

DEMOCRACY IN ACTION: Protecting Civil Society Space

Trócaire Policy Report





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Trócaire Democracy in Action Policy Report 2012.

Cover Image - Guatemala: a tense stand off between police and indigenous people at the counting of votes at a public plebiscite on mining in the region.

Photo: Pastoral Commission: Peace and Ecology, Diocese of San Marcos, Guatemala

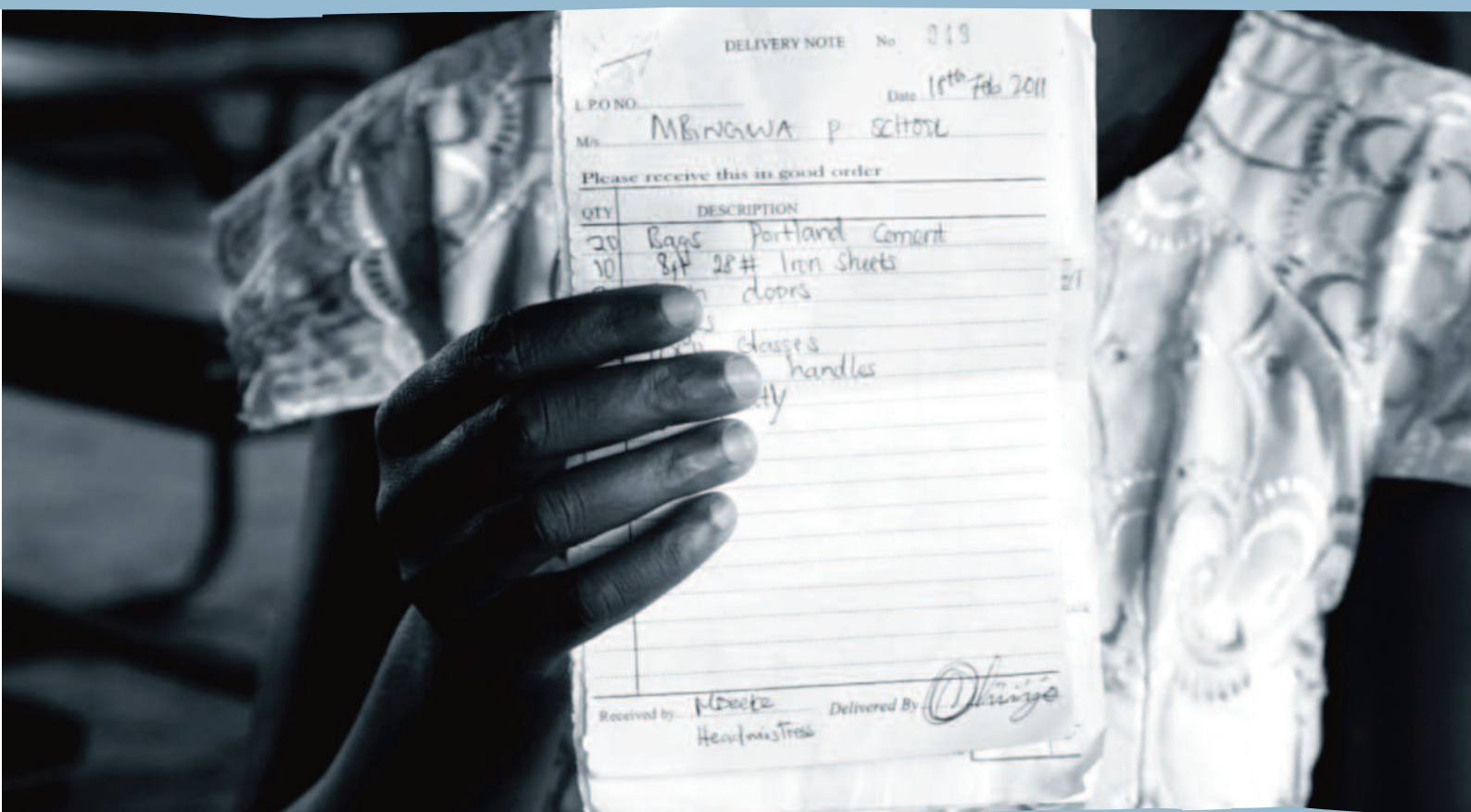
Contents

Abbreviations	2
Introduction	3
Chapter 1: Civil Society at the Heart of Development	5
Chapter 2: Support to Civil Society in Principle and Practice	8
Chapter 3: Civil Society at Risk and the Responsibility to Protect	12
Recommendations	20
Annex 1: Human Rights: the Impact on the Right to Participate	22

ABBREVIATIONS

AAA	Accra Agenda for Action
ACT	Action by Churches Together
ACPPP	African Civil Society Platform on Principled Partnership
AU	African Union
CAFOD	Catholic Agency For Overseas Development
CSO	Civil Society Organisation
DFID	Department for International Development
EU	European Union
GHR	Governance and Human Rights
HDR	Human Rights Defenders
HLF-3	Third High Level Forum on Aid Effectiveness
HLF-4	Fourth High Level Forum on Aid Effectiveness
ICNL	International Centre for Not-for-profit Law
INGO	International Non-Governmental Organisation
MDGs	Millennium Development Goals
NGO	Non-Governmental Organisation
OAS	Organisation of American States
ODA	Overseas Development Aid
SIDA	Swedish International Development Agency
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
US	United States
WMD	World Movement for Democracy

INTRODUCTION



Malawi: A head teacher shows a delivery note for building work. The Malawi Economic Justice Network helps volunteers to monitor government expenditure and demand accountability.

Photo: Michael Kelly

A vibrant, strong and free civil society is essential to development. This vital role has long been acknowledged by the international community. The 1990s were a 'golden age' for civil society in development, with international recognition of the roles of civil society actors in promoting democracy in Latin America and Eastern Europe. This was reflected in increased resources for civil society activities, and political support from donors for protecting and expanding human rights and space for civil society participation¹.

From our experience working in 27 countries around the world, Trócaire is witnessing how hard-won gains towards democracy and the recognition of and respect for civil society activities and spaces are highly vulnerable to reversals. Powerful actors do not necessarily respond positively to increases in spaces for participation, or to more vocal and empowered citizens and organisations. There is a worrying trend in the closing of space for civil society and citizen expression in many countries, particularly for those whose work challenges injustice. This paper details the impact of these trends on the potential for civil society to serve as a catalyst for democratic change and effective governance. It is based upon research conducted jointly with our sister organisation CAFOD, and draws on the recent experience of our partner organisations in four countries².

Many governments have recently moved to constrain operational and political space for civil society, through restrictive legislation against civil society, especially non-governmental organisations (NGOs), or the criminalisation of civil society activists for advocacy activities.³ Attacks on Human Rights Defenders (HRDs) are increasing at an alarming rate. Human Rights Watch have documented an increase in murder, detention, harassment and other direct attacks on HRDs, as well as documenting the impact of restrictive legislation on civil society.⁴ This explicitly restricts the space and the role of civil society in challenging power in governance relations, and inhibits democratic change at local, national and global levels. In practice, faltering responses from international donors in reaction to changes may facilitate further restrictions across a range of countries.

The role of the international community, including donor countries, remains vital to protecting and promoting civil society. The Arab Spring mobilisations, which highlighted that development gains in contexts characterised by authoritarian or weak democratic regimes may be unsustainable without respect for human rights principles, have brought renewed attention to the role of civil society and the importance of protecting civil society space. They have opened debate about the nature of civil society itself in different contexts, and the important role of informal, grassroots and non-associational forms of citizen advocacy and engagement⁵. This opening is an opportunity for the international community to reflect on the importance of civil society space, to resist the securitisation of aid, and to redouble efforts to put the promotion and protection of civil society space at the heart of the development project.

¹ See Trócaire (2010) *Leading Edge 2020* p58-9 available at: <http://www.Trócaire.org/sites/Trócaire/files/pdfs/policy/LeadingEdge2020websizedfinal.pdf>

² Joint Trócaire and CAFOD, unpublished research undertaken in Honduras, Ethiopia, Malawi and Cambodia. See also Trócaire and CAFOD (2011), *Civil Society at Risk Briefing Paper*

³ Trócaire and CAFOD concept note for research: *Strategic Responses to Collapsing Civil Society Space*

⁴ Roth, K. (2010), 'The Abusers' Reaction: Intensifying Attacks on Human Rights Defenders, Organisations and Institutions', Human Rights Watch.

⁵ IDS (2011), 'The Pulse of Egypt's Revolt' *IDS Bulletin* 43.1

CHAPTER 1: CIVIL SOCIETY AT THE HEART OF DEVELOPMENT



Colombia: Women demonstrators call for peace

Photo: Sisma Mujer, Colombia

A diverse, strong and independent civil society sector is essential for the long-term, sustainable and just reduction of poverty. Recognising that civil society encompasses diverse organisations and viewpoints, which reflect the many contradictions and inequalities within societies, Trócaire defines civil society as *the arena, distinct from the state and the market, where people promote their common interests and seek to shape governance and policies for the benefit of all in society, without the promise of commercial profit or official power*.⁶ Trócaire believes that civil society organisations (CSOs) in particular have an important role to play in ‘bringing the voices of the poor’ to influence government policies, to challenge injustice and to hold governments to account.

We work in partnership with those civil society actors that see their role as *agents of social transformation* (actors with alternative views, policies and actions that promote social and economic justice) and *defenders of democratic principles* (active players in ‘constructing democracy’ and establishing democratic political and social structures)⁷. CSOs and activists worldwide contribute in unique and essential ways to development as innovative agents of change and social transformation, and flourish in contexts that protect the freedom of association and freedom of expression.⁸ It is for these reasons that protection of the democratic space in which strong and independent civil society groups and actors operate is a critical objective for Trócaire.

Trócaire works in contexts characterised by weak democracy, where space for civil society activities is fragile, and reversals are always possible. Some measure of democracy, especially elections, is usually in place. However without adequate checks and balances on the use of power, the governance of the state remains vulnerable to elite capture and influence by vested power interests.

To challenge injustice, our partners actively engage with visible forms of power, exercised in formal decision-making procedures at local, national and global levels. At the same time, our partners consistently highlight encounters with hidden forms of power. Agenda-setting and controls on participation limit the impact of engagement. There are also invisible boundaries to activism, such as over-arching dominance by elites, pervasive ideologies and socialised norms, and feelings of powerlessness among marginalised groups, that inhibit the role of civil society in challenging inequality.⁹ The restrictions of political space discussed in this report demonstrate how the power of civil society to challenge injustice is visibly diminished in these democracies, and how the hidden and invisible power structures are reinforced. Trócaire believes that the frontiers of work on human rights changes over time, and so we work to achieve the right to participate as the entry point to achieving all other rights.¹⁰

⁶ Trócaire (2006), Civil Society Strengthening Policy

⁷ Trócaire (2006), Civil Society Strengthening Policy

⁸ For a summary of the diverse CSO roles in development, see International Framework for CSO Development Effectiveness: www.cso-effectiveness.org/IMG/pdf/draft_international_framework_for_cso_development_effectivenessv3.pdf

⁹ The terminology around power and space used in this section draws heavily from Gaventa (2006) “Finding the Spaces for Change: A Power Analysis” IDS Bulletin Vol. 37 No. 6, see also <http://www.powercube.net>

¹⁰ Trócaire (2010) Governance and Human Rights Strategy p16

CIVIL SOCIETY IN BURUNDI TRANSFORMING PEOPLE'S LIVES

In Burundi, the Batwa people are an indigenous minority (1-2% of the population), who often face deep poverty as well as discrimination and political exclusion. Trócaire's partner Uniproba, a local Burundian organisation that works for the rights of the Batwa people, joined forces with IFES (International Foundation for Electoral Systems) and the Burundian Ministry of Interior to provide identity cards to as many Batwas as possible.

In advance of this project, research found that fewer than 50% of the Batwa people were in possession of ID cards. Without this simple document, they were second class citizens, denied the vote and access to basic services. By the end of the process, 21,219 Batwas over the age of 16 had received their ID card, the first step to becoming full citizens with rights: being able to vote and participate in elections, and having access to land, education and health, as well as to travel freely around the country.

Recipients of ID cards spoke about the impact the project had on their lives: Mr Jean Bucumi said: "I am happy to have it, the old one was burnt with the rest of my house during the war. Now I will be able to travel and work far from my house and to negotiate ...for fair retributions for my work. It will now also be possible to legalise my marriage and certified the birth of my three children, so that they can go to school." Mme Generose Mpawesimana was "very happy to have this card, as I will now be able to access healthcare for my child, just like any other mother."

Actions limiting the space for civil society organizations like Uniproba to influence government and to work on issues of civil and political rights make projects like this one more difficult all around the world. Meanwhile, questioning the legitimacy of civil society organizations means that poor people are less likely to receive this essential support.

CHAPTER 2: SUPPORT TO CIVIL SOCIETY IN PRINCIPLE AND PRACTICE



Malawi: Community members in Ntcheu scrutinise local budget reports. The Malawi Economic Justice Network insists that budgets are visible to the people they are meant to serve, so communities can be involved in decision making.

Photo: Michael Kelly

Civil society organisations' freedom to operate is guaranteed by international human rights law. In October 2010, the UN Human Rights Council passed a landmark resolution (Resolution 15/21) on the Rights of Freedom of Peaceful Assembly and Association, sponsored by 63 countries. This resolution calls on the UN to promote the right to freedom of assembly and establishes a *Special Rapporteur* to monitor and report on violations. Importantly, the resolution provides a broad definition of groups at risk of violation of the right to free assembly, going beyond the focus on human rights defenders of existing UN mechanisms such as the *Special Rapporteurs* on Human Rights Defenders and Freedom of Expression. As this report shows, violations in these three areas are closely intertwined, but the creation of this new mechanism on freedom of assembly is recognition of new challenges facing civil society worldwide.

Human rights underpin the principles of aid effectiveness, and have been reaffirmed by bilateral donors and aid recipients in the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action (AAA), and most recently the Busan Partnership for Effective Development Co-operation. At the third High Level Forum on Aid Effectiveness in Ghana (HLF-3), civil society secured formal recognition by donors and partner countries within the Paris process of its important role as an independent actor in development cooperation. The Accra Agenda for Action (AAA) formally confirmed the need for an *enabling environment for civil society* as a key element of aid and development effectiveness, and established development partners' commitments to work with civil society organisations in creating and sustaining that environment. The HLF-3 also brought a focus on the role of civil society – distinct from donors and partner governments – in different development contexts. There was a formal recognition of the need to engage on the matter of how CSOs would relate to the Paris process, and a commitment to work with CSOs to create an enabling environment that would help them maximise their contributions to development. In the AAA donors, partner governments and CSOs agreed to work together to address CSO effectiveness. There was a call for higher levels of engagement and broad-based dialogue with CSOs, parliaments and other development actors by donors and developing country governments on development policy and practice. The agenda also committed donor and developing country governments to enhancing transparency and accountability to each other and to their citizens¹¹. In the Busan Partnership Declaration commitments on democratic ownership for development effectiveness were strengthened.

In addition, many bilateral donors have made explicit commitments to supporting civil society. The European Union has a strong set of policies and practices around protecting civil society and human rights defenders. For the UK's Department for International Development (DFID), building capacity and space for civil society remains one of the five objectives of the work of the Civil Society Department and DFID country offices have introduced new local funding modalities to support local civil society, for example in Mozambique, Ghana, and Malawi. The Norwegian state development agency, NORAD, has made broad support to civil society a core part of its mandate, and offers a benchmark against which to measure other donors' positions. Specifically, NORAD looks to support civil society actors to engage at the policy and political level, "to play an active advocacy role, for instance, in fighting corruption, in peace and reconciliation processes, through independent information distribution and as an ombudsman in relation to public authorities"¹². In addition, the Norwegian government has prioritised support and protection for human rights defenders at risk.

Irish Aid has a clear commitment to civil society that is based on the belief that a strong civil society can have positive benefits for sustainable and equitable development. Irish Aid's Civil Society Policy aims "to strengthen and widen the space for men and women to act collectively and to participate in sustainable development processes"¹³. The policy explicitly highlights the need for "an enabling environment for civil society to organise and engage with government and broader constituencies" and "to support the role of civil society in promoting participation and good governance". There is also a role for Irish Aid to champion

¹¹ Accra Agenda for Action, paragraphs 14, 20C, 24 <http://www.oecd.org/dataoecd/30/63/43911948.pdf>

¹² NORAD (2009), "Principles for Norad's Support to Civil Society in the South", *NORAD*, Oslo; p11

¹³ Irish Aid "Civil Society Policy" p13 <http://www.irishaid.gov.ie/article.asp?article=1213> ; Irish Aid (2006) <http://www.irishaid.gov.ie/whitepaper/>

civil society space, and its policy explicitly states that Irish Aid will “advocate, through the policy dialogue process with governments, for the development of a positive environment for civil society organisations to operate effectively”. The Department of Foreign Affairs (DFA) has a specific commitment to protect Human Rights Defenders, and in 2010 guidelines for embassies and missions on how to engage with HRDs were published.¹⁴ Protecting HRDs is also a key area of contribution for DFA in its involvement with the UPR mechanism.

From principles to practice: mind the gap

However there is a gap between these principles and aid practice on the ground where civil society actors have increasingly become the target of attempts to restrict political activity. The constrained space for civil society is not just a matter of limiting the activities of recognised civil society organisations, but of curtailing basic democratic rights of free expression, public assembly and political participation.

There is evidence of the misuse of the Paris Declaration principles to restrict civil society space in the name of alignment, harmonisation and accountability.

“...what began as a genuine call for mutual accountability and harmonisation of development effort between donors, governments and CSOs has turned into a wave of legislation and policies targeting organisations [CSOs] that do not appear to conform to government choices”¹⁵.

By focusing on those aid effectiveness results that derive from the Paris Declaration, and not paying close attention to progressing Accra Agenda for Action commitments, “donors are increasingly putting CSOs on the firing line of governments, and providing a justification for CSO control”¹⁶. Since the AAA commitments were endorsed in 2008 there is evidence that “many CSOs, in both donor and developing countries, have experienced deteriorating and disabling conditions for their work.”¹⁷ The result is a growing threat to CSO diversity, risk-taking and innovation. It is too early to judge whether the (relatively weak) language on the enabling environment for civil society expressed in the Busan Partnership declaration will make any difference in practice.

While there are examples of bilateral donors responding to government actions against civil society in certain contexts, overall donors are more likely to respond to threats of this nature in an uncoordinated and ad hoc fashion (see chapter 3 below).

Shifting priorities?

Furthermore, in addition to the gap between principle and practice, it would appear that donor perceptions of civil society have changed since the ‘golden era’ of the 1990s, when civil society was a ‘champion’ of development. Disappointment with the results from participation, a focus on a technical agenda for achieving the MDGs, and an increasing focus on the role of the state and of private sector actors has eclipsed and at times displaced the important role of civil society in development. In particular, there is evidence of less donor interest in ‘slow burn’ political activities such as empowerment for rights, advocacy and development education. This has an indirect impact on the range of civil society activism at international, national and local levels. An emphasis by donors on the technical or service-delivery

¹⁴ Department of Foreign Affairs (2010) “Guidelines for Irish Embassies and Missions on Human Rights on Human Rights Defenders”

¹⁵ ACPPP (2010), African Civil Society Platform on Principled Partnership (ACPPP), Communiqué, issued on 21 July 2010, Nairobi, Kenya; p5

¹⁶ Ibid. p28

¹⁷ See http://www.cso-effectiveness.org/IMG/pdf/international_framework_open_forum.pdf; For further details, see « key Messages for the Fourth High level Forum on Aid Effectiveness » by the Task team on CSO Development Effectiveness and Enabling Environment, Working party on Aid Effectiveness, Cluster A at: http://www.cso-effectiveness.org/IMG/pdf/final_key_messages_from_the_task_team.pdf

functions of civil society organisations, at the expense of more varied roles exerts a de facto, if inadvertent, restriction on the diversity of civil society roles.¹⁸

The growing prominence of new actors in development over the past decade has influenced the content of the aid agenda. The focus on private sector development has led to the inclusion of business actors, especially large multinational corporations and national business elites, as influential participants in development planning and projects alongside state and donor agencies, often displacing or actively limiting civil society participation and partnership in these processes.

In the context of the global financial crisis, economic growth has become a predominant concern, often allowing a prioritisation of private sector initiatives while governance and human rights issues have become obscured. This trend has been reinforced at international level by the entry of non-traditional donors and the growing influence of the G20¹⁹. The development agenda promoted by the G20 explicitly focuses on economic growth and on expanding business and investment opportunities between middle-income countries and regions such as Sub-Saharan Africa.²⁰

At national level, these opportunities are a welcome diversification for developing countries. However bilateral agreements often have little concern with governance and human rights issues. Articulation of rights-based approaches to development has declined in donor discourse, even as it remains a priority for many NGOs. This trend threatens to dilute the hard-won collective standards aspired to by more traditional donors, and obscure international principles. The entrance of new donors and aid/investment modalities can also decrease the leverage of traditional donors to persuade partner governments to comply with governance and human rights standards, particularly related to civil society activism. For example, China's lending to developing countries in 2009 and 2010 amounted to just 20% less than the total ODA from the EU and its 27 member states.

CHINA'S INFLUENCE DISPLACES TRADITIONAL DONORS IN CAMBODIA

China has become the most important source of foreign investment in Cambodia over the past five years. The Cambodian government has approved \$6 billion of Chinese investments since 2006, while China provided at least \$2 billion more in grant aid and loans. Economically, this support is important for Cambodian development, but politically it has resulted in greater readiness of the Cambodian government to rebuke the diplomatic community when they raise governance-related concerns. As a result, the relationship between the Cambodian government and western donors has deteriorated and this may have contributed to self-censorship of the diplomatic and donor community, and a reduction in the leverage of the international community to support and promote an enabling environment for civil society.

This gap between principles and practice, and the apparent shift in international support away from the protection and promotion of civil society space are particularly alarming in light of what we are witnessing on the ground – an accelerating closure in the freedom to operate, especially for individuals and organisations engaged in advocacy and social justice.

¹⁸ Howell et al (2008) p88

¹⁹ The G20 is a forum attended by finance ministers and central bank governors of the world's most highly developed economies – 20 countries plus the European Union.

²⁰ G20 "Seoul development Consensus for Shared Growth" http://www.g20.org/Documents2010/11/seoulsummit_annexes.pdf

CHAPTER 3: CIVIL SOCIETY AT RISK AND THE IMPERATIVE TO PROTECT



Cambodia: Members of the Beung Kak Lake community campaign against land grabbing.

Photo: Building Community Voices, Cambodia

Civil society space has always been at risk in the countries where Trócaire works, but in recent years there is considerable evidence of a worsening environment for civil society. This trend is not uniform, and in some contexts, space for civil society is opening up. This has been the case for example following major emergencies, such as after Cyclone Nargis in Myanmar, or where there has been a significant change in political context, for example in Bolivia following the 2005 Presidential elections. In these cases, it is important to recognise such shifts and support local civil society to make the best use of such developments. In many contexts, people's legitimate aspirations for more democratic forms of government are being expressed through both traditional forms of protest, and through increasing use of Internet and mobile technology to organise and mobilise for change. Technology is changing how citizens, social movements and civil society organisations operate, and potentially points to a future where ease of access to information could radically transform political structures in short timeframes.

However, the global war on terror launched by the United States and its allies in the wake of the 9/11 terrorist attacks on New York and Washington introduced an over-arching preoccupation with security issues across all areas of international public policy. Alongside this, militarised responses to insurgency, and growing problems of drug-trafficking, have intensified the dominance of a security agenda. This agenda has played into the hands of authoritarian regimes and weak democratic governments seeking to restrict the activities of civil society actors, especially the activities of NGOs. As a result of this agenda, governments are increasingly taking actions to regulate, restrict or even criminalise civil society activities, stifling the space where democracy may flourish.²¹

Security concerns and the anti-terror discourse have been used to curtail freedom of association and expression and restrict the activities of civil society groups in highly varied contexts. For example, in Russia and other former Soviet states, such as Uzbekistan, Tajikistan and Kyrgyzstan, the discourse of terrorism has been skilfully deployed to attack political opposition and clamp down on civil society in the name of national security and political stability²².

Human rights principles, enshrined in international human rights law, and reflected in the principles of aid effectiveness, have not translated into strong protection of civil society space in many cases. Increasingly, governments have reacted negatively to international monitoring of human rights. Some have been reluctant to invite Special Rapporteurs to observe issues that have been flagged as violations of human rights. In the case of Angola, the government rejected the recommendation to extend open invitations to oversight mechanisms that came from the United Nations Universal Periodic Review (UPR) of human rights in Angola in 2010²³.

Experiences of closing space: Cambodia, Ethiopia, Malawi and Honduras²⁴

Across four country case studies carried out by Trócaire and CAFOD in 2011, a common picture emerges of attempts by governments to restrict political opposition and citizen participation. Civil society in these four countries was subject to multiple overlapping threats, with civil society organisations and NGOs engaging in advocacy experiencing particular vulnerability.

²¹ Howell et al (2008) "The backlash against civil society in the wake of the Long War on Terror" *Development in Practice* 18:1, and Cordaid 2008 "Friend not Foe: Civil Society and the Struggle Against Violent Extremism"

²² Howell, J. (2006) "The Global war on terror, development and civil society" *Journal of International Development* 18:1 p128

²³ See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/125/27/PDF/G1012527.pdf?OpenElement>, specifically p15 recommendation 38 to see what was asked of the Angolan government, and also <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/Draftreport14thHRC.pdf> section 473, to see the Angolan government's rejection

²⁴ This section draws on joint research conducted by Trócaire together with CAFOD and a number of our partner organisations in Cambodia, Ethiopia, Honduras and Malawi

The common sets of threats experienced across these different contexts can be summarised according to three categories: legislative, judicial and extra-legal:

Legislative threats: involve the passage of new legislation or amendments to existing legislation

Judicial threats: involve the use of a country's legal system and law enforcement agencies

Extra-legal threats: involve actions by state and non-state actors outside of the legal system

These categories are not mutually exclusive and in most cases, governments are using a combination of these types of actions in order to restrict space for civil society to operate.²⁵

Legislative threats relate to situations where governments pass laws or policies that seek to restrict civil society activities. One form of threat, which has become increasingly common, is the passage of so-called 'NGO laws' that purport to promote greater accountability of Non-Governmental Organisations (NGOs) through increased regulation of their activities. Whilst Trócaire and our partners are committed to increasing civil society accountability and agree that legislation may be one way of contributing to this in some contexts, such NGO laws are in practice acting to restrict civil society critique of government policies. The ACPPP reports that 35 African governments (or 62% of the total) have either passed or are advancing legislation that restricts the activities, funding, and sometimes the very existence, of civil society organisations²⁶. Typically these laws involve a requirement for NGOs to re-apply for government registration whilst introducing overly complicated and bureaucratic procedures and conditions. They commonly restrict certain NGO activities, such as rights-related advocacy or anything that is considered political; regulate the amount of foreign funding NGOs can receive; and grant the authorities arbitrary and discretionary powers to refuse or revoke registration.

ETHIOPIA'S CHARITIES AND SOCIETIES PROCLAMATION

A period of challenging relations between NGOs and the Ethiopian Government culminated in 2009 with the passage of the restrictive Charities and Societies Proclamation. The law requires all CSOs to register with the government and crucially prohibits any organisation which receives more than 10 percent of their funding from foreign sources from engaging in work on the following themes: *"the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of disabled people and children; the promotion of conflict resolution or reconciliation; and the promotion of the efficiency of the justice and law enforcement services."* This has had a profound impact on civil society in Ethiopia, dramatically narrowing the scope of their activities to service delivery and emergency relief. The lack of indigenous funding options has meant several organisations have closed down, some have lost membership and others have had to reorient their work towards service delivery due to the new restrictions. Many groups are afraid to engage in policy or advocacy and have stopped these kinds of activities altogether, thus removing a key mechanism by which poor and marginalised people in Ethiopia can voice their needs.

²⁵ See Van der Borgh and Terwindt (2009) Political Space of NGOs, Centre for Conflict Studies, Utrecht University, Utrecht. The authors argue that the criminalisation and stigmatisation of civil society actors may not necessarily constitute a human rights violation; nonetheless cumulative actions against civil society will reduce democratic space and make the fulfilment of human rights, and the state's duty to protect, unlikely.

²⁶ See ACPPP (Africa CSO Platform on Principled Partnership) (2011), "Civil Society, Aid and the Disabling Environment: Motivation and impact of the disabling environment on development work in Africa"

In addition to such NGO laws, governments have enacted a range of other legislative and policy measures in order to restrict civil society space. These include misuse of anti-terror measures, media freedom laws, defamation laws and restrictions on freedom of assembly and freedom of information. Research by Cordaid²⁷ found that counter-terrorism measures overemphasise security, distort development priorities and have led to greater state repression and increased human rights abuses, including extrajudicial killings.

Judicial actions often follow on from legislative actions and relate to measures taken through the courts system and law enforcement agencies. This includes where individuals and organisations find themselves subject to legal proceedings on false charges or defamation charges. Other actions in this category may include deregistering CSOs, and the broader closing of space for civic engagement such as banning demonstrations or meetings and censorship of the Internet and mobile communications. Such actions are prevalent in all of the four case study countries.

CRIMINALISATION OF SOCIAL MOVEMENTS IN CAMBODIA

In early July 2011, the Cambodian government suspended a local land rights NGO for a period of five months. An administrative oversight was cited as the rationale for the suspension; however, it is widely reported that the real reason was the organisation's work on land rights abuses affecting poor and marginalised communities as a result of the Government-sponsored railway rehabilitation project. On 17th August, three further advocacy-oriented CSOs also received warning letters from the Government for "inciting" families to oppose the state-sponsored railway project. The following day one hundred activists demonstrating and handing out leaflets to protect the Prey Long Forest in Preah Vihear Province from economic land concessions were arrested and detained.

Extra-legal measures denote the most extreme category of actions deployed in order to restrict civil society space, and includes harassment, smear campaigns, physical violence, unlawful or arbitrary detention and even killings. Such actions have again been documented in each of the four case study countries, however governments tend to resort to such methods only when entrenched power interests are seriously threatened or when they can be reasonably certain that they are acting with impunity.

²⁷ See Cordaid (2008), Friend not Foe: Civil Society and the Struggle Against Violent Extremism, available at: www.cordaid.nl/nl/Friend-not-Foe_FFF_David-Cortright.pdf

DESCENT INTO VIOLENCE IN MALAWI

In Malawi civil society space has become increasingly restricted since the 2009 elections after which the government introduced restrictive new legislation. Amendments to the Police Act granted new powers to search without a warrant; the Penal Code was amended allowing the government to close down any media outlets publishing material against the public interest; and a proposed Injunctions Bill prevents anyone taking out injunctions against the government. Furthermore, civil society leaders including Trócaire partners have reported increasing intimidation in recent months. This has culminated in the deaths of 19 people in July in 2011 when police opened fire on civil society demonstrations calling for changes to government economic policies. Civil society leaders have reported death threats and many have gone into hiding. The Malawian government is specifically targeting NGOs and networks working on human rights and governance issues. The independent media and academics known to be critical of the government have also been singled out. Whilst some space for dialogue remains open, particularly at local level, the situation is deteriorating rapidly.

VIOLENT REPRESSION OF CIVIL SOCIETY IN POST-COUP HONDURAS

Immediately after the coup d'état in Honduras on 28 June 2009, the de-facto government imposed a series of emergency measures including curfews, closure of critical media and restrictions on freedom of movement and association. There was an escalation of human rights abuses against civil society including surveillance, threats, disappearances, torture and murder – reminiscent of the counter-insurgency techniques used against left wing groups in the 1980s. Additionally, the security forces deployed extreme force against protestors peacefully opposing the coup, including the arbitrary arrest and detention of between 3,500 and 4,000 people. Since the installation of the government of President Porfirio Lobo in January 2010 there has been little improvement in the environment for civil society. Attacks have continued against individuals and organisations considered to be opposed to the current government. A wide range of CSOs have been targeted including human rights organisations, independent media, trade unions, farmers' groups and teachers' associations. The use of excessive force and violence against protestors in a climate of impunity has become the norm, as exemplified by the killing of more than 40 land activists in northern Honduras during 2010 and 2011.

A common argument used by governments to justify restrictions on civil society activities is the high level of western funding received by some civil society organisations and therefore the twin issues of i) the need to defend national sovereignty against foreign influence and ii) a perceived lack of legitimacy with the local population. Trócaire and partner organisations acknowledge that some civil society organisations could do more to improve internal governance and accountability to their constituencies and are actively seeking to address these issues. However, such arguments also serve to distract attention from the serious accountability gaps on the part of governments, and cannot explain the severe repression being experienced by grassroots social movements, which clearly do not have legitimacy issues, in countries such as Cambodia and Honduras.

In Nicaragua, President Daniel Ortega's deliberately extreme interpretation of national ownership has sidelined civil society organisations that are critical of his government from policy processes, dramatically reducing the space for them to operate²⁸. In Zambia, the NGO regulatory board has wide powers to approve the area of work carried out by civil society organisations and to issue policy guidelines to harmonise their activities in line with the national development plan²⁹. These arguments have been invoked as a justification for restrictions on civil society funding, particularly in the case of money being channelled through NGOs for policy and advocacy work. This trend has also been seen in the case of the 2004 NGO Bill in Zimbabwe and the 2009 Ethiopian Proclamation on Charities and Societies.

The clampdown on civil society is not confined to strong authoritarian regimes, but is taking place across a variety of contexts, and is usually related to repression of the broader political space. When space for the political opposition or for civic engagement and expression more generally is restricted, civil society is also targeted. Restrictions on civil society activities are almost always preceded or accompanied by restrictions on media and freedom of expression and the curtailing of individual citizen rights such as the right to information or association. In some cases, as civil society becomes stronger and begins to challenge elites, to demand space for participation and accountability from those in power, there may be a counter-reaction, to crack-down on perceived opposition.

Situations of heightened risk

Certain situations, activities and types of organisation attract higher risks. For example, advocacy activities, especially on sensitive issues such as human rights issues, anti-corruption, or extractives and natural resource management entail particular risks for civil society organisations. These issues are highly sensitive, touching the heart of the governance problems in many countries, and governments have tried to restrict NGO work on these areas. Civil society and media activity on issues surrounding natural resource extraction can be particularly risky when exposing cases of corruption and challenging entrenched patronage networks and powerful private sector actors. Activists in a wide range of mineral rich states have been selectively targeted and have experienced harassment or intimidation in response to their work highlighting corruption in the extractive industries.³⁰

Secondly, in situations where political parties are weak, or where they are entrenched in patronage systems, civil society organisations may be treated as the de facto political opposition. In these cases actions against civil society are often accompanied by threats to media freedom and the right to assembly or association.

Times of political change and emergencies also pose increased risks for civil society, for example during electoral periods or more severe situations such as the outbreak of armed conflict, coups or states of emergency. These situations often prompt the passing of laws granting the security services special powers, such as preventative detention, seizure of assets and surveillance. Such laws are often poorly regulated, retained for extended periods of time and may be used to target those who speak out against the government. Civil society organisations may find themselves targeted by armed groups as well as the government.

²⁸ Schulz, Nils-Sjard (2007), "Nicaragua: a rude awakening for the Paris Declaration", *FRIDE*, Madrid; Multi-donor Fund Consortium (2008) "Government persecution and harassment of civil society organisations creates alarm and confusion in Nicaraguan society", *Oxfam GB, Trócaire, SNV-Holland, Oxfam Novib*, Managua; Marengo, Iván García (2011), "An Appeal to the Open Forum", *Global Facilitating Group in representation of Coordinadora Civil, Nicaragua, Central America and the Caribbean*.

²⁹ Civicus (2009a) "Analysis of the Zambia NGO Bill", CIVICUS, Johannesburg

³⁰ These states include Angola, Cambodia, Congo Brazzaville, the DRC, Equatorial Guinea, Niger, Nigeria. In Bolivia, Colombia, Ecuador, Guatemala, Honduras, Peru and the Philippines, where groups working on community/ indigenous peoples' rights or environmental issues in the context of mineral extraction have been the subject of government harassment and attempts to criminalise social protest against mining. For further details see www.publishwhatyoupay.org.

Finally, for civil society organisations themselves, weak internal governance and accountability can leave them vulnerable. In the case study countries examined, civil society organisations were susceptible to targeting by legislative, judicial and extra-legal measures as a result of inadequate internal systems. Without grassroots support, leaders and staff can become vulnerable at moments of crisis. Decreasing levels of financial support for civil society organisations, and the cumulative effect of restrictions to civil society activities serve to exacerbate this vulnerability. Nonetheless, the challenge remains for civil society organisations, and the international NGOs and networks to continue to improve governance standards for national partners in order to protect against manipulation and harassment.

The vital role of donors

Donor action has on occasions made a significant difference in preventing or limiting restrictions to democratic space. In Cambodia for example, the EU has been able to act as a bridge between the government and civil society and has helped to facilitate exchanges of information. The EU delegation met with NGOs to discuss their concerns in relation to the proposed NGO Law and was instrumental in successfully pushing for an extended consultation period.

In Malawi, bilateral donors have been more coordinated and active in raising concerns about governance and human rights issues with the government. In the middle of a standoff between government and civil society, the donor community took the unusual step of issuing a joint statement about “certain negative trends in the country” which was widely publicised. The UK Department for International Development also cited the oppression of civil society as a factor in its suspension of direct budget support to Malawi. Additionally, in 2012 DFID, Irish Aid and the EU will begin dispersing grants from a new £3.5 million civil society fund which aims to empower citizens to hold government to account. Given the weakness of the sector and the dearth of funding opportunities, particularly for governance work, this is a welcome development that will provide a much-needed boost to civil society.

In the immediate aftermath of the coup in Honduras, the international community was unanimous in its condemnation and all aid was suspended. More recently the EU has developed a Human Rights Defenders strategy, formalising channels of communication with the government on this issue.

However poor donor coordination in speaking out against civil society repression tends to be the norm. Whilst individual bilateral and multilateral donors, including the UK, Ireland and the EU have issued statements and taken action to criticise and combat repression of civil society in individual countries, too often this action is neither coordinated nor taken in a sustained fashion. This stands in contrast to donor commitments to greater coordination as part of the aid effectiveness agenda.

For example, in Ethiopia, donor governments and diplomatic missions could have been better coordinated and more active in trying to engage the Ethiopian government on the Charities and Societies Proclamation. Whilst some donors, such as the Netherlands, threatened to withdraw aid, and others such as Sweden actually did so, the majority of donors adopted a “wait and see” approach which greatly facilitated the proclamation’s passage.

Similarly, in Honduras the initially strong and unified donor reaction to the 2009 coup and corresponding crackdown on civil society was not sustained beyond the January 2010 election, despite there being no substantive change in terms of the repressive measures being used by the state. The international community has subsequently been far less active or vocal on human rights issues and aid from the EU and United States has been reinstated. A lack of unity amongst Honduras’ development partners has hampered a sustained and coordinated response to the restrictions on civil society space.

Poorly coordinated and ad hoc donor responses can facilitate shrinking democratic space in practice. Where there is a perception that there are no consequences in response to attacks on civil society space, further restrictions or attacks may be implicitly facilitated. And when powerful actors see that repression is tolerated in one context, others may carry out similar actions in other contexts. The message that civil society space is valued by donors must be communicated strongly and consistently.

Donor inaction on threats to civil society has the greatest impact on civil society organisations themselves. Impacts include: greater vulnerability to threats if the donor stance towards protecting civil society actors and spaces falters or varies; greater likelihood of engaging in self-censorship; difficulties in establishing clear political or advocacy strategies; strain on alliances, organisations, and individuals; and ultimately less capacity to improve internal governance and accountability to communities.

Donor responses matter: when donors take decisive action, governments are forced to respond. When donors fail to act systematically, or in a coordinated manner, this can facilitate further attacks on civil society, and has direct negative effects on civil society organisations and activities and more broadly on democratic space.

Recommendations

In 2011, in reaction to the unfolding events of the Arab Spring, major donors such as the United States, and the EU and member states couched their support in emancipatory language around the role of civil society in democratisation, echoing the discourse of the 'golden era' of civil society in the 1990s. It has apparently spurred a renewed interest in the means of engaging third parties on issues of human rights and democratisation. For example, human rights principles have always been enshrined in the European Union's Neighbourhood Policy governing trade with countries of North Africa and the Middle East, but have rarely been invoked in decision-making processes. In May 2011 this policy has been reviewed to give it an explicit focus on 'deep democracy' and a partnership with societies, based on commitments around political reforms, support to civil society organisations (including non-registered NGOs), promoting free media and electronic communication and to reinforce human rights dialogues³¹.

This initiative to realign the EU Neighbourhood policy to place the protection of civil society as a pre-requisite highlights the need for the same principles, already enshrined in the Paris Declaration and the AAA, to be effectively implemented as part of engagement with other parts of the world. Where independent civil society finds itself under existential threat, democracy itself is critically endangered. It is the responsibility of the international aid and diplomatic community to protect the space for civil society to grow and potentially transform democratic ownership.

Trócaire calls on Ireland and the international community to protect human rights and space for civil society activities, and in particular to:

- Reinforce the importance of the role of civil society and the right to participate as entry points for achieving democratic ownership, improving governance and delivering on aid effectiveness. This should be done through policy dialogue and bi- and multi-lateral partnership agreements with aid recipient countries.
- Strengthen the coherence between international human rights principles and frameworks for aid effectiveness. For example, recommendations emanating from the UPR process and UN treaty bodies should be taken into account by donors when monitoring and evaluating performance in aid relations at the country level.
- In recipient countries, consider the establishment of multi stakeholder independent review mechanisms (including a range of civil society actors) to assess the robustness of government systems when it comes to preventing or dealing with threats against civil society space and the politicisation of aid.
- Continue and where appropriate increase the provision of both financial and technical focused support to civil society. At the same time, technical funding mechanisms for civil society support should not replace on-going analysis by donors of the relationship between governments and citizens, and robust engagement and support for the creation of an enabling environment for civil society.

³¹ EU Neighbourhood Policy 2011 http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

Trócaire calls on Ireland and other official donors to respond clearly and coherently to threats and attacks on civil society space:

- Develop clear guidelines around what constitutes a breach in standards relating to human rights and an enabling environment for civil society activism. Examples identified by Trócaire programme staff are outlined in annex 1.
- Donors should adopt a mixture of aid modalities (rather than an exclusive focus on budget support); allowing for greater flexibility in response to deteriorating governance environments.
- Donors must be clear on what actions should be taken in response to breaches of human rights principles, and on how aid should be adapted to a deteriorating governance climate. Consequences of breaches must be made clear to partner governments, parliaments and the public in recipient countries, and must be outlined in partnership agreements.
- Support and respond to alerts by international civil society networks, giving voice to these issues by speaking out against government actions which seek to constrain legitimate civil society activities.
- Implement the EU and DFA Guidelines on engaging with Human Rights Defenders more consistently systematically across cases, drawing on the recent commentary of the Office of the High Commissioner for Human Rights.

Trócaire calls on Ireland, the international community and international NGOs to develop more comprehensive international mechanisms to support human rights principles that underpin civil society space, and protect human rights defenders:

- The EU and Irish Aid must take a leadership role in implementing international mechanisms for the protection of human rights defenders³².
- The Department of Foreign Affairs should actively champion the role of the Special Rapporteur for the Freedom of Assembly and Association, through reference to his findings and recommendations, and by exploring the possibility of financial or technical support.
- The fulfilment of human rights principles, including the protection of civil society activism, must be the overarching framework for defining performance criteria in aid relations. This will necessitate additional resources and training on human rights, and the identification and monitoring of measurable indicators on human rights, to be contained in partnership agreements.
- Donors should systematically document and coordinate their responses to breaches in human rights principles, such as those outlined in annex 1. In countries strongly affected by narrowing space for civil society, this could include the establishment of specific civil society space monitoring and feedback mechanisms at country level.
- International civil society networks should broaden their interaction with national civil society organisations to facilitate strategic engagement with international mechanisms. There is potential for regional civil society networks to strengthen links with formal regional organisations, and lobby key donors in particular geographical areas.
- International NGOs should use or build new alliances to deepen their research and advocacy on this issue, to formulate joint advocacy positions for lobbying donors and national governments.
- An over-arching priority for INGOs should be strengthening the legitimacy and accountability of partner organisations, in order to contribute to democratic ownership.

³² Eg the UN Declaration on Human Rights Defenders; the EU guidelines on Human Rights Defenders; Irish guidelines on Human Rights Defenders; Report of the UN Special Rapporteur on Human Rights Defenders (first report due in June 2012)

Annex 1: Human Rights: the impact on the right to participate

The restrictions on civil society activities can infringe on the human rights principles that support democratic space for civil society activities. The following table summarises the international principles protecting civil society, and gives some examples from Trócaire partner countries of infringements³³:

PRINCIPLE	Details of the principle	Examples of barriers
Principle 1: The Right to Entry (Freedom of Association)	<ul style="list-style-type: none"> The right of individuals, including non-citizens, to form, join and participate in civil society organizations including trade unions, associations, and other types of NGOs. Activities include all 'legal' or 'lawful' purposes, and specifically the promotion and protection of human rights and fundamental freedoms. There is no requirement to form a legal entity. 	<p>Legislation to discourage, burden and prevent the formation of civil society organizations:</p> <ul style="list-style-type: none"> Burdensome registration and/or annual re-registration INGOs have to have special permission to operate
Principle 2: The Right to Operate Free from Unwarranted State Interference	<ul style="list-style-type: none"> Protection against unwarranted government intrusion in internal governance No state regulations that would amount to a restriction of recognized rights, through politicized regulation, arbitrary decision-making, or interference with the privacy of civil society representatives. 	<p>Legal constraints to legitimate activities</p> <ul style="list-style-type: none"> Harassment of HR organisations Difficulty securing visas, movement Determination of what constitutes legitimate activities Restrictions on advocacy, divisions between INGOs and CSOs Genocide or ideological division laws
Principle 3: The Right to Free Expression	<ul style="list-style-type: none"> NGOs protected in their ability to speak critically against government law or policy, and to speak for human rights and fundamental freedoms. The right to freedom of assembly to plan and/or engage in the advocacy of legal aims. 	<p>Legal provisions to restrict free expression</p> <ul style="list-style-type: none"> Censorship – government scrutiny Defamation laws, penal code Attacks on media outlets

³³ Adapted from WMD & ICNL (2008), Defending Civil Society, World Movement for Democracy and International Centre for Not-for-Profit Law, Washington DC; The input on barriers was generated at Trócaire Global Governance and Human Rights Meeting, November 2011

PRINCIPLE	Details of the principle	Examples of barriers
<p>Principle 4: The Right to Communication and Cooperation</p>	<ul style="list-style-type: none"> • With other elements of civil society, the business community, international organizations and governments, both within and outside their home countries • To form and participate in networks and coalitions; and • To use the Internet and web-based technologies to communicate more effectively. 	<p>Prevention/stifling of free exchanges of contact and communication</p> <ul style="list-style-type: none"> • <i>Civil society tied in government spaces for participation</i> • <i>INGOs prevented from entering or expelled</i> • <i>Restricting free use of the internet</i>
<p>Principle 5: The Right to Seek and Secure Resources</p>	<ul style="list-style-type: none"> • Within broad parameters, right to funding from legal sources: individuals and businesses, other civil society actors and international organizations, inter-governmental organizations, as well as local, national, and foreign governments. 	<p>Restricted ability of NGOs to secure resources</p> <ul style="list-style-type: none"> • <i>Reduced availability of donor funds for civil society</i> • <i>Government funding to CSOs, implications</i> • <i>Heavy restrictions on international funding</i>
<p>Principle 6: State Duty to Protect</p>	<ul style="list-style-type: none"> • The State has a duty to promote respect for human rights and fundamental freedoms, and the obligation to protect the rights of civil society. The State's duty is both negative (to refrain from interference with human rights and fundamental freedoms), and positive (to ensure respect for human rights and fundamental freedoms). 	<p>Failure of the state to protect</p> <ul style="list-style-type: none"> • <i>Torture, extra-judicial killings</i> • <i>Victimisation and assassinations</i> • <i>Jailing/torture of journalists</i> • <i>Impunity and abductions</i>

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