European Center for Not-for-Profit Law Stichting

ANNUAL ACTIVITY REPORT 2020

European Center for
Not-for-Profit Law

ECNL Strategy

Mission: ECNL's mission is to create legal and policy environments that enable individuals, movements and organisations to exercise and protect their civic freedoms and to put into action transformational ideas that address national and global challenges.

Vision: We envision a space in which everyone can exercise their rights freely, work in solidarity and shape their societies.

Pathways for change: We know that change will come and be sustainable if it is locally owned, strategic and developed with consideration of the local specifics. We have seen that transformations will happen with aware and empowered activists whose actions are enabled by strong legal frameworks that help guarantee rights and freedoms. We have identified and successfully implemented the following pathways for change:

> **Knowledge pathway:** Identifying, synthesizing and understanding of the trends and core issues is key to creating good policies, laws and practices, pre-empting and pushing back on restrictions.

> **Empowerment and mobilisation pathway:** Aware, alert, connected and knowledgeable organisations, activists and movements can prevent threats and sustain gains in a longer term.

> **Reform and Standard Setting pathway:** Strong international, regional and national systems can safeguard rights, give guidance, change narratives and disrupt systems of power that limit civic action.

Our strategic goals for 2020-2023 reflect our belief that aware and empowered civic action can lead to transformative changes:

> **Goal 1.** Defending civic freedoms through knowledge, strategies and tools.

> **Goal 2.** Empowering activists and organisations to protect and expand civic freedoms through joint action.

> **Goal 3.** Strengthening standards and opening avenues to safeguard civic freedoms.

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Strengthening civic freedoms protections in standards on artificial intelligence (AI) and emerging technologies

Digital technology has transformed the way we exercise our rights and freedoms. On the one hand, it is an indispensable tool for organising protests or online campaigns. On the other hand, digital activism is threatened by restrictions, including internet shutdowns, biometric mass surveillance or censorship. Various algorithm-based mechanisms are also used in different ways to influence civic engagement. To avoid that such measures suppress the right to protest, privacy and free expression, they should be developed in transparent way and with civil society's participation.

ECNL advocates for global and regional legal standards on AI and tech to be based on and respect fundamental rights. At the UN, ECNL provided expertise and feedback to the Office of the High Commissioner for Human Rights Report on new technologies and their impact on human rights in the context of peaceful protests. The Report includes our contributions and recommendations both in terms of the physical and digital civic space. It was used as evidence to support the adoption of progressive Human Rights Council tech-related resolutions, which incorporate civic space safeguards.

On the regional level, ECNL represents the Council of Europe (CoE) Conference of INGOs at the CoE Ad Hoc Committee on Artificial Intelligence (CAHAI), a body tasked to work on a future regulatory framework for AI - how it is designed, developed and applied. As an important milestone, CAHAI adopted a Feasibility Study in December 2020. The Study identifies the principles as well as the rights and obligations, which could become the main elements of the AI legal standards based on human rights, democracy and the rule of law. ECNL is now supporting CSOs to take part in the ongoing regulation debate. We provide written guidance and deliver workshops on AI and human rights, so that CSOs are well equipped to shape this key legal instrument.

On the European Union-level, we work with a coalition of CSOs to influence future regulatory framework. We submitted an opinion to the European Commission AI White Paper urging EU policymakers not to put global competitiveness ahead of the protection of fundamental rights. We also joined 46 European CSOs calling for the forthcoming Digital Services Act to create binding transparency rules for online platforms, since their function is crucial to the development of opinions and therefore to the exercise of democracy.

ECNL also supports national CSOs to position themselves and seek engagement in the drafting of national AI strategy, which is first step towards national regulation of AI. Our research and analysis on participatory processes in drafting NAIS has shown promising avenues of meaningful engagement, but also "room for improvement", which we encapsulate in our country-based work. One example is Ukraine, where we launched discussions for CSOs and human rights advocates to engage in AI policy making. By demystifying what AI is, ECNL empowers partners to participate in processes and bring valuable expertise about the impact of AI-based systems on affected and vulnerable communities.

Increased safeguards for protests in the physical space and online

> *"It is a very inclusive process. It's the first time that I see such a process for myself from the beginning to the end."*
> *Christof Heyns, Human Rights Committee, Rapporteur of General Comment No. 37 on Art. 21 (in Just Security)*

In July 2020, the UN Human Rights Committee adopted the first ever General Comment No. 37 on Article 21, ICCPR (Right of Peaceful Assembly). This was a crucial development at time when the right of peaceful assembly has come under increased pressure in countries across the world, especially due to COVID-19.

The General Comment addresses the most critical issues faced by individuals who assemble and protest. It creates safeguards for emerging protest practices such as digitally-mediated assemblies, which are recognized as a critical aspect of organising during the pandemic. It also condemns negative trends of use of disproportionate force, internet disruptions and attacks on media, watchdogs or vulnerable groups.

The final text takes stock of all the detailed analysis that ECNL, together with our partner CSOs and experts provided in the last two years, and benefits from the in-depth consultations that informed the debate around emerging topics.

ECNL now seeks to ensure that activists, lawyers and policy makers are aware of the enhanced standards enshrined in the GC. To support the promotion of the GC and its implementation into national practices, we started developing user-friendly thematic fact sheets on specific innovative aspects in the text of the GC. A member of the UN Human Rights Committee said:

> *"I expect the outreach you are doing, in such an accessible format, will reach many rightsholders. This work is commendable."*

Indeed, despite the pandemic, people continued to protest. They have faced unprecedented and grave violations of their rights under COVID-19 measures, but also come up with innovative protest strategies in the physical space and online. ECNL gathered important evidence on the changed nature of assemblies and worked with a coalition of CSOs to help monitor the impact of emergency measures as well as digital technologies in their own countries. We also published a briefer on what the online and digital issues are that human rights activists need to consider when monitoring at assemblies. Right after the outbreak of the virus, we published an overview on protests in a time of pandemic in Europe showing why blanket bans are problematic and what the strategies are to stand up against restrictions. This paper was widely quoted and used also by peer groups, e.g., it was one of the materials used in Transparency International's Summer School course.

Building a Global Hub of CSOs to push back against counter-terrorism and anti-money laundering overregulation

ECNL continued its ongoing work to expand the Global Hub as an active resource for civil society to share learnings and provide peer support on AML/CFT standards and processes.

ECNL provided expertise to CSO partners in Turkey facing threats posed by a new counterterrorism law. We delivered a training to support them analyse the situation, collect evidence and argue against restrictions. One participant said:

> *"...Participants benefited a lot from this session, since it was very informative and they gained quite some perspective regarding FATF. The discussion part was also thought provoking. Your presence made a big difference..."*

We also trained international organisations operating in Turkey and developed a joint advocacy strategy. In addition, we engaged with global partners, such as the Financial Action Task Force (FATF) Secretariat and UN Special Rapporteurs to address this latest trend in Turkey and assess the law's compliance with international AML/CFT standards: in their note, the UN experts recommend the government reconsider the legislation to ensure its compliance with obligations under human rights treaties.

2020 has also marked an important development in terms of increased CSO access to CFT policies. After years of engagement and advocacy, FATF has made it possible for civil society to share their concerns about CFT impact on civic freedoms directly with the FATF team of evaluators. Assessment teams will now thus consider CSO experience and expertise when evaluating a country's compliance with FATF standards.

ECNL also joined a CSO coalition to help advance UN counter-terrorism (CT) policies and open more processes for consultation with civil society. In June 2020 we co-hosted a virtual high-level convening bringing together close to 1,000 representatives of UN Member States, UN office, and civil society to assess the impact of CT measures on human rights, peacebuilding, and humanitarian and development assistance. The sessions were organized around three general themes (1) the effectiveness and inclusivity of the UN Global CT Strategy and UN CT bodies, (2) the implications of UN CT policies shaping COVID-19 responses, and (3) priority areas for reforming the UN CT architecture. Together with the coalition we now use the results of this convening to provide expertise and engage with member states in the review of the UN Global CT Strategy.

Keeping civic space healthy: better protection of fundamental freedoms in combating COVID-19

As the pandemic started to spread, ECNL and ICNL observed a set of measures that were introduced to deal with the pandemic, but had an impact on CSOs. Therefore, we jointly launched the COVID-19 Civic Freedom Tracker to monitor the impact of emergency laws and practices on civic space worldwide. The Tracker currently covers over 450 measures from 164 countries. We analyse and understand the threats, and raise awareness about the consequences of ill-defined COVID-19 measures (see this interview in Spanish, or this article on contact tracing in Dutch).

Many CSO partners still find it difficult to navigate current security and emergency measures. Through a specific set of blogs we also provided arguments for partners to use in national-level advocacy against COVID-19 restrictions. We also keep an eye on new challenges that are specific to the pandemic when it comes to participating in decision making, and published a rights card reminding people that their right to public participation is valid in times of emergency, as well. Moreover, we document how CSOs are finding ways to remain engaged through their activism and rise against the restrictive measures. Furthermore, our briefer on what states should and should not do has been translated in 12 languages through crowdsourcing and remains relevant as countries grapple with the pandemic.

We also mapped how governments have introduced new security-related legislations or used existing measures to further restrict fundamental freedoms and human rights. Our [research](#) revealed that such security measures have many different manifestations, feeding into the war-like rhetoric of governments. We aim to incite CSOs to raise concerns about an over-securitized response to the pandemic, as this bears the risk of authoritarian drift in democratic states moving away from the rule of law.

Expanding and protecting civic freedoms nationally

In July 2020 Moldova adopted [a new, progressive law on Noncommercial Organisations](#), after a 5-year-long process. ECNL provided support to local partners to defeat restrictive amendments that would have limited their right to access to funding, advocacy and freedom of expression. These efforts ensured that the adopted law will ultimately improve CSOs' operating environment.

At the same time, a growing number of EU countries e.g., the [Netherlands](#), [Austria](#), [Denmark](#) and [France](#) are drafting laws that disproportionately restrict freedom of assembly, association and access to funding. The drafts are justified on the need to ensure national security. The drafts also include discriminatory provisions against minorities, immigrants and disadvantaged groups. ECNL published legal opinions and submitted official comments to support CSOs' legal arguments. Our products have been also used by European Commission staff for their own analysis and dialogue with respective governments. In addition, building on our [EU Law Handbook](#) and [blog series](#), we provided expertise on advocacy strategies CSOs can use to revert the drafts based on EU Law. Further, we convened civil society groups to provide them training and identify emerging issues that require new analysis from the EU Law perspective.

Monitoring trends, transforming laws and practices

We believe that the systematic monitoring of the environment in which civil society works helps pre-empt harmful practices and propose evidence-based solutions. One example is our CSO Meter that we developed with partners in six Eastern Partnership countries. This unique tool measures key areas relevant in the region and support CSOs resilience amid crises: in 2020 we focused on COVID-19 emergency measures that brought further limitations over civic freedoms. Data from the CSO Meter has allowed partners to have a clear plan of progressive law reforms needed in their contexts and targeted recommendations that they have already started implementing. During the 4-year program partners engaged in 20 advocacy actions and reforms, and ECNL provided technical assistance to 11 initiatives. As a result, 7 CSO laws and policies were adopted or initiated based on issues identified by the CSO Meter. For example, the updated procedures adopted by the Armenian government in January 2021 will ensure more accountable and transparent state grant provision for CSOs in the country. In Moldova the new NGO Law adopted in 2020 unifies regulation for all nonprofit legal entities and creates the premises for their sustainable development. The monitoring results from CSO Meter have also been incorporated in international advocacy and promoted by multilateral bodies to improve domestic reforms (e.g. influencing the UN Universal Periodic Review process on Belarus, or engaging with the Open Government Partnership to integrate recommendations into the Action Plans in Azerbaijan).

Creating sustainable environments for fundraising

In April 2020, ECNL and ICNL launched the Fundraising Principles to support a more enabling environment for fundraising around the globe. The Fundraising Principles provide a global overview of current trends in fundraising regulation and self-regulation, and offer recommendations addressing seven key areas. They serve as a reference point to promote and facilitate further dialogue between CSOs and policy makers about how to pursue a balanced system of legislation, co- and self-regulation that enables CSOs' fundraising activities. For example, in Finland CSOs used the Fundraising Principles during discussions with national ministries as part of a legislative project aimed at assessing the relationship between emission compensation activities and the Fundraising Act. In Armenia, our local partner NGO Center relied on the principles to develop a policy research on philanthropy, including recommendations to the government, CSOs and businesses on how to improve the environment.

Advancing EU safeguards for civic space

As a part of the ongoing efforts to support the EU institutions in advancing safeguards for civic space, ECNL submitted input into the new [EU Action Plan on Human Rights and Democracy 2020-2024](#). The final text includes ECNL proposed ideas and recommendations. It calls for various measures to protect civic space, freedom of assembly and expression and protesters. Importantly, it calls for the promotion of a safe and enabling environment for civil society as actors in their own right, including long-term strategic support to capacity building and meaningful participation of civil society at country, regional and global level. It also recommends the development of tools to detect and respond to early signs of closing civic space, as well as tools to monitor opportunities of openings. The latter two points were asks that ECNL was trying to gather support for over the past few years.

Supporting participation in climate action

Climate activists and movements fighting against the climate crisis are under pressure across the globe. Environmental defenders, CSOs and young activists are subject to fierce repression that can take various forms: introducing laws criminalizing legitimate expression and assembly, excluding or preventing CSOs from participating in environmental policy making, stigmatisation of activists as "eco-terrorists," increased use of punitive lawsuits ("SLAPPs"), physical persecution, arbitrary arrests, verbal harassment online and offline, excessive use of police force. These actions are contrary to international standards on human rights and the environment. ECNL together with its alliance partner, ICNL developed a detailed briefer, that captures these practices, lays out the measures used to target civil society actors working on climate justice and provide recommendations. It is used in advocacy efforts to improve standards and ensure greater participation.

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5 Riviervismarkt, 2513 AM, The Hague, Netherlands

www.ecnl.org   @enablingNGOlaw

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