

**Review of Evidence of Progress
on Civil Society-related Commitments
of the Busan High Level Forum**

**Task Team on CSO Development Effectiveness
and Enabling Environment**

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ABOUT THIS DOCUMENT

This Review of Evidence has been prepared as a contribution to the Global Partnership for Effective Development Cooperation's monitoring of progress since the Busan High Level Forum in December 2011.

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The views contained in this document do not necessarily reflect those of all Task Team members, the co-chairs, nor the Institute of Social Studies.

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EXECUTIVE SUMMARY

The purpose of this document is to provide an overview of evidence of progress on commitments made at the Accra and Busan High Level Forums (HLFs) in key areas of interest to the Task Team on Civil Society Organisation (CSO) Development Effectiveness and Enabling Environment. It is offered as a qualitative contribution to the Global Partnership for Effective Development Cooperation's (GPEDC) monitoring exercise, and to inform discussion on progress since Busan at the 2014 High Level Meeting. This *Review of Evidence* draws from secondary sources contributed by Task Team members and others. It seeks to point to overall trends where possible, as well as to examples representing areas of progress or where progress is stalled. It provides complementary qualitative evidence on the GPEDC monitoring framework's Indicator 2 on the enabling environment for civil society, along with additional evidence to reflect the broader spectrum of civil society-related commitments found in the Busan Partnership Document (BPd) that are equally worthy of being monitored. This document thus addresses the following topics, with reference to the key related BPd commitments:

- A) Democratic ownership and inclusive development partnerships (paras. 11a, 11c, 12a, & 22);
- B) Enabling environment for civil society (paras. 10, 11, 11d, 12d, 22, & 22a);
- C) Donor support to and engagement with civil society (paras. 10, 11d, 12d & 22a); and
- D) CSOs' development effectiveness (paras. 11d, 22b, & 23d).

From the perspective of the Task Team, critical to democratic ownership is the existence of institutionalized, inclusive, multi-stakeholder mechanisms for determining and monitoring development policy and planning. There is growing evidence of the effectiveness of multi-stakeholder approaches to advance ownership at the global level, such as seen with the GPEDC. There are also indications that, while the quality varies considerably, multi-stakeholder dialogue is on the rise at country level. Greater effort is therefore needed to model good practice in this regard. The Task Team intends to undertake a more fulsome review of country level experience in institutionalized multi-stakeholder dialogue mechanisms beginning in 2014.

For the Task Team, a key element of inclusive development partnerships is partnerships that embrace leadership and ownership of development initiatives from varied development stakeholders, including CSOs. Thus, CSOs may have 'differential' priorities, plans and approaches, and their 'right of initiative' to design and implement development programmes consistent with the needs and priorities of the people they serve or represent needs to be maintained. Findings suggest however that the concept of 'ownership' continues to be conflated with that of 'alignment' with government (or donor) plans and priorities, and 'inclusive development partnerships' are seen to exist when CSOs act as co-implementers of government programs rather than as development actors in their own right.

With regard to the enabling environment, the Task Team places emphasis on the importance of government policies and legislation that directly affects CSOs, and the consistency of these laws and regulations with agreed international rights: freedom of association, freedom of peaceful assembly, 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 duty to protect. Findings suggest a worrying trend that the less-than-conducive environment for civil society reported pre-Busan by the Task Team and others continues today, and is perhaps growing in a wider range of countries. A mounting body of evidence tracks restrictions on CSOs' access to foreign and non-foreign sources of finance, which impedes both CSOs' freedom of association to engage in legitimate activities, including fund-raising, and broader economic and social rights work, by limiting CSOs' ability to advocate for or deliver economic and social development. Other restrictions are also evident. In particular limitations on peaceful assembly are increasing, based on the misconception that peaceful assemblies are *a priori* a threat to public order.

How donors support and engage with CSOs is another area of concern for the Task Team. In 2012, the OECD published *Partnering with Civil Society: 12 Lessons from Peer Reviews* that provides effectiveness principles for donors, differentiated from principles that might apply to their relationships with other actors. The donor-CSO relationship is evolving, but with findings also pointing to an uneven record across donors' practice. Most donors, although not all, have sound civil society policies in place. However the degree to which the good intentions in donors' civil society policies are reflected in practice is varied, such as in the area of strengthening developing country civil society. Many donors maintain CSOs' right of initiative in some funding envelopes, while others increasingly use financial incentives to direct CSOs to partner solely on the basis of donors' priority areas of focus. Examples of good practice in dialogue and joint learning could be emulated across a greater number of donors. Modest progress is being made by a group of donors to agree to address the relatively high administrative costs experienced by both donors and CSOs in their funding relationship, through donors' plans to harmonize their conditions and requirements of CSO funding, but this is not a panacea and its actual impact will need close monitoring.

Thousands of CSOs globally have adopted the *Istanbul Principles for CSO Development Effectiveness*, the implementation of which are now supported by various toolkits and guidelines. The CSO Partnership for Development Effectiveness (CPDE) will continue to facilitate implementation of the *Principles* through awareness-raising and capacity building in the years ahead. The *Principles* are in essence a statement of CSO common values and approaches to guide their work, with adaptability to different contexts and CSO approaches. As the *Principles* are applied it will be important to continue to pay attention to some of the key outstanding challenges regarding CSO effectiveness. These challenges include CSOs' internal management and governance; coordination and information sharing across CSOs and with governments; results monitoring and reporting; and ensuring demand-driven programming.

INTRODUCTION

The purpose of this document from the Task Team on CSO Development Effectiveness and Enabling Environment (Task Team) is to provide an overview of evidence of progress on commitments made at the Accra and Busan High Level Forums (HLFs) in key areas of relevance to civil society. It follows on the Task Team's 2011 *Review of Evidence* and *Key Messages* for Busan.¹

This document is offered as a contribution to the Global Partnership for Effective Development Cooperation's (GPEDC) monitoring of progress since Busan. The GPEDC's monitoring addresses the enabling environment for civil society through the global monitoring framework's Indicator Two. The Task Team's document provides complementary qualitative evidence on this indicator, along with additional qualitative evidence to reflect the broader spectrum of civil society-related commitments found in the Busan Partnership Document (BPd).

This paper draws from secondary sources as well as from input received from Task Team members at its October 2013 meeting in Vienna. It is not intended as a comprehensive report covering all developments in the civil society-related commitments of the BPd. Instead, it points, where possible, to overall trends, to examples representing areas of progress that could be considered good practice, and as well to examples where progress is halted or reversing.

Specifically, this document is most concerned with paragraph 22 of the BPd, which states:

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.

¹ The Task Team is developing a publicly accessible web platform to hold its main documents. Currently the 2011 *Key Messages* and *Review of Evidence* are accessible at <http://cso-effectiveness.org/multi-stakeholder-task-team.215>

Other Bpd commitments of particular relevance to civil society are also addressed in this document, notably:

Paragraph 10's (and 12d's) commitment to "facilitate, leverage and strengthen the impact of diverse sources of finance to support sustainable and inclusive development";

Paragraph 11's preamble to the Bpd's "shared principles" highlights that these principles must be "consistent with our agreed international commitments on human rights, decent work, gender equality, environmental sustainability and disability";

Shared principle 11a) on "ownership of development priorities by developing countries";

Shared principle 11c) on "inclusive development partnerships", whereby "openness, trust, and mutual respect and learning lie at the core of effective partnerships in support of development goals, recognising the different but complementary roles of all actors";

Shared principle 11d) on "transparency and accountability to each other" as well as Paragraph 23's commitment to transparency through a "common, open standard" of reporting; and,

Paragraph 12a)'s commitment to "Deepen, extend and operationalize the democratic ownership of development policies and processes".

While seeking to address each of these Bpd commitments, this document is organized into four sections as follows:

- A) Democratic ownership and inclusive development partnerships;
- B) Enabling environment for civil society;
- C) Donor support to and engagement with civil society;
- D) CSOs' development effectiveness

Each section begins with a short description of the meaning of these concepts from the Task Team's perspective, followed by a qualitative review of select evidence of progress in these areas since the Busan HLF.

A) DEMOCRATIC OWNERSHIP AND INCLUSIVE DEVELOPMENT PARTNERSHIPS

Democratic Ownership as Multi-stakeholder Dialogue

It is the Task Team's perspective that democratic ownership requires inclusive, multi-stakeholder mechanisms for determining and monitoring development policy and planning. This means that there are institutionalized opportunities for all development actors in a country – be they national or local governments, civil society, parliaments or the private sector – to engage in establishing and monitoring government priorities and plans such as reflected in Poverty Reduction Strategies or

other development policies. It is through such inclusive processes that ownership in setting directions for the implementation of solutions can be built, in ways that draw from and engage the comparative advantage and synergies of the various stakeholders.

Global and Regional

The Task Team points out that the GPEDC itself provides an example of the kind of inclusiveness that could be mirrored both in other international processes, and at national levels. This is reflected in the Task Team's communication to the High Level Panel of Eminent Persons on the Post-2015 Agenda (HLP) in March 2013.² The GPEDC embodies an inclusive multi-stakeholder approach with its broad representation and inclusive participation of varied development actors and countries in a way that surpasses the often-seen approach of mere issue-based consultation and outreach.

The Task Team itself operates as a multi-stakeholder body with representation from CSOs, donor agencies, and aid partner countries. The Task Team's experience demonstrates that consensus building through fully inclusive multi-stakeholder engagement is not only possible, but is essential for building real ownership of shared goals, and agendas and commitments for action that are politically feasible. The Task Team fostered an important consensus, shared by its members, on standards for enabling conditions and practice for CSO development effectiveness. Its consensus in turn had an impact on the outcomes of HLF4 and subsequent post-Busan discussions on enabling CSOs to participate fully in development.

The Task Team points to a other recent examples of sustained and systematic multi-stakeholder initiatives at the global level. The Open Government Partnership, launched in 2011 "to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance", is guided by a multi-stakeholder Steering Committee.³ The UN/FAO Committee on World Food Security (CFS), originally established in the mid-1970s, was revitalized in 2009 with membership (although non-voting membership) for CSOs and social movements embedded in its structure, as well as a Civil Society Mechanism (CSM) to coordinate their participation. Proposals to the CFS from the CSM "are taken seriously and need to be negotiated" (Mooney, 2013, p. 64). Though not without its challenges, the CFS is a model, within the UN system, for other global initiatives to emulate, not least of which due to its ability, through the CSM, to engage with voices of marginalized peoples such as via the peasant organisation umbrella La Via Campesina (Mooney, 2013).

² Followed by a subsequent communication in advance of the September 25th 2013 UN General Assembly Special Meeting. Both documents are currently available at: <http://www.csopartnership.org/task-team-on-cso-de-and-the-ee>

³ See para. 1 at: <http://www.opengovpartnership.org/about>

These examples help to demonstrate that the multi-stakeholder approach toward democratic ownership means much more than holding consultations with civil society. The CFS for example shows that working within the UN system does not, by definition, limit UN-initiated processes to being the exclusive purview of states. Yet today, despite the hopeful call for an “equal partnership of all stakeholders” (HLP, 2013, p. 3), apparently “only UN member states can define the Post-2015 Agenda” (Ibid, p. 25). To date, the process to defining the Post-2015 Agenda has pursued inclusion through outreach and consultation with CSOs and other stakeholders, favouring an online consultation format, which has allowed thousands to contribute. Yet as 2014 approaches, how within an “intergovernmental” process forward “an inclusive and people-centered post-2015 development agenda” (UN, 2013, p. 3) will be arrived at remains unclear.

Regionally, in August 2013 Bangladesh hosted a workshop on the GPEDC and links to the Post-2015 Development Agenda with representation from 13 governments, multilateral institutions, donor agencies, the private sector, and CSOs. An objective of the workshop was to formalize the new regional peer support facility, the Asia-Pacific Development Effectiveness Facility (AP-DEF).⁴ The intent is for the AP-DEF to provide a consultative and inclusive mechanism that provides advice, facilitates exchanges between countries and pushes the implementation of an Asia-Pacific agenda forward with evidence and perspectives from the region, targeting first the GPEDC High Level Meeting planned for 2014 (Siddique, 2013). The AP-DEF will be guided by a multi-stakeholder Steering Committee with governments from the region rotating the chairing role, beginning with the Government of Bangladesh.

Country-level

Examples of systematic, multi-stakeholder dialogue fora at national level have also been identified, however, more evidence is needed covering the two years since Busan.⁵ The Task Team, beginning in 2014 and in collaboration with the CSO Partnership for Development Effectiveness (CPDE) and others, intends to track cases of multi-stakeholder dialogue mechanisms at country level to draw lessons of success and obstacles in institutionalizing this form of democratic ownership. This work will include following closely: the European Commission’s multi-stakeholder Roadmapping exercise; regional and country fora established to support BPD implementation; and country-specific initiatives.

⁴Established with financial support from AusAID and UNDP’s regional office, the AP-DEF builds on the experience of the former Capacity Development for Development Effectiveness Facility for Asia and Pacific (CDDE).

⁵A number of country-level multi-stakeholder platforms have previously been documented e.g. in OECD (2009). *Civil Society and Aid Effectiveness: Findings, Recommendations and Good Practice*; Reality of Aid (2010). *Case Stories of Civil Society Engagement on Aid Effectiveness*; and Reality of Aid (2011). *Democratic Ownership and Development Effectiveness: Civil Society Perspectives on Progress since Paris*.

In its 2013 *Synthesis of Evidence of Progress Since Busan*, the CPDE has presented examples, based on twelve country case studies, of emerging country-level multi-stakeholder dialogue fora that have the potential to deepen and operationalize the democratic ownership principle. There are indications of “modest progress” in a number of Sub-Saharan African countries for example with the sustained operation of some sector and national policy dialogue fora (CPDE, 2013, pp. 16-17). On the whole however, the CPDE study concludes that multi-stakeholder consultation is “mostly episodic, at the discretion of governments and often involves 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” (CPDE, 2013, p. 16). This is reinforced by findings of a recent ACT Alliance and Catholic International Cooperation for Development and Solidarity (CIDSE) survey and case study-based report that indicates a low level of government effort to engage CSOs and communities in development planning (2013, p. 10).

Despite these general findings, there are some positive examples of effort toward greater inclusion of CSOs in policy dialogue with government. In some instances, policy or issue-specific multi-stakeholder consultation is put place only for a period, such as seen with the design of Public Service Charters to monitor service delivery in Malawi (Act Alliance/CIDSE, 2013, p. 10). In Rwanda, the Government has welcomed CSO engagement in national policy dialogue fora and provided clarity on the opportunities available including through Development Partners Meetings, numerous Sector Working Groups, and District-level mechanisms (Ibid, pp. 33-38). Despite improvements over the past five years, CSOs remain cautious about articulating critical positions however, and thus about the degree to which they are actually able to influence government direction through these fora (Ibid), which suggests that there is room to strengthen mutual trust and political will toward genuine inclusiveness.

The Public Councils (PCs) launched in Kyrgyzstan in 2011 offer an interesting model of institutionalized multi-stakeholder dialogue. These multi-stakeholder councils work under each Ministry and Agency as mechanisms of dialogue between government, civil society, the private sector, and other actors. They play both a consultative and a watchdog role, and are also intended to be a venue for information sharing on non-state actors’ initiatives. By 2012, thirty-six such PCs were in operation with mixed success. Despite the highest level of political will in support of the PCs, which were introduced by Presidential Decree, there remains some resistance at Ministry and Agency level to embrace the inclusive PC format (Dzhanaeva, 2013, p. 104). A draft law is under consideration, which would further legitimize their existence as autonomous, arms-length bodies geared to both advise and monitor state actions. While a tool for promoting transparency, accountability and democratic ownership, the PCs are also seen to have an intrinsic value in strengthening state – civil society relationships that can, over time, help broaden and deepen the political will necessary for such inclusive mechanisms to work.

Inclusive Development Partnerships and CSO Leadership

The BPD emphasizes “country ownership” of development, in which there is an essential role and responsibility for leadership on the part of developing country governments in providing health, education or other critical services to all its citizens (para. 11a). But the BPD also stresses the importance of “inclusive development” (paras. 10, 11c & 14) in which development is a ‘whole-of-society’ concept where there is a critical role for all governments, civil society, parliamentarians and other non-executive actors to ensure that development policies are substantially owned by the intended beneficiaries, and that development is truly inclusive, just and sustainable (United States & BetterAid in GPEDC, 2013).

For the Task Team, an inclusive ‘whole-of-society’ path to development also implies that leadership and ownership of development initiatives can come from any development stakeholder, including CSOs. These different development stakeholders each may have varied, or in the language of the BPD, “differential” priorities, plans and approaches (paras. 1, 14 & 36). This suggests that non-state development actors have the ‘right of initiative’ to design and implement development programmes consistent with the needs and priorities of the people they serve or represent. CSOs, for example, conduct initiatives that fill gaps in the reach of government programmes to the poorest and marginalized sections of the population, create innovative alternatives with local populations, strengthen accountability to primary beneficiary populations, monitor the actions of government and the private sector, and pursue the promotion and protection of human rights.

This understanding of the ownership concept was raised by the Advisory Group on Civil Society and Aid Effectiveness prior to the Accra HLF (OECD, 2009), and again in the Task Team’s 2011 *Review of Evidence*, in the face of an insidious and growing post-Paris Declaration trend whereby the aid effectiveness principles of ownership and alignment were being applied to CSOs in ways that, inadvertently or otherwise, narrowed the space of CSO operation by viewing national government plans as the sole basis of “country ownership” and thus requiring CSO alignment with such plans. The Task Team observes that there remains today considerable ambiguity and discretion in the ways that the principle of inclusive development partnerships is reconciled with the ownership and alignment principles of effectiveness. In 2012, the World Movement for Democracy (WMD) and the International Center for Not-for-Profit Law (ICNL), for example, were sufficiently concerned by the “alignment-as-ownership” trend that they dedicated a section of their *Defending Civil Society Report* to “the unintended consequences of efforts to enhance the effectiveness of foreign aid” (WMD & ICNL, 2012, p. 4). A requirement for CSOs to align and harmonize against national development plans infringes upon the freedom of association in that it “limits the ability of CSOs to pursue activities not pre-defined by governments.... and may limit the ability of CSOs to play a critical watchdog role” (Ibid, p. 17).

In his 2013 report, the United Nations (UN) Special Rapporteur⁶ on the rights to freedom of peaceful assembly and of association, Maina Kiai, called attention to the need for funders to respect CSOs' autonomy as development actors in their own right, able to engage in activity areas that respond to the needs of the people they work with or represent. Indeed, his report expresses regret that some "domestic public donors" continue to provide resources only for CSO activities that align with government policies, whereas "the right to freedom of association, which is an essential component of democracy, underlies a pluralism of views" (UN Special Rapporteur, 2013, para. 14). Thus governments violate the right to freedom of association when they restrict funding for the stated purposes of aid effectiveness (Ibid, paras. 14 & 41).

B) ENABLING ENVIRONMENT FOR CIVIL SOCIETY

The notion of an enabling environment for civil society is multi-dimensional. It can be understood to broadly include various elements of a country's governance including: the vitality of formal political institutions; the quality of the legal and judicial system; media freedom; and structures to promote, monitor and protect human rights. More civil society-specific elements of the enabling environment are understood to include CSO-specific legislation; taxation regulation for charities and non-profit enterprises; regulations on CSO transparency and accountability; financial support mechanisms; and structures for participation and multi-stakeholder dialogue (OECD, 2009).

The Task Team, however, applies a narrower lens to the enabling environment concept in order to focus on the civil society-specific elements, with a particular emphasis on government policies and legislation. For the Task Team, consistency with agreed international rights as stated in the BPD (paras. 10, 11, 22a) is key: freedom of association, freedom of peaceful assembly, 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 duty to protect.⁷ (Task Team, 2011a, p. 10 citing ICNL & WMD, 2012, pp. 34-52; and UN Special Rapporteur, 2013 on the right of peaceful assembly).

The Task Team also considers the presence of systematic and inclusive multi-stakeholder dialogue fora as a critical component of the enabling environment. This document thus addresses the topic separately (see the previous section) given the specific BPD commitment to "democratic ownership" (paras. 12a & 21), and the foundational importance of such dialogue to achieve progress in the other areas. Indeed, some of the current wave of restrictions on civil society might be avoided if the availability of multi-stakeholder dialogue opportunities increased trust and cooperation between CSOs and government.

⁶ All references to the UN Special Rapporteur in this Review are drawn from his 2013 report.

⁷ The International Principles Protecting Civil Society and their basis in international and regional human rights law are elaborated in the WMD and ICNL 2012 *Defending Civil Society Report*.

The Task Team also considers that the way in which donors fund and otherwise engage with civil society are also important components of the enabling environment given the influence that donors are able to exert on individual CSOs and the civil society sector as a whole. Donors' support to and engagement with civil society is thus also treated separately in the next section of this document.

The GPEDC monitoring framework indicates that the monitoring team is working with CIVICUS to derive data from sub-dimensions of CIVICUS's new Enabling Environment Index (EEI), to inform Indicator 2.⁸ As such, this Task Team report does not delve into the EEI but instead draws from alternative sources. Though not feasible to assess within the current time frame for monitoring, it will be interesting to note whether any countries participating in the GPEDC's monitoring exercise have chosen to include Indicator 2 or an equivalent in their country results monitoring frameworks.

When looking globally, the post-Busan record of progress in building enabling environments for civil society will inevitably be mixed. Indications are however that the pre-Busan trend toward a 'disabling' environment for civil society continues today, with a growing number of actors pointing to this trend and calling for action. In the last year, more than fifty 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 (ICNL, 2013c).

All of the developments noted here are reinforced in the CSO Partnership for Development Effectiveness's (CPDE) recently released document *An Enabling Environment for Civil Society Organizations: A Synthesis of Evidence of progress since Busan*. This CPDE report also draws from secondary literature, as well as from country case studies undertaken by CPDE members, and has been submitted to the GPEDC as a contribution to monitoring of Indicator 2.

President Obama hosted a Civil Society Roundtable in September 2013 as heads of state gathered for the UN Special Meeting on the Post-2015 Agenda. His opening speech stated that: "we're... seeing a growing number of countries that are passing laws designed specifically to stifle civil society. They're forcing groups to register with governments, eroding human rights protections, restricting NGOs from accessing foreign funding, cracking down on communications technologies that connect civil society groups around the globe. In more extreme cases, activists and journalists have been arrested on false charges, and some have been killed. We're also seeing new and fragile democracies cracking down on civil society, which.... sets

⁸ Note that ICNL and CIVICUS will also over the next two years be piloting a new Enabling Environment National Assessment (EENA) in 16 countries. The EENA will involve primary data collection at country-level and include multiple stakeholders in data collection and validation, with the intent of offering a "springboard for local actors to improve the legal and enabling environment for CSOs" (ICNL 2013b, p. 1).

them back and sends a dangerous signal to other countries” (White House, 2013, para. 9).

This statement is supported by a body of evidence, including from the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, one of the Roundtable panelists. The UN Special Rapporteur’s mandate was established in October 2010 in response to the shrinking space for civil society witnessed in many parts of the world. As a significant proxy indicator of the ongoing negative trend in this regard, in October 2013, the UN resolved to extend the Special Rapporteur’s mandate for three years.

The UN Special Rapporteur’s 2013 report gave prominence to issues relating to civil society’s access to resources and to peaceful assembly. Other observers have echoed both of these concerns in parallel reports in 2013. The Observatory for the Protection of Human Rights Defenders 2013 report, for example, is dedicated to the issue of violations of the right to funding, and a newly published CIVICUS report (2013a) also highlights the issue as key among the growing regulatory constraints civil society is facing. The latest issue of ICNL’s *Global Trends in NGO Law* (2013c) also addresses these topics.

Funding Flows and the Freedom of Association

The UN Special Rapporteur’s report notes that “[i]n recent years, civil society actors have been facing increased control and undue restrictions in relation to funding.” (2013, para. 12).⁹ According to the UN Human Rights Committee, the right to freedom of association under Article 22 of the *International Covenant on Civil and Political Rights* (ICCPR) protects the right of an association “to carry out its statutory activities”, including, to seek, secure and use financial resources, from domestic, foreign or international sources (Ibid, para. 16). The right to access foreign funding, a right increasingly under threat, is part of this protection, more specifically covered under the *UN Declaration on Human Rights Defenders*¹⁰ and subsequent reports.¹¹

ICNL details fourteen country cases in which new restrictions on funding flows have either been enacted or proposed from 2012 to date, in countries ranging from Azerbaijan to Malaysia to Pakistan (ICNL, 2013c). There appears to be a “contagion effect”, which occurs when globally influential countries impose restrictions that

⁹ The report lists the following “problematic constraints” amongst others: “outright prohibitions to access funding; requiring CSOs to obtain Government approval prior to receiving funding; requiring the transfer of funds to a centralized Government fund; banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as “foreign agents” or other pejorative terms; initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding” (UN Special Rapporteur, 2013, para. 20).

¹⁰ See article 13 of the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.

¹¹ See the 2004 *Report of the Special Representative on Human Rights Defenders, Hina Jilani (A/59/401)*, para. 82.

embolden other governments to adopt their own restrictive measures” (Moore & Zenn, 2013, p. 74). India’s Foreign Contributions Regulation Act (2010) has been an inspiration for example in its prohibition on the ability of organizations the government deems as “political” to access foreign funding, as have recent legislative amendments in Russia prohibiting similarly “political” organizations from receiving US funds, and requiring all CSOs receiving foreign funds to register as “foreign agents” (ICNL, 2013c, pp. 3 & 6). More generally, foreign funding restrictions include labeling CSOs with pejorative terms; requiring government approval to seek or secure foreign or international funds; stringent and burdensome reporting requirements, and harsh penalties (fines or convictions) for infractions (ICNL, 2013c).

A hallmark of the Busan HLF was the acknowledgement that the resources of all actors, from around the world, need to be mobilized to further advance the Millennium Development Goals (MDGs) and growth. Limitations on funding flows to civil society erode the BPD commitment to “facilitate, leverage and strengthen the impact of diverse sources of finance to support sustainable and inclusive development” (para. 10). Noteworthy too is that the UN Special Rapporteur treats restrictions on resource flows as being not simply a direct violation of the right to freedom of association, but indirectly of “the enjoyment of other human rights by those benefitting from the work of the association” (2013, para. 9). Thus restrictions on financial resources “also undermine[s] civil, cultural, economic, political and social rights as a whole” (Ibid), and by extension, the ability to achieve those rights in as much as they are embodied in the MDGs and will presumably also be in the Post-2015 Sustainable Development Goals.

Restrictions on access to foreign funding are prominent, and especially harmful in countries where civil society is already facing other dimensions of a restrictive environment (ICNL, 2013c) and where sources of domestic funding, especially for advocacy, human rights, and other non-service delivery activities, are limited or non-existent. In a context of continued detrimental impact on CSOs’ access to funding due to the global economic crisis, the suppression of financial flows is especially detrimental.

In his report, the UN Special Rapporteur recognizes that CSOs have a responsibility of transparency and accountability to their donors when it comes to their receipt and use of funds, but he reminds us that limitations on CSOs’ access to funding must pursue a legitimate interest and be “necessary” in a democratic society, which calls for a test of “proportionality” (2013, para. 23). The protection of state sovereignty is not a legitimate interest under the ICCPR for placing restrictions on the right to the freedom of association, and counter-terrorism cannot “be used as a pretext to constrain dissenting views or independent civil society” (Ibid). In the context of foreign funding, authorities may “at most” subject associations to “a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities” (Ibid, para. 37).

Peaceful Assembly

Turning to the issue of freedom of peaceful assembly, the UN Special Rapporteur states that, “in far too many instances, the ability to hold peaceful assemblies has been denied or restricted by authorities in violation of international human rights norms and standards” (2013, para. 44). Through 2012 – 2103, a host of restrictions on the right to peaceful assembly have been documented, including the criminalization of protest, arrest or fining of assembly organizers and participants, burdensome and unrealistic pre-notification requirements, and outright bans (ICNL, 2013c).¹² Overall there is an indication that the freedom of peaceful assembly “is as constrained or more so” than five years ago (ACT Alliance/CIDSE, 2013, p. 14).

Article 21 of the *ICCPR* recognizes the right to freedom of peaceful assembly, a right further consolidated by the Human Rights Council and in other UN and regional declarations.¹³ Norms surrounding this right include a presumption that peaceful assemblies are lawful rather than a “threat to public order”; that notification, rather than authorization be the rule, and only for large assemblies; that access to public space be provided and protected; that information and communication technologies be allowed at and to organize events; and that organizers not be held liable for the behavior of assembly participants (UN Special Rapporteur, 2013, paras. 49-78).

As with violations to the right to freedom of association, the UN Special Rapporteur notes that respecting the right to freedom of peaceful assembly affects the ability of civil society to “publicly voice their message, which ultimately benefits the realization of the right(s) they strive to promote and protect” including the kinds of economic and social rights contained in the Millennium Development Goals and anticipated in the Post-2015 Sustainable Development Goals (2013, p. 13).

Additional Restrictive Measures, Regulatory and Otherwise

CIVICUS has documented 413 broad threats to civil society in 87 countries between 2012 and the present (CIVICUS, 2013a, p. 2), threats that are not only legal and regulatory in nature, nor limited to restrictions on funding and peaceful assembly. Other observers note similar broad trends, for example, the International Trade Union Confederation lists 7 countries “at risk” where extreme violations of trade union and labour rights are seen, and another 80 countries where violations of lesser severity have taken place (ITUC, 2013).

¹² Note that ICNL, as part of the Civic Space Initiative (in consortium with Article 19, CIVICUS, and World Movement for Democracy), will soon launch a Freedom of Assembly Monitor that will assess and signal global and regional trends, as well as country-specific developments. The Monitor will provide an Internet tool for stakeholders to report the latest developments relating to freedom of assembly.

¹³ Such as seen in the *Convention of the Rights of the Child*, or in the Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights and the Council of Europe’s Commission for Democracy through Law joint *Guidelines on Peaceful Assembly* (UN Special Rapporteur, 2013, paras. 46 & 50).

One type of regulatory restriction is increasingly seen is limits on the activities CSOs can engage in. CSO activities may be strictly prescribed to exclude those related to the promotion of accountable government, democracy or human rights, or alternatively they may be left vaguely described and open to political interpretation. The 2013 Indonesian Law on Mass Organisations (ORMAS) for example prohibits CSOs from activities that “fall within the purview of law enforcement agencies and government”, and disallows international CSOs from engaging in activities that might “disrupt the stability and oneness” of the country (CIVICUS, 2013a, p. 5). Other restrictive measures are seen when extreme measures are taken against CSOs, such as dissolution or deregistration, when they do not sufficiently meet reporting or other administrative requirements. In 2012, for example, Afghanistan forced the dissolution of at least 800 national and international CSOs for failing to submit detailed biannual activity and financial reports to the government (CIVICUS, 2013a, p. 7). Such actions and often the regulations behind them do not meet the tests of necessity and proportionality called for by the UN Special Rapporteur, when other, “less intrusive measures exist to mitigate.... risk” (2013, para. 35).

Also documented is a backlash on the use of electronic communication, with a number of countries newly implementing undue controls, regulatory and otherwise, in forms such as internet blackouts; defamation and sedition laws applying to expression on the internet; website blacklisting; state monitoring and interception of electronic communications; or unaffordable licensing fees (ICNL, 2013c). Covert surveillance via ICTs is also increasingly prevalent, including ‘behind-the-scenes’ surveillance, and establishing false internet identities “to create pseudo movements, infiltrate legitimate organisations and conduct surveillance of what activists say in these ‘trusted’ spaces” (Groome et al, 2013, p. 288).

Of considerable concern is the incidence of public ridicule and stigmatization, direct harassment, and imprisonment of civil society activists, particularly human rights defenders, seen in countries ranging from Burundi to Turkey (CIVICUS, 2013a, pp. 13-14, ACT Alliance/CIDSE, 2013, p. 12). States are resorting to different forms of reprisals against both individual leaders and their organisations, often targeting individuals collaborating with national, regional or international human rights bodies (Ibid, pp. 15-16).¹⁴ Of even greater concern still is the incidence of assassination of civil society activists, with a growing count in particular in Southeast Asia and South and Central America, often targeting “land, indigenous and environmental activists.... advocating for greater transparency in the extractive industry” (Ibid, p. 10).

As a reflection of progress toward the creation and maintenance of enabling environments for civil society in keeping with internationally agreed rights, this compilation of evidence is discouraging. It demonstrates that in many countries around the world, the state-civil society relationship is a far cry from the shared

¹⁴ See also the International Service for Human Rights’ 2013 *Reprisals Handbook* at: http://www.files.ishr.ch/public/ishr_handbook_web.pdf

principle of “inclusive partnerships” characterized by “openness, trust, and mutual respect and learning.... recognizing the differing and complementary roles of all actors” characterized in the BPD (para. 11c). While there are also positive examples where more enabling environments are emerging or being consolidated¹⁵, the Task Team is focused on the opposite trend given that the latter seems to be picking up speed in spite of international commitments. In undertaking the previously noted review of multi-stakeholder dialogue mechanisms to profile good practice, the Task Team will, by necessity, also profile good practice in the enabling environment more broadly.

C) DONOR SUPPORT TO AND ENGAGEMENT WITH CIVIL SOCIETY

For the Task Team, donors’ CSO financial support models as well as their broader engagement with civil society are part of the enabling environment that affects CSOs’ ability to be effective development actors and, as such, need to be considered as part of the Busan HLF enabling environment commitment.

In 2012, the OECD published *Partnering with Civil Society: 12 Lessons from Peer Reviews*. In essence, the 12 lessons constitute “a set of ‘effectiveness’ principles for donor consideration, differentiated from principles that might apply to donors’ relationships with other actors” (Wood & Fällman, 2013, p. 143). The *12 Lessons* publication provides a solid basis for more systematic monitoring of progress in donor practice, particularly as its recommendations are integrated into the guidance for Development Assistance Committee (DAC) peer reviews. The Task Team may collaborate with the Informal Donor Group on Civil Society to take up select recommendations from the OECD’s *12 Lessons* for in-depth study of progress in the coming years. For the current report, the Task Team points to examples of the ways in which donor support to and through CSOs and other forms of CSO engagement is evolving. As in the Task Team’s 2011 *Review*, the evidence continues to suggest an uneven record.

Policies

Foundational to the donor – civil society relationship is the existence of an evidence-based, overarching civil society policy, preferably one that puts attention to strengthening civil society in developing countries, and is developed in consultation with diverse civil society stakeholders (OECD, 2012b, p. 9-10). In 2011, almost all donors had a policy or strategy on civil society (OECD, 2011, p. 6). Most of the donors’ policies or strategies that were listed as “under development” in 2011 however (OECD, 2011, pp. 48-53), remained under development in 2013. Canada’s

¹⁵ Good practice such as seen for example in ICNL’s *Global Trends in NGO Law* (2010) issue *Enabling Reform: Lessons Learned from Progressive NGO Legal Initiatives* at: <http://www.icnl.org/research/trends/trends2-3.pdf>

Department of Foreign Affairs, Trade and Development¹⁶ for example lacks a civil society policy despite years of drafting civil society policy documents, and the 2012 Peer Review urging for CIDA to complete its civil society strategy (OECD, 2012a, p. 20).

For European donors, the European Commissions' 2012 Communication *The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations*, represented the culmination of the Commission's three-year process of internal reflection and Structured Dialogue with CSOs and other stakeholders toward this renewed policy. A key tool for the Commission in implementing the policy is the multi-stakeholder elaboration of country-level, sector and thematic Roadmaps. The intention is for the Roadmaps to provide an overview of current civil society support as a basis for country-level planning that can fill gaps and complement existing investments, notably from Member States of the European Union.

Germany's Federal Ministry for Economic Cooperation and Development (BMZ) finalized its first Strategy on working with civil society in German development policy in 2013 following intensive dialogue with CSO stakeholders. The strategy is focused on BMZ's cooperation with German civil society, and quite comprehensively addresses many of the OECD's 2012 recommendations.¹⁷ Throughout the strategy, the BMZ's belief that "a strong and vibrant civil society forms part of any properly functioning democracy.... [and] can play such a key role in partner countries as an engine of sustainable development" is evident (2013, pp. 5-6).

Several donors are also developing strategies or guidance tailored for specific tracks of CSO engagement, while integrating civil society considerations into other policies. Finland's Ministry of Foreign Affairs for instance has since 2010 had a combined policy and guidance document entitled *Guidelines for Civil Society in Development Policy*, and in 2012 elaborated a "principles and priorities" document specific to its international NGO funding. CSOs, as funding partners and as integral actors in social, economic and democratic development, are integrated throughout the Ministry's (2013) high-level development policy, which also outlines steps to help CSOs strengthen their development effectiveness.

A number of donors are updating or replacing older civil society policies to incorporate lessons and ensure that the policies reflect donors' current reality and desired directions. The Netherlands' Ministry of Foreign Affairs has undertaken a substantial evidence gathering exercise and engaged its CSO constituents in a

¹⁶ In 2013 the former Canadian International Development Agency was merged into Canada's Department of Foreign Affairs and International Trade, creating the Foreign Affairs, Trade and Development Canada.

¹⁷ Its three main objectives for civil society cooperation are: i) development education and mobilizing civic engagement in Germany; ii) strengthening civil society in developing countries, including addressing the enabling environment; and iii) fostering civic engagement and engaging in dialogue with governments, multilateral institutions, the private sector and others on challenging global issues (Federal Ministry for Economic Cooperation and Development, 2013).

process of dialogue toward updating its civil society policy, as are Denmark and Sweden. As a growing number of donor countries (e.g. Australia, Canada, The Netherlands, the US amongst others) are increasingly focused on partnerships with the private sector and in private sector development, some are integrating consideration for the role of civil society, both as watchdog and collaborator in the pursuit of inclusive private sector development. An example is the Netherlands' 2013 *It's none of your business! Or is it? – How business opportunities in developing countries are improved by civil society*.

Despite these positive policy developments, an ongoing area of concern lies in the degree to which the good intentions in donors' civil society policies are reflected in their practice. Recent evaluations of Sida's civil society programming for example suggest that the civil society policy has "only to a limited extent influenced CSO funding practices at embassies and HQ units" (Nilsson et al, 2013, p. 88). A further emerging question relates to the degree to which the assumptions behind donors' civil society policies reflect "the realities of governance and civil society in programme countries" when incentives for civic agency and opportunities for engagement in genuine democratic processes are limited (SIPU International, IDS & IOD PARC, 2013, p. 38).

Objectives of Support to and Engagement with Civil Society

The OECD encourages donors to do more to strengthen civil society in developing countries, including greater effort to foster an enabling environment at country-level (OECD, 2012b, p. 13). Many donor policies contain civil society strengthening as an objective, though there remain challenges in the way this is pursued. More direct support to developing country civil society can be one way to address this objective. Data however indicates that donors continue to prefer to work with their domestic CSOs, with requirements for these CSOs to partner and develop capacity with developing country CSOs (OECD, 2013, p. 9).¹⁸

It seems likely that this trend to work through donor country-based CSOs will continue under ever-growing pressures for efficient, value-for-money investing, which tends to favour fewer investments with large domestic CSOs with a proven track record and quick understanding of donor requirements (Wood & Fällman, 2013, p. 145), not to mention the political outcry when domestic CSO funding is squeezed. The "long value-chains" (ITAD/COWI, 2012, p. 90; SIPU International, IDS & IOD PARC, 2013 p. 41) from donor to domestic CSO to local partner to the intended

¹⁸ The most recent data on flows to and through CSOs is from 2011, available from the OECD's 2013 Aid for CSOs. These figures show an increase in absolute terms of the amount of funds flowing to and through CSOs, from US \$14.5 billion in 2008 to US \$19.43 billion in 2011, while the share of bilateral ODA for CSOs had stabilized at approximately 20 percent (p. 5). Across donors, the share of bilateral ODA to and through CSOs ranges between one and thirty-eight percent, with less than half allocating more than twenty percent of their bilateral ODA for CSOs (p. 6). These figures cover the 24 countries that were DAC members up to 2012, and not the new DAC members on board from 2013.

ultimate beneficiary do not seem to undermine the 'efficiency' rationale. Joint funding through country-level intermediaries has offered a partial solution for many donors seeking to support developing country CSOs more (if not entirely) directly, but such joint funding is not without its critiques (e.g. supply rather than demand-driven, reduced dialogue opportunities between donors and CSOs, and limited range of CSOs reached) (OECD, 2011, p. 26; ITAD/COWI, 2012, Scanteam, 2007). Denmark's Ministry of Foreign Affairs, in collaboration with the Informal Donor Group, will be leading a review of these joint mechanisms to assess, among other things, the degree to which they are fit-for-purpose.

The degree to which donors steer CSOs by providing earmarked funding tied to donor-specific objectives remains an area worthy of ongoing investigation. Donors such as the European Commission, Germany's BMZ, Sida, Denmark, AusAID, Irish Aid and DfID are some that maintain funding envelopes that continue to respect CSOs' right of initiative, while other donor countries such as Canada and the US seem to maintain a preference for earmarking. Core/institutional support to CSOs to pursue CSO-defined "priorities, plans, strategies and approaches" (OECD, 2011, p. 11) is most conducive to allowing CSOs to program in ways that align with and are owned by their partners and constituents. Core support was by far donors' least preferred funding modality in 2011 and there is little indication that this is changing significantly. Earmarked funding continues to be donors' mechanism of choice, though there is considerable variance across donors as to the degree to which earmarked funding steers CSOs in a very specific and directive way, or toward donors' higher-level objectives (e.g. poverty reduction, environmental sustainability, etc.). The latter may allow for greater donor responsiveness to CSO-initiated programmes, while the rigid steering that comes with donor 'focus', may be undermining CSOs' potential contribution to development outcomes. An evaluation of Sida's civil society policy implementation notes for example that: "The single-focus nature of many projects contrasts with the complexity of reality as experienced in poor communities", which can have "negative effects on alignment, relevance and feasibility" of CSOs' programmes (SIPU International, IDS & IOD PARC, 2013, pp. 43 & 44).

Figures from 2011 show that donors tend to favour support to CSOs' work in reaching a specific development objective related to "social infrastructure and services" (OECD, 2013, p. 10), a finding reiterated in CSOs' country-level experience of diminishing funds for governance, human rights and social justice work (ACT Alliance/CIDSE, 2013, p. 11). A possible reason is donors' practice of results measurement that "tends to emphasize the type of concrete, quantitative results more readily achieved from service delivery initiatives" (Wood & Fällman, 2013, p. 149). Responding to this critique, the Informal Donor Group will be undertaking a literature review to identify the type of results and indicators that can be expected from other important CSO roles and activities, such as in policy dialogue and promoting human rights. The objective is to develop a results framework model and menu of options appropriate to the full range of CSO activities, particularly in complex environments.

Aside from CSO-specific funding arrangements, donors have been called on to better integrate the objective of strengthening the enabling environment for civil society into their work, through policy dialogue with governments and civil society, diplomacy, and programming (OECD, 2012b; Nilson et al, 2012; ITAD/COWI, 2012). Programming investments such as USAID’s Enabling Legal and Policy Environment for Civil Society global programme or the UK Charity Commission’s enabling environment promotion work are two examples. Another major investment worth noting is the three-year, Sida-funded Civic Space Initiative. Jointly implemented by ICNL, Article 19, CIVICUS and World Movement for Democracy, this initiative aims to protect and expand civic space by fostering an enabling legal environment for CSOs, focusing on civil society legal initiatives at the global, regional and national levels.

Implementation of the European Commission’s new policy will be grounded in political economy analysis as part of the Road mapping process, which will help the Commission and Member States of the European Union to meet the “duty to advocate for a space to operate for both CSOs and individuals” (European Commission, 2012, p. 5). The Community of Democracy’s Working Group on Enabling and Protecting Civil Society’s quiet diplomacy provides another constructive example. On the whole, however, donors could do more to address enabling environment challenges for civil society, including in their policies and day-to-day programming investments as currently, “the features of the enabling environment.... are insufficiently recognised in developing strategies for civil society engagement” (ITAD/COWI, 2012, p. 94).

There is a widening gap across donor practice in whether, and the degree to which, public education and awareness raising of international development and global issues is an objective of their domestic CSO funding. In Austria, Germany, and Luxembourg for example, the imperative of such investments is clear, and a growing number of European countries’ Ministries or agencies responsible for development cooperation are members of the Global Education Network Europe.¹⁹ In other countries, such as Canada and the UK, donor agencies have eliminated or greatly reduced development education funding, despite consistent OECD calls on DAC members to ensure it is a priority (OECD, 2012b, p. 17).

Dialogue and Learning

Establishing regular dialogue fora with civil society provides a way for donors to systematically tap into CSOs’ knowledge and expertise (OECD, 2012b, p. 23), allows CSOs to stay abreast of and potentially influence evolving policy and programmes in donor agencies, and represents an opportunity for learning and exchange across all participants. Donors have tended however to engage in dialogue with CSOs in an *ad hoc* rather than systematic manner, and mainly on donor-identified policy priorities (Tomlinson, 2012, p. 10), often on politically ‘safe’ topics such as specific sector or thematic areas (ITAD/COWI, 2012), and not on broader or potentially more

¹⁹ See <http://www.gene.eu>

contentious issues. CSOs continue to point to insufficient and inadequate mechanisms for systematic and meaningful dialogue with donors, both in donor and developing countries (CPDE, 2013, p. 24).

Some donor good practice of meaningful and systematic CSO dialogue is evident. In Luxembourg, a working group between the Ministry and the *Cercle des ONG* meets four times a year to encourage mutual updates and discussions of forthcoming issues. The *Cercle* is also invited once a year to participate in the meetings of the inter-Ministerial committee on development cooperation (Luxembourg Ministry of Foreign Affairs, 2013).

The Learning Partnership component of DfID's Programme Partnership Arrangements (PPAs) provides another example. A 2013 evaluation of the PPAs by the UK's Independent Commission for Aid Impact (ICAI) ranks the Learning Partnership very favourably, noting it "has proved highly effective at promoting joint learning and innovation, to the benefit of both PPA holders and the wider community of development CSOs" (ICAI, 2013, p. 1). The Learning Partnership facilitates four Learning Groups²⁰ which commission reviews and organize regular learning events to which CSOs (PPA and non-PPA-holders) and DfID staff are invited.

Inspired by the success of the Learning Partnership, the ICAI questions whether DfID is "using all available opportunities to learn from the CSOs it funds" (Ibid, p. 21). Its observation is worthy of consideration by all donors:

[The CSOs] have much to contribute on a wide range of issues, such as delivering in difficult environments and to hard-to-reach groups, building CSO capacity in developing countries, working with the private sector, multi-stakeholder collaborations, developing delivery standards and leveraging funding and influence.... By choosing to relate to PPA holders primarily as service deliverers who are accountable to it, DfID is missing out on further opportunities to learn (Ibid).

Administration and Transaction Costs

The desire to reduce transaction costs is shared by donors and their CSO partners. The OECD suggests that donors need to develop "strategic, clear, flexible and harmonized approaches for funding and reporting systems...to make them more strategic, streamlined and flexible" (2012, p. 35). With leadership from Sida, a number of Informal Donor Group members are committing to harmonize as much as possible the conditions and requirements in their partnerships with their domestic CSOs, including through joint application, monitoring and reporting formats and frequencies. A *Code of Practice* package, developed with input from CSOs, is nearly

²⁰ The Learning Groups cover the following topics: Measuring Results in Empowerment and Accountability; Inclusion (with a sub-group on Gender); Resilience; and Institutional Effectiveness.

finalized and contains *Key Principles, Guidelines for Operationalization*, and a *Tool for Commitment and Accountability*.

Donors leading the harmonization initiative hope to have its recommendations incorporated into the DAC peer review guidelines, and are also considering recruitment of a third party to monitor donor compliance with the code. That this initiative has proceeded with a critical mass of donors behind it is noteworthy in an era when transaction costs have been increasing as a result of the “rising bar of financial management and accountability and results-based reporting requirements” (Wood & Fällman, 2013, p. 148). A review of the *Key Principles* suggests that the risk of harmonization toward the lowest common denominator, that is, toward the donor with the most rigid requirements, has been avoided.

It will be important for monitoring to go beyond an examination of donor implementation of the principles, to assess whether their domestic CSOs are enabled to extend the benefits of harmonization to their developing country partners. It will be equally important to ensure that the harmonized standards do not lead donors’ domestic CSOs to leave those developing country CSOs with more limited capacity to meet the harmonized requirements on the sidelines (SIPU International, IDS & IOD PARC, 2013, p. 42).

It is clear that there are a number of examples of donors, individually and jointly, actively pursuing good practice in their support to and engagement with civil society since the Busan HLF. The record is mixed, however, as a number of donors have been stalled in their progress, while others have simultaneously implemented both enabling and more restrictive changes to their CSO support and engagement. The good practice examples presented here help to demonstrate what can be done and thus the potential for more positive change across the donor community, even in the face of today’s economic constraints.

D) CSOs’ DEVELOPMENT EFFECTIVENESS

The concept of CSO development effectiveness here speaks to CSOs’ commitment to address issues of effectiveness and accountability in their practice. The Open Forum for CSO Development Effectiveness process and the establishment of the *Istanbul Principles*²¹ as a framework for understanding CSO development effectiveness was acknowledged in the BPD. Initiatives to advance CSO development effectiveness need not be explicitly tied to implementation of the *Istanbul Principles per se*. Many CSOs, whether self-motivated or in response to criteria or demands from donors and governments, are in an ongoing cycle of learning and enhancement of their roles, forms of partnerships, and results monitoring, with outcomes generally consistent with the *Istanbul Principles*.

²¹ See <http://cso-effectiveness.org/istanbul-principles.067>

The Istanbul Principles and Beyond

Between the Accra and Busan HLFs, the Open Forum led the global CSO process that led to establishment of the *Istanbul Principles* and their accompanying *International Framework* for implementation. Within the year following HLF 4, the Open Forum put in place a series of resource materials to help CSOs with tools and learning resources that would encourage context-specific practice consistent with the *Principles*. An *Implementation Toolkit* to encourage country-specific implementation of the *Principles* was produced together with an *Advocacy Toolkit*, designed to guide CSO advocacy for an enabling environment. A *Practitioner Activity Guide* was also developed to help CSOs analyze how the *Principles* might relate to their work and to begin strategic planning for adapting and changing their practices accordingly. An interactive CSO ‘wiki’ platform was established featuring further guidance for advancing CSO development effectiveness through the *Principles* and offering an online opportunity for CSOs to post complementary guidance, case studies, or queries.²²

Responding to the evolving architecture exemplified in the GPEDC, and to capitalize on the synergies and coordination between the pre-Busan Open Forum and BetterAid, these two linked global CSO platforms established a new global CSO Partnership for Development Effectiveness (CPDE), which, following multi-level consultation with CSOs, finalized its new mandate and structure in December 2012.²³

The process of finalizing the CPDE’s structure and workplan, and the need to secure multi-year funding, has constrained the coalition’s role to facilitate activities at the country level to educate and use the *Istanbul Principles* as a framework for CSO development effectiveness. Nevertheless, in June 2013 the CPDE’s Working Group on CSO Development Effectiveness organized the first Training of Trainers (ToT) in Johannesburg attended by forty-five civil society educators, facilitators and trainers from across the globe. Numerous workshop sessions were held, based on the guidance materials developed by the Open Forum. The ToT was an initial activity organized to reach out and eventually encourage more CSOs at the country level to look closely into their organisation’s praxis, and strengthen their own effectiveness and accountability in keeping with the *Istanbul Principles*.

With this ToT session, the CPDE envisions that the participants will replicate the training with their constituencies, deepen commitment and launch initiatives to further promote CSO development effectiveness, with reference to the *Istanbul Principles* and making use of the complementary tools.

²² All of these are accessible at the former Open Forum’s website: <http://cso-effectiveness.org/Toolkits>

²³ As with the two coalitions that preceded it, the CPDE will be funded by various donor agencies following the protocols of a joint-funding Memorandum of Understanding.

Much still needs to be initiated at the country level and within individual CSOs from the vantage point of the CPDE once secure funding is in place. But at the same time, there are examples of CSO initiatives that are already underway in parallel to the CPDE global processes. The US and Canadian development CSO umbrella organisations, InterAction and the Canadian Council for International Cooperation (CCIC) undertook a post-Busan survey, which found that 60 percent of respondents²⁴ “have integrated the *Istanbul Principles* into some element of their work” while another sixty one percent intend to do so in the future (CCIC & Interaction, 2013, pp. 8-9). As reflected in the CPDE’s forward programme design, national umbrellas are important actors in popularizing an understanding of the *Principles* and supporting their CSO communities to examine their practices accordingly.

In Canada, for example, CCIC in 2012 held workshops with CSOs across the country to raise awareness about the *Principles*. With its members expressing an interest in further guidance on how each principle might be manifested in practice, CCIC published twenty-nine case studies profiling members’ best practice as it relates to each *Principle*.²⁵ CCIC has also presented the *Istanbul Principles* and *International Framework* to CIDA, which in turn has included coverage of the *Principles* in its civil society training session for staff going on overseas posting.

A myriad of CSO self-regulation initiatives existed before the Open Forum’s efforts of course, even while they may mirror some or all of the *Istanbul Principles* standards. Examples are available from Colombia²⁶ to Cambodia²⁷, and were up to 2010 being tracked through the One World Trust database²⁸ on CSO self-regulation initiatives.

An often-cited global example is that of the *International Non-governmental Organisation (INGO) Accountability Charter*.²⁹ With annual reporting, review by an independent panel and a sanctions mechanism in place, the *Charter* is hailed as “one of the strongest initiatives in terms of assurance mechanisms” (Obrecht et al, 2012, p. 2). A recent study undertaken by One World Trust for World Vision calibrates the degree of “interoperability” between the *Charter*’s principles and those of a sample of national-level self-regulation initiatives (Ibid). The study represents a practical demonstration of steps that INGOs ascribing to the *Charter* can take to meaningfully operationalize and integrate it into their work. Yet, while the *Charter* has its strengths as a self-regulation mechanism, the degree to which it motivates INGOs to address some of the key critiques that they are subject to, such as issues of considerable power imbalance in their partnerships with local CSOs, or their

²⁴ The report notes that the figures are indicative only as the sample of respondents was small and not fully representative of development CSOs across the two countries. They are also likely subject to self-selection bias.

²⁵ See http://www.ccic.ca/what_we_do/IP-case-studies_e.php

²⁶ See the Colombia NGOs for Accountability and Transparency initiative in OEDC (2009) p. 92.

²⁷ See the work of the Cooperation Committee for Cambodia at <http://www.ccc-cambodia.org/ngo-code-compliance-committee.html>

²⁸ See <http://www.oneworldtrust.org/csoproject/>

²⁹ See <http://www.ingoaccountabilitycharter.org>

potential to ‘crowd out’ local CSOs competing for the same limited financial resources at country level, is unclear.

The type of monitoring and assurance built into the *Charter* can also serve to strengthen country-specific self-regulation initiatives spurred by the *Istanbul Principles* or otherwise. At least one or a combination of disclosure requirements, verification mechanisms, and sanctioning are generally used in self-regulation mechanisms (Prakash & Potoski, 2006 in Prakash & Gugerty, 2010), and are strengthened when CSOs are able to let go of the “fear that public sanctions will identify “bad apples” that weaken the reputation of the sector as a whole” (Prakash & Gugerty, 2010, p. 38).

The *Istanbul Principles* are in essence a statement of CSO common values and approaches to guide their work. They are designed to offer the type of high-level guidance that is appropriate given their aim of applicability to a diverse range of CSOs across the globe, with varied mandates and working in different operational contexts. This means that even with the practical guidance available through the *Toolkit*, the application of the *Principles* may not sufficiently address some of the key concerns regarding CSO effectiveness that donor and developing country governments and CSOs continue to raise. At the same time, there is some concern among CSOs that the *Principles* may become criterion against which CSO practice could be further regulated by governments already prone to restricting civil society.

CSOs’ internal management and governance practice is an area needing ongoing attention so that CSOs can better pursue accountability from governments with the strength of having “their own houses in order” and an ability to demonstrate high standards of governance and accountability within their organisations (ITAD/COWI, 2012, pg. 97). This echoes findings from CIVICUS’ Civil Society Index summary report that CSOs may not always be “modelling the values they espouse” (CIVICUS, 2011, pp. 24-29).

The degree to which CSOs can respond to the ongoing call for greater coordination and information sharing among CSOs and with governments is also worthy of attention (Norad, 2012, p. 11). Donors, governments, and CSOs themselves (Open Forum, 2010, p. 10) share an interest in seeking synergies, and in avoiding duplication of effort, or undermining social programmes for which governments have a responsibility to ensure at least minimum access for their whole population (Task Team, 2011a, p. 10). CSOs can also increase their influence and confidence, especially in the arena of policy dialogue, through greater inter-CSO coordination, and such coordination does not need to entail formalized networks but strategic networking processes (ITAD/COWI, 2012, p. 96). Findings from the ACT Alliance/CIDSE study indicate a growing level of information-sharing and collaboration across the CSO community at country level and across borders, facilitated by the ever-expanding access to information and communications technology (2013, p. 15-16).

Results monitoring and reporting is another area that some CSOs could continue to address. Many evaluations of CSOs find that “the quality of monitoring.... is often found wanting”, suggesting that some CSOs may need to continue to strengthen their monitoring and evaluation capacities overall, with emphasis on articulating processes of change and monitoring at outcome level (Watson et al, 2012, pp. 58 -59). A 2013 evaluation of DANIDA’s support to civil society specifically suggests, for example, that Danish CSOs could improve their monitoring and evaluation frameworks to better assess their value-added contributions such as in capacity development, networking and advocacy (Intrac, Tana & InDevelop, 2013, p. 17). As previously noted, this would be helped by a donor approach to results that is open to qualitative and process-oriented achievements.

There is also a need to work toward more CSO initiatives that are genuinely demand-driven and responding to the priorities of their partners, constituents, and the ultimate beneficiaries of development cooperation (Task Team, 2011a). The first of the *Istanbul Principles* seeks to address this issue by calling on adherents to follow a human rights-based approach with emphasis on participation and empowerment, as does the sixth principle of “equitable partnerships” (Open Forum, 2011b, pp. 8, 13). The application of rights-based approaches is not always easy, nor done consistently however; there are varied interpretations of what it entails and “mixed evidence for how the approach translates onto the ground” (Watson et al, 2012, p. 44).

On the whole, within the framework provided by the *Istanbul Principles* and more, there is a need for CSOs to continue to seek to address these real challenges to their development and aid effectiveness, to the best of their ability despite actual and perceived shortfalls in enabling conditions.

Transparency

A commonly heard refrain as regards CSO operations is the need for transparency of information on CSOs’ financial flows, including CSOs’ own financial contributions to development cooperation.³⁰ This is an area of particular relevance for aid-recipient country governments seeking a full picture of CSO activities in the various sectors of government responsibility, particularly when it comes to service delivery such as in health or education. While the UN Special Rapporteur warns against unduly burdensome reporting requirements, he acknowledges that associations should be accountable to their donors (2013, para. 38). Transparency is an important commitment in the *Istanbul Principles* and in the *INGO Charter*, but one that CSOs acknowledge requires greater attention. A CSO Working Group has been collaborating with the International Aid Transparency Initiative (IATI), both to promote CSOs to publish their data to the IATI standard, and to try to render the IATI standard sensitive to CSO ways of operating (IATI CSO Working Group, 2012).

³⁰ In 2011, development CSOs in DAC member countries raised an estimated minimum US \$ 32 billion, an amount equal to 24 percent of total ODA, and up from US \$ 23.9 billion in 2008 despite the ongoing financial crisis (OECD, 2013, p. 6).

To date the IATI registry³¹ lists 144 CSOs as having published at least one data set to the IATI standard. Eighty-eight percent of these are INGOs, a not surprising figure given these organisations are more likely to have the resources required to tailor their information management systems to publish data to the IATI standard. Many of these INGOs do so to meet DfID's requirement that CSOs receiving DFID funding publish to the IATI standard.

DfID is also providing support to BOND, the UK platform for UN development NGOs, to train and support UK CSO partners to publish to the IATI standard.³² DfID is funding the Bond Effectiveness Programme,³³ which, among other things, helps CSOs become compliant with IATI and make use of the data. Interaction in the US and Partos in The Netherlands, both CSO platforms, are similarly working with their membership to understand the implications of the IATI standard for improved CSO transparency. On the other hand Rendir Cuentas, a Latin American network, is working with many Latin American CSOs on transparency issues unique to developing country CSOs, largely independent of the IATI process and standard, due to the uniqueness of the challenges facing Latin American CSOs and transparency.³⁴

Ensuring CSO development effectiveness is a critical component of the aid and development effectiveness equation and one that cannot be ignored. Effectiveness issues apply to CSOs on the ground as development actors in their own right, to CSOs acting as donor and government partners, and to CSOs as financial contributors to development cooperation. Success in the pursuit of CSO effectiveness and accountability may not only help to reign in the pervasive donor and government efforts to regulate civil society, but may also strengthen the social support needed to sustain civil society in the long term (Sidel, 2005, p. 804).

CONCLUSION

This *Review of Evidence* is a contribution of qualitative evidence of progress and gaps in meeting the civil society-related commitments of the Busan HLF, as gathered by the Task Team over the past year. It is intended to be a living document, one which will be updated with additional findings, and circulated as a contribution to the GPEDC's April 2014 High Level Meeting. The Task Team looks forward to further collaboration across its membership, with the GPEDC, and with other stakeholders, to identify good practice and address bottlenecks of progress going forward.

³¹ See <http://iatiregistry.org/>

³² DfID is one among various donor agencies making information on their overall ODA flows more transparent, such as for example through DfID's Development Tracker accessible at: <http://devtracker.dfid.gov.uk/>

³³ See <http://www.bond.org.uk/effectiveness> or access the Helpdesk at support@iatistandard.org.uk

³⁴ See <http://rendircuentas.org/>

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