

Civil society under pressure – shrinking – closing – no space

By Barbara Unmüßig, President of the Heinrich Böll Foundation

A disconcerting trend has been perceptible for quite some time. Governments across all continents – irrespective of their political orientation – are taking drastic action against civil society actors: against non-governmental organizations, social and ecological activists, women’s rights activists and human rights advocates. The space for actors who are critical of government policies, who call for democracy and human rights, who take an active stand against large-scale projects, and who protest against social injustice, land grabbing and environmental degradation is shrinking. These actors are increasingly the focus of state and private powers and the target of vilification campaigns, repression or criminalization. As a political foundation with its roots firmly planted in the civil societies of our partner countries, we have experienced first-hand how their space is being restricted (shrinking spaces) or how it is becoming virtually impossible for them to carry out their political activities (closing spaces). An independent and critical civil society is not just a thorn in the side of a multitude of governments in Africa, Asia, Latin America and the Middle East; these same governments are fighting civil society to an extent unheard of in the past 25 years.

Civil society: no thank you

Intimidating, vilifying or even banning civil society is nothing new. Many people have been denied the fundamental rights of freedom of assembly, association and speech that are entrenched in the Universal Declaration of Human Rights of 1948, and this denial continues even today. We have even seen setbacks for quite some time: the space granted civil society actors to carry out their activities is being massively restricted. This is not only true of authoritarian or semi-authoritarian regimes but also of democratic governments. Some of the advances made in democratization in Eastern Europe, Africa and Latin America in the aftermath of the Cold War are just taken back. The rights to participation and involvement are being taken away again.

What is more, an increasing number of nations are jointly embarking on an outright “counter-offensive” against active citizenship.

Dozens of countries in Africa, Asia, Latin America, Eastern Europe and the Middle East have long since thwarted external democracy promotion – whether governmental or non-governmental. They do this with a veritable bundle of measures: comprising laws, bureaucratic and tax regulations and harassment, smear campaigns in the media, secret service methods and open repression. There appears to be an open season on the types of restriction that are permitted: activists are arrested, bank accounts frozen, threats made, licenses revoked, websites blocked, registrations coerced and offices closed.

NGO legislation booming

A veritable boom has broken out in so-called NGO laws governing relations between domestic and foreign non-governmental organizations (cash flow, registrations, reporting obligations, etc.). Laws of this nature are unquestionably legitimate. After all, we, too, are subject to the regulations of the law of association governing e.g. rules of non-profit status, taxation and the minimum standards for internal procedures, bylaws, elections, accountability, etc. However, it is vital that such regulations do not question the right of association but respect the independence of organizations. NGOs are not only under pressure in Russia, Turkey or India; in over 60 countries, NGO laws have either been passed or initiated over the past three years. In its most recent report, CIVICUS, a global organization for citizen participation, pointed to 96 significant restrictions in the rights of civil society in the period between June 2014 and Mai 2015.

The core concern of the new or amended NGO laws is to cut the flow of foreign cash to domestic organizations and/or to place the flow of money under state control. The law passed in Ethiopia in 2009, for example, prohibits all domestic NGOs receiving more than ten percent of their budget from abroad from engaging in any form of political activity. In Israel, a bill has been submitted that seeks to set this budget percentage at 15 percent. This shows the ambivalence of the governments concerned: money for NGOs should continue to flow into the country but then either purely for social or ecological projects with no designs on any form of political

engagement whatsoever or, for example, for the benefit of the governments' own issues or for such issues acceptable to such governments.

India's Foreign Contribution Regulation Act (FCRA) grants NGOs receiving money from abroad a "license" that dictates that ultimately no political activities may be funded with that money. For some time, India's authorities have intensified their efforts to check whether the various legislative requirements are being observed. Among the most prominent victims of the intensified checks conducted by India's government is Greenpeace India: the organization's FCRA license has been revoked, and some of their bank accounts blocked.

The specific means of restricting space and of intimidation include the registration rules and the regulations governing reporting obligations. Russia's NGO law has gained "notoriety" and found its emulators (e.g. in Malaysia and in an Israeli bill). Those receiving money from abroad must be registered and act as a "foreign agent". The term "agent" is not only used in NGO laws. Denoting critical minds and actors as "Western agents" has been a popular tactic in vilification campaigns – whether in Venezuela, Ecuador or Russia.

A large number of countries also require actors receiving foreign funding as well as foreign organizations operating within their countries to disclose their envisaged activities and to seek approval (Algeria, Ethiopia, Jordan, Nepal, and Turkmenistan) or to have them conducted through state channels from the outset. These restrictions are further aggravated by reporting obligations that are harassing in nature and not guided by any legitimate interest in transparency or accountability (Indonesia, India, and Bangladesh).

Increasingly, the registration process is being placed within the remit of national security agencies or ministries. In China, the new NGO bill stipulates that sovereignty will rest with the Ministry of Public Security instead of the Ministry of Civil Affairs, as has been the case until now.

Cambodia rushed an NGO law through parliament in the summer of 2015 which forbids all activities that endanger the peace, stability, public order, culture or

traditions of the country. This wording is characteristic of virtually every new NGO law. They either restrict political activity or prohibit it altogether. Those opposing “public order and security” or violating national interests can expect their license, registration, etc. to be revoked. This opens the floodgates for interpretation and arbitrary government. In many countries, national security and the war on terror are used as a pretense to gag or ban democratic organizations. This general suspicion has taken on an extreme form in Egypt: here, we can safely say that the country has become a military dictatorship that leaves no space for any form of critical civil society initiatives. The situation today is worse than under the regime of Hosni Mubarak, which, at least, left grey areas and space for human rights activists and other critical minds.

Protests nipped in the bud

Autocratic countries strive to nip any form of association and public protest in the bud. NGO laws are not the only legislative measures that restrict civil society’s space: home security laws, anti-terrorism laws, media laws – all of these entail restrictions on the capacity to act for civil society actors, social movements, journalists, bloggers and critical professional associations.

In democratic or partially democratic countries, we can increasingly observe that the entire bundle of legal, administrative and repressive measures undertaken by governments above all targets social movements and NGOs that stand up to large-scale projects such as the developing of coal, oil or gas reserves, and to land grabbing or other infrastructure projects. China, Russia, India, Turkey or Cambodia are not alone in exerting pressure on environmentalists as members of civil society. Wherever the controlling of access to and exploitation of strategic, natural resources – from coal, oil and gas to water, forests, land and biodiversity, and genetic resources – is concerned, those in power resort to strategies in order to safeguard their power and preserve their business model.

In a report published on 10 June 2015, Maina Kiai stated: “Increased demand for resources has resulted in the opening up of more areas for exploration and exploitation, especially in populated areas, leading to conflict between competing interests. By some accounts, between 93 and 99 per cent of 73 000 mining, logging,

agriculture, oil and gas concessions in eight tropical forested countries were inhabited. The same sources indicate that, for example, up to 40 per cent of the territory of Peru has been handed over by the Government to private for-profit entities to exploit natural resources and that in Liberia and in Indonesia 35 and 30 percent, respectively, of the land is in the hands of the private sector for exploitation operations. The existence of widespread social conflict associated with natural resource exploitation is therefore not surprising. For example, in Peru, the Ombudsman's Office documented 211 social conflicts in the month of February 2015, 66 percent of which were related to natural resource exploitation. In Colombia, the Ombudsman's Office participated in 218 dialogues between mining companies, protestors and the Government." (Human Rights Council 2015). The human rights violations committed in developing countries aside, Maina Kiai also cites similar violations in Canada (Human Rights Council 2015, p. 24) and Australia (p. 41) in connection with the exploration of raw materials.

The murdering of activists (above all those engaged in local resistance) is also becoming more prevalent. According to the British NGO, *Global Witness*, the number of environmentalists that have been killed is steadily increasing (Global Witness 2015). In 2014, there were 116 killings worldwide – which equates to approximately two deaths per week. The most dangerous country for environmentalists is Honduras with 101 deaths between 2010 and 2014. And these are only the recorded cases. The number of unreported deaths is most likely far higher as the murders are frequently committed in remote areas. The targeted victims are those that challenge power and control structures, disclose corruption and injustice, and refuse to be dragged into the industry's voluntary initiatives but instead seek to uncover and prevent their political influence.

In many countries, it is a matter of both – of repelling any entitlement to democratic participation and protests against the "development model" so as not to endanger the political and economic power of the elites. Governmental fear of citizens' participation and protest is immense. The loss of political power is the major threat. All too often, defending this power goes hand in hand with the safeguarding of economic interests. Here, protests against land grabbing and large-scale projects are "unwelcome".

Funding from “abroad” is then used as a pretense and stokes specifically nationalistic resentment designed to distract from these interests. Garcia Linera, Bolivia’s Vice President, denounced domestic think tanks and NGOs as being representatives of the “imperial environmental discourse”. The revocation of Greenpeace India’s license is interpreted as a declaration of war on the part of India’s government against all those who oppose the Indian development and growth model. Isolating national activists from external cash flows and digital connections is one thing; prosecuting and subjecting them to intelligence surveillance in their own country another: these two combined not only lead to shrinking spaces for NGOs but can even shut them down completely.

In some of our partner countries, this strategy has long since proven to be successful. In Russia, the vast majority of human rights activists have been robbed of their primary sources of funding. Many NGOs – whether in Kenya or India – are already disbanding. The critical minds are going into exile (Ethiopia, Egypt). Those partnered with NGOs or foundations are withdrawing for fear of being harassed or criminalized (China). The political climate has taken a dramatic turn for the worse for NGOs in numerous countries. Their denunciation as agents of the West or as neo-colonists is ensnared in a context in which the nationalistic card is part of securing power.

From "foreign agents" and "softer aggression"

2006 saw the introduction of a new NGO law in Russia. In 2012 – Vladimir Putin had just returned to power in the Kremlin – every organization that “received money from abroad” and “was politically active” was obliged to register as a “foreign agent”. Since virtually none of them complied with this obligation, the law was amended in 2014 to permit the state to register an organization in this list against its will. So those not labeling their materials as a “foreign agent”, a term that most people in Russia associate with spies and enemies, can expect to be hit with a huge fine. Since 2015, it is also possible to declare foreign NGOs “undesirable”. A total of twelve (largely US) organizations have been added to the “patriotic stop list” by the Federation Council, the upper house of Russia’s Federal Assembly. The Council claimed that their activities showed signs of “mild aggression” against Russia. According to the Chairman of the Foreign Affairs Committee, Kosachov, these

foundations are solely interested in priming people for mass street protests that they can activate “when they decided the time has come”. The National Endowment for Democracy was the first NGO to be virtually expelled by the Attorney General in late July 2015.

China evidently also perceives the presence of foreign civil society organizations as a security risk: a fifth column threatening social stability and perhaps even the longevity of China’s government. The second draft published at the beginning of May 2015 governing foreign NGOs stipulates that virtually every organization is required to register with the security authorities. They are said to be responsible for administrative tasks and control. Moreover, foreign organizations will require a domestic patron who is to be vested with responsibility for every activity undertaken by the international NGOs. All activities are expected to be forbidden that are of a “political and religious” nature, that “compromise internal security”, or violate “concepts of social morality”. The deliberately vaguely worded definitions and content leave plenty of space for arbitrary interpretation. If the law were to be passed as it stands now, Chinese organizations would no longer be allowed to receive money from foreign organizations, if their offices or their activities are not registered and approved.

Smaller nations have been equally swift in making it clear that they will not tolerate any “color revolutions”: there will be “no rose, orange, or even banana revolution“, the President of Belarus, Lukashenko, is quoted as saying in 2005, who is still in office today. Ethiopia’s President Meles Zenawi also held a television address to announce that there will be no rose or green revolution in Ethiopia and proceeded to push through a law in 2009 prohibiting politically active NGOs from acquiring more than ten percent of their funding from abroad. The country’s open political landscape has ceased to exist. All 547 members of parliament elected in 2015 belong to the ruling political party, the Ethiopian People’s Revolutionary Democratic Front (EPRFD).

This bad practice is also catching on in Europe: since 2014, the government in Hungary has been taking action against organizations that receive financial support from “EEA and Norway Grants”, a fund that opposes social and economic inequality

in Eastern Europe and is primarily funded by Norway. In July 2014, Prime Minister Orbán warned against “political activists who are getting paid from abroad” and who are “advancing foreign interests in Hungary”. Stigmatizing rhetoric is deployed with the specific aim of discrediting the work of NGOs critical of the government. In 2014, the governmental agency KEHI launched a criminal probe into NGOs that had either received financial aid from Norway or passed it on to Hungarian NGOs, including numerous reputable organizations such as the Ökotárs Foundation.

Where does this sense of threat emanate?

An increasing number of governments perceive NGOs as an extension of Western governments, as a danger for political, economic and social control over their own country. Katja Drinhausen and Günter Schucher from the German Institute for Global and Area Studies (GIGA) reason this shift with the foreign policy pursued by G.W. Bush, interventions in Afghanistan and Iraq (regime change), and the West’s declarations of solidarity with the color revolutions in Georgia, Ukraine and Central Asia, as well as the revolutions in the Middle East from 2011 onwards.

Government resistance to external democracy promotion is, above all, justified in its eyes by the country’s “sovereignty” – a key category in international law – that has attained a high emotional importance in many countries as a result of the decolonization struggles. Looked at from this perspective, democratization aid is viewed as an illicit intervention into the internal affairs of another state. The bugbear of the “color revolutions” plays a major role here – regime change in the early 2000s – that were named after symbolically related colors or fragrant plants.

Developments of this nature are very troublesome to us. Sounding out the political space for action in a difficult environment is just one of the core activities of a political foundation. The number of strategies available to international organizations here is few and far between given such an environment. Weighing these requires a sure instinct and responsible gauging as to whether the safety of the cooperation partners and staff is ensured. This sometimes means remaining in the country despite every form of resistance that is presented, “hibernating” there, and supporting and assisting civil society actors for as long as possible or until the space widens again. Being present in a country can signify that the room for discussion with partners can be held

open, and sometimes prevents partners from having to end their activities immediately or being arrested, and that the existence of the organizations can be extended somewhat. Staying in a country can mean that organizations need to restrict themselves to certain topics and rescind political visibility

Sometimes, however, it also entails having to draw consequences and withdrawing from a country if the space afforded to them is shrinking to zero. It is for this reason that we withdrew from Ethiopia towards the end of 2012. The freedom of press, opinion and association had become dramatically restricted there over the past few years. The passing of laws on the role and functions of NGOs in 2009 as well as the implementation regulations of autumn 2011 reached new heights in political control and restrictions on the freedom to act.

Ethiopia – closing spaces for civil society

Between March and September 2011, six Ethiopian journalists were arrested and charged with aiding terrorism; a further six journalists were tried in their absence. In December 2011, two Swedish journalists were sentenced to eleven years in prison, while two Ethiopian journalists were imprisoned to 14 years each in January 2012, and an exiled blogger was handed down a lifelong jail sentence. In June 2012, renowned journalist Eskinder Nega along with 23 other people were found guilty of terrorist acts and also given long or life sentences. Critical journalists have, for years, felt that they had been pressurized and that their safety had been compromised. A number of newspapers were discontinued (e.g. Addis Neger in 2009, Awramba Times in 2011), and many critical journalists have fled the country before they would have faced charges. Argaw Ashine, the Chairman of the Ethiopian Environment Journalist Association and a long-standing partner of the Heinrich Böll Foundation, left the country in 2011 after his name had been cited in a report from the US embassy in Ethiopia published by WikiLeaks.

A draft text submitted by the Ethiopian government in April 2012 ultimately confirmed that independent political work would not be possible even after the conclusion of a bilateral agreement and that the means left available to the Heinrich Böll Foundation would have been extremely limited. For example, the law prohibits any and every form of women's rights or human rights activity. Moreover, existing and potential partner organizations continue to be subjected to the regulations of the NGO law

and therefore do not perform the core activities of the Foundation. Civil society is thus denied political role and consequently reduced to implementing the government's goals. The consequence of this is depolitization and self-censorship. The Foundation was unable to find any other partner organizations capable or willing to hold up to this development.

What's next?

The fact that critical voices campaigning on behalf of human rights and rule of law as well as LGBTI rights and an economic policy geared towards social and ecological justice are a source of disapproval to those in power is nothing new. What is new, however, is the massive and shameless way in which they seek to counteract this – a development that will endure and may even worsen. Therefore, the massive restrictions placed on the space afforded civil societies must be put on the political agenda. Freedom of opinion, organization and association are the essence of any democracy. Their restriction poses a challenge to democratic governments and global cooperation. This issue must therefore become part of foreign and development policy as well as human rights discussions, be taken up by governments, and, globally, be integrated into inter-governmental discussions and negotiations.