



EADI Policy Paper Series

Legal Frameworks and Political Space for Non-Governmental Organisations: An Overview of Six Countries: Phase II

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June 2014

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Executive summary

There has been increasing concern to understand the realities that affect how international and local NGOs operate in many countries. Globally, there is high-level agreement on the value of greater inclusion of civil society within policy-making processes, resulting in commitments to put in place an enabling environment for civil society to function. In some countries progressive legislation is being passed to facilitate this. However, in many countries legislation regulating the operation of NGOs is weak or poorly implemented. This often reflects wider social, political and economic constraints on citizens to express themselves and to hold state authorities to account. Throughout 2013 frustrations erupted in protests, sometimes violent, in many parts of the world.

This report examines the legal framework and real operating environment in six countries, selected by the German Ministry for Economic Cooperation and Development (BMZ) for study: Egypt, Kosovo, Myanmar, Peru, Rwanda and Vietnam. The report builds on an earlier study analysing Bangladesh, Ethiopia, Honduras, Kyrgyzstan, Serbia and Uganda.¹

Key findings from the six case studies are:

- *Egypt* has a broad and relatively diverse civil society, which is evolving with new forms of civil society activism. Egypt is going through a constitutional transition and changes are being made to the regulatory framework affecting civil society. There is consequently a ‘wait and see’ attitude amongst many local actors and international NGOs.
- In *Kosovo*, the framework of laws is supportive of NGOs although there are discrepancies in implementation. The main challenges for NGOs include human rights abuses, lack of political will to fully implement existing laws, poor organisational capacity, and withdrawal of external aid. Closer engagement with the European Union has catalysed some positive progress.
- *Myanmar* has introduced legal reforms but the constitution inherited from military government and some laws restrict the functions and activities of NGOs; NGOs working in areas deemed politically sensitive are blocked from registering. Human rights abuses are common. However, internal momentum for social and political change is apparent, fuelled by economic growth. There is an increase in support from international donors and NGOs.
- In *Peru*, restrictive legislation is in place. NGOs working on issues which do not favour the government, including human rights, face scrutiny. Economic growth has been accompanied by a reduction of external assistance. However, there has traditionally been a strong local civil society and encouraging signs include new rights for indigenous groups to be consulted.
- In *Rwanda*, the real operating context for NGOs is one of enforced collaboration with the government political and development plan. Those working within these boundaries can act fairly freely; those that do not face difficulties. New legislation and decentralisation have opened up space for increased civil society involvement in policy-making. Space for politicised, human rights work is more limited. From a traditionally weak base, local organisations continue to face capacity challenges and co-optation is frequent.
- *Vietnam* lacks a clear legal framework, engendering an insecure and unpredictable operating environment. Human rights NGOs are not permitted. Apolitical technical, research and service delivery is encouraged, however. Challenges include organisational capacity. Positive signs include the passing of legislation to promote popular participation in decision-making.

¹ See Hayman, R., Lawo, T., Crack, A., Kontinen, T., Okitoi, J. and Pratt, B. (2013) Legal Frameworks and Political Space for Non-Governmental Organisations: An Overview of Six Countries. Available from: http://www.eadi.org/fileadmin/research_highlights/res/NGO-BMZ_Final_draft_11_July.pdf

Core themes and patterns include:

- Work by NGOs (local and international) on social development issues is often actively supported. Work on human rights, governance, advocacy and ethnic or religious minority issues tends to be subject to greater legal or practical restrictions.
- A blurred line between political activism and the social justice work of many NGOs creates tensions with state authorities. Spaces for NGOs to participate in policy making exist in most of the case studies, although this is often controlled. Engagement with local authorities at the sub-national level offers an avenue for constructive and productive dialogue.
- The legal frameworks are diverse across the case studies, and NGOs are affected by a wide range of laws and regulations. While good legal frameworks are crucial to creating an enabling operating environment, these can be abused. The absence of a clear framework creates an insecure and unpredictable environment. Restrictive legislation hinders NGO operational efficiency and curtails their roles in advocacy, lobbying and campaigns.
- A large or growing number of NGOs does not equate to a vibrant civil society; the quantity of NGOs can be at odds with the ability of civil society to fulfil key roles. A sound understanding of the history of civil society is crucial to assess the space for NGOs to operate.
- Aid withdrawal resulting from positive economic performance or post-crisis transition has a significant effect on many NGOs. External aid provides crucial support but also be counter-productive if it creates dependency or crowds out local civil society organisations.
- Many of the countries are experiencing profound and rapid change which has major impacts on NGOs. However, in all countries there are windows of opportunity and niche areas where international and local NGOs can nurture social progress and citizenship.
- Analysis is affected by limitations and contradictions in the available literature on NGOs and civil society in many of the case study countries.

Based on these findings we recommend that donors and INGOs:

- *Hold governments to account* over their legislation on NGOs and matters affecting civil society through international and regional bodies.
- Encourage the *implementation or development of clear and supportive legal frameworks*.
- Encourage the creation of *independent ombudsman offices* to support civil society.
- Fund *civil society support programmes* that are planned and implemented in a participatory country-specific manner with local partners, and that respect and work with local government.
- Take a *long-term perspective* when aiding NGOs, avoid swamping NGOs with aid, and put in place robust exit and sustainability strategies to ease aid volatility.
- Build on *lessons learned* from other countries and contexts to avoid poor practice that is damaging for local civil society.
- *Acknowledge where credit is due* and facilitate constructive but critical engagement.
- *Look beyond the NGOs located in capital cities*.
- Explore *niches for working constructively with local partners*, intermediaries and local platforms, as well as semi-organised or unorganised movements.
- Recognise *the limitations for nascent civil society*, including finding a balance between social service provision roles and advocacy roles, and respecting the security and safety of local activists and staff.

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1 Introduction

In 2013 the German Ministry for Economic Cooperation and Development (BMZ) commissioned a paper entitled *Legal Frameworks and Political Space for Non-Governmental Organisations: An Overview of Six Countries* (Hayman et al 2013). The aim of the paper was to explore legal and political space for international and local NGOs to operate in difficult environments, focusing on countries of interest to the BMZ. The case studies in this initial study were Bangladesh, Ethiopia, Honduras, Kyrgyzstan, Serbia and Uganda (see Box 1 for a summary of the six cases). This initial study is henceforth referred to as the Phase 1 report.

Box 1: Summary of Phase 1 case studies

- *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* introduced new legislation in 2009 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 organisations to operate and the picture is less bleak.
- 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 (although the government began drafting legislation in September 2013 that may negatively affect NGOs working on political activities) 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 polarised 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.

To expand on the findings of the first report, the BMZ commissioned a second study in October 2013 (Phase 2). A list of countries were proposed to the BMZ, covering a range of countries, regions and contexts in order to provide both comparable and contrasting cases to the first six countries. Again the countries proposed lay within the interests of the BMZ. A further six countries were selected by the BMZ for Phase 2: Egypt, Kosovo, Myanmar, Peru, Rwanda and Vietnam.

The same research framework was employed. The research was desk-based, involving a review of the available academic literature and grey material. A number of telephone interviews and email exchanges took place with civil society actors or experts on civil society for the Egypt, Kosovo, Peru and Rwanda case studies. A longer case study was prepared for each country exploring the economic

and political context, the history and background of civil society and NGOs,² the legal framework for NGOs, and the ‘real’ operating context (i.e. how legislation is implemented). In the case studies and general sections of the report reference is made to the quality of legal and regulatory frameworks affecting civil society and NGOs. This appreciation is based in particular on the review of the freedoms granted to citizens and civil society organisations, as well as their formal recognition and inclusion in public policy processes. The additional dimension of clarity of legal and regulatory frameworks refers to the degree of consolidation and coherence of the different elements of the regulatory framework. The case studies were then synthesised for inclusion within this report.

This report begins with a brief update on recent developments at the global level regarding NGOs and civil society, building on the literature review summarised in the Phase 1 report. This is followed by a synopsis of each case study. We then analyse key cross-cutting themes from the six countries, comparing those with the findings from the Phase 1 report. In the final section we offer some recommendations and areas for further reflection.

2 Global developments affecting NGOs in 2013

2013 was a year of contradictory trends for non-governmental organisations (NGOs) globally and civil society more broadly. The debate over nurturing an ‘enabling environment’ for civil society and facilitating the greater involvement of citizens in global policy processes contrasts with the increase in countries where governments are attempting to restrict freedoms of association and assembly (ICNL 2013e), or are enacting legislation that discriminates against individuals on the grounds of sexuality. NGOs working in political and governance spheres, and working on human rights are subject to repression and harassment in numerous countries. At the same time, spaces to champion workers’ rights (e.g. amongst garment workers in South Asia and migrant workers in the Gulf) and to turn a spotlight on women’s rights (e.g. in India following high profile rape cases) are opening. As Tandon and Brown (2013) observe political space for civil society voice and action seems to be expanding and contracting simultaneously depending on the area of work of a civil society.

The global level debate on creating an ‘enabling environment’ took shape after the High Level Forum (HLF) on Aid Effectiveness at Busan in late 2011. The groups representing civil society at the HLF were tasked with developing a better way of measuring the state of civil society in order to feed into new development effectiveness indicators. After much debate, consultation and trialling, CIVICUS, with the support of the Working Party on Aid Effectiveness, launched the Enabling Environment Index (EEI) in 2013. The Index is defined as “a set of conditions that impact on the capacity of citizens [whether individually or in an organized fashion] to participate and engage in the civil society arena in a sustained and voluntary manner” (CIVICUS 2013a). The index scores governance, socio-cultural and socio-economic dimensions for civil society in 109 countries based on secondary data on a scale of 0-1; 1 being the most enabling environment and 0 the least enabling. New Zealand, Canada, Australia, Denmark and Norway topped the list as states with favourable environments for citizens to participate in civil society, whereas Democratic Republic of Congo (DRC), Uzbekistan, Iran, Burundi and the Gambia had the worst EEI scores (idem).

Like any index, the EEI can be critiqued for reducing complex processes to a set of indicators and scores which are often meaningless in the absence of an accompanying narrative and which mask important dynamics within a given context. Moreover, the Index is plagued by lack of up-to-date and comparable data, particularly on the legal environment for civil society at country levels. Only two sub-dimensions in the EEI directly measure the legal and regulatory framework for civil society,

² Civil society, civil society organisations and non-governmental organisations - a word on terminology. In this report we define ‘civil society’ as the space between the state and the market, recognising that the boundaries are often blurred. Civil society organisations (CSOs) are all formal or informal groups of people working together towards common goals within civil society space and may operate at local, national and international levels. CSOs include membership groups, trade unions, community associations and NGOs. We define non-governmental organisations (NGOs) as professional organisations, constituting a small proportion of total CSOs (Beauchlerk, Pratt and Judge 2011).

namely NGO legal context and civil society infrastructure. On the other hand, the EEI represents an important attempt to map out critical elements of an enabling environment and keep the issue of the enabling environment on the policy making agenda. It shows that many governments are far from keeping their promise to create an environment that allows citizens to mobilise and participate in civil society (CIVICUS 2013a).

The enabling environment discourse resonates within policy processes in some regions and countries. For example, the European Commission has been promoting the development of ‘roadmaps’ for civil society in the countries in which it operates. This stems from the Communication on civil society relations approved in September 2012 (European Commission 2012) which seeks to enhance efforts to promote an enabling environment for civil society organisations in EU partner countries and support their meaningful participation in domestic and international policy development. The roadmaps are supposed to be developed in cooperation with local civil society, and should support a more structured dialogue and strategic cooperation with CSOs based on deep understanding of national civil society and the wider socio-economic context within which CSOs operate.

Over 2013 the attention of established global civil society networks and larger international NGOs (INGOs) was also taken up with consultations on a new global development framework to replace the Millennium Development Goals (MDGs). Global stakeholder engagement mechanisms were developed to facilitate civil society input into the official discussions on the post-2015 development agenda. These consultations – which included UN-led mechanisms such as the National Consultations, Thematic Consultations, online consultations, and High Level Panel meetings, as well as civil society-led initiatives – have involved a broad range of civil society groups worldwide. Yet, many of the discussions have lacked depth and have failed to promote meaningful civil society participation, highlighting how such processes often do not support genuine inclusivity and struggle to build civil society capacity to participate in policy development. The existing global development framework has additionally come under scrutiny by many NGOs for being a top-down imposition embodying unequal relationships between rich and poor countries and has little recognition of civil society’s inclusion, role and contribution to development. There remain important questions around whether the organisations accredited to multilateral meetings are representative of the breadth and depth of civil society and around whose interests they represent (CIVICUS 2013b; Hayman 2012; Leavy and Howard, 2013; Fischler 2013; Frecheville and Fischler, 2013; Stetcher 2013).

The rhetoric on creating an enabling environment and supporting civil society through mapping and new policies, etc. is nevertheless at odds with the reality of ongoing squeezes in funding for NGOs in many OECD countries, linked with wider cuts to aid budgets or shifts in priority within aid budgets.³ This seems to be particularly affecting support for NGOs in middle income countries, which are caught between a reduction in assistance from international NGOs and donors, and a lack of alternative local sources of sustainable income (INTRAC 2014). In this situation, we can observe attempts by NGOs to seek new ways to mobilize funds. Some have chosen to venture into micro-finance and social enterprise and are thus compelled to follow market-based principles, whereas others are taking up government contracts to deliver public services (Tandon and Brown 2013). Reliance on government funding entails working within government confines (service delivery and social enterprises) and competing with others who are profit-seeking. In the long run, there are concerns this shrinking resource base is likely to compromise the independence of civil society as well as limit their areas of work, thus working against efforts to create an ‘enabling environment’. While aid to fragile states and the poorest states continues to be upheld, there are questions to be asked about how fragility is defined in relation to the enabling environment discourse (De Weijer and Kilnes 2012). In many of the countries explored in this study, fragility from the perspective of lack of accountability between state and citizens or weak governance is apparent. Yet these are not necessarily the world’s poorest or most fragile – and hence aid-worthy – states.

Away from the global level, in many countries the reality for civil society is more volatile. Some regional dynamics are in evidence, for example the replication of anti-homosexuality legislation in several sub-

³ See INTRAC’s work on aid withdrawal: <http://www.intrac.org/pages/en/aid-withdrawal.html>

Saharan African countries, or ‘foreign agent’ legislation aimed at restricting foreign funding of more politicised civil society in Russia and some East European and Central Asian countries (ICNL 2013e). In many countries, we are continuing to witness mass mobilisation of citizens to protest against government policies and legislation, most recently in Thailand and Ukraine. These mobilisations are fuelled by widespread anger about inequalities, denial of rights, and political and financial corruption. They often incorporate multiple demands from political opposition parties, civil society organisations and individuals. The use of social media to facilitate mobilisation is frequently evident in more developed countries, with technology being used to foster new and enhanced opportunities for horizontal communication and networking between individuals, civil society and other groups (Tufté et al 2013). We are also continuing to see an increase in rights-related mobilisation opening up spaces for social change, for example on labour rights amongst garment workers in South Asia and migrant workers in the Gulf; and on women’s rights in India on the back of high profile rape cases. While the lasting impact of some social movements is minimal (Tufcecki 2013), in other cases social movements have effectively acted as political game changers. Examples are the landless movement in Brazil and the Indian anti-corruption movement, which both acted as catalysts for the passing of long-blocked legislative proposals and policy progress.

Several of the more political mobilisations have turned extremely violent, with a backlash from security forces. In some instances the absence of structure within social movements may facilitate government clampdowns (Tufcecki 2013). They also in turn can fuel attempts to curb freedom of association through legislation (resulting in a vicious cycle as in Ukraine), through the arrest and imprisonment of online activists, or through attempts at internet control which is becoming more widespread, justified on the premises of security (CIVICUS 2013b).

The involvement of registered, professional NGOs in citizen mobilisation varies from country to country. Some are driven by citizens who are fully involved in NGOs within their countries, in many instances organisations that are supported by external assistance. Many of these protests would not have been possible without the growth of confidence of civil society actors in their role and contribution to political and social progress, and the concomitant mobilisation of support which can be observed over a much longer term. This has empowered many civil society actors to question established procedures, mechanisms and norms (Tandon and Brown 2013). At the same time, many of these citizen activist movements are rejecting formal hierarchical structures of organisations and are embracing more horizontal structures. These allow for greater spontaneity and high public and medial appeal of their forms of expression, but also occasionally contribute to the ephemeral nature of them. The volatility of these incidences presents real challenges for the relationships between international NGOs (and their donors) and local partners who may be involved in such action. It can be particularly challenging in the post-revolution environment when external actors begin to support or strengthen local organisations to push forward reforms or build the framework for sustainable change, but aftershocks can frequently throw everything into disarray. This is evident across North Africa, for example.

This analysis shows a real mixed picture. In some regards the outlook for civil society freedoms to engage in critical advocacy vis-à-vis government in a range of countries may appear gloomy, but there are often seemingly contradictory trends in evidence. At the global level strategies to foster an enabling environment are continuing to be explored. In many countries we are seeing a growth of civil society scope to act in areas outside of critical advocacy, including engagement in policy dialogue around service provision. This in turn can enhance citizen trust in civil society organisations and NGOs. The debate around the parameters for civil society work, i.e. the opportunities for the creation of an enabling environment, or barriers to it, is often focused on the national level. This frequently generates tensions with policy agendas pursued by government, and hence makes the work of civil society very challenging particularly in the context of governments that prefer exercising a strong level of political control in public life. However, working with regional intergovernmental bodies such as the African Union or the Council of Europe in the case of Russia, has been instrumental in moving the focus away from often controversial national level debates to supporting norms at a higher level by sharing lessons or positive experiences from neighbouring countries (CIVICUS 2013b). In the Middle East and North Africa, international instruments have been invaluable tools to support civil society to put pressure on their governments; they tend to be used strategically for the purpose of advocating on

specific issues (especially when governments have ratified them but not translated them into national policy and practice), such as child rights, women’s rights, participation and protection, and disability.

3 Experiences from six countries

The case studies were carried out using a common framework which addressed 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 (Egypt, Kosovo, Myanmar, Peru, Rwanda, Vietnam).

3.1 Egypt⁴⁵

3.1.1 Context

Egypt is widely regarded as a regional power within North Africa and the Middle East. Since its 1979 peace agreement with Israel, the West has viewed Egypt as a key ally and stabilising agent within the region. However, recent events have challenged this status, provoking widespread instability throughout the country. Ripple effects have been felt in the region as a whole, with deepening social and political tensions between liberals and political Islamists and reinstating the country’s security/military establishment.

Civil society has played a critical role in these events. In February 2011, widespread social protests led to the resignation of Egyptian President Hosni Mubarak. An interim military administration, led by the chairman of the Supreme Council of Armed Forces became the de facto government. Islamist parties won a majority of the seats in the November 2011 parliamentary election and Mohammed Morsi, a senior member of the Muslim

Egypt: basic data



Population (2012):	80.72 million
GDP per capita (2011):	6,180 USD
UNDP Human Development Index (2012) (rank 1-186):	112
Transparency International Corruption Perceptions Index Score (2013) (scale 0-100):	32
World Bank Rule of Law Index (2011) (ranking scale 100-0):	42.7
Official Development Aid (2011):	410 million USD
Poverty Incidence (2012):	18.5%
Enabling Environment Index Score (scale 0-1):	0.40

Sources: Bertelsmann Stiftung 2012a; Central Intelligence Agency (n.d); CIVICUS (2013a); Transparency International (2013); ICNL (2013a); OECD (2013); UNDP (2013); World Bank (2013c)

⁴ Semi-structured interviews were carried out with four prominent civil society actors based in Egypt.

⁵ Since the time of writing this report there have been a number of significant events within Egypt. These include: the passing of the new Egyptian constitution; presidential elections with low voter turnout; imprisonment and trial of Muslim Brotherhood activists and journalists; and continued political turmoil and instability. Critical voices from NGOs and civil society groups, unions and opposition parties continue to be repressed, including through growing incitement and defamation campaigns in the media against human rights organisations and human rights defenders. However this has not stopped the signing of petitions, and protests continue against the anti-protest law put in place in November 2013. The new Egyptian constitution is seen by civil society as containing progressive and regressive elements, and may possibly be amended as Egypt finds its point of stability. However, the new rights and freedoms it offers will only improve life for Egyptian citizens if influential political institutions deliver on their promises, translate reforms into practice, and ensure enforcement.

Brotherhood won the presidential elections in June 2012.

However, demonstrations continued as public discontent with President Morsi's rule within significant sections of Egyptian society increased. The military deposed Mohammed Morsi in July 2013 and appointed a civilian, Adly Mansour as interim President. The military immediately instigated a violent crackdown on pro-Morsi protests. The Egyptian government has recently introduced legislation that permits the security forces to ban demonstrations and forcibly disperse unsanctioned and violent protests. Despite this, Egyptian citizens continue to take to the streets.

3.1.2 Background to civil society and NGOs

Egypt has a broad and relatively diverse civil society comprised of formal and informal groups, movements and organisations. Up until relatively recently, Egyptian civil society has largely been comprised of formal organisations, namely small civic associations and service-oriented NGOs, and medium sized professional syndicates and trade unions (Abd el Wahab 2012). However, only a small section of society actively participates in these organisations. Many are dominated by elites, meaning that on the whole, formal civil society reflects divisions and inequalities within broader Egyptian society (Altan-Olcay and Icdygu 2012; Bertelsmann Stiftung 2012a).

The Egyptian state has played a crucial role in the development of civil society in Egypt. Since independence, the Egyptian state has repeatedly intervened in civil society and several authoritarian governments have imposed severe restrictions on civil society (Abd el Wahab 2012). Although the number of organisations increased under Mubarak, the political environment did not support civil society to flourish. A thirty year state of emergency and restrictive legislative framework prevented civil society from organising and associating freely. The state also tightly controlled civil society engagement in policy formation, incorporating groups that legitimised the ruling regime into the political process and excluding all others (Bertelsmann Stiftung 2012a). Through these controls, the state permitted the rise of a fragmented and weak set of formal organisations supportive of the regime, and restricted the activities of organisations it considered as a threat to the establishment (Altan-Olcay and Icdygu 2012).

Civil society activity increased hugely in the years immediately preceding the 2011 Revolution. Despite permitting the emergence of a more independent civil society voice and becoming more responsive to some civil society demands, it continued to exercise high levels of control and violently repress elements of civil society. Public protests and civil demonstrations increased in the years immediately preceding revolution, as social movements formed in response to specific instances of acute and violent government repression. This included the emergence of new and predominantly youthful forms of civil society activism, supported by an increasingly independent media and new forms of social media, who went on to play a crucial role in the 2011 Revolution (Ezbawy 2012).

A new more diverse and inclusive civil society has emerged in Egypt, which includes labour movements, collective neighbourhood associations, unions, youth-led groups, virtual forms of organising and newly formed social and political grassroots movements (Abd el Wahab 2012; Ezbawy 2012; Ibrahim and Stroud 2011). Many emergent movements and organisations, which are organised laterally rather than hierarchically, have proved to be well networked and connected (Anon 2013). However, civil society has become increasingly polarised along religious and ideological lines, as recent pro and anti President Morsi demonstrations have evidenced.

3.1.3 Legal framework

Recent events have created a degree of uncertainty with regards to the legal framework for NGOs in Egypt. At the time of writing, the legal framework for NGOs in Egypt is ostensibly governed by the Law on Associations and Community Foundations (Law 84 of 2002) and the Implementing

Regulation for Law 84 of 2002 (Ministry of Social Affairs Decree 178 of 2002). However, some members of civil society believe that recent events have superseded the existing legal framework.

Law 84 of 2002 allows for the creation of associations and foundations (i.e. non-governmental institutions), and unions. It requires all civic associations to register with the government, effectively prohibiting the existence of informal organisations (Bertelsmann Stiftung 2012a; ICNL 2013a). It gives the government power to deny an organisation legal status, interfere in the internal affairs of organisations and dissolve them on vague grounds and without a judicial order (ICNL 2013a). It prohibits organisations from participating in political activities, which in practice includes advocacy and campaigning (ICNL 2013a; Freedom House 2013a). Organisations need prior approval to receive funding from international actors, to join an international organisation and the authorities can prevent individuals from travelling to meetings and events outside Egypt (ICNL 2013a). The law includes harsh sanctions for any organisation or individual found in violation of the law.

Under ousted President Mohammed Morsi, the government drafted a new NGO law; however this was strongly resisted by national and international civil society and was never put into effect. At the time of writing the government of interim President Adly Mansour is also drafting a new legal framework for NGOs. The current draft includes modest improvements including softening of restrictions of foreign funding and a simplification of registration procedures. Most importantly, the Minister in charge of drafting the new law has said that he is ready to address any contention over the law through public discussion with civil society (Masr 2013). However, the law still falls short of international standards for freedom of association, in that it forces all forms of civil society to register, gives authorities the power to deny or suspend registration of international NGOs operating in Egypt, and contains harsh sanctions (Hawthorne and Elgohari 2013). In other words, the new draft NGO law still gives authorities various ways to maintain control over and penalise civil society it regards as having crossed government red lines.

In November 2013, interim President Adly Mansour approved a controversial new law regulating public assembly, including marches, demonstrations and public meetings of more than 10 people (Law 107 of 2013 on the Right to Public Meetings, Processions and Peaceful Demonstrations). The law requires protesters to notify the government of a protest at least three days in advance, and enables the government to ban and disperse protests on vague grounds (ICNL 2013a). It permits security forces to disperse unsanctioned protests with water cannons, tear gas and birdshot. Any act committed by a single person perceived as violent, such as throwing a stone, legally permits the army to disperse the whole demonstration. It imposes harsh penalties including imprisonment for a range of vague offences such as “violating the public order” and “impeding the interests of citizens”, and sets long prison sentences and significant fines (ICNL 2013a; Human Rights Watch 2013a). Human rights organisations argue that this gives the government wide discretionary powers over protests, severely restricts freedom of assembly, and criminalises legitimate and peaceful public meetings and demonstrations (Amnesty International 2013a; Human Rights Watch 2013a).

At time of writing, the Egyptian electorate has just approved a new constitution. Although this constitution gives more power to security and military forces, it also has a few articles of value to the civil society sector. These include articles simplifying registration procedures for NGOs, and supporting women to participate in public life more fully. Overall, it is seen by many as an improved version from the perspective of civil society.

3.1.4 The operating context

The real operating context for civil society is primarily affected by the discretionary application of the legislation framework, restrictions of freedom of assembly through the use of extra-legal measures by police and military, and the current ‘wait and see’ attitude among civil society.

Egyptian governments have historically and continue to implement the legislative framework governing NGOs in a discretionary manner (ICNL 2013a). The government will use the full force of

the law against those organisations that it perceives as having crossed one of its red lines, while allowing the majority of organisations, who are consciously apolitical, to operate relatively freely (Abd el Wahab 2012). However, those viewed with suspicion, such as groups who have close links with foreign organisations and donors, and Islamist groups, especially the Muslim Brotherhood, are scrutinised and their activity curtailed through both legal and extra-legal measures such as intimidation, arrests and threats.

In June 2013, an Egyptian court convicted 43 NGO workers, including 16 American nationals, for operating without a license and receiving foreign funding, awarded many lengthy jail sentences and recommended the closure of the organisations involved (Loveluck 2013). The government has also closed many organisations associated with the Muslim Brotherhood. For example, the courts ruled that an NGO set up by the Muslim Brotherhood was illegally registered, and ordered it to be closed down. Any institution affiliated with this organisation was also subsequently closed down and all financial and material resources belonging to these organisations were confiscated (Spencer 2013).

Extra-legal measures including violence, intimidation and arrests also further restrict operating space for organisations and activists, including virtual space to deliberate and act (Freedom House 2013b; ICNL 2013a). In recent months, there have been numerous reports of beatings, sexual harassment, and forceful detention of prominent human rights activists (Binder 2013). There has also been intimidation of bloggers and online activists, restricting freedom on the net (Freedom House 2013b). However, it appears that those most affected by the use of extra-legal measures are Islamic protesters and civil society activists associated with the Muslim Brotherhood.⁶ In December 2013, the cabinet announced that the Central Bank of Egypt froze funds from over 1000 NGOs that were accused of being connected to the Muslim Brotherhood (EIPR, 2014). The EPIR declared that this has “grave societal implications, which impedes the activity of charitable NGOs” (ibid).

Ongoing restrictions on civil society have weakened the morale of individuals and organisations that hoped for better following the 2011 Revolution. The crackdown on large elements of civil society means that many organisations are choosing to lie low and adopt a ‘wait and see’ attitude (Okail 2013). Many are being extremely cautious for the time being, with formal organisations in particular keeping a low profile and avoiding taking funds from external donors and foreign organisations. They are very careful not to appear in the press or advertise what they are doing so as to escape scrutiny. This is while others such as human rights organisations, local think tanks and CSOs have continued to advocate against repressive legislation (such as the protest law), calling for their right as Egyptian civil society to exercise their key role in Egypt’s transition.

3.1.5 Conclusions on Egypt

The uncertain legal and political environment within Egypt at the time of writing means that it is very difficult to draw strong conclusions about which direction political space for NGOs and civil society will take. The country is transitioning primarily from one legal framework to another that appears will be less restrictive in some regards, and more restrictive in others. It is clear that over the past decade, civil society in Egypt has become increasingly diverse and vibrant, and is actively attempting to reclaim physical and political space. However, this has in turn led to increased tensions with the government and military who regard large elements of civil society as threatening and dangerous (Hawthorne and Elgohari 2013). Despite this, there is a general feeling within Egypt that space is increasing, with civil society evolving with new emerging groups and greater participation than before. Many are choosing to adopt a ‘wait and see’ attitude for the time being although there are hopes that things are changing.⁷ Donors likewise are advised to proceed with caution in their support

⁶ The Egyptian authorities banned the Muslim Brotherhood and its spin-off groups in September 2013. Source: Kingsley 2013.

⁷ Throughout the transition civil society has adopted a ‘wait and see’ attitude. However, some elements of civil society have nevertheless been forthright, in spite of restrictive political space, in expressing their voice and self-organising. Although the new government faces significant challenges of restoring economic conditions and improving employment

for civil society in Egypt – continued support will be vital for civil society to mature and work together more effectively, but donors should not rush in.

3.2 Kosovo⁸

3.2.1 Context

Kosovo unilaterally declared independence from Serbia in 2008. As of October 2013, at least 103 countries recognised Kosovo – 53% of UN member states (Political Geography 2013). However, Serbia, Russia and the majority of Kosovo-Serbs refuse to do so. Ethnic-based tensions remain acute in the country (Amnesty International 2013b: 230) and the Serb minority face high levels of political and social exclusion.

Since 2008, the European Rule of Law Mission (EULEX) has had a technical, monitoring and advisory role and limited executive powers. There has been steady progress in establishing a ‘generally adequate body of laws and regulations’, although judicial independence is limited and the rule of law is weak (USAID 2013). EULEX’s efficiency in establishing the rule of law is undermined by the division within the EU about Kosovo’s status (Bokhorst 2013).

The EU brokered a landmark deal aimed at normalising relations between Kosovo and Serbia in April 2013. Under the agreement, ethnic Serbs will have their own police and appeal court, and both countries agreed not to block each other’s efforts to seek EU membership.

Since 2008, Kosovo has registered annual positive growth rates: 4.5% on average (World Bank 2013d). It is a lower-middle-income country, but one of the poorest in Europe with a per capita GDP of €2000 (ibid).

Kosovo: basic data



Population (2012):	1.80 million
GDP per capita:	---
UNDP Human Development Index (2013):	---
Transparency International Corruption Perceptions Index Score (2013) (scale 0-100):	33
World Bank Rule of Law Index:	---
Official Development Aid (2011):	657 million USD
Poverty Incidence:	---
Enabling Environment Index Score (scale 0-1):	0.52

Sources: Bertelsmann Stiftung (2012d); Central Intelligence Agency (n.d); CIVICUS (2013a); Transparency International (2013); OECD (2013); World Bank (2013c)

and living conditions, it is hoped that the government will begin to see civil society as a constructive channel between people and the government. This would encourage healthy dialogue conducive to political stability, although it must be stressed that this is far from certain. The international community should support human rights organisations and advocates of diversity, voice and social justice, in positioning themselves in relation to this new government and ensuring that the state of affairs improves as both the constitution and 2011 revolutions have promised.

⁸ Initial findings from this case study were validated in discussion with Kristie Emerson.

3.2.2 Background to civil society and NGOs

The origins of modern Kosovo civil society can be traced to the late 1980s/early 1990s and were fuelled by civil resistance to the Serbian regime (KIPRED 2005: 5-6). With the establishment of UN Interim Administration Mission in Kosovo (UNIMK) and the Provisional Institutions of Self-Government in 1999, funds and technical assistance were pumped into the country to serve the needs for emergency assistance, reconstruction and post-conflict reconciliation (Koçani and Hoxha 2011: 7). The influx of donor money in the immediate aftermath of the war for civil society programmes led to a proliferation of local NGOs (ibid). Many of these NGOs, however, were created around donor-priorities, rather than an authentic expression of the community's needs and preferences (Rieff 2000).

Civil society is now evolving in an advocacy-oriented direction, pressurising government to being more accountable, and to permit greater inclusion in decision-making. Kosovo NGOs mainly work on 'transparency, civil rights, community development, disability, economic development, education, good governance, health, judicial reform, ethnic reconciliation, humanitarian aid, social welfare, youth and women.' (TransConflict 2013).

Some think tanks have successfully worked with the government on joint projects especially regarding foreign affairs like the EU membership process (USAID 2012: 2). However, NGOs have generally found it difficult to shape the political agenda. There are hardly any training or capacity building organisations for NGOs due to lack of funding. Donor initiatives such as EU Technical Assistance to CSOs (TACSO) have proved useful, but they are ad hoc and not operational for long enough to produce sustainable results (ibid: 5).

There are only a small number of civil society umbrella groups and not many are functional or have proved sustainable over the years (Koçani and Hoxha 2011: 18). An exception is the CiviKos platform, which signed the first formalised commitment to partnership between the government and civil society – the Memorandum of Cooperation in 2007 (ibid: 19). CiviKos has participated in the drafting of the 'Government Strategy for Cooperation with Civil Society 2013-2017'. This committed the Kosovo government to several objectives, including 'creat(ing) a supportive and favourable environment for the development of civil society' (CiviKos 2013: 3). The strategy was drafted in recognition of the 'low level of mutual trust' between government and civil society (ibid: 9). The document claims that 'recognizing and understanding the role of civil society by civil servants remains low (and) civil society continues to have insufficient knowledge about the processes of policy-making' (ibid).

3.2.3 Legal framework

The CSO Sustainability Index judges that the legal environment for civil society has remained fairly steady since 1999 and the framework of laws are generally good. Nonetheless, it criticises NGO-specific laws for being too broad, and for not being fully implemented because of lack of capacity and poor understanding of the relevant government units (USAID 2012: 2).

The NGO Reporting and Monitoring Division reviews annual and financial reports and monitors the extent to which NGOs abide by their statute. It can take up to 60 days to register an NGO or change the registration of an existing NGO. NGOs must register in the capital which disadvantages those based outside Pristina (ibid: 2).

The Municipal Public Communication Offices are responsible for public communication of municipal policies and activities, under the Regulation on Public Communications Service. Public consultation at the municipal level is primarily governed by the Law on Local Self-Government, which provides a sound legal foundation for an enabling environment for civil society. This requires open meetings of the Municipal Assembly, about which the public should be informed and allowed to participate. Article 73 stipulates that a consultation committee must be established to which NGO representatives

should be invited (Koçani and Hoxha 2011: 12). The law also enshrines the right to petition and local referendum (ibid).

The Office of Good Governance is responsible for designing and implementing measures for NGO involvement and civic participation at the central level. However, it has been judged to have generally failed to meet this remit.

The government proposed a new Law on the Central Bank and Microfinance Institutions in April 2012, which would have enabled the Central Bank to privatise 17 inactive microfinance NGOs, and transfer their estimated €100 million in capital to private shareholders (Freedom House 2013c). Although the legislation was eventually defeated the following year, the episode revealed troubling insights about the government's attitude towards NGOs and the challenges of the reform process.

Nonetheless, there are encouraging signs that the promise of EU membership has spurred important progress. The government has created mechanisms to promote structured cooperation with civil society. The Rules of Procedure of the Government of 2011 obliges all ministries to undertake public consultation exercises, and to provide time and information for civil society actors to participate. It also requires them to seek input from NGOs that will be affected by the proposals. The Kosovo Assembly also adopted an Information and Public Relations strategy in 2012, which aims to increase the availability of information to better enable public participation in its work.

3.2.4 The operating context

The most problematic issues that affect the organisational context for NGOs are: human rights abuse; lack of political willingness and poor implementation of existing laws; lack of capacity of government and NGOs; and aid withdrawal. Each factor is discussed below.

Human Rights Abuse

Several rights that are enshrined in the constitution are generally respected in practice by the government, EULEX and KFOR (NATO Peacekeeping Force for Kosovo). These include: the prohibition against arbitrary arrest and detention, freedom of assembly, and freedom of association (US Department of State 2012a). However, numerous human rights problems persist, including discrimination against ethnic minorities, LGBT persons, and judicial inefficiency and corruption. In addition, journalists claim that they are frequently forced to self-censor owing to pressure from public officials and organised crime. They claim they face dismissal if they are critical of the government, and fear for their safety if they engage in criminal investigative reporting.

The Office of the Ombudsperson is tasked with investigating human rights violations and abuses of power by government officials. It is more active than previously, but is widely considered to be ineffective. After recommendations from the European Commission that the government provide sufficient resources to bolster the capacity and independence of the Office, the government has provided the full amount of funding requested by the Ombudsperson in its annual budget.

Lack of Political Willingness and Poor Implementation of Existing Laws

The Law on Access to Public Documents is poorly implemented. It is alleged that inconsistent criteria are applied to determine which documents should be released into the public domain (KCSF 2013:5). Furthermore, civil servants and politicians are accused of being resistant to provide certain information and unjustly delaying the release of information.

The Kosovo Civil Society Foundation has accused the Municipal Public Communication Offices of serving the interests of the ruling political party in the municipality. The worst Offices are said to only conduct meetings with civil society for appearances, failing to provide timely and adequate information in advance of meeting and failing to update websites.

Troubling questions have also been raised about the political willingness to fully commit to the principles of participatory policy-making in laws of major constitutional, political and economic significance.

Lack of Capacity of Government and NGOs

One of the main obstacles to productive engagement with civil society is argued to be the poor capacity of the relevant governmental and public institutions (KCSF 2013). The government has admitted it has difficulties in establishing which NGOs should be invited to participate in working groups on certain issues (CiviKos 2013: 8). Likewise, there is a lack of capacity amongst NGOs that could make a valuable contribution to policy consultations. There is poor awareness about the legislative process, and the opportunities that exist to lobby and offer expert advice at different stages (Koçani and Hoxha 2011: 26). In addition, problems with personnel and management are fundamental and widespread. Only a small minority of NGOs have detailed strategic plans, and then usually because the donor demands it.

Aid Withdrawal

Donors are gradually pulling out of Kosovo due to the global financial crisis and the Eurozone crisis has increased the speed and scale of aid withdrawal. NGOs are highly dependent on donor funds as a consequence of the easy accessibility of funding after the war. It is estimated that around 80% of funds for civil society come from international donors (CiviKos 2013: 21). Many NGOs, therefore, find themselves in a particularly precarious financial state because of aid withdrawal. Membership organisations and trade unions are more financially resilient. Past research has found that focus groups partly blamed donors for the weak sustainability of NGOs, as they have ‘seldom encouraged or required NGOs to develop long-term sustainability and self-financing plans.’ (KCSF 2005: 39).

A few large NGOs have benefited from the establishment of three new donor programmes in 2012 funded by the Norwegian Embassy in Kosovo, the Swedish Foreign Ministry and UN Women in cooperation with UNDP. Smaller NGOs, particularly those outside Pristina, have not had the capacity to take advantage of this opportunity to diversify their funding model. Hence, the financial sustainability of smaller organisations is most at risk.

Although EU funding for civil society has steadily increased in recent years, Kosovo NGOs have found it difficult to meet the EU rules on co-financing. The government has committed itself to working with civil society to examine ways in which these issues can be addressed, and increase civil society’s involvement in donor coordination mechanisms (CiviKos 2013: 22-3).

3.2.5 Conclusions on Kosovo

Kosovo has faced significant challenges since its declaration of independence. It should therefore be commended for making huge strides in government-civil society relations, despite hindrances to productive engagement in policy-making processes. Groundbreaking initiatives and legislation include the Government Strategy for Cooperation with Civil Society 2013-2017; the Information and Public Relations Strategy 2012; the Rules of Procedures on public consultation and the Law on Access to Public Documents. However, BMZ, the EU and other international donors should press for full implementation of these instruments, and encourage further measures to ensure that they meet international best practice. Kosovo’s legal framework holds the promise of an enabling environment for civil society, despite problems with implementation. Kosovo has been supported in these efforts by international donors and motivated by the promise of EU membership. Unfortunately, donors have been short-sighted in failing to promote capacity-building measures for NGOs to enable them to withstand disruptions in their funding model and changes in the political and legal environment. The inevitable departure of a large number of donors is likely to have a severe impact on the functioning and sustainability of many NGOs in Kosovo.

The recent normalisation agreement between Kosovo and Serbia, and the ongoing EU integration process, offers donors the chance to pursue dialogue with Pristina about ways in which to address the protection of human rights, particularly in terms of protection of minorities, media freedom, and guarantees of the rule of law.

3.3 Myanmar

3.3.1 Context

The military junta that seized power in Myanmar in the 1962 coup have been responsible for consistent and gross human rights abuses during their rule (Amnesty International 2013b: 187). Myanmar is now undertaking a slow and uneven transition from authoritarianism and a centrally-planned economy, to a democratic market economy.

The country’s general election in 2010 was not free or fair. It was boycotted by opposition groups, including Aung San Suu Kyi’s National League for Democracy (NLD). A nominally civilian government led by President U Thein Sein was installed in 2011, but the military retains a privileged position in government. By-elections were held in 2012 in improved conditions, and the NLD won 43 out of 45 contested seats.

The dominance of the ethnic majority over the country’s diverse minority groups have been the cause of deep unrest. Since the elections, the government has signed ceasefire agreements with a number of ethnic opposition groups but there are still outbreaks of violence.

Myanmar’s foreign relations have dramatically improved as a result of its internal reforms. Myanmar is one of the poorest countries in East Asia. However, the country’s future economic prospects are very promising; it is receiving healthy inflows of FDI.⁹

The country will assume the chairmanship of ASEAN in 2014 – a powerful symbol of its reintegration into the international community after decades of being treated as a pariah state.

Myanmar: basic data



Population (2011):	52.80 million
GDP per capita (2011):	1,950 USD
UNDP Human Development Index (2012) (rank 1-186):	149
Transparency International Corruption Perceptions Index Score (2013) (scale 0-100):	21
World Bank Rule of Law Index (ranking scale 100-0):	4.2
Official Development Aid (2011):	376 million USD
Poverty Incidence:	---
Enabling Environment Index Score:	---

Sources: Bertelsmann Stiftung (2012e); Central Intelligence Agency (n.d); Transparency International (2013); OECD (2013); UNDP (2013); World Bank (2013c)

⁹ Myanmar is receiving healthy flows of FDI from China, Hong Kong, India, Thailand and South Korea.

3.3.2 Background to civil society and NGOs

The military coup was a devastating blow to civil society. The 1974 Constitution outlawed all political activity outside the control of the state. Myanmar's numerous ethnic minorities suffered a brutal campaign of suppression. The teaching of minority languages was outlawed yet numerous organisations worked covertly to provide aid and services and foster political resistance. For example, various community-based organisations (CBOs) in minority communities continued to run educational programmes surreptitiously. Many of these organisations still exist today – and still suffer high levels of state-sponsored discrimination and violence (Lorch 2010).

Myanmar civil society was rejuvenated in the mid-1990s when INGOs and UN agencies began to channel funds to organisations that provided healthcare and health education, micro-finance and childcare (ICNL 2013b). Cyclone Nargis in 2008 was an important catalyst for growth in civil society activity, creating the opportunity to carve out civic space.

There are no official figures on the numbers of NGOs in the country, but all indications suggest rapid expansion since the cyclone and the last election. It is hugely difficult to measure and map out civil society activity, because of the dearth of comprehensive and detailed research, and the extremely fluid political situation (Petrie and South 2013:10). Nonetheless, NGOs providing social, health and education services have proliferated under President Thien Sein's administration.

The NLD has encouraged the trend towards politicised civil society by engaging in social work within communities in areas where advocacy activities would be immediately repressed by the authorities. This provides the NLD with a subtle way to raise political consciousness; however, it also presents a challenge for civil society actors that have traditionally delivered services on a more neutral platform.

The British Council runs a civic engagement programme called 'Active Citizens' that promotes peer-to-peer relations across cultural and geographic boundaries to build capacity and foster community cohesion. It has yielded promising results in Myanmar. For example, women activists were funded to participate in a study visit to community groups in the UK, and the skills that they acquired led them to set up a social action project in South Yangon to teach women garment workers their legal rights. The British Council office in Myanmar continues to provide support through a small grant and planning resources (British Council 2014). It is an example of many similar small projects on the ground that are helping to promote meaningful social change in a way that is sensitive to the political constraints on action.

Cross-border organisations have played a crucial role in providing services to conflict-affected communities for decades. Cross-border groups have been the beneficiaries of significant amounts of aid for many years, and they have proved adept at boosting their profile by emulating the rhetoric of international solidarity networks and presenting their activities in sympathy with the priorities of Northern donors (Petrie and South 2013: 16). NGOs within Myanmar find it more difficult to compete for funds because they lack experience, and they are often associated with non-state armed groups (NSAGs) (particularly in ethnic minority areas) which donors typically frown upon.

3.3.3 Legal framework

Research and evaluation of policy dynamics and regulatory trends with regards to civil society has noted that donors have acknowledged Myanmar for the progress it has made on legal reform, but numerous repressive laws are still in place. Laws are in place that contain provisions allowing for the imprisonment of journalists, lawyers and activists (Human Rights Watch, 2013b). Laws also exist that prohibit citizens from disclosing information about the country to foreign media outlets, potentially increasing the vulnerability of journalists.

NGOs currently register under the Associational Law 1988, which carries a penalty of a maximum of five years imprisonment. NGOs that are regarded by the authorities as politically threatening are

generally blocked from attaining registration. As part of the registration process, all executive committee members have to sign up to a letter to guarantee that they will remain apolitical (ICNL 2013b). NGOs that do manage to win approval for full registration are obliged to submit reports detailing their activities and finances, amongst others. Local authorities also conduct frequent inspections of NGOs, exacerbating a pervading climate of insecurity (ibid).

The Associational Law may soon be replaced by a law currently in its draft stages, which has been the focus of much national and international criticism in recent months. It contained ‘vague, broadly defined’ criteria that enabled the registration of an NGO to be cancelled (OHCHR 2013: 8). 500 Myanmar NGOs also expressed serious concerns and issued statements calling for these clauses to be rejected (Vrieze 2013). Leading activists expressed pleasant surprise when most of the proposed changes were accepted. The current draft now makes registration a voluntary process that is not subject to any sanction. The International Center for Not-for-Profit Law noted a ‘substantial improvement’ of the current draft, but remains concerned that it still does not meet international best practice (ICNL 2013b). Nonetheless, the amendments are an encouraging sign that the government is becoming more receptive to civil society input.

Another important stage in Myanmar’s reform process was the establishment of the Myanmar National Human Rights Commission in September 2011. It was announced that the commission would adhere to UN guidelines and aspire to international best practice as laid out in the Paris Principles on Human Rights. However, deep concerns persist about its independence and effectiveness (Amnesty International 2013b). The Asian NGO Network on National Human Rights Institutions (ANNI), comprising of 30 members across the continent, published an open letter expressing ‘serious concern’ about the ‘limited and non-inclusive’ consultation with civil society organisations in the drafting of the Commission’s enabling law. They argued that robust public scrutiny and input from civil society was vital to ensure the draft laws complied with all aspects of the Paris Principles (Forum-Asia 2013). The letter was endorsed by 25 Myanmar NGOs, including several human rights and democratisation organisations.

3.3.4 The operating context

Generalisation is problematic in a country as diverse and complex as Myanmar. The following analysis is subject to an important caveat: the extent of civil society space available for NGOs to operate has been determined by the extent of government control over the territory. Many civil society actors have to struggle to negotiate multiple authority structures.

Progressive legal reforms are largely failing to translate into changed practices at the local level, where gross human rights abuses are still routine despite the democratisation process and officials are generally immune from prosecution. There are still restrictions on freedom of speech, association, assembly, movement, religion and freedom of the press.

The authorities have arrested and incarcerated individuals for voicing anti-government opinions under the pretext of maintaining law and order, although there has been a marked decline in the level of harassment of human rights activists compared to before the 2010 election (US Department of State 2012b).

Freedom of assembly is protected by the constitution and the 2011 Law of Peaceful Assembly and Procession; however, this right is often not respected in practice. The UN has expressed concern about the frequent arrests and prosecutions of peaceful protesters under this law (OHCHR 2013). Likewise, although freedom of association is enshrined in the constitution, it is often not upheld in practice, for example the authorities harassed organisations that teach minority languages (US Department of State 2012b).

Human rights abuses against minority communities are widespread, with Rohingya Muslims particularly at risk. The government suspended humanitarian aid in the area and during the past year

numerous UN and INGO staff have been arrested (Human Rights Watch 2013b). The government also restricts access to numerous conflict and ceasefire zones other than Rohingya Muslim areas. NGOs have developed a variety of creative strategies to cope with these multiple constraints, including purposely avoiding words that may arouse suspicion or hostility of the authorities (Wallis and Jaquet 2011). Local organisations also have to exercise caution in working with advocacy INGOs, for fear of reprisal from the authorities.

The government blocks the efforts of some NGOs to register if they work in areas deemed to be politically sensitive, which forces them to operate surreptitiously at considerable risk to their safety. Human rights NGOs find it extremely difficult – if not impossible – to register. Even NGOs that are not considered a threat can find the registration process a complex and difficult task.

Freedom House (2013d) assigns Myanmar a press freedom score of 72 out of 100 (100 being the worst). Media outlets tend to practice self-censorship (Human Rights Watch 2013b), although they are becoming bolder in engaging in sensitive topics. There have been several landmark events that have signalled greater relaxation of media restrictions (Reporters without Borders 2012). However, the OCHCR has expressed concern over the Printing and Publishing Law in July 2013 that includes ‘vague, broadly worded bans on publications that, for example, “jeopardize the tranquillity of the community”.’ (OHCHR 2013: 5). The capacity of the press to perform the role of ‘watchdog’ is limited by poor freedom of information.

3.3.5 Conclusions on Myanmar

Myanmar is experiencing a fragile democratic transition and there is no guarantee that the country will not slide back into authoritarian military rule. Nonetheless, there seems to be internal momentum for change amongst the political elite, fuelled by the promise of rapid economic growth. The international community has a crucial role in pressing the government to ensure that economic reforms are accompanied by political and legal reforms that create enabling conditions for an independent and vibrant civil society. Donors should be cautious that their strategy of positive engagement so far does not induce them to mute their criticism of human rights abuse.

Donors have an excellent opportunity to press their concerns in 2014, such as through the EU-Myanmar taskforce. The aim of this is to build a long-term partnership to support democratic transition, through investment, development aid and parliamentary cooperation. This is an ideal forum to press Myanmar to create the enabling conditions for the development of an independent and vibrant civil society. One important step in this regard is to reform the draft associational law in line with international best practice. An alliance of human rights NGOs have criticised the EU for thus far failing to ‘ensure substantive civil society participation in all areas of the task force’ (Fidh 2013). The EU and the Taskforce should be challenged to fully inform its Myanmar policy with regular and detailed consultation with local NGOs.

3.4 Peru¹⁰

3.4.1 Context

Peru continues to suffer from unstable national polity since its independence in 1821. Governance has also suffered over the years, which sadly has not been helped by the return to democracy, as there is very little in terms of a consolidated political system illustrated by the lack of a party structure providing some consistent direction for government.

¹⁰ We are grateful to civil society experts on Peru who contributed data and reflection for this study.

After the civil war (from 1980 to 1993 approximately) a major attempt at political and legal reform has been to reinforce decentralisation to the regional, provincial and district levels. This was intended to bring power closer to the more isolated rural areas and to spread some of the country's wealth. However, most commentators feel that the decentralisation has not been as successful as hoped, in part due to the lack of capacity in local government to handle the new responsibilities and funds.

In the past 10 years Peru has experienced rapid rates of economic growth. However, despite some efforts by the present government (Ollanta Humala is the current President, elected in 2011) Peru has failed to achieve the levels of political participation and reform needed to bridge the gap between the political elite and the populace. Peru has some of the worst inequality indices globally despite some social protection schemes aimed at providing support for the poorer elements of Peruvian society.

At one time Peru was a major aid recipient and many donors supported the country in its rehabilitation efforts during and after the civil war. However, economic growth has led to a major reduction in international assistance to Peru, with few governments still maintaining programmes in the country.¹¹ From around the mid-2000s aid has been withdrawn consistently so that there are only a few official donors left and overall there has been a reduction in NGO donor funds (Pinzas 2009).

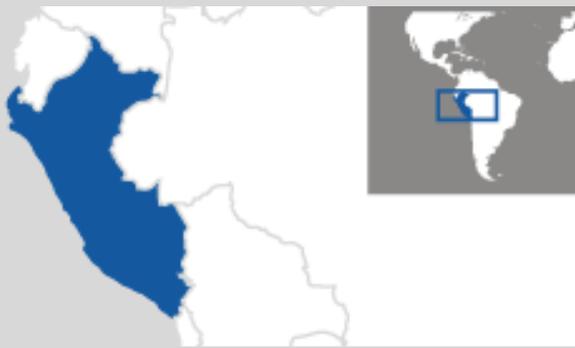
3.4.2 Background to civil society and NGOs

Peru has traditionally had a very strong, almost organic, civil society often based on the Andean culture of communal land ownership and governance. There was a blossoming of NGOs in the 1970s due to several positive factors. President General Velasco (President of Peru from 1968-1975) encouraged cooperatives, land reform, peasant and indigenous communal property ownership and extended state control over many industries. NGOs met these challenges through increased work with indigenous groups, cooperatives, peasant communities, and numerous others. When Velasco was overthrown in 1975, this gave impetus to the foundation of a raft of new NGOs.

Despite the civil war, NGOs continued to work in many areas of the country on a range of issues and themes. Unfortunately NGOs and cooperatives were often targeted by both sides of the civil war (members of the Maoist armed group *Sendero Luminoso* often targeted NGOs and more progressive local officials as they saw them as competitors for power but not sharing the same narrow ideology,

¹¹ Net official development assistance (received as % GNI) decreased from 1.6% in 1990 to 0.4% in 2011 (World Bank 2013b).

Peru: basic data



Population (2011):	29.99 million
GDP per capita (2011):	9,538 USD
UNDP Human Development Index (rank 1-186) (2012):	77
Transparency International Corruption Perceptions Index Score (2013) (scale 0-100):	38
World Bank Rule of Law Index (ranking scale 100-0):	30.2
Official Development Aid (2011):	624 million USD
Poverty Incidence:	14.7%
Enabling Environment Index Score (scale 0-1):	0.57

Sources: Bertelsmann Stiftung (2012b); Central Intelligence Agency (n.d); CIVICUS (2013a); Transparency International (2013); ICNL (2013c); OECD (2013); UNDP (2013); World Bank (2013c)

and there was an assumption by the armed forces that many NGOs were supporters of *Sendero Luminoso*). The outcome was some weakening of NGOs and other civil society groups, especially outside of the capital.

This early growth of NGOs in Peru happened before most INGOs entered the country. Initially there was some funding but few INGOs had presence. Later, many more INGOs did start to work both in development and humanitarian programmes, joined by environmental organisations. There was also an explosion of human rights based organisations during the civil war.

There has been some conflict between local and international NGOs, firstly because some INGOs became operational rather than just funding local groups, hence crowding out local initiatives, and secondly through some differences of opinion regarding approach. It was argued that INGOs tended to take a more apolitical position regarding key issues, which endeared them to major donors but not to local civil society (Pratt 2007).

Peru has always had an intellectual output from civil society which outmatched the size of the country (Carroll, Humphreys and Scurrah 1991). This led to the creation of several NGO think tanks covering a range of sectors. Some fear that the current reduction in external aid is leading to shrinkage in the number and level of activity of these independent sources of research and policy development. Government is not inclined to fund those organisations critical of their policies.

During the 2000s there were many NGO attempts to bring justice to those involved in the abuses committed during the war. There was also a call for more transparency and a reduction in corruption given the fall of President Fujimori and subsequent revelation of corruption during his period in power. These campaigns, along with concerns over the environment led to increasing tensions between civil society and the government.

3.4.3 Legal framework¹²

Peru's national legal framework follows civil law, with CSOs chiefly regulated by the civil code. There are national regulations that govern International Technical Cooperation organisations, which apply to Peruvian NGOs, registered as *asociaciones civiles sin fines de lucro* as well as International Technical Cooperation Foreign Entities based abroad. The association, the foundation, and the committee, are the legal types of civil society organisation (CSOs), or non-profit legal entities, regulated by the Civil Code. Income Tax payment is also an important factor, as tax exemption for Associations and Foundations is hard to obtain and restrictive (ICNL 2013c).

The NGO Law of 2006, administered by the state Agency of International Cooperation (APCI), regulates the formation of NGOs and their activities (Bertelsmann Stiftung 2012b). The law requires NGOs to register with APCI. The law has been widely criticised, with some key articles ruled unconstitutional, although most have been upheld (ibid). Also significant is that a proposal to increase the powers of the APCI, which has the potential to significantly affect the operation of NGOs, has been pending in Congress since 2009. Many hope that this legislation will not be approved, but the threat of a future government returning to this is ever present.

Specific legal restrictions to NGOs involved in politics or lobbying do not exist. However, groups that do undertake these activities have faced efforts to silence them (ICNL 2013c). It is important to remember that the heavy handed attitude of the Garcia and Fujimori government has not allowed for a more progressive reform of laws pertaining to civil society.

With regards to indigenous rights, in 2011 the government promoted a law to give Peru's indigenous communities the right to be consulted regarding legislative or administrative issues which affect them

¹² This section is based on information from ICNL (2013c) *NGO Law Monitor: Peru*. <http://www.icnl.org/research/monitor/peru.html> unless otherwise stated.

directly (Human Rights Watch 2013c). This was passed after a decade of ratification by Peru of Convention 169 of the International Labour Organisation.

The Toledo Government (President of Peru from 2001 to 2006) included human rights and social protection language in its social policy legislation (The World Bank Group 2008). It has been argued that “policies fostering participation and local empowerment are increasing the percentage of households that participate in local decision-making and the sense of entitlement to be part of the decision-making process” (ibid). However, there are substantial challenges to the implementation of these social policies (ibid).

The General Law of Education (2003) codified education as a social right. However, challenges include decentralisation within public education (The World Bank Group 2008). Although decentralisation could create opportunities for participation in ensuring quality, without a culture of evaluation and national standards to measure results against decentralisation may exacerbate quality disparities (ibid).¹³ With regards to health, a rights-based legal framework for health promotion exists, although this emphasises individual as opposed to the state responsibility. The 1993 Constitution (Article 7) and the General Law on Health (Law 26842) of 1997 state that citizens have the right to participate individually or collectively in health-improving activities (ibid).

There have been some achievements in Peru’s nutritional health programmes. Law 27460 implemented decentralised administration, with representation of civil society. Law 27732 mandates civil society participation in design, implementation decision-making and revision of nutritional programmes. However challenges exist and even when participation is mandatory, those who benefit are community members in positions of leadership (The World Bank Group 2008).

3.4.4 The operating context

The NGO Law of 2006 is argued to be the most significant restriction to NGOs as it allows extreme control of resources by APCI, creating barriers to NGOs’ external funding (Act Alliance 2011; ICNL 2013c). It is also apparent that organisations working on issues that do not favour the government are subject to increased scrutiny. Human Rights Defenders in Peru have faced judicial harassment (CIVICUS 2013b). It has been reported by human rights organisations that participants undertaking demonstrations have been arrested (Bertelsmann Stiftung 2012b).¹⁴

In the past 4-5 years, Peru has become an upper middle income country due to its rapid economic growth. One of the effects has been the withdrawal of most foreign assistance (Peralata 2008). The golden years of NGOs and the need to assist groups during and after the civil war had made Peru a centre for external assistance. Suddenly many donors withdrew and often without much attention to any logical exit strategy (Pinzas 2009).

A quick review now shows a massive reduction of NGOs in Peru since around 2009.¹⁵ Think tanks exist but there are fewer and these are less tied to civil society. It is not clear without more detailed research exactly how many NGOs have closed, but a review of the umbrella body of NGOs would indicate that at least 50%, perhaps two thirds, are no longer functioning. This has clear implications for many areas of social life and for NGOs’ work in Peru (Act Alliance 2011).

¹³ According to the 2012 Programme for International Student Assessment (PISA), which assesses competencies of 15 year-olds in reading, mathematics and science, Peru was ranked 65 out of 65 countries (Source: OECD 2012; Álvarez 2013).

¹⁴ There was also criminalisation legislation passed during the García Government linked to protests over extractive industries See: <http://innovacionesinstitucionales.files.wordpress.com/2013/08/dt-9-los-derechos-humanos-y-las-industrias-extractivas-en-el-perc3ba1.pdf>

¹⁵ We went through the data base of the umbrella group Asociación Nacional de Centros and at least 50% of the websites would indicate that the NGOs no longer exist. Of those left, perhaps another 50% have not been updated since 2009 which would indicate lower levels of activity and funding. There are of course some remarkably active exceptions, especially those websites linked to the Amazonian Indian groups.

There are, however, exceptions. The indigenous groups are still very active in part because of the ongoing threats to their environment from external extractive industries, but also the availability of niche funding from foreign donors dedicated to indigenous and environmental matters. Furthermore, continued debates over human rights have left some of the human rights NGOs still in receipt of funds.

In line with our findings elsewhere¹⁶, there are new and emerging civil society movements and organisations. These are often driven by a younger generation (student movements and the indigenous movements). The indigenous organisations are now some of the strongest in the country, despite lower levels of basic education, their relative isolation and dispersal across huge geographic areas.

The formal options for participation have also been improved to an extent. The decentralisation policies of the state have led to opportunities to participate in the governance of local government and services, especially in health and education – although these are not without challenges (The World Bank Group 2008). Whether decentralisation will in the longer term produce improved local governance is still to be shown and it is too early to tell whether this move will improve the problematic governance issues which have confronted Peru for many years.

Another positive influence in Peru has been the founding of the “Defensoría del Pueblo” (ombudsman’s office), which now has offices in all regions of Peru, and describes itself as a critical collaborator with government. It has it would appear built up serious credibility in the country, is often the first port of call for individuals in conflict with the state and has defended groups against illegal actions by the state. For civil society the Defensoría del Pueblo plays an important role.¹⁷

3.4.5 Conclusions on Peru

There has traditionally been a strong local civil society in Peru. In recent years there has been a reduction in foreign donor support for civil society so formal NGOs have suffered a proportional decline. Meanwhile, the civil war and neoliberal legislation also reduced the prevalence of mutual support organisations as well as weakening formal labour organisations. The instability of political life in Peru and the defensiveness of consecutive governments to criticism of their plans to expand the economy led to tensions with specific groups of civil society. There has also been a failure to drum up a strong constituency in middle classes who probably do not easily identify with events in isolated parts of the country. The current government is less antagonistic than previous regimes to civil society, but controversies over the Amazon and extractive industries are likely to create tensions between state and civil society. Poor governance also seems systemic and also threatens gains made by the economy.

There is still a role for external support to existing Peruvian groups which are willing and able to engage with the state over such issues and also to argue in favour of the more marginalised sectors of the population. There is little reason, however, for external bodies to fund the things that could be, and often are now, supported locally by government for some social protection programmes or popular campaigns for apolitical causes such as cancer research and some of the church initiatives.

¹⁶ See <http://www.pria.org/>; Development in Practice (2013) Special Issue: Civil societies at crossroads: eruptions, initiatives, and evolution in citizen activism, 23(5-06).

¹⁷ <http://www.defensoria.gob.pe/>

3.5 Rwanda¹⁸

3.5.1 Context

For almost 20 years, political space in Rwanda has been dominated by the Rwandan Patriotic Front (RPF), the party that came to power following the civil war (1990-1994) and genocide (1994) that left at least 800,000 people dead. Although Rwanda remains extremely poor, for the past decade the country has largely been at peace, known relative internal stability, experienced economic growth averaging 8.1%, and seen major achievements in health, education and the productive sectors. The country has received huge amounts of overseas aid to assist in this process and international NGOs have been strongly present through the post-1994 period, active in the economic, social and governance fields.

Rwanda’s progress is nevertheless not without controversy. The ruling elite maintain strong control over all aspects of the country, pursuing a developmental and consensus-based political plan that tolerates no dissent. Regional relations are fraught, with claims over Rwanda’s role in eastern Democratic Republic of Congo plaguing the country’s international relations. This has affected aid flows on a regular basis.

New legislation and a decentralisation programme that aims to strengthen local decision-making have opened up legal space for citizen engagement with the state and have supported increased civil society involvement in policy-making. However, space for more political or human rights-related work is limited, and is the focus of much of the academic literature and reports from international human rights organisations.¹⁹ The government greets analysis that is critical of the RPF-led project, especially by external writers, with intolerance, resulting in a long-standing friction. Analysis of the operating space for NGOs carried out by Rwandan organisations within Rwanda paints a more nuanced picture, namely that while organisations are constrained by a sensitive political context, they are able to support social and economic development, including amongst vulnerable groups, provided that they align with the nationalist developmental project.

Rwanda: basic data




Population (2011):	11.46 million
GDP per capita (2011):	1,163 USD
UNDP Human Development Index (2012) (rank 1-186):	166
Transparency International Corruption Perceptions Index Score (2013) (scale 0-100):	53
World Bank Rule of Law Index (2007) (scale 100-0):	30.5
Official Development Aid (2011):	1278 million USD
Poverty Incidence:	89.6%
Enabling Environment Index Score (scale 0-1):	0.42

Sources: Bertelsmann Stiftung (2012c); Central Intelligence Agency (n.d); CIVICUS (2013a); Transparency International (2013); ICNL (2013d); OECD (2013); UNDP (2013); World Bank (2013c)

¹⁸ Initial findings from this case study were validated in discussion with individuals based in sub-Saharan Africa, involved with civil society or international NGOs in Rwanda, and with recent long-term experience of the Rwandan context.

¹⁹ See Human Rights Watch (2013d) and Johnson (2013) for two very different perspectives.

3.5.2 Background to civil society and NGOs

Civil society in Rwanda has historically been weak, a result of top-down state control over most aspects of life. Associational life emerged as the colonial period began to draw to a close, with a growing number of church-based groups, cooperatives, mutual security societies, cultural associations, and clan organisations. These became the spaces in which economic, social and political opportunities emerged, including the beginnings of political parties by the late 1950s (Prunier 2002). Rwanda's post-colonial regimes were authoritarian and all-pervasive, and associations, cooperatives, and church-based groups existed under the auspices of a one-party state.

By the 1980s local and international NGOs were prolific in Rwanda, a country upheld as a developmental success. However, the *quantity* of both local and international NGOs that existed prior to the genocide is at major odds to the *quality* of civil society. While associational life existed it was not a civil society that promoted pluralism, democracy or resilience (Uvin 1998). When democratic space opened up in the early 1990s, it was filled with radical and ethnically divisive voices (idem). During the civil war and genocide many local organisations were either implicated in massacres or did nothing. Only a few attempted to act in the face of the violence. Nearly all INGOs left the country when the genocide began in earnest in 1994, but flocked back in even greater numbers to deal with the aftermath, damaging their credibility, particularly with the new government (Hayman 2006). This history is important to understanding civil society in Rwanda today and the attitude of the RPF-led regime towards NGOs.

A recent study of civil society in Rwanda reports that local civil society organisations are growing in number and are more diverse (CCOAIB 2011). In addition to local and international NGOs and faith-based organisations, there are more cooperatives, associations, informal organisations, women's groups, youth groups, trade unions, media associations, micro-finance organisations and human rights organisations. However, the report notes that many associations and cooperatives do not see themselves as part of civil society, and many remain weak with fairly minimal impact (idem: 45).

Local and international NGOs are heavily focused on service provision and support for vulnerable groups, with a high proportion of NGO spending going on health, education, social protection and agriculture (RCSP 2011). This reflects the roles civil society groups ascribe to themselves, but also the operating climate for NGOs, with a government that generally distrusts civil society but tolerates NGOs provided that they align their activities with national development plans and priorities (Bertelsmann Stiftung 2012c).

The government, however, has not been averse to attempting to enhance citizenship and public engagement, for example through the *Ubudehe* programme which aims to stimulate participation and accountability at the local level. The programme received a United Nations Public Service Award in 2008 and has created spaces for some form of participatory democracy (Shah 2013).

3.5.3 Legal framework

In 2008 the government enacted Organic Law no. 55/2008 governing non-governmental organisations in Rwanda. In 2011, new laws were passed governing national NGOs (Law 04/2012), international NGOs (Law 05/2012) and religious based organisations (Law 06/2012), after a lengthy consultation processes which included Rwandan and international civil society organisations, as well as local and international experts. The ICNL's assessment of the new law is that it is not perfect but is a positive step in the direction of creating an enabling environment for voice and participation (ICNL 2013d).

The national NGO law regulates the registration of NGOs, and limits the power of government to deny registration. The law also contains provisions to strengthen NGO internal operations and legitimacy, and establishes rights and procedures for NGOs to participate in policy and legislative development (ICNL 2013d). While some report that registration is inexpensive and fairly simple if somewhat slow (CCOAIB 2011), others observe that many organisations find the registration and reporting procedures

onerous (Freedom House 2013e). The international NGO law contains similar provisions to the national NGO law. However it also places a 20% limit on administrative expenditure. Multiple authorities exercise varying degrees of oversight of the NGO sector, each of whom require periodic reporting, which can make compliance efforts costly and burdensome (ICNL 2013d).

A bigger challenge to NGOs comes from the 2003 constitution. The constitution guarantees freedoms of association, peaceful assembly, the press, speech, information, thought, opinion, conscience, religion and expression. However, Article 33 prohibits the “propagation of ethnic, regional, or racial discrimination, or any other form of division”. The wording on divisionism is vague and has been used against individuals, political parties, NGOs and civil society organisations to restrict and punish those accused of promoting divisionism or of harbouring genocide ideology.

3.5.4 The operating context

One informant proposed that four types of organisation can be identified in Rwanda: those that live in fear of the state, play safe and avoid confrontation; the predators or survivors for whom civil society presents an arena for private and political accumulation; the cautious progressives who find innovative ways to engage positively with the state; and the hard core activists (often outsiders) who are heavily critical of the state.

Control

Despite a strong legal framework, the real operating context for NGOs can be very restrictive. The situation is particularly problematic for organisations that work on human rights or sensitive governance issues or those that are openly critical of the government. Such groups can be subjected to legal action, intimidation and harassment. At the most extreme end, the Rwandan Government uses legislation on divisionism and genocide ideology to restrict space for civil society activists and political opposition (Beswick 2010; Bertelsmann Stiftung 2012c).

The uneven application of the laws creates a climate of uncertainty for those who wish to discuss sensitive issues openly and has contributed to the perception of narrowing political space (Beswick 2010). Threats, intimidation, disappearances and extra-judicial killings, including outside of the country, have further exacerbated this climate of fear. These actions are difficult to attribute to the government, but are the subject of speculation and rumour among civil society activists and government opponents, both inside and outside the country. As a consequence, activists within Rwanda exercise considerable self-censorship (*idem*).

Consensus-building, the elite bargain and civil society consultation

A large number of local and international NGOs do, however, operate in Rwanda, working within the boundaries of a policy-making and political system which is based on unity and consensus, rather than contestation and competition (Hayman 2009). The policy-making environment is structured by a “political settlement or elite bargain” (Golooba-Mutebi and Booth 2012: 21). Within this elite bargain, there is more inclusion and compromise than observers often recognise. While the government rejects the notion of civil society as a counterweight to government (Bertelsmann Stiftung 2012c), it does accept the involvement of civil society in the process of national development policy-making, albeit on its terms (Gready 2010; Freedom House 2013e). The process of participation within development policy-making dates back to the late 1990s (Hayman 2006), and permeates multiple levels of policy-making at national and district levels (Bertelsmann Stiftung 2012; CCOAIB 2011).

On the other hand, many analysts consider that the system fosters co-optation and control (Human Rights Watch 2013d; Gready 2010), and that the situation is getting tougher. Close connections amongst the Rwandan elite, who circulate within the political, bureaucratic, religious, and civil society spheres, mean that space for civil society is tied up with this elite bargain. Organisations are constantly

under scrutiny and many find themselves walking a narrow line between independence and co-optation.

Capacity challenges and external support

In addition to this difficult operating context, many civil society organisations in Rwanda have inherent structural weaknesses. Despite decades of external assistance, including partnerships with international NGOs and various donor-funded programmes aimed at strengthening civil societies, local organisations remain weak. They suffer from resourcing and sustainability challenges, as well as poor organisational capacity and systems (CCOAIB 2011). Of particular note is the frequent movement of senior staff amongst civil society groups, international NGOs and government positions, leading to a problem of skills and capacity retention (*idem*).

In recent years the political situation has led many international donors and NGOs to reduce support to Rwanda. A number of larger INGOs are no longer running offices in Rwanda, and have scaled back some programmes and projects. However, the reasons for such decisions tend to be multiple and cannot be solely attributed to the operating environment. Whatever the reason for withdrawal, the consequence will be less aid available to local NGOs, which will do little to change the status quo or improve the chances of civil society progressing. On the other hand, Rwanda's membership of the East African Community is opening up opportunities for cross-regional collaboration and capacity building which may help to nurture local organisations.

Golooba-Mutebi and Booth (2013) urge development actors to recognise the positives of Rwanda's political settlement and elite bargain, and find ways to work with this framework, rather than pushing for principles and approaches that are inspired by a model of liberal democracy that is neither recognised nor accepted amongst the ruling elite.

3.5.5 Conclusions on Rwanda

It is important to distinguish between: space for development-oriented NGOs to function and implement development programmes and projects (generally uncontested); space for civil society organisations and NGOs to participate in development policy-making (tolerated and encouraged within certain boundaries); and space to engage in political activities and work on sensitive, human-rights related or governance topics (restricted). This is sometimes a fine line, in a country where insecurity (real or imagined) is not far from the surface, which creates boundaries for the roles of civil society organisations. NGOs in Rwanda consequently operate in a climate of heavily-controlled political space. Within this space, the government tolerates NGOs insofar as they are contributing to the national development plan and work within the consensus-based political system.

Donors and INGOs seeking to support civil society in Rwanda need to adopt a long-term perspective based on in-depth critical appraisal. NGOs that operate within the elite bargain have more chance of opening up spaces for citizen voice and action through a process of gradual social change at multiple levels, than NGOs that push a human-rights, democracy agenda. However, external supporters need to be extremely alert to the real dynamics under the surface in Rwanda, including knowing which groups and individuals they are supporting, so that they do not inadvertently underpin further violence through naivety, as happened in the past. Nurturing of local civil society should be coupled with high-level political dialogue to hold the Rwandan government to account regarding its international human rights obligations and its own legislation on NGOs.

3.6 Vietnam

3.6.1 Context

Donors have frequently castigated Vietnam for its record on human rights, which remains appalling, despite its election to the UN Human Rights Council (UNHCR) in November 2013. The 2013 CIVICUS Enabling Environment Index identified Vietnam as the 10th worst country amongst those surveyed for threats for civil society space. In contrast, Vietnam’s economic performance has been acknowledged by the international community. Within 25 years it has been transformed from one of the world’s most poverty-stricken countries to a middle-income country.

As a result of the country’s positive economic performance, bilateral donors are steadily withdrawing their support for development projects, including funding for local NGOs. Vietnam is struggling to deal with the economic disruption caused by aid withdrawal and the global downturn.

3.6.2 Background to civil society and NGOs

The Communist Part of Vietnam (CPV) ushered in *doi moi* (*renewal*) economic reforms in 1986 to attract foreign direct investment. Civil society began to bloom from this period, particularly in the 1990s when there was an increased inflow of aid from development agencies from Japan, Europe and international financial institutions (Gray 1999). Numerous INGOs began to move into the country and there was a proliferation of local organisations.

Vietnamese NGOs are heavily involved in charity, research, consultancy, education and health. They are registered by the state through Vietnamese Union for Scientific and Technical Associations, line ministries and provincial/district people’s committees. But NGOs are only one part of a highly diverse and civil society in Vietnam. CIVICUS (2006) also identifies CBOs, mass organisations and professional organisations as important subsets of civil society actors that deserve special consideration. However, this is an area of contention as they are subsidised by the state, and so could be considered quasi-governmental. Unlike NGOs, most CBOs are not formally registered under the civil code but are an integral part of civic life in Vietnam.

The majority of research-oriented NGOs are based in the capital; similarly technical assistance NGOs gravitate to Hanoi. This is probably explained by the proximity Hanoi offers to the seat of government, since these NGOs invest a lot in policy advocacy. Hanoi also offers close access to international donors and organisations. NGOs centred on social issues are primarily clustered around Ho Chi Minh City (HCMC).

Vietnam: basic data




Population (2011):	88.78 million
GDP per capita (2011):	3,205 USD
UNDP Human Development Index (2012) (rank 1-186):	128
Transparency International Corruption Perceptions Index Score (2013) (scale 0-100):	31
World Bank Rule of Law Index:	---
Official Development Aid (2011):	3514 million USD
Poverty Incidence:	38.5%
Enabling Environment Index Score (scale 0-1):	0.37

Sources: Bertelsmann Stiftung (2012f); Central Intelligence Agency (n.d); CIVICUS (2013a); Transparency International (2013); OECD (2013); UNDP (2013); World Bank (2013c)

3.6.3 Legal framework

Different legal frameworks are in place for INGOs administered by the three main governmental agencies tasked with managing affairs relating to international donors. NGOs are likely to find it very difficult, if not impossible, to get registered if they work in an areas perceived as politically sensitive (Sidel 2010). The legal registration process is long and complex even if an NGO is regarded apolitical. The lack of a clear legal framework engenders an insecure and unpredictable operating environment. Widespread corruption and lack of transparency in official procedures means nepotistic networks are usually key to achieving successful outcomes.

NGOs are also subject to administrative decrees. There have also been recent administrative decisions that make the legal environment more challenging for NGOs. Restrictive provisions relating to donor funds were introduced by Circular 7/2010 (Sidel 2010). The Prime Ministers Decision No.97 (implemented in 2010) restricted scientific and technical research to 317 topics; other subjects effectively outlawed for public discussion (Kepa 2011: 3). These policies emphasised the role of civil society in providing technical assistance within the context of a strong state authority. This limits the space for NGOs to engage in political advocacy, and represents official suspicion about NGOs as a potential threat to state power. INGOs are obliged to provide written reports on their activities every six months to COMINGO (NGO Resource Centre 2013). This can be a real impediment to the operational efficiency of INGOs.

There are, however, some interesting political and legal changes underfoot. ‘Rice-roots’ movements have emerged in the last decade and have been increasingly vocal in demanding greater inclusion into the policy process (Wells-Dang 2010: 106). The government has taken some progressive steps in response to the challenges they pose to their authority, including that new legislation has been passed to promote popular participation in decision-making (ibid).

There are other promising signals of greater efforts at inclusion, including USAID’s approval for the government when it signalled its commitment to working with civil society to tackle a host of political/economic challenges by signing the Vietnam Partnership Document in January 2013 (Parker 2013). Some NGOs can make claims of real policy impact, including the consultation of LGBT NGOs by the Ministry of Justice on proposals to revise legislation relating to same-sex cohabitation. Later the same year, the government abolished fines for organising and participating in same-sex marriage.

3.6.4 The operating context

Vietnam is regularly criticised by INGOs such as Human Rights Watch (2013e) and Amnesty International (2013b) for gross human rights abuses and they have been criticised for taking advantage of the ambiguous wording of security laws (especially the 1999 Penal Code) to prosecute democracy and human rights activists and their families (Amnesty International 2013b). The judiciary is politically partisan. The government does not permit the establishment or operation of human rights NGOs, and uses a variety of means to monitor, intimidate and persecute those critical of the human rights impact of its policies.

There are slow transformations in the body politic that are leading to greater civil society integration in the policy process. NGOs have successfully lobbied for the Assembly to postpone the passage of the land law by presenting alternative plans based on community consultations (East Asia Forum 2013) and a Civil Society Forum was established in September 2013.

Rights of assembly, association, demonstrations and access to information are proclaimed in Article 69 of the 1992 Constitution, with the qualification that such rights need to be stipulated by the law in ‘a crude expression of socialist legal positivism’ (Bui 2013a: 90). The Ministry of Justice found that 25.59% of executive orders and decisions between 2007 and 2011 contravened constitutional law (ibid). The CPV approved a constitutional amendment process in 2011 in response to pressure to address the disjuncture between legal rights and political practice. The public discourse on

constitutional issues opened up to incorporate different civil society voices in a way that would be unthinkable a decade ago (ibid, p.9). Hundreds of thousands of people participated in the consultation process but hopes that this signalled the start of meaningful policy dialogue were dashed. Party hardliners prevailed and a series of amendments were instated that strengthened the position of the CPV (Human Rights Watch 2013f).

Nonetheless, these events illustrate a greater willingness amongst the intelligentsia, retired military figures and the general public to voice opinions on matters of public interest.

Civil society is also struggling with financial challenges. They have restricted and unstable sources of funding, which compromises their abilities to operate effectively and develop long-term strategies, and undercuts their efforts to retain staff. Talented and mobile members of staff seek alternative employment overseas once they have gained experience, causing disruption in programme delivery (Taylor et al 2012: 5). Many NGOs that rely on international donors are finding it difficult to procure alternative sources of public or private funding. NGOs have adapted their agendas in response to the priorities of development aid and there is evidence that organisations are becoming increasingly innovative in their efforts to diversify funding streams (ibid: 28).

3.6.5 Conclusions on Vietnam

NGOs face internal challenges including organisational capacity; and external challenges including human rights abuses. The government maintains control over potential dissidents, whilst encouraging the development of NGOs involved in apolitical technical assistance, research and service delivery (Sidel 2010). However, there are some positive signs that civil society is finding creative ways to achieve sustainability and political impact. Some close observers of Vietnamese politics argue that the international portrayal of the country as a totalitarian, closed polity are failing to appreciate the ways in which activists are expanding civil society space by engaging in political struggle on the ground (Wells-Dang 2010: 109; Bui 2013a). Donors can promote these trends by lobbying the government in bilateral talks and exploiting the advocacy opportunities offered by Vietnam's seat on the UNHCR. Funding withdrawal should also be accompanied by capacity building measures.

4 Core themes and issues

As with the previous report, this report covers 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 organisations in those countries today have emerged and the challenges both they and international NGOs face. Moreover, several of the countries are experiencing rapid and profound change, making the context for civil society extremely fluid. Egypt is a very significant example of this, but Kosovo, Vietnam and Myanmar are likewise facing rapid change.

This section teases out some of the common patterns and themes that emerge from these six case studies, and reflects on how these patterns and themes relate to the findings from the six countries covered in the Phase 1 report (Bangladesh, Ethiopia, Kyrgyzstan, Honduras, Serbia and Uganda).

4.1 Development and human rights: safe and dangerous topics

The majority of the cases demonstrate that work by NGOs (local and international) on social development issues is tolerated, or even actively supported by governments. However, organisations working on human rights and democracy face greater restrictions (e.g. in Myanmar, Vietnam, Rwanda, Egypt and Peru). In Peru, it is likely that tension will further emerge between civil society and the

government due to controversies over the Amazon and extractive industries. In the study on Vietnam, for example, the development of organisations involved in apolitical technical assistance, research and service delivery is encouraged; however, the establishment or operation of human rights NGOs is not permitted.

Human rights abuses against civil society activists are widespread, and organisations working on human rights or activists that express anti-government sentiments are particularly vulnerable to repression. Self-censorship is an all too common coping mechanism. Organisations working on ethnic or religious minority issues also experience difficulties in Myanmar and Kosovo, although we note that new rights for indigenous groups to be consulted in Peru are a positive development. In the Kosovo case study discrimination against LGBT persons persists. On the other hand, LGBT NGOs have been involved in successful consultation processes in Vietnam.

Playing an advocacy role can also be problematic. In Kosovo, civil society organisations are managing to pressure the government to be more accountable, and to permit greater inclusion in decision-making. However, in other case studies space for advocacy is limited (e.g. Egypt, Vietnam). The most evident restriction on civil society activism comes through clampdowns on the rights of public assembly, as in Egypt.

Box 2: Development and human rights in the Phase 1 case studies

The findings of the Phase 2 paper replicate the Phase 1 cases on this theme. Service delivery is an accepted and fairly uncontested role for civil society organisations in all of the first six case studies; in some there was also a certain degree of scope for NGOs to tackle governance issues, including advocacy (e.g. Bangladesh, Kyrgyzstan). However, the Phase 1 report observed that when NGOs stray too far into the political arena they face greater restrictions and tensions arise with government (e.g. Bangladesh, Kyrgyzstan, Ethiopia, Honduras and Uganda).

In all countries in the Phase 1 report, there were challenges for NGOs working on human rights issues, including LGBT and minority rights, although this was more extreme in some environments than others. The vulnerability of those defending minority and LGBT rights was particularly noticeable in Honduras (where minorities and LGBT activists have become more vulnerable to violence and assassinations), Kyrgyzstan, Serbia and Uganda (though we note that the Ugandan president has recently refused to sign off very controversial anti-homosexuality legislation).

4.2 Participation and policy-making

In many countries there is a blurred line between political participation and civil society, a blurring that is particularly problematic when civil society becomes an avenue for political opposition, or where NGOs are associated with armed groups. In Egypt, civil society organisations played a critical role in recent upheavals and are likewise closely involved in political processes to negotiate change. However, recent events have shown that boundaries and operating leeway for civil society can constantly shift. When supporting the revolution's calls for democratic change was seen to be a national priority, civil society activists were at the forefront and their work was unchallenged; continued work post-revolution led to strong backlash and curtailment of activities related to democracy and human rights. Civil society - particularly those receiving external funds - began to be seen as working against national security and interests.

In Myanmar the blurred line is more nuanced. The NLD deliberately avoids advocacy in areas of high political repression, but service delivery activities do provide the NLD with a subtle way of amassing support and raising political consciousness.

Most of the case studies demonstrate that there is space for NGOs to participate in policy-making at some level. Often this is carefully controlled, as in Rwanda, and too often participation seems tokenistic. In Vietnam, there are some indications that civil society has been successful to an extent in fighting for greater inclusion in the policy process; new legislation has been passed to promote popular participation in decision-making. Likewise in Myanmar there are signs that the government is becoming more receptive to civil society.

Decentralisation appears to represent an avenue for more involvement of civil society and citizens in policy-making processes. In Rwanda, for example, the decentralisation policy and the *Ubudehe* programme aiming to strengthen local decision-making has opened up space for citizen engagement with the state at the local level. Decentralisation has also been important in Peru, although the effectiveness of its implementation in practice is questioned. In Kosovo, the normalisation agreement between Serbia and Kosovo focuses on local government competencies and service provision, likewise offering opportunities for sub-national level engagement. Civil society organisations that engage with local authorities are also likely to be seen as more legitimate in the eyes of the local population, as observed in Kosovo, Rwanda, Peru and Vietnam.

There is inevitably a concern about co-optation of civil society organisations and activists into supporting government agendas through their involvement in policy-making processes. This comes out in the Egypt, Kosovo, Rwanda and Vietnam studies, and presents a challenge for the true participation of civil society.

Box 3: Participation and policy-making in Phase 1 case studies

We did not comment on decentralisation as a key theme in the first six studies. However, most of the case studies observed invitations from the government for civil society to participate in policy arenas, most notably around development programmes, and very often through decentralisation or at the sub-national level. Some governments had enacted participatory processes in the preparation of laws and policies (e.g. Uganda and Honduras). The Ethiopian and Kyrgyzstan cases gave examples of programmes aimed at bringing local government officials and civil society organisations together which are allowing relationships based on mutual benefits to emerge.

However, the report also raised questions about the real extent of participation, and whether it is genuine participation or more tokenistic consultation. For example, the Honduras example showed legal frameworks supportive of participation in governance processes but in reality freedom of expression is suppressed by a menacing atmosphere of intimidation and violence.

Likewise charges of co-optation arose. For example, in Serbia access to grants for CSOs often seem to depend largely on personal attachments or political affiliations.

4.3 Legal frameworks: between enabling and restrictive

There is a real mix of legal frameworks in the six case studies:

- Enabling legislation, e.g. in Rwanda and Kosovo
- Absence of a clear framework, e.g. in Vietnam and Egypt
- Restrictive legislation, e.g. in Peru and Myanmar, and also Vietnam and Egypt

A good legal framework is crucial to ensuring an enabling operating environment for NGOs, and often goes beyond legislation on NGO activities per se. Many of the case studies reveal how NGO activities are also affected (enabled and restricted) by other legal provisions or policies, including on human rights, decentralisation, assembly and association, information or communications, and taxation; provisions in constitutions are equally important. The absence of a clear framework creates an insecure and unpredictable environment, as in Egypt and Vietnam. Restrictive legislation (or heavy

bureaucratic requirements) hinders NGO operational efficiency, including how they generate funds from internal and external sources; and curtails their roles in advocacy, lobbying and campaigning. Organisations working on areas perceived to be politically sensitive often find registration difficult or even impossible (e.g. Vietnam and Myanmar).

However, a strong legislative framework does not necessarily translate into an enabling environment for NGOs, or – more importantly – a safe and protective environment with accountability measures built into the system. Legal frameworks that seem supportive of civil society can be abused through a lack of political willingness to implement laws (as we saw in Kosovo) or through strong-arm tactics to maintain control and compliance. This is particularly pertinent in Rwanda where the constitution has been used by the government to restrict civil society activity that it regards as divisive and has reinforced a climate of fear. Similar tendencies come out in the Egypt case study. In both these countries foreign-funded or international NGOs have been subject to crack-downs. Under such conditions, once the law is applied in a certain way, there is no mechanism by which civil society organisations can question or challenge how the law is being applied.

Box 4: Legislative frameworks in Phase 1 case studies

Serbia and Kyrgyzstan provide examples of good legislation poorly implemented. In Serbia, a framework of laws has been put in place for an enabling environment for civil society, but there is a lack of awareness amongst CSOs with regards to legal regulations.

Outdated, complex or weak legislation was highlighted as providing a fertile environment for abuses and misuses by both government and NGOs (e.g. Bangladesh, Honduras and Serbia).

Several Phase 1 countries had experienced the introduction of legislation restricting the activities of both national and international NGOs, for example in Ethiopia, Bangladesh, Uganda and Serbia.

4.4 History matters: understanding the quantity and quality of NGOs

The existence of a large or growing number of NGOs does not necessarily equate to a civil society which contributes effectively to social and political progress, as is evident in Rwanda, Vietnam and Myanmar. The quantity of NGOs can be at odds with the quality of civil society, especially when there is a tension between foreign-funded or external NGOs and local groups. Understanding the history of civil society in the country is crucial to being able to make this distinction, and to being able to ascertain the real potential space for civil society organisations to operate. Rwanda, for example, had a large NGO presence and a huge number of associations, civil society groups and cooperatives prior to the genocide; but civil society was retrospectively assessed as being very weak. Local organisations continue to struggle from both weak capacity and legitimacy, not helped by a repressive political environment. A vibrant civil society may not mean a progressive or effective one.

There are quite strong differences across the case studies with regard to the historical trajectory of civil society. Peru has historically had a strong civil society, with local organisations withstanding a turbulent political history. This differs to the trajectory of civil society in post-communist Vietnam or within authoritarian centralised states (e.g. Rwanda, Myanmar and Egypt) where the state had a heavy influence on civil society and where civil society activism may have been covert (as in Myanmar). The historical legacy often impacts on relations with contemporary regimes. For example, in Vietnam raising funds in an innovative way is challenged by the nature of the post-communist state and society. History may also explain why seemingly progressive new regimes become hostile to civil society, for example where revolutionary movements have relied on NGOs or civil society in their bids for power, but see them as a potential threat once they are in power, particularly if civil society groups continue to operate within the political arena. Egypt stands out as a case in point, but similar trends can be seen in other countries (e.g. Kosovo). Furthermore, NGOs can also be viewed with suspicion and hostility

by the local population, if ‘non-governmental’ is perceived as ‘anti-governmental’ by those who aspire to reconciliation or stability, or if NGOs are perceived as corrupt or the tools of donors.

The rapid growth of NGOs and other types of civil society actor following crisis or regime change can also be a double-edged sword. Myanmar is currently experiencing rapid growth in the number of NGOs, but elsewhere history shows that this sometimes has negative consequences, particularly when local groups can be crowded out by foreign-funded organisations or when there is increased competition (and therefore tension rather than coherence) amongst NGOs for resources. This was evident in Kosovo, Rwanda, Peru and, more recently, Vietnam. We will return to this in the next section.

Egypt is the only case study where polarisation within civil society is immediately apparent.

Box 5: History, quantity and quality of civil society in Phase 1 case studies

Several of the Phase 1 studies had a long history of vibrant civil society, notably Bangladesh, Honduras, Uganda and Ethiopia to a lesser extent; but polarisation was also a feature in Honduras (as in Egypt). Serbia and Kyrgyzstan saw rapid growth of NGOs in the 1990s. Kyrgyzstan and Ethiopia experienced major increases in NGOs following periods of conflict or political crisis. Bangladesh displays the problems of balance between local and external groups, but also the tensions that arise between the political elite and politically-active civil society.

Uganda, Ethiopia and Kyrgyzstan are examples where civil society provided a locus of support for regime change at a turning point in the countries’ histories but where the government subsequently took a hostile view of civil society when it goes beyond particular boundaries.

4.5 Aid and sustainability

Economic growth and positive economic performance has been accompanied by a reduction of external assistance in Peru and Vietnam, with a significant impact on some NGOs. The impact of aid withdrawal is likewise evident in Kosovo, affecting the sustainability and functioning of organisations. Here the withdrawal is based on post-transition stabilisation, rather than economic growth.

An increase in foreign-funded NGOs, which is common in post-crisis or post-transition contexts and has affected all our case studies at one time or another, with Myanmar currently experiencing this, can be both a blessing and a curse. Aid allows NGOs and nascent civil society organisations to flourish, provides much-needed support for vulnerable groups, and offers sustained resources for groups working on governance-related or human rights areas. The legitimacy afforded by foreign aid can also be used to encourage interactions between state and civil society.

However, an influx of aid can have a distortive effect, with NGOs following the money and concentrating on donor-driven priorities rather than local issues, or becoming over-dependent on external resources rather than building a sustainable local funding base. This was evident in Rwanda, Egypt, Kosovo, Peru and Vietnam. This causes problems when donors withdraw, leading to capacity and sustainability problems. It is interesting that in Egypt newly emerging youth groups and small movements (post-revolution) have refused external funds in order to maintain their credibility among the public and to avoid government scrutiny.

Moreover, the case studies indicate endemic problems with capacity building support that has had limited overall impact, often because it is about meeting donor or government needs (e.g. Kosovo, Vietnam, Rwanda). In the Kosovo case study, despite a donor influx, donors have failed to promote capacity building measures for NGOs which would enable them to withstand both disruptions in their funding model and changes in the political and economic environment. In Vietnam, some NGOs are finding it difficult to find funds in an entrepreneurial manner. And in many countries there are problems with staff and skills retention, e.g. Egypt, Kosovo, Vietnam and Rwanda. Weak capacity

amongst NGOs affects their ability to engage with government, either in participatory policy-making or in advocacy.

Box 6: Aid and sustainability in Phase 1 case studies

There were similar trends in the Phase 1 case studies in relation to aid. Declining funding, linked to global economic and policy trends, and security situations, was causing problems for NGOs in Honduras, Kyrgyzstan and Serbia. We also saw how an increase in foreign funding has positive and negative effects, e.g. in Ethiopia, Serbia, Uganda and Kyrgyzstan.

In the Phase 1 report we found that sustainability is a challenge for domestic NGOs where they are dependent on external funding or where foreign NGOs or mega-NGOs crowd out local civil society actors. For example, Kyrgyzstan saw an influx of aid after independence, but as external aid declines NGOs are experiencing capacity challenges. In Serbia, CSOs face challenges in accessing alternative funding sources as donors begin to disengage. This is after a significant amount of funding was provided to Serbian CSOs by international donors after the war.

4.6 Opening up spaces for influence and change

Some of our case studies are countries in the midst of profound and rapid change, notably Egypt and Myanmar, which is having major impacts on the roles and operations of NGOs. In all the countries, whether they seem to be on a positive or a negative trajectory regarding the civil society environment, international and local NGOs are finding ways to work and areas to work on. Sometimes the only option is to operate on the government's terms, as in Rwanda, which could have either positive outcomes (a slow process of building the capacity of civil society and trust through controlled participation) or negative consequences (underpinning a system that may ultimately result in more violent conflict). In other countries, NGOs are being forced to innovate to survive in a squeezed financial climate, as in Peru or Vietnam. In many contexts we see the rise of new less formalised or unorganised movements, which are managing to find space within which to influence government (or overthrow it in some cases). Such movements are evident in Vietnam (the rice-roots movement), Egypt and Peru. In Egypt social media is a key mobilising tool, with a strong youth presence. In Vietnam, on the other hand, the rice-roots movement is formed of very poor peasants and is not predominantly youth-based.

Generally, NGOs can operate provided that they work within set boundaries. This sometimes includes careful choice of language and discourse when working on sensitive topics. A particular window of opportunity for engagement with government – while also coming closer to grassroots communities – seems to be offered by decentralisation policies and programmes, as we see in Rwanda and Peru. In Peru, the establishment of an independent ombudsman appears to be particularly positive for civil society (it remains to be seen whether greater support will result in a more effective ombudsman in Kosovo). Other more encouraging signs include spaces for the international community to press governments to create enabling conditions for civil society, e.g. in Kosovo in relation to the ongoing EU integration process, in Myanmar through its chairmanship of ASEAN and in Rwanda through its membership of the East African Community. The improvement in the legal framework in Rwanda

could provide a means for holding the government to account on creating an enabling environment. And in Vietnam there are signs of space for greater inclusion of civil society in the policy process.

However, space is clearly closing, or remains closed, for many organisations engaged in human rights work or areas deemed to be politically sensitive. This is the case in the Peru, Egypt, Myanmar, Rwanda and Vietnam studies.

Box 7: Space for influence and change in Phase 1 case studies

The windows of opportunity were similar in the Phase 1 studies. In Kyrgyzstan and Ethiopia there may be greater scope for engagement at the subnational level, where it is possible to create spaces for collaboration and consensus-building amongst state, civil society and private sector actors to enable long-term change. As with Kosovo, the Serbia case study both demonstrated that EU integration can offer positive opportunities for creating enabling environments for CSOs.

New forms of civil society, particularly involved young people, are important in the Honduras and Kyrgyzstan case studies.

4.7 Knowledge

A final finding is that there is a limited amount of written material on NGOs and civil society in many of the case study countries, particularly peer-reviewed and academic literature on wider trends affecting civil society rather than studies of individual programmes or projects. There is a lot of literature on Rwanda, for example, but it focuses primarily on the genocide and the political economy, with limited in-depth exploration of civil society. For Myanmar sources are scarce in general. In Peru, we know anecdotally that privatisation is affecting community activism in rural places, but there is no literature analysing this. In Egypt, on the other hand, the legal and political framework in which Egyptian NGOs have operated over the years was relatively under-researched for a long time; over the past decade there has been an increase in independent critical research and think-tanks that are beginning to fill this gap.

In several countries we also see real contradictions across the literature on civil society, notably in Vietnam and Rwanda. In Vietnam, there is a contradiction between the analysis of civil society in global initiatives, such as the CIVICUS Enabling Environment Index, and the narratives of activists on the ground who may be aware that local organisations are able to create space for civil society. The paucity of literature means that weighing up the quality and credibility of the conflicting evidence is challenging.

Box 8: Knowledge in the Phase 1 case studies

We made no specific comments on the literature base in the Phase 1 report. However, retrospectively this is a pertinent point in some cases, such as Kyrgyzstan, though not all (Uganda, Bangladesh and Ethiopia have more substantive literatures). There are a limited number of authors publishing about the wide trends affecting NGOs and civil society in many of the countries we have looked at, making analysis heavily reliant on reports from international NGOs and donors. The gap between the analysis within global reports – CIVICUS, World Bank or Human Rights Watch for example – and the felt realities amongst those involved in supporting civil society organisations on the ground is equally evident in the Phase 1 studies.

5 Conclusions and Recommendations

The study takes place against a backdrop of ongoing profound change for civil society as a consequence of global geopolitical, economic and climatic shifts. Both formal NGOs and other types of civil society organisation will continue to face many challenges in the coming years in response to these shifts – but they also present exciting opportunities for emerging forms of civil society to find its

place and voice. International networks, NGOs in donor countries, philanthropic, bilateral and multilateral donors have an important role to play in facilitating this process. At the same time they need to be very careful not to disrupt or put at risk those who are most vulnerable in their local contexts; or deepen internal cleavages through discretionary support to some groups and not to others.

The twelve case studies (the six from Phase 1 and the six from Phase 2) demonstrate that a strong, historically-aware analysis of local civil society and the role of external NGOs is crucial for understanding who is who in civil society in a given country, and which organisations or sectors of civil society are most active, most effective, most vulnerable to funding fluctuations, or most at risk of invoking adverse responses from the state. Differentiating between the progressives, the opportunists and the co-opted may be one way of establishing which organisations may have the greatest impact, and therefore how they might best be supported in their work. A more historical analysis also shows how each country has faced moments of major flux which have profoundly impacted on civil society. In these volatile environments donors (including international NGOs) need to reflect on whether the strategies implemented were appropriate, and what vital lessons can be learned to improve activities in countries currently facing major change, such as Egypt, Myanmar and Kosovo.

We are concerned by the contradictions that emerge between global, regional, national and local discourses. A global rhetoric about enabling civil society exists, embedded in agreements like the Busan Partnership for Effective Development and shored up by recent attempts at mapping exercises and indices to get a better comparative understanding of the state of civil society. To some extent this global thrust is trickling down into national policy-making and political dynamics, as recent legislative shifts in some countries indicate. However, it is plainly obvious that the existence of good legislation does not necessarily translate into good implementation; and a lot of recent restrictive legislation exists and continues to be passed. On the other hand, attempts to standardise the analysis of the state of civil society, through mechanisms such as the Enabling Environment Index, can mask important nuances. The rankings and ratings for the countries we have studied are sometimes at odds with more local analyses of the situation. We need to beware of focusing too heavily on liberal interpretation of the functions of civil society, informed primarily by western perspectives, which may ignore or potentially damage local dynamics. Even in the most challenging environments for NGOs, our studies show that there are spaces for local civil society organisations, NGOs and international NGOs to function.

Further, there is a profound contradiction emerging with the withdrawal of support for civil society in many contexts (not just in the countries we have explored, but also happening in many western countries) set against the obvious needs for support for organisations working in difficult contexts, especially those working on human rights and governance issues. At the same time, this study highlights the damage that can be caused by over-aiding civil society organisations, or by over-emphasising the challenges for human rights and governance NGOs which may potentially undermine support for organisations working towards more long-term sustainability and social change. A careful balance needs to be struck.

While renewed interest in the state of civil society may lead to better knowledge, our case studies also demonstrate that we often have very contrasting reports about civil society. Good, independent, and diversified information is still lacking on civil society in many contexts. Efforts to map and understand civil society can be challenging in the face of fluid situations and rapid change.

5.1 Recommendations

Important lessons emerge from the brief case studies presented here, building on the recommendations made in the Phase 1 report.

We recommend that bilateral and multilateral donors:

- Use diplomatic pressure where leverage exists and **hold governments to account** over their legislation on NGOs and matters affecting civil society, as well as over their

commitments on human rights. This should also happen through international bodies such as the EU, ASEAN, East Africa Community, and UN bodies, and is especially pertinent while the countries concerned hold seats. The run-up to elections may present an important opportunity to encourage respect of human rights and freedom of association, expression and assembly.

- Encourage the **implementation of good legal frameworks** where they exist; where legal frameworks are weak, we recommend that efforts be made to support civil society to push for changes.
- Encourage the creation of **independent ombudsman offices** to support civil society to hold government to account.
- Fund **civil society support programmes** that are planned and implemented in a participatory country-specific manner with local partners, and that respect and work with local government, particularly at the sub-national level. More indirect support and needs-based interventions can minimise fears of external agendas while strengthening local capacities where it is most needed.
- Take a **long-term perspective** when aiding NGOs and put in place robust exit and sustainability strategies to ease aid volatility.
- Build on **lessons learned** (including historically) from other countries and contexts. For example, donors should be mindful of the risks of over-aiding nascent NGOs in Myanmar, recognising the negative consequences that this has had in other countries, including the crowding out of local groups by foreign-funded organisations, increased competition for resources, a focus on donor-driven priorities, and the risks of dependency on external funding.
- **Acknowledge where credit is due**, for example when governments have made efforts to engage with civil society or when civil society organisations are far from perfect but are developing from a low starting point, as we see in Myanmar, Kosovo and Rwanda. Constructive engagement nevertheless requires a careful line to be walked between ignoring real dynamics under the surface, over-aiding, and criticising unduly.

We recommend that international NGOs:

- Be **alert to the damaging consequences of pouring large-scale resources** into civil society in countries emerging from crisis within a short period of time. Recognise the damage of creating dependency, undermining public trust, and the sustainability and innovation of local civil society in the long-term.
- Take a **long-term perspective** when aiding local NGOs and put in place robust exit and sustainability strategies to ease aid volatility. This includes reviewing capacity building support.
- **Look beyond the capital cities**. Too often support for NGOs is concentrated in capitals, yet the most effective actions for nurturing local civil society are often at sub-national levels or outside the main cities.
- Explore **niches for working constructively with local partners**, intermediaries and local platforms, as well as semi-organised or unorganised movements, to influence and engage constructively with local authorities and government.
- Recognise **the limitations for nascent civil society** on the ground. This includes finding a balance between social service provision roles and advocacy roles – both are important.

International (protected) NGOs can be an important voice standing up for human rights in constrained environments; but they can also undermine local organisations through criticism of government which results in negative consequences for local civil society. The security and safety of local activists and staff need to be respected.

5.2 Areas for further investigation

This study has provided an overview of the issues surrounding legal and political space for international and local NGOs to operate in six countries. It has also reflected on how common themes and patterns relate to the findings from the six countries examined in Phase 1. Issues that merit further investigation that were touched upon in this paper include:

- Investigating the role of women's organisations in many of the countries. To what extent do women's organisations become a driving force for social change in these contexts? How are they positively and negatively affected by legislation? Is there a difference in legislation and operating space for women's organisations in these countries? Are women leaders of civil society organisations more likely to become co-opted when they are closely linked with the political elite?
- Connection between the political history of civil society and distrust by post-crisis regimes: are there any trends or patterns that can be predicted?
- Interrogating the challenge of supporting progressive local civil society groups without damaging them through too much aid. This is a major conundrum and more case study based work on good examples of supportive programmes, and bad examples of damaging ones, would help to build an evidence base.
- Examining social media, emerging social movements and their impact on opening up space for civil society to hold governments to account, as well as assessing in which contexts social media and emerging social movements are relevant. Likewise, exploring whether the enabling environment depends on more than technological platforms but also social capital and pre-existing social movements.
- Considering the power of transnational civil society and solidarity movements in carving out more space for civil society than is possible within national geographies. Whilst this is related to social media as mentioned above, it also includes the mutual support and engagement of transnational movements for global justice.

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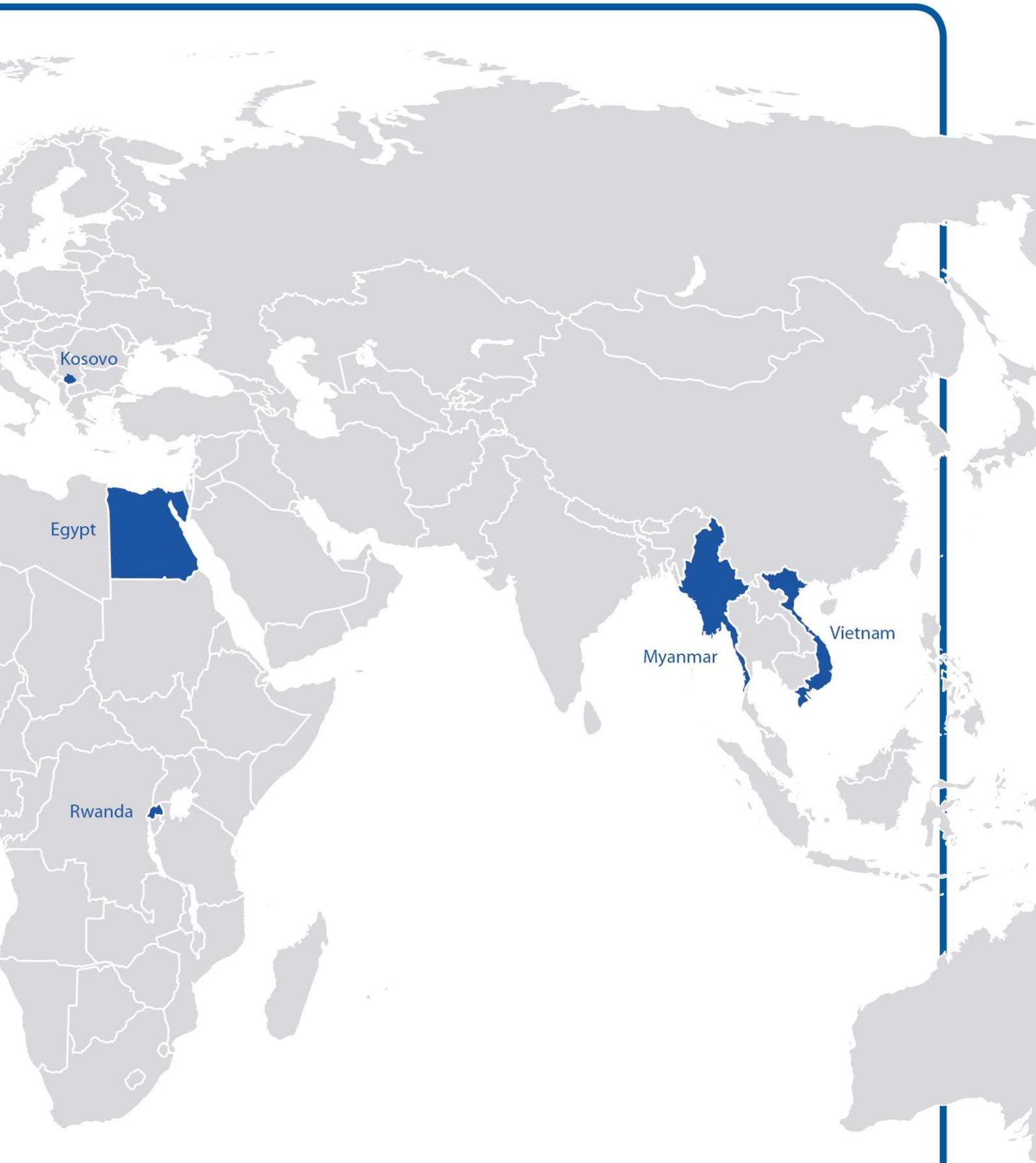
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Peru



Kosovo

Egypt

Rwanda

Myanmar

Vietnam

Annex: Countries analysed in this paper



EUROPEAN ASSOCIATION OF DEVELOPMENT
RESEARCH AND TRAINING INSTITUTES

EADI (European Association of Development Research and Training Institutes, www.eadi.org) is the leading professional network for development and regional studies in Europe. EADI pursues the following objectives:

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This policy paper was funded by BMZ.



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for Economic Cooperation
and Development