategic use of the UN system an activist can make in defending civic space?

**M.K.** • You have to be a bit realistic about what can happen in the UN system. It cannot be the most important strategy. The UN works purely at a moral level to push, to act as an amplifier of what is going on on the ground. And that's the most important part of the UN system.

Finding special procedures [also known as Special Rapporteurs, Special Representatives, Working Groups, Independent Experts] that can help is crucial. They can act as a megaphone on the issue. Sometimes, their country missions can have an impact, but I think that we have to be realistic and always remember that struggles come first and foremost at the national level, and then we can see how we can use the UN. I believe my mission in Georgia for example contributed to the reversal of a law that would have restricted the activities of CSOs. Eventually the CSOs' work contributed to the first ever peaceful transfer of power in the post Soviet space. And in South Korea, my visit helped challenge the narrative that unions were bad and helped reinforce the need for alliances. And in the UK my support for a public, judge-led inquiry on undercover policing of CSOs helped tilt the balance into actually forming one.

**Conectas** • And with that cautionary note, can the international system be doing more to protect activists operating to reclaim civic space and if so, what?

**M.K.** • What it can do more is speak out more, although the High Commission for Human Rights speaks out a lot around protecting activists. What the UN has not done well enough is get the UN as a body to care more about rights. What I learnt from my time within the UN is that the Geneva site is so small within the wider UN system, it's easy to get lost in it. It has to be the Secretary General of the UN who says, "this is our priority and whether you are working in UN Habitat, Peacekeeping, or at UN women – your job has to be protecting human rights".

**Conectas** • Are funders responding adequately to the demands that restrictive environments are putting on activists? What are the key strategies that funders should be implementing to ensure they are supporting activists in the best way?

**M.K.** • We've got to get away from the funding system that we have now, which is competitive. All these calls for proposals, which make people compete, actually advantage those groups who have got the capacity and the people with the fine education who can write a fantastic proposal, as opposed to activists on the ground.

Funders have to get away from project funding and recognise that the only way to fight this crackdown is if activists are funded in a way that they are free to do what they need to do. This means moving away from all the demands that they currently make.

Accountability should be maintained, of course, but with less emphasis – a recent report<sup>5</sup> showed that the accounting departments of major civil society organisations are larger than the accounting departments of major businesses.

In this restrictive environment funders should be creative and should be motivated by international law, rather than domestic law, as they did in the cold war era! If they need to pass money through another agency, another place, do so, just keep at it. When NGOs and civil society are under attack by a particular country, funders should upscale and engage with those organisations who are being attacked. This will send a message to the repressive governments or authorities that “you can do whatever you please, but we are not stopping. In fact, we’re going to support the activists even more.”

**Conectas** • How can activists on the one hand work to reclaim democratic spaces and protect the fundamental freedoms of expression, association and assembly, but also fight the dissemination of hate speech and non-rights based values? How can activists respond to the criticism that such a position is contradictory?

**M.K.** • Americans are the ones who say hate speech is alright as long as it doesn’t lead to violence. We need to counter that – first intellectually, but also in practice. We have a duty to defend values. When values are not human rights based and values do not contribute to human dignity and tolerance, then they are values we must take a stand against, and that includes hate speech. I don’t think that is contradictory. I don’t think that the right to expression and the right to association should mean that everything goes. Human rights are not about anarchy, they about values.

We’ve got to be creative in the way we work. We’ve got to be brave about how we do it and stand up to it. We have to be thoughtful about how we do it.

There must be a bottom up approach as well in the way we work with all people. One of the things that has struck me over the years is how few organisations have organisers and mobilisers on their staff. They have professionals, lawyers, accountants and yet they don’t have mobilisers and organisers. I think this is somewhere we have to go. It’s got to be that we spend more time with people than we do with a laptop. It’s got to be that.

**Conectas** • You’ve touched on how we move forward, but with so many negative stories in the press, what hope or what future do you see for the protection of civic space? How do we reclaim the narrative and foster public support around civil society?

**M.K.** • We’ve got to go back to basics. We have to start talking about the good things that we do. But let’s be careful. The narrative can’t only be positive and it’s not just about public relations. I’ve talked to some groups and they say, “All we need to do is to hire a public relation expert.” We do need public relations within the human rights movement because we’re not so good at this. But we also need to know that public relations cannot drive us.

We've got to do the hard work of going door-to-door, home-to-home, village-to-village. I think as activists, we've got comfortable with our successes. With the rise of populism and the right wing, we've got to ask, engage and find out why people are so frustrated and angry. We thought that the path was only going forward without imagining that there could be obstacles. I think that's hurt us to a large extent. So, let's go back to the basics. Let's work with the people on the ground – let's work with villagers, with the neighbourhoods, with the workers, with everybody.

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*Interview conducted by Oliver Hudson  
(Conectas Human Rights).*

## NOTES

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1 • "The Defenders - 185 Environmental Defenders Have Been Killed So Far in 2017," The Guardian, December 15, 2017, accessed December 18, 2017, <https://www.theguardian.com/environment/ng-interactive/2017/jul/13/the-defenders-tracker>.

2 • "Comparing States' Treatment Of Businesses And Associations Worldwide," Free Assembly, October 2015, accessed December 18, 2017, <http://freeassembly.net/reports/sectoral-equity/>.

3 • "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association," Free Assembly, A/HRC/32/36, 2016, accessed December 18, 2017, [http://freeassembly.net/wp-content/uploads/2016/05/A.HRC\\_32.36\\_E.pdf](http://freeassembly.net/wp-content/uploads/2016/05/A.HRC_32.36_E.pdf).

4 • *Ibid.*

5 • Jeri Eckhart Queenan, "Global NGOs Spend More on Accounting Than Multinationals," Harvard Business Review, April 23, 2013, accessed December 18, 2017, <https://hbr.org/2013/04/the-efficiency-trap-of-global/>.

# VOICES



**THE ONE-STATE REALITY  
OF CONSTANT EXCEPTION**

Hagai El-Ad

**LIVES IN FAVELAS MATTER**

Raull Santiago

**BRIDGING PHILANTHROPY  
AND RIGHTS**

G. Ananthapadmanabhan  
& Shambhavi Madhan



# THE ONE-STATE REALITY OF CONSTANT EXCEPTION

**Hagai El-Ad**

- *Israeli and Palestinian NGOs are getting closer: not because the civil space is widening in occupied Palestine, but because it is shrinking in occupying Israel*

## ABSTRACT

*After 50 years of occupation, to enable further oppression of Palestinians, stronger silencing of Israelis is now deemed necessary. The text moves back and forth from one side of the Green Line to the other, exploring the realities of Palestinians living under Israel's occupation regime, of Israelis striving to reject this reality – and the ways in which both are intertwined. Recent international developments and the rise of authoritarian leaders around the world resonate locally and further contribute to negative trends, but if challenged and reversed globally, then the international context can play a key role in the non-violent path for a future, for both Israelis and Palestinians, that will be based on freedom, democracy, and human rights.*

## KEYWORDS

Israel | Palestine | Occupied Palestinian Territories | Shrinking Civic Space | Green Line | Military Justice System | State of Exception | Bare Life | International Funding

What's the exact measure of "Israeli democracy" these days? For that, it's helpful to get a reading through the lens of a Palestinian.

Mai Da'na is a Palestinian from Hebron. Two and a half years ago in February 2015, late on a winter's night, Israeli soldiers entered her home. For Palestinian families, all over the Israeli-occupied West Bank, this is an everyday part of life: almost any soldier can enter a Palestinian home, anytime. No search warrant is required, no legal standards such as "probable cause" or "reasonable suspicion" are even relevant.<sup>1</sup>

You see, in occupied Palestine, Giorgio Agamben's constant *state of exception*<sup>2</sup> is not philosophy: it is reality, and it has been exactly so for the past half century, and counting. Da'na herself and her children – she is 26 years old – have lived all their lives under this reality. In fact, this reality has been going on for almost double her lifetime. To fully grasp the meaning of living a *bare life*, one only needs to watch the video she took when the soldiers arrived, entered her home, demanded that the children be awakened and asked them their names in the dead of a cold night.<sup>3</sup>

Unlike Da'na, I am a Jewish Israeli citizen; I live in West Jerusalem, in Israel proper. Thus, my predicament is very different – in terms of who can enter my home, some 30 kilometres north of Da'na's, and in terms of a million other ways in which the lives of subjects and the lives of masters diverge. And yet, our spaces are interconnected – and this is what this piece, and this life, is about.

In recent years, Da'na began volunteering in B'Tselem's video project. Women videographers have consistently distinguished themselves as some of the best amongst the two hundred or so volunteers that for the past decade were empowered, through this citizen journalism project, to show the reality of the occupation exactly as it is.<sup>4</sup> So, it was no wonder that in August 2017, when the project reached its 10<sup>th</sup> anniversary, B'Tselem decided to feature at the Jerusalem Cinematheque a programme highlighting "Palestinian Women, from the First Intifada<sup>5</sup> until Today". It included a collection of video segments, all shot by women videographers – including the video by Mai Da'na from that night in February of 2015.

Screening the reality of life on one side of the Green Line<sup>6</sup> on the other side of that line is a simple enough act. But what has thus crossed the line was much more than only those images from Hebron.

This is what transpired following the screening: The Israeli Ministry of Culture very publicly wrote the Ministry of Finance, demanding "that funding for the Jerusalem Cinematheque be re-examined in light of its screening of films by B'Tselem volunteers." The legal basis for such a demand became law<sup>7</sup> in Israel back in 2011, as part of an earlier wave of "anti-democratic" legislation. Six years have since passed, and in recent months, the current Minister of Culture, MK Miriam (Miri) Regev (Likud), is waging a campaign, using her

governmental powers, against artists, screen-writers, theatres – and yes, cinemas – who dare go ahead with events, plays, or films that “incite against Israel”.<sup>8</sup> According to her interpretation, showing the truth about Israel’s rule over Palestinians must be “incitement”.<sup>9</sup> The minister wishes to exercise what she calls, in true Orwellian fashion, “freedom of funding”:<sup>10</sup> her freedom *not* to fund artistic speech that deals with that constant state of exception in effect just a few kilometres away from the Jerusalem Cinematheque.

...

Citizens – especially Jewish citizens – living on this side of the Green Line, are generally used to exercising their free speech rights. But in occupied Palestine, free speech has been a non-option since August 1967, two months after the occupation began. OC Central Command Order No. 101 – “Order Regarding Prohibition of Incitement and Hostile Propaganda Actions”<sup>11</sup> – has been in effect, with several amendments, ever since. Its point of departure is that Palestinian residents have no inherent freedom of protest or freedom of expression, and that even non-violent resistance and civil protest involving peaceful assembly are forbidden. For fifty years, we have been defining almost any Palestinian opposition to Israel’s occupation regime as incitement, while denying basic freedoms such as free speech. Is anyone really surprised that now a screening of a video collection focusing on the occupation regime is framed as – of course – incitement, and that the freedom of speech of Israelis is in question?

Indeed, space for an open society is shrinking in Israel. No longer can it be taken for granted that civil society non-governmental organisations (NGOs) in Israel proper, west of the Green Line, can function freely. One cannot deny the ironic, bitter, sense of justice in this process, that brings Israeli and Palestinian NGOs – and Israeli and Palestinian activists – closer: not because the civil space is widening in occupied Palestine, but because it is shrinking in occupying Israel.

Of course, for the millions of Palestinians we have been ruling for decades, the democratic space collapsed a long time ago. We have ruled millions of non-citizens with no political rights by military decrees for decades, and in that context, the casual vulnerability of Palestinian homes is just one example of how bare life can be, in a place where Israel controls with impunity<sup>12</sup> through administrative, arbitrary decisions people’s ability to travel abroad,<sup>13</sup> receive a work permit,<sup>14</sup> get married,<sup>15</sup> have access to their land,<sup>16</sup> build a home<sup>17</sup> – to name just a few examples.<sup>18</sup>

But at the doorstep of this abyss, barely a few kilometres away, the pretense of a western democracy was alive and well. As recently as 2008, for example, Israel’s National Report,<sup>19</sup> submitted as part of the state’s *Universal Periodic Review*, proudly stated that “Israel has an open, vibrant, and pluralistic civil society, actively engaged in raising priorities and challenging the Government’s conduct. The Government is engaged in an ongoing dialogue with numerous NGOs [...]”.



Fast forward less than a decade to current day Israel, where equating NGOs opposing the occupation with treasonous servants of suspect foreign powers has become routine, from the Prime Minister down. In this current reality, an ongoing cocktail of intimidation, infiltration, and legislation is the new normal.<sup>20</sup> The need to maintain the appearance of democratic norms has now been mostly set aside, replaced by a political appetite to demonstrate to a cheering public that the government is after the fifth column.

Thus, the efforts led by the Minister of Culture are only a few out of many likeminded initiatives. Together, these spell out the shrinking of space for free speech and for civil society. It is a process that took place mostly in the last seven years in Israel, moving forward in tandem with the likes of Hungary, India, and Turkey. This rising authoritarianism in Jerusalem can be spotted even from as far as Berlin: in June 2017 a spokesperson for the German Ministry of Foreign Affairs said that Hungary, by passing a law that bans foreign funding to NGOs and civil society groups, has thus joined “the ranks of countries like Russia, China and Israel, which obviously regard the funding of NGOs, of civil society efforts, by donors from abroad as a hostile or at least an unfriendly act.”<sup>21</sup> A few months later, Israel was featured in the Secretary-General’s annual “reprisals report” on *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*.<sup>22</sup>

...

Of all the various efforts to act against Israeli human rights NGOs, the most steadfast one has been to try and curtail access to international funding. But the government cannot simply pass a law to which an addendum with the list of undesirable groups will be attached – that would be too blunt. It took several years and a few legislative iterations, until an administrative criterion which would apply almost exclusively to the, well, undesirables was identified: a relatively high percentage of “foreign state-entity funding”. Some context: international funding is common and extensive in Israel, across the spectrum, including the Israeli army (lavishly supported by the US), research programmes (with unique access to EU funding), hospitals, universities, schools, museums, welfare NGOs, settler groups, human rights organisations and much more. But in the NGO sector, foreign embassies, United Nations grants and the likes quite obviously tend to invest in promoting human rights, and not in the advancement of the occupation. Hence by looking at an NGO’s relative funding from such sources, one can *de-facto* produce a list of the NGOs the government is after, without having to resort to listing them on an individual basis.

The above logic was at the core of the most recent amendment to Israel’s not-for-profit law. According to an amendment passed in 2016,<sup>23</sup> beginning in 2018 (based on 2017 fiscal data), groups which receive 50 percent or more of their funding from “foreign state-entity” sources will practically need to self-identify as foreign agent NGOs. The amendment was initially marketed as simply “advancing transparency”<sup>24</sup> – but since the law was passed, it serves as the staging ground for further legislation,<sup>25</sup> completely removed

from “transparency”, but rather quite transparently about yet more public shaming and administrative limitations and burdens against human rights NGOs.

The above amendment (known as the “Transparency Law”) does not limit access to foreign funding. However, in June 2017 the Prime Minister publicly confirmed that he has tasked Minister Yariv Levin with formulating a new law that would block foreign governmental funding to Israeli non-profits, in an effort explicitly targeting human rights groups opposing the occupation.<sup>26</sup> Quoted in Ha’aretz, Minister Levin explained the background for the change in the government’s position, from the law the government promoted only a year earlier, which did *not* limit foreign governmental funding, to now wishing to block such funding through new legislation. Levin explained how the new US administration makes it possible: “It wouldn’t have made it through in the period of the Obama administration. They were very uneasy about the bill. The present administration has no problem with it.”<sup>27</sup>

...

Palestinians cannot easily cross the Green Line and enter Israel: special permits are needed for work, medical care, or other reasons. Authoritarian thinking, however, needs no such permit, a green light from the powers that matter will suffice. Similarly, the winds blowing from Washington DC appear to be felt on both sides of the Green Line. A few weeks following Minister Levin, it was Defence Minister Lieberman who used almost identical language – but now in the context of actions on the other side of the Green Line, namely the possibility to go ahead with demolitions of *entire* Palestinian villages: Khan al-Ahmar east of Jerusalem, and Susiya in the South Hebron Hills.<sup>28</sup>

Mai Da’na’s footage also crossed the Green Line. Its modest screening before 100 or so spectators was sufficient – in 2017 Israel – to trigger a McCarthy-style governmental review of one of Israel’s most established cultural institutions. For, to enable further oppression of Palestinians, stronger silencing of Israelis is now deemed necessary. Our fates are intertwined.

Similarly, the international mechanisms that somewhat delayed these developments are intertwined. Not only are many international actors used to taking their cue from Washington – now under Trump – but also Israel’s leadership is currently empowered by the favourable winds blowing from the rising authoritarian powers across the globe. Facing these circumstances, there are no foolproof solutions, and the outlook is often bleak.

As rightfully worrying as these negative developments inside Israel are, they are not the reasons why Israel cannot be considered a democracy. For that, we need not focus on what has transpired in recent years, but open our eyes to the past half century. Israel’s rule over millions of Palestinians with no political rights has been in effect for all of Israel’s existence as an independent state, except the first 19 years. That is why Israel is not a democracy, and indeed has not been one for many a decade already. We live in a one-state reality between

the Jordan River and the Mediterranean Sea, a state whose constant state of exception is one of masters and subjects, of millions with political rights – and the millions without.

Yet, here is what I genuinely embrace: yes, the authoritarian global realignment is real. If you have any doubts, just listen to Netanyahu, Trump, Modi, Orbán,<sup>29</sup> and the many other contenders to join their ranks. But it is not preordained that this will be the *only* global realignment witnessed by humanity in the 21<sup>st</sup> century. The Universal Declaration of Human Rights is too precious an achievement, won after unimaginable human suffering. We know what is at stake. We might as well stand together so that “the equal and inalienable rights of all members of the human family” are realised, so that “the foundation of freedom, justice and peace in the world” will be as solid as it must be. There are no assurances of success: only the certainty that it is a future worth fighting for.

## NOTES

- 1 • “An officer or a soldier so authorized in general or in a specific instance is authorized to enter, at any time, any place, vehicle, boat or airplane for which there may be reason to suspect use, or were used for any purpose which harms public peace, security of the IDF forces, the maintenance of public order, or for purposes of uprising, revolt or riots, or there is reason to suspect the presence there of a person who violated this order, or goods, objects, animals, documents to be seized in accordance with this order, and they are authorized to search any place, vehicle, boat or airplane and any person on them or coming out of them.” “Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009,” No Legal Frontiers, November 1, 2009, accessed November 27, 2017, Section 67, [nolegalfrontiers.org/military-orders/mil019ed2.html?lang=en](http://nolegalfrontiers.org/military-orders/mil019ed2.html?lang=en).
- 2 • See Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005): 1-112, for an exploration of how supposed times of crisis or states of emergency are used by governments to override rights.
- 3 • The video can be viewed on BTselem’s YouTube channel: “Soldiers Enter Hebron Homes at Night, Order to Wake Children, 24/02/15,” YouTube video, 3:51, posted by BTselem, March 29, 2015, [www.youtube.com/watch?v=oHRj-GF5dwg](http://www.youtube.com/watch?v=oHRj-GF5dwg).
- 4 • Since 2007, BTselem’s camera project has been distributing video cameras and providing training to Palestinian volunteers in the West Bank. The project has become one of the most successful of its kind globally. For more information and background, examples of video footage and more, please visit “BTselem’s Camera Project,” BTselem, 2017, accessed November 27, 2017, [www.BTselem.org/video/cdp\\_background](http://www.BTselem.org/video/cdp_background).
- 5 • The first Intifada, a Palestinian uprising against the Israeli occupation, started in December 1987. The second Intifada started in September 2000.
- 6 • The Green Line, Israel’s 1949 Armistice border with its neighbours, is often referred to as the pre-1967 borders. Lands captured in 1967 by Israel beyond the Green Line are the Occupied Territories.
- 7 • “Budget Foundations Law (Amendment 40) – Reducing Budget or Support for Activity Contrary to the Principles of the State”. For additional background see: “The Nakba Law,” The Association for Civil Rights in Israel, November 9, 2011, accessed November 27, 2017, [www.acri.org.il/en/knesset/nakba-law/](http://www.acri.org.il/en/knesset/nakba-law/).
- 8 • In early 2016 Regev tried to advance a “loyalty in culture” bill. That legislation was later shelved, in exchange for a commitment by the Ministry of Finance to more proactively enforce the abovementioned Amendment 40. Regev herself continued to invoke accusations against artists for disloyalty, incitement, or both, such as on September 2017 when she demanded the police to open an investigation against the Jaffa Theatre, for holding a solidarity event with Palestinian poet Daren Tatour. Tatour, an Israeli citizen, is under house arrest since late 2015. She is facing incitement charges, focusing on a poem she published, titled “*Qawem Ya Shaabi Qawemahum*” (Resist my people, resist them).
- 9 • For instance, Regev in September 2017: “It’s outrageous that Israeli artists contribute to the incitement of the young generation against the most moral army in the world by spreading lies in the guise of art.”
- 10 • Governmental funding for cultural institutions, mostly through the Ministry of Culture, is supposed to be independent of political bias. In January 2016 Regev said that she “will not allow the subversion of the foundations of the state, especially when it is government-funded.”
- 11 • “Israel Defense Forces Order No. 101 Order Regarding Prohibition of Incitement and Hostile Propaganda Actions,” BTselem, August 27, 1967, accessed November 27, 2017,

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# LIVES IN FAVELAS MATTER

**Raull Santiago**

- *Reducing inequality in Brazil* •  
*by listening and giving value to favelas*

## ABSTRACT

*This text presents an overview of human rights activism that uses independent media as a tool to dispute narratives and build solutions in places marked by inequality and violent racial exploitation, such as the favelas in Rio de Janeiro. It focuses on the Complexo do Alemão, the place from where Raull Santiago, a member of Coletivo Papo Reto (the Straight Talk Collective), writes.*

## KEYWORDS

Coletivo Papo Reto | Favelas | Rio de Janeiro | Independent media | Open media | Media activism | Community media | Media in the periphery



It was very complicated to start this text. I tried writing at different times and in different places. I wrote on the notepad on my cell phone, using voice typing, and on the computer. I made several attempts, but my time is short. So, this text was the combination of all of that.

My name is Raul Santiago. I am 28 years old and I live in the Complexo do Alemão, a group of *favelas* located in the north zone of the city of Rio de Janeiro. This is the place I am going to talk about: it is where I was raised and where I have lived until now. I will give an analysis of the current situation in Brazil based on our experiences in the Complexo do Alemão.

*Favelas* are humble places, full of rich experiences in community life. Of all the different *favelas* and neighbourhoods in the outskirts of cities in Brazil, Complexo do Alemão is where I belong. Although it is an incredible place, this well-known *favela* has been exploited in recent years in the so-called “war on drugs”. With the fight against drug trafficking as an excuse, the government uses most of its military power against the population and many people go to prison or die in the process. Mainly the poor, black people of this country.

So, the war on drugs is a modern tool for racial control and perpetuating social inequality. It is cruel and unequally waged in the poorest places in the country – the *favelas* and the peripheries in Brazil. In this context, the police is the only public policy that is here to stay. It is a scene where there is a lot of police violence and grave rights violations occur. Yet, some politicians and the mainstream media insist on saying that the *favelas* are *the* problem in Brazilian society. This big farce serves as the basis for building a negative image of us.

We created, together with nine friends, *Coletivo Papo Reto* (the Straight Talk Collective) to try to stop the violence and racial inequality that we experience daily and that can be clearly seen in the narratives about us. Our collective uses independent media to denounce the violence, to dispute narratives based on our reality and propose ways to guarantee rights and strengthen the *favela* as a place of power, using the idea of “by us, for us”.

*Coletivo Papo Reto* has two basic lines of action:

**1 • Media for resistance:** using various technologies to denounce rights violations committed by the state, the goal is to mobilise networks and send reports, together with other public institutions and civil society organisations, to try to reduce the violence we face every day.

**2 • Affirmative advertising:** we use this to develop the idea of “by us, for us”, while seeking to strengthen the *favela* and its residents and to challenge the dominant media’s narrative that insists on criminalising us by disseminating images that portray us as the problem. We use the media to show the strength that exist in the *favela*. Through street actions and online programmes, we seek to give a different take on our reality.

Using technologies as tools to denounce human rights violations and racial violence, we have worked in partnership with the US-based organisation Witness to learn about online safety and planning collective security. We are also experimenting with and helping to develop applications and technologies that activists can use – such as, for example, audio-visual coverage during a conflict – to capture footage that can be used as evidence in court.

## A place in dispute

Complexo do Alemão has often been presented as the symbol of power of the Brazilian mafia, but it has never had the opportunity to be shown in a positive light and as a place full of powerful and incredible people. Independent media is filling this gap and exposing mainstream media for being largely responsible for constructing the negative image of the reality in *favelas*.

A new model of public security, inspired by the experience in Comuna 13 in Medellín, Colombia, where there is a 24-hour police presence in the favela, was adopted in the Complexo do Alemão in 2010. A cable car – a mass transit system that transports people on cars run on cables – was also built.

In Brazil, however, a permanent police presence is a real problem, as it increases the number of confrontations, deaths and violations that people suffer from. The cable car built in the Complexo do Alemão in 2011, which cost millions of Brazilian reals of public funds, was shut down over a year ago. It became just another symbol of corruption and illustrates the scale of the robbery committed by Rio de Janeiro's governor, Sérgio Cabral, who is currently in jail for corruption.<sup>1</sup>

Furthermore, in 2007, during the Pan American Games, over a dozen people were assassinated in the Complexo do Alemão. Unfortunately, this was not the first time that large events in Brazil led to suffering and rights violations for the people living in the favelas and the periphery. It was no different during the World Cup or the Olympics. Evictions and serious violations marked these events.<sup>2</sup>

## Brazil's contradictions

Brazil is an incredible country with incredible people. But there is also a lot of inequality here. Even though more than 54 per cent of the population identifies itself as black, black people are still highly underrepresented in spheres of influence and decision-making. What is more, they are the ones who are assassinated and jailed the most. Currently, Brazil has the third largest prison population in the world, with 698,618 individuals held in jail in 2016. It came in only behind the United States (2,145,100) and China (1,649,804), and ahead of Russia (646,085), according to Infopen, the National Prison Information System.<sup>3</sup>

The prison system has failed and is incapable of improving. There are people in jail who are still awaiting trial. In many prisons, for example, there is a lack of water and food and violence prevails. Unlike the countries that lead the list with the highest number of people deprived of liberty and are discussing ways to reduce their prison population, in Brazil, the prison population is on the rise.

In addition to the high number of arrests, racial genocide is happening in the country. In 2016, over 60,000 people were murdered and the majority of them were black, according to the *Atlas da Violência 2017* (2017 Atlas of Violence) report launched by the Institute of Applied Economic Research (IPEA) and the *Fórum Brasileiro de Segurança Pública* (Brazilian Forum on Public Safety). It also indicated that 71 out of every 100 people assassinated in Brazil are black.

Between January and August 2017 alone, 712 people were killed by the police, according to the *Instituto de Segurança Pública* (ISP, Institute for Public Safety). The majority of the killings were justified by the war on drugs. Therefore, as a tool for maintaining racism and inequality in the country, the war on drugs continues to incarcerate and execute strong, intelligent, enterprising youth.

Because lives in favelas matter and in order to guarantee our survival and show that favelas are powerful and the solution, *Coletivo Papo Reto* continues to denounce abuses, strengthen the people and the place, and try to connect with youth in the peripheries of Brazil, Latin America and around the world.

## Progress in the midst of chaos

On 18 February 2015, the way in which *Coletivo Papo Reto* turns communications into a tool for disputing narratives and promoting concrete actions was the subject of a feature article in *The New York Times* magazine.<sup>4</sup> The report highlighted the potential of independent media – that is, cell phones and internet in the hands of youth from the periphery. We occupied the pages of one of the biggest channels of mainstream media on the planet to talk about a new way of communicating, contesting the imagery on our reality and, by doing so, challenging the negative coverage of us by the mainstream media in the country.

Also in 2015, *Al Jazeera* television made a documentary on the work of *Coletivo Papo Reto* in partnership with Witness, called “A Bigger Brother”.<sup>5</sup>

In 2017, *Coletivo Papo Reto* participated in collective action to defend residents from the Complexo do Alemão who had suffered from the arbitrary acts of agents of the state: Rio de Janeiro’s military police. In the first few months of the year, police officers invaded some houses and evicted the people who lived there in order to turn their homes into a kind of illegal military base. The people whose homes were invaded went to *Coletivo Papo Reto*

for help. Together with other civil society organisations and public authorities, we quickly traced a plan of action to try to end this abuse. Months were spent trying to resolve the situation. Despite the serious threats we received, we finally managed to win by using audio recordings, photographs and videos as proof. We were able to force the police officers to vacate the homes and the police major to leave the *favela*.<sup>6</sup>

In addition to Coletivo Papo Reto, I am currently participating in a national project called *#MOVIMENTOS: Drogas, Juventude e Favelas* (*#MOVIMENTS: Drugs, Youth and Favelas*), in which youth from the *favelas* and peripheries of the country discuss new drug policies that take into account the issues of racial violence, social inequalities and a war that is only waged among the poor. We want to talk to society about drugs while drawing on diverse knowledge and focussing on protecting rights, reducing harm and putting an end to the racist war.

As a result of this work and with the goal of expanding the network of resistance in the periphery, I have participated in different national and international conferences and met other movements fighting against racism and the violent impacts of the “war on drugs”. In 2017 alone, I have gone a few times to the United States, where I met the US black movement and talked with groups such as Black Lives Matter, among others. I also travelled to Colombia and the Dominican Republic and around Brazil to talk about human rights and racism, and especially to teach and learn how to use independent media and new technologies to denounce human rights violations. This experience has been important for strengthening our networking and developing partnerships with other groups and movements in the same line of resistance. In the midst of all this running around, I continue to use rap and poetry as a form of expression of this struggle.

Here is a poem that is part of the work I develop with words.

*FAVELA,*

an agglomerate of resistance and power.

Where the scene for survival makes us want more,

LIFE

That around here is full of struggles, but together,

A strong energy that makes us say at the end of each phrase,

WE'RE UNITED,

And we really are, there is no routine,

Surviving between racism and inequality is what brings us closer,

And the LOVE for every backstreet and alley,

That keeps the heart called *favela* pumping,

or for the smile of every child who lives there.

We are power and also the solution,  
For the problems, there is only one way out.  
We have to keep, at all cost,  
The *Favela* and the Periphery ALIVE.

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# BRIDGING PHILANTHROPY AND RIGHTS

**G. Ananthapadmanabhan & Shambhavi Madhan**

- *A journey between activists and foundations* •

## ABSTRACT

*Despite recent growth in philanthropic giving in the Global South, there remains a gap between development and human rights funding, with preference being given to the former. This article argues that the gap between these two paradigms should close, as it has done in the Global North, although philanthropy in that region is not without its challenges. The authors argue that the responsibility for this shift lies not only with philanthropic foundations, but with activists too.*

## KEYWORDS

Philanthropy | Global South | India | Development | Human Rights

Recent years have seen considerable growth in philanthropy in the Global South. In India, the total funds for the development sector have grown at a rate of 9 per cent over the past five years, increasing from approximately INR 150,000 crore in 2011 to INR 220,000 crore in 2016.<sup>1</sup> This growth has primarily been due to private contributions, which constituted 32 per cent of the total contributions to the development sector in 2016, up from 15 per cent in 2011. Although a significant amount of funding has been directed towards rights and entitlements of people from marginalised communities, little of this is explicitly framed as contributions for the advancement of human rights. Bridging this gap is a journey that is at a nascent stage in India, and continues to be a work in progress in many other parts of the world.

Philanthropists in India mostly operate under the development paradigm. They fund work that seeks to include underprivileged or marginalised populations in economic development by improving their access to basic services like education and healthcare. This approach embodies an impatience to develop along these lines, and is indicative of a hierarchy of issues/needs. Problems like hunger and lack of access to clean drinking water occupy the top tiers, while human rights violations and lack of access to justice, which are seen as less urgent or as relevant only to a minority, are relegated to the bottom tiers. Arguably, a framework like Amartya Sen's Capability Approach could be used to tie together the various social, political and economic issues that marginalise or exclude certain communities.

For rights activists, the interconnectedness between these issues is immediately visible. However, the language used by activists to communicate this is vastly different from the language familiar to funders. This can make these conversations incomprehensible at best, and alienating at worst. In the Global South, though the line between rights and entitlements is very thin, work on one frequently bleeding into the other, a pronounced human rights framework is mostly absent in the perspective of philanthropists and the programmes they choose to support.

There are then a number of disconnects between philanthropists and a rights framework in the Global South. Global North philanthropies are at a different place in the journey than their Global South counterparts, but far from free of issues.

For example, foundations struggle to invest their endowment funds in line with their mission and values. There has been considerable outcry in recent years, opposing fossil fuel investments of foundations, and encouraging these organisations to invest in greener companies.<sup>2</sup> These campaigns have been quite successful, as evidenced by the hundreds of foundations worldwide that signed the pledge to divest from fossil fuels, including Rockefeller Brothers Fund and Children's Investment Fund Foundation. However, this struggle does not end with only fossil fuel divestment, and needs to move towards proactive investments of endowment funds in mission-aligned organisations and programmes. An example of an organisation adopting such an approach to investment is the Heron Foundation, which is working towards achieving 100 per cent mission-aligned investment.

Additionally, Global North philanthropists who fund organisations advancing human rights, with the possible exception of those in North America, are external looking and usually tend to focus their efforts in Global South countries. While this monetary support is needed in the South, it is also demonstrative of a tendency to focus on human rights violations and inequalities in other countries, at the expense of taking ownership of those in one's own. This shares a mutual causality with existing Global North-Global South power equations, and is therefore detrimental to the advancement of human rights in the long term.

Complete alignment between philanthropy and a rights framework is a long journey and far from finished. Some developments that have pushed this journey are the people moving from human rights organisations to foundations. In India, as more foundations open their doors to people from a human rights or civil society background, they are able to diversify their perspectives and approaches to grantmaking, creating lasting change in how grantmaking is done and who it supports.

Additionally, while language and articulation form an important part of human rights discourse, it is necessary for rights activists to develop the ability to speak to philanthropists in a language they understand, connecting human rights and development frameworks. If these partnerships are to be forged, activists will need to work through the discomfort of altering discourse to suit the needs of philanthropists, while exploring ways to push philanthropy to adopt a rights-based approach. Though this puts the burden of bridge-building on the activists, existing power dynamics *vis a vis* money and influence call for this first step.

In short, there is enormous overlap between the goals of philanthropists and those of human rights activists. However, in order to achieve these goals, philanthropists need to understand that human rights and development goals are inextricably linked, while human rights activists need to find ways to help them get there.

## NOTES

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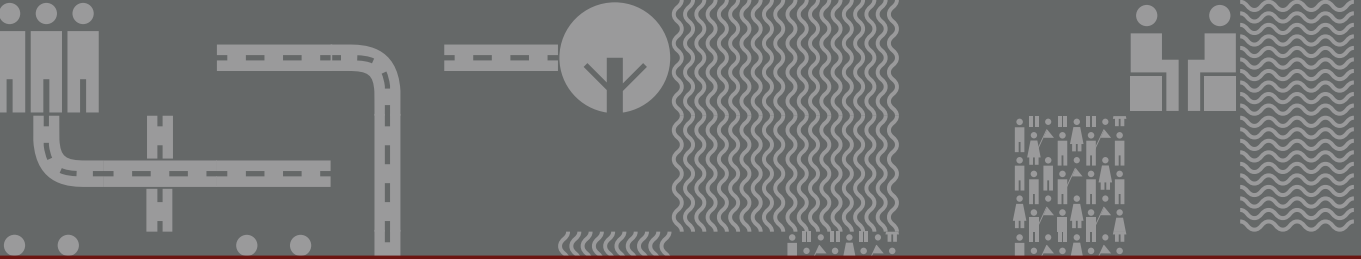
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