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ANNUAL ACTIVITY REPORT

European Center for Not-for-Profit Law Stichting

European Center for
Not-for-Profit Law

Strengthening global standards for freedom of assembly

Freedom of peaceful assembly is the backbone of an active civil society, enabling its members to effectively participate in public life and voice their opinions around issues. However, this fundamental right is increasingly under attack: governments are imposing restrictions to stifle dissent and are also trying to control online communication tools to hinder the organisation of physical or digitally mediated demonstrations. To counter this trend, ECNL supported the ongoing development of the General Comment on the right to peaceful assembly for the United Nations (UN) Human Rights Committee. As an authoritative legal interpretation, the General Comment provides guidance for the right's practical implementation: it will clarify States' obligations to facilitate assemblies and limit potential for arbitrary interferences. It is also an invaluable tool for future litigation.

ECNL supported the drafting process with a number of initiatives. We set up an informal coalition of over 20 CSOs to coordinate regarding responses to the requests of the Committee to ensure that that our interventions and arguments are mutually helpful and complementary. ECNL conducted research and produced an online Library of UN and regional materials on freedom of assembly to provide the Committee members with a useful resource.

We also facilitated consultations between Committee members and CSOs so partners can directly share experiences and expertise; and hosted a meeting for the Committee on digital mediated assemblies with a view for standards to protect the use of new technologies as a tool to organise and hold assemblies. One Committee member noted:

> *"[a] wonderful workshop with so many excellent experts. I think we all learned quite a bit — certainly I did, and it will serve us well on the Committee to have these reflections in mind when reviewing the text."*

Supporting community engagement and local philanthropy

As the philanthropic sector and the use of digital technologies have grown, so have opportunities for CSOs to adopt new fundraising practices from their communities. Questions about how to appropriately regulate these new practices are also increasingly pertinent. ECNL launched an initiative to enhance understanding of the respective roles that regulation and self-regulation play in fundraising.

With a core group of experts, in 2019 ECNL developed global principles affecting fundraising. Our research, underpinning these principles, identifies the common interests and intersections of the philanthropic sector, government, and other stakeholders in maintaining strong, well-resourced CSOs while also building public trust. We intend the Fundraising Principles to assist decision-makers from all sectors and at all levels to make informed decisions regarding the appropriate use of regulatory methods in their contexts, which in turn will enable CSOs to access philanthropic resources so they can successfully fulfil their missions. The Fundraising Principles are to be released in 2020.

Strengthening a community of CSOs and coalitions to counter negative effects of counter-terrorism and anti-money laundering measures

ECNL has over years of direct experience working on countering negative effects of counter-terrorism, counter-terrorism financing and anti-money laundering (CT, CFT, AML) policies on civic freedoms and improving access to financial services (de-risking). Our approach is two-prong: (1) changing global and regional standards and narratives; and (2) building knowledge and resilience of national civil society actors to engage in and to advocate for enabling national laws and policies. In this process we also engage with government and banks to provide expertise and facilitate dialogue. In addition, we engage with the UN Human Rights Council, the UN General Assembly and other UN counter terrorism

bodies around the implementation of the Global Counter Terrorism Strategy, and UN resolutions and their impact on civic space.

In 2016, ECNL, with a coalition of CSOs achieved a transformative change: the narrative, previously enshrined in the global standard of the Financial Action Task Force (FATF) that all CSOs are particularly vulnerable to terrorist abuse, was dismantled. A significant justification for restrictive laws was removed, and now the new standard requires countries to identify if and which CSOs are at risk and to adopt proportionate measures. To aid implementation, ECNL and its partners convened a global Expert Hub of 36 activists from 26 countries on AML/CFT, committed to lead initiatives in their own countries in this field. ECNL trains them on how to apply the new standard, rebut attacks on their operations and how to engage with banks to avoid closure or suspension of CSO bank accounts. Hub members now build their own coalitions, document the effects of AML/CFT measures in their own countries, develop strategies and reform laws. With our support, Hub members in Kyrgyzstan, Tunisia developed joint government-CSOs risk assessments, a best practice which is attracting global interest. In Tunisia, this process transformed the relationship between the CSOs and the government, with the latter convening a working group to consider relevant legal issues.

Empowering CSOs and coalitions to protect their spaces to assemble

The rights to assemble, demonstrate, protest and gather together in public space, are central elements of a democratic society and a crucial means of citizens (and others) to collectively express their views, contribute to social, cultural and political discourse, and hold the authorities to account. In a new era of mass protests, people fighting for a better society increasingly take to the streets and organize, but are routinely confronted by obstacles to their fundamental right of peaceful assembly such as violent policing, surveillance, criminalization of protesters or technological controls. ECNL helps activists protect their rights by working with a network of partners from 12 countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to research the levels of protection for the right to freedom of assembly, monitor protests and advocate for reform.

In 2019 we worked further with our informal group to further increase their capacity to observe assemblies so that they can gather more primary data which can be used for evidence-based local advocacy. With the OSCE Office for Democratic Institutions and Human Rights (ODIHR), we delivered a training to give our partners the skills to connect

with other activists in their countries and start building up their own network of monitors to track infringements in a more systematic and sustainable way. ECNL also released a user-friendly briefer on the basic principles of monitoring: this is a quick rundown of key issues human rights groups or individuals have to consider before, during and after monitoring public assemblies. As one of the immediate follow up steps, ECNL supported an ad-hoc international monitoring mission, which allowed our partner in Belarus to monitor the Sarajevo Pride. With Bosnia and Herzegovina being the last country in the Balkan region to host such a parade, the Pride was a high-profile event of symbolic importance for the local LGBT community – in Belarus authorities routinely ban such marches.

Co-creating tools and platforms for civic action

Over 3 years, ECNL and 7 local partners from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, in consultation with over 800 CSOs produced the CSO Meter – the first locally owned monitoring tool on enabling environment in the region. The Meter provides a methodology to monitor and analyse how laws and practices enable or restrict CSO operation, funding and advocacy in the countries. Based on this, our partners produce country reports that highlight good practices, civic space restrictions and provide recommendations for change. The pilot monitoring in 2019 focused on identifying solutions: in the reports local partners formulated a total of 273 recommendations under the 10 enabling environment areas that provide a baseline for future advocacy on how the environment could and should be improved in the EaP countries. As an immediate impact, our partner in Armenia could rely on the CSO Meter findings to successfully push back against burdensome reporting requirements proposed by the state authorities (see below for details).

Developing guidance for legal reform and operations

The demand for the Handbook on Registering a Civil Society Organisation was an inspiration for ECNL to scale up this initiative. This resource provides easy-to-use information on laws regarding incorporation and operation of CSOs, and with Volume Two published in 2019, it now provides guidance on legal frameworks in 17 countries. We deepened partnership with pro bono lawyers to create access to legal expertise. We are currently working with lawyers to further expand the list of countries, but also to make available template documents for CSOs to use when registering.

Contributing towards Artificial Intelligence (AI) standards that consider civic freedoms

ECNL continues to map how digital technologies and AI have the potential to improve lives but also restrict civic freedoms (e.g., by monitoring CSOs or intimidating protesters). To address emerging needs around use of tech and AI and its impact on civic space, ECNL engaged in initiatives that help set standards, generate knowledge and understanding about the issues and launch discussion about actions to take to make the use of AI but also prevent potential negative impact on civic freedoms.

At the 2019 Mozilla Festival, ECNL launched a discussion about the impact of algorithms on our freedom to assemble and protest with a group of lawyers, activists, technologists and academics.

We agreed that for potential solutions legal and human rights professionals must develop broader networks to merge knowledge, experience, ideas and peer connections by a diverse group. ECNL continues to explore this field so that we can protect and advance civic freedoms and by combining law and tech.

In parallel, as regional and global institutions debate how to ensure an ethical and legal framework for the design, development and use of algorithm-based systems, we continue our efforts to integrate the protection of civic freedoms in AI related regulations. In Europe, the Council of Europe (CoE), in particular, has taken several steps towards providing Europe-wide standards for the responsible

development and use of AI. ECNL became actively involved in the process early on and two CoE documents: Recommendation on the human rights impact of ADMs and the Commissioner for Human Rights' Recommendation on AI include our recommendation that any development of technology should have systems to assess potential threats to civic freedoms. ECNL also became one of the two CSO representatives in the CoE inter-governmental committee working to identify legal frameworks for responsible

development and use of AI.

On the EU-level, as members of the European Artificial Intelligence Alliance, ECNL provided input in the development of the EU Ethics Guidelines, which reflects many of our recommendation. The Guidelines explicitly recognize that a trustworthy AI must be grounded in fundamental rights and that the protection of freedoms of association and assembly contribute to forming a basis for such trustworthy AI.

Supporting national level actions

Financial sustainability is a key challenge for the non-profit sector in Moldova, where more than 80% of funding comes from foreign sources. ECNL worked with partners to support their advocacy for an improved environment for philanthropy so that CSOs can raise more funds locally. In 2019 we supported the creation of a new CSO platform that seeks to be a common voice of organizations in the field of philanthropy. The platform has brought together the most active organizations to promote the need for law reform, but also improve self-regulation standards for organizations that engage in public fundraising. Launching the platform ensures that there is a group of local stakeholders that can push for future reforms ensuring that CSOs have a strong voice in any future discussion on philanthropy in the country.

In October 2018 the Government of the Republic of Armenia published for consultation amendments to the Law of the Republic of Armenia on Public

Organizations. The amendments aimed to increase annual reporting obligation for all CSOs and require data that would violate privacy of individual donors, founders and staff. ECNL supported the partners in their advocacy efforts. Together we developed arguments to help decision makers put forward progressive solutions, prepared comments from comparative perspective nothing how international standards in the area of reporting and transparency regulate the field and developed a comparative overview showing what are the practices in other countries on CSO reporting. As a result of these efforts, in August 2019 a new version of the proposed amendments to the law was published without the restrictive provisions. In March 2020, the despite being in a state of emergency, the Parliament adopted the proposed amendments which now require all CSOs to provide annual report but it is not burdensome and threatening the privacy of donors.

Our Network

ECNL is engaged at the European and international level as expert or member of different European and international networks, including:

International Center for Not-for-Profit Law
The Global NPO Coalition on FATF
The Expert Hub on Anti-Money Laundering and Terrorism Financing
European Civic Forum
Civil Society Europe
Eastern Partnership Civil Society Forum
European Social Enterprise Law Association

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