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Child Rights Governance

Policy brief

Speaking Out:

Safeguarding civil society space for children

► Introduction

Save the Children believes that a strong, diverse and independent civil society can play an important role in ensuring the realisation of children's rights. This policy brief outlines why Save the Children believes that civil society is important for children and their rights. It explores what is needed to create an enabling environment for civil society and concludes with some recommendations directed at states, donors, civil society and multilateral organisations.

What is civil society?

CIVICUS (World Alliance for Citizen Participation) defines civil society as: "The arena – outside of the family, the state, and the market – which is created by individuals, collective actions, organisations and institutions to advance shared interest. Civil society therefore encompasses civil society organisations (CSOs), social movements, and the actions of less formalised groups and individuals."

- CIVICUS State of Civil Society Report (2011)

► Why is civil society important for children and their rights?

An empowered civil society is a key indicator of the sort of open, inclusive and accountable governance which is necessary for the realisation of children's rights. This is because civil society organisations (CSOs) can hold states to account for realising children's rights and can advocate for positive change for children in policies, laws, programmes and budgets. It can also promote, raise awareness of and build capacity on children's rights. In many countries, civil society helps to deliver basic services for children and it can also be a watchdog to ensure equal access to services and adequate standards of quality across the continuum of development and humanitarian contexts.

Civil society can support the participation of girls and boys in governance as active citizens and agents for positive change in their societies. Children's opportunities to improve their own lives and to drive their own agendas are connected with the strength and diversity of civil society which at its best provides multiple opportunities for self-expression, dialogue and exchange for children and adults alike. It is vital to have diverse spaces and places where people, including children, can come together to argue constructively, find possible points of consensus and work collectively. This pluralist vision is only possible when there is a wide range of civil society organisations, movements and individuals that are able to act freely. Children have the right to be heard, they want to be heard and we need them to speak out to better understand and respond to their situation.

In order to work with and for children, civil society must have freedom to operate within an enabling environment. The term 'enabling environment' refers to the institutional, legal, political and administrative conditions that underpin the existence and effectiveness of civil society. There is a core of rights that act as the bedrock of an enabling environment for civil society. These include the rights to access information and to freedom of peaceful assembly, association, opinion and expression, - online and offline - which are contained in a vast body of international law and inter-governmental commitments¹. These rights are constitutionally guaranteed in many countries and serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights.

Under the UN Convention on the Rights of the Child, children, who constitute more than 30% of the world's population, also have rights to information, freedom of opinion, expression, peaceful assembly and association. Children's capacity to influence on their own terms is largely dependent on the extent to which these civil rights and freedoms are met. It is particularly important to ensure that children have access to timely, age appropriate and child-friendly information, as without this they cannot express informed opinions, meaningfully participate in change and claim their rights.

Children's associations - meaning organisations run by and for children - are particularly important in empowering girls and boys as active actors and citizens. Through these associations, children have increased opportunities to meet, to share their experiences and to take joint action on issues affecting them. They also have greater power to defend and negotiate their rights through their collective strength, which is especially relevant for the most deprived children. In reality, children often encounter obstacles when forming their own organisations - it is often necessary to be an adult in order to register an organisation as a legal entity and children's associations thereby risk co-option by adult-led organisations².

Involving children in governance and decision-making at all levels supports children's civic engagement and understanding of democratic processes. It can also help governments to improve development outcomes, design more accurate and relevant interventions for children and allocate resources more effectively. To enable children to participate in governance, governments should institutionalise child-friendly, age-appropriate and safe processes and mechanisms where children can articulate their views and influence decision-making and accountability. It is also important to ensure that adults, including actors in civil society and decision-makers, are sensitised about children's rights, including their right to exercise their civil rights and freedoms and participate in governance. Birth registration is the official record of a person's existence and a precondition for exercising one's civil rights and freedoms. It is therefore essential for the realisation of children's rights. Despite this, 230 million children lack birth registration.

1. For example, the International Covenant on Civil and Political Rights provides for the rights to freedom of opinion and expression, peaceful assembly and association, and participation in public life (articles 19, 21, 22, 25); the International Covenant on Economic, Social and Cultural Rights provides for the right to form or take part in a trade union and to participate in cultural life (articles 8, 15); the International Convention on the Elimination of Racial Discrimination prohibits discrimination in relation to the expression, assembly and association, and in conduct of public affairs (article 5); the Convention on the Rights of the Child provides for freedom of expression, association and peaceful assembly and the right to information (articles 13, 15, 17).

2. Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (2014), A/HRC/26/29

An enabling environment for civil society

It is the primary responsibility of states, in accordance with their international human rights obligations, to promote and protect rights that enable civil society to operate. This means that states should put in place robust legislative and administrative frameworks that protect and promote rights to the freedom of peaceful assembly, association, opinion and expression.

An enabling environment for civil society goes beyond the simple absence of restrictions and encompasses a set of conditions that actively help civil society to function, thrive and contribute to the improved realisation of children's rights. This is a recognition of the fact that there must be physical and digital spaces and places where people can come together and this is essential in creating opportunities for coordination and channels through which individuals and groups – particularly those who are excluded and discriminated against – can make their voices heard and influence the development of society, including reconstruction or peace processes following a humanitarian crisis.

An enabling environment for civil society should not only exist at the national level, but should also be in place in relation to the work of international and regional multilateral institutions to ensure that civil society can take active part and influence the work of these institutions without fear of reprisals³.

The importance of creating an enabling environment within which civil society can operate freely has been emphasised by the UN Committee on the Rights of the Child:

- CRC General Comment⁴: No. 5 *"The State needs to work closely with NGOs in the widest sense, while respecting their autonomy...NGOs played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital⁵."*
- CRC General Comment No. 16 *"...States should ensure conditions for active and vigilant civil society, including effective collaboration with and support to independent civil society organisations, child and youth-led organisations... States should refrain from interfering with these and other independent organisations and facilitate their involvement in public policy and programmes relating to children's rights and business⁶."*

The UN Human Rights Council has also adopted several resolutions of particular importance for civil society. In 2014 it acknowledged the *"crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is indispensable for building peaceful, prosperous and democratic societies⁷."*

In 2011, over 160 states came together at the Fourth High Level Forum on Aid and Development Effectiveness, in Busan, South Korea⁸ and agreed the Busan Partnership Agreement. This agreement recognised that 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 states⁹".* These 160 states committed to guarantee an "enabling environment" for civil society organisations in order to maximise their contributions to development. Although specific to the context of aid delivery, the Busan Agreement affirms a consensus that a free and vibrant civil society is a fundamental building block of open, inclusive and accountable governance.

3. The Special Rapporteur on the rights to freedom of peaceful assembly and of association prepared a report on multilateral institutions and civil society in 2014 (Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/69/365)

4. A General Comment elaborates on key child rights issues within the Convention on the Rights of the Child and seeks to update them or to explore their implications further.

5. UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5 para 58

6. UN Committee on the Rights of the Child (CRC), *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, CRC/C/GC/16 para 84

7. UN Human Rights Council, *Civil Society Space*, A/HRC/27/L.24, 2014

8. See OECD information on Countries, Territories and Organisations Adhering to the Busan Partnership for Effective Development Co-operation, available at: <http://www.oecd.org/dac/effectiveness/busanadherents.htm>

9. Article 22, *Busan Partnership for Effective Development Co-Operation*, available at: <http://www.oecd.org/dac/effectiveness/49650173.pdf>

► Trends in guaranteeing an enabling environment for civil society

In recent years, many countries have limited the space in which civil society operates. By 2010, 90 countries had either passed “NGO laws” controlling civil society or were considering the introduction of such laws¹⁰ with a further 20 new countries considering the introduction of restrictions by 2013¹¹. The overall trend is for increased state regulation, intervention and scrutiny over civil society activities. There has also been an increase in controlling protest movements and direct harassment of civil society activists and their organisations¹² as well as reprisals against members of CSOs for engaging with multilateral human rights institutions, most notably, the UN Human Rights Council.

These restrictions have emerged for a variety of reasons - some of which are not clearly substantiated - including: a heightened sensitivity to the threat to national security of terrorism post 9/11; the association of CSOs with political opposition groups; as efforts to ensure civil society is more accountable to beneficiaries and to reduce corruption; negative peer learning amongst governments; and fear of external political interference through funding of civil society by foreign agencies.

The right to peaceful assembly has been restricted - according to CIVICUS, this trend has emerged as a direct reaction to the popular protests of 2011 and 2012, not just in the Middle East but also in more well-established democracies. Mandatory registration requirements for civil society organisations have also been used as a means to control “spheres of activity”. In many countries the service provision role of civil society organisations may be accepted and even encouraged but human rights and advocacy work has been a particular target of clampdowns; for example, in some countries, CSOs that do advocacy or human rights work are not permitted to take more than 10 per cent of funding from foreign sources.

“Repressive legislation, often shared between states, is becoming a threat to civil society as Member States make laws criminalizing or restricting this work... Restrictions on funding have become a major existential threat to associations across the world.”

- Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly, and of association speaking at a High Level Event on Supporting Civil Society (2013), text of speech available here: <http://freeassembly.net/wp-content/uploads/2013/10/SR-UNGA-SPEECH-Sept-23-2013.pdf>

On the positive side, there are many examples of good practice in creating an enabling environment within which civil society can operate including simplification of CSO registration and creation of consultative roles for civil society within government ministries.

In a few cases donors have responded effectively and in a coordinated manner to planned or actual restrictions on civil society space. In 2011, 14 governments¹³ pledged financial support for the “Lifeline: Embattled NGO Assistance Fund” to help civil society activists across the globe who are confronting crackdowns by providing emergency and advocacy assistance to enable them to continue their work in difficult circumstances¹⁴. The EU has a number of policies to protect civil society and in 2012 it published a statement on the value of CSOs in EU development cooperation which stated: “the international community, the EU included, has a duty to advocate for a space to oper-

10. *Civil Society: The Clampdown is Real Global Trends 2009-2010*, CIVICUS (2010) p4

11. InterAction Policy brief, January 2013, available at: http://www.interaction.org/files/FABB%202013_Sec5_CivilSociety.pdf

12. CIVICUS State of Civil Society Report 2014, Executive Summary p5

13. Australia, Benin, Canada, Chile, the Czech Republic, Denmark, Estonia, Lithuania, the Netherlands, Norway, Poland, Sweden, the United Kingdom, and the United States

14. *Defending Civil Society Report Second Edition ICNL (2012)*



Photo: Teri Pengilly

ate for both CSOs and individuals. The EU should lead by example, creating peer pressure through diplomacy and political dialogue with governments and by publicly raising human rights concerns¹⁵.”

Since 2012, the United Kingdom’s DFID has made building capacity and space for civil society a key objective and NORAD, Irish Aid and SIDA have also made it a core part of their mandate¹⁶. However, there is little doubt that donor governments and diplomatic missions could do much more, and in a more coordinated fashion, to speak out about limitations on civil society space.

The Open Government Partnership (OGP) was launched in 2011. Its vision is that governments across the globe become sustainably more transparent, accountable, and responsive to their own citizens. The ultimate goal is for governments and civil society to work together to improve the quality of governance and the quality of services that people receive. OGP supports both government and civil society by pushing open governance to the highest levels of political discourse, providing ‘cover’ for difficult reforms, and creating a supportive community of like-minded reformers from countries around the world. Since 2011, the OGP has grown from 8 to 65 participating countries.

Civil society actors are themselves increasingly acknowledging that they should adhere to as high levels of transparency and accountability as they are requesting from others. This means that civil society is strengthened, more credible and better positioned to make demands on governments, politicians, parliamentarians and other stakeholders who influence the environment for civil society. In terms of such self-regulation many CSOs have already taken concrete steps to model good practice, demonstrate their transparency and to be open to admit failures and be self-critical.

15. *The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations*, European Commission, (2012) available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0492>

16. *Democracy in Action: Protecting Civil Society Space* Trocaire (2012) p9

Way forward

More needs to be done and by more actors to create a genuinely enabling environment for civil society that can further children's rights. The following are some recommendations for a way forward.

States

- States should guarantee in law and practice adults' and children's rights to freedom of association, peaceful assembly and expression - online and offline - without discrimination and in line with international standards.
- States should repeal laws and abandon practices that restrict: the rights of individuals to form and join civil society organizations; the right of civil society organizations to fulfill their legal purposes without state interference, to seek and secure resources including across borders and to communicate with national and international partners adhering to international standards, including the Busan Partnership Agreement. The right to access information should be embedded in law and states should make comprehensive, disaggregated and user-friendly information available to the public in a timely and accessible manner.
- States should take proactive measures, including the adoption of laws and policies and the allocation of budgets, to realize children's rights to freedom of expression, association and peaceful assembly and the right to access information. As part of these efforts, states should ensure that the legal framework is conducive to the establishment of child-led organizations and create spaces within decision-making processes for these associations.
- To ensure that the public can engage in governance, formal processes and mechanisms for participation should be established across government. The purpose of public engagement should be publicised in advance and the public should be provided with feedback on their inputs.
- To enable children to genuinely participate in governance and public decision-making at all levels, states need to ensure that child-friendly, age-appropriate and safe non-tokenistic processes and mechanisms are embedded to enable children to articulate their views and recommendations.
- States should strengthen civil registration systems to ensure free birth registration of all children irrespective of their status and without discrimination of any kind immediately after birth, through universal, accessible, simple, expeditious and effective registration procedures.
- States should act and react when restrictions on enabling space for civil society are happening in law or practice in other countries.
- States should ratify all core international human rights treaties, including the Convention on the Rights of the Child including all three Protocols and the International Covenant on Civil and Political Rights, and remove all reservations.

UN and other international and regional multilateral institutions

- UN and regional human rights mechanisms and treaty bodies should make recommendations on and follow up measures taken by states to create a safe and enabling environment for civil society, including the realisation of adults' and children's civil rights and freedoms.
- The UN Human Rights Council, through its special procedures, should develop and adopt guiding principles on creating a safe and enabling environment for civil society, including for children
- The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association as well as the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression should continue to examine and make recommendations related to the realisation of children's civil rights and freedoms.
- The UN and other international and regional multilateral institutions should adhere to principles of transparency, participation and accountability in all its work. They should commit to an enabling environment for civil society and meaningful, inclusive and transparent participation of civil society in all their processes based on access to timely and easy access to all information and documents. This means that accreditation procedures are straightforward to use and multiple platforms and opportunities are created for input and feedback.

Donors

- Donors should have a clear policy on collaborating with civil society that complies with the Busan commitments. They should recognise CSOs as development actors in their own right; promote an enabling environment (including effective donor support); and encourage CSOs to implement practices that strengthen their accountability and contribution to development effectiveness¹⁷.
- In bilateral and multilateral discussions and partnership agreements with states, donors should actively promote the rights to information, freedom of expression, association and peaceful assembly, including for children.
- Donors should promote an enabling environment for civil society including through direct funding to children's rights organizations and coalitions and child-led initiatives. Funding should also be provided to organizations working explicitly to protect civil society space.
- It is important to create roles for CSOs within aid policy development, monitoring and evaluation at all levels.

Civil society organisations

- International NGOs should use their position and reputation to push the agenda on issues that are difficult for local organisations to pursue. They should also facilitate the engagement of civil society, including children, with international and regional human rights mechanisms.
- International NGOs should seek to protect peaceful and democratic local organizations from persecution and provide them with support in pursuing legitimate claims to the civil rights necessary for an open and pluralistic civil society.
- Civil society should create strategies to directly influence policies and policy implementation of laws and regulations affecting civil society space and to increase national and international pressure for improved civil society space.
- They should strengthen their own capacity to demand and protect civil society space and strengthen coordination and collaboration of actors demanding improved civil society space - including using their constituency bases to support their demands for improved civil society space.

For more information contact:

Child Rights Governance Global Initiative
Save the Children
Email: ls@redbarnet.dk / usc@redbarnet.dk

