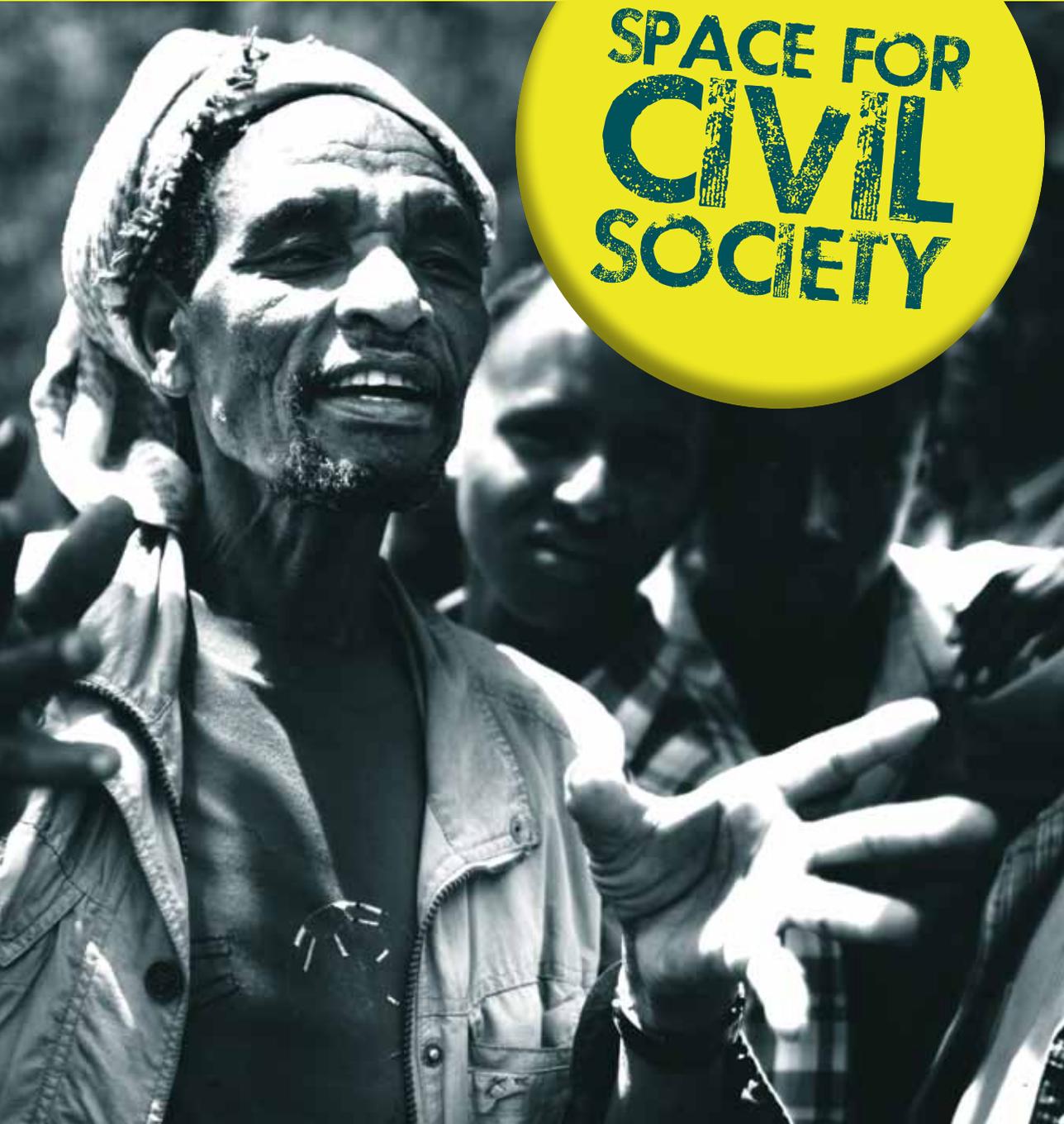


HOW TO PROTECT AND EXPAND AN ENABLING ENVIRONMENT

SPACE FOR  
**CIVIL**  
SOCIETY



**actalliance**

**CIDSE**   
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Author attribution list	2
List of tables	2
List of abbreviations	3
Preface	4
Executive summary	7
Background	10
Methodology: a user's analysis	14
Main findings	19
Conclusions	30
Recommendations	33
Country findings	36
Malawi	36
Rwanda	55
Zimbabwe	71
Colombia	86
Bibliography	103
Appendix 1	108
Appendix 2	111

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**actalliance**

ACT Alliance is a coalition of more than 140 churches and affiliated organisations working together in over 130 countries to create positive and sustainable change in the lives of poor and marginalised people.

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together for global justice  
ensemble pour un monde de justice  
juntos en pro de la justicia global

## **AUTHOR ATTRIBUTION LIST**

Kerrie Howard (Methodology)

Sive Bresnihan

Dewa Mavhinga

Professor Wiseman Chirwa

Billy Mayaya

Louise Winstanley

## **LIST OF TABLES**

Table 3.1: Demographics of survey responses (page 15)

Table 3.2: Organisational size of survey responses (page 15)

Table 3.3: Examples of survey scales (page 16)

Table 3.4: Method for quantifying data (page 17)

The analysis and proposals presented in this research paper do not necessarily reflect the views of all CIDSE and all ACT Alliance members. Limitations of the methodology of the study are highlighted on page 13.

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## LIST OF ABBREVIATIONS

**ACHPR:** African Commission on Human and Peoples' Rights

**AIPPA:** Access to Information and Protection of Privacy Act

**AMIR:** Association of Microfinance Institutions in Rwanda

**AU:** African Union

**CADECO:** Capacity Development Consultants

**CCEEU:** Coordinación Colombia Europa Estados Unidos (Colombian EU Coordination Platform)

**CEDAW:** Convention on the Elimination of All Forms of Discrimination against Women

**CEDEP:** Centre for the Development of People

**CHRR:** Centre for Human Rights and Rehabilitation

**CIVETS:** Six favoured emerging markets, namely, Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa

**COCOF:** Conseil Consultatif des Femmes (Consultative Council of Women)

**CODHES:** Consultoria para los Derechos Humanos y el Desplazamiento (Consultancy on Human Rights and Displacement)

**CONGOMA:** Council for Non-Governmental Organisations of Malawi

**CNRG:** Centre for Natural Resource Governance

**CSO:** Civil Society Organisation

**DDP:** District Development Plans

**DMPGs:** Development Partner Coordination Groups

**DPMs:** Development Partners' Meeting

**DELTA:** Development Education and Leadership Training in Action

**EACSO:** East Africa Civil Society Forum

**EDPRS:** Economic Development and Poverty Reduction Strategy

**EFZ:** Evangelical Fellowship of Zimbabwe

**EITI:** Extractives Industries Transparency Initiative

**EPOIZ:** Ecumenical Peace Observation Initiative in Zimbabwe

**ESMAD:** Anti-riot police

**FARC:** Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia - People's Army)

**FBO:** Faith-Based Organisation

**GPA:** Global Political Agreement

**HDI:** Human Development Index

**HOCDZ:** Heads of Christian Denominations in Zimbabwe

**HRD:** Human Rights Defender

**IACHR:** Inter-American Commission on Human Rights

**ICA:** Interception of Communications Act

**ICC:** International Criminal Court

**ICCPR:** International Covenant on Civil and Political Rights

**ICESCR:** International Covenant on Economic, Social and Cultural Rights

**ICNL:** International Centre for Not-for-Profit Law

**IDPs:** Internally Displaced Persons

**IHL:** International Humanitarian Law

**JADF:** Joint Action Development Forums

**LGBTI:** Lesbian, Gay, Bisexual, Transgender/ Transsexual and Intersexed

**MDC:** Movement for Democratic Change

**MDGs:** Millennium Development Goals

**MFIs:** Micro-Finance Institutions

**MGDS:** Malawi Growth and Development Strategy

**MNC:** Multi-National Company

**NGO:** Non-Governmental Organisation

**OECD:** Organisation for Economic Cooperation and Development

**OHCHR:** Office of the High Commissioner for Human Rights

**OPC:** Office of President and Cabinet

**PAC:** Public affairs Committee

**POSA:** Public Order and Security Act

**PVO:** Private Voluntary Organisation

**RCSP:** Rwanda Civil Society Platform

**RDB:** Rwanda Development Board

**RGB:** Rwanda Governance Board

**RPF:** Rwanda Patriotic Front

**SADC:** Southern African Development Community

**SANGONET:** Southern Africa NGO Network

**SWG:** Sector Working Groups

**UNCESCR:** United Nations Committee on Economic, Social and Cultural Rights

**UNDP:** United Nations Development Programme

**UPR:** Universal Periodic Review

**WOZA:** Women and Men of Zimbabwe Arise

**ZANU-PF:** Zimbabwe African National Union - Patriotic Front

**ZCBC:** Zimbabwe Catholic Bishops

**ZCC:** Zimbabwe Council of Churches

**ZLHR:** Zimbabwe Lawyers for Human Rights

The presence of a vibrant, strong and free civil society is essential in order to guarantee sustainable 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. It is a role that has been acknowledged by the Accra Agenda for Action (2008) as integral to driving aid and development effectiveness, and reaffirmed by the Busan Partnership for Effective Development (2011).

At the same time, civil society organisations and human rights defenders all over the world face considerable risks and restrictions, particularly when they promote democracy, human rights and social justice. Governments adopt policies, institute funding modalities and enact legislation that in many cases is not conducive to forwarding the interests of civil society organisations. There are even cases where civil society activists have been criminalised for their advocacy roles in sensitive areas, such as extractives, natural resources and human rights.

Drawing on the input of their members and partners in the field over the last few years, the faith-based networks, ACT Alliance and CIDSE, have been assessing political and social developments that have had an impact on the space for civil society. In 2013, the two networks decided to jointly explore and record the enabling and disabling conditions under which local civil society organisations operate in Colombia, Malawi, Rwanda and Zimbabwe. The aim was to document the perceptions of a wide range of civil society and so better understand the strategies civil society uses to engage and protect their space, even in restrictive environments.

This study is the outcome of a research process that involved more than hundred organisations - from community-based to leading regional and national bodies - representing a wide range of civil society actors working in the field of development and human rights.

Our research shows that the work of civil society organisations is increasingly carried out in a climate of fear where people are subjected to harassment, censorship and inequitable legislation. In three out of the four countries studied, peaceful assembly and political participation is becoming more difficult. In all four countries, governments have failed to meet their commitments to protect the space for civil society and to provide it a role in the design of development policies. Legislation governing civil society organisations has become progressively more restrictive in some countries, with the enactment of new laws or amendments that curtail civil society activities and compromise their autonomy. These include excessive and expensive administrative procedures and/or the prohibition of foreign funding sources especially in the areas of advocacy, human rights or other

“sensitive” issues. Restrictions in funding are perceived by civil society organisations as tied to the demands of the aid effectiveness agenda, and as an attempt to limit their role to implementers of development agendas rather than as development actors in their own right.

This is a particularly concerning trend since, for development efforts to be effective, it is essential that communities are empowered to lead their own development programs or to participate in government-led projects.

In spite of these challenging conditions, the report documents some best practices where civil society has succeeded in protecting or even expanding their operating space. It illustrates approaches that have had a positive impact on the enabling environment of civil society, presenting strong recommendations for effective action. The report describes how alliances between civil society organisations can increase their legitimacy and influence in national planning and policy making by raising issues together and sharing information and learning. Joint action is also essential to strengthen security and protection mechanisms for civil society leaders and human rights defenders.

It is not sufficient, however, for civil society to be left alone in securing and strengthening an enabling environment. A wide range of stakeholders, including the international community and donor countries, are required to act to ensure the role of civil society organisations as “actors in their own right” is guaranteed and protected, and respect for human rights, democracy and sustainable development secured. This report also provides clear recommendations for donors and governments to strengthen and secure an enabling environment for civil society.

ACT Alliance and CIDSE are committed to advancing these recommendations and to ensuring that they will be brought to the attention of governments and the international community. It is of utmost importance that all laws and regulations restricting civil society activity are amended to ensure the independence, participation and freedoms to which civil society actors are entitled. It is likewise essential that governments involve civil society organisations in the design and implementation of development plans. In particular, efforts should be directed at ensuring that indigenous groups, women’s organisations and other marginalised and disadvantaged groups are able to participate meaningfully in the decision-making processes.

Working with many civil society organisations and networks over the years, it is our belief that sustainable development and democracy cannot be achieved in the absence of a robust and independent civil society or respect for human rights and human dignity.



Bernd Nilles  
**SECRETARY GENERAL CIDSE**



John Nduna  
**SECRETARY GENERAL ACT ALLIANCE**



# Executive summary

In many parts of the world, the work of civil society organisations (CSOs) is becoming increasingly dangerous. Civil society actors speak out against social injustice, despite threats to personal security, to defend the human rights of others and to protect the freedoms that constitute a democracy. They hold governments and policy makers to account with the aim of upholding the basic freedoms and rights to which everyone is entitled.

In order to operate effectively, civil society must have the space to speak out, to educate, to mobilise and to ensure that everyone can participate in the democratic processes of their country. Across the world, however, trends are emerging that see the space for civil society shrinking or even disappearing. If these trends are not stopped, the damage to sustainable democracy, peace and development would be unimagable.

It has long been acknowledged that a strong and vibrant civil society is a key component of sustainable and legitimate development. Without it, development plans are less likely to achieve their objectives and people are more likely to suffer through inequitable growth and policies that fail to address their needs.

The world's governments have made high level commitments, for example, at the Fourth High

Level Forum on Aid Effectiveness in Busan, to enable a rights-based and participatory environment necessary for civil society to thrive. In many cases, however, their commitments are not being transformed into reality at the community level. In fact, many CSOs and human rights defenders continue to experience increased restrictions on their activities and funding, intimidation, excessive use of force, arbitrary detention, enforced disappearances and extrajudicial killings.

It is a matter of great importance to highlight these issues and to call on governments and international institutions to urgently address them. With this in mind, CIDSE and the ACT Alliance have jointly commissioned this research to document the trends in Malawi, Rwanda, Zimbabwe and Colombia as indicative of a wider phenomenon. This report draws on interviews and focus groups in each of the four countries, and provides CSOs with the opportunity to analyse the environment in which they work.

The survey, involving CSO leaders and focus groups of CSO staff, reveal some disturbing findings about the environment in which CSOs are working. Framed around the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human

Rights [including the right to development] and Fundamental Freedoms, the research confirms that these rights are interdependent and that if one right is curtailed, it has a negative impact on the others. The report also describes the ways in which CSOs perceive the enabling environment to have changed, in relation to these rights, over the past five years.

The findings illustrate a pronounced difference between government commitment to involve CSOs in the design and implementation of development policy and plans, and the actual experience of CSOs in all four countries. In Rwanda, locally embedded organisations are negotiating their participation with some success and, in Colombia, social mobilisation and movement has been an effective means of getting the attention of local government. But overall, the picture is of top down development which excludes community voices and perspectives and delivers weak, unsustainable results.

The climate of fear in which many CSOs operate makes development and human rights work extremely difficult. In addition to insecure working conditions, CSOs are routinely stigmatised for working on issues that challenge prevailing social norms, notably around sexual minorities. The survey also showed that people do not feel free to assemble peacefully. Given the role of protest in the struggle for peace and justice, such a development is a matter of concern.

Funding is another contributory factor to diminishing civil society space in recent times. The combination of the financial crisis and a tendency of states to restrict foreign funding for CSOs working on 'sensitive' issues, such as human rights, make the future of CSOs uncertain. In some cases, CSOs conform to the agenda of international donors, sometimes at the expense of their own aims and objectives. They also struggle with the increasing workload that comes with both applying for and administering international donor funds. However, with few alternative funding streams available, many CSOs feel that they will be forced to change the focus of their work in the future.

Legislation around CSO activities has become increasingly restrictive in some countries with new laws being introduced or amended to target the work done by CSOs. Some countries are introducing administrative processes that are either prohibitively expensive, restrict the receipt of funding from international or foreign organisations, or force organisations to compromise their standards of autonomy. For smaller CSOs in particular, capacity is an issue when engaging with government, accessing funding or making their voice heard.

The picture, however, is not entirely negative. In response to restrictive environments, many CSOs have been innovating and adapting and, as a result, helping to strengthen or even expand their operating space. As well as gathering data on the ways in which governments have reduced civil society space, this report also aims to document and analyse

approaches that have had a positive effect on the enabling environment. Innovative approaches to co-operation and collaboration in Malawi, Zimbabwe, Rwanda and Colombia have seen CSOs find a stronger voice, a greater ability to access funds and strengthened capacity. This has enabled them to resist governments questioning their legitimacy or threatening their very existence.

Strong recommendations for action have emerged from the findings of this report. It is our strong belief that in order to secure sustainable development, peace and democracy, it is vital that stakeholders act now.

1. Information is power. CSOs need to work together to gather and analyse data to support their objectives and provide evidence of human rights abuses.
2. Formal and informal coalitions are vital for sharing learning and information, raising issues, increasing legitimacy and influence, and securing funds. Coalitions need to reach across internal, national, international and sectoral divides to optimise their potential.
3. Donors must refrain from burdening CSO partners with excessive demands for planning and reporting since this serves to make organisations ultimately more accountable to donors than to local communities.
4. CSOs, human rights defenders, independent journalists and lawyers need protection as well as ongoing risk analyses and support strategies to mitigate the risks to themselves and/or their organisations.
5. Development policy making must systematically involve CSOs and indigenous and minority groups.
6. CSOs must build and sustain close links with their communities through participatory and popular education methodologies so that the loudest voices on laws and policies come from citizens.
7. Funding policies and practices must strengthen CSO capacity to operate independently. CSO/donor partnerships need to be based on equal partnership, and not just on funding agreements.
8. Policy should be designed to assist CSOs in generating local and independent revenue streams, and may include incentives for philanthropists and businesses to engage in corporate social responsibility.
9. All laws that restrict NGO activity and are inconsistent with international human rights law must be repealed. CSOs need to have the independence and freedoms to which they are entitled under these laws.
10. The right of citizens to peacefully assemble, march and protest on matters of public concern must be safeguarded, in law and in practice.
11. Security forces responsible for the aggressive repression of social protest or human rights activity must be investigated and prosecuted.
12. Effective systems to manage funds in an accountable and transparent manner must be put in place.



# Background

International organisations and fora have repeatedly underscored the need for a vibrant, strong and free civil society to ensure the achievement of sustainable human development.

The Busan Partnership for Effective Development Cooperation, signed at the Fourth High-level Forum on Aid Effectiveness in Busan in November 2011, states that civil society organisations (CSOs) “play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation” (2011: para. 22). The new European Union approach to engaging with CSOs in external relations has a similar emphasis: “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” (European Commission, 2012: para. 1.1).

Both policy documents include commitments to ensuring an enabling environment for CSOs. The European Union communication also highlights important aspects of an enabling environment that are the primary responsibilities of the state. These include freedom of expression and association, the right to secure funding, access



to information and participation in public life (Forth High-level Forum, 2011: para 22 (a); European Commission, 2012: para. 3). Maina Kiai, the UN Special Rapporteur on the rights of peaceful assembly and association, reaffirmed the positive obligations on states to “establish and maintain an enabling environment” as part of their obligations under the right to freedom of association (2012: para. 63)

However, these commitments and obligations have often been followed by inaction on the part of the signatories and little has been done to alter the reality on the ground. Today, CSOs are faced with the challenge of working under increasing constraints as many governments limit their operational and political space.

These obstacles may be judicial or extrajudicial measures, ranging from restrictions on activities and funding to intimidation, excessive use of force, arbitrary detention, enforced disappearances and extrajudicial killings. Such challenges have been highlighted by numerous reports, based on in-country research, such as Trócaire’s 2012 report “Democracy in Action: Protecting Civil Society Space”, and ACT Alliance’s 2011 report “Shrinking political space for civil society actors”.

Across the world, human rights defenders (HRDs) are routinely harassed, physically assaulted, arbitrarily detained and even executed. The 2013 Frontline Defenders Annual Report highlighted the continued trend of

extrajudicial killings of HRDs, as well as the high number of physical attacks, judicial harassments and reprisals against HRDs across all regions. One victim of extrajudicial killings was Chut Wutty, a prominent environmental activist, who was shot dead by military police while investigating illegal logging and land seizures in Cambodia.

Adaptations of new NGO laws in recent years have imposed severe administrative restrictions on CSOs, particularly those working on advocacy or human rights issues. They bestow sweeping discretionary powers that enable government agencies to ban CSOs from working on certain issues, such as human rights, and to dissolve CSOs arbitrarily with no independent oversight.

The issue of funding has become a key concern as states restrict foreign funding to prevent CSOs from working on “sensitive” issues, such as human rights. In his latest thematic report, Maina Kiai states that CSOs are currently facing “increased control and undue restrictions” on funding and that limiting foreign funding under the guise of protecting of “state sovereignty” does not justify restrictions on freedom of association. He adds: “Affirming that national security is threatened when an association receives funding from foreign source is not only spurious and distorted, but also in contradiction with international human rights law” (2013: para. 30).

Increasingly, states are curtailing the work of CSOs by imposing excessive administrative requirements and depriving them of funding opportunities by limiting foreign funding in areas where domestic funding is not available. Two examples include legislation, such as

the Ethiopian Proclamation to Provide for the Registration and Regulation of Charities and Societies (enacted in 2009) and the 2012 amendments to Russian law that require all recipients of foreign funding to register as “NGOs carrying functions of foreign agents”. Laws along similar lines are currently under consideration elsewhere as more states move to crack down on civil society. The proposed amendment to the Kenyan Public Benefit Organisation Act of 2012, which would have imposed restrictions comparable to the Ethiopian proclamation, was blocked by the Kenyan Government after extensive protest in Kenya and international criticism. In South Sudan, an NGO law, currently being discussed by parliament, seeks to impose similar restrictions. While in Bangladesh, the draft Foreign Donations (Voluntary Activities) Bill, proposed in 2012 by the Bangladesh NGO Affairs Bureau, contains a number of provisions aimed at limiting foreign funding opportunities for CSOs.

This trend imposes debilitating constraints on CSOs in their role as catalysts for democratic change and effective governance. It also risks reversing hard-won gains towards democracy and threatens the recognition and respect that CSOs deserve. As supporters and funding partners of CSOs worldwide, the member organisations of CIDSE and ACT Alliance who initiated this study, give priority to strengthening and co-operating with civil society. In order to move beyond a mere analysis of problems and challenges faced by CSOs, the CIDSE working group (WG) on Enabling Environment and the ACT Alliance Community of Practice on Human Rights in Development decided to conduct research into stakeholder approaches, strategies and interventions

that contribute positively to the enabling environment for civil society organisations.

In order to address shrinking spaces in-country, stakeholders need data and information to help them identify key difficulties in the enabling environment, help suggest improvements and monitor progress. In this context, it is paramount to gather reliable data on CSOs' operating environments and the level of political commitment to policies, laws and practices that promote such an environment.

Many organisations have felt the need for a tool, similar to an index, to assess the enabling environment for CSOs, in "real time" and in ways that offer insight into its positive and negative impacts. An analysis of strategies and approaches that have led to improvements in enabling environments has the potential to unlock knowledge and boost learning among CSOs across the world. It is in this context that CIDSE and the ACT Alliance commissioned the development of this research.

The methodology adopted for this study (see Chapter 3) assesses the overall direction and shape of the operating environment for CSOs in Malawi, Zimbabwe, Rwanda and Colombia. The research establishes where progress has been made and identifies where more can

be done to build on positive and strategic action. Current indexes, such as the USAID CSO Sustainability Index or the CIVICUS Civil Society Index, are often designed for external stakeholders' indicators. They usually have a factual and quantitative basis (rather than being experience-based) and tend to only bring value when assessed over long periods of time. A recent shift in approach seeks to ground indexes in the state responsibilities defined in international treaties and conventions, but this process has only just started (e.g., the Monitoring Matrix on Enabling Environment for Civil Society Development by the Balkan Civil Society Development Network).

This study opted for a survey of in-country CSO leaders combined with structured focus group discussions with CSO practitioners within organisations. The survey is based on indicators aligned with the principles of the UN Declaration on Human Rights Defenders which offer a universally agreed framework. The approach is experience-based, offers a user's analysis (since the best judge of the enabling environment must be those who have to work with it) and allows for the triangulation of data, as recommended by Arndt and Oman following their assessment of indexes entitled "Uses and Abuses of Governance Indicators" (2006: 93).



# Methodology: a user's analysis

## The survey

The aim of the research tool is to generate understanding of the impact of official policies and practices on the enabling environment and their effect on CSOs. The research methodology offers a quick and resource efficient method for testing the supportiveness of the enabling environment for CSOs/NGOs at any given time, in contrast to other indicator systems which are lengthy and costly to implement. The tool is a user's analysis: as users of the enabling environment the research enquires into the experience of CSOs and NGOs. The research is neither an investigation nor an assessment. Rather, it offers a lens through which we can gain new insight and understanding.

That said, the research offers a source of reliable analysis and data to form the basis of

new or renewed dialogue with government, new strategies of action, or reform of specific policies or practices to assist with aid effectiveness.

The research methodology uses two research techniques to systematically gather data from two different sources. By triangulating the two sets of data, the research tests and confirms key findings.

Drawing from the experience of Transparency International, as well as Office of the work of the High Commissioner for Human Rights on Human Rights Indicators (2012), this tool uses a survey (see Appendix 1) to ask CSO leaders how easy it is, in their experience, to conduct development work in their country.

The survey framework is bound by and designed around the rights and responsibilities outlined in the UN Declarations on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights [including the right to development], and Fundamental Freedoms (referred to as the UN Declaration on Human Rights Defenders), adopted by the UN General Assembly in 1998. Conceptually, the UN Declaration on Human Rights Defenders covers all relevant rights and freedoms; it also has the advantage of being universally accepted. The survey produces a quantitative assessment using cardinal/ordinal scales.

The aim of the survey is to capture the views of a wide range of CSO leaders, including those leading community based organisations, as well as those leading regional or national organisations.

The survey of CSO leader’s experiences was administered electronically in three of the four country studies (not Malawi), via Survey Monkey. Electronic survey is optimal as it preserves original data and minimises any bias or error that may arise during face to face administering, transcription or recording.

Research standards emphasise a critical mass of 100 responses for surveys (Krejcie and Morgan, 1970), although in ethnographic and qualitative research meaningful findings have been discerned from small sample groups (Cohen et al., 2000:93). Clearly the size of the identified group determines the sample size to a large extent. This survey aimed to reach all CSO leaders of the identified group, in order to avoid bias in the selection of participants. The minimum sample size is 20. Sample sizes, sample demographics and organisational size obtained for this study are shown in Table 3.1 and 3.2.

**TABLE 3.1: DEMOGRAPHICS OF SURVEY RESPONDENTS**

	<b>RWANDA</b>	<b>MALAWI</b>	<b>ZIMBABWE</b>	<b>COLOMBIA</b>	<b>TOTALS</b>
City/nationwide	15	21	14	13	63
Regional	6	9	2	5	22
Rural	4	7	4	4	19
<b>Totals</b>	<b>25</b>	<b>37</b>	<b>20</b>	<b>22</b>	<b>104</b>

**TABLE 3.2: ORGANISATIONAL SIZE OF SURVEY RESPONSES**

	<b>RWANDA</b>	<b>MALAWI</b>	<b>ZIMBABWE</b>	<b>COLOMBIA</b>	<b>TOTALS</b>
1 employee	0	0	2	1	3
2-10 employees	5	12	8	11	36
11-20 employees	13	12	4	3	32
Over 21 employees	7	13	6	7	33

## Interpretation of the survey findings

Survey questions 4-48 were ranked on a Survey questions 4-48 were ranked on a declining scale (see Table 3.3). Five was the most enabling scale and one the most disabling. Scales of five and four indicate an enabling trend, albeit with occasional problems, and scales of

three and below indicate a disabling trend. Responses can hence be divided broadly into percentage of enabling judgments (scales of 4 & 5), and percentage of disabling judgments (scales of 3, 2 and 1).

**TABLE 3.3: EXAMPLES OF SURVEY SCALES**

<b>SURVEY SCALES</b>	<b>RESPONSES</b>	<b>RESPONSES TREND QUESTIONS OVER FIVE YEARS</b>
Five	It never happens It is very easy	It is much better than 5 years ago
Four	It happens occasionally It is easy	It is better than 5 years ago
Three	It happens sometimes It is difficult	It is the same
Two	It happens very frequently It is very difficult	It is worse than 5 years ago
One	It is impossible	It is much worse than 5 years ago

Scales of five are very enabling and confidence building. They indicate that a strategy exists, government action is very supportive and high levels of CSO participation in development. One example of an enabling indicator is question 13 of the Rwanda survey, where the majority of CSO leaders state that in the past year they have not had to pay a bribe to get work done.

Scales of four are generally positive, as they indicate positive measures or an isolated, as opposed to a systematic, problem.

As Table 3.3 shows, a scale of three is not

neutral. In instances where three means the situation is the same as five years ago (what we can refer to as trend questions), this is a negative outcome because either a) no action has been taken to improve the enabling environment, or b) action taken has not improved the enabling environment.

Scales of three and below, on the other hand, suggests a lack of institutional response, even difficulty or interference. These scores suggest the problem is without a solution and perhaps entrenched. For example, a strong indicator of this type would be Question 4 of the Colombia

survey where the majority of CSO leaders responded with a two, stating that there was scarce involvement by government authorities of CSOs in designing and implementing development plans.

Strong indicators will be those where the vast majority or a very large majority agree. For ease of language and interpretation, the following guide can be used to describe the survey findings:

**TABLE 3.4: METHOD FOR QUANTIFYING DATA**

<b>ASSESSMENT</b>	<b>PERCENTAGE</b>
Vast/overwhelming majority or almost all	97 - 100%
Very large majority, most	80 - 96%
Large majority	65 - 79%
Majority	51 - 64%
Minority	35 - 49%
Small minority, few	4 - 19%
Almost no, very few	0 - 3%

## The focus groups

Overall, 36 focus group discussions, following preset structured key questions (see Appendix 2) and guidelines, were carried out.

The questions probed measures and approaches by varied stakeholders having a positive impact on the enabling environment. By focusing on positive impact, the intention was to identify trend accelerators where policy has had an impact on practice.

Concrete examples of good practice, emerging from focus group discussions, were followed up with fact-finding interviews to confirm specific details and facts regarding policies, practices and impact.

The findings of the focus groups and the survey were discussed and reflected upon during a final feedback meeting with key stakeholders.

The feedback meetings produced final action points which have been included in each country chapter of this report.

Each country chapter combines and triangulates the survey results and key findings from focus group discussions. Case studies are presented to illustrate successful strategies that came up during focus groups.

It should be noted that not every issue raised in the focus groups is covered by this report, rather the focus group findings addressed here are those that were a) common to most focus groups, b) triangulated with survey findings, and c) helped identify best practices.

## Limitations of the methodology

The findings presented in this report are based on consultations with approximately 30 civil society actors per country. Country level samples then are relatively small. Additionally, perceptions and experiences necessarily influence country level findings and this has limited the comparability of the different countries in some respects. The research provides the opinions of national and local civil society, their experiences of enabling and disabling factors and the impact of these factors on their work. In difficult environments, where restrictions of freedom of expression, assembly and association are often found, civil society actors can sometimes internalise these restrictions and find them to be the norm, while the situation might be viewed differently from outside the country. With all these factors in mind, data from secondary sources has been incorporated into this report, providing additional context for the research and its findings.

In most instances, sample groups were defined as the commissioning organisations' partners. Nonetheless, CSO leaders are frequently the heads of coalitions and networks having

an overall view of the experience of varied organisations.

Not all survey findings are analysed in the country chapters, only those that triangulated with findings emerging from the focus group discussions. Limited resources prevented further data mining at this stage.

The survey was exploratory, and some anomalies were later found when assessing findings. One anomaly of note was Question 28 where scale four stated, "I would be little concerned" about making explicit criticisms in public about government policy. This ought to have been the response for scale three, and hence research findings for this question are slightly more positive than in reality.

The scope of the focus groups was much limited in Zimbabwe due to security concerns and the pre-election period during which the research was conducted.

With the exception of Zimbabwe, one-to-one interviews, either structured or unstructured, were not conducted as part of this research project.



PHOTOS: CHRISTOF KRACKHARDT & FRANK SCHULTZE/BREAD FOR THE WORLD



## Main findings

This chapter summarises the main findings of the study. In structure, it follows the framework of the rights and freedoms that guided the survey design, as drawn from the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights, including the Right to Development, and Fundamental Freedoms. The chapter is based on country level findings and outlines factors which have both enabled and disabled the work of CSOs over the past five years. The chapter also links the data from the four countries together and identifies general trends.

Overall, the richest data relates to the right to conduct development work without fear of reprisals, freedom of expression and the right to make complaints, freedom of peaceful assembly, and the right to develop and discuss new development ideas. What is clear from the findings is that these rights and freedoms are interdependent, enjoyed or curtailed depending on context, and mutually reinforcing. Although

there are some positives, the study findings indicate a degree of decline in the enabling environment over the past five years. The trend is downwards with regard to the right to participate in development activities and freedom of peaceful assembly, for example. Case study material demonstrates how CSOs are circumventing some of these challenges. By combining the various strands of this study, it is possible to draw conclusions on how CSOs could be further enabled, by both donors and governments, to play a fuller role in national development processes.

Under each sub-section below, there is a summary table of applicable survey data. Some of the figures in the tables represent the mean score of responses to two questions (e.g. the Right to conduct development work without fear of reprisals is captured in responses to both questions 8 and 9). Each sub-section comprises a summary table and a discussion of the survey data and qualitative data gathered via focus group discussion.

# Right to conduct development work and participate in designing and implementing development plans

	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Question 4	4.5%	19%	12%	0%
Question 34	4.5%	Void	28%	5%

Level of participation in development plans, maximum score 100 (Malawi void error in survey administration)

One of the strongest indicators to emerge from the survey is the limited extent to which CSOs, across the four countries, feel involved in the drafting and implementing of development plans, and the low levels of government effort to involve CSOs and the communities with whom they work. This is worrying, because we know that whether communities are leading their own development or participating in government-led projects, or indeed a mixture of both, their engagement is vital, if development efforts are to produce sustainable outcomes.

In Colombia, the government has placed large-scale mining, gas and oil extraction at the centre of national plans for economic growth and development. CSOs working on human rights, community rights, land rights and the environment have serious concerns about this model of development but feel stigmatised and excluded from debates. 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. The Colombia

Santurbán Páramo case study shows just how much noise local civil society has to generate to get legitimate concerns heard and to compel government and corporations to listen and act responsibly. Similarly, the Arauca case study illustrates the effectiveness of linking local Indigenous leaders to relevant authorities working on development.

In Rwanda, the government has been pursuing an aid effectiveness agenda over a number of years and has taken steps to institutionalise CSO participation in national level sector working groups and local district planning forums. While provisions are comprehensive and have been welcomed by civil society, CSOs still do not rate the level of participation in development processes as high. They point to lack of technical capacity to make the most of new spaces opening up. They also say participation is limited by insufficient collaboration with others, fear of being labeled as political opposition (which deters public critique of government policies or actions) and the 'brisk pace of reform'. Indeed, there are very few examples of national level CSOs in Rwanda bringing concrete influence to bear on development policies. At local level there are more examples. The Conseil Consultatif

des Femmer (COCOF) case study is an example of how a locally embedded CSO successfully negotiated its way through a stringent government directive.

In Malawi, CSOs report that sustaining momentum on particular advocacy processes due to constantly changing policy frameworks is a challenge. The endless changes have made it difficult for them to exert influence over policy. There is also an absence of national civil society fora for debate and strategising which weakens the ability of CSOs to collectively engage with government. Some good examples of CSO-government co-operation were noted. These included the process to develop Public Service Charters in Malawi to track service delivery. There was co-operation between the Office of President and Cabinet (OPC) and civil society organisations on the nature and the scope of the Charter.

Notable in the Zimbabwe case is the extent to which development work of any kind is a challenge. CSO experiences are by no means uniform (the relationship between the authorities and CSOs varies depending on what CSOs work on and how they do their work). It is not uncommon for them to be accused of being partisan and, on those grounds, blocked from undertaking work in a particular province or district. The political gatekeeper uses threats to circumscribe the work of CSOs, but arrests have been known to happen as well. While the operating environment is challenging, some CSOs make a conscious effort to involve people of different political affiliations and find that it creates more space for their work. Others nurture professional relationships with individuals, such as police and government officers, in order to obtain the necessary

security clearance. CSOs also engage legislators through Parliamentary Portfolio Committees and present recommendations on legislation. In July 2013, for example, the Harare Residents Trust lobbied the Minister for Local Government to review exorbitant water and electricity bills and for debt cancellation for Harare residents.

Civil society's donors are frequently referenced as an area of concern. CSOs across all four countries have experienced a significant reduction in resources from the donor community over the past few years, and an increased focus on funds for activities other than organisational funding. The number of targets, objectives and activities expected by donors is progressively increasing while funds are decreasing, and there is little evidence of donors supporting CSOs to develop independent funding streams.

Colombian CSOs are concerned that the funding crisis will ultimately push CSOs into service delivery and away from work on governance and democracy, thus weakening their role and purpose. In Rwanda, meanwhile, the government has been adept in recent years at persuading donors to channel their funds through central government to enhance aid effectiveness. CSOs fear that this will mean less funding for their work down the line (particularly those engaged in human rights monitoring and human rights education work). In Malawi, additional funding was channelled to CSOs for governance related work during 2009-2011, but the general experience is of a downward trend. Declining levels of funding in Malawi has affected mutual cooperation and interaction between CSOs, because it has created competition. CSOs say that the divisions tend to fall along ethno-linguistic

lines and are further complicated by the ethno-linguistic political divisions in the country.

In Zimbabwe, a contrary challenge was highlighted. CSOs would say that because of the governance crisis in Zimbabwe, there has been a flood of donor funding for civic and political rights work over the past few years to the neglect of grassroots and rights-

based social and economic analyses. Likewise, in Colombia, CSOs are engaged in discussions with the government on human rights policy and protection, but there is a near complete absence of CSO participation on policies and programs related to the extractive industry. Donors are part of these dynamics, channelling their resources and energies into particular areas, to the neglect of others.

## Right to conduct development work without fear of reprisals

ENABLING SCORE	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Mean score of questions 8 & 9	34	57	68	30

Level of security of person, maximum score 100

The survey confirms that the large majority of CSO leaders in Colombia and Zimbabwe work in conditions in which they sometimes or frequently feel unsafe. Whereas in Zimbabwe the state is often the perceived perpetrator, in Colombia the threat may pertain to state forces, demobilised paramilitary groups or armed opposition groups. In Colombia, the situation is not too high risk for those working on public policy in urban areas but the situation for HRDs in rural areas remains complex under the current administration. The numbers of attacks and killings of defenders are on the increase: in just two years the number killed more than doubled from 32 (2010) to 69 (2012) and the number of attacks increased from 174 to 357. In Zimbabwe, laws are continually invoked to detain and prosecute human rights defenders. This was highlighted by the UN in 2011 when the United Nations Universal Periodic Review (UPR) committee for Zimbabwe called

on the government to cease arrests, harassment and detention of individuals with different views. In both contexts, officials add to the risk by making derogatory public comments about CSO leaders or CSOs in general, which can then become justification or a pretext for others to commit crimes against them.

Malawi may trail behind Zimbabwe and Colombia when it comes to issues related to the right to physical integrity, but the legacy of 2009-2011 (CSO offices were raided and CSO leaders arrested or targeted by the President in personal attacks) lingers and a minority of CSO leaders still do not feel safe carrying out their activities. Past trauma is a factor in this (trauma can have a deleterious effect on development efforts and can delimit CSOs' perception of what is possible). Another factor is that CSOs are simply not confident that the political culture

within government has really changed. CSOs in Malawi have also experienced instances of publicly ridiculing and/or shaming individuals. The Malawi LGBTI case study illustrates how groups, such as The Centre for Development of People (CEDEP) and the Centre for Human Rights and Rehabilitation (CHRR), have been stigmatised by the government, the public and even fellow CSOs.

The majority of CSOs participating in the Rwanda survey did not report feeling physically insecure on account of their work. However, they did say that they feared being perceived as a 'counter power to the state'. Reluctant to go into details, they described a fear that is real enough to inhibit what they do and say.<sup>1</sup> Being perceived as a counter power or threat to the state is something that CSOs in Malawi and Zimbabwe also described. They observed how humanitarian organisations enjoy a different (and easier) relationship with institutions of the state than organisations working on democracy or human rights.

CSOs have found ways to deal with some of this. In Zimbabwe, where state crackdown on CSOs has been direct and overt, organisations have made huge strides in building capacity to protect themselves. Many have security plans and security training programmes in place to mitigate the restrictive political and legal environment. This includes closer co-operation and collaboration with human rights lawyers who offer legal advice and legal representation to arrested human rights defenders and CSO leaders (see case study on Zimbabwean Lawyers for Human Rights). The Falsos Positivos case study from Colombia shows how, through effective monitoring and documentation work,

CSOs in Colombia were able to challenge the kind of impunity that often places human rights defenders at such risk. The work revealed the extent of extrajudicial executions, and those involved successfully lobbied for the prosecution of the army personnel responsible.

In many of these cases, donors and international partners have been key players as witnesses and protectors of last resort. In 2011, Amnesty International and Human Rights Watch noted with growing concern acts of impunity and demanded the release of civil society leaders who were charged with sedition for holding a peaceful demonstration in Malawi. CSOs feel that this protected CSO leaders under threat, since the government did not dare to take action. Likewise, members of international church-based networks provided financial assistance to CSO leaders whose houses and offices were petrol bombed and others who were jailed and charged with sedition. Zimbabwean CSOs credit international solidarity as having contributed significantly to the release of human rights activist, Jestina Mukoko, in late 2008 following her abduction and torture by state actors. Although very important at the time, these are emergency and reactive measures and seem to highlight a gap in more long term strategies.

More sustained forms of solidarity work are evident in Colombia. Most CSOs in Colombia rely on international accompaniment by groups, such as Peace Brigades International and Red de Hermandad. Their continued presence reminds observers that, in spite of regime change and reform, the work of civil society is still very dangerous. Verification commissions, diplomatic support and lobby work by international groups have also helped to save lives over the years.

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1. The reports of Amnesty International and Human Rights Watch have, over the years, detailed a combination of state intimidation, threats, manipulation, infiltration and administrative obstacles.

# The right to freedom of association

ENABLING SCORE	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Mean score of questions 16 & 17	37	54	62	15

Reasonableness of legal requirements, maximum score 100

With the exception of Zimbabwe and perhaps Colombia, survey findings for freedom of association indicate that CSOs feel legal requirements for registering CSOs and NGOs are reasonable. In Rwanda, which scored highly in the survey, there is a clear legal and policy framework for NGOs that was signed into law in 2012. This new framework has generally been seen as positive, and as an improvement from previous laws. However, in practice, the law still puts burdensome conditions for registration on CSOs, by including excessive bureaucratic requirements and providing for significant and often disruptive oversight over local CSOs by the governmental regulatory authority (Kiai 2014, ICNL 2014). CSOs have experienced difficulty meeting legal requirements for registration, particularly in Colombia. There, peer networks have emerged to support smaller CSOs struggling with the financial burden of meeting extra requirements. In Zimbabwe, there are several cases of the government using the Private Voluntary Organisations (PVO) Act under which many CSOs operate, to make life difficult for particular organisations

and individuals by imposing extensive and onerous bureaucratic requirements on them.

CSOs face blocks over and beyond the issue of simply registering their organisation. In January 2013, for example, a new regulation was approved by the government in Zimbabwe requiring all youth organisations to be registered with the Zimbabwe Youth Council. Under the new regulation, no youth organisation can receive funding without authorisation from the youth council and all affiliates are required to pay high annual levies to the youth council. While a Parliamentary Legal Committee has ruled that the regulation is in violation of existing laws, it nonetheless poses a significant threat to the country's youth movement. Similarly in Malawi, a requirement of registration under the NGO Act is that the legal entity must be a member of CONGOMA which is a national umbrella association for NGOs. However, section 32 (2) of the Constitution says 'No person may be compelled to belong to an association'. To date, there has been no court ruling on the matter.

# Freedom of peaceful assembly

ENABLING SCORE	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Mean score of questions 20 & 21	29.5	47	12	5

Level of freedom of peaceful assembly, maximum score 100

Peaceful protest is important because it is the space where CSOs can express dissatisfaction or advocate for reform. However, as others have suggested, including the Special Rapporteur on freedom of peaceful assembly and freedom of association, freedom of peaceful assembly appears to be in a downward trend. With the exception of Malawi, where CSOs have experienced improvements since the 2009-2011 period, the large majority of those surveyed indicate that freedom of peaceful assembly is as constrained, if not more so, as five years ago.

For Rwanda, the score was very low but it did not emerge as an issue for CSOs in the focus group discussions. The suggestion, therefore, is that it is not something that is even a possibility in the prevailing context. An overwhelming 90% of Zimbabwean respondents said that it is difficult to organise peaceful demonstrations that are critical of government policy and that it is becoming more difficult. The public assemblies and marches of Women and Men of Zimbabwe Arise (WOZA), whom some view as having a provocateur strategy, are routinely disrupted by police. Hundreds of WOZA members have been arrested over the last few years. Amongst the charges used to justify detention of these social activists is that of 'knowingly failing to give notice of a gathering' under section 25 of the Public Order and Security ACT (POSA), and that of 'participating in a gathering with intent to promote public

violence, breaches of the peace, or bigotry'. Following its UPR in 2011, Zimbabwe was called upon to uphold its international obligations to respect the rights to freedom of expression, assembly and association. The UPR committee recommended that the government should amend both POSA and the PVO Act, which are known to impose considerable restrictions on the work of CSOs. The government did not agree to consider this recommendation.

In 2011, the Malawian government tried to smother street protest in a number of ways. In February of that year, planned protests were thwarted and organisers were briefly arrested. In the course of the year, it got more and more difficult to hold peaceful demonstrations. A decree was issued ordering any grouping intending to hold a demonstration to deposit MK 2,000,000 with the relevant authorities before demonstrating. In addition, a quasi-civil society organisation in Malawi filed a court injunction to block demonstrations. Fortunately, organisers of the demonstrations hired lawyers who were able to have the injunction lifted. The neutral role of the courts in mitigating such disabling factors was hailed by civil society organisations as a key factor in the protection of civil society space at that time. The case study on Citizens Claiming Demands discusses why the demonstrations were so important, and how they played a part in getting political leaders to the negotiating table.

In Colombia, in the last five years, concerns have been voiced about the use of arbitrary detention during protest marches, the length of time taken to process those detained, and aggression on the part of the police towards protesters, particularly by ESMAD (anti-riot police). A new law, the citizen's security law

(Ley de Seguridad Ciudadania) could worsen the situation as it makes it an offence to block highways, something that protest marches would do. The Santurban Paramo case study points to the challenges but also the innovative ways around the obstacles.

## Access to information and the right to seek, obtain, receive and hold information relating to development

ENABLING SCORE	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Mean score of questions 22, 23 & 24	36	31	49	20

Level of access to information, maximum score 100

Effective access to information laws is a key mechanism through which CSOs challenge and check government decisions on budgets, policy and implementation. Survey findings show that CSO access to information is generally weak. Rwanda would have achieved a far higher score if its freedom of information laws had

returned better results. On the positive side, the survey revealed that CSOs do use such laws to access information, and there is a role for national CSOs to play in supporting community CSOs in these processes. In Malawi, CSOs felt that access to information law would greatly facilitate their policy advocacy work.

## Freedom of expression and the right to make complaints about official policies and acts relating to development

ENABLING SCORE	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Mean score of questions 26, 27, 28 & 29	56	58	47	24

Level of enjoyment of freedom of expression, maximum score 100

As the survey findings indicate, there are positive results for Malawi and Colombia with over half of those surveyed enjoying greater freedom of expression as compared to five years ago, but less positive for Rwanda and Zimbabwe.

Although reluctant to go into detail, CSOs find it difficult to initiate public debates in Rwanda or to openly criticise government for an action or policy, via media or otherwise. UN and AU reports posit that the laws on genocide ideology and sectarianism (more commonly referred to in Rwanda as divisionism) have played a role in this. In 2004, the laws were used to publicly denounce national human rights monitoring groups and a number of human rights activists subsequently left the country, fearing for their

safety. Journalists have also been charged and sentenced under the laws. Since the laws took effect, CSOs have been wary of being labelled 'divisionist'. The government recently agreed to reform the laws (the UN has been pushing for this, arguing that they have had a deleterious effect on public life and constitute a disproportionate restriction on freedom of expression) but it will take more than changes in the law to undo the deleterious effects.

In Zimbabwe, sections 33 and 37 of the Criminal Law (Codification and Reform Act) frequently lead to the detention of social as well as political critics charged with 'undermining the authority of or insulting the President', and the operating environment for independent media (whether radio or print) is extremely difficult.

## Right to share information and the right to unhindered access to and communication with non-governmental and intergovernmental organisations

	COLOMBIA	MALAWI	RWANDA	ZIMBABWE
Question 38	82	86	96	85
Question 39	73	68	60	60
Question 40	82	89	96	85
Question 41	59	62	68	80
Mean question 38-41	74	76	80	78

Level of information sharing, maximum score 100

One of the most positive outcomes of the research is the degree to which, aided by new technologies, CSOs are able to share information and build more effective cooperation networks, locally and internationally, as well as improved knowledge for advocacy.

The case studies show how significant impact can be achieved by CSOs working in coordination and acting on the basis of reliable research gathered collaboratively using systematic methods. The Falsos Positivos case study shows what CSOs were able to achieve

when working together and based on the information collected. They gathered specific and accurate statistical data on human rights violations and repression in their areas and fed this into national NGO databases. This finding reinforces conclusions by CIVICUS on the need to invest in broad coalitions between established organisations and informal loose forms of association. Rather than setting up structures, CSOs in Zimbabwe have created forums for joint advocacy and strategy development, as the Zimbabwe Heads of Coalition case study illustrates. Likewise, CSOs in Rwanda are convinced of the need for strong, issue-based coalitions to help advance policy agendas. This seems particularly important for Rwanda because evidence-based advocacy is emerging as one of the ways for CSOs to bring concrete influence to bear on government policy and practice.

The relationship between research and advocacy is well established amongst

INGOs and international intergovernmental organisations. A future challenge for these international organisations is the effective transfer of these skills and capacities to those working nationally, regionally and locally. Likewise, CSOs see one of their key responsibilities as supporting and strengthening smaller CSOs and community leaders. Donors and governments can encourage linkages around particular issues by, for example, supporting learning exchanges or joint project proposals. This can work both ways, however, as there is a lot that national CSOs can learn from grassroots social networks.

Capacity building was defined by CSOs as knowledge management and leadership stewardship. CSOs laid particular emphasis on the transfer of tacit knowledge from government and INGOs to CSO leaders and practitioners, particularly in Rwanda and Malawi.

## **The right to solicit, receive and utilise resources for the purpose of development** (including the receipt of funds from abroad)

The global financial crisis has not just reduced the funds available, it has added a new instability to funding. In addition, CSOs and NGOs in all the countries surveyed are experiencing donor withdrawal with scant attention to help establish viable alternatives.

Being dependent on external funding is highly undesirable. Aside from reducing CSO autonomy to act, repeated bidding and reporting on external grants depletes energy and valuable resources. In this context, the path

towards financial autonomy for CSOs, in an environment where many home governments are unwilling to offer any favourable policies and incentives, still remains largely uncharted.

The case studies point to innovations. CSOs and NGOs in both Colombia and Zimbabwe are turning to volunteering and working part-time. Some CSOs are starting to provide services based on a social enterprise model, and to lobby for appropriate regulatory frameworks to help them in this.

Basket funds and joint funding proposals were other forms of good practice highlighted during the research. Rwandan CSOs welcomed government projects which invested in

training CSOs to deliver services. CSOs and NGOs expressed a wish to work more closely with business, but were uncertain as to how to develop such plans.

PHOTO: CHRISTOPH PÜSCHNER/BREAD FOR THE WORLD





## Conclusions

Using a user's analysis approach, this study asked civil society actors across the four countries how easy it was for them to conduct development work. Based on their views and experiences, they responded to survey questions and, in a series of focus groups, reflected on factors that shape their operating environment. Study findings highlight both

positive and negative trends, and indicate where action can be taken by donors, governments and CSOs themselves to reinforce the enabling environment. While they have been used to draw some general conclusions, the findings also illuminate context-specific experiences and perspectives. CSOs in the four countries have different foci and employ different tactics

and strategies. They also experience different levels of ease (and difficulty) when it comes to enjoying basic rights and freedoms.

On the positive side, study findings show that CSOs across the four countries are sharing more information and knowledge with each other across local, national and international divides leading to effective collaboration and deeper relationships. Some of the case studies illustrate how these new ways of working have enabled CSOs to respond effectively when their legitimacy is challenged or threatened by state or non-state actors. Other positive findings from this study include improvements, from the perspective of civil society actors, in freedom of expression in Colombia and Malawi, and greater access to decision making fora in Rwanda. The case of Rwanda shows how the government's aid effectiveness agenda has provided CSOs with new opportunities to participate in development processes.

The study findings, however, also indicate a degree of decline in the enabling environment over the past five years. In this, the interdependence of the various rights under review emerges as key. For example, as long as freedoms of peaceful assembly and expression are constrained, the right to participate in development processes will be as well.

One of the findings to emerge from the study in terms of negative trends is around participation of CSOs in designing and implementing development policy and plans and level of government effort to involve them. Across all four countries, the disparity between what is provided for on paper and the actual experience of CSOs is pronounced and for different reasons. In Rwanda, locally embedded organisations

are negotiating their participation with some success and, in Colombia, social protest has been an effective means of grabbing the attention of local government. Overall though, the trend is disquieting. The implication is top down development which excludes community voices and perspectives and, very possibly, delivers weak, non-durable results.

Another significant finding was that many CS actors feel unsafe some or all of the time on account of the work that they do. This lack of security has a deleterious effect on development efforts. Strategies for protection were adopted in Malawi during 2009-12. In Zimbabwe, lawyer networks are proving vital in addressing arbitrary arrests and other kinds of security threats. Nonetheless, the practice of ongoing risk analysis and protection mechanisms to mitigate future risk is less visible.

Across the board, there were also low survey scores for freedom to assemble peacefully. The finding is particularly significant in light of case studies signaling the role of protest in the struggle for peace and justice. In Malawi, the right to protest, so fiercely guarded by civil society between 2009 and 2011, played a big part in getting the then government to the negotiation table. In Colombia, social protest against local mining companies energised and mobilised communities, and focused the attention of the local government. With the exception of Malawi, all countries surveyed experience fairly serious constraints in this area.

One of the salient issues raised by CSOs consulted was access to funding, in particular to independent funding. A concern was expressed

that the aid effectiveness agenda would result in a diminished or 'narrowed' role for CSOs (as mere implementers of development agendas). To overcome issues of diminishing availability of funding, funding with too many donor restrictions and requirements, and funding that undercuts the long term sustainability of CSOs, some organisations have developed independent revenue streams but they are few. Many CSOs expressed a desire to secure locally negotiated funding sources.

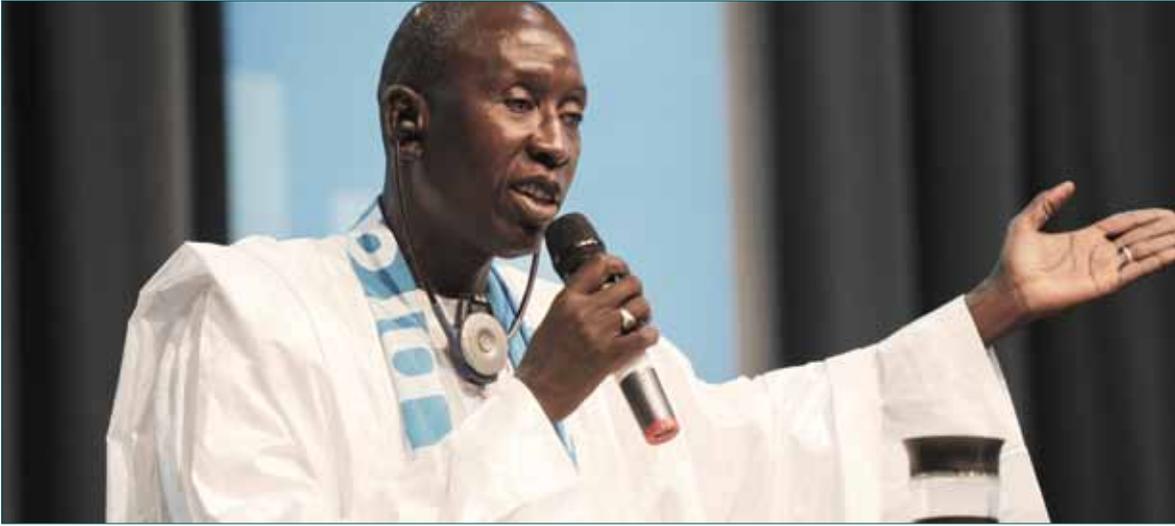
It is no surprise that the findings underscore the role of government in determining civil society space but interesting that CSOs also placed an emphasis on donors. The findings suggest that civil society's donors wield influence through the kind of funding they provide, to whom and when as well as through other forms of support and interaction. They are also viewed by CSO actors (in moments of crisis) as protectors of last resort and as witnesses to injustice. Lastly, in sharing examples of good practice, CSOs revealed some of the agency they themselves

wield to unlock crises, influence policy and challenge impunity. They reflected on how they could work differently and more effectively in the future. Details are enumerated in the recommendations.

Currently, a disconnect exists between the commitments made at high-level forums, such as the Busan Partnership Agreement, and the reality on the ground, where steps towards a more enabling environment for civil society are rare and shrinking space is prevalent. The Busan Partnership Agreement and the new EU approach to the role of civil society in external relations are both positive developments that should be applauded. However, for these admirable commitments to have the desired effect for the people on the ground, the political will has to be extended beyond high-level policy agreements. All stakeholders have to participate in a meaningful way in promoting an enabling environment for civil society, with a view to contributing to equitable and sustainable development.



PHOTOS: NILS CARSTENSEN/DANCHURCHAD, PAUL JEFFREY/ACT ALLIANCE



# Recommendations

## For civil society's donors

- Strengthen the capacity of CSOs to gather and analyse information that is relevant for their programs and for the communities with whom they work. Support them to use it well. Real time information gives CSOs a strong base upon which to reflect and grow. It helps them to contribute effectively to national planning and policy making processes and to challenge government policies and actions;
- Support the formation of loose, issue-based coalitions of organisations working in different sectors (from human rights to humanitarian assistance); foster linkages and learning exchanges between national NGOs and grassroots social movements. Civil society is at its healthiest and best placed to affect change when diverse interests and analyses are cohering and where there is solidarity among its parts;
- Facilitate the core work of CSOs and support them to be accountable and effective agents of change. Refrain from imposing with excessive demands around planning and reporting on CSO partners. Placing heavy demands on an organisation can create a situation where they are more accountable to the donor than local communities;
- Help CSOs and HRDs who face everyday security risks to protect themselves and their organisations and to manage the accompanying stress. Participate in ongoing risk analyses and support strategies to mitigate the different risks. Be prepared to respond at short notice, but support longer term risk mitigation strategies as well;
- Regularly update context analyses, and consult with a wide variety of sources. This

enables policies and practices which do not exacerbate existing cleavages within civil society (political, ethnic, regional or otherwise) and ensures responsiveness to emergent ideas and voices;

- Use existing protocols, such as the EU country roadmaps for civil society engagement, to push for more effective mechanisms for CSO engagement in policy making at country level, and conduct CSO consultations to monitor experiences of these mechanisms over time. Support learning across countries in relation to experiences of formal mechanisms but also in relation to use of other means to influence change;
- Support CSOs to sustain close links with their communities by optimising the use

of participatory and popular education methodologies and by ensuring that accountability with communities is strong;

- Remain attuned to the aid effectiveness agenda – how it provides leverage for CSO participation in development processes but how it can also be used to delimit the role of civil society;
- Adopt funding policies and practices that strengthen CSO capacity to operate independently. External funding should not be based solely on the delivery of activities, it must also support institutions and offer sustainable models;
- Cultivate partnerships with CSOs based on equal partnership, not just funding agreements.

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## For governments

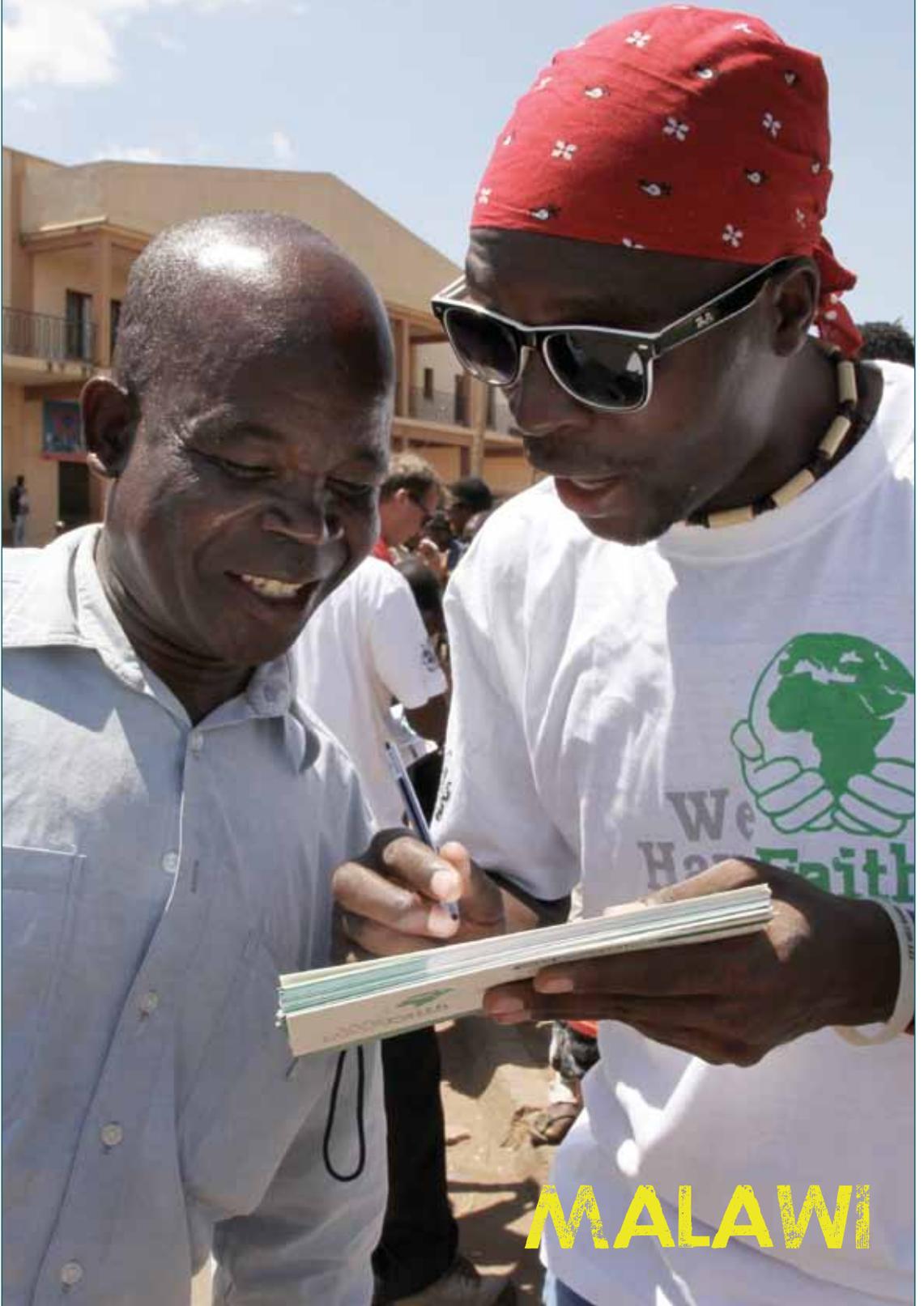
- Increase the number and quality of mechanisms by which CSOs can contribute to and influence the design, content and implementation of development plans;
- Repeal or amend all laws that are invoked to restrict NGO activity as well as all laws that are inconsistent with international human rights law, providing CSOs with the independence and freedoms to which they are entitled under these laws;
- Take steps to ensure that human rights defenders, independent journalists and lawyers are protected from intimidation and harassment while performing their legitimate and public duties;
- Safeguard, in law and in practice, the right of citizens (including civic organisations) to

peacefully assemble, march and protest on matters of public concern;

- Investigate and prosecute security forces responsible for aggressive repression of social protest or human rights activity;
- Ensure that indigenous groups and other minority and disadvantaged groups in society are formally incorporated into policy making processes, and that they are not only consulted but able to bring influence to bear;
- Adopt policy which assists CSOs in generating local and independent revenue streams, such policy may include incentives for philanthropists and businesses to engage in corporate social responsibility.

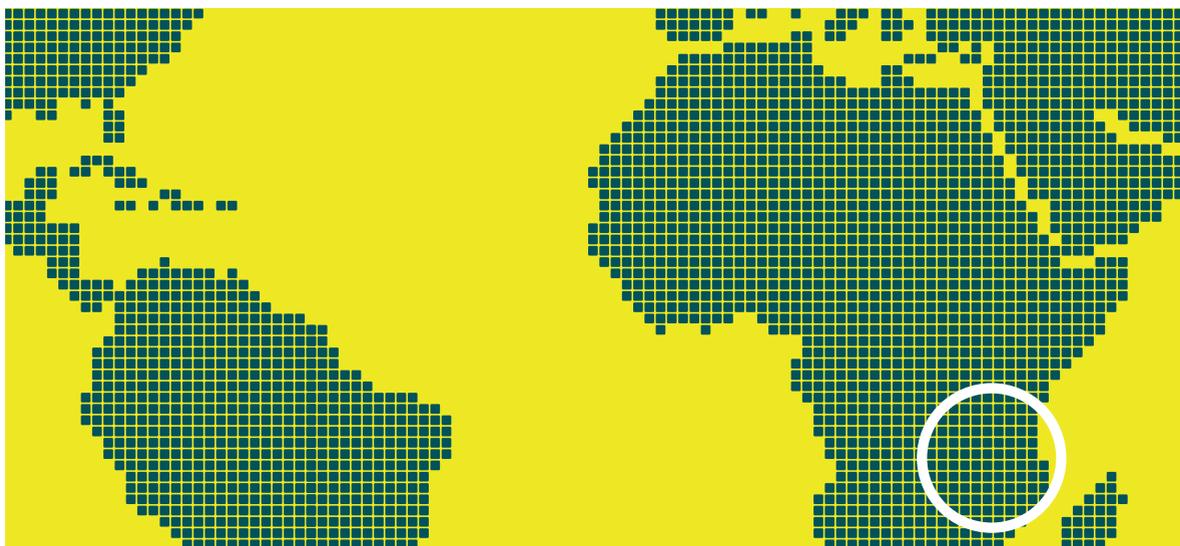
## For CSOs

- Build capacity to gather and analyse information from communities and from other sources. A broad knowledge base helps organisations to reflect and grow, to contribute effectively to national planning and policy making processes and to challenge government policies and actions;
- Dialogue and collaborate with national NGOs working across different sectors as well as with grassroots social movements. Civil society is at its strongest and best placed to affect change when diverse interests and analyses are cohering and where there is solidarity among its parts;
- Pool information and knowledge with others to strengthen position and influence over particular policy or other kinds of issues;
- Ensure that there are effective systems in place to manage funds in an accountable and transparent manner;
- Prioritise the security of CS actors who may be at risk; engage in ongoing risk analysis and employ strategies to mitigate the different risks, both individual and organisational;
- Use existing frameworks to push for more effective mechanisms for CSO engagement in policy making at country level, and document experiences of these mechanisms over time;
- Learn from the experiences of other CSOs in the global South – how they use both formal and non-formal means to participate in development processes;
- Optimise the use of participatory and popular education methodologies at the grassroots level and ensure that accountability with communities is strong;
- Exploit the leverage that the aid effectiveness agenda provides safeguarding for the multiple roles of civil society at the same time;
- Build strong constituencies, through grassroots work or via coalitions with locally based groups, so that the loudest voices on laws and policies are citizens, not civil society organisations;
- Reduce dependency on donors either by engaging with local philanthropists and companies, or by engaging in income generating activity;
- Cultivate partnerships with donors based on equal partnership, not just funding agreements;
- Exchange and collaborate with CSOs working in all sectors and bridge the gap between CSOs working in ‘development’ and CSOs working on human rights and social justice. There are issues that affect the development landscape that can be tackled together, namely corruption, impunity, presidential terms, inequality, discrimination, economic policy.



**MALAWI**

# Country findings



## Political and economic context

Malawi is a landlocked country in south central Africa, ranking among the world's least developed countries. Agriculture accounts for 37% of GDP and 85% of export revenues. The economy depends on substantial inflows of economic assistance from the IMF, the World Bank and individual donor nations. It is estimated that 40% of Malawi's annual budget is covered in this way.

Many people in Malawi live in extreme poverty. According to UNDP, between 1980 and 2012, Malawi's Human Development Index (HDI) rose by just 0.8% annually, from 0.272 to 0.418 today, giving the country a rank of 170 out of 187 countries with comparable data. The HDI of Sub-Saharan Africa as a region increased from 0.366 in 1980 to 0.475 today, placing Malawi below the regional average.

The period of this research (2009-2013) falls under two political administrations in Malawi: President Bingu wa Mutharika (2004-2012) and President Joyce Banda (2012-to present). In his first term, President Bingu was hailed for his successes in stimulating economic growth, for surrounding himself with competent advisors and for tackling corruption. There were also checks and balances at that time from the opposition. However, after his landslide victory in 2009, his governing style during the second term of his presidency underwent significant change. It was characterised by intolerance to all forms of dissent and the promotion of allies to powerful positions in an effort to maintain his rule. His party's majoritarian position seems to have resulted in a weakened accountability mechanism. He arbitrarily appointed his brother as successor, dismissed the Vice-

President for not endorsing his position, and used his absolute majority to introduce what is commonly termed in Malawi as “bad laws” (Malunga, no date). Exacerbated by a deepening economic crisis further aggravated by the withdrawal of aid by a number of major donors, this period was marked by increasing political tensions and social unrest. Some civic leaders, critical of President Bingu, suffered human rights violations, including arbitrary detention, break-ins, petrol bombings and death threats. Others, fearing for their lives, were forced into hiding. Mass demonstrations in July 2011 were violently suppressed.

After the sudden death of President Bingu in 2012, Vice-President Joyce Banda was sworn into office in keeping with the Malawi Constitution, despite an attempt to thwart the succession process. A commission of inquiry into the death of a student activist was initiated. Some laws and amendments to laws, which had threatened internationally guaranteed human rights were repealed. Notably this included Section 46 of the Penal Code, which had allowed the Minister of Information to ban publications deemed “contrary to the public interest” and the amendment to Section 10 of the Civil Procedure Act (commonly referred to as the “injunction law”) (International Bar Association, 2012). In recognition of reforms instituted by President Banda, several major donors resumed previously suspended aid, including the United States, the European Commission, the International Monetary Fund and the World Bank. However, after an initial period of optimism, President Banda has come under increasing criticism from different quarters, including civil society. In alleged efforts to maintain power, she has been accused of giving positions to her followers

on parastatal boards and delaying judgments in corruption trials (Diana Cammack, 2012). Her appointment of some key civil society leaders to governmental positions has been seen by some as an attempt to dis-empower or weaken civil society. There have been reports of organisations that hold demonstrations to protest the misuse of public resources have been publicly targeted and ridiculed. As the results of this research show, although civil liberties in Malawi appear to have improved over the last five years, it remains an area of concern as the country prepares for its 2014 elections.

Malawi is a signatory to several international and regional human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples’ Rights (ACHPR), and Southern African Development Community (SADC) Protocol on Gender and Development. Although Malawi is signatory to these instruments, limited knowledge levels have contributed to poor demand for their enforcement. These instruments are also yet to be domesticated. This has meant that any laws introduced in Malawi that are contrary to the rights guaranteed in these instruments cannot be challenged in domestic courts (International Commission of Jurists, 2013). Malawi has also lagged behind in its reporting obligations under various international human rights treaties. (International Bar Association, 2012).

## Development of civil society in Malawi

Since Malawi's independence in 1964, CSOs have mushroomed. The number of CSOs in Malawi increased from 104 in 2001 to 359 in 2011. Today, there are estimated to be 510 NGOs registered with the Council for Non-Governmental Organisation of Malawi (CONGOMA) in Malawi (ICNL, 2014).

During the Kamuzu Banda regime, policy advocacy NGOs were banned. Control of information and censorship were the prevailing symbols of governance. The CSO-government relationship was dominated by 'tension and suspicion' (Faiti, 1993: 27). In the early 1990s, NGOs began appearing in Malawi: mostly relief organisations providing relief services to refugees from the Mozambican civil war. When the refugees were repatriated, many NGOs either closed shop or reoriented their operations to rehabilitation (Malunga, no date). At the same time, the political climate was changing since Malawi was coming under increasing pressure to change from a one-party state to a multi-party democracy. There was a burgeoning protest movement and public support for human rights CSOs. Many of the leaders of the new pro-democracy movement had been exiled or had exiled themselves under Banda. Often they came from the Northern region in Malawi, contributing to an image of NGOs as "people from that area that do not like the government" (Malunga, no date).

In March 1992, the Catholic Bishops Conference of Malawi issued a pastoral letter entitled "Living Our Faith" (Mitchell, 2002), openly criticising the totalitarian regime. Discourses of 'dignity', 'rights', 'freedom' and 'equality' underpinned the letter. Soon after the publication of the letter, the country witnessed unprecedented

civil unrest, strikes, student demonstrations and rioting (Marolen, 2006). In June 1993, a referendum was held where Malawians were called upon to decide whether to have a multi-party political system or maintain the status quo. 63% of Malawians voted for political pluralism. Under the one-party state, quasi-governmental institutions, such as the Chitukuko cha Amayi m'ma Malawi (translated: Malawi Women's Development Organisation), drove the grassroots development agenda. There was a radical shift in focus with the emergence of a multi-party democracy. The constitution was amended to include a bill of rights. The country experienced a boom in NGOs, trade unions, associations and other civil society organisations. The number of civil society networks increased. By and large, these networks have contributed to collective action in advancing common interests. However, there are instances where they seem to operate in parallel. This may be attributed in part to a lack of internalisation of network dynamics. There is also an inclination towards competition as opposed to collaboration. For a government that is uncomfortable with collective CSO action, this inclination can easily be exploited by a 'divide and rule' approach. Some CSOs in Malawi have been vocal on governance issues, particularly around abuse of power by the executive. Faith Based Organisations are many and active. The Catholic Church, in particular, has been vigilant on issues of human rights and abuse of power. Some suggest, however, that civil society has disintegrated/weakened since 2011 (International Bar Association, 2012).

## Policy and legal framework for CSO operations

NGOs in Malawi can be registered under the Trustees Incorporation Act of 1962 or the Companies Act 2000. Although the validity of NGO registration under the latter has been debated, the consensus among lawyers is said to be that NGOs are free to register under either Act so long as they function within the confines of the law (ICNL, 2014). Concerns have also been raised around the potential for a politicisation of the registration process under the Trustees Incorporation Act of 1962, as it is the Minister of Justice who has the authority to incorporate an organisation under this Act (ICNL, 2014). Religious organisations are, in general, not required to register with the government. They often use the registration of their parent religious body (Ngambi, 2010).

Regardless of whether NGOs are registered under the Trustees Incorporation Act or the Companies Act, all NGOs must register under the NGO Act of 2001 (Chapter 5:05 of the Laws of Malawi, referred to as the NGO Act). The NGO Act applies to institutions or organisations, constituted for public benefit purposes and this expressly excludes churches, religious organisations, political parties, trade unions or social clubs. The Act, as a regulatory framework for NGOs, seeks to promote the development and values of a strong, independent civil society. The requirements for registration under the Act are: governing instrument of the NGO, plan of activities of the NGO, source of funding, latest available audited annual financial statements and proof that the NGO is a member of CONGOMA, an umbrella group for all NGOs in Malawi.

The NGO Act has been criticised on a number of levels. As part of the registration process, NGOs

need to produce “a statement that the NGO shall not engage in partisan politics, including electioneering and politicking”. Civil society has previously challenged the meaning of “electioneering and politicking” in the NGO Act as being vague and liable for misinterpretation, leaving their continued operation at the mercy of government (Ngambi, 2010). NGOs are also required to pay fees to both CONGOMA and the NGO Board, which is a burden, particularly on newly formed NGOs.

However, as developments in Malawi in recent times seem to confirm, government/civil society relations are determined more by the political context: “at any given time relations may be cordial and collegial; at another time relations could be conflictual and adversarial” (Moyo, 2010).

The existence of some old laws that are inconsistent with constitutionally guaranteed freedoms is said to create further unfavorable conditions for the free operation of CSOs in the country. The laws that may be used to curb the activities of CSOs include:

- The Police (Amendment) Act of 2010, which gives the police powers to undertake searches without a court warrant
- The Preservation of Public Security Act (Act 58 of 1965), which makes it a criminal offence to publish anything that the Minister of Information may consider to be prejudicial to public security
- The Penal Code (Act 22 of 1929), which criminalises the publication of anything that may cause public alarm
- The Protected Emblems and Names Act (Act 10 of 1967), which criminalises statements regarded to be embarrassing,

ridiculing, demeaning, or insulting to the President

- The Censorship and Control of Entertainments Act (21:01) enacted in 1968, which prohibits the publication of material

that is considered by the Censorship Board to be 'undesirable'

- The Communications Act, which places some limitations on political broadcasting by community radios in its Section 51.

## CSO views

This section presents the views of Malawi civil society organisations on the factors, which enabled or disabled their operational space during the period 2009 to 2013. The findings are based on the responses from 37 CSO leaders to a research questionnaire and the results from 10 focus group discussions with a wide variety of CSOs in Malawi.

### Enabling factors in Malawi

Overall, the large majority of Malawian CSO leaders (76%) felt that the enabling environment was more supportive towards CSOs than it was five years ago (Q6). In the focus group discussions, CSOs acknowledged that positive developments had taken place in the past 12 months. However, CSOs reported a number of restrictions during the period 2009 and 2012. The government was very violent and there was an atmosphere of fear. The majority of CSO leaders stated it was now easier to be openly critical of government policy and practice on development compared with five years ago (Q29). However, the results showed that while there are signs of improvement since the 2009-2012 period, these gains are fragile and needs supporting and embedding.

### Physical integrity/access to human rights defender mechanisms when threatened

According to the questionnaire, the majority

of CSO leaders now feel safe most of the time to work on development related issues in their regions (Q8), although some CSO leaders reported that they had experienced arbitrary arrests (see below under disabling trends). In order to deal with threats against them, CSOs said that they had created linkages with international organisations, including Amnesty International, Human Rights Watch and Frontline Defenders, for emergency support and to publicise the plight of jailed CSO leaders in Malawi. These international organisations had helped to pressurize the Malawian government and lobby international donors, where necessary. For instance, in 2011, Amnesty International and Human Rights Watch demanded the release of civil society leaders who were charged with sedition for holding a peaceful demonstration. One focus group felt that this protected CSO leaders under threat because the government did not dare to take action. Members of international church-based networks provided financial assistance to CSO leaders whose houses and offices were petrol bombed, and legal support to others who were jailed and charged with sedition. Although very important at the time, these were emergency and reactive measures and seemed to highlight an absence of institutionalized mechanisms for the protection of human rights defenders.

### **Limited government restrictions on access to funding/few CSO closures**

The majority of CSO leaders felt that legal requirements and processes for CSO registration are reasonable (Q16). In the focus groups, despite reflections on weaknesses within the NGO Act, it was noted that the NGO Act did create space for civil society to raise revenue, without any major impediments, both within and outside Malawi. It was noted, however, that the Reserve Bank of Malawi had issued a circular in 2011 demanding income statements from CSOs with the aim of tracking funding sources. Few organisations reported in the CSO questionnaire that they had been threatened with closure (Q18). However, in the focus group discussions it was reported that there had been attempts to close certain CSOs whose work clashed with the interests of government in the period under review (see disenabling factors below).

### **Holding public meetings/peaceful protests**

**PUBLIC MEETINGS IN THE COMMUNITY** CSOs reported that it was extremely easy to hold public meetings in the community (Q19). However, in one focus group, it was suggested that politicians influence rural communities to refuse to receive or accommodate CSOs that are critical of the government (Mzuzu focus group). It could not be ascertained from the study results whether this is more widespread or only related to a certain geographical area of Malawi.

**PEACEFUL PROTESTS** CSO leaders were divided on whether it is currently easy or difficult to organise a peaceful protest critical of government policy but most agreed that it is currently at least easier to do so than it was

five years ago (Q20, 21). In the focus group discussions, CSOs assessed that, in fact, demonstrations had been an effective way of challenging government, particularly in 2011 when there was “unity”. Demonstrations were organised countrywide and there was mass mobilization. However, participants pointed to the fact that demonstrations, perceived by government to have political overtones, have often been blocked and organisers have been arrested. For example, in February 2011, planned protests were thwarted and organisers were briefly arrested. The government vehemently opposed nationwide protests in July 2011, and the President branded the organisers as “gays”.

### **Malawi’s constitution/independence of the judiciary**

In Malawi, according to CSO questionnaire responses, freedom of movement is largely assured, and CSOs reported that they rarely have to pay bribes to get their work done (Q12, 13). Participants pointed to the important role played by Malawi’s republican constitution, which sets out the framework for creating an enabling environment. It has a full bill of rights that clearly outlines the need for an active citizenry and freedom of association. However, it is important to note in this regard that, although the Malawi constitution is held in high regard, concerns have been raised about the ease with which it can be amended. Between 1994 and 2005, 205 items in the constitution were amended, in part or in their entirety. The changes were of various kinds, ranging from the removal or addition of certain words or phrases, to changes in entire sections or inclusion or repeal of sections.

When there is a danger of impunity, CSOs have been able to resort to the supreme law of the

land to protect their fundamental rights and freedoms. The example was given of a case in 2011 when a quasi-civil society organisation filed a court injunction to block demonstrations. Organisers of the demonstrations hired lawyers who were able to have the injunction lifted. The neutral role of the courts in mitigating such disabling factors was hailed by civil society organisations, in most of the focus groups, as a key factor in the protection of civil society space in Malawi. The court's timely and professional operation without fear of reprisals was vital. According to CSOs, it was the independence of the Malawian judiciary that mattered most. One focus group suggested that the courts were intent on demonstrating their independence because they were angered at the manner in which President Bingu and his government had often disregarded their judgments.

### **Sharing of information/networking**

CSOs reported that it was easy to receive and share knowledge (Q38) and to access the Internet without restrictions (Q40). Sharing information, according to responses, has become easier in the past five years (Q41). In the focus group discussions, participants particularly pointed to how the sharing of ideas and resources had facilitated partnerships and co-operation. Referring to the civil society-government dialogues following the July 2011 demonstrations (see case study), CSOs noted the key role played by the Public Affairs Committee (PAC), a religious grouping with national representation, and the UN in Malawi. PAC was well known, enjoyed public trust and was respected by government because of its track record in mediating CSO-government dialogue. The Malawian government also respected the UN (Drezda focus group). Although the President died before the results

of this dialogue could be properly assessed, there was a perception that it helped reduce the levels of violence. Participants also talked about the importance of regional and international networking. As examples, CSOs referred to their networking with the SADC Electoral Support Network and the Southern Africa NGO Network (SANGONET) around acts of impunity in Malawi.

### **Access to media**

According to the results of the CSO questionnaire, CSOs felt that they could easily get opinions published in both print and electronic media, such as the Internet. Some of them are asked for media interviews and opinions (Q26, 27). In the focus group discussions, CSOs pointed to the important role of the private media, particularly in 2011 (see case study). In Malawi, there is a proliferation of private newspapers, private radio stations and private televisions to which CSOs have open access and can present their opinions. It was noted that the media was also under threat in the period 2009-2011. As a result, they were supportive of CSOs because there was a common interest.

### **Working with UN bodies/institutions**

68% of CSO leaders reported that it was easy to work with UN bodies without fear of reprisals (Q39). In the focus group discussions, examples were given of CSOs working with UN institutions. A few Malawian CSOs have engaged with regional and international protective mechanisms, such as the United Nations Human Rights Council, the African Union (AU), the African Commission on Human and Peoples Rights (ACHPR) and the Southern African Development Community (SADC) (see case studies). External pressure and lobbying

by Malawian CSOs also contributed to the formation of the government-civil society dialogue facilitated by the United Nations Malawi office in 2011-2012. Its purpose was to demand a response to a 20 point petition from civil society in response to the worsening political and economic environment in Malawi, evidenced by increased incidents of political violence as well as acute shortages of basic goods and poor service delivery (see case study). In 2012, the Deputy UN Human Rights Commissioner visited Malawi and met with CSO leaders. The objective was to assess the human rights situation following the nationwide demonstrations on 20 July 2011. Additionally in 2013, The National Right to Food Network, which has been championing legislation on the Right to Food Bill since 2003, met with the UN Special Rapporteur on the Right to Food.

## Disabling factors in Malawi

### Government strategy on CSOs is inadequate

The majority of CSO leaders felt the government strategy on CSOs is inadequate (Q5), and most agreed that CSO participation and co-ordination in development plans and implementation is inadequate and sometimes very poor (Q4). In the focus groups, a difference was noted in the responses from advocacy/human rights CSOs and service delivery CSOs. CSOs working on human rights and democracy issues perceive government-CSO relations as confrontational. On the other hand, CSOs who provide emergency relief and other visible service delivery work view relations in a more positive light. CSOs pointed to insufficient co-operation from state institutions when CSOs were under threat. CSOs pointed to the fact that there were still a number of “bad laws” in place. As long as these laws remained in place,

the environment would remain unpredictable. The major impediment over the next year relates to access to free, fair and accessible elections in 2014.

### Harassment

There have been attempts to close CSOs in the period under review when their work clashed with the interests of government. For instance, in 2011, the government, at the height of political and economic instability, scrutinized the registration records of the Human Rights Consultative Committee (HRCC) to verify whether it was conforming to the stipulations of the Registrar General. CSOs saw this as a rouse to deregister the network. In addition, the offices of critical organisations have been raided. In the focus groups, it was reported that during the period 2009-2011, the offices of the Centre for Human Rights and Rehabilitation (CHRR) were raided more than once.

### Stigmatisation

A third of CSO leaders feel they are sometimes or frequently referred to in derogatory terms by the authorities (Q9). The majority of CSO leaders feel they experience stigmatisation for working on issues perceived as unconventional, such as human rights and particularly sexuality (Q15).

In the focus groups, civil society organisations noted that although the situation is currently calmer, they are still dealing with the same political system with the same values.

The Centre for the Development of People (CEDEP) and Centre for Human Rights and Rehabilitation (CHRR) have been strong advocates for LGBTI rights. As the case study describes, they have been stigmatised by the

government, the public and even fellow CSOs as a result. Civil society activists who are critical of the government are often branded as “gays” by the government in an effort to delegitimise their demands.

### **Arbitrary detention**

More than a third of CSO leaders have experienced some form of arbitrary detention over the past five years (Q43). This was reported mostly between 2009-2011 and while arrests of civil society leaders has lessened since, journalists, in particular, continue to receive death threats for reporting on corruption within the rank and file of government. In 2011, after increasing threats to specific CSOs, selected NGOs attended a training workshop on Internet data security and personal security facilitated by Trocaire. CSOs said that they are now more vigilant about monitoring their surroundings and data security as a consequence of the training.

### **Difficulties in arranging peaceful assemblies**

In 2011, it became increasingly difficult to hold peaceful demonstrations. For example, a decree was issued ordering any grouping intending to hold a demonstration to deposit MK 2,000,000 before demonstrating. President Banda later reversed this in 2012. However, according to certain CSOs, intimidation still persists and there is apprehension over whether restrictive amendments/decrees/laws could return, given the expansive powers granted to the Office of the Presidency in Malawi.

### **Freedom of expression and access to information**

57% of civil society organisations responded that they would be concerned about

making explicit criticism of government on development matters (Q28). CSOs feel that there continues to be intimidation of the media. There has been little change in this regard since President Bingu’s second term in 2009 and the ascension of President Joyce Banda in 2012. The Censorship Board, a relic of Malawi’s one-party system, still exists although its powers have waned and it mostly focuses on dealing with issues such as pornography. However, its criticism of some media houses alleging that they had “sensationalised” live coverage of the July 2011 demonstrations is an example of its expansive powers to limit fundamental rights and freedom.

Media organisations in Malawi are sustained financially mainly through government advertisements. As a result, they find themselves in a position where they cannot be too critical of the government for fear of losing advertising income. Party operatives usually publicly threaten media houses that take an anti-government stand in their reporting. This creates an inherent fear in the minds of media house editors, leading often to self-censorship.

While CSOs felt that access to the Internet was fairly easy, they lamented the absence of access to information law. CSOs felt that such enabling legislation would facilitate CSO work on policy advocacy.

Limited support from the oversight mechanisms, e.g., the ombudsman’s office. The majority of NGO leaders had not used the services of the ombudsman’s office. Although not confirmed in the focus groups, this may be explained by the fact that its role has been skewed towards addressing issues related to employment disputes within

government, as opposed to the totality of human rights. It is also important to highlight that Malawi's oversight mechanisms, including the ombudsman's office, have suffered due to lack of funding and personnel. In addition, the executive and the legislature rarely respond to recommendations from these institutions.

Limited access to government authorities and regular dialogue mechanisms between government and CSOs

The large majority of CSO leaders felt that access to ministers and government officials is difficult (Q31). The large majority has on occasion been invited to participate in meetings and initiatives (Q32). A significant minority felt that consideration of their views had improved over the past five years, but the majority felt it was the same (Q33). The large majority felt their proposals were implemented sometimes or rarely (Q34). The large majority stated that proposing legal reforms on development issues ranges from difficult to very difficult (Q36).

These results suggest a lack of structured dialogue between CSOs and government on development policy issues. In focus groups, CSOs explained that access to government remains highly centralised and primarily dependent on the blessing of both the President and the ruling party rank and file. CSOs noted that in less 'volatile' engagements related to food security or infrastructure it is easier to access technocrats within government. There was some indication that access is more difficult for small rural organisations compared to larger organisations. The example was given that the District Executive Committee turns up when an international NGO calls for a meeting but not if the same request is made by a small rural organisation (focus group, Balaka).

Some said that tensions between CSOs and government could be related to the absence of institutionalised forums where the two sides can meet and work together (focus group, Salima).

CSOs said there were additional challenges in sustaining momentum on advocacy processes due to constantly changing policy frameworks. For instance, since 1994, the overarching policy direction of Malawi has changed with each successive government: Vision 2020 and Poverty Reduction Strategy Papers under President Bakili Muluzi, and the domestication of the Millennium Development Goals, and the Malawi Growth and Development Strategy (MGDS) I and II under President Bingu wa Mutharika. This has made it very difficult for CSOs to effectively engage with government and influence policy. There is also an absence of national fora in which CSOs can debate and strategise on national issues. This weakens the ability of CSOs to engage government on national issues from a united position.

However, some good examples of CSO-government co-operation were noted. CSO mentioned the process to develop Public Service Charters in Malawi to track service delivery. There was co-operation between the Office of President and Cabinet (OPC) and CSOs on the nature and scope of the Charters.

### **Funding stability and co-ordination**

65% of CSOs felt that government policies over the last five years had not improved their organisation's ability to generate resources (Q48). In focus groups, CSOs indicated that funding levels were inadequate due partly to the global economic crisis. However, the governance crisis in Malawi had not helped

either as donors and development partners lost trust in the country. Some felt this played to the advantage of larger NGOs who received more funding in view of the governance crisis. In addition, declining funding levels, according to CSO leaders, affected co-operation and interaction among CSOs, because it increased competition for available resources and increased divisions. The divisions tend to run along ethno-linguistic lines complicated by the ethno-linguistic political divisions of the country.

In the focus group discussions, CSOs felt there was a limited number of funding institutions and few basket funds for CSOs, besides the World Bank and the Tilitonse Fund. Dependency on donor funding, as well as the lack of co-ordination and planning within the wider context of civil society, had weakened the ability of CSOs to create an atmosphere that was conducive to sustainability. Malawian CSOs said donors have had the upper hand in driving the agenda. "Donors have more leverage. They have the money to influence the agenda of CSOs and the weakened negotiation position of local CSOs is not potent to challenge this" (focus group, Mzuzu). For instance, the creation of the Tilitonse Fund during the Bingu regime was an important source of support for critical voices at the grassroots. With the sudden death of President Bingu, there has been a perceived shift in focus. This shift is seen to have benefited more established CSOs

and INGOs and left out emergent grassroots organisations. The fund is also open to all CSOs, including international CSOs (focus group, Lilongwe). CSOs pointed to the Danida funded Church NGO Consortium in the late 1990s-early 2000 as a good example of CSO basket funds that had built capacity among CSOs and faith based organisations (FBOs) at a crucial time (focus group, Blantyre). CSO financial sustainability is further exacerbated by weak linkages between Malawian CSOs and the Malawian private sector. In addition, the Malawian private sector's corporate social responsibility is limited (by choice) to supporting sporting activities, HIV and AIDS related activities, and selected education and health activities in a rather disjointed manner.

### **Lack of effective networking among CSOs and code of conduct**

Focus groups referred to networking challenges within civil society in Malawi. A problem raised was that those charged with co-ordinating and networking within civil society often deviate from their mandate and become implementers. One focus group noted that there had been calls for CSOs to commit to a code of conduct. However, CSOs have been slow to respond. Concerns were also raised about the possible existence of CSOs created by government officials to channel resources. Some also said there is limited monitoring on the part of the NGO Registrar and CONGOMA on compliance with standards and expectations.

# CASE STUDIES

## Increasing the space for LGBTI rights in Malawi

In 2011, one of Malawi's leading dailies, The Nation, broke the story of a traditional engagement ceremony that had taken place between two gay men. This was a first in a deeply conservative society. There was a public furor despite the secular agenda of the country's republican constitution. The two men found themselves at the center of public attention and ridicule. The then President was the first to declare them criminals and "worse than dogs". In Malawi's conservative society, the issue sparked debate as it was viewed as a test case that challenged prevalent prejudice towards sexual minorities.

Two CSOs, the Centre for Human Rights and Rehabilitation (CHRR) and the Centre for the Development of People (CEDEP), began a campaign to protect the rights of minority groups with a specific focus on the LGBTI community in Malawi. Their campaign focused on the decriminalisation of sex between consenting adults of the same sex. Additionally, this advocacy called for the removal of rules related to the age of consent, the prohibition of discrimination in the workplace, the legal recognition of same sex partnerships and the removal of restrictions on same sex couples. The case drew international attention, including a visit of UN Secretary General, Ban Ki Moon, to Malawi. The President eventually succumbed to this pressure and pardoned the two men on "humanitarian grounds" but maintained that homosexuality was a crime in Malawi (International Bar Association, 2012). President Banda's government has been slow to act. At the time of writing, the relevant provisions in the Penal Code have not been reviewed despite public commitments to do so by the President and other ministers.

The campaign for LGBTI rights challenges the traditional understanding of equality and gender stereotypes in Malawi. There is also resistance to change among a large majority of CSOs. To address these views, CSOS have employed media strategies. For example, a weekly newspaper column, "Sexual Minority", has started with the aim of deconstructing the nature and scope of discrimination based on sexual orientation and to raise awareness of the need to recognise the rights of sexual minorities. So far, progress has been slow and many continue to toe the traditional line. There has also been resistance on the part of Faith Based Organisations to acknowledge the rights of the LGBTI community, arguing that the issue of sexual orientation runs counter to the principles and values of religion. In response to this, both CHRR and CEDEP have initiated dialogues with the clergy around the issue and on the universality of rights.

## Public Affairs Committee/Council for Non-Governmental Organisations in Malawi and Government Dialogue Team

With rising public concern about the political violence that emerged from the July 2011 nationwide demonstrations, the United Nations Malawi Office suggested that efforts be made towards peace building as a way of preventing further political fragmentation.

The UN Malawi office facilitated a first meeting to discuss the modalities of initiating a peace building process. The Public Affairs Committee (PAC) utilised its skills in high level advocacy to collaborate with CONGOMA in coming up with a core team from civil society for this dialogue. Members of the CSO team were drawn from a wide range of CSO stakeholders, such as the Malawi Health Equity Network, the Church and Society Synod of Livingstonia and the Nurses and Midwives Council. The government also constituted its own team comprising - clergy, cabinet members and traditional leaders.

The dialogues brought about some resolutions and action points on the ways in which the government could resolve the political and economic changes outlined by civil society in their 20-point agenda.

The following factors have been identified as contributing to this achievement:

- The terms of reference for the dialogue were drawn up by both sides and in this way, effectively established the parameters for dialogue.
- Some increased political will on both sides to compromise positions for the purpose of peace and nation building.
- The role of international bodies, such as the UN, in facilitating the process.
- Public interest in the dialogues.

Despite the achievements, there were also challenges that need to be addressed in similar exercises in the future. These include the following:

- The lack of peace building skills on both sides.
- The inability of the executive to keep a neutral position on the matter.
- The frequent boycott of sessions by both sides due to acts of impunity, e.g. torching the house of HRDs.

## 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.

(Developed from: Malunga, Chiku (no date), Civil Society @ Cross Roads in Malawi)

## Donor partner co-ordination group

In late 2009, a donor partner co-ordination group of several international NGOs was established with the aim of increasing co-ordinated donor support for civil society in Malawi. The group decided to share details of their partnerships, types of project, funding provided, length of grant, and other key information.

The aim of the group is to increase:

- Co-ordination of funding and other types of support to particular partner organisations.
- Complementarity of support (i.e. to avoid double-funding or duplication of efforts).
- Agreement and advocacy on minimum standards for civil society development programs and projects in Malawi, through establishment of joint principles of good partnership.
- Sharing of information and documentation on programs, projects, partners, funding and collaborators to improve network members' impact and results.
- Co-ordination of advocacy and campaigning opportunities to influence national policy.
- Collaboration on capacity building for both partners and donor staff.

The group discusses issues at a strategic level. Any issues regarding specific local partners or networks are discussed in sub-groups headed by identified lead agencies. Possible issues for discussion include:

- Development, implementation and follow-up of principles of good partnership for support to civil society in Malawi.
- Issues that affect civil society's ability to operate effectively in Malawi (political trends).
- Ways in which to increase effectiveness in funding modalities (project support versus program support).
- Mutual learning opportunities (trainings, capacity building, minimum standards for humanitarian relief, financial management training of local partners).
- Feedback from sub-groups (when relevant).
- Continuous update of the common website which aims to map all multilateral, bilateral and INGO support to civil society in Malawi.

During its four-year life, the number of participants has increased and the provision of systematic information on donors' support to civil society in Malawi has become a requirement. It was agreed that a joint database be developed and presented on a website which could give an easy, accessible and comprehensive picture of support to civil society in Malawi.

The overall objective of the website is to increase transparency in the flows of funds to civil society. This will allow better co-ordination amongst development partners and make it easier for civil society organisations to identify potential partners. It should also increase mutual learning and support through shared information on studies, evaluations and audits, and lead to better quality programs and cost-effective use of resources. The database will provide an easy entry point for donor partners who wish to co-ordinate their efforts and build on each other's experience of local partners.

## Conclusion

The CSO-government relationship has traditionally been defined by both power and culture since being in opposition to authority is largely seen as insubordination in Malawi. Political leaders find it hard to accommodate CSOs, as this is perceived as an erosion of their authority. By inference, this is also an indication that Malawi's political platform is still learning the new 'modus operandi' on ways of being inclusive and accommodating differing views through free debate on controversial issues.

There are fundamental steps that can be taken to enhance CSO-government relations in a young democracy such as Malawi's. It has to be acknowledged that while civil society may not save or change the world (Obiro, 2006), CSOs are here to stay. The government can enhance CSOs' contribution by, for example, mandating, facilitating, resourcing, partnering and endorsing them in service provision and policy advocacy and monitoring (Brinkerhoff,

2004). Some of these strategies are already being implemented but two areas require the government's attention. The government needs to intensify efforts to enter into joint development ventures with CSOs, to publicise the value of public service philanthropy; and to publicly acknowledge the role played by the non-governmental sector. Joint development ventures between CSOs and the government require joint monitoring and evaluation. The government needs to develop laws and regulations that allow both CSOs and the government free access to and sharing of information, a shared policy dialogue, facilitation of media reporting and, more importantly, the facilitation of reporting on each other's policy research findings. Unless some of these principles are institutionalised, CSOs' contribution will remain piecemeal and haphazard.

## Actions/recommendations International

In the long term, at the international level, there is need to lobby for the creation of the office of the UN Special Rapporteur on Civil Society. In the short term, support needs to be provided to HRDs so that they can continue to work in an enabling environment.

### Regional

There is need for our African counterparts to show solidarity by exerting pressure on the Malawi government to commit to international protocols, regional governance instruments and the local constitutional frameworks.

### Annual enabling environment reporting

Although the annual civil society space reporting is being spearheaded by CIVICUS, it needs to be coupled with an annual process of local reporting on the enabling environment so as to monitor progress.

### Improve CSO accountability

Calls for greater CSO accountability and transparency have resonated, particularly amongst government staff. CSOs are often more accountable to their donors than to the people. As donors' focus shifts more towards

state institutions and as CSOs' role in the bigger picture arguably recedes, CSOs are clearly going to have to work harder to justify their right to a place at the table. Action must be taken to develop a CSO code of conduct.

### **Healing and rehabilitation**

The events of 2011 traumatised many Malawians, tore the civil society movement apart and created mistrust at many levels. It is therefore important to design interventions that promote healing and rehabilitation at national and local levels.

### **Create a national CSO forum**

A CSO forum where CSOs debate and jointly lobby on national issues needs to be created. This national forum would also be the place where CSOs could consistently review the enabling environment and take stock of any threats and opportunities.

### **Review of restrictive laws**

It is essential that a review of laws that are inconsistent with the constitutional provisions for CSO independence and freedoms is carried out. This should then generate relevant recommendations to the Law Commission

and parliament. Implementation of the recommendations of the constitutional review conference would go a long way to ensure the flourishing of an enabling environment.

### **Capacity building and partnership programs**

Assistance is needed to build the capacity of CSOs to conduct research on topical issues; design legal, political, and publicity strategies and to partner with related institutions, such as constitutional bodies, academic institutions, and media houses. Training and research programs by academic institutions would also be helpful.

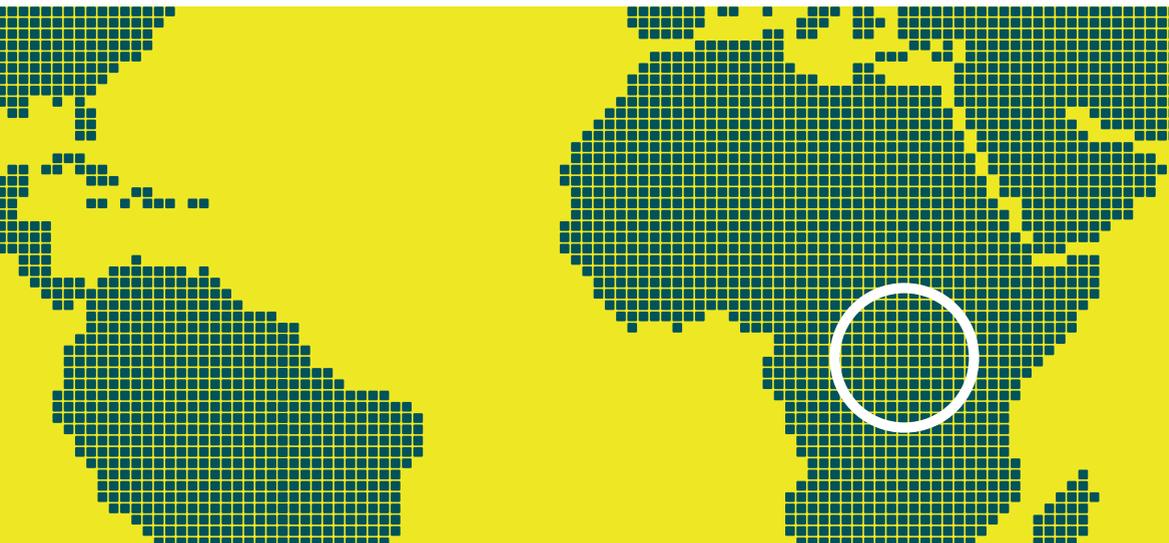
Partnership programs should include a standard requirement that INGOs have to implement their activities jointly with district-based NGOs and CSOs to transfer skills and contribute to capacity building.

### **CSO basket funding**

Basket funding mechanisms need to be increased to create more opportunities for funding. This would also help to open up opportunities for philanthropy and business involvement in CSO activities.



**RWANDA**



## Political and economic context

Rwanda has been steadily rebuilding itself since the genocide of 1994, which claimed close to a million lives, gutted the country and left a deeply traumatised population in its wake. A period of political transition followed, based on the 1993 Arusha agreement and on multiparty principles. This transitional arrangement ran until August 2003 when presidential and parliamentary elections were held and a new Constitution was promulgated. The end of this transition heralded a new era of multipartism with elements of power sharing, institutions to ensure protection of human rights, and emphasis on equality and national unity.

Politically, the Rwanda Patriotic Front (RPF), under the leadership of President Paul Kagame, has held a majority in both the legislature and executive since 2003. This government is credited with bringing political stability and economic development to the country. It has set up a comprehensive system to achieve justice and the rule of law and it has earned

the reputation among bilateral donors of being an honest and efficient government to work with. The government has placed an emphasis on increasing domestic tax revenues and foreign direct investment and on improving the effectiveness of foreign aid, all of which have contributed to steady economic growth and a rise in living standards for Rwandans. Over the past 10 years it has made significant development strides, with Rwanda on track to achieve key MDG targets by 2015. Some of the serious challenges facing the government include dealing with demographic pressure (Rwanda remains one of the most heavily populated countries in the world) and providing decent employment to the 2 million people set to enter the workforce in the decade to come.

However, over the past 10 years, international human rights observers have accused the government of, among other things, blocking political opposition and suppressing independent media and human rights

monitoring groups. Specifically, the government has come under criticism for its laws on 'genocide ideology' and sectarianism (more commonly known as divisionism), and for the ways in which the laws are used to inhibit freedoms of expression and association. The government is highly sensitive to this (or any) kind of criticism and argues that such measures be seen in light of the recent past and the need to forge national unity. UN and AU bodies argue that promoting national unity is not incompatible with the rights of individuals and communities to freedom of expression and association<sup>2</sup>. They posit that the laws have impacted negatively on public life, constitute a disproportionate restriction and are not formulated with sufficient precision for individuals or organisations to know how to regulate their conduct.

The laws have been applied and experienced in different ways. Since their promulgation, hundreds of cases of genocide ideology have been brought before the Rwandan courts (Amnesty International, 2010) and while a significant proportion of the cases have resulted in acquittals, defendants have often spent long periods in detention. Independent journalists have borne the brunt of these charges. Since 2003, along with charges of libel and endangering national security, a number of them have been detained on charges of 'sewing divisions' and 'fomenting hate'. Although CSOs have never faced formal charges under these laws, the laws have delimited their work in other ways. In 2004, a number of human rights

monitoring groups and their funding partners were denounced in a Parliamentary report on 'divisionist ideology'. A number of individuals working for the denounced organisations subsequently left the country, fearing for their safety.

Following its UPR review in 2011, the Rwandan government committed to reforming the laws (work is underway) but observers maintain that the legislation has already had a far reaching effect, creating a situation whereby ordinary Rwandans are afraid of voicing their views, even on uncontroversial issues (Human Rights Watch, 2010; Amnesty International, 2010), and independent media outlets struggle to keep their heads above water. A recent case highlighted by Human Rights Watch was the murder in July 2013 of Gustavo Makonene, the coordinator of Transparency International Rwanda's Advocacy and Legal Advice Centre in Rubavu. Human Rights Watch described the 'silence' that followed the activist's death and the 'surprisingly little public attention' that it garnered (Human Rights Watch, 2014).

Ultimately, the absence of critical civic voices within Rwanda, and effective advocacy by CSOs on issues related to human rights, is attributed by most observers to the hard line taken by the Rwandan government towards criticism of its policies and practices. Those voices trying to promote alternatives to government policies and practices are often perceived as confrontational, which leads to conflict with the government (CIVICUS, 2011).

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2. In relation to freedom of association, one of the recurring cases tabled by UN and AU bodies is the government's refusal (in line with its unity and reconciliation policy) to recognise the indigenous status of the Batwa minority and their right to self-identify and organisation as Batwa.

# Policy and legal environment for civil society

The government does acknowledge the role of civil society in development. In particular, it recognises that CSOs can help it to meet its commitments to accountability, transparency

and efficiency in deploying resources and delivering services. To this end there are a number of avenues for CSO participation within Rwanda’s development framework:

LEVEL	AVENUE
National	<p>The <b>Government and Development Partners’ Meeting</b> which is held biennially and provides a forum for high-level dialogue on development cooperation.</p>
	<p>The <b>17 Sector Working Groups</b> which are technical working forums made up of Development Partners (usually international donors but may include CSOs or private sector actors), civil society organisations, the public sector and the government, responsible for supporting the development and implementation of sector strategic plans.</p>
District	<p><b>JADF</b> JADFs were established by ministerial instruction in July 2007. They are defined as consultative forums for information sharing and dissemination that promote cooperation among people and actors in development and social welfare. They are to enhance “participation, transparency, dialogue, voice and accountability by sharing information, effective coordination as well as planning and harmonised Monitoring and Evaluation of stakeholder’s interventions” (RGB brochure “Enhancing Capacity for Joint Action Development Forums – JADF, 2013). The Government of Rwanda sees JADF as having a prime, if not exclusive mandate for local government-CSO collaboration. CSO contributions to all kinds of district planning processes are expected to be channelled through the JADF. CSOs are members of the JADF and their action plans are subject to review with a view to coordinating development activities.</p>
	<p><b>District Development Plans, Annual Action Plans and budgets</b> These plans and accompanying budgets are compiled by local governments at district level. They detail the priorities, targets and subsequent resource allocation for development activities within a given district. The District Development Plans (DDP) are five year plans for any district and the Economic Development and Poverty Reduction Strategy (EDPRS) and the Sector Strategic Plans set the framework for the DDP. Although JADF is seen as the structure in which private sector and CSOs provide input, the JADF doesn’t have a decision-making mandate regarding the establishment of plans; it can only provide an opinion to local government.</p>
	<p><b>IMIHIGO</b> Imihigo is the Rwandan concept of “performance contract” in which one entity commits itself to achieving a set of targets during a given time-span (normally one year). The concept was mainstreamed by the government in 2006. It attracts great visibility as the commitments are signed by mayors in front of the President and are subject to rigid evaluations. Priority and urgency is awarded to activities contained in the Imihigo. Local authorities often count on private sector and CSOs contribution to reaching Imihigo targets, for example by leveraging resources, undertaking part of the work and assisting with the mobilisation of the population.<sup>3</sup></p>

3. Source: ‘The Collaboration between Civil Society Organisations and Local Governments in Rwanda’. Paper prepared on behalf of the GIZ programme ‘Supporting Decentralisation as a Contribution to Good Govern-ance in Rwanda’ in 2013 (unpublished).

However, the extent to which CSOs are able to exert influence in these spaces varies, depending (among other things) on where the organisation is positioned (local, national, sectoral) and also on the capacity of personnel to navigate what is a restricted environment. This duality (restrictive public sphere on the one hand and space for organisations to be heard on the other) is mirrored in survey data. Survey respondents were generally positive about the level of government effort to involve civil society in the decision-making process, and about the clarity of policy frameworks and processes. They were less positive about their ability to express a critical or dissenting opinion in such spaces. The overall extent to which respondents felt included and able to influence was therefore quite low. Likewise, the surveys returned low scores on freedom of public assembly. This aspect, however, did not surface in focus group discussions. It is not an aspect that many feel comfortable discussing in a group setting.

Rwanda's civil society is composed of a diverse mix of groups and organisations working locally, regionally and at the national level. The co-operative movement in Rwanda has been very strong since the 1970s. To this day, there continue to be many groups: organised at local level into farmers' co-operatives and then organised again into regional or national associations. A strong women's movement dates from the early 1990s, as well as a human rights movement and an independent trade union movement. These movements emerged with the advent of multi-party democratisation

in the early 1990s. Many national organisations are affiliated to thematic umbrellas. For example, there is a women's umbrella PRO-FEMMES TWESE HAMWE which brings together women's organisations from across the country, providing some capacity building and also assisting with research and advocacy work. There is also the Justice and Peace Commission of the Catholic Church (which reaches right down to parish level) and equivalent bodies for the Muslim and Anglican communities. Since the early 2000s, new kinds of organisations have been emerging, focusing on social research, policy analysis and citizen advocacy. There is also a much broader civil society operating at local level made up of church groups, savings circles and funeral societies, etc. These groups bring people together for different reasons and (as with other countries) the social capital they generate, and the actual leverage they exercise over local affairs, tends to be overlooked by external actors.

Since 2004, a Rwanda Civil Society Platform (RCSP) has regrouped 15 civil society bodies (including the aforementioned umbrellas) at the national level. Its primary function is to facilitate interface between civil society and government/development partners at a national level and to promote and disseminate best practices within the civil society sector. RCSP is central to government and development partner efforts to incorporate civil society into the aid co-ordination framework but its role and approach has been criticised by international human rights organisations<sup>4</sup>.

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4. The Platform regularly aligns itself with the government and, at times, has defended the government against criticism downplaying the scale of human rights abuses. The Platform's election observation mission produced a very positive report on the 2010 presidential elections, despite evidence of government crackdown on opposition parties, journalists and critics in the pre-election period.

The more formal CSOs are regulated by a clear legal and policy framework. In 2012, the President signed in laws governing national NGOs, International NGOs, and Faith-Based Organisations. Under the law, NGOs obtain legal recognition through the Rwanda Governance Board, which was created in 2011. Rwandan legislation differentiates between local NGOs (law N° 04/2012), international NGOs (law N° 05/2012) and Faith-Based Organisations (FBOs) (law N° 06/2012). The Rwanda Governance Board (RGB) is responsible for the registration and evaluation of local NGOs and FBOs, while the Directorate General for Immigration and Emigration assumes the same responsibilities for international NGOs. This recently revised

legislation has been generally seen, by many CSOs, as positive and as an improvement. However, the RGB has been criticised for its excessive bureaucratic requirements for registration. Another concern is that the registration criteria afford wide-ranging options for the authorities to deny registration, such as failing to provide “convincing evidence that the (applicant) may jeopardise security, public order, health, morals, and human rights” (ICNL, 2014). Following his recent visit to Rwanda, the United Nation’s Special Rapporteur on the rights to freedoms of peaceful assembly and association, Maina Kiai, raised concerns about the role of the RGB and its role in, and scope of, oversight over CSOs (Kiai, 2014).

## CSO views

This section presents and discusses the views of Rwanda civil society organisations on factors, which they feel have enabled or disabled their operational space in the period 2009 to 2013. The findings are based on the responses from 28 CSO leaders to a research questionnaire and discussions within 5 focus groups with a wide variety of CSO organisations in Rwanda.

### Enabling factors in Rwanda

#### **Willingness of government to engage with CSOs at different levels**

The policy frameworks at national level were cited as being clear and helpful to CSOs in their efforts to influence development processes (the National Unity and Reconciliation policy framework, along with the Decentralisation Implementation Plan were two that were cited) as was the willingness of government to engage with CSOs at different levels, e.g., DPMs, DPCCs, SWGs, JADFs. Almost all respondents agree that the enabling environment is more

supportive and inclusive now than it was five years ago (Q6). The majority of respondents have access to information on official budget and policies and that access is better than five years ago (Q22, 23). Access to information did not extend to freedom of information laws (Q24).

#### **Space for informed dialogue and negotiation with government**

The majority of survey respondents feel that government strategy is supportive towards CSOs, placing Rwanda ahead of other countries participating in the study. A large majority feel that consideration of their views in official meetings and working groups has improved over the past five years, that they are treated respectfully, and that they have the freedom to act as CSOs (Q9,10,11) (Q18, 19). They feel little, if any, pressure to desist from activities and felt safe most of the time (Q8). Civil society actors have not experienced problems of corruption

(Q13) or defamation (Q30), and over half state they have access to officials and ministers (Q31).

CSOs with the most experience of dialogue and negotiation with government seem to be livelihoods based (agro-processing or micro-finance organisations). They have been lobbying government for reprieve from particular tax or regulatory regimes, among other things. One example of on-going lobby work is the work of the Association of Microfinance Institutions in Rwanda (AMIR). For the past two years, AMIR has been trying to convince government to introduce what it terms “industry friendly laws” which will ensure that people not served by commercial banks have access to financial services. So far, they have carried out research, held closed-door meetings with decision makers and sparked debate in the media by publishing an opinion piece in the English daily *The New Times* (the Rwanda Revenue Authority published a response in the same paper). Progress has been slow and the organisation is careful and prescribed in its approach but it is maintaining pressure on the government to review the regime for MFIs. One of the key drivers behind the lobby agenda of an organisation, such as AMIR, has been the brisk pace of reform in the country. New regulations for the micro-finance sector were introduced in 2003 and had a major impact on many MFI operations. The government subsequently developed a fully-fledged policy framework which was promulgated in 2006.

For CSOs working with farmer groups, dialogue

and negotiation with government has always been part of their work (the farmer co-operative movement dates back to the 1970s). What is new, perhaps, is the naming of this kind of dialogue and negotiation as ‘advocacy’ work, and the prescribed duty of governments to provide space for this kind of petitioning and to listen. Duhamic Adri’s experiences (outlined in SOSOMA case study) are relevant for the newer kinds of CSOs, i.e., those that emerged in the 2000s with a specific research and advocacy agenda. These CSOs present themselves not as providers of inputs and services, but as advocates for the poor.

In terms of space for civic action at local level, faith-based organisations shared experiences of their work with local government and local leaders. Participants cited the capacity and behaviour of local leaders and local government officials in some districts as disabling factors. CSOs are, however, working to shift prevailing dynamics. One faith-based organisation working in the North West of the country has observed a direct link between its DELTA<sup>5</sup> training programmes and citizen confidence levels when interfacing with local authorities. The CSO cited a recent example where the community was having issues with the local Mayor. The issues were not being resolved at the local level so the provincial authorities were called in. A public meeting was held and, after some airing of views, the provincial authorities explained that they would retire with the district authorities and decide on what could be done to resolve the issues. At that moment, one of the women who had participated in the DELTA

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5. DELTA – Development Education and Leadership Training in Action is a collective training program designed to prompt action for social change. It is based on the teachings of Brazilian adult educator Paulo Freire.

training (a young, unmarried woman with very little formal schooling) stood up and explained that the community wanted to be part of the effort to resolve the issues and requested that the meeting continue until a way forward had been agreed upon (her request met with success). This is an example of how CSOs, working through participatory and empowering methodologies, are enabling citizens to direct the transformation of prevailing social and political dynamics at a local level.

Other CSOs have taken the initiative to set up CSO led stakeholder forums to facilitate their work at local level. These forums are in addition to the forums that have been instigated by the government (e.g., JADF). Although the example given was specific to the agro-processing sector, value chain forums have helped with information flow between key stakeholders and have enabled CSOs to build and maintain relations with decision makers. Admittedly, it is less of a challenge for an agro-processing CSO to attract diverse stakeholders, since they are providing employment and generating revenue within the local area but the model is significant because it is one of the few examples of a CSO led multi-stakeholder forum.

Using recourse mechanisms, such as the Ombudsman and the Human Rights Commission was identified by one CSO as a mechanism that had enabled their justice work. In the main survey, half of all respondents concurred that the ombudsman's office, or similar body, had handled complaints or issues raised by them over the last five years. The case mentioned involved the expropriation of land from a number of families to make way for a commercial tea growing enterprise. In this particular case, the CSO made the decision to

submit the case to the National Human Rights Commission because they estimated that the local authorities were not giving sufficient weight to the concerns of the families involved. The commission subsequently conducted an inquiry and recommended that the matter be taken to the local courts. With the support of the CSO, the families won their case in court. Following the court ruling, the CSO was obliged to approach the National Human Rights Commission again when the local authorities delayed in executing the court's judgment. The matter is still not fully resolved.

### **Disabling factors in Rwanda Absence of well-developed mechanisms to ensure community participation in the formation of policies, or community feedback on the impact of policies**

88% of survey respondents felt that the government had not ensured the participation and co-ordination of CSOs in drafting and implementing a national development plan. Survey results reveal that, while the majority of respondents feel that things have improved over the past five years (government consideration of civil society views has increased, the overall environment is more supportive and inclusive), they don't actually feel any more involved and that the influence they bring to bear is minimal. A large majority of survey respondents think it is difficult to propose or challenge a legal act or bill related to development issues and to make proposals that are implemented by the authorities (Q34, 35, 36). Also, in spite of their being positive about the frameworks in place to participate in policy making and planning, just over half of the respondents say that they have not often been invited to give feedback or participate in government bodies or working groups on

government policies. One participant spoke of how the 'swift pace of reforms' has meant limited participation of citizens and CSOs. An example of problematic implementation that was cited was the grass thatched house eradication campaign 'Operation Bye Bye Nyakatsi' of 2010 (the idea being to upgrade the minimum standard of housing to brick and tin). Here, over-zealous local authorities, keen to reach targets, demolished the homes of very poor and vulnerable families (Batwa were disproportionately affected) without providing adequate alternative shelter.

### **Fear that as a CSO you may be construed as being a counter power to the state**

Participants explained that fear of being perceived as a counter power was enough to discourage CSOs from tackling 'sensitive' issues with government. One participant said that 'frank dialogue' with government was difficult. This point was corroborated by the survey where just over half of respondents said it was no easier to be openly critical of government policy or practice than it was five years ago, and that they would be concerned about making explicit criticism of government in public (Q27, 28). Interestingly, while the majority of respondents said that it would be easy to get published in the local media, only a minority said they had actually been interviewed over the past year (Q28, 29). CSOs didn't give specific examples of 'sensitive' issues but mentioned areas of policy that were 'delicate' or 'unclear'. The consequence of this reticence, they said, was 'weak positioning' by civil society and development policies that generally shape up in the way that government prescribes. Other survey questions that pertained to open criticism or public dissent threw up similar responses. When asked about

public protest, a large majority said that it was not possible and that it was not getting any easier (Q20, 21).

These various survey findings link in with CSOs' experience of limited public debate (preferring to approach government in closed meetings) and lack of solidarity among CSOs. In relation to low levels of public debate, they acknowledged that spaces had been set up to bring CSOs and government together, such as the JADF, but said that the level of public debate in these forums was not high. They said that the attitude of local officials in meetings could make the spaces feel small and that the forums were sometimes run more like information delivery sessions than as forums for debate. Lack of solidarity was a common theme as well. There were instances when organisations could have presented a unified front, but instead they either publicly sided with the government or stayed quiet. Lack of solidarity in moments of crisis leaves the directly affected organisations feeling quite isolated and unable to defend the civic space they occupy.

### **Weak institutional capacity, weak capacity for advocacy**

Although it is important to view the factors above as singular disabling factors, CSOs did not discuss these factors independently of their own capacity issues, but rather as linked to these issues. They cited lack of capacity to prepare evidence based arguments and present them cogently to authorities; failure to prepare well for or attend JADFs which leaves the authorities the chance to assume the upper hand in meetings; lack of skills in policy analysis, techniques and strategies to create and sustain pressure for change or bring influence to bear; and lack of collective action on important policy

issues. The strategic positioning of a CSO also seems to have a bearing on the capacity question. CSOs based at local level, for example, were able to provide instances of where they had challenged decisions, influenced outcomes or highlighted injustices. This is not to say that the local CSOs were not navigating a complex pathway but that they appeared to enjoy a confidence and energy borne out of a good working relationship with the community.

### **Donor policies and practices**

Donor policies and practices emerged as disabling factors at times. Examples cited included:

- Funding is often short term but affecting change, either at the community or policy level, is a slow process
- The administrative burden of meeting donor demands (and donors are often multiple in order to guard against funding shortfalls)
- Changing priorities of donors as well as ideological differences.

When asked what the main obstacle for delivering work over the next year would be, the majority of CSO leaders listed funding and meeting budget needs (Q49): 'Competing for donor funds with the government', and 'limited funds to conduct studies and surveys nationwide'.

### **Lack of visibility of civil society**

CSOs don't feel that they adequately communicate their work and its impacts, and consequently that their role is not fully appreciated or understood by key stakeholders (namely government and development partners). While CSOs explained their lack of visibility as a consequence of their own shortcomings, lack of visibility can

be understood in relation to a government that a) is strong on aid alignment, with high expectations of itself, development partners and of CSOs to deliver results, and b) embraces civil society as a player in development but not as watchdog. CSOs are conscious that their lack of visibility makes it easy for government to play down their role, and for donors to opt to support government or those activities of CSOs that are directly aligned with government programmes. Some are also keen to be recognised as contributing something that the other partners don't bring to the table.

### **Difficulty building coalitions**

CSOs find it difficult to build ad hoc alliances on particular or pressing issues, either sector specific, or something to do with broader civil society and this diminishes their influence. When asked whether stronger coalitions can be realised in the Rwandan context, participants emphatically replied yes. There are examples of coalitions. CSOs have worked together on land issues since the early 2000s. At the very beginning, civil society participation was steered via Landnet Rwanda Chapter – an entity that comprised both INGOs and local NGOs – which afforded it a technical advantage as well as extra leverage. There are also examples of CSOs working in coalitions, on livelihoods, for example. Beyond these examples and umbrella and platform affiliations, there are very few instances of CSOs coming together to work on common issues. There is division at times as to what angle to take on an issue or how to broach it with government, and solidarity is not often in evidence.

Although it was only raised by the working groups composed of faith-based organisations and organisations working with trauma, the

issue of trauma is important. There are people in communities who continue to live with the trauma of 1994. They experience high levels of stress and anxiety which affects their families and, as the Capacitar case study shows, can

affect their working life and their participation in social life and in local affairs. Trauma affects people's basic belief in their own inner strengths and capacities.

## CASE STUDIES

### The story of SOSOMA: civil society lobbying for a favourable regulatory environment

SOSOMA Industries Ltd started out as an 'agro-processing project' of the NGO Duhamic Adri in the early 2000s. The agro-processing unit was established to add market value to grains produced by Duhamic Adri's network of cooperatives in the south of the country and to boost agricultural production and income in rural areas. Their product, SOSOMA (a compound of sorghum, soya and maize) proved to be very popular on the local market and, in 2008, Duhamic Adri opted to register the project as a stand-alone limited company. As a limited company, however, SOSOMA Industries Ltd was obliged to pay VAT at a fixed rate of 18% on products going to market. Faced with this VAT as well as the increasing costs of raw materials, the entity began to struggle to keep the price of its product down as it was being undercut by other suppliers who had VAT exemptions from government. In 2010, SOSOMA Industries sent a letter to the Rwanda Development Board (RDB) requesting an exemption from the VAT payment. They followed this up with a request for a meeting with RDB and the Rwanda Revenue Board. After a year of dialogue, SOSOMA Industries was granted the VAT exemption. It is the only company of its kind (a limited company with a not-for-profit origin) to have been granted this exemption and represents an important precedent.

SOSOMA Industries Ltd and Duhamic Adri pegged their arguments for the exemption on MDGs and the value of their product on poverty reduction and infant mortality rates. They knew the government would be more receptive to these arguments than to arguments related to their not-for-profit principles. Their overall assessment is that while government assists with business set up – registration is easy and there are incentives for initial infrastructure – the tax regime for not-for-profits remains an issue. However, now that the precedent has been set, there is potential for similarly formed agro-processing enterprises to push for exemption on the same grounds and for the sector to collectively push for a standalone tax regime.

## COCOF: delivering microcredit services to the poor, their way

COCOF, an NGO working in two districts of the southern province of Gitarama, has been providing credit and savings services to people in the local community since 1997. The credit and savings facilities were provided through informal tontines (rotating credit schemes). In 2010, COCOF and Duhamic Adri decided to fuse their microcredit client base together and formally register the services as a credit and savings co-operative. Based on client numbers at that time, the co-operative was to re-group roughly 1,500 clients from across the district. By 2011, the two organisations had collected relevant papers from central government and were at the point of convening a general assembly of members to launch the new co-operative when the local authorities intervened. The district mayor explained that existing clients and credit and savings services were to be incorporated into SACCO (the state run credit and savings co-operative) and that a standalone credit and savings co-operative would not be possible. The preparation work in the run up to the establishment of the COCOF/DUHAMIC merger had revealed to COCOF the extent to which the community valued their services but at that point, they didn't feel they had much of a choice. If they went ahead with the establishment of the new co-operative, Rwanda's Central Bank (BNR) would simply refuse to grant a license. The only option facing them was to incorporate with SACCO. Or was it?

A meeting was convened at district level with COCOF, Duhamic Adri, the Director General (DG) of the Rwanda Co-operative Association (RCA) and a number of key authorities from the district. The assembled group discussed various issues and the RCA DG then went away and drafted a proposal. COCOF's client base was against the idea of the incorporation (to the point where some of them said they would simply quit the scheme altogether) and COCOF had its doubts too, so they put the RCA proposal to one side and commissioned an external resource person to help them consider their options. COCOF was happy with the recommendations of the resource person and shared them with members, assuring them that if they were able to push the recommendations through, the incorporation could work in their favor. The study itself recommended a number of things including adequate representation of COCOF and Duhamic Adri on key committees, existing clients of Duhamic Adri and COCOF (within the new set up) to continue to receive services from Duhamic Adri /COCOF and that interest gain on existing Duhamic Adri/COCOF loans to be kept separate from interest gain on outstanding loans held by SACCO. A general assembly was finally convened (June 2013) and COCOF President was appointed Vice President of the SACCO co-operative.

According to COCOF, this was not an easy process, and it was a long one. There were times when members were ready to simply quit from COCOF's saving and credit scheme altogether, and there were times when it was difficult to negotiate with the local authorities. 'At the beginning, they were not flexible'. When COCOF met resistance from the local authorities, they would invite them to meet with members to see the level of resistance they (COCOF) were facing. COCOF also explained its ways of working to the local authorities and underscored the different ways in which the organisation contributed to the district level development plan. Finally, COCOF managed to push through every single one of the resource person's recommendations. According to the organisation, involvement of the members was key, as was the research, dialogue and negotiation. The strength of the members' position on the issue of incorporation is testament to the value they placed on the credit and savings services provided by COCOF and COCOF's track record in the district gave it leverage with the authorities.

## Capacitar Rwanda and the transformative power of popular education

Capacitar Rwanda uses a popular education approach to trauma rather than a therapy model, giving people tools to heal and transform themselves. In 2010, a sister working in the southern district of Kamonyi contacted the Capacitar Rwanda team and told them about a group of about 30 women she had been working with that were proving challenging. The women were all widows from the genocide and although they had formed their group a number of years ago, they had never worked well with each other or with the wider community. In spite of funds they had received over the years (from various local and international survivor support organisations), they were still isolating themselves from the community and struggling to live full lives. The sister said the group had even been gifted with a parcel of land in the valley near their homes but that they had never mustered the will to cultivate it. When other members of the community moved in on the parcel of land, the women had raced down and chased them away, saying it was theirs.

The sister asked if Capacitar might help to fix what was troubling these women, and give them motivation to approach life in a new way. Although very experienced Capacitar practitioners, Antoinette and her colleague Gilbert travelled down to Kamonyi in early 2011 feeling a little apprehensive. During that first meeting, they presented Capacitar to the women and explained what it was for. They also ran through a few simple exercises, adapting some to ensure that the women would feel entirely comfortable. The exercises ran for just 10 minutes and comprised of simple techniques for the harmonisation of energies. After this session the women said to the team, 'ok, you can come back'.

Between January and April 2011, the Capacitar team travelled to Kamonyi each week to run a session with the women. During the first two months, some women shared their stories but the Capacitar team ensured that the focus remained on the body and its energy. In March, with the approach of the annual genocide commemoration month



and the end of their time with the women, the Capacitar team invited the women to reflect on where they had come from and where they felt they were going. It was a critical juncture where painful experiences were verbalised but the women were able to talk about how they were discovering ways to deal with trauma and pain.

'Celine' was one such lady. 'Each time I saw a bush,' she said, 'I would say to myself that I had to go into it to hide'. During the genocide Celine had been hiding in a bush, with her baby tied to her back when some people came from behind with knives and hacked the baby off her. She was left clutching the cloth baby sling. 'Since Capacitar', she said, 'every time I feel that fear I hold my index finger like this and I am okay' (in Capacitar, the index finger is the place where fear resides). Another member of the group spoke of how she cried every night just before going to bed. She explained that after 1994, infiltrators broke into her house just as the family were about to sleep and attacked her daughter, who was pregnant at the time. Her daughter didn't survive the attack but the baby did. Right up until recently the woman found herself crying at that time of evening every night. 'Now,' she said, 'instead of crying at night I clasp my thumb' (the place where grief and tears reside). Another key source of strength for the women has been the pinky finger – where lack of self-esteem resides. Many of these women have been crushed not only by the trauma of near death experiences but also by the humiliation of having to run a house as a single woman – having to herd cows and fix roofs (traditionally men's work) has made them feel ashamed and unworthy of a place in community life.

The Capacitar team wrapped up its work with the women in April 2011, but has stayed in close contact with the sister who supports the women's group. Since 2011, she has reported that the group appears stronger, more receptive to change and has been collaborating with others. In 2012, the group organised a party to share their sense of achievement with the wider community. 'They want to say to themselves and to others "we exist, we accept to live" (Sister Antoinette, Capacitar Rwanda). The case of the women's group in Kamonyi illustrates the way in which trauma, at a very basic level, can inhibit participation. It also bears testimony to the power of popular education to transform people's sense of self and their relationship with the world around them.

## Conclusion

The aid effectiveness infrastructure and the leadership role that the Rwandan government has taken on development appears to have accelerated CSO engagement in development processes, and acutely heightened CSO leaders' awareness of the need to strengthen their capacity. These are developments that Rwanda CSOs feel positive about. These positive outcomes are overshadowed by the fact that civil society actors feel unable to express themselves freely or to keep pace at times. This creates a tension that can impact negatively on development work. A third of those surveyed made an overall negative judgment regarding the state of the enabling environment, highlighting that there are critical areas constraining CSO ability to contribute fully as equal partners. In concrete terms, this leads to the rolling out of development policies that have not benefited from civil society and communities' perspectives.

The best practice case studies demonstrate how Rwandan CSOs have dealt with the threat of cooptation, competition from the private sector and accumulated trauma in their communities. What is striking about the case

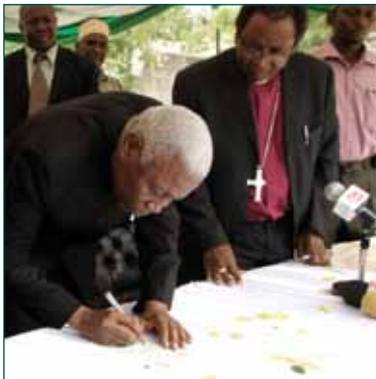
studies is the attention to detail in the pursuit of solutions and operational processes, and the unwavering commitment to finding solutions based on extensive consultation.

At the final consultation in July 2013, CSOs confirmed they are keen to:

- Focus on using existing spaces more effectively
- Optimise the use of participatory approaches in their work with communities
- Improve collaboration between themselves
- Develop relations with media to amplify their visibility and to nurture and support real debate.

On funding, many of the CSO leaders surveyed are ambiguous about donor funding and whether it contributes positively to the enabling environment. They cite an array of funding practices, which prevent them from developing sustainable organisations and projects. The vast majority would like to develop independent sources of financial income and see this, together with their own capacity building, as their main challenge.

PHOTOS: NORWEGIAN CHURCH AID



# Actions

CSOs highlighted the following actions for strengthening the enabling environment for civil society:

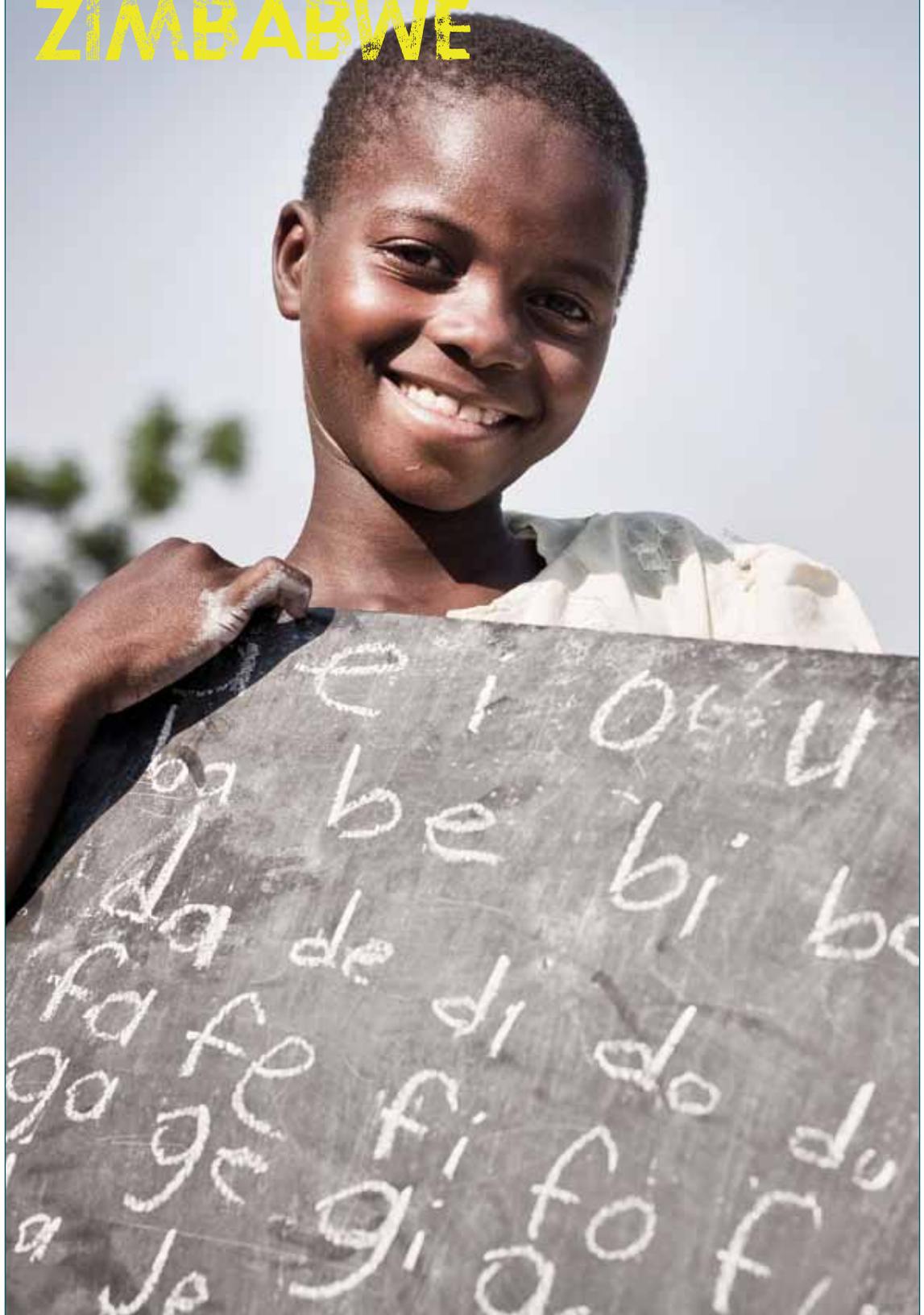
## **Participation in designing and implementing development plans**

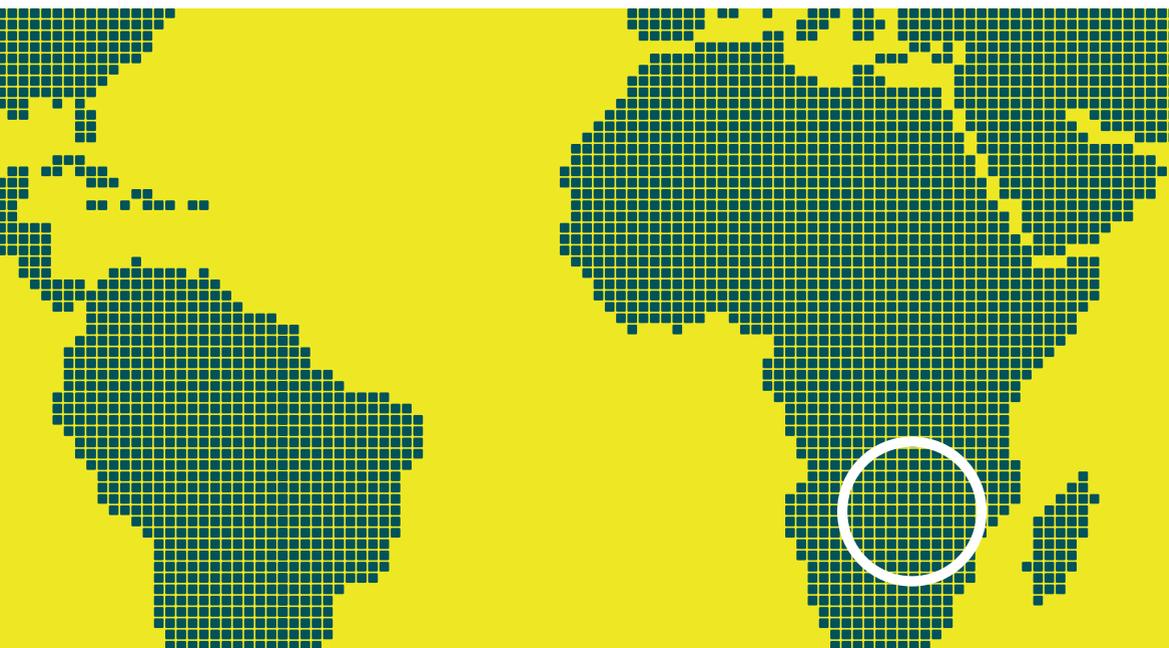
- Strengthening participation and the level of contribution of CSOs in Sector Working Groups and JADFs
- Supporting and strengthening existing accountability forums by working with local communities and working closely with local leadership
- Supporting CSOs to optimise use of participatory and popular education methodologies in their work with communities
- Supporting CSOs to initiate other kinds of fora for debate and discussion including round tables, use of media, value chain forums
- Ensuring participation of communities in the policy formulation, implementation and decision making of CSOs themselves
- Ensuring inclusion of beneficiaries in the roll out and monitoring of national development plans and policies. Ensuring that policies are inclusive and protect the vulnerable and traumatised
- Supporting CSOs to formulate evidence based positions with strategies for dialogue and negotiation on key policy issues

## **CSO capacity building and coalitions**

- Supporting CSOs to develop a comprehensive action plan and budget for the enabling environment, including creating and maintaining networks and coalitions that will advocate for the enabling environment
- Facilitating knowledge sharing, peer learning and collaboration among CSOs
- Supporting CSOs to create and exploit opportunities for debate at all levels, including government and community level and across media and social media
- Supporting CSOs to establish robust documentation systems, including monitoring and evaluation systems
- Supporting collective research for publication, advocacy and campaigning
- Supporting CSOs to coordinate with regional networks, such as East Africa Civil Society Forum (EACSOF), which provides an opportunity for regional advocacy and networking on the aid effectiveness agenda

# ZIMBABWE





## Political and economic context

Zimbabwe's Human Development Index value for 2012 was 0.397, positioning the country at 172 out of 187 countries and territories. Between 1980 and 2012, Zimbabwe's HDI value increased from 0.367 to 0.397, an increase of 8%, or an average annual increase of about 0.2% (UNDP, 2013).

The implementation of economic structural adjustment programs in the 1990s, the land reform program and other government policies has resulted in Zimbabwe experiencing unprecedented macro-economic decline. Most firms in the manufacturing, agriculture, mining and tourism sectors face viability challenges (ZIMSTAT, 2013). Zimbabwe will struggle to meet many of its Millennium Development Goals (MDGs). The UNDP, in its latest report on Zimbabwe, estimates that four MDGs will be met, six may be met and 11 will remain unmet

by the 2015 deadline (UNDP, 2013). While there has been progress on combating HIV and AIDS and making universal primary education available, there has been an alarming decline in the country's medical services, and a marginal drop in female prevalence of HIV (from 7.61% to 6.7%) (OHCHR, 2012). Maternal mortality has worsened over the past two decades from 283 deaths per 100,000 births in 1994 to around 960 per 100,000 in 2010-2011. The figure has risen by more than 40% in the past six years alone (OHCHR, 2012). Across the country there is generally poor access to safe, clean and potable water, and to sanitation.

The past five years in Zimbabwe have seen the formation and duration of a power-sharing government, formed in February 2009, between the Zimbabwe African National Union - Patriotic Front (ZANU-PF) led by President

Robert Mugabe and two factions of the Movement for Democratic Change (MDC) led by Morgan Tsvangirai and Arthur Mutambara (Welshman Ncube now leads this faction). The coalition government has committed to implementing the Global Political Agreement (GPA) underwritten by the Southern African Development Community (SADC) and the African Union (AU) that includes a number of reforms to improve the civil society operating environment and to pave the way for credible, free and fair elections. Due to extreme polarisation and lack of political will, however, a number of reforms have failed to take off, including amendments to repressive legislation.

The Zimbabwe research study was conducted in the run-up to the 31 July 2013 national elections at a time marked by significant tension and reduced operating space for civil society as political parties contested for office. Although political leaders across the political divide called for “peaceful elections”, there remained underlying fear and reluctance to openly engage on issues deemed sensitive for fear of jeopardising already delicate relations with authorities. Robert Mugabe won the presidential election with his ZANU-PF party winning more than two thirds of the parliamentary vote.

## Policy and legal environment for civil society

CSOs in Zimbabwe form a diverse, heterogeneous community that stretches across a broad spectrum, covering a wide range of issues and interacting with the government in various ways depending on the type of CSO and area of focus. CSO groups range from humanitarian or service-delivery, to faith-based organisations, community-based organisations, youth groups and human rights and governance groups (some with one CSO belonging to one or more categories). The headquarters of most umbrella CSOs are in the capital, Harare, leading to some marginalisation of other geographical regions, such as Matabeleland, which is home to ethnic minorities. In response to this marginalisation, CSOs in Matabeleland formed a coalition, the Matabeleland Civil Society Consortium, to advance the interests of their region.

Study findings show that an individual CSO’s relations with the authorities, and the government’s treatment of that CSO, depends to a large extent on whether it adopts a confrontational strategy or uses different approaches suited to different issues (characteristic of humanitarian, service-delivery and community-based organisations)<sup>6</sup>. Co-ordination and sharing of information and strategies between different groups of CSOs (for example, between humanitarian and human rights groups) has been minimal and marked by tension. Additionally, sometimes political, geographical or ethnic differences have undermined effective collaboration between CSOs.

In Zimbabwe’s highly polarised environment, there have been strong, and at times justified,

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6. One-to-one interview with a CSO leader, Harare, October 2013.

perceptions of CSOs being partisan which has undermined some of their work. Although the donor community has played an important role in supporting CSOs in Zimbabwe, its role and influence has not always been positive. Some donors, in their eagerness to overtly involve themselves in the affairs and activities of CSOs, have contributed to worsening the polarised environment with negative consequences for the CSOs and NGOs they support.<sup>7</sup>

Leading academic and Zimbabwe civil society leader, Professor Brian Raftopolous, has criticised the global human rights discourse in which, since the 1990s, international aid has linked neo-liberal economic policies to the 'good governance' agenda and political conditionality. This has placed the emphasis on elections and formal political and civic rights, rather than on social and economic rights. He notes that much of the human rights discourse and lobbying in Zimbabwe is constructed through this framework, with little analysis of political economy issues, the broader effects of global neo-liberalism on local debates, or the politics of regional dynamics in SADC. The result is that, when such pressures are not tightly linked to a strong national social base, there is a greater likelihood of them becoming extensions of international development agendas. Given the emphasis on political change, with little thought to broader developmental issues required for substantive transformation, it is not surprising that CSOs are often passive spectators in the development process (Raftopolous, 2010).

Another academic, Eldred Masunungure, noted that civil society in Zimbabwe suffers from the general weaknesses common to the sector across Africa as well as specific shortcomings

that arise from Zimbabwe's particular crisis. In his view, in terms of financing – and, to a lesser extent, agenda-setting – CSOs in Zimbabwe are reliant on the international donor community which provides most of the material resources and thereby challenges CSOs' autonomy. Masunungure proposes that for CSOs to be able to set the agenda autonomously, they need to be free from opposition politics at the domestic level as well as less dependent on international donors (Masunungure, 2011: 126).

CSOs leaders based in Bulawayo and Matebeleland are concerned that national civil society groups based in Harare neglect issues specific to their geographical regions. They believe that this geographical disconnect has contributed to tension and suspicion among CSOs.<sup>8</sup>

Zimbabwe has a new constitution that was approved in a national referendum and signed into law in May 2013. It has an expansive bill of rights covering civil, political, social and economic rights. There is need to promote socio-economic rights, especially in relation to access to water in Matebeleland. The impact of the new constitution, particularly in the creation of an enabling environment for CSOs, is yet to be felt under the new, exclusively ZANU-PF, government whose attitude towards CSOs remains unclear post elections.

The main law regulating the operations of CSOs in Zimbabwe is the Private Voluntary Organisations (PVO) Act of 2005. This law grants the Minister of Labor and Social Services the power to approve NGO applications for registration or to de-register NGOs deemed to have violated the law.

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7. One-to-one interview with a CSO leader, Harare, October 2013.

8. One to one interviews with four Bulawayo-based CSO leaders who requested anonymity, October 2013.

In January 2013, the then ZANU-PF Minister for Youth and Indigenization, Saviour Kasukuwere, formally approved regulations requiring all youth organisations to be registered with the Zimbabwe Youth Council or to be banned. Under these regulations, no youth organisation may receive funding without authorisation from the youth council, and all members or affiliates of registered youth organisations are required to pay exorbitant annual levies to the youth council. However, the Parliamentary Legal Committee ruled that the regulations violate the law, leaving their legal status in question. They have not been implemented as yet, but if they are they may cripple the operations of youth organisations throughout the country.

Other laws that affect the enabling environment include the Access to Information and Protection of Privacy Act (AIPPA), 2002; the Public Order and Security Act (POSA), 2007 and the Criminal Law (Codification and Reform) Act, 2004. In September 2013, the government announced new telecommunications regulations that pave the way for the state to obtain and use information communicated between individuals through telecommunication devices (Government of Zimbabwe, 2013). If implemented, these regulations may potentially violate constitutionally guaranteed rights to privacy of communications and have an adverse impact on CSO operations.

All humanitarian or development assistance NGOs are required by law to secure government approval for their operations from the relevant department. Once such approval is secured, the operations are outlined within a memorandum of understanding that the CSO in question and the government department sign, as outlined in the Policy on the Operations of NGOs in

Humanitarian and Development Assistance in Zimbabwe, July 2003. The government of Zimbabwe continues to rely on these regulations to closely monitor and regulate CSO access to communities across the country (Muzondidya et al 2010: 43).

Harassment, especially raids and arrest of civil society leaders and human rights activists, in Zimbabwe continued throughout 2012 and 2013. Amnesty International reported that activists from the NGO Women of Zimbabwe Arise (WOZA), whom some view as having a 'provocateur' strategy, had their activities routinely disrupted by anti-riot police. At least 200 arrests of WOZA members were recorded (Amnesty International, 2013). In 2011, 45 activists were arrested and charged with treason by police in Harare while holding a meeting to discuss the implications of the protests in Egypt and Tunisia. Thirty-nine of the activists were acquitted two weeks later, but the remaining six were charged on lesser offences and sentenced to community service.

The charges used to justify detention of social leaders include: "knowingly failing to give notice of a gathering" under section 25 of the Public Order and Security Act; "participating in a gathering with intent to promote public violence, breaches of the peace, or bigotry" and "undermining the authority of or insulting the President" under sections 37 and 33 of Criminal Law (Codification and Reform) Act, respectively.

Both regional and international human rights mechanisms have repeatedly raised a wide range of concerns about Zimbabwe. In 2011, during its United Nations Universal Periodic Review, Zimbabwe agreed to consider just 31

of a total 96 recommendations put forward for improving human dignity. Among those rejected were all the recommendations related to civil society including:

- Uphold international obligations to respect the rights to freedom of expression, assembly, and association, and cease arrests, harassment, and detention of individuals with different views;
- Ensure human rights defenders, independent journalists or lawyers and civil society representatives are effectively protected from any form of intimidation and harassment while performing their legitimate duties;
- Review and amend the Public Order and Security Act (POSA) and the Private

Voluntary Organisation Act that impose considerable restrictions to the work of human rights defenders in order to bring them into line with the international standards and respect for freedom of association (UN HRC, 2011:93-96).

On 25 May 2012, the UN High Commissioner for Human Rights, Ms Navi Pillay, ended the first visit to Zimbabwe by any High Commissioner for Human Rights. In her concluding remarks, Ms Navi Pillay noted: “human rights defenders, journalists and political activists have been arrested and charged on a regular basis” (OHCHR, 2012).

## CSO views

The following are triangulated research findings from the electronic survey, focus group discussions and national consultations.

### Enabling factors in Zimbabwe

The large majority of CSOs indicated that they have not been threatened with closure (Q18), although at least half have been pressured to desist from some activities (Q10). A few CSOs including Crisis in Zimbabwe Coalition and the National Constitutional Assembly have opened regional offices in South Africa to minimise security threats, and to provide a safe haven for CSO leaders otherwise under threat in Zimbabwe. The regional offices enable the CSOs to engage more easily in regional advocacy via staff based outside the country without fear of reprisals.

A considerable number of CSO leaders said they do not experience corruption (Q13),

although, occasionally, this was a problem for a minority. The majority of CSO leaders feel that government or other actors do not tamper with their records (Q25). Some CSO leaders, however, often come under pressure from low-level government officials and police, but this is often easily resisted without any repercussions for their work. However, if new regulations empowering government to monitor private communications are implemented, this may lead to a change in perception of the security of CSO records.

Sharing knowledge with national and international organisations and co-operating with UN mechanisms without fear of reprisals is perceived by the majority of CSO respondents to be easy, particularly during the last five years under the power-sharing government. There has been CSO engagement with regional and international protective mechanisms including

the United Nations Human Rights Council, the African Union (AU), the African Commission on Human and Peoples Rights (ACHPR) and the Southern African Development Community (SADC). These bodies in turn engaged the government of Zimbabwe to promote an enabling environment for CSOs and to cease harassment of CSO leaders and human rights defenders.

External pressure and lobbying by Zimbabwe CSOs contributed to the first visit by a United Nations High Commissioner for Human Rights, Ms Navi Pillay, in May 2012. Some CSOs have formed solidarity linkages with international organisations for emergency support and international publicity of the plight of CSO leaders in Zimbabwe. These include Amnesty International, Human Rights Watch, the World Council of Churches, the International Commission of Jurists and Frontline Defenders. For example, in December 2008, state agents abducted and tortured CSO leader, Jestina Mukoko. She was only released after sustained publicity and advocacy by local groups working in collaboration with international CSOs.

A local campaign led by the Centre for Natural Resource Governance (CNRG) to stop human rights abuses in Marange diamond fields also gained a global audience through collaboration between CNRG and international CSOs. It resulted in the government of Zimbabwe putting in place a plan of action that addressed the bulk of concerns raised. Collaboration between the Zimbabwe Advocacy Office, the Europe-based Ecumenical Zimbabwe Network and Zimbabwe's main church organisations – the Evangelical Fellowship of Zimbabwe, the Zimbabwe Catholic Bishops Conference and the Zimbabwe Council of Churches – resulted

in the setting up of the new Ecumenical Peace Observation Initiative in Zimbabwe (EPOIZ) in August 2012. EPOIZ is a collective initiative working to promote peace in communities across Zimbabwe.

The vast majority of respondent CSOs feel it is easy to access internet services and to share and collect information (Q40, 41). However, there are growing concerns that the Interception of Communications Act (ICA) and the new telecommunications regulations announced in September 2013 will be used to monitor internet use and intercept private communications.

Similarly, a large number of CSOs state that it is easy to receive funds from abroad, although they are concerned about the dwindling levels of funding (Q48, Q49). Some CSOs have had success in making joint funding applications (see case studies). Funding for the government of Zimbabwe, however, remains severely limited due to restrictive measures currently in place and the government's decision to withdraw from the Commonwealth. As a result, under the Cotonou Agreement, Zimbabwe is unable to access some international funding sources, such as the Commonwealth and the European Union.

### **Disabling factors in Zimbabwe**

Nearly all CSO leaders (95%) stated that the government has not ensured effective participation and co-ordination of CSOs in drafting and implementing a national development plan (Q4). A large majority of leaders (85%) feel government strategy towards CSOs working on development is minimalist and unsupportive (Q5) making government interference the potential biggest

obstacle over the next year. The political, social and economic environment is highly restrictive, particularly because of the legislative framework. Political polarisation has led to a lack of co-operation from government and the closing of physical operating space. CSOs are often wrongly accused of being partisan and have been forbidden by political gatekeepers to undertake their work in a number of provinces and districts as a result. This has been enforced through arrests or threats. The same restrictive environment has also facilitated impunity for human rights violators. Security for both staff and organisations is a growing concern as state agents frequently threaten and harass staff and partners.

55% of respondent CSO leaders sometimes feel unsafe while 20% often feel unsafe (Q8). The large majority feel that some routes need to be avoided when travelling and find it quite difficult or very difficult to move around the country for work purposes (Q12). Sixteen of the 20 CSO leaders surveyed said either they or a member of their organisation had experienced detention. Six were released within a week, and six were held for much longer periods. Almost all stated that registration processes have been uncertain or unreasonable (Q16), and 65% stated that registration requirements are more difficult than five years ago (Q17).

Most surveyed CSOs have collectively put in place security plans and security training. This includes closer co-operation and collaboration with human rights lawyers who offer legal advice and legal representation to arrested human rights defenders and CSO leaders (see case study). Security training and plans include organisational security, security of individuals and security of information. The training has helped reduce the

number of security breaches. There has been direct engagement with government leaders over harassment and threats to CSO leaders. There has been better co-ordination and greater collaboration for collective action among CSOs through the Civil Society Heads of Coalitions Forum (see case study).

The majority (60%) stated that, because of restrictive legislation, such as the Public Order and Security Act (POSA), and a polarised environment that generates conflict, it was difficult or very difficult to hold a peaceful meeting in the community. An overwhelming majority of leaders (90%) feel it is difficult to organise peaceful demonstrations that are critical of government policy (Q20), and almost all feel it has become more difficult over the past five years (Q21). Early in 2013, the government promulgated regulations to control the functions of youth civil society organisations. The Zimbabwe Youth Council Regulations 2013 (not yet in force and whose legality has been questioned by parliament) require that youth associations register and record donations before accepting them.

To prevent polarisation within communities, some CSOs seek to be politically inclusive to ensure people of different political affiliations are involved in all activities in a politically neutral and non-partisan way. They have found that this has resulted in different political actors accepting their work, thereby creating space to do more work.

The majority (55%) of respondents said it was difficult or very difficult to access print media, and exactly half stated that they had never been asked for an opinion by TV or radio about development issues (Q26, 27). The vast

majority said they would be concerned about making explicit criticisms of government (Q28). The majority feel that restrictions on freedom of expression are the same as they were five years ago. Some CSOs have produced content for the press, either as paid advertorials, supplements or billboards on the streets. Other CSOs, including youth groups working on youth voting registration or health awareness, frequently sponsor radio talk shows to engage the public in debate. The financial cost of the advertorials is very high and therefore not sustainable in the long run. In a few cases, government authorities have ordered CSOs to pull down advertorial billboards.

A considerable majority of CSO leaders stated that access to ministers and government officials was difficult (Q31) although they have, on occasion, been invited to participate in government meetings and initiatives (Q32). A significant minority stated that consideration of their views has improved over the past five years, but the majority felt it was the same (Q33). A large majority stated that CSO proposals on development are implemented sometimes or rarely (Q34). The large majority stated that proposing legal reforms on development issues ranged from difficult to very difficult (Q36). The majority of CSO leaders have not used the services of the ombudsman's office (the public protector). Of the six who had, only two felt the office was willing to support them (Q37). The ombudsman's office was abolished by the new constitution and its functions taken over by the Zimbabwe Human Rights Commission (ZHRC), which is not yet fully operational.

Some CSO leaders said they have resorted to nurturing professional relationships with individuals in police and government offices

as it helps overcome some obstacles, such as wrongful arrests or problems getting security clearance to carry out development work. This excludes payment of bribes or other corrupt inducements. CSOs consistently engage legislators, through parliamentary portfolio committees, to present recommendations on the legislative reforms needed. In July 2013, the Harare Residents' Trust lobbied the Minister of Local Government for a review of exorbitant water and electricity bills and for debt cancellation for Harare residents. The minister responded positively by ordering debt cancellation for Harare residents. However, this favourable outcome was met with speculation that it may have been nothing more than electioneering since the minister made the decision barely a week before national elections.

Almost all CSO leaders stated that government policies have not helped them develop funding stability (Q48). Decreasing donor support and lack of government support to improve CSOs' ability to mobilise financial resources means CSOs are not getting adequate funding to achieve effective operations, research or advocacy. To address dwindling funds, CSOs are taking steps to engage a wider and more diverse pool of funding partners to increase their chances of mobilising financial resources. They are also adjusting their operations to ensure low cost and high impact activities (through engagement of volunteers, among other mechanisms) that can be accomplished with limited financial resources. One of most successful approaches has been CSO joint funding applications for money to be put into funding baskets. For example, women's organisations have come together as have youth groups (see case study) and thematic groups, such as CSO coalitions on elections.

# CASE STUDIES

## 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 favour of other strategies of engagement. Beyond litigation, the focus should be on advocacy for the reform of restrictive laws and lobbying relevant government institutions.

## Heads of CSO Coalitions Forum case study

### EFFECTIVE CO-ORDINATION AND GREATER COLLABORATION

In 2008, leaders of the main coalitions of civil society organisations working in Zimbabwe established an informal network for more effective co-ordination on strategy, advocacy and engagement with government to help improve in the operational environment for CSOs. The aim of the forum, which to an extent is being fulfilled, is to improve collective security by lobbying key policy makers on issues regarding the enabling environment.

The Heads of CSO Coalitions Forum have co-ordinated collective action on a number of occasions including issuing joint statements in support of CSO leaders under state persecution and harassment. They have also organised action, such as visiting CSO leaders in prison and other places of detention and collectively speaking on critical issues to reduce the risk of victimisation for individual CSO leaders.

A limitation of the forum is that it currently lacks adequate representation from development or service delivery CSOs. Also, as most of the CSO coalitions are based in the capital, Harare, there is insufficient representation from other regions in the country including the Bulawayo region, which is home to Zimbabwe's largest ethnic minority group. The Heads of CSO Coalitions Forum is potentially a platform for increased dialogue and engagement between CSOs and the government, but this has not been the main focus for the forum.

Directors and board chairpersons of the following CSOs constitute the Heads of CSO Coalitions Forum: Combined Harare Residents' Association, Counselling Services Unit, Crisis in Zimbabwe Coalition (representing over 350 organisations), Media Alliance of Zimbabwe, National Association of NGOs, National Constitutional Assembly, Women's Coalition of Zimbabwe, Zimbabwe Congress of Trade Unions, Zimbabwe Election Support Network, Zimbabwe Human Rights Association, Zimbabwe Human Rights NGO Forum, Zimbabwe Lawyers for Human Rights, Zimbabwe Peace Project and Zimbabwe Women Lawyers Association.

## Joint funding case study

Financial support for core CSO operational activities is an essential element of an enabling environment. To ensure sufficient financial resources, a number of CSOs have resorted to joint funding applications and implementations of projects. The donor community has responded positively.

For example, sixteen CSOs working with young people came together in 2012 in a joint civic and voter education campaign to encourage young people to register to vote.

Another joint initiative is the Ecumenical Peace Observation Initiative of Zimbabwe (EPOIZ). The EPOIZ initiative enables churches in Zimbabwe to jointly promote peace and non-violence in Zimbabwe as well as to lobby SADC and the AU to support peace initiatives in Zimbabwe. It was set up by the Heads of Christian Denominations in Zimbabwe (HOCDZ) that brought together Zimbabwe Council of Churches (ZCC), Zimbabwe Catholic Bishops (ZCBC) and the Evangelical Fellowship of Zimbabwe (EFZ).

The advantages of joint funding applications include greater project sustainability, efficiency and effectiveness. By coming together to work collectively, CSOs also increase their credibility and acceptance in communities. For the donor community, joint funding has the advantage of increasing value for money as less money is spent on administration and overheads when several organisations come together to act as one bigger organisation. Joint initiatives also help in advocacy, as policymakers are more likely to engage with a collective than with single entities.

However, in Zimbabwe, joint funding applications have only been made by a handful of CSOs so far. This is due to a number of challenges including mistrust within CSOs, competition and lack of adequate information on the benefits of the strategy.

## Conclusion

Highly restrictive legislation is a key feature of the measures deployed by the Zimbabwe government to restrain human rights and governance CSOs and others. This includes the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), the Private Voluntary Organisations (PVO) Act, and sections 33 and 37 of the Criminal Law (Codification and Reform) Act. The latter has led to the arbitrary detention of social and political critics charged with “undermining the authority of or insulting the President”.

Conclusions from this study should be seen in the context of a highly diverse and heterogeneous Zimbabwe civil society with which government authorities engage differently depending on type of CSO and area of focus. Zimbabwe ranked the lowest on almost all the survey indicators covered in this study, reflecting the highly restrictive operating environment in which CSOs carry out their work. The survey findings show that the Zimbabwe government offers the least enabling environment of the countries examined and that certain policies and practices towards CSOs are non-conducive.

However, state authorities do not pose the only obstacles to an enabling environment for CSOs in Zimbabwe. CSOs’ weak internal capacity and choice of engagement strategies are also key factors affecting the operational space and government attitude towards them. CSOs should review their scope of work and focus beyond civil and political rights and start pushing for broader human rights goals and issues including social and economic rights and development.

Capacity building and development would strengthen Zimbabwe’s CSOs and would further promote an enabling operational environment. Some CSOs, particularly those using confrontational or ‘provocateur’ strategies to achieve change, may consider using different strategies, such as dialogue and nurturing relations with government authorities. Those CSOs that have adopted strategies of dialogue and engagement have found that state authorities have reciprocated, while those perceived to be prone to confrontation have experienced a less enabling environment.

The donor community has a significant role to play in promoting an enabling environment for CSOs. Refraining from exacerbating the polarisation within civil society and avoiding undue interference or guidance of local CSOs would go a long way to improving civil society, state relations and greater CSO efficiency and effectiveness. The government has often, not entirely without basis, accused some NGOs of working closely with their international donors to effect regime change in Zimbabwe.

Government restrictions against CSOs over the last five years have severely weakened CSOs’ capacity to mobilise citizens for effective work. However, CSOs have developed strong co-ordination networks to spread the risk of insecurity and deal with threats to their liberty and physical integrity. Notwithstanding these various challenges, outside South Africa, Zimbabwean civil society remains one of the most vibrant in Africa.

# Actions

CSOs highlighted the following actions for strengthening their enabling environment in Zimbabwe:

## Security and protection

With support from the donor community, international organisations and other partners, CSOs can strengthen mechanisms for the security and support of human rights defenders and CSO leaders. This should include the use of pro bono lawyers, and deeper, routine and more widespread security training. This would include raising awareness on how to adapt Zimbabwe's legislative environment affecting CSOs registration, operations and interactions with governmental agencies. This would contribute to improving relations currently strained and characterised by mutual suspicion.

CSOs should increase efforts to build relations with government through sustained efforts to maintain a non-partisan focus and reassure government that CSOs activities are politically neutral. Human rights and governance CSOs should consider broadening their focus beyond civil and political rights to include socio-economic rights and development.

## Financial support

CSOs face viability and sustainability challenges in an increasingly difficult operating environment characterised by dwindling resources. They should focus on securing adequate financial resources through approaches such as basket funding, joint funding applications and project implementation, domestic resource mobilisation and implementation of low cost, high impact programs.

## Reform of restrictive legislation

The government of Zimbabwe should take

measures to improve the legislative operating environment for CSOs. CSOs should continue to demand the repeal or amendment of restrictive legislation from the government of Zimbabwe, through representations to various government institutions including parliament and cabinet. This includes the Public Order and Security Act (POSA), the Interception of Communications Act and its recent regulations, and the Access to Information and Protection of Privacy Act (AIPPA) to give effect to Section 62 of the Constitution of Zimbabwe, which makes access to information a right.

## Reform of state institutions

CSOs should continue to insist on urgent reform of key state institutions, including the administration and justice institutions, to ensure better capacity and willingness to ensure a more tolerant and enabling operating environment for CSOs. Some of the reforms will include human rights education and regular training for government institutions, such as the police, who frequently interact with CSOs.

## CSO capacity building and networking

The donor community, international NGOs and government should support capacity building programs for CSOs in areas of leadership, community development, community dialogue, human rights protection, research, lobbying and advocacy. CSOs need technical capacity building to improve the accuracy and credibility of their information. Support is also needed for CSO network linkages with human rights and local government organisations

Capacity building for human rights CSOs should include broader, more comprehensive approaches to human rights work that go

beyond the current narrow focus on political advocacy for democracy and freedom, at the expense of other civic issues including social and economic rights. Another key area for CSO capacity building is strengthening governance and accountability mechanisms within civil society.

### **International community/donors**

The donor community in particular but also international NGOs and inter-governmental organisations, such as the UN, should consider

ways of helping to reduce polarisation and instrumentalisation while promoting an enabling environment for CSOs. CSOs should also work to develop their relationships with regional organisations, international NGOs and the donor community in ways that show clear independence and autonomy. This would help address government concerns that some CSOs are merely ‘regime change agents’ working at the behest of donors and western governments.

PHOTO: MARKO PRISKE/BREAD FOR THE WORLD



# COLOMBIA

PHOTO: SEAN HAWKEY / ACT ALLIANCE





## Political and economic context

Unlike other countries covered in this study, Colombia is a resource rich country where a 50-year long internal armed conflict has raged between state forces often assisted by paramilitary and guerrilla groups. During the conflict, incalculable numbers of civilians have been killed and displaced. In November 2011, the number of officially registered internally displaced persons (IDPs) in the country stood at over 3.8 million. This figure does not take into account recent displacements (UNHCR, Country Profiles, 2013). Consultancy on Human Rights and Displacement (Consultoría para los Derechos Humanos y el Desplazamiento-CODHES) reports state that by 2012 there were 5.7 million IDPs. Colombia has one of

the world's most unequal levels of rural land ownership, which has worsened due to the displacement crisis. Despite the peace talks that started in 2012, there is still no ceasefire in operation. Peasant farmers, Indigenous and Afro-Colombian people have borne the brunt of the conflict, and continue to do so: "[...] human rights violations are committed daily, with a disproportionate impact on vulnerable or geographically isolated sectors of the population and on social actors, community leaders and human rights defenders" (OHCHR, 2013: 4).

Although Colombia sits in the high development category (with an HDI value of 0.719 in 2012 and

positioned 91 out of 187 countries; between 1980 and 2012 HDI value increased from 0.556 to 0.719, an increase of 29% or an average annual increase of about 0.8%), it is characterised by serious inequalities. It had an extremely high GINI co-efficient of 55.9 in 2010, which is the same as in 2003 (World Bank 2012). Colombia is on track to meet MDG goals on universal primary education and infant mortality, but unlikely to meet goals on maternal mortality, reduction of extreme poverty or income gap (UNDP, 2011). In 2012, it was the seventh most unequal country in the world. Colombia does not use its taxation system in a redistributive way and this exacerbates the poverty gap further. For example, the national budget for Familias en Accion - a conditional cash transfer program - is 0.3% of GDP with 7.8 million beneficiaries. By comparison, the 'pay as you go' pension system costs 3.3% of GDP with 1.4 million (almost exclusively rich) beneficiaries. Gross inequalities, poverty and competition for the control of natural resources, particularly land, are widely seen as the root causes of the conflict.

The five-year period of this research covers two political administrations, whose approach towards the conflict and civil society differ. President Álvaro Uribe Vélez (2002 to 2010) pursued a policy of 'democratic security' focusing on military defeat of the guerrilla groups alongside demobilisation negotiations with the army-backed paramilitaries. President Juan Manuel Santos Calderon who took up the presidency in 2010, passed a Victims and Land Restitution Law (2011) and the following year initiated peace talks with FARC (Fuerzas Armadas Revolucionarias de Colombia / Revolutionary Armed Forces of Colombia - People's Army).

The 'democratic security' doctrine led to a militarisation of civilian life. During this period, civil society space was considerably reduced through public stigmatization and the de-legitimation of actors who criticised government policies. The Colombian intelligence service (DAS/Departamento Administrativo de Seguridad) targeted NGO actors with the objective, according to an internal DAS document, of 'neutralising and restricting' the work of HRDs. The army was also engaged in a systematic practice of extrajudicial executions of ordinary civilians, known as falsos positivos, and the political system was infiltrated by those allied with paramilitaries (referred to as parapolitica).

Despite changes under the Santos government and a move to the doctrine of 'democratic prosperity', freedom of expression and space for civil society actors remains complex. According to OHCHR (2013), Amnesty International (2013) and the IACHR (2011), despite a change in attitude by the national government, HRDs and journalists are still threatened, judicially persecuted, forced into exile and experience theft of sensitive data. Judges continue to be killed and forced into exile. The Ministry of Interior's protection program has been strengthened but the UN reports slow and inadequate implementation of protection measures (OHCHR, 2013). The National Unit of Human Rights and International Humanitarian Law (IHL) were recently strengthened with the aim of expediting investigations into attacks and killings of HRDs and journalists. However, impunity remains extremely high and therefore fails to deter attacks.

*"Cases [continue] of threats, surveillance, information thefts, sexual violence and*

*homicides against human rights defenders... [those working] on extrajudicial execution cases have received threats from State actors. In high-conflict areas, defenders—in particular indigenous leaders—continue to be subject to accusations of being part of guerrilla groups, as well as to stigmatisation and arbitrary detention. Judicial officials sometimes face pressure by members of the military to prosecute defenders and leaders.”* (OHCHR, 2013: 37)

Journalists encounter danger when photographing protests and the IACHR reports several attacks on journalists by the police as well as criminalisation for broadcasting information or opinions on matters of public interest. Despite improvements in the general environment for civil society actors, primarily in urban areas, the environment in which HRDs are working is not an enabling one.

Although the Santos administration has taken a different political approach to the Uribe government, his economic policies have remained the same in that they promote accelerated economic growth (through an

extractives model). With a buoyant GDP despite the economic crisis, Colombia has been classified as a CIVETs country and a favoured emerging market. However, the government does not consult with CSOs on these policies and as a result the extractives model is driving social unrest and mobilising social protest, including a national strike in August 2013. Multinational companies (MNCs) are also failing to carry out adequate consultation processes with those directly affected by their operations despite it being a legal requirement in Colombia to consult with Indigenous and Afro-Colombian peoples. These concerns are echoed by the UN Committee on Economic, Cultural and Social Rights which states that: “infrastructure, development and mining mega-projects are being carried out [in Colombia] without the free, prior and informed consent of the affected indigenous and Afro-Colombian communities” (UNCESCR, 2010:9). In terms of aid effectiveness, the Colombian government’s failure to work with and include in its policies the perspective of civil society, in particular marginalised groups, is of particular concern.

## CSO views

This section presents the views of Colombian civil society organisations on factors, which they feel have been enabling or disabling their operational space in the period 2009 to 2013. The findings are based on the responses from 22 CSO leaders to a research questionnaire and discussions within five focus groups comprised of a wide variety of CSOs in Colombia.

### Enabling trends in Colombia

The majority surveyed considered it easier,

than five years ago, to make statements that are openly critical of official policy (Q28, 29). They do not experience direct state pressure to desist from their activities (Q10) and are not threatened by public policy with closure (Q18). It is also easier to hold peaceful public meetings in the community (Q19). The authorities and other actors are more tolerant of those working on development than they were five years ago (Q45). Officials at a national level have reduced the number of public statements stigmatising

those working on human rights and governance issues, although this is less true at the regional level. CSOs, particularly national groups, are consulted on issues of protection of human rights defenders and community leaders. There is also a nationwide consultation on a national human rights policy.

However, despite these positive findings, the picture remains mixed. CSOs in urban areas reported a general improvement in atmosphere and working environment, whereas those in rural areas reported a restricted operating space for CSOs working on extractives, land restitution and victims' rights, and the prevalence of threats, disappearances and killings. Attacks on CSO leaders were reportedly carried out in the majority of cases by paramilitaries. Many of those interviewed said a trend was emerging of an increasing number of murders as well as threats and attacks on HRDs/CSOs working on these issues, particularly in rural areas (see disenabling trends). Some participants referred to this as the placebo effect, where there was an improved environment for the defence of human rights but that the number of killings of people defending rights was continually rising.

In some areas, such as Arauca, the improved environment was due to CSOs' work to tackle impunity. Interviewees and focus groups referred to their work with the Coordination Colombia, Europe and the United States (Coordinación Colombia Europa Estados Unidos - CCEEU) working group on revealing the widespread and systematic nature of extrajudicial executions. By successfully prosecuting some of the army personnel responsible (see Falsos Positivos case study), they said the army no longer considered they could do anything and get away with it. They

also referred to the revelations regarding the infiltration of paramilitaries into the political structures (the parapolitica scandal) and intelligence services (DAS) and the related DAS prosecutions. DAS was shut down under the Santos administration and there have been prosecutions of top level DAS personnel.

### **Administration**

Although 82% believe that legal requirements are now more stringent than they were five years ago (Q17), 59% of those surveyed considered that the registration process was not unreasonable (Q16). While the registration process does not cause problems for the established CSOs, difficulties were reported by some small CSOs, particularly farmers and victims groups, who not only require registration but also professional accounts and tax returns. They found the paperwork difficult because it required the work of professionals. These economic realities were reported as an obstacle and a financial threat to the work of small and self-help CSOs, such as campesino groups and victims organisations. However, larger CSOs in the region have supported small CSOs to overcome these obstacles by helping them complete the paperwork, and/or by 'friendly' professionals working on a voluntary or semi-paid basis. Without this support, the small CSOs doubted that they would have been able to sustain the financial burden of paying professional fees.

### **Engagement with national and international governments**

According to the questionnaire, it has become easier over the last five years to share knowledge and collaborate with national and international organisations (Q38, 41) and work with UN bodies (without fear of reprisals)

(Q39). There were no restrictions reported on internet access (Q40). CSO focus groups and interviewees report that, during the repressive years of the Uribe administration, they adopted a tri-partite approach to dialogue with the government in order to keep civil society spaces open and in an attempt to make them effective. The tri-partite model consisted of the government and CSOs conducting their dialogue in the presence of the UN and international representatives from the diplomatic community, who monitored and observed the process. The example given of its implementation was the 'Mesas de Garantías', a roundtable discussion to agree policies and measures on the protection of HRDs and community leaders. Those interviewed considered the involvement of the international community as fundamental to this process, and believed that the maintenance of civil society spaces, within a repressive regime, was only possible with international accompaniment.

However, despite success in spotlighting the human rights violations and keeping them on the international agenda to pressurise the Colombian government, the implementation of the commitments made was a major downfall under the Uribe government. Under the Santos administration, interviewees and focus groups reported that they had obtained high level government consultations with the executive and legislature on human rights policy, gender policy and protection mechanisms, including differential protections for women. They also reported success, at a national level, in terms of improved structural changes and frameworks; however, they stated that the major shortcoming continues to be implementation, or lack thereof.

## **Records and data**

Interviewees and focus groups said that, during the Uribe administration, it was an uphill battle to get the international community to take the extreme situation of nationwide human rights violations and repression seriously. One interviewee, responsible for presenting information at an international level, stated that they were often only given between five and 15 minutes to present. They learnt that these short presentations had to be made up of precise and concrete statements backed by statistical data. Most of those interviewed and in focus groups explained the importance of collecting accurate statistical data. Government statistics could be inaccurate or non-existent (particularly relating to falsos positivos or conflict-related sexual violence). In order to ensure they get accurate and well-documented information, CSOs gather specific accurate statistical data on the themes they need. Networks of organisations across the country collect, verify and collate the data which they then feed into national NGO databases. Nearly all of the focus groups and interviewees referred to the importance of documentation of cases and the accompaniment of communities whose rights had been violated. Several referred to the CCEEU working group on falsos positivos. As this group collated the cases they began to recognise and denounce the enormity of this crime. However, one of the obstacles they had to overcome was the incredulity of the international community when they started to denounce the extent of this practice. They had documented 3,000 cases between 2002 and 2008. The visit of UN Special Rapporteur on Extrajudicial Executions, Philip Alston, in 2009 was key to achieving this. Philip Alston confirmed in his report the widespread and systematic nature of the falsos positivos killing

and linked this practice to high-ranking officers in the army (see Falsos Positivos case study). The NGOs published their report during his visit. The report of the NGOs together with that of the UN Special Rapporteur meant that it was impossible for the Colombian government to deny what was happening. According to the questionnaire, a large majority of organisations were able to collect information without experiencing tampering or interferences with their records (Q25). However, reports of break-ins to organisations and stolen computer data, whilst more frequent under the previous regime, has not been eliminated under the Santos regime (one focus group said it had continued under the Santos regime).

### **Disenabling trends in Colombia** **Lack of consultation on public policies regarding development strategies**

According to the questionnaire, nearly all CSO leaders (95.5%) said that the government has not ensured effective participation and co-ordination of CSOs in drafting and implementing a national development plan (Q4). 23% of CSO leaders stated that there was no participation at all. 91% stated that government strategy towards CSOs working on development is minimalist and unsupportive (Q5). This behaviour sits against a backdrop of a national development plan that has the extractive industry as one of its main economic drivers. Serious concerns were expressed by the majority of those interviewed and in focus groups that their voice was not being listened to regarding the dangers of using extractives as a major driver for development. CSOs working in human rights, community rights, land rights, natural resources, minerals or environmental issues stated that they were most likely to be stigmatised. Leaders of such organisations had

been criminalised under the last administration and some are still defending themselves against false charges, according to several focus groups/interviewees. In one focus group, reference was made to concerns regarding criminalisation of those participating in social protest marches. Interviewees/ focus groups in one region explained their use of innovative approaches to social protest to avoid repression (see water campaign in Norte de Santander below).

The policy of 'consolidation of territory' used in some departments was seen by one focus group/and some interviewees as a strategy to protect the property and expansion of the MNCs. This included army units set up to guard the pipelines of oil corporations. They stated that in their experience militarisation had brought with it greater restrictions on CSO movement and increased repression. Several focus groups/interviewees stated that despite 'free, prior and informed consent' being a legal requirement for indigenous and afro-descendent populations, there was a worrying lack of real consultation where mining, oil and other mega projects, such as ports and dams, were concerned.

Colombia is predominantly an agrarian country and many of those interviewed and focus group participants were concerned that the 'consolidation of territory' policies were reducing agricultural land and production. Some referred to the increasing food insecurity, which was being compounded by the impact of the Free Trade Agreements. Others discussed how the lack of consultation on these policies united campesinos and indigenous groups in opposing a development model that threatened their territory, agriculture and/or

water. Concerns were also expressed regarding environmental impacts. In some cases, the fact that these were national policies has united local government with CSOs (see Santurbán Páramo case study).

### **Human rights defenders and community leaders**

According to the questionnaire, 82% of CSO leaders feel unsafe sometimes and 32% feel unsafe often or always (Q8). The large majority felt that some routes needed to be avoided when travelling and that it is quite difficult to move around the country for work purposes (Q12). Those interviewed and in focus groups explained that repression, and the general environment, was worse under the Uribe administration. This was because the defence of the rights of communities and human rights in general was equated with being 'the enemy' (namely, a guerrilla or guerrilla supporter). This was dangerous under a regime that proposed military defeat of the guerrilla. All interviewees and focus groups mentioned the complexity of the current situation for those working on human rights, the rights of victims and for those seeking to reclaim their land under the current administration, particularly in rural areas. This is reflected in the statistical data collected as the numbers of attacks and killings of defenders are on the increase. In just two years, the number of HRDs killed has more than doubled from 2010 (32 killed) to 2012 (69 killed). The number of attacks has increased from 174 in 2010 to 357 in 2012 (ISAAHRDC, 2012). In 2011, Colombia was once again the most dangerous country in the world for trade unionists. Of the 76 people murdered for their trade union activities, not counting the workers killed during the Arab Spring, 29 lost their lives in Colombia' (ITUC, 2012).

Nearly all those interviewed and in focus groups mentioned the dangers of public statements stigmatising those working to defend human rights. Many referred to statements by high-level officials that made HRDs vulnerable and limited their working space as they were forced to defend themselves. This has also led to distrust between the state and NGOs/CSOs. The majority of those interviewed and in focus groups explained the importance of NGO international accompaniment to help them maintain their work in difficult rural areas - this was the case five years ago and, for HRDs interviewed/in focus groups, remains necessary today. They explained how international accompaniment allowed them to continue their work in rural areas, which would otherwise have been impossible. The accompaniment organisations, specifically mentioned, were Peace Brigades International and Red Hermandad. Also mentioned was the accompaniment by the Catholic Church, Pastoral Social and UN agencies, especially when delivering humanitarian aid and emergency supplies.

The majority of those responding to the questionnaire that had requested protection from state institutions said the support ranged from poor to very poor (Q46). Those interviewed and in focus groups explained that there was a slow response to requests for risk assessments and implementation of approved measures. Those requests that were approved were often inadequate or under resourced. This had worsened under the current administration, according to those interviewed. One example given was the provision of a bullet-proof car. Changes under this administration mean restrictions are now placed on the amount of fuel allocated per month. As a result there was

only sufficient petrol fuel to run the car for two weeks in every month, placing additional restrictions on CSOs' working space.

### **Social protest**

The large majority of leaders who responded to the questionnaire (67%) feel it is difficult to organise peaceful demonstrations that are critical of government policy (Q20), and the majority feel it has become more difficult over the past five years (Q21). Concerns were expressed by those interviewed and in focus groups regarding the use of arbitrary detention during protest marches and the length of time taken to process those detained. Aggression on the part of the police towards protesters was mentioned in some focus groups with one focus group specifically referring to aggression from ESMAD (anti-riot police). One focus group and several interviewees expressed concern that a new law, the citizen's security law (Ley de Seguridad Ciudadanía) could worsen the situation because the law made it an offence to block highways, as protest marches would. The Santurbán Páramo case study (see below) shows how some communities have taken creative approaches to social protest, in order to avoid confrontation and repression, while still mobilising public opinion and developing a nationwide publicity campaign.

### **Media**

The majority of CSO leaders stated that access to the press and opportunities for civil society to express its views and participate in public debate are limited (Q26, 27). According to several interviewees and focus groups, news reports linking human rights to guerilla groups have been harmful and often the media seems to simply relay information from powerful interest groups. Some interviewees and focus

groups mentioned using community radio and TV stations, documentary filmmakers and film festivals to generate space for civil society debate. In order to get information into the international arena, CSOs have used public declarations and YouTube to encourage and elicit an international response, thereby keeping space open for social protest and restraining the level of repression.

### **Dialogue with central government**

In their responses to the questionnaire, the large majority of CSO leaders stated that access to ministers and government officials was difficult, sometimes impossible (Q31). A large majority had only been invited sometimes, if at all, to participate in official activities and working groups (Q32). The response from the national focus group and interviewees, however, differed in that they considered there were more meetings under the Santos administration, and with high-level government officials, especially during the first two years. However, these meetings could be counterproductive when commitments were not implemented because they absorbed considerable amounts of time and limited the other activities that could be undertaken. Both in the questionnaire and in the focus groups, the majority said their views appeared to be taken no more seriously than they were five years ago, however, the majority stated that their proposals were seldom implemented (Q34). Challenging proposals and getting alternative proposals implemented is difficult. (Q35, 36) The majority of NGO leaders stated that the ombudsman's office had not been willing to assist them with their work issues and activities (Q37). The majority stated that there had been a noticeable absence of the Human Rights Ombudsman's office in respect

to the protection of community leaders and human rights defenders. They commented on the very weak performance of this office in the last eight years. Before this, it had been a key institution for the human rights movement and had produced important analytical documents. The only exception was the System of Early Alerts, which continued to function well.

## **Funding**

The majority of leaders responding to the questionnaire reported difficulties in receiving funds from abroad (Q47). All respondents stated that government policy over the past five years had not helped them generate funds (Q48). In this respect, Colombia produced the worst scores across the entire study. In focus groups and interviews, CSOs discussed their experience of a drastic reduction in resources from the international community, which, in large part, was associated with the peace talks. They have seen donors moving to fund central government programs rather than NGOs. Some considered there had been a reduction in aid whereas others suggested that it was a refocus of aid rather than a drastic decline. Others said funds from international organisations had shifted in focus to activities-only funding

rather than organisational funding. They also observed that the number of targets, objectives and activities that donors expected had increased as funds had decreased.

CSOs face problems of sustainability because of declining funding from international sources, particularly those working in the areas of human rights promotion and democratisation. There has been little support for helping NGOs develop independent funding streams. One focus group member highlighted how Trocaire, before withdrawing from Colombia, had provided support and training for its partners to obtain other sources of funding. CSOs said capacity is the main challenge as external aid declines and distrust exists between themselves and government. There are concerns that to accept government funding in the current polarised political context could compromise the work they are doing on democratisation and human rights promotion. This could weaken their role and purpose by pushing them into service delivery and away from their work on governance and democracy. They explained that government funding currently focused on service delivery of government program objectives.

# CASE STUDIES

## 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 Araucanía facing a crisis of food insecurity. They sought help from the Pastoral Social in Araucanía. 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.

## Santurbán Páramo case study: How social protest can 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.

## 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 de-legitimisation 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.



## Conclusion

According to the organisations consulted, although there have been some improvements the Colombian government continues to demonstrate a negative trend in relation to the enabling environment for civil society organisations. The government's more positive attitude towards those working on human rights and development issues is being undermined by its lack of openness to criticism, and by its implementation of policies and practices that hamper CSO work. Areas of particular difficulty are freedom of peaceful assembly, CSO participation in drafting and implementing development policy, negotiating land restitution, and the ability of CSOs to generate independent income.

A key feature of the negative trend is the lack of security for those engaged in work on human rights especially, economic, social and cultural rights. Most of the CSO leaders surveyed stated they felt unsafe sometimes, with 32% feeling unsafe often or always. These feelings are reflected in the statistical data, which demonstrate that working on the defence of rights carries a high cost in terms of security. There are year after year increases in the numbers of HRDs and community leaders being killed and attacked, particularly those working on land and victims issues. The lack of a decisive government strategy to support CSOs working on development matters further exacerbates matters. This is especially marked

at an official level, with 68% of CSO leaders stating that there had been few to virtually no opportunities for civil society to input into development related matters. This lack of opportunity is driven by official support for a development model based on extractives and resource exploitation at the cost of social, environmental and human rights norms.

In an effort to overcome the difficulties faced by human rights defenders and community leaders, the case studies show how CSOs have often adopted highly collaborative approaches to their work, presenting issues with one voice and ensuring issues presented are well evidenced and documented. They have worked collaboratively on their own protection and engaged effectively with INGOs. A key feature of these initiatives is the degree of CSO dialogue with national authorities and their engagement with international observation and monitoring, UN mechanisms and treaty bodies and the Inter-American System. The rigour with which Colombian NGOs have pursued their goals, and confronted extremely hostile conditions, has earned them renewed legitimacy and strengthened their environment.

While CSOs are free to express critical opinions, there is limited effective access to the media and official channels of influence. As a result, some organisations have developed their use of social media, YouTube and community radio stations. 86% of those surveyed said they had been stigmatised for collaborating with those perceived as holding unconventional views on human rights, religion or sexuality.

Since the start of the peace process, CSOs have noted the withdrawal of international development and human rights funding. Whilst

some organisations believed donor funding was being withdrawn from Colombia, others said that it was being re-directed into the peace process. Given that Colombia is the wealthiest of the four countries examined in the study, it is remarkable that there appears to be virtually no government support to help CSOs generate independent income streams. The dramatic decrease in funding for organisations working on human rights, democracy and justice for victims may well lead to their closure. Alternatively, according to some organisations, the Colombian government may, in the future, end up co-opting CSOs into 'service delivery' rather than enabling them to remain independent, and to fulfil their role.

CSOs pointed out that funders and their own government needed to understand the importance of their work in terms of a 'public good', that is, in terms of promoting democracy, good governance and human rights which, in short, is their fundamental role in a democracy, and not as service deliverers.

As the workload of Colombian CSOs increases because of the peace process, the reduction in funding is being acutely felt. This lack of funding could result in reduced civil society capacity to participate in the construction of peace and political change. The shifting pattern of aid to central government and away from CSOs at this crucial juncture of peace negotiations and peace building will have an impact on the participation of civil society in the construction of a sustainable peace.

# Recommendations

CSOs highlighted the following actions for strengthening the enabling environment for civil society:

## International accompaniment

- Renew the mandate of the UN OHCHR in Colombia for a further three years to help in the construction of a sustainable and just peace
- Governments should use diplomacy to encourage Colombia to fulfil its international commitments and ensure a broad-based CSO/NGO participation on consultative bodies in the area of development. These include consultative groups set up to prepare for membership of the OECD and plan for the adoption of the OECD Supply Chain Due Diligence; a consultative group on Extractives Industries Transparency Initiative (EITI) in preparation for membership, and consultation on the implementation of the UN Guiding Principles on Business and Human Rights, amongst others
- Governments should urge Colombia to implement/incorporate recommendations received from CSOs/NGOs on consultative bodies and in working groups.

## Capacity building

- Support CSOs to re-evaluate their role and priorities in the changing context in Colombia
- Support CSOs to undertake research to underpin development and human rights work
- Strengthen work with victims' organisations, in order to improve their capacity and understanding of the new laws and on issues of access to justice for communities

- Support capacity building for CSOs to participate in consultative groups for international governance mechanisms, such as the OECD, EITI and UN Guiding Principles on Business and Human Rights, amongst others.
- Support organisations working on justice, democracy and human rights and their participation in the construction of peace.

## Funding

- Donors should play an important role in encouraging Colombia to uphold constitutional and international commitments to guarantee the right of civil society to fulfil its functions and influence policy and governance from a critical standpoint
- Government and donors should promote funding policies and practices that strengthen CSO capacity to operate independently as watchdogs of democracy and human rights
- Donors should ensure that they are not basing their funding solely on the delivery of activities. If CSOs are to fulfil their role, donors need also to support institution building
- Governments and donors should ensure that any reduction in funding is accompanied by a front-loading of additional funding for capacity building within CSOs/NGOs to support a sustainable transition from one type of funding to another.

## Protection measures

- Focus on the practical implementation of existing institutional frameworks and laws including differentiated protection mechanisms for women and communities
- Increase the capacity of the National

Protection Unit to respond immediately to requests for risk analysis and rapid delivery of allocated protection measures

- Focus on prevention by developing and implementing strategies to tackle extremely high levels of impunity for attacks on and killings of human rights defenders and community leaders
- Strengthen the capacity of the Human Rights Unit in the Attorney General's Office to move forward on the investigation and prosecution of those responsible
- Expand the expertise and capacity of the Human Rights Unit to centralise all records of attacks on and killings of HRDs, and track patterns of attacks on and killings of HRDs, in order to identify both the instigators and perpetrators of the crimes and bring them to justice.

### **Participation in designing and implementing development plans, and free, prior and informed consent**

- Increase the formal spaces where civil society is consulted on development policies with the possibility of changing and influencing regional development plans
- Ensure indigenous groups are formally incorporated into regional planning, and not merely consulted, so that these groups are able to articulate and implement their different needs, as is their constitutional right

- Formally ensure the incorporation of small scale farmers (campesinos) and Afro-Colombians into regional planning and development

- Review current legislative frameworks to align with the UN Declaration on Indigenous Peoples, Constitutional Court and international jurisprudence. Make clear provisions for obtaining 'free, prior and informed consent' in all projects and plans affecting Afro-Colombian collective territories, and indigenous peoples' resguardos and ancestral territories.

### **Freedom of expression**

- The government should allocate policy and resources to promote the inclusion of the opinions of vulnerable and poor people in media and press coverage
- Investigate and prosecute security forces responsible for the aggressive repression of social protest
- Instigate training for the police force in alternative methods of policing civil protest marches as Colombia seeks to move from conflict to peace.

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# Appendix 1:

## The survey questionnaire

1. What is the size of your organisation?
2. What is the main focus of your organisation's work?
3. Where is your organisation based?
4. Based on your experience, to what extent has the government ensured the participation and co-ordination of CSOs in drafting and implementing a national development plan?
5. Based on your experience, how supportive is government strategy on CSOs working on development matters?
6. To what extent would you say the enabling environment for your organisation is more supportive and inclusive than it was five years ago?
7. To what extent has your organisation been able to expand its activities and impact over the last five years?
8. How safe, in respect of your physical integrity, do you feel working on development related issues in your region?
9. In some countries, CSO leaders are at times publicly referred to in derogatory terms by the authorities on account of their work. If this has occurred to you in the last year, how often has it occurred?
10. In some countries, CSOs are at times pressed by state authorities or other actors to desist from some or all of their activities. If this has occurred to you or a member of your organisation in the last year, how often has it happened?
11. In some countries, CSOs are at times required to seek permission or permits from the authorities to carry out some or all of their activities. If this has happened to you, to what extent would you say such permission was reasonable?
12. Currently, how easy is it for your organisation to travel throughout your region or country for purposes of work without experiencing some form of official control of your movements by the authorities or other actors?
13. In the past year, how often have you had to pay a bribe to get work done?
14. Do you feel that the treatment of your organisation by the authorities is the same as that of other CSOs?
15. How likely is your organisation to be stigmatised if it collaborates with other peaceful organisations perceived to hold unconventional views on human rights, religion or sexuality?
16. In your experience, how reasonable are the requirements and processes for legal registration of CSOs?

17. To what extent is it now easier for your organisation to comply with and fulfil legal processes and requirements than it was five years ago?
18. In some countries, CSOs are threatened with closure. If your organisation has been threatened with closure by the authorities in the past year, how often has this occurred?
19. How easy is it for your organisation to call a peaceful public meeting in the community (either rural or urban)?
20. How easy is it for your organisation to organise a peaceful public protest or other form of gathering against government policy?
21. To what extent is it now easier to organise a peaceful public protest compared with five years ago?
22. How easy is it for your organisation to access timely information about government budget and policy decisions regarding development issues?
23. To what extent is it now easier to access timely information about government budget and policy decisions compared with five years ago?
24. If you have lodged formal access to information requests in the past five years, how often have they been successful?
25. In some countries, CSO records are at times tampered with by the authorities or by other actors. If this has happened to you in the past year, how often has it occurred?
26. How easy is it for your organisation to have its opinions published in the local or national newspapers?
27. During the past year, how often have you been asked to give an interview or opinion to the mainstream media (National TV or radio) on a relevant development issue?
28. How concerned would you be about making explicit criticism of government on development matters in public?
29. To what extent is it now easier for you to be openly critical of government policy and practice on development compared with five years ago?
30. In some countries, CSO leaders have been formally accused of defamation on account of public statements. Over the past five years, if this has occurred to you or a member of your organisation, how often has it occurred?
31. How easy is it for your organisation to meet with relevant ministers, authorities or senior government officials to discuss issues and/or how they can support your organisation's work?
32. Over the past year, how often have you been invited to give feedback to or participate in government bodies or working groups on government policies, current programs or new initiatives in support of development?
33. To what extent do you feel consideration of your views has improved during official meetings and working groups compared with five years ago?
34. To what extent do you feel your organisation's proposals are implemented by the authorities?

35. How easy is it for your organisation to challenge, either individually or in coalition with other CSOs, a legal act or bill relating to development issues?
36. How easy is it for your organisation to propose legal reforms relating to development issues?
37. Over the past five years, how willing has the ombudsman's office, or similar body, been to handle complaints or issues your organisation may have raised?
38. How easy is it for you to receive and share knowledge with other organisations nationally or internationally?
39. How easy is it for your organisation to work with UN human rights bodies without fear of reprisals?
40. How easy is it to access the internet without restrictions on web-sites or restrictions on accessing messages?
41. In your experience, to what extent has sharing information with both national and international organisations become easier compared with five years ago?
42. If you have had to raise a complaint with the authorities about your treatment (either as an individual or on behalf of a member of your organisation) by the authorities or other actors during the past year, how good was the response?
43. In some countries, CSO leaders are at times wrongfully detained during the course of their work. If this has happened to you or a member of your organisation during the past five years, how quickly was their unconditional release secured?
44. Have you experienced discrimination (for instance, by an unexplained denial of housing, employment or education) over the past year, and if so, to what extent do you feel this was related to your involvement in development work?
45. In your experience, are the authorities or other actors more or less tolerant of those working on development compared with five years ago?
46. Have you had to request protection from the authorities because you have been subject to threats or harassment on account of your development work? If so, how good was the protection?
47. How easy is it for your organisation to receive funds from abroad?
48. Compared to five years ago, to what extent have government policies improved your organisation's ability to generate financial resources?
49. What will be the main obstacle to your work over the next 12 months?
50. Are there any important issues you would like to raise that have not been covered?

# Appendix 2:

## The focus group questions

1. To start the discussion, you may like to introduce your work.
2. What are the main obstacles your organization has encountered during the last five years in carrying out its work?
3. Discuss the actions taken to overcome these obstacles, emphasizing who or which institution was crucial in helping overcome the obstacle.
4. Discuss the most successful actions taken and the outcomes.
5. Discuss the reasons why these actions were successful.
6. Prioritization: what five actions, steps or measures would help improve delivery of your organization's work? (Consider whether local, regional or national action is needed. Also consider which stakeholders are most important).

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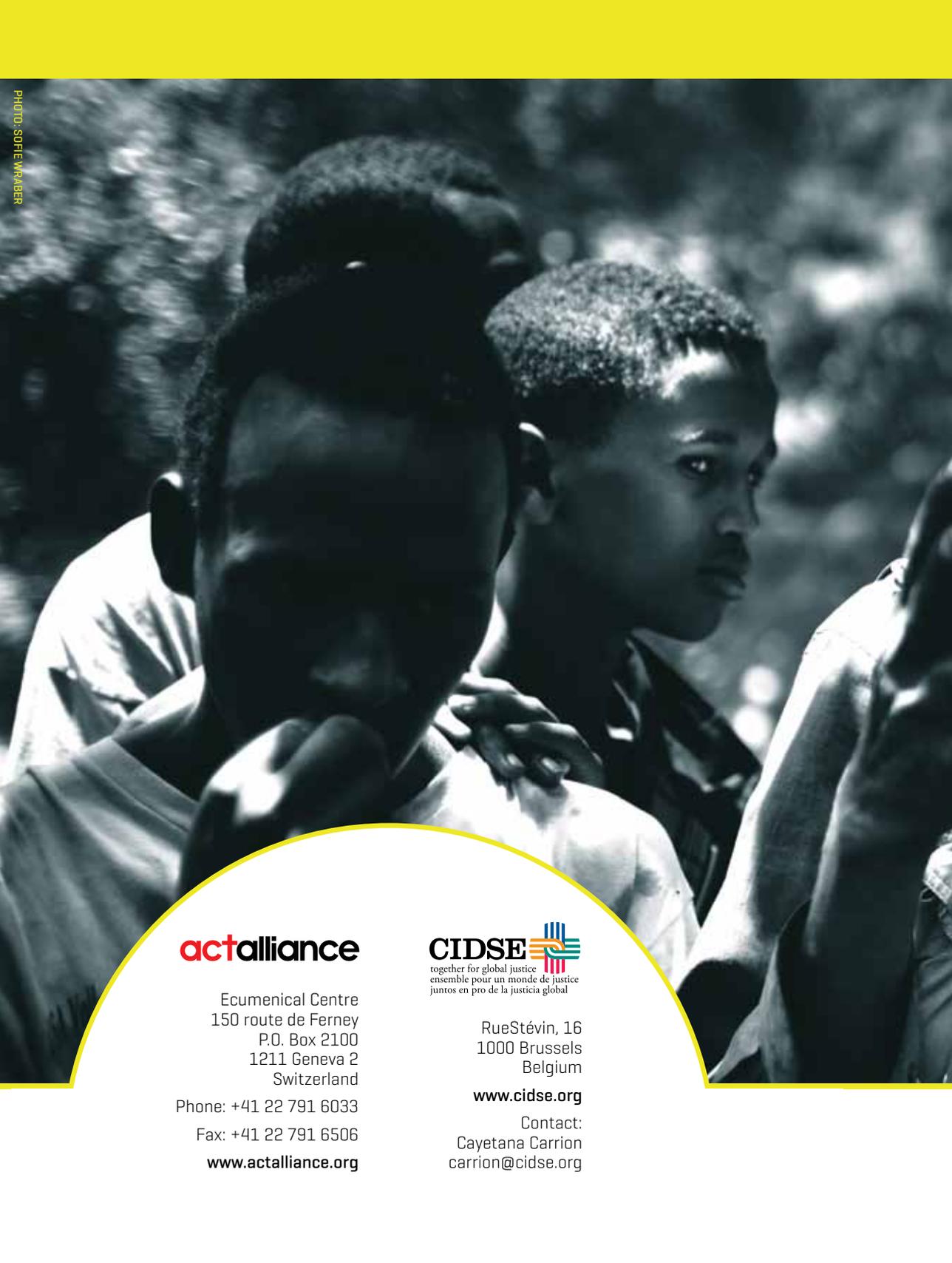
and the Act Alliance Community  
of Practice on Human Rights in Development

# actalliance



Church of Sweden 





**actalliance**

Ecumenical Centre  
150 route de Ferney  
P.O. Box 2100  
1211 Geneva 2  
Switzerland

Phone: +41 22 791 6033

Fax: +41 22 791 6506

[www.actalliance.org](http://www.actalliance.org)

**CIDSE**   
together for global justice  
ensemble pour un monde de justice  
juntos en pro de la justicia global

RueStévin, 16  
1000 Brussels  
Belgium

[www.cidse.org](http://www.cidse.org)

Contact:  
Cayetana Carrion  
[carrion@cidse.org](mailto:carrion@cidse.org)