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Freedom of Opinion and Expression and Sustainable Development – Why Voice Matters

Introduction

The exercise of free expression by civil society makes a crucial contribution to sustainable development, but this contribution is endangered not only by direct restrictions on free expression by civil society representatives, but by an array of other practices, threats, and restrictive measures that are combining to shrink the space in which civil society operates. Civil society organizations (CSOs), activists, and human rights defenders (HRDs), including environmental, land, and indigenous defenders, are at the forefront of efforts to shape national development priorities, exercise scrutiny over development projects, promote the participation of communities in decision-making, and raise awareness of tradeoffs and alternative pathways to

achieving development goals. In some contexts, governments and private sector actors have viewed civil society as partners in achieving sustainable development, but in all too many cases authorities and private actors have sought to stifle the free expression of civil society engaged on development issues, either directly or indirectly. Governments, international institutions and civil society, and private actors all have a role to play in countering this negative trend.

This submission represents a joint effort by twelve CSOs, based in Bolivia, Colombia, Democratic Republic of the Congo (DRC), Ethiopia, Indonesia, Mexico, Nepal, the Philippines, Uganda, and the United States.¹ The information presented in this submission was compiled amongst the participating organizations through a survey administered in January 2023 and an online discussion convened on January 24, 2023.

The participating CSOs stand available to answer any questions or provide any additional information that may be helpful to the Special Rapporteur.

Contributions of Free Expression by Civil Society to Sustainable Development

CSOs and civil society representatives, through the exercise of free expression rights, discharge several functions essential to achieving sustainable development.²

CSOs and activists identify and publicize development challenges, including ways in which development trends or initiatives may be leaving behind or disadvantaging marginalized or vulnerable groups; work with communities to develop and disseminate proposed solutions to these challenges; and monitor and investigate development programs and projects, including the impacts of such projects on local livelihoods, the environment, and public finances. In Uganda, for instance, civil society has played a leading role in demanding greater transparency from the authorities about sovereign debt obligations and the performance of debt-funded projects.³ In DRC, civil society engaged in advocacy and public awareness-raising to push back against proposals to open oil exploitation projects in Virunga Park, leading

¹ The participating organizations include: Red Unitas (Bolivia); Confederacion Colombiana de ONG (CCONG); Actions pour la Lutte Contre les Injustices Sociales (ALCIS) (DRC); Alerte congolaise pour l'environnement et les droits de l'homme (ACEDH) (DRC); Consortium of Ethiopian Human Rights Organizations (CEHRO); Indonesian Center for Environmental Law (ICEL); Alternativas y Capacidades, A.C. (Mexico); NGO Federation of Nepal; IBON International (Philippines); National Union of People's Lawyers (NUPL) (Philippines); Alliance for Finance Monitoring (ACFIM) (Uganda); and the International Center for Not-for-Profit Law (ICNL) (United States).

² See, e.g., Confederacion Colombiana de ONG (CCONG), *Contribuciones de las OSC al desarrollo* (2018), https://ccong.org.co/files/939_at_Contribuciones%20de%20las%20OSC%20al%20desarrollo.pdf.

³ Kenneth Kazibwe, "Civil society asks gov't come clear on debt transparency," Aug. 22, 2022, <https://nilepost.co.ug/2022/08/22/civil-society-asks-govt-come-clear-on-debt-transparency/>.

ultimately to the abandonment of these projects – and the development in their place of hydroelectric power projects supplying power to 80% of the regional population, and green economy initiatives providing livelihoods to more than 60,000 people.

Civil society often has specific technical expertise and community connections that allow CSOs and activists to produce and disseminate information that can valuably influence decision-making on development. The online Aid Observatorio, for example, is a CSO-initiated and maintained database of development projects that offers on-the-ground narratives and evidence-based analysis of development projects in fragile and developing countries.⁴ Civil society can also channel and represent the interests of communities in dialogue with national and local authorities, to shape development projects and programs towards equity and sustainability. In the DRC, thanks to citizen mobilization by civil society since 2013, authorities have adopted a national land policy that addresses the customary land rights of local communities, issues of climate justice and conservation of nature, the involvement of local communities, and the integration of new technology in the governance of land tenure.

Civil society promotes effective participation in international and domestic mechanisms meant to promote accountability and transparency in national development. For example, civil society participation and expression has been essential to the effective functioning of the Extractive Industries Transparency Initiative, the leading global standard for the good governance of oil, gas, and mineral resources. Civil society administers the EITI process (with industry and government) in implementing countries, and plays a critical role in publicizing data from the EITI process, highlighting failures to comply with EITI requirements, and mobilizing communities to demand better resource governance.⁵

By exercising free expression, civil society plays a particularly important role in promoting sustainable development in contexts with closing civic space. By continuing to advocate for sustainable development, for the inclusion of marginalized and vulnerable communities, for transparency and accountability, for environmental protection, and for opportunities for public participation, civil society reminds the public of its right to shape sustainable development in its collective interests. Civil society also highlights abuses committed by the authorities and private actors against activists and HRDs promoting sustainable development, especially those defending the rights of indigenous and local communities and advancing environmental

⁴ Reality of Aid, "Aid Observatorio," <https://realityofaid.org/cso-aid-observatorio/>.

⁵ EITI, "Civil society organisations", <https://eiti.org/civil-society-organisations>.

protection.⁶ Through its voice, civil society counters impunity and serves as a shield and node of mobilization to protect the activities of HRDs.

Threats to Civil Society Expression on Development Issues

Civil society engaging on issues of sustainable development faces a variety of threats, primarily from state actors but from non-state actors as well. In a survey of the organizations contributing to this submission, participants identified the following as the “top threats or restrictions affecting CSOs and civil society representatives engaged in reporting, analysis, advocacy, or organizing around issues of sustainable development” in their countries or regions:

- Physical and online threats, attacks, and harassment;
- Arbitrary detention and/or criminalization or judicial harassment;
- Stigmatization and negative discourse;
- Lack of access to information or opportunities for participation in public decision-making; and
- Restrictions on access to resources, including funds made available by the government.

Civil society representatives, activists, and HRDs continue to face **attacks and harassment** as a consequence of their advocacy and expression on issues relating to sustainable development. More than half of human rights activists killed globally in 2021, as documented by Frontline Defenders and the Human Rights Defenders Memorial, were land, environment, or indigenous rights defenders.⁷ In the Philippines, for instance, more than 400 politically motivated extra-judicial killings were documented during the six years of the Duterte regime, with the largest number of victims affiliated with peasant or farmers’ organizations.⁸

Civil society representatives and activists working to promote environmental protection, or to critically assess official development projects and initiatives, have been subject to **arbitrary detention, criminalization, and judicial harassment**. In recent months in the DRC, for instance, five land and environmental defenders were sentenced to 20 years imprisonment by the Military Court of Goma for purported association with criminals; and the CSO ACEDH has faced suit from authorities in

⁶ Examples of publications and monitoring tools maintained by civil society to highlight and push back against rights violations committed against HRDs include UNITAS’s Observatorio de Defensoras y Defensores de Derechos in Bolivia, <https://redunitas.org/observatorio/>, and CEMDA’s periodic reports on attacks against environmental and land HRDs in Mexico, see, e.g., <https://www.cemda.org.mx/el-cemda-en-el-mes-de-marzo-de-2022/>.

⁷ Front Line Defenders, *Global Analysis 2021* (Feb. 23, 2022), <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0>.

⁸ Human Rights Philippines, “Case Studies,” <https://humanrightphilippines.org/case-studies/>.

Goma, as well as physical attacks, following efforts by the organization to promote environmental protection and accountability in the region. In the Philippines, in 2022, police and military forces harassed and detained around 90 peasants and land rights advocates peacefully conducting *bungkalan* (self-organised community farming) in Luzon,⁹ while community and indigenous leaders opposing geothermal and mining projects have similarly been arrested and faced spurious charges.¹⁰

More specifically, governments have used cybercrime or defamation laws to curtail civil society expression on development issues. Thus, in 2021, indigenous activist Sarah Dekdeken was convicted of cyber-libel in the Philippines for criticizing the demolition of a monument recognizing community struggles against harmful infrastructure projects.¹¹ Defamation suits have also been weaponized by private interests to bring strategic lawsuits against public participation (SLAPPs) aimed at silencing criticism of their activities. In a survey of SLAPPs filed in the Global South, ICNL found that over half of the SLAPPs studied targeted environmental or environmental health advocacy, with another 30% seeking to punish advocacy on human rights or labor rights; the most common targets of these suits were activists and CSOs.¹² SLAPPs have been recently filed in Indonesia, for example, against community members protesting environmentally destructive mining projects.¹³

Counterterrorism legislation and regulations have also emerged as a potent weapon in the governmental arsenal for suppressing freedom of expression and preventing civil society discourse on sustainable development. In the Philippines, the Anti-Terrorism Act provides a broad definition of terrorism, where protest, dissent, and advocacy can be easily obfuscated with acts of terrorism and violent extremism. The law also grants vast powers to the Anti-Terrorism Council and the Anti-Money Laundering Council, which are empowered to designate groups and individuals as terrorists, and to inquire into bank deposits and freeze accounts on an *ex parte*, emergency basis.¹⁴ As 350.org

⁹ IBON International, "On the illegal, mass arrest of 92 peasants and advocates in the Philippines," June 10, 2022, <https://iboninternational.org/2022/06/10/mass-arrest-92-peasants-philippines/>.

¹⁰ International Work Group for Indigenous Affairs (IWGIA), "Activists are not terrorists: the criminalisation of human rights defenders in the Philippines," Mar 10, 2021, <https://www.iwgia.org/en/news/4036-activists-are-not-terrorists-the-criminalisation-of-human-rights-defenders-in-the-philippines.html>.

¹¹ Sherwin de Vera, "After cyber libel conviction, Igorot activist asks: Is telling the truth a crime?," <https://nordis.net/2022/12/02/article/news/after-cyber-libel-conviction-igorot-activist-asks-is-telling-the-truth-a-crime/>.

¹² International Center for Not-for-Profit Law (ICNL), *Protecting Activists from Abusive Litigation: SLAPPs in the Global South and How to Respond* (2020), <https://www.icnl.org/post/report/slapps-in-the-global-south-report>.

¹³ Haris Prabowo, "Hegemoni SLAPP: Saat Polisi-Jaksa Langgengkan Kriminalisasi," Sep. 13, 2022, <https://tirto.id/hegemoni-slapp-saat-polisi-jaksa-langgengkan-kriminalisasi-gv9l>.

¹⁴ Other measures in the Philippines complement the repressive operation of the Anti-Terrorism Act, including: the Terrorism Financing Prevention and Suppression Act, which penalizes financing terrorism (and has been used to file dozens of cases currently pending before the courts and the Department of Justice); the Note Verbale by the Department of Foreign Affairs, which requires the issuance of clearances for foreign grants to CSOs; and a

has noted, the Act “threatens the work of Filipino indigenous people, small farmers, artisanal fishers, forest workers, and environmental activists operating in one of the global frontlines of the ecological and climate crisis.”¹⁵

Authorities have engaged in **stigmatizing rhetoric and negative discourse** about civil society actors criticizing official development policies or programs. In Mexico, for example, CSOs and activists dissenting from the construction of the Tren Maya – which is projected to have significant negative environmental impacts¹⁶ – have been identified by the authorities as recipients of clandestine foreign funding serving the “cabals of the powerful.”¹⁷ In the Philippines, activists highlighting the environmental and social costs of development projects, or advocating for the inclusion of marginalized and vulnerable communities in decision-making, have been “red-tagged” as terrorists or Communist sympathizers.¹⁸ In these cases and others, stigmatizing rhetoric by the government has encouraged attacks against civil society representatives and HRDs, and supported a culture of impunity for these attacks.

There are positive examples of authorities creating opportunities for public participation and dialogue with civil society and communities on sustainable development. The government of the DRC, for instance, has involved civil society in the process of land reform and development of the national energy policy, and has also conducted multi-stakeholder dialogues on the situation of environmental defenders. By and large, however, governments afford **inadequate opportunities for public input and participation** on development decision-making. Thus, while selected CSOs were invited to take part in the Philippines’ Voluntary National Review in 2022, this participation did not represent the diversity of CSOs in the country, with critical and progressive CSOs sidelined. Moreover, there is limited inclusion of women, girls, youth, LGBT, and indigenous communities in spaces for decision-making, dialogue, or agenda formulation regarding sustainable development.¹⁹

Memorandum issued by the interior and local government, by which CSOs are required to show their legitimacy by securing clearances from the armed forces of the Philippines demonstrating that they have been cleared of participation in illegal or subversive activities.

¹⁵ 350.org, “Stand with Filipino Environmental Defenders against the Terror Law!,” <https://world.350.org/asia/junkterrorlaw/>.

¹⁶ Cassandra Garrison, “Collapse, contamination: Mexican scientists sound alarm at Mayan Train,” Jan. 4, 2023, <https://www.reuters.com/investigates/special-report/mexico-environment-train/>.

¹⁷ Michael Layton, “Mexican President Targets U.S. Philanthropy, but It’s Mexican Civil Society That Could Take the Hit,” Sep. 16, 2020, <https://johnsoncenter.org/blog/mexican-president-targets-u-s-philanthropy-but-its-mexican-civil-society-that-could-take-the-hit/>.

¹⁸ Bernice Beltran, “Philippine environmental defenders in the crosshairs of red-taggers,” Apr. 15, 2021, <https://earthjournalism.net/stories/philippine-environmental-defenders-in-the-crosshairs-of-red-taggers>.

¹⁹ UNDP, “World’s most marginalized still left behind by global development priorities,” Mar. 23, 2017, <https://hdr.undp.org/content/worlds-most-marginalized-still-left-behind-global-development-priorities-undp-report>.

Authorities have also sought to **restrict access to funding by civil society** in an effort to discourage independent and critical activity by these actors. In Uganda, in February 2021, authorities suspended the Democratic Governance Facility, a multi-donor fund, on the basis that the DGF's funds were being “used to finance activities and organizations designed to subvert [the] Government.”²⁰ In practice, the suspension of the DGF's funds has led to the closure of a significant portion of Ugandan civil society, handicapping its ability to engage in advocacy for sustainable development, environmental protection, or participation of marginalized groups in economic initiatives. In Mexico, allies of the governing regime introduced legislation in 2022 that would have barred CSOs receiving foreign funding from engaging in advocacy, following the 2019 issuance of a circular suspending the distribution of government funds to CSOs and other organizations. While the 2022 initiative was ultimately withdrawn, the reduced funding to CSOs and threat of further restrictions has chilled critical expression by civil society in Mexico, including on issues of development.

Finally, governments have imposed **requirements that CSOs align their activities with national development strategies**, thus abridging their ability to engage in independent advocacy, analysis, or awareness-raising. In Bolivia, Law 351 and Supreme Decree 1597 establish guidelines for the granting of legal personality to non-profit civil entities, requiring these organizations to specify in their statutes their “contribution to economic and social development,” “taking into account the guidelines established in national planning, national policies and sectoral policies.” Authorities have used these requirements to promote mandatory affiliation by CSOs with official development policy, upon threat of revocation of legal personality in case of non-compliance.

Recommendations to Key Stakeholders

Governments have primary responsibility for preserving space for civil society actors to exercise free expression on development-related matters and thereby contribute to sustainable development. International institutions, donors, and international civil society all have important roles to play in protecting and expanding this space, as well.

Governments should reform laws and other measures restricting the exercise of free expression rights on matters of sustainable development by civil society actors. This includes revising or removing measures criminalizing or penalizing protected expression, such as cybercrime or criminal defamation laws, and implementing mechanisms designed to prevent abuse of legal process by private actors seeking to

²⁰ Freedom House, “Uganda: Suspension of Democratic Governance Facility Highlights Growing Concerns,” Feb. 4, 2021, <https://freedomhouse.org/article/uganda-suspension-democratic-governance-facility-highlights-growing-concerns>.

suppress critical speech (such as early dismissal procedures aimed at short-circuiting SLAPPs). Governments should also address laws and practices tending to constrict space for civil society to operate and engage in expression and participation, including on matters of sustainable development. This includes:

- revising anti-terror and other security legislation to tighten vague definitions and limit broad authorities enabling the misuse of these measures against civil society, and ensuring due process protections for all those charged or designated under such legislation;
- promoting accountability for attacks on defenders and civil society actors;
- refraining from stigmatizing or abusive rhetoric about civil society; and
- liberalizing restrictions on civil society access to funding.

Governments must also create and expand spaces for civil society representatives and community members to offer perspectives and shape decisions on development priorities, pathways, and mitigation measures, including for environmental protection. Authorities should promote the full inclusion and empowerment of representatives of marginalized and vulnerable communities, including women, girls, youth, LGBT, and indigenous civil society representatives, in these mechanisms.

International institutions, civil society, and donors should provide financial, diplomatic, and technical assistance to CSOs and activists, especially in environments with restricted civic space. This assistance can aim to, *inter alia*: promote adoption of enabling legal frameworks; build civil society capacity and resiliency; and highlight cases of activists subject to threats, attacks, and repression. These actors should ensure that international fora and policy processes include space for local civil society actors to participate and influence decisions that will impact development efforts in their countries. Bilateral and multilateral donors should adhere to the OECD DAC *Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*²¹ and promote its full implementation by incorporating the Recommendation's principles into policies and development strategies, while ensuring that these principles form the basis for cooperation in partner countries. International standard-setting bodies such as the Financial Action Task Force (FATF) and its regional bodies should adopt and revise policies and guidance, and conduct country evaluations, to ensure that anti-terror or anti-money laundering rationales are not deployed to restrict space for civil society to exercise fundamental freedoms.

²¹ Organisation for Economic Cooperation and Development (OECD), *DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* (2021), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5021>.

Private actors should collaborate closely with civil society to assess the consequences for sustainable development and human rights of proposed projects and transactions, through fully consultative and inclusive participation of affected communities, and should refrain from entering into partnerships with companies known to have caused or facilitated human rights abuses, including those aimed at stifling free expression. Such actors should refrain from abusive rhetoric or actions, including repressive use of legal process, and should lend support to legal defense of civil society representatives facing criminalization or judicial harassment for exercising free expression rights on matters relating to sustainable development.