Making Aid Effective means Protecting Civil Society

The Accra Agenda for Action (AAA) formally confirms the need for an *enabling environment for civil society* as a key element of aid and development effectiveness. Despite these commitments there is growing evidence that the space for independent Civil society organisations (CSOs) work has been rapidly deteriorating.

 The centrality of an enabling environment for CSOs need to be recognised and acted on at the fourth High Level Forum (HLF-4) in Busan in December 2011. This involves:

– Promoting an agreement at HLF-4 on minimum standards that create an enabling environment for CSOs

– Before and at HLF-4, reaffirm the AAA's recognition of CSOs as independent development actors

– Endorse, and promote the endorsement by other countries of the *Istanbul Principles*

– Promote the issue of democratic space for civil society action as a special focus for the UN Special Rapporteur.

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Introduction

Since the Paris Declaration on Aid Effectiveness in 2005, the whole question of aid effectiveness has become a driving force in the overseas development sector. Over 100 countries now accept the 'Paris principles', together with the follow-up approaches and declarations, as the blueprint for improving the impact of Official Development Assistance (ODA). All development actors take cognisance of them, even if some civil society actors still critique their shortcomings and the inadequacy of implementation.

This on-going process has created an overarching approach to the delivery of what is termed 'high quality aid' – in other words, ODA that is country-owned, aligned with recipient country priorities and harmonised among donors, focused on the poorest people, predictable, untied, delivered through effective institutions, and focused on results rather than activities.

Civil society organisations (CSOs) are increasingly involved in trying to influence what was initially a donor-led aid effectiveness process, and will be active at the Fourth High Level Forum on Aid Effectiveness (HLF-4) in December 2011. They will work to ensure that ODA works to build the capacities of poor and marginalised people to realise their rights and achieve internationally agreed development goals.

Working through the Open Forum for CSO Development Effectiveness, CSOs have made substantial progress, in a global process in which CSOs from more than 70 countries participated, on agreeing the principles and framework by which their development effectiveness can be strengthened, and by which they can be held accountable.[1] CSOs have agreed the *Istanbul*

Principles and will present the *International Framework on CSO Development Effectiveness* at HLF-4 as evidence of their commitment to strengthen their own effectiveness as development actors.

There is a range of important issues that civil society wants to advance at HLF-4, including the promotion of rights-based approaches to development, increased focus on gender equality and decent work, strengthened commitments on aid reform and effective aid delivery, and the need for an equitable international framework for development cooperation.[2] For Trócaire, however, one issue increasingly stands out as critically important: ensuring an enabling environment for the work of civil society actors against a backdrop of closing democratic space.

Democratic space: vital for civil society's contribution to development

Civil society organisations (CSOs) and activists worldwide contribute in unique and essential ways to development as innovative agents of change and social transformation.[3] A diverse, strong and independent civil society sector is essential for the long-term, sustainable and just reduction of poverty. In particular, CSOs have an important role to play in 'bringing the voices of the poor' to influence government policies, and in holding governments and other powerful actors to account for their actions. It is for this reason that protection of the democratic space in which strong and independent civil society groups and actors operate is a critical objective for Trócaire.

At the third High Level Forum on Aid Effectiveness in Ghana (HLF-3), civil society secured formal recognition by donors and partner countries within

1   It is important to recognise that there are a range of different CSO actors. While most will work towards this agenda, strengthening their development effectiveness and accountability mechanisms, there will be some who will not abide to these principles and frameworks.
2   See CSOs' common Key Messages and Proposals towards HLF-4 at: www.cso-effectiveness.org/IMG/pdf/cso_asks_final_.pdf
3   For a summary of the diverse CSO roles in development, see Annex 2, International Framework for CSO Development Effectiveness: www.cso-effectiveness.org/IMG/pdf/draft_international_framework_for_cso_development_effectivenessv3.pdf

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Minimum Standards for an Enabling Environment

The Siem Reap CSO Consensus on the International Framework for CSO Development Effectiveness,[5] defines the enabling environment as: "the political and policy context created by governments, official donors and other development actors that affect the ways CSOs may carry out their work. "Enabling standards" are a set of interrelated good practices by donors and governments – in the legal, regulatory, fiscal, informational, political, and cultural areas – that support the capacity of CSO development actors to engage in development processes in a sustained and effective manner."[6] The creation of such an environment is highly complex and involves the interplay of many domestic and international actors in the progressive realisation of human rights. The following fundamental principles and standards, however, should apply across all countries to guarantee fundamental rights and as pre-conditions for a robust and effective civil society:

- Freedom of association and assembly for men and women;
- Legal recognition facilitating the work of CSOs, including women's rights organisations;
- The right to freedom of expression for men and women;
- Freedom of movement, mobility rights and the right to travel for men and women;
- The right to operate free of unwarranted state interference;
- The legal space to seek and secure necessary resources in support of legitimate roles in development.
- Public authorities, moreover, are required by international law to provide protection when the integrity of a civil society organization or lives of its staff and members are threatened.

the Paris process of its important role as an independent actor in development cooperation. The Accra Agenda for Action[4] (AAA) formally confirms the need for an *enabling environment for civil society* as a key element of aid and development effectiveness, and establishes development partners' commitments to work with CSOs in creating and sustaining that environment. This explicit recognition of civil society was a welcome complement to the Paris Declaration.

The HLF-3 also brought a focus on CSOs' roles – distinct from donors and partner governments - in different development contexts; formal recognition of the need to engage on the matter of how CSOs would relate to the Paris process; and a commitment to work with CSOs to create an enabling environment that would help them maximise their contributions to development. In the *Accra Agenda for Action* donors, partner governments and CSOs agreed to work together to address CSO effectiveness;[7] called for higher levels of engagement and broad-based dialoguewith CSOs, parliaments and other development actors by donors and developing country governments on development policy and practice;[8] and committed donor and developing country governments to enhance transparency and accountability to each other and to their citizens.[9]

"CSOs across Africa are now facing the greatest crisis they have faced since the wave of independence on the continent some 50 years ago, with an emerging practice of governments using an aggressive combination of multiple pieces of legislation, policies and political tools to restrict civil space."

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[4] Paragraph 20C

[5] http://www.cso-effectiveness.org/IMG/pdf/final_framework_for_cso_dev_eff_07_2011-3.pdf

[6] Ibid, p.17

[7] Accra Agenda for Action, paragraph 20C

[8] Ibid, paragraph 13

[9] Ibid, paragraph 24

A Pattern of Shrinking Democratic Space

Despite these commitments on the part of donors, and other international actors, there is growing evidence that the space for independent CSO work in many developing countries has been rapidly deteriorating over the past few years.[10] The multi-stakeholder Task Team on CSO Effectiveness, reporting to the OECD Working Party on Aid Effectiveness, has noted "a growing body of evidence to suggest an increasingly restrictive, rather than enabling environment for civil society, with reduced democratic, legal and financial support space for CSOs to varying degrees in both developing and donor countries around the world."[11]

Globally there is evidence of more restrictive financial and regulatory frameworks that severely constrain CSO activities, often threatening their very existence (including right to entry, operation, expression, communication), the Task Team reported. The need for the 2010 resolution of the UN Human Rights Council on the rights to peaceful assembly and association, and designation of the first UN Special Rapporteur monitoring these rights, also attest to this ominous trend and underline the gravity of the situation. Moreover, addressing common concerns of limitations and restriction placed on CSOs in accessing resources for their work, the UN Special Rapporteur on Human Rights Defenders' recent Commentary found it necessary to reassert the right of CSOs to funding as an inherent element of the right to freedom of association.

A recent Trócaire/CAFOD research on civil society space[12] in Ethiopia, Malawi, Honduras and Cambodia, concludes that, increasingly, civil society space is being restricted – sometimes at national, sometimes at local level — to contain challenges to the use of power. The box below outlines some of the findings from this research in relation to the situation in Malawi. The findings of this research are backed by recently released research on the 'disenabling environment' for CSOs in Africa by the African Civil Society Platform on principled Partnership (ACPPP). This research reports that 35 African governments (or 62% of the total) have either passed or are advancing legislation that restricts the activities, funding, and sometimes the very existence, of CSOs. The ACPPP concludes that CSOs across Africa are now facing "the greatest crisis" they have faced since the

Threats to Civil Society in Malawi

In Malawi civil society space has become increasingly restricted since the 2009 elections. This is a remarkable reversal of a period of around 15 years of democratic gains and civil society expansion since the end of one party rule in 1994. Civil society, particularly Malawi's churches, played a key role in ushering in a democratic era and have been key guardians of good governance and human rights ever since. However, since 2009, the government has begun to introduce restrictive new legislation. Amendments to the Police Act granted new powers to search without a warrant; the Penal Code was amended allowing the government to close down any media outlets publishing material against the public interest; and the Injunctions Bill prevents anyone taking out injunctions against the government. Furthermore, civil society leaders including Trócaire partners have reported increasing intimidation in recent months. This has culminated in the deaths of 19 people in July this year when police opened fire on civil society demonstrations which called for changes to government economic policies. Civil society leaders have reported death threats and many have gone into hiding. The Malawian government is specifically targeting NGOs and networks working on human rights and governance issues. The independent media and academics known to be critical of the government have also been singled out. Whilst some space for dialogue remains open, particularly at local level, the situation is deteriorating rapidly.

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[10] See, for example, the reports: *Shrinking Political Space of Civil Society Action*, ACT Alliance, Geneva, June 2011; and *Civil Society – The Clampdown is Real*, CIVICUS, South Africa, December 2010; *CSOs in Situations of Conflict*, CIVICUS, South Africa, April 2011. See also Trócaire's horizon scanning report *Leading Edge 2020. www.trocaire.org*

[11] For further details, see 'Key Messages for the Fourth High Level Forum on Aid Effectiveness" by the Task Team on CSO Development Effectiveness and Enabling Environment, Working Party on Aid Effectiveness, Cluster A. www.cso-effectiveness.org/IMG/pdf/final_key_messages_from_the_task_team.pdf

[12] Ethiopia Civil Society Scoping Study, Joint CAFOD/Trócaire Research on Civil Society Space

wave of independence on the continent some 50 years ago, with an emerging practice of governments using an aggressive combination of multiple pieces of legislation, policies and political tools to restrict civil society space.[13]

This restriction of civil society space is deeply damaging to the countries in which it happens. It is dangerous for CSO activists working for sustainable human development, including Trócaire and its' partners in turn. Moreover, it is directly at odds with the Irish government policy of supporting democracy and good governance, and working with and through CSOs in development.[14]

Official Irish government policy[15] cites among CSOs' key roles in development: voicing citizens' needs; supporting poor and marginalised women and men to vindicate their rights; bringing pressure to bear on government to perform better; delivering basic services where governments cannot or will not meet their responsibilities; engaging with government to influence politics, policies, strategies and practice; promoting and advocating for human rights; monitoring the performance of government in relation to human rights and more; enabling citizens to engage in democratic processes; research and advocacy; and holding government to account. Ireland has also been active asserting and ensuring the protection of human rights defenders, who are often on the receiving end of the more harmful and violent manifestations of shrinking civil society space. Irish NGOs, including Trócaire, strongly support the Irish Government's view that such roles and activities represent the value added of civil society in action for development.

How Civil Society Space links with the Aid Effectiveness Agenda

Certain elements of the aid effectiveness agenda are intrinsically linked with this issue of closing civil society space and need to be highlighted, especially where these may inadvertently exacerbate already challenging contexts.

In an extremely worrying development for the aid effectiveness agenda, the ACPPP's research across Africa has identified the misuse of the Paris Declaration principles – and, indeed, the International Framework for CSO Development Effectiveness – to restrict civil society space in the name of alignment, harmonisation and accountability.[16] The result is a growing threat to CSO diversity, risk-taking and innovation as a result of donor harmonisation and country-level alignment within partner countries. This situation, moreover, is further compounded by emerging challenges and threats in the reduced role envisaged by a number of OECD donors for 'home-country NGOs' in development partnerships (agenda setting, programmes, policy advocacy, etc); and evidence of reduced donor interest in, and funding of, certain complex or 'slow burn' CSO activities, such as empowerment for rights, governance, advocacy, development education, etc.[17]

The ACPPP argues from its findings that "what began as a genuine call for mutual accountability and harmonisation of development effort between donors, governments and CSOs has turned into a wave of legislation and policies targeting organisations [CSOs] that do not appear to conform to government choices."[18] The ACPPP contends that by focusing on those aid effectiveness results that derive from the Paris Declaration and not paying close attention to progressing Accra Agenda for Action commitments, "donors are increasingly putting CSOs on the firing line of governments, and providing a justification for CSO control."[19]

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[13] See *Civil Society, Aid and the Disenabling Environment*: *Motivation and impact of the disenabling environment on development work in Africa*, Africa CSO Platform on Principled Partnership (ACPPP), Kenya, June 2011.

[14] See Frontline Defenders Urgent Appeal for Benedicto Kondowe, Executive Director of the Coalition for Quality Basic Education. http://www.frontlinedefenders.org/node/15592

[15] See White Paper on Irish Aid (2006) and Irish Aid Civil Society Policy (2008)

[16] See *Civil Society, Aid and the Disenabling Environment: Motivation and impact of the disenabling environment on development work in Africa,* Africa CSO Platform on Principled Partnership (ACPPP), Kenya, June 2011. Pages 22 - 23 discuss how the Paris Declaration is being used to create a disenabling environment for CSOs. Country examples are cited in this discussion.

[17] The White Paper on Irish Aid (2006) and Irish Aid Civil Society Policy (2008)

[18] *Civil Society, Aid and the Disenabling Environment: Motivation and impact of the disenabling environment on development work in Africa,* Africa CSO Platform on Principled Partnership (ACPPP), Kenya, June 2011. Pg. 5

[19] ibid. Pg. 28.

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Based on its work since Accra, the Task Team on CSO Development Effectiveness has reported to the Working Party on Aid Effectiveness that all participants at HLF-4 should recognise the importance of "assuring that the Paris Declaration principles, including ownership and alignment, are not in any way interpreted or applied to narrow the enabling environment for CSOs."

This issue, however, has been sorely neglected since 2008, and is sidelined in the Draft Outcome Document for HLF-4.[20] The International Framework for CSO Development Effectiveness, endorsed by civil society in Siem Reap, Cambodia, in June 2011 specifically states that: since the 2008 Accra HLF-3 commitment by donors and governments 'to work with CSOs to provide an enabling environment that maximises their contributions to development', "many CSOs, in both donor and developing countries, have experienced deteriorating and disenabling conditions for their work."[21]

Moving Forward: What needs to happen in Busan

The centrality of an enabling environment for civil society organisations and actors needs to be recognised and acted on at the HLF-4 in Busan in December 2011. In the absence of basic minimum enabling standards on the part of donors, partner governments and other development partners (be they local authorities, private sector actors, foundations, international organisations or others), CSOs will be thwarted in their work to reduce poverty, as well as the promotion, protection and defence of human rights.

While the focus in the Draft Outcome Document on the role of parliaments is welcome, the commitments on the role of civil society need to be greatly strengthened, and to reflect much more fully the key outcomes of the Working Party's multi-stakeholder Task Team on CSO Development Effectiveness – including its important recommendations in relation to CSOs as independent development actors, the enabling environment, donor support models, CSOs' effectiveness, and issues of accountability, transparency and respect for human rights.[22]

In the lead up to HLF-4, and well beyond that particular meeting, Trócaire will highlight this crisis situation for civil society globally, and call on all development actors to do their utmost to address this. In the short term, this can be advanced through specific and concrete measures at HLF-4 to advance an enabling environment for CSOs. In the longer term, it will require close attention and political engagement and action by donors, partner governments, CSOs and others.

The recent evaluation of Ireland's performance against the Paris Declaration states that it should "maintain the leadership role that Ireland has assumed in furthering aid effectiveness at country and multilateral levels."[23] Trócaire proposes that Ireland can play a key role in this regard by advancing basic minimum enabling standards for CSOs to engage with development and human rights, in line with one of its own key civil society policy objectives. Existing government policy suggests that Ireland has a strong strategic interest in advancing an international agenda for improved civil society space and could make further use of its political and diplomatic capital, in addition to the technical and financial support of Irish Aid, to advance basic minimum standards for an enabling environment.

Recommendations

Looking forward to HLF-4 in light of the urgent threat to CSOs around the world, and revisiting the commitments of the Accra Agenda for Action on aid effectiveness, Trócaire calls on Ireland, fellow EU Member States and the OECD to **affirm and ensure the participation in development of the full diversity of CSOs, as independent and autonomous development actors in their own right**.

In doing so, Trócaire urges them to prioritise and promote the matter of tackling shrinking civil society space in many countries – and the consequent, urgent need for development partners to progress agreement on basic minimum standards for an enabling environment for CSOs.

[20] See Giffen, J and Judge, R, *Civil Society Policy and Practice in Donor Agencies*, INTRAC, Oxford, UK, May 2010, for discussion of some of the trends and implications
[21] First (July 2011) Draft Outcome Document for HLF-4:https://community.oecd.org/docs/DOC-
[22] The International Framework for Development Effectiveness: www.cso-effectiveness.org/IMG/pdf/final_framework_for_cso_dev_eff_07_2011-3.pdf
[23] Civil Society Task Team Report

Trócaire calls on Ireland to:

- Promote agreement at HLF-4 on minimum enabling standards for government and donor policies, laws, regulations and practices (in line with international human rights law) that create an enabling environment for CSOs to maximise their contributions to development and human rights, including women's rights.[24]

- Address the issue of CSOs being hindered or restricted in their roles as independent development actors, as formally recognised in the AAA, under the guise of countries' adherence to Paris Declaration principles or aid effectiveness approaches.[25]

- Before and at HLF-4, reaffirm the AAA's recognition of CSOs as independent development actors in their own right, playing roles that complement but are distinct from those of governments and the for-profit private sector. To this end, the Minister of State for Trade and Development should make a statement emphasising the importance for Ireland of autonomous CSOs, their roles in development, and the importance of assuring the minimum enabling standards that would allow them to fulfil their potential as independent development actors.

- Endorse, and promote the endorsement by other countries of, the *Istanbul Principles* (developed partly in response to the AAA's call for civil society reflection on how it relates to the Paris process) as a basis for context-specific assessment of CSO contributions to development, and for donor and government policies that enable these contributions.

- Include a civil society representative in official delegations of Ireland and fellow EU Member States to HLF-4, as anticipated by the OECD— and, if the need arises, consider funding for HLF-4 for informed and engaged civil society representatives from countries where civil society may struggle to send representatives.

- Actively promote and support an enabling environment for CSOs' work by speaking out publicly where CSOs are under threat and by using its influence to call on donors to act and speak collectively in light of donor and partner countries' commitments under international human rights norms and standards.

- Encouraging cooperation among both donors and partner country governments with the recently appointed Special Rapporteur on the Freedom of Assembly and Association. The issue of democratic space for civil society action, such as securing basic minimum enabling conditions, should be promoted as a special focus of the work of the Special Rapporteur.

- Continue Irelands own support, and encouraging cooperation among both donors and partner country governments with other relevant UN human rights mechanisms such as the UN Special Rapporteur on the Promotion and Protection of the Right to **Freedom of Opinion and Expression** and the UN Special Rapporteur on the Situation of **Human Rights Defenders.**

Conclusion

The draft Outcome Document for the HLF-4 states that international development cooperation currently finds itself at a critical juncture. As outlined above, a critical part of this relates to the disabling environment in which civil society actors are working across the world. International development cooperation must promote democratic ownership and adherence to human rights standards, and squarely address the underlying causes of poverty and inequality in the world today. This issue is intrinsically linked with key elements of the aid effectiveness agenda. It is essential that the HLF-4 in Busan, as a key development forum, is used to address the issue of shrinking democratic space for civil society. Ireland, by virtue of its good policy stance, track record in this area and membership of the EU, is in a strong position to ensure that this happens.

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24 Joint Evaluation of the Paris Declaration – Phase 2 Donor HQ Study Irish Aid http://www.oecd.org/dataoecd/61/51/47083236.pdf

25 This includes 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. See World Movement for Democracy and International Center for Not-for-Profit Law's Defending Civil Society report (2008) for the list of international and regional instruments in which these principles are enshrined.