



EUROPEAN ASSOCIATION OF DEVELOPMENT
RESEARCH AND TRAINING INSTITUTES

EADI Policy Paper Series

Legal Frameworks and Political Space for Non-Governmental Organisations:

An Overview of Six Countries

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July 2013

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Executive summary

This study examines the legal frameworks and political space for non-governmental organizations (NGOs) to operate in selected countries in order to suggest appropriate approaches for supporting civil society in difficult political contexts. The cases examined were Bangladesh, Ethiopia, Honduras, Kyrgyzstan, Serbia and Uganda. The study is motivated by growing concern over the ability of civil society to fulfil its core functions, especially in the areas of governance and human rights. The past decade has seen diverse trends; new spaces and enabling environments have opened up for civil society in some contexts, but shrunk in other contexts. Civil society actors have increasingly been recognized as significant actors in global processes. For example, the Busan Partnership for Development Effectiveness stresses the need for enabling environments to be created for civil society organisations (CSOs). At the same time, civil society freedoms have been restricted in a number of countries by new legal initiatives. This tendency has been justified partly by the post-2001 security agenda, and partly by the interests of repressive regimes. The case studies look deeper into these trends in a variety of societal contexts:

- *Bangladesh* has a massive, primarily service-oriented NGO sector dominated by mega-NGOs and foreign-funded NGOs. The legal framework is generally weak, and many NGOs suffer from poor governance. Civil society space is constrained by two dominant political parties which are suspicious of NGOs entering the political arena, and there have been some cases of harassment of NGOs working on human rights or governance issues.
- *Ethiopia* has recently introduced new legislation which restricts foreign funding for NGOs, and in practice has narrowed the space of human rights NGOs. The new legislation has particularly affected international and large NGOs based in the capital; at the sub-national level there is more flexibility for local civil society to operate.
- In *Kyrgyzstan* the space for civil society has stabilised since the political crisis of 2010. The legal position and rights of NGOs are respected under the new constitution and the post-2010 period has seen the emergence of more locally-embedded CSOs. The main challenges are the capacity of CSOs as external aid declines and distrust within the sector.
- In *Honduras*, the legal framework is supportive of participation in governance processes. However, civil society is highly polarized and freedom of expression is suppressed.
- For *Serbia*, EU accession requirements encouraged significant progress in creating a comprehensive legal framework for CSOs. However, human rights CSOs are becoming more vulnerable, including to attack from extremist groups, with the government doing little to protect their freedom. Problems are also resulting from a reduction in foreign funding.
- In *Uganda*, NGOs are significant in service delivery and reconciliation work. The constitution assures rights for civil society action, but the legal and political environment has become more restrictive in recent years.

The case study countries differ in their historical and political contexts. However, a few common themes can be identified: first, service delivery seems to be an accepted and often expected role for CSOs but when they are perceived as engaging in more politically-sensitive areas, they are more likely to experience clamp-downs on their operations. They may be identified as political opponents and subject to attacks and harassment. Second, in some countries the legal frameworks are outdated and complex which opens the door to misuse and misinterpretation. In other countries new legislation is being introduced, but it is not always favourable to civil society. Moreover, the implementation of enabling legal environments might be used to serve elite interests. Weak capacity and sometimes poor accountability of CSOs themselves is an equally debilitating factor. Third, CSOs are often dependent on external funding and are thus vulnerable to being perceived as serving external agendas. They face problems of sustainability in a context of declining aid funding. Restrictive trends have invited diverse responses from the international donor and NGO community ranging from strong pressure to

adaptation. Fourth, the case studies demonstrate that there are windows of opportunity which can be used by local civil society organisations to tackle governance-related issues even in restrictive environments. These are often supported by international organizations, showing that there is some room for manoeuvre.

Donors and international NGOs could consider the following in response to shrinking spaces for civil society:

- Explore avenues for dialogue and collaboration with local authorities and civil society networks to enable constructive engagement around the benefits of CSO-government partnerships to deliver programmes.
- Explore different models for supporting the development of an independent, sustainable and accountable local civil society. Examples include working with networks, peer-approaches, basket funds and new technologies to build capacity without creating dependency.
- Recognise that heavy-handed diplomatic pressure may not be conducive to encouraging governments to uphold their commitments to protect civil society space; more subtle approaches may be more effective.
- Donors should consider pressuring other donors that are pursuing policies which are having deleterious effects on civil society.
- Explore options for supporting the strengthening of the legislative environment for civil society.
- Conduct more in-depth research in particular countries to tease out good models and practice.

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1 Introduction

Over recent years there has been considerable concern that space for NGOs and civil society more broadly has become increasingly restricted in many countries. In some countries, the legal framework has been tightened to condition the roles that local and international NGOs can play; in other contexts the legal frameworks may not be restrictive but the political and economic realities hamper the work that NGOs can do. At the same time, while many organizations have seen their work curtailed due to restrictive legislation and repressive tactics, others continue to find ways to operate that ensure that support to strengthen and build the capacity of local civil society can continue; and in extreme cases transformations or revolutions have opened up new opportunities for civil society.

Finding the spaces where NGOs can work to tackle governance issues is extremely important in relation to long-term processes of change. This is even more salient in a global environment where the roles and sustainability of civil society are changing rapidly in response to economic shifts and new geo-political dynamics.

This paper aims to provide the German Ministry for Economic Cooperation and Development (BMZ) with an overview of the issues surrounding legal and political space for international and local NGOs² to operate in difficult environments, drawing on six case studies (Bangladesh, Ethiopia, Honduras, Kyrgyzstan, Serbia and Uganda). It has been commissioned following the decision by the Heinrich Böll Foundation to close its office in Ethiopia in response to restrictive legislation which was making it increasingly difficult for the Foundation to fulfil its mission in the country. The paper begins with a brief overview of the issues facing civil society at the present time, followed by a detailed review of the situation in six countries. It concludes with an analysis of the core themes emerging and a set of recommendations.

2 Overview of the issues

Over the last decade we have seen a notable shift in the operating context for civil society globally. On the one hand, civil society organizations, networks and platforms have increasingly been recognised as important actors in global policy fora, and their rights enshrined in international declarations. On the other hand, many governments, which at an international level have embraced the role of civil society as agents of change and development, have restricted the freedoms of civil society organisations within their countries. This contradictory behaviour sits against a backdrop of major shifts in global economic and political systems. Civil society is facing new opportunities and challenges in vastly different ways in those countries experiencing economic growth, those experiencing economic decline, and those facing political turmoil (PRIA 2012).³ We are seeing the rise of new, less structured social movements, which operate according to a different logic to increasingly professionalised NGOs. Civil society organizations that have long relied on external funding are also facing sustainability challenges as funding is withdrawn

² The definitions of non-governmental organisations (NGOs), civil society organisations (CSOs) and even civil society differ across the countries that we have explored. For the purposes of this study, we consider civil society to be the space between the state and the market. Civil society organisations are all formal or informal groups of people working together towards common goals within civil society space; they may operate at local, national and international levels. CSOs include membership groups, trade unions, and community associations. NGOs are professional organisations - in our context mainly engaged in social and economic service delivery, provision as well as lobbying and advocacy work. – which constitute a small proportion of total CSOs (Beauclerk, Pratt and Judge 2011; Setianto 2007).

³ Over 2011-12, the Civil Society @ Crossroads project produced 24 case studies from 16 countries, looking at the new dynamics of civil society. The case studies, as well as synthesis papers, are all available at: <http://www.pria.org/civil-society-at-crossroads->

by western countries which are re-orienting aid towards the poorest countries or are reducing budgets due to deficits (Hayman 2012a).

Recent international efforts to create an ‘enabling environment’ for civil society include a resolution by the UN Human Rights Council on freedom of peaceful assembly and association passed in September 2010 (Tiwana and Belay 2010). The resolution was supported by diverse states and was unanimously approved. The UN furthermore continues to urge member states to protect human rights defenders and provide a secure environment for civil society to operate, e.g. under the UN Declaration on Human Rights Defenders. Under international law, principles which guarantee the protection of civil society include the right to entry (freedom of association), the right to operate without unwarranted state interference, the right to free expression, the right to communication and cooperation, the right to peaceful assembly, the right to seek and secure resources, and state duty to protect (World Movement for Democracy 2012).

In November 2011, the Busan Partnership for Effective Development Cooperation was adopted as a successor to the Accra Agenda for Action of 2008. The Accra Agenda for Action of 2008 called on donors to support efforts to increase the capacity of all development actors such as parliaments, civil society research organizations, media and the private sector (ACT Alliance 2011). The Busan Partnership went further in calling for inclusive cooperation between various development stakeholders and for states to “implement fully their respective commitments to enable CSOs to undertake their roles as independent development actors” with a particular focus on creating an enabling environment. Busan shifted the agenda of international development from aid effectiveness to development effectiveness. This call for the creation of an enabling environment to guarantee fundamental rights and freedoms of citizens, as well as to acknowledge their contribution to national policy and development has been taken up by CIVICUS (CIVICUS 2011), the European Union (EC 2012) and the World Economic Forum (KPMG 2013), amongst others.

Despite this international-level recognition of the roles of civil society, which has seen civil society progress from being marginalised to actively being included in talks on development effectiveness (Hayman 2012b), the reality in many countries is one of shrinking space. There is no international instrument which explicitly guarantees or protects the work of civil society and NGOs. UN documents promote state engagement with civil society but this does not constitute a legally binding obligation and remains an accepted standard of behaviour in the context of democracy and good governance (ACT Alliance 2011). Indeed, many countries have started regulating and controlling civil society. The regulations span from administrative hurdles to formulation of restrictive laws, intimidation and criminalization of civil society actors (ACT Alliance 2011). In a 2008-2010 Civil Society Index (CSI) organizational survey carried out by CIVICUS on the external environment for civil society in 25 geographically and politically diverse countries, 47% of respondents stated that regulations in their countries for civil society are restrictive (Tiwana and Belay 2010). Of these, 11% perceived extremely high level of restrictions being placed on civil society. Out of the 4,122 organizations that participated, 58.8% reported having experienced illegitimate restrictions or attacks by local and/or central government.

To some extent, this phenomenon can be traced to the counter-terrorism approach in the wake of the September 11th, 2001 attacks after which CSOs worldwide faced strained relationships with government. While the United Nations Security Council Resolution 1373 called on UN member states to embrace concrete steps to tackle terrorism with the intention to protect innocent civilians and state structures, the fundamental freedoms of civil society actors also suffered (Tiwana and Belay 2010; Zharkevich 2010). Human rights defenders have subsequently been stigmatized and categorized as “terrorists”, “enemies of the State” or “political opponents” and around the world regulatory measures have been enacted which have limited the rights of citizens to freely express their views, associate and assemble (Tiwana and Belay 2010). Restrictions through regulation have been described in some quarters as symptomatic of a growing backlash against democracy (Moyo 2009).

Some of the measures to curtail the freedom of CSOs come in the forms of legal barriers to the formation of organizations, operational activity, advocacy and public policy engagement,

communication and cooperation with others, assembly and resources (World Movement for Democracy Report 2012). Governments sometimes justify these obstacles as being essential in order to improve the accountability and transparency of CSOs, to harmonize or coordinate CSO activities, to meet national security interests by addressing terrorism or extremism and/or in defence of national sovereignty against foreign influence in domestic affairs. Activities by unregistered groups may be criminalized or outlawed.

The shift towards a multi-polar international system with new power centres such as the emerging economies of Brazil, Russia, India, China and South Africa (BRICS), is counterbalancing the influence of western democracies (CIVICUS, 2011). While western governments have in the past promoted rights-based approaches in civil society frameworks, the new providers of foreign aid and investment do not subscribe to similar principles and may provide alternatives to governments which are facing sanctions or censure for human rights abuses.

A common pattern is that NGOs working in service delivery or on government-endorsed programmes experience less resistance and are more free to operate (ACT Alliance 2011). NGOs working in human rights, community rights, land rights, natural resources, minerals or environmental issues are more likely to become stigmatised. Opposition in these various sectors is also likely to occur during certain periods of government decision-making or when there is scrutiny of government policies. It is not uncommon for restrictive laws to be introduced as countries prepare for presidential elections or when the government is confronted with protests. During these periods, the criminalisation of NGOs can easily take place (Van der Borgh and Terwindt 2009).

Obviously generalisation is problematic. However, states that are relatively free and strong tend to have clearly defined civil and political rights grounded in the rule of law, and they have the capacity to defend these rights (Van der Borgh and Terwindt 2009). In autocratic states, governments have a clear and strong capacity to limit the work of civil society. Nevertheless, in electoral democracies, traditional authorities, warlords, social or religious movements and international corporations can be crucial in the de facto local political orders which can influence the room for manoeuvre of NGOs (ACT Alliance, 2011). Furthermore, the current economic climate is even having negative knock-on effects on civil society space in countries that are considered to be strong democracies, such as Ireland and the United Kingdom. In both these countries, research has shown that political and economic conditions are affecting the independence of civil society (Poppowell 2013; The Baring Foundation 2013).

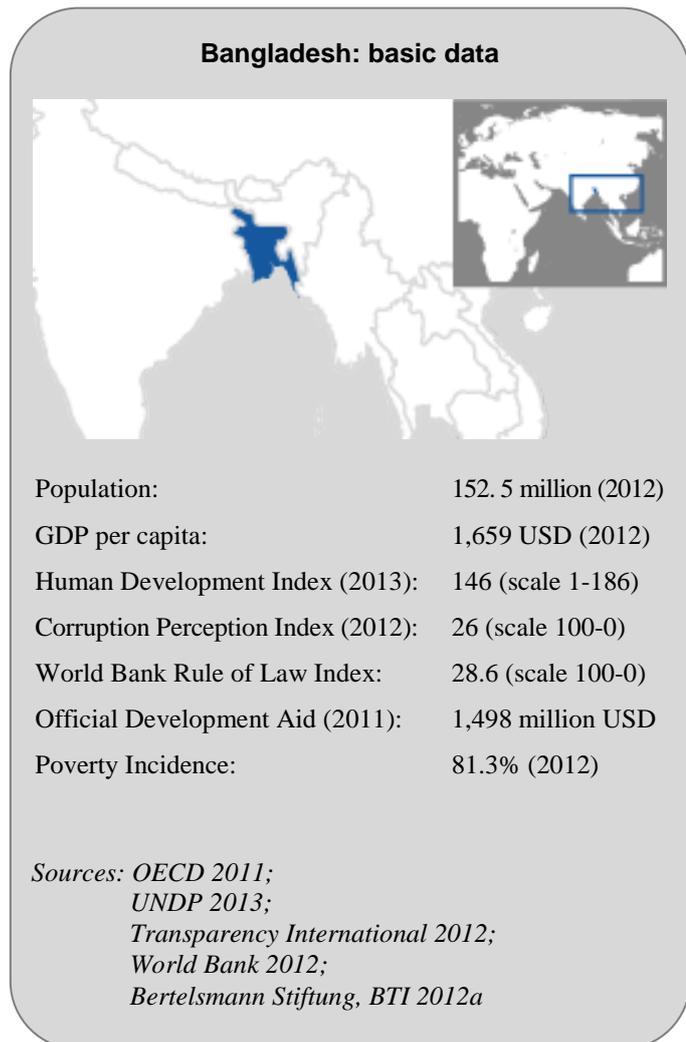
3 Experiences from six countries

The case studies were carried out using a common framework which addressed very briefly the socio-political context in the country, the background to NGOs in the country, the legal framework regulating NGOs, the 'real' operating context, and recommendations. The following sections provide a synopsis of each case study (Bangladesh, Ethiopia, Honduras, Kyrgyzstan, Serbia and Uganda).

3.1 Bangladesh⁴

3.1.1 Context

Bangladesh continues to adjust to the realities of statehood following the war of 1971 when it split away from Pakistan. The issues from the civil war are still fresh today, and included a reaction against a stricter form of Islamic state, a move towards secular democracy, and a feeling within the population that somehow they were the neglected part of South Asia. During the last 10 years the economy of Bangladesh has grown at a healthy rate which is bringing many people out of poverty. However, the level of governance is poor. The national political scene is characterised by a polarisation between two major parties: Awami League (AL), currently in power; and the Bangladesh Nationalist Party (BNP). This polarisation mars all political activity in the country, with changes of policies following the rise and fall of the two parties and their leaders. Behind the political instability is a high level of corruption, with poor records in judicial independence and press freedom. Despite or perhaps because of the instability, Bangladesh is a major aid recipient; a large amount of aid goes to the major Bangladeshi NGOs.



3.1.2 Background to civil society and NGOs

The NGO scene in Bangladesh can trace its roots to the independence movement of the 1970s, growing out of the disruption and humanitarian needs of the civil war and subsequent reconstruction. The weakness of governance led many donors to push funds through NGOs, making them some of the largest in the world. The skills and foresight of the Bangladeshi NGO leadership also led to the development of many alternative forms of development based outside the state, from micro-credit

⁴ This section draws on insights from research and evaluation work, as yet unpublished, undertaken by INTRAC and the University of Bath in Bangladesh in 2012.

through to street schools, the use of IT (phone networks), as well as traditional community development activities.⁵ For some years it has been common for official donors to provide direct funding to Bangladeshi NGOs (INTRAC 1998), often far outweighing private NGO funding.

A long-standing area of tension is between what might loosely be called the modern NGO sector, which receives foreign funds and has modern management structures aimed at a poverty base, and a ‘traditional’ civil society sector which is often Islamic at its roots and may have philanthropic aims through *Zakat*⁶ funds. These groups often feel crowded out by the well-funded modern sector. There have even been examples of modern NGOs being attacked and premises burnt down, as people in communities are upset by what they see as an overly secular, foreign-inspired influence in their midst.

3.1.3 Legal framework

The basic laws in Bangladesh date from the 19th Century and are based on British legal ideas. They include the Societies Registration Act of 1860, the Trust Act of 1882, and the Companies Act of 1913. Additionally, there is the provision to register as voluntary social welfare bodies under an act of 1961. Two more recent laws have an impact on how NGOs work, notably the Foreign Donations Act of 1978 and the Micro Finance Regulatory Act of 2006. The majority of CSOs are recognized as voluntary social welfare organizations (VSWO), which are typically small and operate locally with funds from local donations and government grants, with activities implemented by local volunteers. As of December 2009, 56,966 VSWOs were registered with the Department of Social Services (ICNL 2013). Organizations that operate with grants from external sources are generally perceived as “development NGOs” and have to be registered with the NGO Affairs Bureau. Of the 2,535 organizations that were registered as of June 2010, 2,305 were of local origin and 230 were foreign/international organizations operating with an office in Bangladesh. There is no real differentiation between NGOs, philanthropic foundations and political foundations. Some of the very large semi-commercial ventures have changed their legal status to companies or even registered banks.

The Foreign Donations Regulation Act causes many problems. It enables the government to withhold foreign funds from NGOs, sometimes on a clearly arbitrary basis, other times because of incompetence and delays. Under the previous government (BNP), several major NGOs had their funds frozen in retaliation for what they saw as partisan political positions. NGOs feel that the government process lends itself to unwarranted interference. There is an as yet unratified law to tighten further controls over foreign funding; this would entail prior consent from government of all activities of groups receiving foreign funds. The government argues that this is in response to alleged misuse of foreign funds for terrorism.

The ageing legal system does not promote internal accountability, and has many anomalies. For example there is very weak auditing of accounts and the concept of an independent board is barely recognised (Irish and Simon 2005). It has also been argued that some of the mega-NGOs have totally outgrown the old legal frameworks, and should no longer be treated as NGOs; the big micro credit programmes (such as Grameen bank or BRAC bank and its allied commercial operations) and some of the others should be tax paying as they now work for profit.

3.1.4 The operating context

Overall the picture of NGOs in Bangladesh is of massive growth, a better profile than government, and involvement in many areas of life (social, commercial, community level, humanitarian

⁵ BRAC for example now has a turnover of ca. 570 million dollars p.a., only 24% of which comes from donors (BRAC 2011)

⁶ *Zakat* is an obligation on Muslims to give away a proportion of their wealth each year to those who are less fortunate. The giving of *Zakat* is considered an act of worship; it is a form of offering thanks to God for the means of material well-being one has acquired.

interventions). The weaknesses of the legal framework, however, allow for abuse from within the sector as well as by government.

Recent work by CIVICUS lists a series of violations of the freedoms of expression, association and assembly, as well as harassments and attacks against individuals and civil society organisations. It noted the virtual monopoly over television, bans on public meetings, cancellation of the registration of some 6000 NGOs and the arbitrary arrest, torture and disappearances of political activists, journalists, trade union and student leaders (CIVICUS 2012a). The sacking of Mohammed Yunus, the founder of the Grameen Bank, has also been interpreted as a side swipe at civil society, potentially the first move by government to try and control the considerable resources built up by the big Bangladeshi NGOs.

The political elite are generally suspicious of NGOs. Although the AL tends to have more tacit support from NGOs, neither of the main parties has been totally relaxed with civil society. The success of NGOs in development and welfare has led to feelings of resentment amongst civil servants (who feel that the NGOs are better resourced and paid) and political leaders wary of the power of NGOs to mobilize large numbers of people. Furthermore, there is evidence that the Foreign Donations Act has been used against opponents of the government. On the other hand, some NGOs do try and ally themselves with one of the two major political parties, which can then expose themselves to criticism from the other party and opens up the whole sector to accusations of being politically partisan. Some of the more mature agencies try to avoid such accusations by ensuring that they have alliances with people from both parties, for example on their boards.

Despite the difficulties of trying to avoid confrontation with government or the political parties, many local NGOs have a considerable success in advocacy and empowerment programmes, for example around women's rights, landlessness, community participation, or even voter registration and electoral monitoring. However, the weakness of NGOs despite their size and resources is noteworthy. There are few major membership organisations able to lobby government, and the disproportionate resources dominated by NGOs give an impression of a strong civil society when in fact their focus is on service delivery. The success of some NGOs lies in the fact that they mirror the patron-client model. Thus a poor woman exploited or abused by the local police will expect the NGO to take up her case, in the confidence that the NGO is headed by a powerful leader with the right contacts (class, ethnic, even landowning) to the feudal elite which dominates the political system.

Given the size, strength and coverage of local NGOs, the roles of foreign donor NGOs are perhaps less high profile than in other countries. Nevertheless, many well-known NGOs are involved in humanitarian work, health, basic agriculture, and some support for campaigns such as those against violence to women and child labour. If an INGO wishes to fund a local NGO, details of the proposed donation have to go through the government approval mechanism under the terms of the Foreign Donations Act. Some local NGOs can in theory be contracted to deliver a service rather than receive grants which may enable them to circumvent the Donations Act, but otherwise INGOs can only fund those groups registered with the government NGO Bureau or the Department of Social Welfare.

3.1.5 Conclusions on Bangladesh

NGOs play a major role in service delivery in Bangladesh. However, the weak legal framework for NGOs opens them up to abuse internally and from government. Although there are advocacy issues that NGOs have managed to engage with, the polarised political context represents a major challenge to the work of civil society as a watchdog over governance and human rights issues. The potential for abuse of the Foreign Donations Act is particularly pertinent in this respect, and the repression of critics closes spaces for dissent. The dominance of the sector by 'modern' mega-NGOs and those dependent on foreign funding creates tensions with 'traditional' local groups, and affects the overall functioning of civil society.

3.2 Ethiopia

3.2.1 Context

Ethiopia formally became a federal state in 1994. Since 1991, the government has been led by a coalition of ethnic-based parties, the Ethiopian People’s Revolutionary Democratic Front (EPRDF). Although the EPRDF has introduced efforts at democratization and regionalization (Chanie 2007), power is firmly in the hands of EPRDF and the space for opposition is limited. The elections in 2005 resulted in violence, and the EPDRF and its allies won a 99.6% majority in the 2010 parliamentary elections, which were criticised for non-transparency, limitations for press and threats to voters (International Federation for Human Rights 2011). The 20-year era of Prime Minister Meles Zenawi was ended by his death from illness in 2012. Ethnic divisions (Mehretu 2012) and religious affiliations have a great impact on the society, and for some analysts explain the need for tight political control (Epstein 2010). Although Ethiopia is a party to most of the core international human rights instruments, its human rights record is controversial (Milofsky 2010). Freedom of speech and assembly is restricted, arrest and torture of human rights activists is common (Bader 2013), and at the grassroots, people are sometimes forced to participate in different government programmes and join the party through coercive means (e.g. threats of denying food aid, Human Rights Watch 2010a). A major challenge to those parts of civil society that receive the most aid has been the Ethiopian Charities and Societies Proclamation in 2009 which restricted the activities of INGOs.

Ethiopia: basic data




Population:	82.9 million (2012)
GDP per capita:	1,041 USD (2012)
Human Development Index (2013):	173 (scale 1-186)
Corruption Perception Index (2012):	33 (scale 100-0)
World Bank Rule of Law Index:	29.1 (scale 100-0)
Official Development Aid (2011):	3,563 million USD
Poverty Incidence:	77,6 % (2012)

Sources: OECD 2011; UNDP 2013; Transparency International 2012; World Bank 2012; Bertelsmann Stiftung, BTI 2012a

Ethiopia is listed as a fragile state by international donors (OECD 2011b) and is one of the world’s major aid recipients. Nevertheless, it has high ambitions to achieve middle-income status by 2025 (INTRAC 2004; UN 2011), and growth rates are currently running at around 7% (World Bank 2013). The economy is highly dependent on rain-fed agriculture. Since 2008, the government has awarded millions of hectares of land to international and national investors on the grounds of receiving foreign currency and ensuring food security. This has had some negative impacts on local small-scale farmers (Oakland Institute 2009), but has also had some positive benefits for the opening of light industry, leading to jobs for educated young people.

3.2.2 Background to civil society and NGOs

Ethiopia has a history of voluntary organizing at local level, for example mutual self-help groups such as *idir* which are organized along kinship, neighbourhood and family lines (Yeshanew 2012), and the peasant associations (*kebeles*) established during the post-1974 Derg era. The latter, however, soon turned into an instrument of political control rather than avenues of local participation (INTRAC 2004). Since then, the EPRDF has consolidated this into a model of both political and civil administration and has introduced elected assemblies at *kebele*, *woreda* (district) and zonal levels.

Prior to the 1970s, only a few international organizations operated in the country, such as the Red Cross. More international organizations arrived to provide relief services during the famines of 1974 and 1984/5, later expanding into rehabilitation services and basic service delivery. A turning point was the change in government in 1991 after which the number of indigenous organizations grew rapidly and an increasing number of foreign NGOs started to operate in the country. There was a growing interest in governance, advocacy and rights-based approaches. However, it did not take long for the relatively smooth government-civil society relations in the early 1990s to be replaced by increasing criticism of civil society action by the government which considered NGOs to be wasting resources and creating dependency among people (CRDA 2007). Significant in this respect is the fact that in 2004, Addis-based NGOs and their funders regularly attacked the government without a firm evidence base for doing so, and some became actively involved in opposition activities.

The current trend seems to be a return to service-delivery and poverty reduction agendas, although several donors have been active in supporting the capacity building of local civil society organisations, including through a common Civil Society Support Programme (see box 1 below).

Box 1: The Civil Society Support Programme (CSSP) in Ethiopia

The CSSP started in 2011, after a very long negotiation period due to uncertainty over the law. It involves six bilateral donors (Irish Aid - the chair/lead; DFID; SIDA; Danida; Dutch Foreign Ministry; and Norway). CIDA may join. INTRAC, in partnership with the British Council and IDL, are responsible for implementing the programme. The programme works closely with the Federal and local government. The aim is to do as much as possible within the existing law. The implementing team is managing to work within the 30/70% rule (whereby no more than 30% of a grant can be spent on the recipient NGO costs) and even the law that says that Networks cannot implement programmes and all funds need to be passed to their members. CSSP requires a lot of effort to help grantees understand and work to the boundaries of the law and its subsidiary directives. Assistance is provided by an almost permanent senior lawyer.

The more restrictive laws apply at the Federal level but not necessarily to local NGOs registered in only one of the regional states. Each region has a mandate for civil society registered and working in that state, and may therefore choose to define the relationship differently from the Federal Law. This enables some flexibility at a local level. The CSSP aims to reach remote areas (geographically and socially) and is able to work in this more flexible framework. Even for organizations registered at the Federal level, it is possible for space to be negotiated if the CSO can demonstrate the benefit of collaboration on issues which matter to local government. For example, one pilot works in a *woreda* with local groups concerned about abduction and trafficking of underage girls for work in the Gulf. The local government, communities and NGOs have all been working together to end this practice. While this could be described as a child/women's rights programme, the project is presented as a women's education project. The Director General of the Federal Charities and Societies Agency has visited from Addis Ababa and asked the CSSP to provide similar opportunities for lesson-learning for his staff.

With networks, the CSSP has tried to support them by finding ways within the law, for example encouraging a network to pass the grant to its members but for members to pass a certain amount back to the network to cover its costs or to pay for services such as training. All this is time-consuming but feasible and ultimately aims to build civil society from the bottom up in Ethiopia.

3.2.3 Legal framework⁷

The *Ethiopian Charities and Societies Proclamation* in 2009 has been under critical scrutiny both by Ethiopian and international actors. Until the proclamation, the registration and operation of CSOs was regulated by the Civil Code of Ethiopia and Regulation (1960). (Yeshanew 2012, 382) and the Internal Security Act (1966). In 1997 the mandate for registration was shifted to the Ministry of Justice. The Constitution adopted in 1995 guarantees freedom of thought and conscience, freedom of assembly and demonstration, and freedom of association.

The Proclamation of 2009 was introduced under the logic of decreasing dependency on foreign funds, ensuring NGO accountability, and limiting interference from foreigners in political activities. The Proclamation identifies two types of not-for profit organizations: charities and societies. Charities are divided into four types: charitable endowments, charitable institutions, charitable trusts and charitable societies. Societies are “associations or persons organized on a non-profit making and voluntary basis” (Article 55 of CSP). The law distinguishes between Ethiopian, Ethiopian Resident and Foreign Charities and Societies. Organizations working in more than one region of the country, and/or those in receipt of more than 10% of their funding from foreign sources are required by Federal Law to register with the Charities and Societies Agency (ChSA) which was established as an autonomous body, but is accountable to the Ministry for Federal Affairs. They are then defined as either a charity or a society. Those that receive 90% or more of their funds from Ethiopian citizens are called “local” organizations. Nongovernmental organizations (NGOs) based in Ethiopia that receive more than 10% of their funding from international sources (including citizens living overseas who donate funds back to organizations in their homeland) are termed “resident” organizations. Organizations based outside of the country and funded outside are called “international” organizations. Foreign charities and societies should have recommendations from the Ethiopian Ministry for Foreign Affairs. Denial of registration is possible when the charity or society is assumed to be used for unlawful purposes or purposes prejudicial to public peace, welfare or good order, or if the name of the charity is contrary to public morality, or is illegal.

The Proclamation places certain restrictions on civil society organizations, but there are also some areas of flexibility. The definition of a charity is that it “generates an identifiable benefit to the public” (article 14), which represents a challenge for CSOs engaged in human rights and governance issues (Yeshanew 2012). The Proclamation restricts work on the advancement of human and democratic rights only to Ethiopian charities and societies. Hence, organizations engaging in such activities cannot receive more than 10% of their funding from foreign sources. However, some organizations have managed to secure an exemption from the government, a practice that has been growing as the government recognises that the achievement of some of its objectives requires collaboration from civil society organizations. At the same time, local fundraising activities are restricted: charities and societies are restricted from soliciting money and property that exceeds 50,000 Ethiopian Birr (4000 USD) before registration; public collection is not allowed unless permitted by the agency; and charities or societies can only engage in income generating activities that are incidental to the achievement of their purposes.

The Proclamation further specifies that no more than 30% of the budget should be used for administration. While this encourages CSOs to focus on implementation, the ambiguous definition of what constitutes administrative costs has raised question among CSOs. For example, there have been cases of payments to employees, trainers or renting of training spaces being interpreted as administrative costs (CIVICUS 2012b). There have been some subsequent adjustments, for example around the salaries of staff who are disabled or affected by HIV, and for equipment necessary for people affected by disability.

Finally, there are growing concerns related to the Anti-Terrorism Proclamation 2009 which defines terrorism very broadly. For example, any peaceful demonstration involving a blockade of public services might be considered terrorism, resulting into imprisonment for up to 20 years. The Anti-Terrorism Proclamation might also lead to civil society organizations being perceived as terrorist groups, allowing surveillance and limiting the freedom of press (CIVICUS 2009). The Mass Media and Freedom of

⁷ This section is mainly based on the NGO Law Monitor (ICNL 2013a).

Information Proclamation of 2008 introduced registration procedures for media outlets, affecting the freedom of speech (UN Country Team 2011). The UN Human Rights Council Universal Periodic Review recommended modifications to the Proclamation of 2000, but these modifications were rejected by the government.

3.2.4 The operating context

There are mixed accounts of the impact of the Proclamation of 2009 on the operating environment for NGOs. On the one hand, NGOs working on human rights and governance have shrunk, particularly those in receipt of external support (which can also be partly explained by the global recession affecting aid). The timely adoption of the Proclamation restricted, among other things, electoral observation and voter education before the 2010 parliamentary elections (Milofsky 2010). Some human rights activists have fled the country, and certain organizations have been particularly affected. For example, Ethiopia's Human Rights Council (EHRCO) closed nine of its 12 branches and made 80 per cent of its staff redundant (although it needs to be recognised that EHRCO and the Ethiopian Women's Lawyers Association represent special cases because their leadership had strong links to the active political opposition in the past and have thus remained a target for the government) (CIVICUS 2012). In October 2012 the government announced it was closing 10 NGOs, which had clear links to inappropriate adoption or evangelical activities, and an additional 400 received warning letters (Sudan Tribune 2012). Bank accounts of some organizations were also frozen due to foreign funding pending in the accounts (Deutsche Welle 2012).

Many CSOs have undergone demanding processes of re-registration, and there are signs of increased self-censorship among CSOs. Some organizations registered as resident NGOs ended most of their projects and advocacy activities related to human rights, free legal aid, election observation, human rights education, conflict resolution between ethnic groups, women's and children's rights, and the organization of public fora and re-oriented their objectives towards development issues and capacity building. This change was reflected in the names of some organizations; for example the Organization for Social Justice in Ethiopia was registered as the Organization for Social Development (Yeshanew 2012).

While NGOs have been particularly affected, for most community based organizations operating at the local level, for organizations registered and working in one region, and for membership-based organisations, the Proclamation has had little noticeable effect. The main constraint is the requirement that only 30% of income can be spent on administration, and local fundraising is a challenging task. Some of the organizations which have adapted to the new environment have become more effective, for example advocacy organizations which had often operated at a great distance from the poor. Although there are some analysts who claim that the implementation of the Proclamation seems to be limiting, controlling and downsizing the civil society sector at large (Yeshanew 2012), it primarily seems to have affected the sector in Addis Ababa. In the regions, the range and number of civil society organizations remains healthy.

The response from foreign NGOs has ranged from high-level criticism to adaptation to the new environment. The Heinrich Böll Foundation closed its offices as a reaction to the legal hindrances on its thematic work, and some USAID-funded NGOs providing capacity building to local NGOs for monitoring and reporting human rights abuses have ended their programmes (Yeshanew 2012). Others, such as Action Aid, have incorporated the new law into their programmes and action strategies by shifting to a needs-based rather than rights-based approach. Overall some 3000 international groups and NGOs have registered under the new law. The adaptation approach has been mirrored by donors; Human Rights Watch (2010b: 54-55) has criticized the mild reactions of the international donor community. One reason is considered to be the geopolitical importance of the country, since it is surrounded by other post-conflict and fragile states.

3.2.5 Conclusions on Ethiopia

Ethiopia has a clear legislative and constitutional framework for civil society, although it is restrictive and the operating context for civil society organizations engaging in the political, human rights and media spheres is increasingly narrow. Since 2009 the space for foreign donor NGOs has been constrained by new

legislation, affecting external support for governance activities and restricting more international organizations to service-delivery programmes and projects. The donor community has put pressure on the government over these issues, but continues to provide large amounts of aid to the country. One strategy has been to orient more support to grassroots organizations and networks, and to promote dialogue with local government. An example of this is the Civil Society Support Programme which offers grants to CSOs with regional-led programming (see box 1).

3.3 Honduras

3.3.1 Context

Hopes for a stable democratic future for Honduras were dashed following the coup d'état of June 2009. Elections in November 2009 were widely derided as illegitimate, with the Organisation of American States (OAS), the EU and the Carter Centre refusing to send election observers (Carter Center 2009). President Porfirio Lobo Sosa claimed victory and remains the current head of state. His time in power has been associated with the gradual re-militarization of the state, and the development of a culture of impunity for human rights abusers. State institutions, political parties and civil society are deeply divided; the atmosphere of recrimination has poisoned relationships between different NGOs, and has hindered attempts to build consensus for political change. Broader social networks are also adversely affected by a general atmosphere of fear and insecurity fuelled by widespread crime (Scott 2011: 12; IACHR 2011: 4). New elections are due to take place in November 2013, and all indications are that the political climate is likely to be highly febrile. There is widespread dissatisfaction with the incumbent government, the public have little or no trust in almost every governmental and political institution in the country (Meyer 2013: 10), and there has been an upsurge in pre-electoral violence targeted at opposition political candidates and activists (Friendship Office of the Americas 2012).

Honduras: basic data



Population:	7.6 million (2012)
GDP per capita:	3,923 USD (2012)
Human Development Index (2013):	120 (scale 1-186)
Corruption Perception Index (2012):	28 (scale 100-0)
World Bank Rule of Law Index:	19.2 (scale 100-0)
Official Development Aid (2011):	624 million USD
Poverty Incidence:	35,4 % (2012)

*Sources: OECD 2011;
UNDP 2013;
Transparency International 2012;
World Bank 2012;
Bertelsmann Stiftung, BTI 2012c*

Honduras has long been one of the poorest countries in Latin America, and is wracked by gross inequality. The global economic crisis has tipped Honduras further into precarious fiscal territory; growth has been sluggish and the budget deficit has deepened. The government is struggling to pay state employees and provide basic services, and has thus become increasingly dependent on NGOs to 'fill the gap'.

3.3.2 Background to civil society and NGOs

The foundations of Honduran civil society lie with religious, labour and peasant based organizations. NGOs began to thrive in the decade that followed the establishment of the country's democratic constitution in 1982. They played a significant role in pursuing demilitarisation in 1990s (CIVICUS 2006). The sector reached its zenith after Hurricane Mitch in 1998. NGOs were in receipt of unprecedented amounts of international funding, and were focussed on a common endeavour to compensate for the government's failure to mount a comprehensive relief and reconstruction effort (ibid.). After 2000, funding began to gradually tail off and civil society was fragmented by political turmoil. The coup has polarised civil society between opponents and supporters/beneficiaries of the government. The Catholic Church plays an important role in promoting reform (Peetz2012).

There are approximately 16,000 NGOs registered with the state department,⁸ and many more civil society organizations that are not officially registered. One study estimates there are around 92,000 citizen groups with a "*shared common goal*" in the country (CIVICUS 2006: 21). NGOs can roughly be divided into two camps: politically-oriented NGOs that are primarily funded by foreign NGOs and European donors; and 'technical', relatively apolitical NGOs that are funded by a variety of other donors (ACT Alliance 2011: 47). The latter make up the majority and have benefitted from more support from the state since the coup, whereas the former have reported increasing incidences of violence and intimidation (ibid).

The Frente Nacional de Resistencia Popular (FNRP) is one of the most high-profile civil society actors. It is a coalition of NGOs and grassroots organizations that use civil disobedience to oppose the government's human rights abuses and to press for the restoration of democracy and the rule of law. The FNRP is distinguished from older forms of protest movements by the prominence of women and lesbian and gay activists in the leadership. They are the institutional manifestation of a broader social movement, La Resistencia (Frank 2010: 7).

A variety of regional and other foreign NGOs have built close relationships with Honduran NGOs. They are mainly active by lobbying bilateral donors and the donor community to bring pressure to bear on the Honduran government to act on emblematic cases of human rights abuse (e.g. ALOP et al 2012; Amnesty International 2012a; Friendship Office of the Americas 2012). Some organisations invest in field research on restrictions to civil society space (e.g. ACT Alliance 2011; Trócaire 2012) and facilitate public hearings on the human rights situation (FIAN International 2012). Some members of European or US-based NGOs that work inside Honduras have reported receiving death threats (Frontline Defenders 2012), which presents difficult security considerations for organisations that would like to remain in the country. There is a risk of an exodus of foreign donor and support NGOs if the security situation continues to deteriorate.

3.3.3 Legal framework

The legal framework for civil society activity has improved in recent years, despite ongoing challenges to the defence of human rights and the reluctance of some government officials to allow NGOs to participate in the policy process. NGOs have been partly successful in their fight for an increased role in consultations with the executive and the legislature. However, small victories have been mitigated by the introduction of restrictions on the space for NGOs to operate, which partly reflects the suspicions of the ruling elite that certain organizations are being funded by foreign governments or terrorist groups.

The Honduran legal framework for NGOs is very complex. The relevant regulations are not codified in a single piece of legislation, which is a significant barrier to entry for grassroots organizations that do not have the capacity to negotiate their way through the tangled web of regulations. The Civil Code and the Administrative Procedures Code grants legal personality to associations and foundations that

⁸ The home page of Seip can be found at: <http://www.seip.gob.hn/>

are designated as promoting the public interest. Registration is supposed to be a relatively straightforward process; however, one state department has the sole authority to grant legal status to NGOs, and there have been reports of delays of as much as seven years before applications are approved.⁹

There are several laws that embed the participation of NGOs in the policy process in various issue-areas, and consultation has become progressively institutionalised in Honduran governance. Examples include: the Law of the National Convergence Forum which established a framework for dialogue between government officials and ‘authorised representatives’ of civil society; a Civil Society Participation Commission that was recently created by Presidential Decree; and a Citizen Council which supports the Public Ministry. A number of other legislative instruments have emphasised the duty of the state to elicit civil society participation in the election of key officials and civil society assistance in implementing law. It should be borne in mind, however, that corruption and clientelism are deeply embedded in Honduran politics. Certain leaders of NGOs, social movements and trade unions have been accused of following the government line in return for bribes (ACT Alliance 2011: 49).

One of the most significant legal developments in recent years was the introduction of the Special Promotion Law for Non-Governmental Organizations (the ‘NGO-D Law’) in 2011, amid high hopes of activists that it would help to safeguard civil society space. However, concerns were raised when President Lobo postponed signing the law for three months: a relatively unusual move that was mirrored by similar dilatory tactics relating to other NGO legislation. ICNL suggests that these largely unexplained delays should be regarded warily in the context of the unstable political and security situation, which suggests that “the legal environment for civil society remains unpredictable, and the need for constant monitoring for threats to the sector remains critical” (ICNL 2013). There are further concerns that there is no specific legal framework to protect human rights defenders (Sekaggya 2012: 9), and about the recent adoption of an Anti-Terrorism Law, which is open to misuse to suppress peaceful protest (Scott 2011: 7; Sekaggya 2012: 8).

3.3.4 The operating context

Honduran citizens live in a climate of severe, state-sponsored human rights abuse. The political elite are closely involved with state security and criminal networks (Peetz 2012), and the Honduran government has failed to act to tackle endemic human rights abuses since the coup (IACHR 2011; CCR & FIDH 2012). The Truth Commission (CDV), which was created by the Human Rights Platform of Honduras, issued an extensive report in October 2012¹⁰ that detailed systematic attacks on civil society, including a string of assassinations. Politically-motivated killings are allegedly being used as a means of ‘social control’ (CCR & FIDH 2012: 7).

Several other credible international organizations also claim threats and attacks on human rights defenders have soared (Amnesty International 2012b; Human Rights Watch 2012a). It is the second most dangerous country in the world for journalists (Freedom House 2012a). Minorities that have long been persecuted, such as the Afro-Honduran Garífuna community and LGBT activists, have become more vulnerable to violence and assassinations. Numerous protests by the agrarian justice movement in the district of Bajo Aguán have been violently repressed (Coordination of National Associations and Networks of NGOs in Latin America and the Caribbean 2013). Politically-motivated persecution has widened and intensified. Death squads have resurfaced, and activists associated with the FNRP are frequently targeted. Prominent figures associated with La Resistencia have also suffered harassment and arbitrary arrest.

The authorities have proved unwilling and unable to prosecute the perpetrators of human rights abuse. Democratic institutions remain weak, and the independence of the judiciary is not sufficiently

⁹ This section is based on information from Honduras NGO Law Monitor at the International Center for Not-for-Profit Law (ICNL, 2013b), unless otherwise indicated.

¹⁰ The full report is available at: <http://www.comisiondeverdadhonduras.org/?q=node/75>

safeguarded. The situation for civil society is not helped by the actions of international actors. Although quick to condemn the coup, aid from the EU and the US was soon restored. Trócaire, one of the foreign (Irish) donor with a presence in the country, claimed that a “lack of unity amongst Honduras’ development partners has hampered a sustained and coordinated response to the restrictions on civil society space” (Trócaire 2012: 18). Both the US and EU have come under pressure for failing to take strong enough action. As the largest bilateral donor to Honduras, the US has been particularly criticized for failing to take strong enough action about human rights abuses. The US’s stance to Honduran politics, however, seems to be primarily motivated by securing cooperation with their national security priorities, such as narco-trafficking.

3.3.5 Conclusions on Honduras

There is a gamut of laws in Honduras that are supposed to assure civil society participation in governance processes. In reality, freedom of expression is suppressed by a menacing atmosphere of intimidation and violence. Human rights defenders and journalists are particularly vulnerable, as are those defending minority and LGBT rights. Civil society is highly polarised and the international community has put limited pressure on the government to address the situation.

3.4 Kyrgyzstan

3.4.1 Context

Kyrgyzstan was one of the poorest areas of the old Soviet Union, and the economy virtually collapsed when it became independent in 1991. It came to be considered as one of the more liberal or democratic Central Asian states, with strong economic growth in the second half of the 1990s, burgeoning political parties and the widespread development of civil society organizations heavily supported by external donors. However, in the last 10 years there have been two periods of major political turmoil. The Tulip Revolution in 2005 ousted the president who had been in power since independence. Hopes of political change after 2005 were subsequently undermined by the concentration of power in the hands of the president and ruling party. In April 2010, against a backdrop of rising poverty and inequality, plus weak and inefficient government, the president was ousted following popular protests that turned violent. In June of the same year, ethnic violence in the south of the country left hundreds dead and thousands displaced.

Kyrgyzstan: basic data



Population:	5.4 million (2012)
GDP per capita:	2,273 USD (2012)
Human Development Index (2013):	125 (scale 1-186)
Corruption Perception Index (2012):	24 (scale 100-0)
World Bank Rule of Law Index:	28.6 (scale 100-0)
Official Development Aid (2011):	523 million USD
Poverty Incidence:	29,4 % (2012)

*Sources: OECD 2011;
UNDP 2013;
Transparency International 2012;
World Bank 2012;
Bertelsmann Stiftung, BTI 2012d*

The situation has calmed down since 2010, with a peaceful political transition in 2011 and improving state-civil society relations. There appear to have been some positive developments over the course of 2012, notably to address the widespread use of torture, corruption and weaknesses in the judiciary. However, governance indicators remain generally weak (Freedom House 2012b, 2012c), ethnic and regional tensions are unresolved (Nichol 2012), economic prospects are less than secure, and many analysts consider that prospects of further turmoil in the coming years cannot be ruled out (ADB 2012; Conway 2012).

3.4.2 Background to civil society and NGOs

Independence brought a sea-change to conceptualisations of civil society and its roles (Giffen and Earle 2005: 28-30). Aid funds flowed in to support the development and capacity building of NGOs in line with a dominant western neo-liberal ideology (Buxton 2011; Jailobaeva 2012), such that much of the early work on capacity building of civil society in Kyrgyzstan began with discussions about the definitions and functions of an NGO (Garbutt 2010). The period immediately following independence was marked therefore by an influx of foreign NGOs and a mushrooming of local NGOs, which were essentially dependent on external aid funding.

NGOs expanded over the course of the 1990s and into the 2000s, gradually increasing their strength and building up their links with the state. The legal environment was supportive and civil society organizations successfully pushed several causes with the government (e.g. women's rights). In 2001 a Public Council on NGO Affairs was created in the president's office (Buxton 2012). NGOs were active in a range of sectors, including economic activities, the social sectors, democracy promotion and human rights. Particularly in the economic and social sectors there was good collaboration at the local government level.

Initial support for NGOs from external funders began to wane by the mid-2000s, under a logic that either it was time for NGOs to stand on their own feet or that donors were not seeing the results they had expected. Donors became more reluctant to support overtly political activities, and funding inclined towards NGOs working on government programmes or in watchdog roles. There was a decline in broad funding programmes for organisational development and training and the number of NGOs contracted. A study in 2006 concluded that of several thousand registered NGOs, only about 500 were active and sustainable (Buxton 2012). This was countered by growth in civil society organisations in other areas, such as trade unions.

Following the violence in 2010 there was a sudden upsurge in NGOs, when new organizations sprouted to address the humanitarian needs of the displaced, and new funding sources appeared for conflict-prevention activities. Over 800 public associations and 500 foundations registered after April 2010 (USAID 2011). This may represent a turning point in civil society in Kyrgyzstan, with the emergence of more indigenous and locally, embedded organizations, some of which are membership- or volunteer-based (Jailobaeva 2012; Buxton 2012).

3.4.3 Legal framework

The Law on People's Associations was adopted in 1991, establishing the right of people to create associations on the basis of common interests. This was replaced in 1996 by the Civil Code, which contained basic provisions concerning non-profit organizations; and in 1999 by the Law on Non-commercial Organizations which clearly defined different types of non-profit organisations, the scope of permissible activities, internal management, and financial reporting requirements (Association of Civil Society Support Centers 2006; USAID 2012). The law provides for the formation of trade unions, and unions are generally able to operate without obstruction. All religious organizations must register with the authorities, a process that can be cumbersome and arbitrary (Freedom House 2012a).

The late 2000s show a varied picture. On the one hand, space continued to be respected and improved. For example, in 2009 state contracting for NGOs was formally approved by parliament; in March 2010 the Constitutional Court declared that some provisions in the Law on Public Assemblies were unconstitutional, marking a positive step in addressing such issues. On the other hand, prior to the disturbances and change of government in 2010-11, attempts were made to bring in legislation giving the government discretionary power to close down NGOs or prevent NGOs from participating in ‘political activities’, to prohibit foreign funding and to impose stringent registration requirements on foreign NGOs. The bill was rejected at the time (World Organization Against Torture 2010).

A new constitution was adopted in 2011 which allows civil society more freedom. New public advisory councils were established in the parliament and in most ministries, permitting improved monitoring and advocacy by NGOs, and providing the potential for more citizen participation and greater transparency (ICNL 2011). Freedom of association is typically upheld, and a new law on peaceful assemblies was adopted in May 2012. The procedures for registering a CSO are straightforward and relatively quick.

The legal position on the taxation status of NGOs is not particularly favourable and only CSOs qualifying as charitable organizations are exempt from taxation on their earned income; very few organizations meet the strict standards to qualify (USAID 2012). CSOs can legally engage in economic activity, but most have to pay the same tax rates as commercial companies. In part this may stem from confusion between the private sector and NGOs, which have sometimes been regarded as not very distinctive.

3.4.4 The operating context

Pre-2010. Throughout the 2000s civil society was able to advance particular causes, for example on women’s rights, consultation on national development plans, freedom of assembly and to demonstrate, press freedom, the push for proportional representation in parliament and compulsory quotas for women, youth and minorities. NGOs were heavily involved in campaigning against the Akaev regime prior to the Tulip Revolution of 2005, and participated in the Constitutional Council set up after 2005. From 2007-2010 ‘radicals’ within civil society organised a people’s parliament which met every couple of months until April 2010 (Buxton 2012). However, only a small number of NGOs had real access to the corridors of power, notably those based in Bishkek or provincial centres or with personal access to the authorities. There were divisions and splits between radicals and reformers, those who cooperated with the state were criticised by other NGOs, and legitimacy vis-à-vis the local population was often questioned (Musabaeva 2010). State pressure to keep NGOs under control increased following the Tulip Revolution, especially regarding activities related to the political sphere or human rights. Overall collaboration seems to have worked best at the sub-national level, with consultation and collaboration with local authorities (Buxton 2012), and particularly when NGOs activities were oriented towards provision of services (see Box 2).

Post-2010. The picture remained mixed following the violence of 2010 and political changes of 2011. On the one hand, the situation is considered to be more stable for civil society with NGOs making substantial inputs into the revision of the constitution, the new electoral commission, judicial reforms, and police reforms. Labour representatives opposed a draft bill to alter the labour code and succeeded in getting it withdrawn in 2012 (Dillon 2013). There is more advocacy by NGOs on environmental issues, and on human rights (USAID 2012). New organizations and movements are emerging, for example amongst young people.

On the other hand, the violence of 2010 took its toll on the self-image of civil society, affecting levels of trust and deepening apathy within the general population. Civil society organizations themselves had not managed to create space for the participation of minorities, and people were unclear about the roles of NGOs in the post-conflict situation (Moldosheva, Mamasalieva and Buxton 2013). The tactics and development trajectory of NGOs may even have had a detrimental effect on the political environment, with a confrontational rather than a peace- and consensus-building approach. Overall there has been a

real decrease in NGO activity outside Bishkek, meaning that NGOs are seen to be concentrated in urban areas and disconnected from the populace.

Generally, citizens can criticise the government without fear of reprisal and there is not a strong atmosphere of self-censorship. However, operating space is more restricted in the field of human rights. Human rights activists who work on defending Uzbek victims have faced threats, harassment, and physical attacks (CIVICUS 2011). Although the government has generally permitted a broad range of religious practices, it also monitors Islamic groups closely (Freedom House 2012a), and work with and on faith-based associations is difficult. Likewise it is hard for NGOs to work on controversial issues like sexual rights.

The greater challenge is the capacity and sustainability of civil society organizations. Some limited sources of funding are available locally through public contracts, local private donors, and entrepreneurial activities but there is limited funding or voluntary input from the general public. Most local organizations receive a large proportion of their finances from foreign sources (donors), and this has been shrinking, with the exception of new post-conflict activities. This damages the sustainability prospects of NGOs, their links to the beneficiary population, and consequently their legitimacy.

3.4.5 Conclusions on Kyrgyzstan

There is legal space for both foreign and local NGOs to operate; however, the real operating context is more complex. There is space to manoeuvre, but there are endemic governance challenges in Kyrgyzstan and although civil society organizations appear to be making some progress in opening up room for dialogue and consultation at the sub-national level (as Box 2 demonstrates), the extent of their influence is questionable.

Box 2: The Analytical Skills Training Programme in Kyrgyzstan

One problem behind the violent clashes in the south of Kyrgyzstan in 2010 was the absence of mechanisms and spaces for dialogue between different ethnic groups, and the lack of leadership or expertise in this area. Following a series of round tables and meetings at that time it became clear that people were unsure how to build peace or prevent further conflict. To help address this issue, INTRAC, the Public Association 'Centre Interbilim' in Osh and the Civil Society Support Center in Jalalabad launched the Analytical Skills Training Programme from June 2011 to January 2012. It was funded by the British Embassy in Kazakhstan. The programme involved 25 participants from the provinces of Osh and Jalalabad, drawn from NGOs, representatives of the business community and local government, reflecting the importance given to social partnership. The programme involved workshops, community of practice events, research carried out by participants, a regional conference and advocacy projects. The training and research focused on governance, inclusion and conflict prevention.

The formation of mixed groups (from Osh and Jalalabad, NGOs and state, urban and rural) in the programme aimed to contribute to building alliances between representatives of different areas and organizations. Through group work the participants gained an experience of joint research on broader topics agreed together by members of their group after consultation with their organizations; and the research process itself revealed a host of important findings around participation and trust. Despite some challenges within the programme around maintaining close contact amongst a disparate group of participants, and therefore maintaining good motivation and active involvement, the ASTP helped to bring together mini-coalitions for promotion of the rights of persons with disabilities, to increase the accountability of the State Directorate for Rehabilitation and Development, to improve access to public services for rural dwellers, and to promotion the rights of businesses affected by the June events.

Source: Moldosheva, Mamasalieva and Buxton (2013)

3.5 Serbia

3.5.1 Context

Serbia has undergone a profound political and economic transformation since Milošević was ousted from power in 2000, with positive trends in democratisation and governance (Freedom House 2012d; Bechev 2012: 7). It embarked on a far-reaching programme of economic liberalisation, and has experienced rapid growth that has only recently been stalled by the global financial crisis (World Bank 2011). Nonetheless, progress is threatened by pervasive corruption and criminality, mass youth unemployment and the unresolved conflict about the status of Kosovo (Reljić 2013).

Serbia became an official candidate for EU membership in 2012. The government is currently preoccupied with three main challenges: managing a fractious coalition under threat of collapse (The Economist 2013), grappling with economic reforms demanded by the IMF, and normalising relations with Kosovo in order to meet EU accession requirements (Bechev 2012: 26).

Serbia: basic data



Population:	7.3 million (2012)
GDP per capita:	11,281 USD (2012)
Human Development Index (2013):	64 (scale 1-186)
Corruption Perception Index (2012):	39 (scale 100-0)
World Bank Rule of Law Index:	46.5 (scale 100-0)
Official Development Aid (2011):	-
Poverty Incidence:	< 2 % (2012)

Sources: OECD 2011;
UNDP 2013;
Transparency International 2012;
World Bank 2012;
Bertelsmann Stiftung, BTI 2012e

3.5.2 Background to civil society and NGOs

The development of post-Soviet Serbian civil society was severely disrupted by the Yugoslav wars. CSOs¹¹ were key agents in the downfall of the Milošević government, particularly anti-war and pro-democracy organizations, which accounted for 43% of NGO projects in the first half of the 1990s (Gordy 2003). Human rights organizations were also predominant at the turn of the century (Barnes 2011: 8; Milivojević 2006: 15). The sector has since become far more diverse, and spans a broad range of advocacy issues and service-provision activities. Most organizations are clustered around the social services, culture, media, recreation and the environment (Civic Initiatives 2001: 8). Civil society experts predict that the Ministry of Labor and Social Policy will increasingly outsource social service delivery to CSOs in coming years (ibid: 38).

¹¹ It is commonly acknowledged that NGOs have a public image problem in Serbia. Numerous opinion poll surveys and academic studies have consistently shown that there is a widespread perception that corruption is rife amongst NGOs, and that many organizations that claim serve the public good are simply vehicles for special interests (OSCE, 2010, pp.40-41; Grødeland, 2006; 2008: p.920). There has been a concerted drive in the sector to use the term 'CSOs' instead of 'NGOs' to evade these negative perceptions (Barnes, 2011, p.8). Recent research studies conducted by key agencies like USAID, OSCE and Civic Initiatives have also followed this practice. This report, therefore, uses the term 'CSO' to reflect the prevalent preference, apart from cases where the data makes specific reference to 'NGOs'.

The central register held by the Serbian Business Registry Agency shows that at the end of 2011 that there were 16,130 CSOs and approximately 380 foundations and endowments. There are only 52 foreign CSOs; domestic organizations overwhelmingly dominate in terms of numbers, geographical reach and level of activity. CSOs are disproportionately concentrated in the capital and Vojvodina, and these tend to be more technically, administratively and managerially competent; and also enjoy better access to government officials (Barnes 2011: 2). Organizations outside these centres, however, tend to have stronger links with local communities (ibid.).

The tough economic climate poses a significant challenge to the viability and sustainability of many organizations (USAID 2011). International donors provided significant funding to Serbian CSOs after the end of the war, supporting civic participation, good governance and democracy promotion, and building the capacity of key CSOs. However bilateral and institutional donors have begun to disengage now that Serbia is seen as stable, and also because of the pressure on donor budgets as a consequence of the global financial crisis. CSOs that have previously been the beneficiaries of generous international support now face real challenges in accessing alternative sources of funds (OSCE 2012: 7).

Funding from the Serbian government for CSOs tends to be biased towards sports and religious organizations (Balkan Civil Society Development Network 2010). CSOs have also complained that procedures for accessing grants from local government are not sufficiently transparent, and decisions can often seem to depend largely on personal attachments or political affiliations (OSCE 2010: 38). Non-governmental domestic donors provide only modest funding streams. The Balkan Community Initiatives Fund¹² is one of the most important donors for grassroots projects. Corporate philanthropy is relatively uncommon, and it has proved difficult to mount successful fund-raisers from the general public (Grødeland 2006: 242). Moreover, there is a clear public preference for humanitarian organizations and general wariness about organizations that adopt an oppositional stance to the government (Balkan Civil Society Development Network 2010). Therefore, CSOs concerned with democratization and human rights promotion are particularly vulnerable to the withdrawal of international donors.

3.5.3 Legal framework

The legal framework for CSOs has undergone a significant change in recent years. A Law on Associations¹³ was enacted in 2010, after an extensive consultation process with civil society actors, legal experts and the Council of Europe. The law establishes a comprehensive legal framework for the establishment and operation of domestic CSOs. It also enables foreign NGOs, which were previously not subject to official regulation, to operate legally in the country. CSOs are required to re-register with the Serbian Business Registry Agency, and to submit financial data which is subsequently posted on the Agency's website (USAID 2011). The law is deemed to accord to European standards, and has been widely welcomed by CSOs and institutional donors. Likewise, the Law on Foundations and Endowments was enacted in 2010 and required all such entities to re-register by the beginning of 2012 (USAID 2011: 176).

CSOs are legally permitted to engage in economic activity on the condition that they are directly related to the organization's statute, and do not put private business at a competitive disadvantage (although the Law on Social Sciences that was adopted in 2011 does allow CSOs to compete on the market as social service providers). The regulations surrounding such activities are complex, however, and act as a disincentive for CSOs to engage in economic activity (USAID 2011: 177), which is unfortunate given the financial frailty of much of the sector. This reflects more widespread ignorance

¹² The list of grantees can be found at: http://www.bcif.org/en/Grantee_List_2011.htm

¹³ The full text of the Law of Associations in English can be found on the International Center for Not-for-Profit Law website: http://www.icnl.org/research/library/files/Serbia/Associations_eng2009.pdf

about legal regulations. The *CSO Assessment*¹⁴ suggests that about one half of CSOs is unaware or only partially aware of the legal regulations that are directly relevant to civil society (Civic Initiatives 2011: 8); this is particularly the case for small CSOs.

According to one opinion poll, 59% of CSOs surveyed were either somewhat or completely dissatisfied with the laws that pertain to the sector, and almost the same proportion rate the legal framework as the most significant impediment to sustainability, along with the withdrawal of international donors (Barnes 2011: 10). It is difficult to ascertain the reasons for such dissatisfaction, though, due to weaknesses in survey designs.

3.5.4 The operating context

Serbia's candidacy for the EU has stimulated government authorities at all levels to pursue greater cooperation with CSOs (USAID 2011: 2, 8). The *CSO Assessment* found that 51% expressed satisfaction with the cooperation of the local authorities, although there was some disruption to these steadily-improving relations around the time of the local elections and recent budget cuts. The national government has adopted new policies to engender closer links with key sections of the community (such as the National Youth Strategy) and to facilitate government consultation with local and national groups about central issues (such as the Poverty Reduction Strategy). Nevertheless, there has been some concern reported amongst activists that laws, strategies and actions plans are tick-box exercises (Barnes 2011: 12). Indeed, just under half of CSOs believe that the political climate in the country is unfavourable for the development of the sector (Civic Initiatives 2011: 8).

The relatively low levels of confidence can be partly attributed to suspicions of a partisan bias towards organizations that are sympathetic towards the government. CSOs across the country express fears about the threat to their independence from political parties, which is particularly acute immediately before elections and in the regions (Barnes 2011: 14). Moreover, some CSOs may act as mere 'fronts' for party interests (GRECO 2010). The Law on Political Activities Financing that was passed in June 2011 prohibits the channelling of donations to political parties through CSOs, yet accusations persist that parties do establish CSOs for precisely this reason, and to access money from the state and from international donors (Barnes 2011: 14). An example is United Regions of Serbia, formed by a coalition of regional parties, which participated in the 2012 elections despite being registered as a CSO (USAID 2011: 176).

There has been an upsurge in complaints from advocacy CSOs about the government's rights record since the last election in July 2012. Human rights activists and journalists are often jailed, and physical abuse is commonplace in Serbian prisons (PÖK 2013). In addition, women, senior citizens, Roma, refugees and sexual minorities are subject to high levels of discrimination (ibid.). Recent reports have expressed concern about threats faced by civil society and human rights defenders in the exercise of the freedoms of expression, association and assembly (Civic Initiatives and Policy Center 2012); and about the government's failure to uphold the rule of law and the prevalence of institutional corruption (Ristic 2012). Grave concerns have been expressed about the increasing number of attacks on human rights activists by extremist organizations and the government's failure to safeguard CSOs from such intimidation (House of Human Rights et al, 2013). It followed soon after the Serbian far-right movement, SNP Nasi, called on the government to label CSOs that are in receive funding from abroad as 'foreign agents'. It submitted a 'blacklist' of human rights organisations that it claimed had committed "criminal and unconstitutional acts", mostly including prominent CSOs that have consistently promoted reconciliation and democratic values after the war (Balkan Investigative Reporting Network 2012).

¹⁴ The *CSO Assessment* is the largest study thus far conducted of the needs and capacities of Serbian CSOs. It was mostly funded by USAID and was conducted by Civic Initiatives and the Office for Cooperation with Civil Society (Civic Initiatives, 2011).

There are also long-standing concerns about the government's weak commitment to uphold the rights of lesbian, gay, bisexual and transgender (LGBT) people. These were realised when the government banned the Belgrade Gay Pride parade in 2012, claiming that it could not guarantee public safety following threats from extremists (CIVICUS and Policy Center 2012; EU Parliament Intergroup on LGBT Rights 2013).

Finally, there are accusations that proposed changes in the Law on Budget System, Law on Book-keeping and Accounting and the Law on Income and Earnings Tax could compromise the independence and sustainability of CSOs (Georgievski 2012). The most significant implication of the changes in the Law on Budget System is that CSOs that receive public funding will be regarded, in legal terms, as state institutions. They will be required to open an account in the Office of Treasury. This could disadvantage small CSOs in rural regions that cannot easily access a local branch of the Treasury; moreover, it prevents those organisations that are not registered as legal entities from receiving any state funds. The draft Law on Book-keeping and Accounting will require CSOs to observe the same financial reporting obligations as private enterprises, in order to account for monies received from the government.

The response by foreign NGOs working in Serbia to these developments has been muted; as is typical in Serbia, it is largely domestic CSOs that have mounted protests, and they have frequently drawn on support by European authorities and other international donors.

3.5.5 Conclusions on Serbia

EU accession requirements have encouraged Serbia to make significant progress in creating a comprehensive legal framework for CSOs, which demonstrates what can be achieved in opening and promoting civil society space with the consistent support of international donors. However, human rights CSOs are coming under increasing attack from extremist groups, and claim that the government is doing little to protect their freedom of expression and right to assembly. Important funding streams from foreign and bilateral donors are likely to cease soon, leaving human rights CSOs particularly vulnerable to closure. Draft laws currently under preparation may threaten the independence and financial sustainability of CSOs.

3.6 Uganda

3.6.1 Context

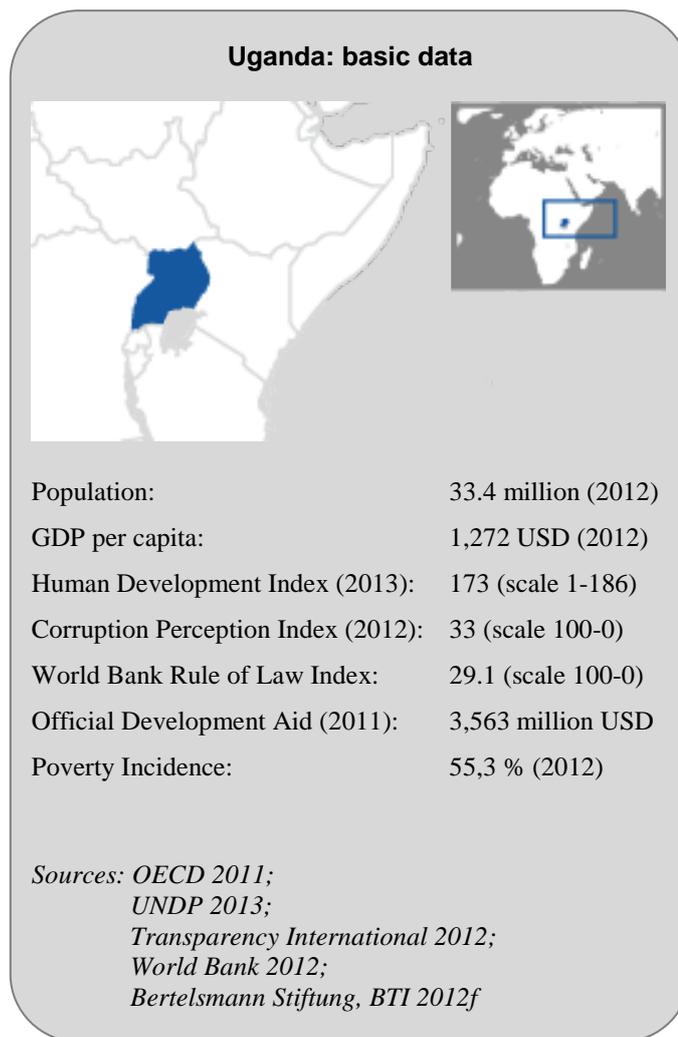
Uganda's socio-political context is determined by its history as a British colony, followed by brutal dictatorship and a devastating civil war, the establishment of a unique non-party rule system and finally the move towards multiparty democracy. Uganda has been in the centre of a number of armed conflicts in recent decades in the North of the country and in the wider Great Lakes region; and is currently treated as a post-conflict state. The country has recently shown some progress in terms of the economy, with growth in 2013 estimated at 6.2%, although it remains very dependent on overseas aid with approximately 30% of the state budget in 2012/2013 coming from bilateral and international donors. Uganda has ratified most of the international human rights agreements and is currently a member of UN Human Rights Council. In terms of political progress, after Museveni became head of state in 1986, he advocated for a 'non-party' system under the National Resistance Movement (NRM) to overcome ethnic, regional, and religious partisanship in politics. The beginning of Museveni's era was characterized by ideas of citizenship building in the country, including a decentralization process (Gubser 2011: 24) and the establishment of citizen's resistance councils at the local level.

Museveni has now been in power for four terms. A multi-party democracy was introduced in 2005; the NRM remains the strongest party challenged by the largest opposition, the Forum for Democratic Change (FDC). There have been considerable tensions around elections, with violent demonstrations and controversy over election results and processes (Gibb 2012). Torture, corruption, the country's north-south divide and gender inequalities are widely acknowledged problems. Recently, aid relationships have suffered because of corruption cases¹⁵ that resulted in the freezing of aid by a number of international donors. Civil society representatives feared that the scandal would also affect the image of Ugandan NGOs in the eyes of their international partners.

3.6.2 Background to civil society and NGOs

The active civil society at the grassroots level reflects traditional mutual self-help groups formed along clan, family and neighbourhood lines. During colonial times, the local leaders' *Bataka* Associations, trade unions and cooperatives were active. Charity work was also organized by missionaries (Nyangabyaki et al. 2004: 144-145; Muhangi 2004). After independence the state took over the traditional space of civil society and started to control cooperatives, women and youth groups. Civil society was highly involved in the political struggle for control (Muhangi 2004; Nyangabyaki et al 2004: 145). Under the dictatorship of Idi Amin there was little room for self-organizing, but the civil society sector rebounded after the end of the regime, especially filling service gaps (Muhangi 2004). Museveni's era has been more tolerant towards the civil society sector. The 1990s saw a major expansion in NGO activities; the number of registered NGOs is now estimated to exceed 7000. The expansion has resulted from the enabling policy environment, increasing donor funding and a surplus of educated employees retrenched as a result of economic restructuring.

Civil society action and volunteering is historically quite strong in Uganda, and civil society actors have played an important role in the delivery of social services under different regimes (Nyangabyaki et al. 2004; Nabiguzi 1995; CARE 2006). The churches have also been important in mobilization and development. However, the civil society and religious sector has been an arena of political struggle and subject to efforts at control from different regimes resulting in continuing mistrust between civil society and government (Nyangabyaki et al. 2004). The relationship between the state and civil society has been characterized by collaboration rather than the latter playing a watchdog role, leading NGOs to sometimes be critiqued for being channels for a government voice (Nabachwa 2010). Government has initiated a number of participatory processes in the preparation of different laws and policies, and there are opportunities for contracts in service delivery work. A



¹⁵ <http://www.guardian.co.uk/global-development/2012/nov/16/uk-suspends-aid-uganda-misuse>

success story of collaboration between government and CSOs has been the results in the struggle against HIV/AIDS. The combination of political leadership and the contribution of NGOs in introducing an antiretroviral (ARV) programme have resulted in a decrease in the HIV statistics (Richey 2012).

In the 1990s, the vast majority of CSOs were active in services rather than advocacy (Nyangabyakiet al. 2004). However, partly as a result of international support, advocacy activities related to human rights, corruption, disability, climate change adaptation and the rights of sexual minorities have increased in the last 10 years.¹⁶ Human rights were not explicit objectives of Ugandan organizations in the 1980s; yet today there are a number of networks and organizations engaging with human rights issues.

There is a long-standing presence of foreign NGOs starting from the early 1980s. Foreign NGOs have been active in humanitarian aid and development programmes, as well as the conflict/post-conflict situation in the Northern part of the country amongst internally displaced people and in peace-building efforts. They have also been active in capacity building for Ugandan NGOs especially in relation to gender, disability and human rights issues. This has led to large scale dependency of NGOs on funding from abroad.

3.6.3 Legal framework¹⁷

Uganda's legal framework system is relatively supportive of civil society action, provided it is exercised by registered bodies. The Ugandan Constitution from 1995 guarantees every Ugandan citizen the right to "influence policies of government through civic organizations" (Article 38 Civic Rights and activities). The constitution also guarantees freedom of speech, assembly and association.

All civil society organizations should be registered. Legal forms include NGOs, Trusts and Foundations, and Companies limited by guarantee. Registration is regulated by the Trustees Act (1954) and Trustees Incorporation Act (1939), Companies Act (1961) and the more recent NGO Registration Act (1989) and NGO Registration Amendment Act (2006). NGOs and international organizations are registered with the national NGO Board. Community based organizations (CBOs) are registered by notification to local councils or to the district administration. The annual registration process requires documentation, recommendations and a registration fee. Registration can be denied although the law does not define eligible reasons for denial. There are no significant differences between Ugandan and foreign NGOs, and there are no legal restrictions for international co-operation or the amounts of money received in international partnerships. However, foreign NGOs require a recommendation from the diplomatic mission in Uganda, are required to explain the need for a foreign workforce and their plans to replace foreigners with Ugandans, and money received from foreign donors has to be transferred through the government controlled bank.

A new NGO policy was approved in 2010 which defines NGOs as "any legally constituted private, voluntary grouping of individuals or associations involved in community work which augment government work but clearly not for profit or commercial purposes" (Ministry of Internal Affairs 2010: 12). The link to government policy agendas is very explicit in this wording. The new policy also distinguishes between national, regional and international NGOs. The process of amending the NGO Act on the basis of this new policy was initiated in 2011 but has not yet been completed.

Furthermore, there are some pending legal initiatives which affect the civil society sector. Among these are the Public Order Act tabled in 2011 and the Anti-Homosexuality Bill re-introduced in

¹⁶ Some examples of civil society advocacy in Uganda are the Save Mabira Crusade (2006-2007) on forest protection, the Anti-Corruption Coalition in Uganda, the Domestic Relations Bill (1940-2011) and Disability Advocacy (Devlin-Foltz 2012). Emerging new agendas include advocacy around climate change issues and especially the capacity of vulnerable communities to adapt.

¹⁷ This section is mainly based on the NGO Law Monitor by the International Center for Not-for-Profit Law (ICNL 2013c).

2012.¹⁸ The latter has received a lot of attention from both Ugandan and international activists as well as politicians from the main donor countries. The Public Order Management Bill 2011 may also bring restrictions on the freedom of assembly and peaceful demonstrations.

3.6.4 The operating context

In recent years the space for civil society has been narrowing. The NGO Amendment Act from 2006 and the 2010 policy have been criticized for striving to monitor and control CSO activities (HURINET 2009). The yearly renewal of permits, the criminal liability of directors and reporting obligations of contacts with the rural population are considered to contravene the spirit of the Constitution. So although the legal operating environment is enabling if NGOs follow the government line, overall the context is more challenging. There have been a growing number of interventions in CSO activity, particularly around human rights, oil and land (Human Rights Watch 2012b). Some workshops arranged by NGOs, notably related to the rights of homosexuals, have been disrupted. Representatives of the media and anti-corruption activists have been arrested. Issues around land use and potential economic gains from the newly emerging oil industry have created tensions. Although CSOs contributed actively to the preparation of the Petroleum Bill in 2012 at government level, CSOs trying to visit communities affected by exploration of oil at grassroots level have been arrested (East and Horn of Africa Human Rights Defenders 2012). The CSOs were accused by Museveni of being used by foreign organizations to sabotage the growing industry (Observer 2013). The issues around land grabbing have resulted in threats of expulsion to foreign NGOs such as Oxfam (Guardian 2012).

A Periodic Review of the UN Human Rights Council in 2011 presented over 170 recommendations for improving the human rights situation in Uganda. These included issues related to the right to assembly and association. Nevertheless, the government has continued to react in a repressive manner. Recently, for example, as a reaction to the citizen's "Walk to Work" protest, blocks and control over the use of social media were introduced (Kakooza 2012: 78-79).

On the other hand, foreign NGOs have continued their capacity building efforts and support to Ugandan CSOs. In Northern Uganda, NGOs have been an active part of the somewhat problematic puzzle of governmental, international and local actors in shifting from humanitarian aid to peace-building. The role of foreign NGOs has been significant in the areas of children, promoting women's role in the peace process and providing psycho social services (Opongo 2011; Odora 2011).

3.6.5 Conclusions on Uganda

In the tense political context of Uganda, civil society is easily treated as a threat and an opposition force to the ruling party. This has led to increasing interference of government in civil society space, especially when related to human rights, economic interests or citizen mobilization. Although the legal framework is enabling and civil society organizations are respected in a service provision role, the current legal and policy framework seeks to restrict activities of civil society organizations which are not aligned with government agendas.

¹⁸ The drafting of the anti-homosexuality bill has been contentious, with charges that there has been interference from foreign civil society, namely some USA-based churches (Seckinelgin 2012).

4 Core themes and issues

The case studies cover six very different countries, with widely different historical, economic, social and political contexts. This context is vital for understanding the conditions under which civil society organizations in those countries today have emerged and the challenges they face. Honduras provides a very stark example of this, where political fragility has fragmented civil society. There are external factors which are more generic, affecting all of these countries, such as the impact of recession and reducing public aid budgets from OECD countries, or the impact of geopolitical shifts and trends. International and foreign NGOs tend to be able to operate under a different logic, but they are also constrained by this context. There are, however, some common patterns and themes that emerge from these six examples.

4.1 Opposition politics, human rights and governance

The case studies demonstrate that service delivery tends to be an accepted role and fairly uncontested role for civil society organizations. Many governments support NGOs in playing this role, or even encourage it. We see this, for example, in Ethiopia, Bangladesh, Uganda, and in Kyrgyzstan at the local level. Moreover, there are examples from most of the case studies of government inviting participation by civil society in policy arenas, most notably around development programmes. This is often a requirement by donors. There are, of course, questions about the real extent of this participation, and whether it is genuine participation or more tokenistic consultation.

It is when NGOs stray too far into the political arena that tensions arise between government and civil society organizations, as we saw in Bangladesh, Kyrgyzstan, Ethiopia, Honduras and Uganda. This is often because of blurred lines between political activity and civil society activity, which is clearly evident in the Serbia, Bangladesh and Kyrgyzstan cases, or when civil society becomes an arena in which ethnic struggles are played out.

In all the countries we saw challenges for NGOs engaging on human rights issues, including LGBT and minority rights, although some environments were more extreme than others with explicit attacks in Honduras and the closure of some organizations in Ethiopia. Sustainability of civil society organizations was particularly problematic for those engaged in human rights issues when sources of funding internally and externally were limited by regulation or by donor withdrawal, as we saw in Kyrgyzstan, Bangladesh and Ethiopia.

4.2 Legal frameworks and operating contexts

As far as the legal frameworks are concerned, outdated, complex or weak legislation provides a fertile environment for abuses and misuses by both government and NGOs themselves. This emerged, for example, in the Bangladesh and Serbia studies. The blurred line between the charitable and the commercial, for example in Bangladesh and Kyrgyzstan, also creates challenges for NGOs around taxation and regulation. However, many of the countries (e.g. Kyrgyzstan, Ethiopia and Honduras) have been addressing weak legislation by introducing new laws and regulations aimed at clarifying the registration process for NGOs, their purpose, their relationships with external actors, and their tax status. In Serbia, new legislation was motivated in particular by preparation for EU accession negotiations.

Clearly the legislation that has emerged is not always favourable towards civil society, a negative consequence of an often necessary process at improving the legislative framework. In several countries there are particular pieces of legislation that have introduced constraints on NGOs (for example, in Ethiopia, Bangladesh, Uganda and Serbia).

It is the implementation of legislation that is more of a concern, particularly how it is used by the political elite in environments where the judiciary is not very independent and governance is weak. This was evident in all the case studies.

Regarding the operating environment, internal weaknesses of civil society constrains their abilities to fulfil their functions. For example, weak accountability structures and question-marks over the legitimacy of certain organisations and their connectedness to the population will affect the ability of NGOs to promote change. This emerged, for example, in the study on Bangladesh and Kyrgyzstan, as well as in Ethiopia amongst organisations based in the capital which were disconnected from the wider population. This is also a problem in societies affected by discord amongst NGOs, e.g. Honduras and Kyrgyzstan.

4.3 External interactions

The growth of the professional NGO as an organizational form is fairly recent in several of the country studies and has helped to strengthen civil society more broadly. However, sustainability is a challenge for all activities of domestic NGOs where they are dependent on external funding or where foreign NGOs or mega-NGOs crowd out local civil society actors. In some places there is a clear tension between the professional NGOs and traditional forms of civil society organization, for example in Bangladesh. Reductions in external funding are not just determined by the legislative or operating context, although the case studies show quite clearly that the political context can have a significant influence on decisions by international agencies to continue funding civil society activities. For example, the security situation could lead to the withdrawal of external funders from Honduras which would weaken those NGOs that receive foreign assistance. Global economic and policy trends also have a significant impact on the sustainability of support for NGOs.

Legislative restrictions on foreign funding affect the voice of both foreign and local NGOs ones that depend on external support. This is particularly the case for organisations working on human rights, democratisation and governance – as we saw in all the case studies. Foreign funding for NGOs in these sectors becomes an easy target for governments, which can accuse external actors of meddling in internal political affairs.

The role of external pressure regarding space for civil society is contentious. On the one hand, there are international systems and structures in place that should enable governments to be held to account for their actions towards civil society – using peer pressure or international law. These include international governance indices, international laws, or global monitoring frameworks, such as that being developed to monitor the implementation of the Busan commitments (DCD/DAC/EFF 2012). However, in a context like Ethiopia, despite the high levels of aid it receives, the government is fairly impervious to diplomatic pressure. The same can be said of Rwanda and Uganda. However, civil society in these environments is also not helped by external actors making little or no noise about major human rights abuses. This is particularly evident in the Honduras case study. The carrot of EU accession has proved an important tool in Serbia, but the current closing of space for civil society raises doubts about whether the government is serious about improving the environment for civil society or whether changes in the legislation are merely tick-box exercises or window dressing.

4.4 Opening up spaces for influence and change

Given the above, the key question may be what spaces do exist for civil society to progress in these environments, and what can external actors do to assist them where appropriate.

Some of the case studies show quite clearly that there is scope for NGOs to tackle governance-related issues even in difficult contexts, such as advocacy, democratisation processes and women's rights,

providing this happens with respect for the legislative and (unofficial) political boundaries. This is evident in the Bangladesh and Kyrgyzstan studies.

The Kyrgyzstan and Ethiopian cases demonstrate that the greater scope may be at the sub-national level. Here it is possible to find windows of opportunity to create spaces for collaboration and consensus-building amongst state, civil society and private sector actors to enable long-term change, primarily because local authorities can see the tangible benefits (and sometimes necessities) of working with non-state actors on certain issues.

The case studies also indicate that more locally-embedded organizations, that are less dependent on external funding, are likely to be key actors, even though they face numerous challenges in capacity. In Serbia, there are encouraging signs of established CSOs providing organizational support to new and smaller CSOs in the face of insufficient support from the state or international donors. They provide assistance with the registration process, provide training on project writing and public relations, disseminate information on funding calls, and advise on tax and accounting issues (USAID 2011: 180). Such a model may be worth examining in more depth.

5 Conclusions and Recommendations

This paper was based on desk-based research, drawing on the existing country papers commissioned by the BMZ as political and economic analytical briefs (PÖKs), and the vast expertise and broad networks of the authors. Facts and details were checked with country-based associates and their ongoing research where possible. It was carried out in four months, and involved six country case studies. These case studies nevertheless reveal the restrictions and difficulties caused by the legislative framework and operating context for NGOs and broader civil society in these countries. Obviously more in-depth work would be required to expand on the information contained in this study, and other countries would provide equally important and comparative information.

The study takes place against a backdrop of profound change in civil society in these countries as a consequence of global geopolitical, economic and climatic shifts. We anticipate that civil society will continue to face many challenges in the coming years in response to these shifts – but they also present exciting opportunities for civil society to find its place and voice in the emerging context. International networks, NGOs in donor countries, philanthropic, bilateral and multilateral donors have a potential role in facilitating this process.

5.1 Recommendations

Important common themes and lessons emerge from the brief studies presented here. Some overarching recommendations that we can draw from these studies are as follows:

- As the Kyrgyzstan and Ethiopian examples show, it is possible for donors and international intermediary NGOs to provide support for civil society in difficult legislative and political environments. The key is to find the avenues for dialogue and collaboration between local authorities and civil society networks to enable constructive engagement around capacity building of local civil society for long-term transformative change, and which demonstrate the benefits of positive CSO-government partnerships to deliver programmes. The sub-national level may provide the greatest potential, which concurs with some of the PÖK findings also.
- Donors need to explore in more depth different models for supporting the development of an independent, sustainable, locally-embedded and accountable civil society. It was clear from several of our studies – and this is borne out by our experiences in other countries – that

operating space for membership-based, locally-embedded organizations may be greater than for NGOs. As the PÖK analyses propose, working with faith-based groups would be appropriate in many of these countries. However, all these organizations face capacity constraints and may have internal tensions to address (as we see in Honduras and Kyrgyzstan). Ways of supporting them without damaging them require creative thinking. Building up local sustainability is increasingly important in a changing global context where aid from INGOs and donors is less guaranteed, driven by factors beyond the country in question. The challenge is to find ways to do this without re-creating dependency situations, which in turn can lead to accusations from political elites of foreign interference. Potential models might include working with regional civil society support networks and associations, using new technologies, and finding ways of encouraging larger and stronger locally embedded, indigenous NGOs to mentor and foster smaller ones.

- External governments have an important diplomatic role to play in encouraging the governments in the countries we have explored to uphold their constitutional and international commitments to guarantee the right of civil society to fulfil its functions. We need to recognise, however, that external pressure may have negative consequences, particularly when the government of the country in question takes a hostile stance towards external interference in its political affairs (as we see in countries such as Ethiopia, Uganda, Rwanda, Russia, Zimbabwe, Egypt and Eritrea). Civil society activists engaged in governance-related advocacy can be particularly vulnerable in such situations. The consequences of withdrawal of international and foreign NGOs and other external assistance upon the sustainability of local organizations must be thoroughly analysed, including which types of organisations will be most affected. As some of our studies show, grassroots activities may not be as deeply affected as might at first be expected, and providing basket funds with other donors to support local groups, as is happening in Ethiopia and elsewhere, may be less politically-sensitive. In these environments more subtle approaches are likely to be more effective, as outlined above.
- Donor governments need to exert more pressure on other donor countries where differentiated approaches may be having deleterious effects on civil society, particularly human rights activists. A case in point is US military assistance to Honduras which is having negative consequences for human rights activists.
- Support for improving legislation to bring it up to the standards of international good practice regarding civil society is another crucial issue. This could be done through support programmes for legal bodies. Good legislation can improve NGO accountability and therefore its legitimacy and credibility – as well as smoothing out poor practice and blurred lines in civil society activity. Improved legislation, combined with knowledge about the legislation and their rights, and strong advocacy skills, will enable NGOs to also act as a watchdog over the enactment of the legislation.
- The Ugandan case illustrates how a national constitution can be supportive of civil society action. All civil society organizations should be registered and, more importantly, there are no significant differences between Ugandan and foreign NGOs. There are also no legal barriers to international cooperation or restrictions on the amount of money received through international partnerships. Furthermore, the rapid increase in the number of NGOs and the growth in funding have resulted in critical commentaries about the legitimacy, transparency, accountability and autonomy of Ugandan NGOs. Ugandan organizations have been active in increasing accountability starting with the CSO Minimum Agenda in 2004 with seven key principles and values. The work resulted in the creation of the Quality Assurance Certification Mechanism in 2006 (Commonwealth Foundation 2009). Uganda suggests an approach on how NGO work can be guided, managed and controlled.

5.2 Areas for further investigation

This study has provided initial reflections on the situation in six countries. Many of the recommendations that we make here would benefit from much more in-depth investigation, notably to examine which approaches and models seem to work under what circumstances in these environments and with what effects. From this we could explore the potential for scaling up, replicating and supporting such initiatives. Within this, issues that merit deeper reflection include:

- Examining lessons from emerging social movements that are contributing towards profound change in several countries (for example, the anti-corruption movement in India; the new NGOs in North African countries) but which operate outside of the ‘traditional’ donor and INGO way of thinking.
- Approaches that NGOs are using to work with and support partners at risk in difficult environments, as the Irish NGO Trócaire has been promoting (Kleibl 2012).
- Evidence from other donors countries which are reviewing the civil society strategies and exploring different mechanisms to enable civil society organisations to do things for themselves (see Trivedy 2012).

Such further study should be carried out in partnership with local civil society networks and bodies and involve engagement with relevant local authorities.

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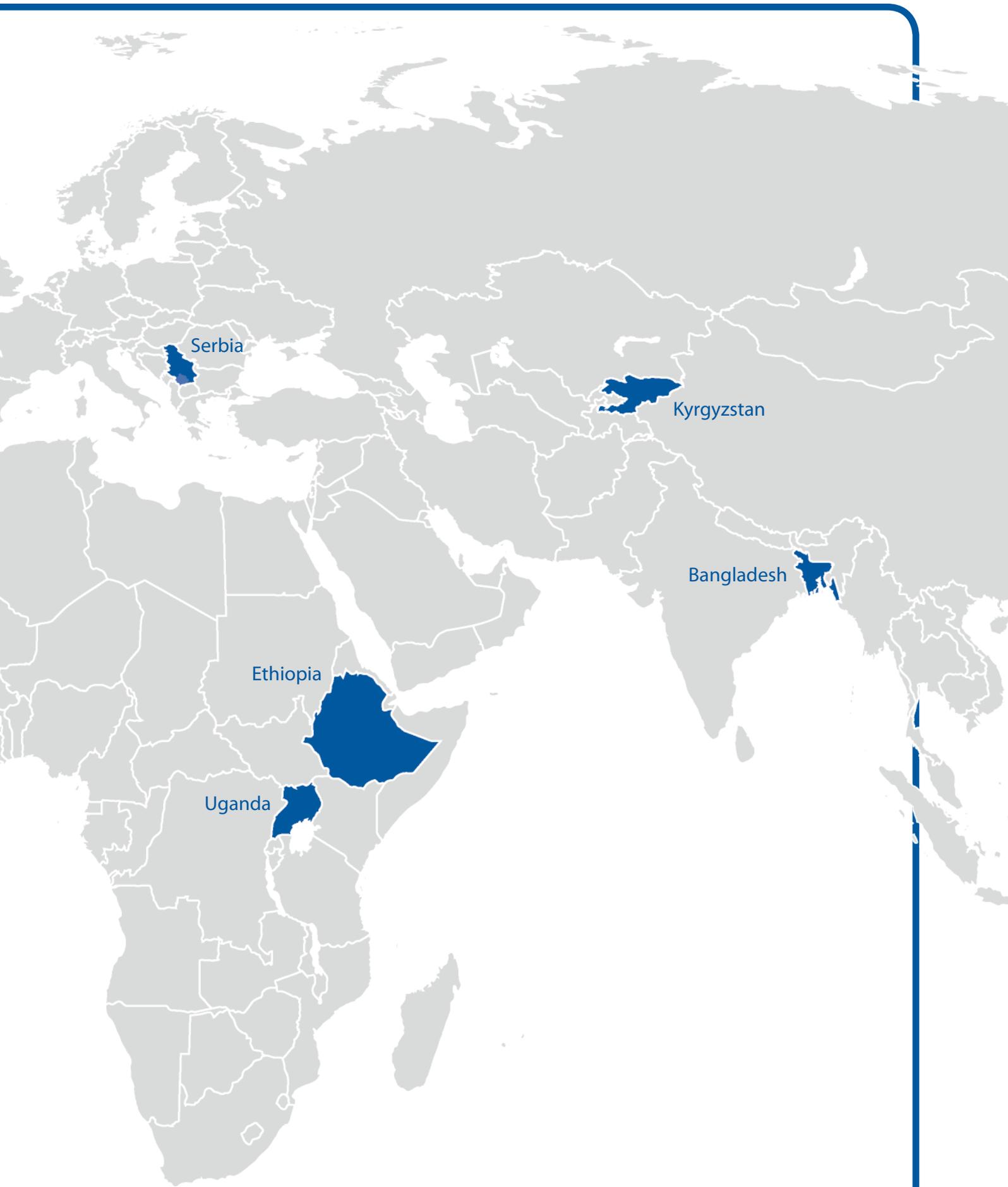
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Annex: Countries analysed in this paper



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This policy paper was funded by BMZ.

