CSO Partnership for Development Effectiveness

An Enabling Environment for Civil Society Organizations:

A Synthesis of evidence of progress since Busan

Civil Society Partnership for Development Effectiveness (CPDE)

A CPDE Contribution to the Global Partnership for Effective Development Cooperation Monitoring Framework: Indicator Two

Submitted by
CPDE Working Group on CSO Enabling Environment
October 2013

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Acknowledgements

This Synthesis of Evidence builds upon the many contributions of CSO members of the Working Group on CSO Enabling Environment. We are particularly indebted to Brian Tomlinson of Aid Watch Canada for his tireless work in compiling and producing the final synthesis report. The work was produced in collaboration with the various CPDE members at the country level, who organized and contributed to CSO-led processes in the past several months, bringing together country assessments of current issues in enabling conditions for CSOs. These case studies are annexed to this report.

CPDE country case studies have been complemented by additional country-level evidence collected through independent processes and case studies by several global CSO members of the Working Group (see the Sources section of this Synthesis for a list). As authors of the Synthesis, we are very grateful for their detailed and nuanced analysis. Members of the Working Group have improved the Synthesis as a result of their careful reading, reflecting their particular knowledge and expertise.

The Synthesis is "work-in-progress," reflecting evidence currently accessible to the Working Group and the author. In the coming months, the Working Group intends to enrich and broaden its country coverage. For CPDE, the Synthesis offers an essential evidence-based reference for multi-stakeholder dialogue within the Global Partnership to deepen its commitment to strengthen inclusive development. This dialogue will also continue to be facilitated by the Multi-Stakeholder Task Team on CSO Development Effectiveness and Enabling Environment.

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1. Monitoring the Busan Commitments to Civil Society

1. The 2011 Busan Partnership for Effective Development Cooperation made an important commitment to strengthen the enabling environment for civil society organizations (CSOs) as independent development actors:

> "Civil society organisations (CSOs) play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation. They also provide services in areas that are complementary to those provided by states. Recognising this, we will:
>
> "a) Implement fully our respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, consistent with agreed international rights, that maximises the contributions of CSOs to development.
>
> "b) Encourage CSOs to implement practices that strengthen their accountability and their contribution to development effectiveness, guided by the Istanbul Principles and the International Framework for CSO Development Effectiveness." [§22]

2. The Busan High Level Forum (HLF) on development effectiveness was unique as a multi-stakeholder process: CSOs were invited for the first time to participate in both the preparations and the HLF on the basis of an equal standing with governments and multilateral donors. All stakeholders in Busan – donors, partner developing country governments, CSOs, parliamentarians and the private sector – agreed to

> "Deepen, extend and operationalise the democratic ownership of development policies and processes." [§12a]
>
> "[A]ccelerate our efforts to achieve gender equality and the empowerment of women through development programmes grounded in country priorities, recognising that gender equality and women's empowerment are critical to achieving development results." [§20] and
>
> "Focus, at the country level, on establishing transparent public financial management and aid information management systems, and strengthen the capacities of all relevant stakeholders to make better use of this information in decision-making and to promote accountability." [§23b]

3. Implementing the Busan commitments to create conditions for inclusive development at the country level through implementation of democratic ownership, gender equality and women's empowerment, and full transparency and accountability, on the part of all stakeholders. These were considered essential ingredients to enable CSOs to maximize their contributions to development.

4. Paragraph 22 acknowledges CSOs' commitments to their own development effectiveness as defined by the *Istanbul Principles for CSO Development Effectiveness*. The *International Framework for CSO Development Effectiveness* is recognized as the basis for holding CSOs accountable to their commitments to the *Istanbul Principles,* and thereby strengthening their effectiveness as development actors. Since Busan, the Civil Society Partnership for Development Effectiveness (CPDE) has been working with regional and country level platforms and CSOs, on awareness building, training initiatives, and improvements in CSO transparency and accountability related to the *Istanbul Principles* and the *International Framework for CSO Development Effectiveness*.[1]

5. Paragraph 22 of the Busan outcome document, alongside the *Istanbul Principles* and the *International Framework*, recognizes the diversity of roles that CSOs can play in development cooperation. A vibrant civil society is in itself an important development outcome. CSOs are "autonomous non-partisan political actors in the social realm" [*International Framework*: 7] that provide diverse development services, work with other stakeholders to shape development policies, enable citizens to mobilize to claim their rights, and strengthen citizens' capacity to hold governments to account.

6. The Busan HLF agreed that CSOs are profoundly affected by the context in which they work. This context is shaped by many factors, including social attitudes, culture, ethnicity and religious beliefs. Consistent with the OECD Monitoring Framework for Busan commitments, this Synthesis of Evidence addresses "those components that relate most directly to the Busan commitments, and are largely within the control of stakeholders adhering to the Busan Partnership (i.e. legal and regulatory framework for civil society operations; and selected elements of the governance / political environment that have a direct bearing on CSO activity)." [2]

2. A Methodological Note

7. This CPDE Synthesis of Evidence brings together accessible evidence on the current state of enabling conditions for CSOs. The evidence is derived from a number of sources (see appendix Two for a complete list):

- Primary country-level research and CSO consultations undertaken by CPDE members;

[1] CPDE has created a Working Group on CSO Development Effectiveness to promote and coordinate initiatives relating to CSO development effectiveness with regional and national CSOs, including the documentation of progress to date. This Synthesis of Evidence on Enabling Conditions for CSOs is a product of the CPDE's Working Group on Enabling Environment. While acknowledging the importance of internal conditions for CSO effectiveness, the focus is on evidence relating to Indicator Two of the Busan Monitoring Framework and the implementation of the Busan commitment in paragraph 22 [a].

[2] OECD, "Guide to the Monitoring of the Busan Partnership," April 2013, p. 17.

- Recently published research reports, based on country analysis; and
- Assessments of conditions and indicators relating to the freedoms of association, assembly and expression.

The CPDE Working Group on Enabling Environment, alongside the Reality of Aid Africa, enabled ten country level civil society consultations and case studies between June and October 2013. While the methodology varied in each country, they often involved questionnaires to a wide range of CSOs, focus group discussions, review of laws and current commentary on issues in the enabling environment. Time did not permit multi-stakeholder dialogue at the country level on the outcomes of these processes. The CPDE / Reality of Aid Case studies are provided in Annex Two.

8. Evidence provided by these CSO-led country processes has been complemented by recent global reports from the International Center for Not-for-Profit Law, whose research and documentation database on legal and regulatory issues for CSOs covers 46 countries, and from CIVICUS, whose *2013 State of Civil Society Report* provides 11 country case studies and 20 thematic chapters on the theme of enabling conditions for CSOs. Further documentation has been provided by 2013 reports from the Association of Women's Rights in Development (AWID), the International Trade Union Confederation (ITUC) and a number of global reports from organizations such as Amnesty International, the Open Budget Partnership, European Association of Development Research and Training Institutes, and several donor-sponsored evaluations. A Summary of Country Level Evidence for 12 countries is provided in Annex One.

9. While recognizing significant gaps in information for a comprehensive assessment of progress since Busan, the evidence does allow for the identification of some key trends. It does so against a CPDE-agreed Framework for assessing progress in the enabling environment for civil society organizations (see Appendix One).

3. A CPDE Framework for Assessing Enabling Environment Progress

10. The CPDE Framework focuses on three core areas, and within each area addresses essential dimensions of the CSO enabling environment:

Area One: Universally accepted human rights and freedoms affecting CSOs

Dimension One: Recognition of rights and freedoms affecting CSOs.
Dimension Two: The legal and regulatory environment, implementing rights and freedoms affecting CSOs.
Dimension Three: Rights of specific groups

Area Two: Policy Influencing

Dimension One: Spaces for dialogue and policy influencing
Dimension Two: Access to information

Area Three: Donor – CSO relationships

11. These CPDE areas affecting CSO enabling conditions are consistent with the areas

identified and noted above for Indicator Two in the OECD's Monitoring Framework. Over the past five years, CSOs, UN human rights bodies, and other stakeholders have pointed to notable shifts in the operating context for civil society at both the global and country level.[3]

12. The Global Partnership, in its Busan outcomes (§22) and its inclusive processes, strongly acknowledges civil society as essential development actors in their own right. Nevertheless, as can be concluded based on this Synthesis Report, this commitment continues to be in tension with the reality of significant and in dozens of cases growing restrictions on the rights and freedoms for civil society in a range of countries around the world.

3. A Summary of Key Findings

Area One: Universally accepted human rights and freedoms affecting CSOs

Recognition and implementation of rights and freedoms affecting CSOs

13. In October 2010 the United Nations Human Rights Council appointed Maina Kiai as a Special Rapporteur on the rights to freedom of peaceful assembly and of association. His mandate has been to closely monitor national practices and experiences related to the promotion and protection of these rights, identify best practices, and to make recommendations on ways of ensuring protection and promotion of these rights.[4] In May 2013, the Special Rapporteur reported to the UN Human Rights Council on appeals and allegations of violation of these rights from 71 countries, received by his office between March 2012 and February 2013.[5]

14. On September 23, 2013, the Special Rapporteur spoke at a High Level Event on Supporting Civil Society, convened by U.S. President Obama in New York, where he noted, "Civil society and those voicing dissent face some of the most significant challenges, unlike those who support official policies. … Repressive legislation, often shared between states, is becoming a threat to civil society as Member States make laws criminalizing or restricting this work. … Restrictions on funding have become a major existential threat to associations across the world."[6]

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[3] See the documents cited for this Synthesis of Evidence Report in Appendix Two.

[4] See http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx.

[5] Maina Kiai, "Observations on communications transmitted to Governments and replies received (A/HRC/23/39/Add.2)," May 30, 2013, accessible at http://www.ohchr.org/Documents/Issues/FAssociation/A-HR-23-39-Add2_EFS.pdf

[6] Maina Kiai, "Sounding the Alarm: emerging threats to civil society and the need for a coordinated international response, " The High Level Event on Supporting Civil Society, New York, 23 September 2013, accessible at

15. In Busan, governments agreed "to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, *consistent with agreed international rights* [§22a, emphasis added]." Yet, country case studies and other documentation, from both CSOs and independent observers cited in the CPDE's review of evidence, confirm the Special Rapporteur's observation of a persistent and continuing narrowing of the legal and regulatory space for civil society.[7]

16. The rights to freedom of peaceful assembly, of association, and of expression are protected for the most part in the constitutions and basic laws of the countries examined. But despite these constitutional safeguards, a wide range of laws, implementing regulations, or government practices (whether formal, informal, or extra-legal) governing the registration, operations and permitted roles of CSOs have been identified as inconsistent with the full realization of these rights. A recent report by CIVICUS points to 413 threats to civil society in 87 countries between January 2012 and October 2013.[8]

17. Among these restrictive measures and practices highlighted in the various reports consulted are the following:

a) Mandatory registration of organizations, rendering illegal any activities by unregistered CSOs, including smaller community-based organizations and informal associations [identified in 3 case studies (Zambia, Zimbabwe and Tanzania) and 4 additional countries noted by ICNL in its online database (Kenya, South Sudan, Ethiopia and Uganda)];

b) Unclear and/or multiple laws, and/or expensive and complex procedures for registering and governing CSOs. As a consequence, reports observe arbitrary and selective application of laws/regulations against certain organizations, significant barriers for smaller CSOs to register, and lengthy delays for successful registration and burdensome heavy reporting requirements.

c) Vague grounds for refusal to register (or de-register) an organization as a not-for-profit or charity, with limited or no due process for appeal (Referenced in 7 of 12 countries

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http://www.ohchr.org/Documents/Issues/FAssociation/StatementCivilSocietyRoundtable23092013.pdf

[7] The UN High Commissioner for Human Rights, at a press conference on October 18, 2012 made the following comment: "Human rights will not improve much without the direct participation of a robust, free and independent civil society - yet we are seeing increasing examples of State policies and actions that deliberate suppress, sideline or deter important civil society activities. In recent months, we have even seen public smear campaigns against members of civil society because of their attendance at human rights meetings at the UN here in Geneva, as well as direct threats against some of them and their family members. This is completely unacceptable behaviour anywhere, let alone in the halls of the UN." See http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12675&LangID=E

[8] CIVICUS 2013b: 2.

reviewed for this Synthesis[9]).

d) Onerous requirements for re-registration (sometimes annually), placing undue administrative burdens on CSOs and opportunities for selective denial of registration of targeted organizations (onerous procedures and/or undue discretion on the part of the government were referenced in 8 of the 12 countries under review).

e) Unclear legal and regulatory restrictions for CSOs in aid-providing middle-income countries to collaborate and engage in South-South Cooperation.[10]

f) Measures banning public demonstrations, prohibiting non-citizens from participating in public protests, limiting numbers of participants in public picketing, and increasing penalties for violations of regulations regarding peaceful assembly.[11]

g) Institution of politically motivated legal proceedings against members of CSOs critical of official policies leading to arbitrary arrests and detention.[12]

h) Reprisals against members of CSOs for engaging with multilateral human rights institutions most notably, the UN Human Rights Council.[13]

Examples of disabling regulatory practices were observed in a wide range of countries under review. While violations are more persistent and far-reaching in highly polarized and authoritarian political environments, lesser legal and regulatory concerns were also recorded in more democratic country contexts such as Canada or Kenya.[14]

18. In an increasing number of countries, CSOs have drawn attention to state reviews and

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[9] Bolivia, Honduras, Nepal, Kenya, Tanzania, Zimbabwe, and Malawi.

[10] See Brian Tomlinson, "Brazil Case Study: The role of CSOs in South-South Cooperation," in UNDP China, *Working with Civil Society in Foreign Aid: Possibilities for South-South Cooperation?*, an e-book publication, September 2013, accessible at http://www.undp.org/content/china/en/home/library/south-south-cooperation/working-with-civil-society-in-foreign-aid/.

[11] See David Moore and Jacob Zenn. "The Legal and Regulatory Framework for Civil Society: Global Trends in 2012, International Center for Not-for-Profit Law, in CIVICUS, *2013 State of Civil Society Report*, accessible at http://socs.civicus.org/?page_id=4289. The ICNL's "NGO Law Monitor" (http://www.icnl.org/research/monitor/) provides up to date information on approximately 50 countries on key issues relating to the freedom of association and the NGO legal framework. A recent review by ICNL of global trends in 2012-13 for freedom of peaceful assembly identified 11 country cases of restrictive measures on this freedom (Uganda, Azerbaijan, Kyrgyzstan, Maldives, Russia, Bahrain, Fiji, Canada, Malaysia, Egypt, and Iraq). See http://www.icnl.org/research/trends/trends4-2.html.

[12] CIVICUS documents imprisonment of civil society members to suppress their work in eight countries (Azerbaijan, Bahrain, China, Saudi Arabia, Turkey, Uzbekistan and Zimbabwe) in CIVICUS 2013b: 13-14.

[13] *Ibid*., 15-16.

[14] In a survey of Canadian and US CSOs, "twenty-nine (29)% of respondents suggested that legal requirements were a significant barrier (including difficult application requirements and maintaining charitable status). Furthermore, several respondents felt that their ability to operate as legitimate development actors was either constrained or threatened." (CCIC and Interaction, 2013: v)

revisions of outdated legal and regulatory frameworks for CSOs, with mixed and often negative outcomes for the enabling environment for CSOs. Reports from CSOs in a range of countries, such as Cambodia, Ethiopia, Nicaragua, Russia and Zambia, among others, have documented various regressive legal reforms affecting CSOs.[15]

19. On the positive side, some governments are making efforts to improve conditions for CSOs. The International Center for Not-for-Profit Law (ICNL) reported that the NGO Coordination Board in Kenya met with the CSO Reference Group in late 2012 and "agreed to work together to establish a conducive legal environment for NGOs in Kenya."[16] The CPDE's country case study for Kyrgyzstan (see the summary points in Annex Two) notes "in general a positive impact of the national legislation on the activities of CSOs and an ongoing process of making registration easier," including improved legislation governing organizing meetings. CSOs in Malawi confirmed a rapid improvement in the political environment for CSOs following the April 2012 swearing in of a new President.[17] At the global level, the Irish Government, with the support of Chile, Japan, Sierra Leone, and Tunisia among others, enabled the passing of a resolution urging a panel discussion on the creation of a safe and enabling environment for civil society in law and practice at the UN Human Rights Council's 25th session in 2014. The Office of the High Commissioner was invited to liaise with States, relevant United Nations bodies and agencies, relevant special procedures, civil society and other stakeholders to ensure their participation in the panel.[18]

Financing CSOs: Issues in foreign finance sources

20. A number of CPDE/Reality of Aid Case Studies (Zimbabwe, Kyrgyzstan [draft law]) draw attention to the growing trend in legislative restrictions on access to foreign funding for legitimate CSO activities, providing government with political tools to arbitrarily restrict dissenting views and critics. In his April 2013 report to the Human Rights Council, Special Rapporteur, Maina Kiai, drew attention to "increased control and undue restrictions in relation to funding received [by CSOs]."[19]

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[15] See Borithy Lun, "Resistance and Solidarity: Cambodian CSOs confront a repressive draft law on associations and NGOs," and Boris Pustyntsev, "The Russian Civil Society is Holding Out," in CIVICUS, *2013 State of Civil Society Report*, accessible at http://socs.civicus.org/?page_id=4289. See Chimpinde, K., 2013. "CSOs call for repeal of NGO Act," Zambia Post, July 15, 2013, Accessed August 2013 at http://www.postzambia.com/post-read_article.php?articleId=35440

[16] NGO Law Monitor – Kenya accessed September 2013 at http://www.icnl.org/research/monitor/kenya.pdf.

[17] See Reality of Aid Africa, "Malawi Country Case Study," September 2013 in Annex Three (summary points in Annex Two).

[18] See http://www.dfa.ie/uploads/documents/HUMAN%20RIGHTS%20UNIT/item_8_final.pdf and http://protectionline.org/files/2013/09/A_HRC_24_L24.pdf.

[19] Maina Kiai, 2013: 5. Kiai's report documents the types of regulatory restrictions on foreign funding and sets out arguments rooted in international human rights standards that protect the ability of CSOs to access funding and other resources from domestic, foreign and international sources. He also addresses the supposed linkages between counter-terrorism and restrictions on funding. His report notes "in order to meet the proportionality and necessity test [in international human rights

21. CIVICUS' *2013 State of Civil Society Report* (citing ICNL) sets out a growing list of 23 countries with such restrictions and points to a "contagion effect" with laws introduced in one country drawing inspiration from laws in other jurisdictions.[20] A recent report by the International Center for Not-for-Profit Law (ICNL) has drawn attention 14 countries where government and/or parliaments were implementing or considering legal barriers to foreign funding in the period 2012-13.[21] These restrictions often target foreign funding for CSOs engaged in policy processes, advocacy and the defense of human rights at the country level. CPDE/Reality of Aid country case studies (Cameroon, Tanzania, Zimbabwe, Bolivia, Kyrgyzstan) draw attention to public demonization in some countries of particular CSOs as agents of foreign (Western) governments as a result of their receipt of foreign funding. In Russia, for example, all CSOs receiving foreign funding are now required by law to register as "foreign agents," considered to be spies, which is being challenged by Russian CSOs in international courts.

22. The Special Rapporteur, in his May 2013 report, rightly rejects the justification of state sovereignty for government stigmatization of foreign funding that result in discriminatory treatment of CSOs. He calls upon States to "demonstrate a change in mentality by highlighting that funding associations contribute to the development of a flourishing, diversified and independent civil society, which is characteristic of a dynamic democracy." States must "allow access by NGOs to foreign funding as a part of international cooperation to which civil society is entitled to the same extent as Governments."[22] According to the Special Rapporteur, it is reasonable to require CSOs to be accountable to their donors, and authorities may subject CSOs to a notification requirement of receipt of funds and to regulations that apply to all associations for the submission of periodic reports on their accounts and activities.

Ways forward in improving the legal and regulatory environment

23. The CPDE country case study for Cameroon sets out some proposals for improving the legal and regulatory environment, which would resonate with CSOs in many countries around the world. These include 1) greater sensitivity in the law to various CSO roles and activities, consistent with the recognition of CSOs as development actors in their own right; 2) harmonization of a number of existing laws and scattered regulations to simplify accountability; 3) a more robust law tackling corruption; 4) the abolition of the power of

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standards], restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations. … Laws drafted in general terms limiting, or even banning funding under the justification of counter-terrorism do not comply with the requisites of "proportionality" and "necessity". (8)

[20] CIVICUS, 2013a: 38.

[21] ICNL 2013: 2-7.

[22] Maina Kiai, *op cit*, 11.

government alone to dissolve a CSO without judicial review; and 5) CSO funding laws that respect international solidarity. CSOs must be free to determine their own statutes, structures and activities and to make decisions consistent with their mandate, without state interference. Such proposals are consistent with widely acknowledged good-practice guidelines for laws and regulations affecting CSOs, which should be considered by all stakeholders for the revision or reform of the legal regime governing CSOs (see Appendix Three for a summary of some good-practice guidelines).

Rights of specific groups

24. The true test of an enabling environment for CSOs, consistent with international rights, is one in which the rights of those CSOs working in more politically sensitive areas are fully respected and protected.

25. In most countries, the service provision and humanitarian assistance roles of CSOs are widely accepted and even promoted by other stakeholders. However, significant barriers often exist for particular groups with mandates that include the critique of and/or advocacy for policy change or for those that represent the views of marginalized and vulnerable populations. According to a recent survey of six countries (also confirmed by the CPDE/Reality of Aid Africa case studies), CSOs "working in human rights, community rights, land rights, natural resources, mineral and environmental issues are more likely to become stigmatized."[23]

26. Many of the reports consulted as well as the CPDE country case studies highlight specific actions against organizations that challenge government and/or represent vulnerable populations:

a) Human Rights Defenders Human rights defenders (HRDs) are particularly vulnerable and targeted in many countries. Women HRDs often face unique gender-based confrontations.[24] According to the Special Rapporteur on Human Rights Defenders' August 2013 report,

> "Both the Special Rapporteur and the Special Representative of the Secretary-General on Human Rights Defenders have repeatedly reported on the extraordinary risks faced by those defending the rights of local communities, including indigenous peoples, minorities and people living in poverty. These human rights defenders commonly face threats, harassment, intimidation, criminalization and physical attacks. The Special Rapporteur and the Special Representative have observed that human rights defenders are commonly branded as being against development if

[23] Hayman et al., page 8.

[24] See the work of the Women's HRDs International Coalition at http://www.defendingwomen-defendingrights.org/about.php and the 35 case studies in its 2012 Global Report on the Situation of Women's Human Rights Defenders at http://www.defendingwomen-defendingrights.org/pdf/WHRD_IC_Global%20Report_2012.pdf.

their actions oppose the implementation of development projects that have a direct impact on natural resources, the land and the environment. … Human rights defenders also speak out against forced evictions that occur in connection to development programmes and projects."[25]

The Special Rapporteur 2010 Report acknowledges the increased risks of women as HRDs, the need to make visible the seriousness of violations against women HRDs, and the need for a gender-specific approach to protection mechanisms.[26]

Attacks on HRDs in various forms were identified in five CPDE/Reality of Aid country reports (Cameroon, Malawi, Zimbabwe, Kyrgyzstan, and Honduras). According to Front Line Defenders, HRDs are essential agents of change. Through their work, "by documenting and denouncing abuses, exposing corruption, pushing for reforms, and ultimately by defending the rights of others, they contribute to building a society where all voices are heard." [27] While documenting many cases of political and judicial harassment, physical attacks and assassination attempts, Front Line Defenders "reported 24 killings of HRDs in 2012 in a mix of countries including Brazil, Burundi, Cambodia, Colombia, Guatemala, Honduras, India, Mexico, the Philippines, Somalia, South Africa, Tanzania, Thailand, and Ukraine."[28]

b) Women's Rights Organizations In the words of the CIVICUS *2013 State of Civil Society Report*, "if a country cannot offer an enabling environment for women's rights organizations, it should tell us that something is more broadly wrong."[29] While CPDE country case studies acknowledge some modest improvements in several countries (Zimbabwe, Kyrgyzstan), the Cingranelli-Richards Human Rights Dataset assesses only eight out of eighty-five countries in which women's rights are "guaranteed in law and practice." [30]

Women's rights organizations play a catalytic role in strategizing and advancing work that challenges existing gender norms and power relations. The Association of Women's Rights in Development (AWID) has documented increased violence against Women Human Rights Defenders (WHRDs), with 24 WHRDs murdered between 2010 and 2012 in a range of countries including Guatemala, Honduras and Mexico. AWID has

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[25] See http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/418/11/PDF/N1341811.pdf?OpenElement

[26] Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN HRC, 16th Sess., UN Doc. A/HRC/16/44 (2010) p. 6 para. 23

[27] Andrea Rocca, "Enabling Human Rights Defenders", in CIVICUS 2013a, *2013 State of Civil Society Report*, accessible at http://socs.civicus.org/?page_id=4289.

[28] Andrea Rocca, *Ibid*.

[29] CIVICUS 2013a, "Where are we?", *2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289.

[30] See CIRI Human Rights Data Project. "Cingranelli-Richards Human Rights Dataset," accessible at http://www.humanrightsdata.org/index.asp

also pointed to the rise of religious fundamentalism across all regions, with 76% of 1600 women activists from 160 countries reporting in a survey that they have dealt with the consequences of religious fundamentalism in limiting their work over the past ten years. Finally AWID has been monitoring the financing of women's organizations (see below) and notes shrinking funding from many of the traditional aid sources of finance.[31]

c) Trade Unions Trade unions are effective social organizations whose defense of workers' rights contribute to reducing income inequality, strengthening social protection, and promoting gender equality in the workplace. These roles however are often highly contested. Several CPDE case studies (Cameroon, Tanzania, Zimbabwe, and Honduras) note specific attacks on the rights of trade unionists. In its 2013 *Survey of Violations of Trade Union Rights*, the ITUC draws attention to "severe attacks on trade unions in Burma/Myanmar, Fiji, Georgia, Guatemala, Bahrain, Swaziland and Zimbabwe, [which] have put the existence of trade unions and democratic institutions at extreme risk." This 2013 report documents a range of disabling conditions facing trade unionists, including denial of civil rights, discrimination against trade unionists, and interference and denial of collective bargaining rights.[32]

27. Several reports have drawn attention to the impact of counter-terrorism legislation on the actions of CSOs, crucially highlighting the adverse effect of such legislations on the work of humanitarian NGOs on the ground. An independent report on the *Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action* found

> "negative impacts on humanitarian activities, such as restriction of funding, blocking of project and self-censorship. … The research uncovered a high level of self-limitation and self-censorship. This was particularly acute in organizations, which perceived their reputation to be highly vulnerable, most notably faith-based Islamic NGOs. … Aid agencies also sought to ensure that counter-terrorism obligations are passed onto local implementing partners."[33]

A review of measures for countering the financing of terrorism for the 2013 CIVICUS *State of Civil Society Report* concluded that such measures constrain CSO activities. They are the product of "a culture of suspicion in which the links between charities and terrorist

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[31] See Cindy Clark and Julia Miller, "Key Factors Shaping an Enabling Environment for Women's Rights Organizations," in CIVICUS 2013a, *2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289.

[32] ITUC, "Countries at Risks: Violations of Trade Union Rights," Geneva, 2013, accessible at http://ituc-csi.org/countries-at-risk-2013-report-on.

[33] Kate Mackintosh and Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action," Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council, July 2013, accessible at https://docs.unocha.org/sites/dms/Documents/CT_Study_Full_Report.pdf. See also "Counter-Terrorism laws can hurt humanitarian action," IRIN News, July 22, 2013, accessible at http://www.irinnews.org/report/98454/counter-terrorism-laws-can-hurt-humanitarian-action.

organisations have been exaggerated while measures to protect freedom of association and expression have been disregarded." Furthermore, "the export of these [financial] regulations to countries where CSOs already operate in a restrictive political climate can provide repressive governments with new tools for surveillance and control and encourage people and money underground."[34]

Ways forward in protection for specific groups

28. CSOs in several countries (Cameroon and Kenya for example) report that organizations targeted by government measures are made more vulnerable due to a lack of resources and capacities to defend their organization. Donors should consider flexible financing and other options to strengthen vulnerable organizations facing disabling conditions for their operations. States should also take special measures to ensure monitoring, follow-up and the application of the rule of law in relation to harassment and violence against human rights defenders, taking account of special circumstances for women human rights defenders. States should also put in place policies for the protection of members of CSOs that provide for independent investigations into criminal attacks on HRDs or other vulnerable populations and should provide national human rights institutions a mandate to support and work with CSOs. All states should issue open invitations to UN Special Rapporteurs and Special Procedures.

Area Two: Policy Influencing

Spaces for inclusive dialogue and policy influencing

29. All stakeholders at the Busan HLF agreed that "inclusive development partnerships" are the foundation for cooperation for effective development. A more inclusive development process requires governments to "deepen, extend and operationalise the *democratic ownership of development policies and processes*." [emphasis added, §12a]

30. Operationalizing inclusive development through democratic ownership involves empowering people as primary beneficiaries, but also as actors in their development. In this context, CSO policy influencing is not only about inclusive participation in consultations, which often remains episodic at the discretion of governments. It is also about creating structured and permanent forums for multi-stakeholder dialogue that include a diversity of civil society actors – particularly those involving marginalized populations –in advising and monitoring development policies, plans and strategies. The effectiveness and inclusivity of multi-stakeholder forums for dialogue are closely related to

[34] Ben Hayes, "How international rules on countering the financing of terrorism impact civil society," in CIVICUS 2013a, *2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289.

an enabling environment for CSOs. Restrictions affecting CSOs, particularly in their capacities to express dissenting views and represent affected populations, pose serious challenges to the realization of democratic ownership, which aims to broaden and deepen the diversity of peoples' participation in development.

31. The country case studies submitted as evidence for this Synthesis pointed to varying, but usually very limited, degrees to which national development strategies have been informed by inclusive consultations. In three country case surveys of CSOs by ACT/CIDSE, more than 50% of CSOs said that they never or only sometimes are invited to give feedback to or participate in government bodies or working groups on government policies (Malawi – 51%; Rwanda – 56%; Zimbabwe – 90%). Significant numbers of CSOs also said they would be concerned about making explicit criticism of government on development matters in public (Malawi – 43%; Rwanda – 48%; Zimbabwe – 75%). At the same time, at least in Malawi, CSO capacity to be openly critical of government policy and practice on development has improved compared to five years ago (Malawi – 62% say now is better than five years ago; Rwanda – 36%; Zimbabwe – 20%).[35]

32. These findings are also largely consistent with a 2011 review of 32 country experiences presented in a Global Report by CSOs working with the Reality of Aid Global Network. This report found at the time "a mixed experience with inclusive consultations and few fully inclusive multi-stakeholder bodies for development planning and monitoring."[36] The Reality of Aid Report could point to only a few experiences among the 32 countries examined through case studies where there was sustained multi-stakeholder involvement in government national development planning directorates.

33. The evidence collected for this Synthesis, similar to the 2011 Reality of Aid Report, describe consultations that are mostly episodic, at the discretion of governments and often involved limited numbers of CSOs, selected for their broad support of government policy. Inclusion of CSOs and other stakeholders within government bodies mandated to coordinate and/or monitor country development strategies remains the exception rather than the rule. CSOs in country case studies and recent reports reviewed for the Synthesis point *inter alia* to

a) Consultations with only a carefully government-selected set of CSOs, avoiding those that might put forward a critical perspective and/or alternatives to government policies (Cameroon, Zimbabwe, Bolivia, Honduras 2013 Country Case Studies)
b) Consultations held to receive CSO views, but such views are based on limited or no access to documentation on relevant government draft policies or priorities (Tanzania 2013 Country Case Study; Peru 2011 Reality of Aid Report);

[35] ACT/CIDSE 2013, forthcoming.

[36] Reality of Aid, 2011. Pages 15 – 20.

c) Superficial consultations in the final stages of policy development, designed for information sharing only, with limited opportunities to hear from stakeholders (Zambia 2011 Reality of Aid Report);

d) A decline in previously-held inclusive consultations/dialogue based on a mutually agreed agenda, in favour of ones that target specific government determined priorities (2013 Canada/US Survey);

e) Rhetorical commitments to create space for women's participation in decision making and planning, but no structured mechanisms for realizing this commitment (Kenya 2011 Reality of Aid Report);

f) Limited or non-existent opportunities for policy dialogue between governments involved in South-South Cooperation (SSC) assistance and CSOs in these countries seeking to make a contribution to SSC;[37] and

g) A general lack of accountability following consultations to determine if and how CSOs concerns were taken into account in the final policy decisions (Zambia 2013 Country Case Study).

34. Despite the Busan global commitments, country-evidence suggests that policy-making processes to determine development priorities and the allocation of resources for these priorities remain mainly an exclusive prerogative of government, with few opportunities for policy influence from affected populations. These latter opportunities, however, may be growing in a few countries. There are several recent examples of progress in formally established multi-stakeholder dialogue that deserve closer study from which stakeholders can draw lessons and elaborate approaches that might be applicable in other countries.

a) In Kyrgyzstan, Public Councils (PCs) were created by Presidential Decree in late 2012. These Councils provide a permanent forum within selected ministries for CSO monitoring the implementation of government policies and the legislated use of public resources, holding state institutions more accountable. While clearly a positive innovation providing opportunity for non-state actors to engage with government at many levels, the early experience has raised questions among Kyrgyzstan CSOs about the current effectiveness of some Councils, the capacity for real impacts on ministerial policies and practices, and directions for deeper democratization of decision-making.[38]

b) The CPDE Cameroon case study – and other evidence for Kenya – point to some progress in more participatory forums for policy dialogue. A 2010 study by Aid Group Cameroon found 37 such forums in the country in areas such as public finance, agriculture, forests and environment, health and education. At the same time some

[37] See UNDP China, *op. cit*.

[38] See the CPDE Kyrgyzstan report for this Synthesis as well as Nurgul Dzhanaeva, Forum of Women's NGOs of Kyrgyzstan, "Enabling environment for civil society in Kyrgyzstan: recent developments," in CIVICUS 2013a, *2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289.

Cameroonian CSOs, in another survey, raised concerns about the transparency of the selection process for civil society representatives. The USAID CSO Sustainability Report for Sub-Saharan Africa pointed to "numerous opportunities for CSOs to participate in the formulation of legislation aimed at advancing constitutional provisions and in reviewing existing laws …" (USAID 2012: 74). There were also reports of modest progress by CSOs in a few policy areas in Zambia, Honduras and Malawi through participatory forums (2013 CPDE/Realty of Aid Country Case Studies). The 2011 Reality of Aid *Global Report* described positive inclusive processes in ongoing policy planning bodies established by the Ghanaian government (Reality of Aid 2011:18 and 56).

c) In 2012 the European Commission published an important statement on the value of CSOs in EU development cooperation. Among other areas, the Communication states, "the international community, the EU included, has a duty to advocate for a space to operate for both CSOs and individuals. The EU should lead by example, creating peer pressure through diplomacy and political dialogue with governments and by publicly raising human rights concerns." The Communication explicitly defines and commits to regular engagement with CSOs and "sets standards that can be used to monitor whether improvements to conditions for civil society result from EU activities."[39]

35. Several observers have noted greater space for civil society policy dialogue and engagement with local authorities around local policies and delivery of programs. A Honduran contribution to the 2011 *Reality of Aid Report* observed a continued productive engagement with local governments on development issues, despite a very restrictive environment for CSOs at the national level following the 2009 coup.[40] While Nepalese CSOs have reported restrictive conditions imposed on CSOs by local authorities (Nepal Summary in Annex Two), the CPDE case study for Malawi reports that "many local CSOs participate in district-level decision-making processes and forums, including the District Executive Committees."

36. Increasingly CSOs are seeking a place at the table in multilateral policy processes where important norms are established and commitments made for country-level reform. The Task Team on CSO Development Effectiveness and Enabling Environment has drawn attention to the highly inclusive preparations and conduct of the multi-stakeholder 2011 Busan High Level Forum on Aid Effectiveness. The Task Team has highlighted the Busan process as a practical example to inform other multilateral policy processes, such as the

[39] See CIVICUS, "Where are we?," page 17 in CIVICUS, *2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289. See also European Commission, 2012. For a commentary see Izabella Toth, Ester Asin Martinez, Olivier Consolo, and Daniel Nuijten, "Space for CSOs: a European perspective," in CIVICUS 2013a*, 2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289.

[40] Reality of Aid 2011, *op.cit.,* page 271.

roadmap towards determining the post-2015 sustainable development goals.[41] The May 2013 High Level Panel of Eminent Persons Report on Post-2015 Development Goals makes a notable call for an enabling environment and access to due process as a necessary condition for CSOs and other non-state actors to fulfill their varied roles in sustainable development.[42] Despite these calls, and some recent positive developments within the UN Food Security Council, CSOs writing for CIVICUS 2013 *Global State of Civil Society Report* describe "missed opportunities at the multilateral level" in which there is "a strong civil society critique, particularly following Rio+20, of the ceremonial inclusion of civil society."[43]

Open budget and access to information

37. For CSOs, there is a close relationship between transparency and democratic ownership. Transparency in information is essential to hold governments to account. Where governments tightly limit access to information, a culture of corruption is more likely to flourish. Among the 32 country cases, the 2011 *Reality of Aid Report* can only point to three cases that describe good practices with significant progress in transparency (Ecuador, Peru and Uganda). For the most part, access to information is either very partial or unavailable on a straightforward and timely basis. This assessment is confirmed by several of the CPDE/Reality of Aid case studies for this Synthesis (Malawi, Tanzania, Zambia, and Bolivia Country Case Studies). The ACT/CIDSE survey of CSOs has similar findings, with 60% of Rwandan CSOs answering in the positive to a question about whether access to timely information about government policy and budget is better now than five years ago (compared to 32% in Malawi and 25% in Zimbabwe).[44]

38. An important indicator of access to public policy information and policy influence is the degree to which the budget process is transparent and open to public participation. The annual budget is a key public policy process, translating development policy priorities into on-the-ground programming. The International Budget Partnership (IBP) is an international coalition that monitors budget processes in approximately 100 countries with the aim "to ensure that government budgets are more responsive to the needs of poor and low-income people in society and, accordingly, to make budget systems more transparent and accountable to the public."[45]

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[41] See Task Team on CSO Development Effectiveness and Enabling Environment, "Enabling a Transformative Multi-stakeholder Post-2015 Development Agenda," August 2013, accessible at http://csopartnership.org/task-team-on-cso-de-and-the-ee.

[42] See the HLP's 2013 report, *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development – The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda*, page 4, accessible at http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf.

[43] CIVICUS, "Where are we?," *op cit*., pages 11 and 19.

[44] ACT/CIDSE 2013. Forthcoming.

[45] See http://internationalbudget.org/who-we-are/ and the International Budget Partnership Annual Report at http://internationalbudget.org/wp-content/uploads/IBP-Annual-Review-2012_final-edition_Digital-Edition-1.pdf

39. The IBP's *Annual Survey for 2012* concludes that progress in accessible budgets has happened, but at a rate that is much too slow. The report highlights that average budget transparency scores have risen in nearly all parts of the world, with progress especially steady and significant among those countries with very low starting points, where the least budget information has been provided. However, there is great variation in how budget transparency has evolved over time in different countries. But while transparency has improved, public participation in the budgetary process has seen little progress:

> According to the Survey "opportunities for public participation in the budget process are either limited or completely absent in most countries. … [T]he idea that citizens have a right to participate in the budget process, and that it is desirable for them to do so, is still far from consensual."[46]

Some CSOs' involvement in their country's budget monitoring - like *'Dynamique Citoyenne'* in Cameroon[47] – point to the difficulty in civil society inputs receiving due consideration in a key policy area.

Ways forward for more inclusive policy processes

40. Governments and donors have a responsibility to facilitate democratic policy processes at the national level through creating structured and institutionalized roles for civil society and other non-state actors within governments' and donors' policy development, implementation and monitoring processes. A number of conditions are critical for realizing democratic ownership:

a) Establish **permanent institutionalized spaces** for multi-stakeholder dialogue on development policy, based on principles of mutual trust, respect and shared responsibilities. Ongoing processes, not one-off events, are essential for sustained democratic ownership. It is also important to recognize the responsibilities and contributions of other actors, especially parliamentarians and local government.

a) Facilitate inclusive **engagement of a diversity of civil society actors** on policy and its implementation at all levels through strengthening fully representative CSO platforms, particularly those representing grassroots-based social organizations, women's and indigenous peoples' organizations. Policy dialogue must be sufficiently resourced to enable full participation of stakeholders.

b) Build **open and timely access to information and transparent accountability mechanisms** and processes, protected by legislation.[48] There must be clarity of

[46] International Budget Partnership, 2012: 34. The average score among countries for public participation is 19 out of 100. This compares with a score of 43 out of 100 for transparency and 52 out of 100 for legislative oversight.

[47] http://www.africanmanager.com/site_eng/detail_article.php?art_id=19389

[48] The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression points to international standards on these issues that governments should follow, endorsing a set of principles on freedom of information by the civil society organization, Article 19 –

purpose and process, with accountability/feedback to those who have been consulted. Access to key documentation in the languages of those being consulted is also essential.

c) Implement **full transparency for budget documentation** and deepen citizens' direct engagement with the budgetary processes.

d) Build inclusive fully participatory processes from the country level to the global level in order to establish **a new global consensus on the post-2015 sustainable development goals** and directions for achieving these goals at the country level.

e) Support the **capacities for a wide range of CSOs** – including women's rights organizations, rural, indigenous, people with disabilities, and urban community organizations – to participate effectively in multi-stakeholder policy processes.

Area Three: Donor – CSO relationships

Donor polices and a CSO enabling environment

41. Most DAC donors (but not all) have written accessible policies that address their relationships with CSOs in the delivery of aid. A DAC review of good practice for donors suggests that these policies should *inter alia*,

> "[S]et out measurable objectives including for implementing the commitments made on civil society in the Busan 4th High-Level Forum on Aid Effectiveness (para 22). These are: recognising CSOs as development actors in their own right, promoting an enabling environment (including effective donor support), and encouraging CSOs to implement practices that strengthen their accountability and contribution to development effectiveness."[49]

The DAC peer reviews have pointed to a number of good practice policies – Sweden, Denmark, Australia, Finland, among others – that address CSOs as development actors in their own right.

42. Translating civil society policies into donor decision-making processes and practices on the ground however remains an ongoing challenge. A recent independent assessment of Sweden's civil society policy concluded that "the Busan commitments, the OECD lessons and the Sida CSO Policy, which all define good practices and guidelines for CSO support, have only to a limited extent influenced CSO funding practices at embassies and Sida HQ units."[50] While similar assessments by other donors would be useful, it is likely that other donors

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The Public's Right to Know: Freedom on Information Legislation, which is based on international and regional law and standards on the issue.

[49] OECD Development Assistance Committee, *Partnering with Civil Society: 12 Lessons from DAC Peer Reviews*, OECD 2012, page 11. Accessible at http://www.oecd.org/dac/peer-reviews/partneringwithcivilsociety.htm /

[50] Nilsson, et al, 2013: 88.

face similar challenges, balancing good practice directions in CSO policy statements with broader political and programmatic demands on donor officials implementing a range of donor policies, particularly at the country level.

43. Several DAC donors have been identified in recent peer reviews urging further policy development in consultation with civil society. A 2013 DAC Peer Review of France for example observed (page 20), "France has not so far developed a strategic approach to civil society organisations, and devotes few resources to strengthening them." The 2012 Peer Review of Canada (page 10) called on CIDA to "complete its civil society effectiveness strategy," (page 20) through which it "should take a fresh look at how it can better achieve its development aims in relation to civil society." (page 29) The latter "will need to strike a balance between respecting CSO autonomy as development actors in their own right, and steering CSOs to deliver Canada's development co-operation objectives"(page 29).[51]

44. Over the past several years, CSOs based in both donor and partner countries have identified a number of issues in donor policies[52] that affect and constrain their effectiveness as development actors:

a) **Non-responsive donor CSO policies** Donor directive policies (narrow donor-determined results requirements) and modalities of support for CSOs (contracting for donor-determined programming) limit CSO capacities and space for pursuing partnerships based on the principles of ownership and alignment with the priorities of their partners and constituencies. DAC donor priorities (and also INGO priorities) are often developed with little engagement with developing country CSOs and sometimes with little knowledge of conditions facing local CSOs. (See the Kyrgyzstan and Tanzania case studies.)

b) **Funding modalities and conditions** CSO effectiveness is weakened by an inappropriate mix and choice of funding modalities,[53] unpredictable timing and long delays,[54] shrinking opportunities for financing that is responsive to CSO priorities and

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[51] For all DAC donor peer review documents see http://www.oecd.org/dac/peer-reviews/peerreviewsofdacmembers.htm.

[52] These issues have been derived from a synthesis of the 2010 Open Forum consultations with CSOs (http://www.ccic.ca/_files/en/what_we_do/Synthesis%20of%20Open%20Forum%20Consultations.pdf) in more than 70 countries; Wood, J., and Karin Fällman, "Official Donors' Engagement with Civil Society: Key Issues in 2012," in in *CIVICUS, 2013 State of Civil Society Report*, page 32, accessible at http://socs.civicus.org/?page_id=4289; UNDP China 2013, Chapter 6; OEDC DAC 2012, *op. cit.* and various CPDE/Reality of Aid Case Studies for this Synthesis.

[53] See Nilsson, et al, 2013, pages 81-83 and UNDP China, 2013, pages 77 – 85 for a description of the advantages and disadvantages of different funding modalities for CSOs, based on the principles set out at the Busan HLF for CSO development effectiveness.

[54] For example in Canada, there has been a two-year gap in a general call-for-proposal by the section of DFAITD (formerly CIDA) responsible for partnerships with Canadian CSOs. CIVICUS 2013a, *State of Civil Society Report* and the CCIC / Interaction CSO Survey notes that donors recently have withdrawn previous long-standing programmatic support for CSOs in Canada, New Zealand and the Netherlands. (CCIC & Interaction, 2013)

programs, and high transaction costs due to a lack of harmonized requirements by donors.[55] CSOs report that competitive funding modalities have resulted in more intensive competition among CSOs in both donor and developing countries, undermining interest in and space for constructive CSO collaboration and coordination. (See Cameroon Case Study)

c) **Availability of institutional funding** While CSOs may be able to seek funding for projects related to their programmatic activities, the terms of donor finance often preclude (or seriously limit) support for core basic operational functions of the organization. This lack of support for these functions undermines the capacities and sustainability of CSOs, particularly those in developing countries, to sustain effective programming capacities to achieve impact over the medium and longer term.

d) **Public awareness programming in donor countries** Sustaining a public constituency for development cooperation is often undermined by limited resources in donor support for public awareness programming in donor countries. There is often a lack of donor clarity about the purposes of its public awareness programming – is it communications about donor/CSO programs or is it to build citizen engagement and critical awareness of the challenges facing people living in poverty?

e) **Pressures for uncritical CSO alignment with government policies** CSOs in developing countries face increasing pressure to align with government development strategies for sector programming. The CPDE Bolivia Case Study (page 19), for example, notes that Bolivian CSOs must state in their statutes the scope of their social and economic activities, "taking into account the guidelines laid down in national plans, national policies and sectoral policies." Where strategies have not been developed through inclusive multi-stakeholder processes with different country stakeholders, CSOs may legitimately argue that their programming fills gaps in these strategies or speaks to the interests of populations whose interests have been marginalized. Similarly, without sustained access and dialogue between CSOs and government, practical collaboration and alignment with government is difficult.

f) **Donor-dependency and direct funding to developing country CSOs** CSOs in a number of the CPDE country studies (Cameroon, Malawi, Zimbabwe, Tanzania) raise the issue of high dependency on official donor finance (either indirectly through INGOs or directly). But at the same time, they also report few if any alternative financing through in-country philanthropy or government ministries. The few alternatives that do exist are based upon a contract-for-service agreement with local governments.

There is also increased donor interest in balancing direct financing to local CSOs with support channeled through CSOs in donor countries. CSOs in developing countries

[55] A ITUC review of donor support mechanisms concluded, in part, that "the consequences of the political nature of trade union development work and its implications for support mechanisms should not be underestimated. However, … the streamlined, one-size-fits-all nature of the funding procedures is a general trend where support mechanisms for CSOs are concerned. The specific features of TU development work are therefore not sufficiently recognised." (ITUC 2012: 43)

appreciate their relationships with CSOs based in DAC donor countries, which have resulted in solidarity; moral and political support; and access to information, networks and the international arena. At the same time, there is strong interest in several developing countries in local CSO/donor-managed pooled funds from several donors, which provide alternative direct support for strengthening domestic CSOs. Donors must try to determine an appropriate balance between these two channels.

g) **Opportunities and resources for developing country policy dialogue** CSOs in developing countries are increasingly collaborating to influence their government's development policies and hold governments to account at the national and local level. A major evaluation of donor support for developing country CSO policy initiatives in Uganda, Mozambique and Bangladesh revealed the need for better and more focused financial and evaluation instruments for donor support, including assessment of civil society engagement in government policy dialogue in complex developing country contexts.[56] CSOs in several CPDE case study countries Cameroon, Kyrgyzstan, Canada also drew attention to the limited scope for regular CSO/donor dialogue, consistent with good practice consultation noted above (paragraph 37). CSOs in Bolivia, on the other hand, noted that the Bolivian Development Partners Group agreed in 2011 to create spaces for dialogue with CSOs, consistent with their commitments in Accra and Busan. A first dialogue was held in November 2012. (Bolivia Case Study, 54)

Ways forwards for a donor policy framework for enabling CSOs

45. The Civil Society Partnership for Development Effectiveness (CPDE) is calling upon DAC donors and other aid providers to pay due attention to the local political, social and economic environment in which CSOs operate, and in the words of the UN Special Rapporteur, to pay particular attention to conditions for "associations working with grassroots communities, marginalized and vulnerable peoples, and on 'unpopular' or cutting edge issues."[57]

46. Consistent with commitments at Busan, donor and other aid providers should assure financial and political support for all roles of CSOs, including their roles in monitoring policy implementation and dialogue, by

a) Focusing support on strengthening the sustainability of a diversity of CSOs as

[56] See the recommendations for development partners in ITAD/COWI. 2012: 71-78. These recommendations included 1) funds for policy processes and for initiatives determined by CSOs themselves (the right to initiate), 2) long term and targeted support that acknowledged the long timeframes for policy change processes, 3) a higher proportion of funding for capacity development and CSO administrative costs in CSO policy influencing processes, 4) pro-active engagement to protect and expand policy spaces for CSOs, and 5) expanding / demonstrating the practice of regular CSO/donor policy engagement. See also the UK's Trade Union Congress' critical assessment of DFID's support for social dialogue involving the trade unions, government and employers. (TUC 2012: 21-23).

[57] Maina Kiai, op cit, 5.

development actors in their own right, and limiting the utilization of CSOs merely to implement donor policies and programs. Such targeted use of CSOs may promote an international CSO community characterized mainly by consultancy-oriented CSOs bidding for projects with agendas set by donors.[58]

b) Taking a "whole-of-government" approach that takes civil society into account across all government policies and programs in development cooperation and direct engagement with Southern CSOs as partners.

c) Collaborating with governments, other stakeholders, and CSOs working domestically to improve enabling political and regulatory frameworks and their implementation.

d) Creating systematic space for meaningful dialogue on relevant development policies with civil society in both donor and developing countries, including strategizing with CSOs for the inclusion of enabling environment issues in policy dialogue with developing country governments and other influential bodies.

e) Providing funding to enable CSOs to pursue development objectives in a way that responds to and is driven by local demand, strengthening the role of CSOs as independent development actors. Such funding includes funding for core functions and for inclusive policy processes. The funding should be provided in a manner that harmonizes donors' terms and conditions and reduces transaction costs for both donors and CSO partners. Sweden is leading an important initiative on harmonization of donor CSO requirements, with recent progress in developing key principles, operational guidelines for implementation in selected areas and an accountability framework, all of which is intended to initiate harmonized conditions for CSOs.[59]

f) Applying results and value assessments that embrace process and qualitative results over the medium to long term and consider value-added contributions.

g) Building upon innovative mechanisms for sustainable financing for social movement organizations focusing on women's rights, decent work, indigenous peoples and discriminated minorities. These mechanisms should ensure increased, responsive, substantial, flexible, predictable and multi-year core funding for these organizations.

h) Engaging fully with the multi-stakeholder Task Team on CSO Development Effectiveness and Enabling Environment to monitor existing commitments to minimum standards for enabling conditions for CSOs, document and promote good practice, and ensure issues of inclusive development are fully engaged in deliberations and outcomes of ministerial meetings of the Global Partnership for Effective Development Cooperation.

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[58] Nilsson, et al, 2013: 90. This independent assessment noted the consequences for CSOs of donor instrumental approaches: "Using CSOs only as 'implementing organisations' … undermines the credibility of CSOs, weakens their accountability to their own stakeholders and shifts this towards the donors, makes it difficult for CSOs to engage in longer term planning such as for their own policy and capacity development, and makes the claims by adversaries that certain CSOs are donor agents more believable among the public." (90)

[59] See Sida 2013a, Sida 2013b, Sida 2013c and Sida 2013d. See also the 2010 donor mapping of donor conditions and requirements for CSO funding at http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan041786.pdf.

i) Minimizing the impact of the Northern financial and fiscal crisis on development cooperation and commitments, including the impact of government cuts on programs for financing vulnerable civil society organizations.

APPENDIX ONE

A CPDE Monitoring Framework for Assessing Progress for a CSO Enabling Environment

The CPDE Framework focuses on three core areas, and within each area addresses essential dimensions of the CSO enabling environment:

Area One: Universally accepted human rights and freedoms affecting CSOs

Dimension One: Recognition of rights and freedoms affecting CSOs.
Dimension Two: The legal and regulatory environment, implementing rights and freedoms affecting CSOs.
Dimension Three: Rights of specific groups

Area Two: Policy Influencing

Dimension One: Spaces for dialogue and policy influencing
Dimension Two: Access to information

Area Three: Donor – CSO relationships

Area One: Universally accepted human rights and freedoms affecting CSOs

The Busan Partnership affirms CSOs as independent development actors in their own right. It substantially links an enabling environment for CSOs to governments fulfilling their obligations to international human rights.

Dimension One: Recognition of rights and freedoms affecting CSOs

Dimension One asks whether a state recognizes at the national level three universally recognized human rights and freedoms affecting CSOs. As a reflection of this recognition, the questions therefore examine whether a state recognizes these rights and freedoms in the constitution and in the basic laws, and whether there are significant violations of these rights.

- Is the **right to freedom of association** protected in the constitution and basic laws of your country?
- Is the **right to freedom to peacefully assembly** protected in the constitution and basic laws of your country?
- Is the right to **freedom of expression** protected in the constitution and basic laws of your country?
- Are there significant and/or severe restrictions on the exercise of one or more of these rights through government intimidation, intrusion, harassment or threats? (Please Note: Dimension Two below will address particular restrictions governing the exercise of these rights based on the implementation of CSO laws and regulations.)

Dimension Two: The legal and regulatory environment, implementing rights and freedoms affecting CSOs

Dimension Two explores the legal and regulatory environment governing CSOs' exercise of the human rights and freedoms addressed in Dimension One.

1. **Entry: CSO formation and registration**
   - Is there an enabling law on CSO registration, and in practice are CSOs able to easily register?

     Definition: "Enabling law" includes voluntary registration allowed for any legal purpose; requiring a small number of founders and/or small amount of assets; based on reasonable, transparent, objective criteria; and providing avenues for appeal.

   - Are the processes/regulations for formation and registration enabling for civil society organizations?

     Definition: "Enabling processes/regulations" includes easy access for all irrespective of location, simple procedure without undue administrative burdens; nominal or affordable fees; timely decision; registration in perpetuity.

2. **CSO Operations: Free from interference**
   - Can CSOs, at the time of and after registration, freely choose where, with whom and with what mandate to work?
   - Are CSOs free to operate, in law and in practice, without excessive administrative burdens and/or government interference (harassment)?
   - Is there interference in CSO operations on the part of the state and other actors for political or arbitrary reasons? Is there legal recourse against such harassment?

     Definitions: "CSO Operations" – The capacities to govern, implement and assess activities on the part of the CSO, consistent with its mandate and the roles of CSOs as actors in support of public goods.

     "Excessive" – Interferes with CSO's capacity to act independently in carrying out its mandate.

3. **CSO expression of views and advocacy**
   - Are there legal or political barriers that hinder a CSO's ability to openly express its opinions, particularly on matters critical of government policies? (Barriers may also include CSO self-censorship of views.)

- Are there legal or political barriers that hinder a CSO's ability to engage in public policy activity and/or advocacy?

4. Access to resources

- Are there legal, policy or political barriers to access – i.e. to seek, secure and use - resources, including foreign resources, for CSOs?
- Are there legal or policy incentives to promote local resource mobilization and financial sustainability among CSOs?

5. Rights to assembly peacefully

- Are there legal or political barriers to the right to peaceful assembly?
- Can groups who gather openly criticize the government through peaceful protests or other forms of demonstrations?
- Are there restrictions to assemble and make claims on government, including government use of harassment, arbitrary arrest or use of excessive force?

Dimension Three: **Rights of specific groups**

This dimension focuses on evidence of discrimination in the application of laws, regulations and policies for particular groups that may advocate for policy change or represent marginalized and vulnerable populations. Important factors also include fair administration of the laws and regulations, equal access to due process and the ability to seek redress.

- Are there CSOs representing particular groups that receive less favorable treatment under the legal and regulatory environment (Dimension Two) due to their specific mandate or activities? (Examples of such groups might include trade unions, women's rights organizations, human rights organizations, organizations of indigenous peoples, LGBT organizations etc.)
- Are there recent examples of leaders and/or members of vulnerable organizations facing discrimination, harassment, arbitrary arrest or extra-judicial killing?

Area Two: Policy influencing

The ability of CSOs to engage with governments on policy concerns through dialogue and advocacy is an essential area for consideration of CSO enabling conditions. The degree to which there are institutionalized spaces for policy dialogue and fair and inclusive processes for government/CSO consultations are critical ingredients of democratic ownership of public policy. Considerations of an enabling environment must not only take account of opportunities/processes for engagement, but also the resulting impacts on public policy.

Dimension One: Spaces for dialogue and policy influencing

- Does government establish inclusive and accessible processes for policy engagement at all levels (local, regional, national)? Are marginalized groups included (e.g. women's rights organizations, indigenous groups)? Are such processes available for all kinds of policies?
- Are there inclusive institutionalized opportunities for CSOs to participate in policy- and decision-making processes?
- Are CSOs involved in design, implementation and monitoring of national development plans and policies?
- Is CSO input taken into account in the policy outcomes? Are there fully accessible accountability mechanisms for feedback and policy assessment, ensuring that governments consider CSO input?
- Are there initiatives to address capacity needs of all stakeholders to fully and effectively participate in policy dialogue? (In particular, governments and CSOs.)

Definitions: "Established processes" for policy engagement includes periodic consultation mechanisms, episodic government/civil society dialogue processes, and processes for government/community engagement.

"Institutionalized opportunities" includes permanent structured mechanisms for policy dialogue, which meet regularly and have a defined mandate to inform the development, implementation and assessment of government policies.

Dimension Two: Access to information

Governments must put into practice principles and laws governing the full transparency and accountability for government priorities, strategies, plans and actions.

- Do CSOs have a right to access to relevant government information, by law and in practice?
- Is the process of obtaining relevant government information simple, timely, transparent and based on established procedures?

Area Three: Donor – CSO relationships

In many countries, donor policies and financing requirements affect CSOs' roles as effective, independent development actors. Donors should establish transparent and consistent policies that define the place and roles of CSOs in donor strategic frameworks and plans, including country-level program implementation plans. Financing modalities should enable

CSOs to implement their own mandates and priorities and be relevant to a diversity of CSOs, respecting their different roles, capacities, constituencies and approaches.

- Are CSO funding mechanisms responsive to the programmatic priorities of CSOs?
- Are CSO funding mechanisms reliable, transparent, easy to understand, and disbursed impartially?
- Are there initiatives by donors for facilitating diversification of CSOs' income sources?
- Are donors creating inclusive processes for CSO policy engagement on donor strategies at all levels (headquarters, within partner countries)?

ANNEX TWO

DOCUMENTS REVIEWED

A. CSO Partnership for Effective Development (CPDE): Contributions of Evidence

Case Studies

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3. Reality of Aid Africa, "Towards Enabling Environment for CSO Participation in Domestication of Busan Agreement – The Legal and Institutional Framework in Tanzania opportunities and Challenges," Tanzania Case Study, October 2013.

4. Reality of Aid Africa, "Enabling Environment for CSOs," Zambia Case Study, October 2013.

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7. CPDE Kyrgyzstan (Nurgul Dzhanaeva, Forum of women's NGOs of Kyrgyzstan), "Report on the monitoring of the indicator two on enabling environment in Kyrgyzstan: Assessing Progress for a CSO Enabling Environment," Case Study, August 2013.

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APPENDIX THREE

An Enabling Legal and Regulatory Environment for CSOs

Based on international experience of laws and regulations affecting CSOs, a number of norms and good practices have been identified that enable CSOs to be effective in fulfilling their roles as development actors.

Those considering drafting new or revised laws and regulations for CSOs should consider the following international-recognized norms against which national legislation should be assessed.[60] These principles include:

- The right of CSOs to entry (that is, the right of individuals to form and join CSOs);
- The right of CSOs to operate to fulfill their legal purposes without state interference;
- The right to free expression;
- The right of CSOs to communication with domestic and international partners;
- The right to freedom of peaceful assembly;
- The right to seek and secure resources, including the cross-border transfer of funds; and
- The state's positive obligation to protect CSO rights.

Based on these norms a number of good practices in national legislation can be identified.[61]

1. Acquisition of legal status should be voluntary, based on objective criteria, and not a prerequisite for the exercise of rights to expression, peaceful assembly and association.
2. Civic organization laws should be written, clearly defined and administered so that it is quick, easy and inexpensive to establish and maintain a civil organization as a legal entity in perpetuity, with a defined and reasonable time limit for decisions and written justification for denial of status, subject to appeal.
3. All acts and decisions affecting formal civil organizations should be subject to appropriate and fair administrative and independent judicial review.
4. Laws and regulations should exclude or simplify reporting procedures for small, provincial, community-based organizations and alliances.

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[60] Quoted from World Movement for Democracy and International Center for Not-for-Profit Law, *Defending Civil Society Report*, Second Addition, June 2012, accessed October 2013 at http://www.icnl.org/research/resources/dcs/DCS_Report_Second_Edition_English.pdf.

[61] These proposals for good practice in the legal and regulatory framework for CSOs are adapted from Open Society, 'Guidelines for Laws Affecting Civic Organizations', Open Society, New York, 2004, accessed July 2013 at http://www.icnl.org/research/resources/assessment/guidelines_en.pdf. They also take into account extensive research on the part of the International Center for Not-For-Profit Law (www.icnl.org) and the World Movement for Democracy (www.wmd.org). See also the recommendations on the legal status of NGOs by the Council of Europe found at https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

5. Laws and regulations should sustain effective processes and instruments that ensure social participation in public policy development, implementation and evaluation.
6. Laws and regulations should provide guarantees for civil organizations with the right to speak freely on all matters of public significance, including existing or proposed legislation, state actions and policies, and the right to non-partisan criticism of state officials and candidates for public office.
7. Civic organizations should be facilitated to carry out public policy activities such as education, research, advocacy and the publication of position papers.
8. Laws, regulations and policies should provide for mechanisms and processes that allow for less bureaucratized, consistent, transparent and more efficient access to public funds, with accountability on the part of both government and CSOs.
9. Laws, regulations and policies should facilitate civic organizations to engage in any legitimate fundraising activity, with voluntary self-regulatory mechanisms for accountability, but public disclosure of the ways in which fund are raised and used, including fundraising expenses.
10. Laws, regulations and policies should create an enabling tax regime that stimulates civic participation through tax incentives for donations from individuals and the private sector.
11. A formal civic organization that is properly established in one country generally should be allowed to receive cash or in-kind donations, transfers or loans from outside the country so long as all generally applicable foreign exchange and customs laws are satisfied. Such laws should not impose confiscatory taxes or unfair rates of exchange.
12. CSO laws and regulations should be administered by an independent multi-stakeholder body. A government agency mandated to determine whether an organization qualifies for 'public benefit' or 'charitable' status, and to administer laws and regulations governing CSOs, should function as an independent commission with mixed stakeholder governance. Regulatory burdens for civic organizations should be commensurate with the benefits they obtain from the State.