**Consultation - How to create and maintain civil society space? What works?**

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**Introduction**

In 2014, ACT Alliance[[1]](#footnote-1) and CIDSE[[2]](#footnote-2) published the study *How to Protect and Expand an Enabling Environment. Space for Civil Society*. We conducted joint research in four countries (Colombia, Malawi, Rwanda and Zimbabwe) to look closer at the developments of the enabling environment for civil society in the four countries and provide recommendations for all stakeholders (Governments, Donors, CSOs) on how to promote and improve an enabling environment for civil society[[3]](#footnote-3).

While the consultations asks for best practice and examples of how to continue to operate in contexts where space is limited, it is worth briefly touching upon the negative developments and their impact before arriving at recommendations for what can be done, by all stakeholders (Governments, Donors and civil society) to reverse the trend and move towards a more enabling environment for civil society. The following highlights some of the main areas of concern impacting on the enabling environment for civil society and provides recommendations for Governments, Donors, multi-national actors and CSOs on how to better protect and promote and enabling environment for civil society.

**Participation in designing and implementing development plans**

The presence of a vibrant, strong and free civil society is essential in order to guarantee sustainable and just development and to provide incentives for social and democratic change. Through its provision of aid and engagement with development activities, the international community affirms that civil society organisations are independent development actors in their own right, playing a vital role in advocating respect for human rights, in shaping development policies and in overseeing their implementation. This role has been acknowledged and confirmed by the Accra Agenda for Action as integral to driving aid and development effectiveness, and reaffirmed by the Busan Partnership for Effective Development. The new European Union approach to engaging with civil society in its external relations has a similar emphasis. It states that “an empowered civil society is a crucial component of any democratic system and is an asset in itself. It represents and fosters pluralism and can contribute to more effective policies, equitable and sustainable development and inclusive growth”[[4]](#footnote-4).

But is civil society able to fulfill this acknowledged role in the development? One of the strongest indicators to emerge from the survey is the limited extent to which the CSOs interviewed in the above mentioned study feel involved in the drafting and implementing of development plans, and the low levels of government effort to involve CSOs and communities in these decisions. The picture is of top down development. Whether communities are leading their own development or meaningfully participating in government-led projects, or a mixture of both, their involvement is vital for sustainable outcomes. By excluding community voices and perspectives, development efforts are likely to deliver weak, non-durable results.

In Colombia, the government has placed large-scale mining, gas and oil extraction at the centre of national plans for economic growth and development. Civil society has serious concerns about this model of development but feel excluded from debates and stigmatized. Under the last administration, leaders of such organisations were criminalised and some are still defending themselves against false charges. Although free, prior and informed consent is a legal requirement for indigenous and afro-descendent populations, the lack of a consultation process has left already marginalised groups even more isolated and discriminated against.

In its claim for participation, civil society should be open for multistakeholder processes and actively identify opportunities for and demand meaningful participation at local, regional, national and international level. Broad coalitions between civil society organisations, but also the backing of others like the media and other influential voices are key to openly support civil society demands for participation. In particular in cases where indigenous people are involved in development plans, international instruments such as ILO Convention 169 and the UN Declaration on the rights of indigenous people can be very helpful in the claim for participation. In order to contribute effectively in participation processes, capacity to gather and analyse information from communities and from other sources is crucial. With a strong empirical, participatory and thus legitimate basis, participation is more likely to be meaningful.

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| **Case study from Colombia – Indigenous groups: consultation with local authorities on the allocation of community resources** |
| According to the law, funds earmarked for indigenous development projects pass from central to local government on an annual basis. The allocation of this funding, however, had not been made with consideration for the priorities that the indigenous people had for their own development. The lack of formal structures for consultation with indigenous communities meant that the local government authorities were providing for indigenous groups without consulting them. This led to mistakes in development planning and emergency response.  The situation was precipitated by three indigenous peoples’ tribes in Arauquita facing a crisis of food insecurity. They sought help from the Pastoral Social in Arauca. Through their auspices a municipal committee was formed between the indigenous leaders and local government authorities that met monthly. In the early stages, Pastoral Social provided an organisational hub (the Technical Secretariat) and capacity building for the indigenous leaders.  The project was important in that it created space for the participation of indigenous peoples in local public policies. It also allowed the indigenous peoples to influence policy, which resulted in the municipal authorities funding productive projects identified as priorities by the indigenous groups. The indigenous peoples were able to identify the sum allocated from national funds, and ensure that it was passed on to them, something that had not happened previously. They were also able to influence the regional development plan. |

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| **Case study from Malawi- Claiming space for citizen demands** |
| Faced by a worsening economic and political situation, civil society organisations came together in 2011 and developed a 20 point agenda. The agenda highlighted the need for the government to address issues, such as fuel shortages, foreign currency shortages, the rise in standards of living and the lack of accountability and fairness among political leaders in the ruling party. The absence of any response by the government to these demands is considered to be a key determinant of what was to follow.  Malawi is not known for mass demonstrations and is considered one of the “quietest and most docile” countries in Southern Africa due to the legacy of President Kamuzu Banda who promoted a parochial and subservient culture. However, in July 2011, Malawians came out in massive numbers to protest against economic mismanagement and bad governance. They came from diverse backgrounds, from ordinary citizens (including women and girls) to professionals from all fields and politicians. The demonstrations were initially organised by a few NGOs but very soon other players, including trade unions, taxi owner associations, street vendors and churches, joined their ranks to create a more collective leadership.  An NGO, sponsored by a government organisation, obtained an injunction to ban the demonstrations on the eve of the protest, allegedly from a newly appointed judge (Malunga, no date). The demonstrators, managed to overturn the injunction on the day of the demonstrations, the 20th of July 2011. Some misguided youths among the demonstrators vandalised and looted property belonging to members of the ruling party. The police used live ammunition and at least 21 unarmed civilians were shot dead and a number were injured and arrested.  The demonstrations were instrumental in forcing the government to the negotiation table. The following factors have been cited as the key determinants of this display of unified civic action against an increasingly repressive environment in Malawi:   * There was national consensus that the ruling party had gone too far. Worsening economic issues were the unifying factor, transcending political, economic and social/cultural differences * The media´s role was crucial. Both private and electronic print reported the preparations for the demonstrations. Phone-in programs and genuine debates around economic and governance issues contributed to an increasing level of public awareness on the issues. Although the government media attempted to delegitimise civil society demands by labelling the planned demonstrations as “pro-gay” and funded by foreign donors, private media was strong enough to diffuse these allegations. Cell phones were used to pass on messages and journalists were trained to provide non-partisan coverage of the demonstrations. * The church used pastoral letters, sermons and prayer vigils to arouse spiritual consciousness about the situation in the country. One bishop preached a scathing sermon at a ceremony attended by the President. Given that over 95% of Malawians are deeply religious, the church´s role was vital. * The independence of the judiciary. The government lost most of the prosecution cases against the demonstrators. In addition to the independent judiciary, there was a professional body of lawyers, the Malawi Law Society, who were vocal in defending citizen rights and interests. In response to the Presidential threat of prosecution of civil society members and political leaders who had organised the demonstrations, the Malawi Law Society announced that it would defend them. Nothing ever came of the President´s threat. * The role of youth. Many unemployed young people believed that a change in government could change their situation. Some claim that the Arab Spring provided inspiration and gave them the conviction that it was actually possible to change governments through civic action. * The CSO leaders who organised the demonstrations had previously collaborated with each other on different initiatives. This facilitated cooperation and the coordination of efforts despite working from different geographical areas. * The government underestimated the capacity of CSOs to mobilise and the determination of citizens to bring about change, and lacked support to halt the demonstrations. * It was local civil society organisations and ordinary citizens who organised the protest and marched on the strength of their own convictions. |

**Recommendations:**

***For the United Nations:***

Monitor and assess the impact of the aid effectiveness agenda on the right to participate, including the freedom of peaceful assembly and association

***For donors:***  
Monitor the aid/development effectiveness agenda to determine the degree to which it either provides leverage for meaningful CSO participation in development processes or limits the role of an independent civil society

Strengthen CSOs’ capacity to gather and analyse information relevant for their programmes and the communities they work with. This would enable them to contribute more effectively to national planning and policy making processes, and to challenge government policies and actions

***For national governments:***  
Involve CSOs in the design, content and implementation of development plans. In particular, indigenous groups and other marginalised and disadvantaged groups in society should be able to meaningfully participate in policy making processes and be consulted regarding decisions that affect them, as per the principles of free prior and informed consent

**Respect and protect through law and practice indigenous peoples´ right to free, prior and informed consent regarding development activities that impact them.**

***For civil society:***

Build capacity to gather and analyse information from communities and from other sources. Pool information and knowledge, in order to contribute effectively to national planning and policy making processes

**Feeling unsafe**

The study also showed that many CSO staff and human rights defenders in the countries studied feel unsafe some or all of the time due to their work. In particular, organisations working in rural areas feel more vulnerable than their urban counterparts in this regard. In some contexts, indigenous communities are more and more targeted[[5]](#footnote-5). Whereas in some countries like Zimbabwe the state and state actors are perceived as perpetrators, in other countries like Colombia the threat may come from a wider array of actors: state forces, demobilized paramilitary groups or armed opposition groups. Additionally, in more and more countries like Mexico, organised crime groups have become a threat for civil society and human rights defenders.

Based on the experiences of our partner organizations from all over the world, we see strong links between civil society’s shrinking or even closing space and natural resources exploitation. Our assessment is that particularly where natural resources are exploited in an environment of corruption, fraud, pillage, mismanagement, without transparency and meaningful participation of the local communities, civil society and human rights defenders are under threat. In order to silence demands by citizens and communities against harmful and illegitimate exploitation, their rights to associate and assemble and to express their opinion are restricted. Often this is done directly by state authorities. However, in particular in conflict areas, it is violence by third party actors followed by impunity, which limits civil society activities.

There are many protection and security tools, trainings and support at the disposal for civil society organisations, offered by local human rights groups, but also by human rights INGOs such as Frontline Defenders, LifeLine, Protection International, IPON. Many of them are also including international advocacy support. However, often they are not known by rural civil society organisations, which do not define their work as human rights work, although they would be defined as human rights defenders (environmental activists, land right activities etc.). Therefore these protection measures also should be made known and accessible for civil society outside the human rights circles.

Also, funders of civil society have to take security risks and protection needs of their partners into account when supporting or implementing a rights-based-approach in their development projects. They must be aware that working for sustainable development might reveal conflicting interests and bear many risks for local NGOs and CSOs in the South. Therefore there is a high need for systematic analysis, permanent dialogue and timely responses when threats and other dangers are directed against our partners. Human Rights Awards also support the aim of protection and the authors of these awards commit themselves to accompany award winners beyond the time of grant.

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| **Zimbabwe Lawyers for Human Rights case study -*Legal assistance***  To improve CSOs’ enabling environment by targeting the legislative framework, Zimbabwe Lawyers for Human Rights (ZLHR) created teams of volunteer lawyers from its membership to provide rapid response legal assistance to HRDs and CSO leaders facing harassment, intimidation or unwarranted arrests by state agents. Through this initiative, ZLHR have contributed significantly to keeping the operating space for CSOs open and have provided support and strength to CSOs leaders to continue with their work.  ZLHR is a not-for-profit, national human rights organisation whose core objective is to foster a culture of human rights in Zimbabwe. It is a membership organisation consisting of around 170 lawyers and law students. They pay a membership fee and volunteer to carry out human rights protection and promotion activities due to their shared interest in human rights and the rule of law. It has a secretariat of 16 people, nine of whom are lawyers employed full-time to implement the organisation’s objectives and policy decisions. ZLHR holds observer status with the African Commission on Human and Peoples’ Rights (ACHPR), forms the secretariat of the Human Rights Committee of the SADC Lawyers Association and has affiliate status with the International Commission of Jurists (ICJ).  ZLHR’s legal assistance, provided free of charge, has been hugely successful in defending CSO leaders and activists, and in challenging various laws that constrain the operations of CSOs. ZLHR also offers legal and security training to CSOs. While ZLHR has won several cases locally and before the ACHPR, in a number of cases government authorities have simply refused to comply with court orders. For example, in March 2013, police refused to release ZLHR member and lawyer, Beatrice Mtetwa, despite a High Court Order for her immediate release. Also, litigation is by nature confrontational, therefore more likely to increase tension between litigants rather than improving relations.  As an instrument of promoting an enabling environment for CSOs, legal representation and litigation have severe limitations and court action should always be a last resort action and discouraged in favor of other strategies of engagement. Beyond litigation, the focus should be on advocacy for the reform of restrictive laws and lobbying relevant government institutions. |
| **Case study from Colombia - False positives case study: How human rights organisations protect rights and promote democracy**  For many years NGOs received reports of deliberate executions of civilians by the Colombian army to bolster the idea that they were winning the war against the guerrillas. In 2004, this pattern of executions intensified. There were instances of army personnel altering the crime scene and sending photographs of executed civilians dressed as guerrillas to the press. These killings became known as “falsos positivos” (false positives).  Initially, both national and international governments were sceptical of the allegations and NGOs were accused of being subversive and anti-government. In order to combat this scepticism, NGOs began documenting and collating case material. They set up human rights workshops in remote communities together with regional and national observatories to collect and verify data. The system ran along the following lines:   * workshops in local villages * accompaniment of communities and victims in presenting cases to the authorities * increased complaints lodged with authorities * case details documented and passed to regional NGO observatories to collate and verify regional statistics * verified data passed to national NGO observatories to collate * national statistics and evidence compiled and used for advocacy work in national and international arenas with governments and the UN.   Eventually, the NGOs’ careful documentation of the cases and analysis reports prompted a visit, in 2009, of the UN Special Rapporteur on extrajudicial killings, Philip Alston. Lawyers from other countries also supported the Colombian NGOs, and accompanied them in the presentation of cases to the International Criminal Court (ICC). In its interim report, the ICC confirmed that: “there is reasonable basis to believe that [the false positives cases] were committed pursuant to a policy adopted at least at the level of certain brigades within the armed forces, constituting the existence of a state or organisational policy to commit such crimes.”(ICC, 2012:9)  Following the dramatic drop in 2009 in the number of reported cases of “falsos positivos” and the beginning of criminal investigations against the army personnel responsible, NGOs experienced an improvement in their working environment. They also felt that their legitimacy at an international level - which had been brought into question by the delegitimisation of their work by the Colombian authorities – was greatly improved.  The leaders from the focus group in Arauca explained that, following the prosecution of army personnel for false positives, their working environment improved because the army no longer believed they had total impunity for every action. However, they qualified this by saying that while there were far fewer killings, criminalisation and harassment continued. |

**Recommendations:**

***For donors:***

* Enhance the protection of CSOs and human rights defenders (HRDs) who face everyday security risks and support them to protect themselves and their organisations and to manage the accompanying stress

***For national governments:***

* Protect human rights defenders and CSOs from attacks while they are performing their legitimate and public duties. Safeguard the right to peaceful assembly and investigate and prosecute attacks or repression of HRDs or CSOs
* Hold security forces responsible for aggressive repression of social protest, effectively investigate and prosecute human rights violations
* Adopt Human Rights Defender laws that guarantee the rights contained in the Declaration on Human Rights Defenders

***For all governments:***

* Promote the implementation of the UN Guiding Principles on Business and Human Rights and other existing standards by states and business entities, and adopt and implement a binding treaty which would require states to ensure that companies prevent, stop and redress adverse negative human rights impacts wherever they operate

***For civil society:***

* Work together to strengthen security and protection mechanisms for CSO leaders and HRDs at risk, including those advocating for the rights of women, sexual minorities and indigenous groups

**Stigmatisation and defamation**

Another main finding of the study was the fact that in all countries, civil society actors fear to be stigmatized. Those promoting human rights, sustainable and social development, and accountability of power holders and business are in many contexts labelled as “political opposition”, “partisan”, “foreign agent” or even “terrorist”. Defamation and stigmatisation question the motivation behind their engagement and activities, and discredit their work and achievements in the societies they live and work in. Also, illegitimate restrictions for civil society and the crackdowns for civil society actors are often done under the pretext of the 1) protection of national security (to counter the growing threat of terrorism), 2) defending national sovereignty (from the influence and perceived interference of foreign funders), 3) protecting traditional and religious values and norms (limiting equality and rights for marginalized and vulnerable groups), 4) supporting economic growth and development (manifesting a narrative that development can be achieved without human rights and that human rights undermines ‘progress’). State controlled media often plays a big role in this.

A recent ad hoc working group comprised of Business & Human Rights Resource Centre, Global Witness, ILGA, Amnesty International UK, Front Line Defenders, CIVICUS, and Just Associates identified key trends relating to the effort and effect of narratives to defame or criminalize civil society actors and human rights defenders. They are connected to local, national and global processes, including some that are found and relevant in countries that are typically considered to be human rights or civil society friendly and have the following impact on civil society actors:

* Multiple violations of human rights, including high number of killings of human rights defenders and their families and communities (e.g., forced evictions);
* gender-based violence including domestic violence, sexual violence against women and LGBTI defenders
* self-censorship, silencing of defenders and civil society;
* fear and insecurity, emotional toll – anger, grief, hopelessness;
* derailment and demobilisation (e.g., activists leave the country);
* increased work and burden on defenders having to exert extra efforts for protection and security in addition to advocating for human rights
* stronger resolve and strengthened alliances among defenders and across sectors “as a matter of instinct and survival”[[6]](#footnote-6)

The strongest defence against attempts of stigmatisation is a civil society deeply rooted and respected in the communities, and openly appreciated by the political system and the market. Media and social media are crucial factors. Stigamtisation of civil society can best be addressed by strong counter narrative from broad civil society coalitions, supportive religious and traditional leaders, social movements and other strong and respected individual voices to mobilise strong public support. Counter narrative always is very context specific. It should focus on showing the legitimacy and the positive impact of civil society and including the work of civil society organisations work on human, political and economic development, environment, political culture and human rights.

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| **Santurbán Páramo case study from Colombia - How social protest can create positive and strong counter narrative and bring about change**  A páramo is a unique alpine ecosystem protected under Colombian law. Ambiguities in the law led to the granting of many mining licenses in the Santurbán Páramo, Santander and North Santander region over the last decade. Fearful of water pollution by mines, negative impacts on food production and social issues, 40 local groups set up the Committee for the Defense of Water and the Santurbán Páramo.  The group realised that it would be important to educate people about the impacts of large-scale open pit mining because of the misinformation from the MNC mining there. To start their campaign, the committee collected scientific information regarding environmental damage and created educational materials. A campaign ‘for the protection of the water’ began. Social protest in Colombia is often violently repressed and frequently stigmatised as being linked to left wing guerilla groups. This is dangerous and reduces the number of people wanting to be involved. Wishing to avoid this, the campaign used a positive campaign slogan ‘the protection of the water’ to run alongside their educational approach. This avoided stigmatisation and meant they gathered a broad base of support from local authorities, student groups, environmentalists, human rights organisations and local businesses. The committee helped organise protection for those who received threats. In an effort to avoid repression and stigmatisation of street demonstrations, organisers used a carnival theme celebrating the right to water and had carnival floats and flags. The atmosphere and theme of the event prevented security forces seeing it as ‘social protest’ and taking their usual repressive approach but enabled the committee to get their message across and into the national press. The local authorities, who had been strongly in favour of the mine, slowly began to change their opinion of the benefits of the extractive industry as they learned of the negative impacts from the campaign. They also observed that the mining corporation had reneged on initial commitments regarding labour rights and other social issues. The local authorities set up a roundtable with CSOs to consult on solutions.  The committee also used national and international mechanisms to raise their concerns. The World Bank Group accepted their request to evaluate its investment in Eco-Oro Minerals’ Angostura mining project. A complaint submitted to the Compliance Advisor Ombudsman (CAO) means that a review of an allegation that the World Bank failed to evaluate the project’s social and environmental impacts is also underway.  Public awareness of the case forced Eco-Oro to suspend their plans for an open pit mine and they are currently reviewing their options. |

**Recommendations:**

***For donors:***

* Support learning across countries in relation to the experiences of formal mechanisms for civil society dialogue and other means to influence change

***For national governments:***

* Protect human rights defenders and CSOs from intimidation, harassment or attacks while they are performing their legitimate and public duties. Safeguard the right to peaceful assembly and investigate and prosecute attacks or repression of HRDs or CSOs

***For civil society:***

* Ensure accountability towards communities, sustaining close linkages with them through the use of participatory and popular education methodologies that promote genuine participation and empowerment of men, women and children
* Build alliances between CSOs and faith-based organisations to protect civil society space. Bridge the gap between those who work on ‘development’ and those who work on human rights and social justice
* Work together in creative ways to show the positive effects of civil society achievements for the society and its development and make them heard by media, social media and the broader public

**Legislative regulation of civil society**

The current trend in civil society legislation is decidedly negative. An increasing number of countries are adopting legislation designed to restrict the freedom of assembly and limit the operational space for civil society organisations. Especially those organisations involved in issues related to resources, gender identity, advocacy or human rights in general have been the targets of such legislation. The International Center for Not-for-Profit Law (ICNL) has estimated that 98 countries have introduced restrictive measures against civil society since the start of 2012[[7]](#footnote-7). While some regions of the world have seen more restrictive legislation enacted than others, the trend is clearly one of global proportions, and one that shows no signs of slowing down.

***Restrictions on funding:***

The recent trend on restricting foreign funding, has had a serious impact on the operationality of many civil society organisations (CSOs). Of the previously 98 initiatives to restrict civil society, an estimated one-third puts constraints on CSOs access to international funding[[8]](#footnote-8). These constraints often come in the form of restrictions on what percentage of annual contributions can be derived from non-national sources (such as Ethiopia’s Registration and Regulation of Charities and Societies Proclamation, which restricts any CSO that receives more than 10% of its annual financing from international sources from conducting any work related to advocacy or human rights), or restrictions that require prior Government approval before a CSO can receive funds from international sources (as examples both Bangladesh and Nepal require prior Ministerial approval before any international funds can be received by a CSO).

Restrictions on access to international funding constitutes a clear violation of the freedom of association, as confirmed by the UN Special Rapporteur on freedom of peaceful assembly and of association in his 2012 thematic report to the UN Human Rights Council[[9]](#footnote-9).

Restrictions on funding can have the most severe consequences on civil society. As funding from national sources for human rights work is virtually impossible in many countries, the result of such restrictions can lead to the total disappearance of CSOs working on human rights related issues in a country (as was the case in Ethiopia, where many CSOs were forced to close as a result of their inability to secure funding from a national source). There are very limited opportunities available for civil society, and unlike other restrictions, the impact of a restriction on international funding can most often not (in the absence of national funding sources) be lessened by adopting other measures to alleviate the impact. The only avenue for civil society is to work towards getting the restriction repealed. It is also an area where international support will often not have the desired effect as it will exacerbate the depiction of CSOs as “foreign agents” (a reference to civil society made popular by the recent developments in Russia). One alternative would be for CSOs to engage in income generating activities to ensure nationally sourced financial resources or engaging with local philanthropists. However, depending on the context and the nature of the CSO this may not be an option.

Often the best practice available to CSOs (short of relocating out of the country) will be to mount a campaign against such restrictions before they become enshrined into law, as was the case in Kenya and Kyrgyzstan, where civil society successfully lobbied, both publicly and privately, to ensure Parliament did not pass a restrictive NGO law. The coordination and solidarity amongst civil society in Kenya enabled a strong campaign that highlighted the negative consequences of the law and the important role of civil society in Kenya.

J**oint Co-ordination and Public Mobilisation to Halt a Restrictive NGO Bill in Kyrgyzstan**

Kyrgyzstan

In January 2012, two Members of Parliament in Kyrgyzstan introduced the first draft law “On foreign aid to the Kyrgyz Republic” for the Kyrgyz Parliament’s consideration. The draft law included regulations that could restrict funding to Kyrgyz NGOs from international sources, seemingly inspired by a similar law adopted by the Russian Parliament, and accorded extensive powers to the executive authorities.

Soon after the draft law had been put on the agenda of the Parliament, a working group that brought together both local civil society organisations, international organisations and international donors was formed. An advocacy plan was created that included a wide range of activities: raising public awareness about the draft law and its negative impact on the civil society in Kyrgyzstan and the groups with whom they work; a civic engagement component that would help demonstrate public opposition to the Bill and put pressure on decision-makers; holding meetings with key members of Parliament who could influence decision-making within their different political groups; public hearings to inform Kyrgyz legislators of the legal, public, and international opinion on the Bill; and writing letters to key decision- and opinion-makers, including the Speaker of the Parliament, the President, and the mass media. Specialized legal organisations conducted sound legal analyses of the draft law, assessing the degree to which the law was in keeping with international human rights law. An email list serve kept all stakeholders regularly and timely updated on the progress of the draft law.

The campaign successfully attracted attention of the international community due to its effective information strategy. The public was effectively engaged: 10.000 signatures were collected from the public appealing to the Parliament to reject the draft law. The petitions were subsequently passed to the Speaker of Parliament and were published on internet media. The working group divided responsibilities for conducting meetings with all key Members of Parliament. In total, 27 individual meetings with Deputies of various parliamentary groups were carried out. The working group together with a specialized international organization organized a public hearing to discuss the draft law “On foreign aid”. More than 100 participants representing the President’s Office, the Government, the Kyrgyz Parliament, international organizations, and local civic organizations were in attendance. Legal opinions of the law were presented, speeches from high-rank international organizations and embassies in Kyrgyzstan were given, and feedback from civil society organisations was presented.

The draft law was withdrawn by Parliament in April 2012. Partners consider that the campaign was successful due to a prompt, well-organized, and joint reaction of local and international organizations working in Kyrgyzstan; the visible public support provided through petitions; and the sound and reliable legal analysis provided of the draft law itself which resounded internationally. However, a number of new attempts have since been made and continue to be made to limit activities of Kyrgyz CSOs and local and international efforts continue in this regard.

***Government oversight and excessive bureaucratic requirements:***

Many examples of restrictive CSO legislation include examples of excessive government interference with the governance of CSOs or unduly burdensome bureaucratic requirements for registration of CSOs. Such restrictions are often characterised by Government oversight over CSO budgets and various bureaucratic measures such as mandatory registration coupled with lengthy delays in dealing with applications for registrations and vague or restrictive requirements for registration coupled with wide, un-checked powers delegated to the overseeing Government authority to deny applications at whim. As examples the Malawi NGO Act requires NGOs to produce a statement that “the NGO shall not engage in partisan politics, including electioneering and politicking”[[10]](#footnote-10). In Zimbabwe, the Private Voluntary Organisations (PVO) Act grants the Minister of Labour and Social Services the power to approve NGO applications for registration or to de-register NGOs deemed to have violated the law. Under the PVO law, registration is mandatory, the registration process is needlessly complex, there no agreed time period for government review of applications, the authority granted to the Minister allows his ministry to inspect all activities and internal governance of CSOs and all CSOs must sign memorandums of understanding with the government, with significant financial costs involved. In practice the PVO law has been used by government to pressure CSOs into desisting from certain activities it deems politically partisan and arrests of intimidation of human rights defenders remains common place.

The above are symptomatic of approaches taken by many governments to CSO registration and oversight. Criminalising CSOs that are not registered is a direct violation of the freedom of association. Likewise, the lack of clear (short) time limits for responding to registration applications and the lack of clear criteria for denying an application must also be considered highly problematic when compared to the rights and obligations of the freedom of association, as confirmed by the UN Special Rapporteur on freedom of peaceful assembly and of association[[11]](#footnote-11).

Once again CSOs are faced with very few options in finding ways to continue to carry out their activities when faced with the above limitations. This holds especially true since such bureaucratic requirements as those described above or often used by governments to target CSOs they wish to silence, a prejudice that often means the practice deriving is often more limiting than the law from which this practice derives.

Of course CSOs can adopt best practice in relation to their own internal governance and finances, by ensuring full transparency and adhering to the Istanbul CSO Development Principles[[12]](#footnote-12). By ensuring that they are fully accountable to their beneficiaries and that their internal governance remains transparent and effective, CSOs can pre-empt any government interference and can expose any such interference as a result of purely political motivations.

***Freedom of assembly***:

The right to peaceful assembly forms a cornerstone of any democracy. Yet as with freedom of association the global trend is decidedly towards limitations of this right.

In the four countries covered by the ACT Alliance/CIDSE study, all four countries had severe limitations of the right to peaceful assembly[[13]](#footnote-13), with Malawi being an exception as the context has changed in a positive manner since the change in Government in 2012, although restrictions still occur. In Zimbabwe, an overwhelming majority of the civil society leaders interviewed for the study stated that it was almost impossible to organise peaceful demonstrations or hold peaceful meetings in the community, if these are in any way seen to be critical of government policy. In Rwanda, peaceful assemblies critical of the government does not even seem to be a consideration of CSOs in the current context, as it would most certainly have consequences for the organisations involved. In Colombia, the use of arbitrary detention and excessive use of force by police and security forces in relation to peaceful protests remains a concern.

The growing trend of limiting peaceful protest is a worrying and it can have significant impact on other rights, such as the right to freedom of expression and the right to information, as well as the physical security of members of civil society organisations and members of the general public.

**Recommendations:**

***For Governments:***

* Ensure that any civil society legislation does not put limitations on funding sources for CSOs or includes excessive bureaucratic requirements, in line with the State’s obligations under the right to freedom of association
* Ensure broad civil society consultation on any new proposed civil society legislation
* Seek advice from internationally recognised experts, such as the UN Special Rapporteur on freedom of peaceful assembly and of association, to ensure that any CSOs legislation is compatible with the State’s obligations under the right to freedom of association.
* Governments should desist from enacting any legislation that unlawfully limits the right to peaceful assembly, and national security should not be used as argument limiting this right, except for in instances allowed under the right to peaceful assembly as interpreted by international experts, such as the UN Special Rapporteur on freedom of peaceful assembly and of association.
* Governments should fulfil their positive obligation under the right to peaceful assembly, by actively facilitating the exercise of this right.

***For Donors:***

* Use all available diplomatic channels (both publicly and privately) to put pressure on Governments considering enacting legislation that violates the right to freedom of assembly.

***For civil society:***

* Ensure that their internal governance is fully transparency and adheres to the Istanbul CSO Development Principles
* Ensure CSO solidarity and provide a coordinated response to any proposed CSO legislation that would unduly limit the right to freedom of assembly
* Explore options for engaging in income generating activities to ensure nationally sourced financial resources or engaging with local philanthropists to secure funding from a national source
* Consider developoing and presenting alternative NGO bills in keeping with international human rights standards to counter government allegations that opposition to NGO bills is a rejection by CSOs to be accountable and transparent or identifying how existing leglisation adequately covers the issues
* Work through regional mechanisms (such as the African and Inter-American human rights systems) to get resolutions, model laws, and decisions on freedom of association and assembly regionally to counteract discourse that these issues are confined to Western interests

1. ACT Alliance is a coalition of more than 140 churches and affiliated organisations working together in over [140 countries](http://www.actalliance.org/where-we-work) to create positive and sustainable change in the lives of poor and marginalised people regardless of their religion, politics, gender, sexual orientation, race or nationality in keeping with the highest international codes and standards. Members are associated with the World Council of Churches or the Lutheran World Federation. [↑](#footnote-ref-1)
2. An international alliance of Catholic Development Agencies, with 17 member organisations from Europe and North America Working to challenge governments, business, churches, and international bodies to adopt policies and behaviour that promote human rights, social justice and sustainable development. [↑](#footnote-ref-2)
3. “Space for Civil Society” CIDSE & ACT Alliance. Full study available [here](https://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CCsQFjAC&url=http%3A%2F%2Fwww.cidse.org%2Fgeneral-content%2Fdownload%2F488_928fe9f39052dbe5da8c89069c4c9177.html&ei=tdSCVenKGoXX7Qa68YKABQ&usg=AFQjCNFPE1Soh2rm8zSv0VQ77ql-2G9g-Q&sig2=CAVQ-ek8GhgxF3HTHLvs7Q&bvm=bv.96041959,d.ZGU) or [here](http://www.actalliance.org/resources/publications/SpaceForCivilSociety.pdf) [↑](#footnote-ref-3)
4. European Commission, Communication COM (2012) 492 final [↑](#footnote-ref-4)
5. This analysis is confirmed by recent research results by organisations like Global Witness. In a report published in April 2015, they found that at least 116 environmental activists were murdered in 2014 - that's almost double the number of journalists killed in the same period.  40 % of victims were indigenous, with most people dying amid disputes over hydropower, mining and agri-business.<https://www.globalwitness.org/campaigns/environmental-activists/how-many-more/> [↑](#footnote-ref-5)
6. Developing counter narrative strategies to the closing down of civic space, Discussion document for Ariadne / IHRFG / EFC donor conference –, ‘Challenging the Closing Space for Civil Society’, Berlin, 11 – 12 June 2015 [↑](#footnote-ref-6)
7. “Aid Barriers and the rise of philanthropic protectionism”, Douglas Rutzen, International Journal of Not-for-Profit Law / vol. 17, no. 1, March 2015 / 5. Available [here](http://www.icnl.org/research/journal/vol17ss1/Rutzen.pdf) [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. <http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf> [↑](#footnote-ref-9)
10. “Space for Civil Society” CIDSE & ACT Alliance, page 40. [↑](#footnote-ref-10)
11. <http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf>, page. 14-16. [↑](#footnote-ref-11)
12. <http://www.interpeace.org/documents/international-dialogue/256-istanbul-cso-development-effectiveness-principles/file> [↑](#footnote-ref-12)
13. “Space for Civil Society” CIDSE & ACT Alliance, page 25 [↑](#footnote-ref-13)