

Submission on CSO Enabling Environment to the UN High Level Panel on the Post 2015 Development Agenda

Summary

We urge the High Level Panel to prioritise an “enabling environment” for civil society in the post 2015 development agenda with due focus on governance and legal frameworks. Civil society has a recognized fundamental role in development which is undermined by a rising tide of restrictions and threats to civic space.

Dear Members of the High Level Panel on the Post 2015 Development Agenda,

The International Center for Not-for-Profit Law, ARTICLE 19, CIVICUS: World Alliance for Citizen Participation, and the World Movement for Democracy, as consortium members of the Civic Space Initiative,¹ welcome the opportunity to make a submission on ‘Enabling Environment for Civil Society Organizations’ for inclusion in the post 2015 development agenda. CSOs – whether they are non-governmental organizations (NGOs), trade unions, faith based groups, think tanks, social movements or community based groups – have a central role to play in development, and it is crucial to explicitly recognize this in the Post 2015 goals framework.

RESTRICTIONS ON CIVIL SOCIETY UNDERMINE DEVELOPMENT

CSOs contribute substantially to development strategies and assist states and the international community in finding innovative solutions to complex development issues. They do this in part by facilitating the representation of a wide range of voices, particularly the vulnerable and marginalized in development debates. CSOs are often at the forefront of law and policy reform processes advancing key social, political, economic and environmental justice agendas. CSOs also catalyse bottom-up implementation of national development policy by having the on-the-ground relationships to mobilize communities, and in many instances, take responsibility for the actual delivery of services. CSOs moreover benefit all stakeholders by helping to ensure that the benefits of development reach those intended by decision makers through focus on accountability and transparency.

We believe that achieving development goals requires establishing and protecting an enabling environment for CSOs and active participation by all, in particular the marginalized and discriminated. Numerous UN reports and declarations recognize that CSOs are an essential partner in development. [Agenda 21](#) sets out a framework for CSOs to participate at all levels in development. Section V of the [Millennium Declaration](#) commits nations to fully respect human rights and to improve participation and access to information. More recently, the Rio+ 20 outcome document “[The Future We Want](#)” states in Paragraph 44 that “We acknowledge the role of civil society and the importance of enabling all members of civil society to be actively engaged in sustainable development. We recognize that improved participation of civil society depends upon, inter alia, strengthening access to information and building civil society capacity and an enabling environment”.

Despite this recognition, restrictive laws and policies have proliferated around the globe to limit core civil society freedoms of expression, association and assembly, which are enshrined in

¹ The Civic Space Initiative (CSI) is a three-year project funded by the Swedish International Development Agency (Sida) that aims to protect and expand civic space by fostering an enabling legal environment for civil society organizations. The CSI focuses on legal initiatives at the global, regional, and national levels.

international law and necessary for CSOs to effectively operate. We are deeply concerned about the following:

- Since October 2011, more than forty restrictive laws have been passed or considered worldwide that would restrict the formation, operation, and funding of CSOs, as well as the right to peaceful assembly. In the first few months of 2013 alone, more than ten countries have passed restrictive laws, and this number is rising.²
- Broadly, legal barriers to civil society include restrictions to entry into the sector; operational activity; speech and advocacy; contact and communication; assembly; and resources.³ These laws are often vague and arbitrarily implemented, impose prohibitions that do not reflect legitimate policy aims, or are severe and disproportionate to any legitimate goal at hand.
- CSOs working in many areas – particularly those that challenge the status quo, such as promoting a healthy environment, fighting corruption, or advancing other important development needs – remain at risk of arbitrary closure or other severe sanctions and unwarranted government interference and harassment.
- As attested by multiple reports of CSOs and UN bodies, members of CSOs continue to be persecuted in many parts of the world. Many civil society workers and journalists have been killed for advocating for basic development rights.
- In recent years, laws and policies in some countries increasingly require CSOs to "harmonize" their activities with government priorities in national development plans. While justified in the interest of aid effectiveness, these requirements may limit the ability of CSOs to carry out activities that might benefit marginalized communities or focus on issues neglected by governments.

These measures not only pose serious limitations on CSOs to operate and contribute to development debates, but also have a chilling effect on people's rights to exercise their freedoms of association, assembly and expression.

In one developing country, the government bans CSOs from promoting, monitoring, or engaging in any human rights activities.

In one of the poorest countries in the world, citizens must accumulate the equivalent of \$1 million to establish a CSO engaging in relief or rehabilitation, including the provision of food or medicine.

EXISTING MULTILATERAL PROMISES TO PROTECT CIVIL SOCIETY

The international framework to protect CSOs is already partially in place. The [Busan Partnership for Effective Development Cooperation](#), agreed in December 2011 by donor and partner governments, South-South cooperators, the BRICS, CSOs and private donors, promises 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." The multi-stakeholder [Task Team on CSO](#)

² International Center for Not-for-Profit Law's [Global Trends in NGO Law](#)

³ [Defending Civil Society Report](#) (2 ed.), June 2012, Co-authored by International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy

[Development Effectiveness and Enabling Environment](#) has urged that the post 2015 agenda should (i) reaffirm CSOs as independent development actors in their own right and the importance of multi-stakeholder policy dialogue, (ii) provide, promote and monitor an enabling environment for CSOs that maximises their contribution to development, (iii) implement donor support models that can contribute to CSO effectiveness, (iv) encourage CSO efforts to enhance their effectiveness and accountability, and (v) share responsibility for accountability and transparency of aid and development efforts.

The Task Team reiterates the guarantee of the following fundamental rights: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding, and the state's duty to protect. The Task Team builds on the guarantees contained in the "[UN Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)" adopted by the General Assembly in 1999.⁴

We also note that the UN Human Rights Council on 21 March 2013 adopted a resolution on '[Protecting Human Rights Defenders](#)' calling on governments to create a "safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity."

- The resolution urges that national regulations and legislation affecting human rights defenders are clearly defined, non-retroactive and consistent with international human rights law.
- On freedom of assembly, the resolution urges that in the context of peaceful protests, no one should be subjected to excessive or indiscriminate use of force; arbitrary arrest or detention; torture or other cruel, inhuman or degrading treatment or punishment; enforced disappearance; abuse of criminal or civil proceedings; or threats of such acts.
- On freedom of association, the resolution urges that registration requirements for CSOs are non-discriminatory, expeditious and inexpensive, and allow the possibility of appeal; reporting requirements should not inhibit the functional autonomy of CSOs; and access to funding from national and international sources is assured.
- On freedom of opinion and expression, the resolution underlines that access to information technologies and the media of one's choice should be promoted and facilitated nationally and internationally.

MOVING FORWARD

To comprehensively address post 2015 development, the promises of the momentous Busan partnership and the HRC resolution must be enabled. Despite these promises, the legal and regulatory environment for CSOs is growing increasingly hostile and severely undermining CSOs' critical role in development. We thus urge the High Level Panel to **prioritise an "enabling environment" for civil society in the post 2015 development agenda with due focus on governance and legal frameworks, as well as socio-economic and socio-cultural factors.** We strongly believe that global development – including aspirations on eradication of poverty, good governance, reduction of inequality, environmental sustainability and end to conflict – risk being undermined by the rising tide of restrictions and threats to CSOs.

We believe that the basic rights necessary to create an enabling environment as set out by the Task Team can be incorporated into the Post 2015 development framework:

⁴ General Assembly resolution 53/144

1. Include a target and indicator(s) to promote an enabling environment for civil society;
2. Link the target and indicator(s) to an analogue to MDG 8 focusing on partnerships for development or to a new goal, such as good governance, human rights, or the enabling environment for development writ large; and/or
3. Make an enabling environment for civil society a cross-cutting element across many goals.

Finally, to provide an enabling environment for civil society, we request the HLP to urge governments to do the following:

- Respect, protect and fulfil the rights to freedoms of association and assembly, as well as the freedom of expression, including the right to information, in accordance with international human rights standards.
- Establish an enabling legal and regulatory environment for CSOs which recognises their independence and right to carry out their peaceful work without fear of harassment, reprisal, intimidation and discrimination.
- Take all necessary measures to ensure that all sectors of society –including women and vulnerable groups– are able to exercise their right to impart and access information without discrimination, including through the media and information and communication technologies (ICTs).
- Take proactive measures to promote the effective participation of civil society, including the marginalized and discriminated, in the design and execution of development strategies.

Already many critical rights to civil society, including the rights of participation, speech, and access to information, have been extensively discussed in the HLP's meetings in London and Bali as well as in the UN Task Teams consultations and other fora. However, the right to associate and peacefully assemble lay at the foundation of civil society's ability to exercise such rights. We welcome the opportunity to discuss this further as you complete the draft of your report and in future processes on the Post 2015 agenda.

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