

DISSENT, EXCLUSION AND ACTION

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“They follow me. They threaten to kill me, to kidnap me, they threaten my family. That is what we face.”

Berta Cáceres 2013, a Honduran activist and winner of the 2015 Goldman Environmental prize

On 2 March 2016, Berta Cáceres was shot dead in her home. Her murder was the latest tragic instalment in a sad tale of dissent, violence and social exclusion echoing around Honduras. Being the co-founder and coordinator of the National Council of Popular and Indigenous Organizations of Honduras (Copinh), Berta had been fighting for the rights of indigenous people for decades. She had been fighting illegal loggers, plantation owners and the building of dams which would threaten the livelihoods of indigenous communities. Berta had received countless threats and was consistently harassed for her outspokenness. For these reasons, she was awarded precautionary measures by the Inter American Commission on Human Rights in 2009, yet she was the 14th person in the last five years to be murdered while under the protection of these special measures. According to Global Witness, at least 109 environmental activists have been murdered in Honduras between 2010 and 2015. Working in the most dangerous country for environmental activists, Berta, like many others before her, paid heavily for taking on powerful vested interests in her struggles to defend the rights of indigenous communities in Honduras. It is a story familiar to many across the world in this turbulent year.

CITIZEN ACTION: DIALOGUE AND DISSENT

At the time of writing the details of the Berta Cáceres case are still emerging, but the tragedy illustrates the fraught relationship between social and economic inequality and the right to dissent and protest. Berta, was, like many others in Honduras and across the world, publicly protesting against the Agua Zarca hydro-dam on the Gualcarque River, a river sacred to the Lenca people and a major source of their water and food. In a country where there has been systematic targeting of environmental defenders, many of whom come from indigenous backgrounds, this was brave. Her precarious status as an indigenous woman, allied with years of challenging powerful international and national powerful elites, made her vulnerable to recrimination. Did she have as much right as anyone else to protest? Yes. Did she have as much power? No.

The space, power and ability to flourish of citizens, whether marginalised, socially excluded, or not, is dynamic and multi-layered. How this space shifts, opens or closes depends on many changing and interrelated factors. It may be very possible for citizens and civil society organisations (CSOs) to engage critically with governments on women's rights, for example, indicating an openness of space, while the topic of engaging in land rights issues might be met with immediate restrictions from the same government. Organisations working on different issues and representing different groups of people, such as ethnic minorities, women and youth, may face more or less restrictions than others at a given time, across different areas. The space available for civil society is shaped by constant negotiation with other actors and by other CSOs. The negotiation for space has existed for years, as have the incidents of discrimination, stigmatisation and even death of people from indigenous groups and tribal populations and others from socially marginalised backgrounds, which are many in Honduras and elsewhere.

So what makes the situation uniquely different today? Why is there such outrage from people in Honduras and outside on the murder of Berta Cáceres?

Globally, the last two years have seen the space for civil society shifting and changing, growing smaller as governments assert a concern with enforcing security, but afforded more opportunities as the intensity of social media increases. There may never have been so much revealed dissent or so many tools for governments to control it. But at the same time, in 2015, the Freedom House Freedom in the World Index recorded a decrease in freedom globally for the tenth consecutive year. For the socially excluded, dissent remains both particularly risky and particularly important. It is risky because, like Berta Cáceres, dissenters can easily be driven out of the expression of options and targeted for upholding the rights of the most marginalised groups. It is important because around the world, processes of social exclusion are intensifying: for many groups, accidents of birth are becoming more significant, not less.

This is compounded by the fact that globally, access to justice is often for sale, legally or illegally, allowing for political capture by elites. Court costs and access to the best lawyers is mostly affordable for elites, leaving the socially excluded further voiceless. When members of the elite can stand above the law, it feeds the level of lawlessness, inequity and fear in society, thus serving to maintain elite power, social exclusion and discrimination.

In the case of Cambodia, for example, land rights are a major focus of advocacy for civil society. Prominent networks, such as the Coalition of Cambodian Farmer Communities and the Community Peacebuilding Network, have been championing farmers' rights for decades. Cambodian authorities have a history of dispersing peaceful demonstrations, as well as threatening and attacking those opposed to land confiscation. Incidents of land grabbing and forced eviction by political and economic elites have continued to escalate in recent years, leaving farmers further marginalised with little recourse to accessing the legal system or attaining justice. The law on associations and non-government organisations, passed in July 2015, is an example of the introduction of further restrictions on civil society. This restriction is hugely detrimental to aims of reclaiming public space, instilling confidence in the distributions of public resources and putting social protection measures in place.

Many would argue that restating constitutional rights would help in reclaiming lost rights, whereas others believe that dealing with social exclusion requires working on the development of long term social cohesion, focusing on citizens as much as the state, investing in the idea of a 'community' and working together to build a sense of a 'common good' that cuts across gender, religion, caste, creed, tribe and other social stratifications. Perhaps it is both that are required to bring about long-term

systemic change for the socially excluded. What is certain is that without space for dissent, neither approach would be effective for overcoming the plight of socially excluded and marginalised groups.

SOCIAL EXCLUSION: INTENSIFYING NOT DIMINISHING

Often, governments have supported exclusionary processes in the name of maintaining social order.

Social exclusion is not new. Groups have been marginalised for millennia on the basis of their gender, race, beliefs and practices. And it continues: a report by India's National Council of Applied Economic Research in November 2014 estimated that untouchability continues to be practised by at least 25 per cent of the population, and only five per cent of Indian marriages are inter-caste marriages. Exclusion is overlain by economic inequality. The increasing gap between the rich and the poor has furthered existing social cleavages rather than diminished them. Credit Suisse recently estimated that the richest one per cent have now accumulated more wealth than the rest of the world put together. During the 2015 Davos summit, Oxfam released a report that highlighted that just 62 individuals have the same wealth as 3.6 billion people - the poorest half of humanity.¹ Ending tax havens, resourcing basic services and providing an equal living wage for men and women are some ways in which growing economic inequality could be bridged. Social inequality and exclusion, however, are more complex problems that money can't always solve. Many prejudices that govern policy and practice require behavioural change, not only from policy-makers, but also from the people at large.

The role of government in social exclusion is mixed, and the role of dissent complex. Often, governments have supported exclusionary processes in the name of maintaining social order. The earliest example we know of is Hammurabi's code, which almost 4,000 years ago instituted three classes (property owners, freed men and slaves) and two sexes. The penalty for killing a property owner vastly exceeded that for killing a slave. More recently, the British colonial administration in India designated some itinerant tribes as 'criminal' tribes, restricting their movement and the jobs they could obtain.

Several governments try to correct for social exclusion through affirmative action. Policies in South Africa and the USA, for example, recognise the historic discrimination suffered by black people and try to reserve places in universities or employment as a means of correcting this discrimination. In India, this policy takes the form of 'reservations' for members of groups that have suffered discrimination in the past, for 'Scheduled Tribes' (Adivasis), 'Scheduled Castes' (Dalits) and 'Other Backward Castes'.

These policies are controversial wherever implemented. Opponents argue that affirmative action for different social groups will lead to a less meritocratic approach to selection and therefore lower quality, because the best candidates are not necessarily selected. For some jobs, such as doctors, this matters, because lives are at stake. Opponents also argue that all affirmative action does is to reserve positions for the best off from each social group, rather than really dealing with social inequality. Supporters however argue that affirmative action is justified on equity grounds, because it will reduce the historical inequality between different social groups in terms of opportunity and access to basic services. And moreover, some supporters argue

¹ '62 people own the same as half the world, reveals Oxfam Davos report', Oxfam International, 18 January 2016, <http://bit.ly/1PAVKgX>.

that affirmative action makes selection more efficient and more meritocratic: it will encourage more applications and lead to higher overall quality.

Usually, those most excluded have the most difficulty in raising their voice, whether on their own behalf or on behalf of others. We saw this with Berta Cáceres in Honduras, and we see this across the world. Global Witness reported that 116 environmental activists were murdered in 2014, three quarters of them in Central and South America, and 40 per cent of them from indigenous communities, with most people losing their lives over hydropower, mining and agri-business related issues.

Similarly, the plight of refugees from the Middle East in Europe is exacerbated by their statelessness, and their lack of a mechanism to raise their voices. These examples are indicative of larger trends that point to greater political capture by elites and a reduction in civic space for socially excluded and marginalised groups.

GOVERNMENT ACTION AND REACTION

At the same time, many governments are responding to perceived security concerns by tightening controls on civil society, making it difficult for everyone to raise their voices, and particularly difficult for socially excluded groups. There have been a range of narratives that have been used by governments to prevent dissent and dialogue between and by certain social groups. Anti-terror discourse has often been used to justify restrictions on the freedom of expression, association and assembly through a variety of means: legislative, by passing new laws or amending existing ones; judicial, with law enforcement agencies targeting activists; and extra-legal, through covert operations. There have been 13 restrictive laws implemented in East Africa alone since 2012. Many of these laws directly affect marginalised groups, as the laws limit the role of that part of civil society that is working for the rights of the socially excluded.

For example, in mid-2015, the NGO Bureau of Kenya de-registered and froze the accounts of two leading Muslim human rights advocate CSOs, Haki Africa and Muslims for Human Rights (MUHURI). This was based on stated suspicions that they are tied to violent extremists, aligning with government crackdowns on Muslim civil society in response to al-Shabaab terror attacks. In addition, both Haki Africa and MUHURI had been critical of the government's treatment of Muslims. After filing a suit against the NGO Bureau, Haki Africa and MUHURI had their registrations reinstated and their accounts were ordered to be unfrozen, but the case points to the targeting of specific organisations based on who they represent and the views they hold.

In other cases, the rhetoric of national unity and cultural preservation has been used to curb the voice of already socially excluded groups. In the case of Uganda, for example, the 2014 Anti-Homosexuality Act has affected the gay community immensely, and with the Anti-Money Laundering Act 2013, many of the organisations and activists working for gay rights find that they are unable to support their activities and continue to work towards equal rights. Similarly in Kenya, despite 2014 task force consultations on amendments to the Public Benefits Organisation (PBO) Act, the task force report recommends a number of problematic amendments, including prohibiting the implementation of donor directives that "offend Kenyan culture." This appears to be targeted at lesbian, gay, bisexual, transgender and intersex (LGBTI) advocacy groups. Many CSOs are dissatisfied with the inclusion of such an amendment.

Activists and journalists working on the issue have highlighted that invited spaces - consultation opportunities designed and managed by government - where they exist, can be used simply to provide an appearance of consultation rather than constitute a meaningful process to strengthen public engagement and the social contract between state and citizen. Real decisions and distribution of power often happen outside these processes, and the passing of laws such as those highlighted here reduces the space to engage in a constructive dialogue and debate issues openly, let alone bring about real change for the socially excluded.

In Rwanda, the state's attempt at building national unity has led to the prevention of the airing of dissenting voices, which has led to many citizens and organisations adopting positions of self-censorship since the Law on Public Demonstrations and Public Gatherings 1991 and NGO laws 2012 were passed. Similarly, in South Sudan, the National Security Services (NSS) Act 2015 and the controversial NGO Bill 2015, now an Act, were used as means to restrict dissenting voices and political opposition.

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Governments and citizens may increasingly find themselves faced with a difficult choice. Many citizens are concerned with the threat of violence and insecurity. The means to disrupt ordinary lives seriously and brutally through violence is growing. Many governments and citizens feel the need to act to improve security, and often the easiest course of action is to tighten controls. The hard won gains of the 1990s and 2000s on civil society space and citizen participation are being reversed and this trend is apparent the world over. But at the same time, social exclusion is an increasing and major concern, for the health of countries and economies, and for security itself. Berta Cáceres should have been able to protest against a decision she disagreed with, just as gay activists should not be criminalised and jailed for their sexual orientation. Many governments and citizens feel the need to act to reduce exclusion by reserving positions or providing direct support. The question is therefore whether governments and citizens can simultaneously make their societies safer and less exclusionary.

They can. But it is not easy, and to do so requires clear and effective leadership, strong political will and the willingness to tolerate, embrace and even celebrate dissent. While notionally, the space to express views by all concerned might exist in democracies, it does not necessarily imply that citizens are able to voice dissent openly, let alone influence decision-making processes that affect them. Not giving people like Berta Cáceres an opportunity to express dissent and be heard sympathetically and fairly is a mistake that risks exacerbating the problems that controls on security are ostensibly seeking to avoid.

When citizens and activists criticise government policy they are often labelled as 'anti-development', 'anti-national', 'politically motivated' and even 'against national security'. In cases where this is coupled with measures to restrict civil society space and stifle public debate, marginalised groups are the worst affected, as they are often the ones challenging dominant and majority perspectives. This undermines the legitimacy of many groups of citizens and their ability to operate as engaged and active citizens. The suppression of dissent, often claimed to be an attempt to enhance national security, has often had the opposite effect, by causing deeper polarisation, leading to less secure, more fragile societies that foster divisiveness and encourage social competition and tension, instead of greater solidarity and cohesiveness across social groups. Governments that legislate to control their societies tightly need, more than governments that do not, to be held to account by all their citizens, and particularly those who are excluded.

CIVIL SOCIETY RESPONSE: A CALL TO ACTION

With increased economic inequality, rising social exclusion and limited space for dissent, civil society has a responsibility not only to create space for dialogue and dissent, but also to engage in doing so constructively. The layered nature of civic space means that in countries where civil society space is largely closed or closing, opportunities may still arise where civil society actors are invited to participate, or where citizens and CSOs are able to create space specifically related to voicing the concerns of those most excluded. International civil society needs to be agile in taking those opportunities and ensuring timely and constructive responses.

Given the complex and dynamic nature of civil society space, civic space needs constant assessment in order to understand current realities and identify where opportunities and threats lie. Where space increases, citizens and civil society will be able to gain strength, in that there will be fewer limitations on their actions and expressions. As civil society becomes stronger and more responsible and responsive, it will be better able to defend civic space and support citizens to claim their rights, voice the interests and needs of their communities, and hold governments, the private sector and international institutions to account. However, if we focus on strengthening the voice of civil society without building robust internal and external accountability or taking into account the space available for civil society to operate in, we may in the short term unwittingly be contributing to increasing restrictions on civil society. Attacks on civil society as being undemocratic or anti-state will become increasingly difficult to defend unless we are able to improve accountability to those we serve.

More than ever before, it is important that organisations such as Oxfam reinvent themselves and increase efforts and resources to support small and fragile citizen groups at the grassroots, and national organisations working with the socially excluded to access information, voice concerns and encourage dialogue between and amongst citizen and state authorities. We need to do so by working in alliances that create stronger voice and mitigate the risk of speaking out for people like Berta Cáceres. This has to be done in ways that support citizens and national groups, build their capacity and garner solidarity, rather than occupy their space.

We need to work towards keeping the influence of powerful elites in check by building mandatory public lobby registries and stronger rules on conflict of interest, and ensuring that good quality information on administrative and budget processes is made public and is free and easily accessible to all. The reform of the regulatory environment, particularly around transparency in government, is essential, if civic space is to be democratised substantively, rather than just procedurally. Clear laws, frameworks and processes that enhance continuous citizen-state interaction will not only strengthen the social contract between citizens and state and deepen civic space, but will also lead to a more transparent, accountable and responsive government. Such initiatives will strengthen civil society, making it better able to contribute constructively to key policy processes. Further, separating business from the financing of political campaigns and wealth from access to justice, and introducing measures to close revolving doors between big business and governments, would lead to a more level playing field.

Oxfam, and other organisations, can use their institutional muscle proactively to place the repression of civil society on the agenda of international institutions and national governments, and assist citizen groups and civil society to operate in repressive environments. We can make use of the evidence from our research, programmes and campaigns to strengthen the impact of our influencing work. We can further support civil society by strengthening the connections between local, national and global level influencing initiatives and encourage the sharing of best practices. Our credibility and strength will only stem from embedding ourselves in local contexts, and ensuring that our policies and processes are informed by the needs of the most socially excluded and marginalised.