European Center for Not-for-Profit Law Stichting

ANNUAL ACTIVITY REPORT 2021

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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Ensuring civic space protections in tech and Artificial Intelligence (AI) regulation

Digital technology has transformed the way we exercise our rights and freedoms. On the one hand, it is an indispensable tool for meetings, protest, participation or online campaigns. On the other hand, digital activism is already experiencing threats and restrictions, including internet shutdowns, surveillance or censorship. Furthermore, various algorithm-based mechanisms are also used in different ways to influence civic engagement: e.g., by governments in decision-making on whether to retain benefits, facial recognition or social-media-scouring surveillance. To avoid that such measures suppress the right to protest, privacy and free expression, they should be developed in transparent way and with participation of civil society. In line with this, in 2021 ECNL worked with national partners, European and global networks to advocate for safeguards for fundamental rights and civic freedoms to be streamlined into the development and functioning of AI systems or devices and for participatory processes in the development and deployment of technology.

The initiatives to create global and regional legal standards that will regulate AI and tech are intensifying – both on global level and in Europe. ECNL provides expertise and advocates that such standards consider the impact of AI and technology on human rights and civic space and include safeguards for our freedoms. Our work in 2021 focused on the following:

Council of Europe (CoE): ECNL represented the Conference of INGOs (CINGO) at the CoE Ad-Hoc Committee on AI (CAHAI). CAHAI developed recommendations for possible elements of a regulatory instrument on AI, to be negotiated in 2022. Together with civil society colleagues, ECNL warned about the strengths and weaknesses of the process and recommendations, calling for enhanced civic space safeguards and more CSO participation. CINGO adopted our conclusions as its official position. The CoE Director General for Democracy praised ECNL's *"incredible contribution"* to the work of the CAHAI, calling us "*the shield of the CoE*" for defending attempts by some member states to weaken the recommendations.

European Union (EU) AI Act and Digital Services Act (DSA): Together with digital rights organisations, ECNL proposed amendments to the AI Act to increase human rights safeguards and ensure stakeholder engagement in AI governance structure and supervisory tasks. Our proposed amendments were well received and incorporated in European Parliament joint IMCO-LIBE Committee report. We will continue with advocacy and preparations to monitor the Act's negotiations and approval, its implementation and impact on civic space.

We also worked jointly with European CSOs on the draft EU DSA, relating to the governance of online platforms, which will impact civic space online. As part of the CSO DSA Alliance, we called on EU policymakers to consider mandatory human rights impact assessment as the primary mechanism for mitigating risks stemming from platforms' operations. The text then approved by the EP included our proposals, such as transparency requirements for intermediary service providers and consultation with CSO stakeholders for impact assessments. The final compromise text was approved in the EU trialogue negotiations. ECNL will keep on working with partners to follow up on the implementation of the DSA when it enters into force as of 1 January 2024.

UNESCO Recommendation on the Ethics of AI: The UNESCO recommendation is the first-ever, global, standard-setting document to address many of the opportunities and challenges posed by AI. We are delighted that the final text incorporates critical points around rights-based and inclusion-focused approach, supported by the Freedom Online Coalition members, including ECNL. After one of our sessions with UNESCO as part of the coalition, the Canadian delegation noted:

> *"From Canada's perspective, this has been very helpful in further contextualizing what is at stake in the language and prioritizing our interventions this week."*

UN Office of the High Commissioner for Human Rights (OHCHR): We worked with the OHCHR digital technologies department on their draft for Developing System-Wide Guidance on Human Rights Due Diligence for Technology. ECNL provided extensive input and comments into the concept note and then first draft, as well as participated in consultation meetings. The Guidelines will be presented in 2022.

Strengthening civic voices in AI policy making

Creating a regulatory framework for AI is very much a human rights and civic freedoms issue, not only technology. Civic groups are the ones understanding the practical impact of AI on vulnerable and underrepresented communities. That is why ECNL is vocal about engaging civil society groups and activists in tech development and regulatory processes and helps build their capacity on this front.

ECNL kickstarted a Mozfest Trustworthy AI Working group to develop guidance for meaningful participation of CSOs and affected communities in AI development. The group promotes developing human rights impact assessments for AI systems and consists of various organisations across the globe working or interested in working on AI developments, as well as academia, researchers and a few private sector stakeholders, including Meta, Twitter, Mozilla and Google. ECNL also designed various online tools: our online workshop learning series on AI and its impact on human rights is aimed at CSOs that do not traditionally engage in digital rights or technology. The learning packages on AI on our newly-launched Learning Center also offer useful resources on the impact AI systems have on our life, rights, communities and work.

Protecting civic freedoms at the intersection of security and technology

ECNL launched work to identify how the use of technology for counter-terrorism (CT) purposes affects civic space. It convened a group of CSOs from each region of the world to identify evidence of impact of biometrics, surveillance and online content moderation on the freedoms of association and assembly. It also launched discussion on this topic and organised the only civil-society led event on the margins of the UN Counter-Terrorism week together with members of a global CSO Coalition working on CT issues, the Mission of Germany to the UN and the UN Special Rapporteur on Human Rights and CT. At this event, we discussed the human rights risks of using biometrics in CT efforts and how biometrics are (mis)used in emergency responses related to the pandemic. The UN Special Rapporteur tweeted:

The use of biometric technologies in countries of the European Union is unduly restricting people's rights including their privacy, right to free speech, protest and not to be discriminated against. That is why, as a campaign partner, we joined and promoted the launch of a new European Citizen Initiative calling on the EU to ban biometric mass surveillance practices in public spaces.

Enabling climate activism

Civil society plays a crucial role in the climate movement, but many governments restrict climate activism. These restrictions undermine climate mitigation efforts.

To shed more light on such restrictions, ECNL gathered examples on how the right to participation in climate related policies is limited in countries such as Ireland and Slovenia, and organised a consultation for European CSOs to support the report of the UN Special Rapporteur addressing this issue. We also developed an e-handbook on key international standards that protect climate activists and the mechanisms they can use to enforce these rights to promote good practice and human rights based approaches in law and practice.

At COP26, ECNL organised a side event dedicated solely to the issue of participatory approach in resolving the climate crisis, the only one focusing on the importance an open civic space to step up climate action. Our session on participation was very timely; COP26 was heavily criticized by many as the 'most exclusionary' climate summit ever. In our blog we encouraged COP26 delegates to take the pledge for an open civic space. We also worked with a coalition of organisations to support the drafting of Recommendations for UN state delegations under the UNmuteCOP26 campaign calling upon them to take action to enhance the participation of Indigenous Peoples organisations and civil society at COP26.

Implementing global standards to protect online assemblies

Following two years of successful evidence-based advocacy and expertise by ECNL and our partners, in 2020 the Human Rights Committee General Comment ("GC") 37 on freedom of peaceful assembly adopted General Comment ("GC") 37 on Article 21, ICCPR (Right to Peaceful Assembly), which strengthens standards for freedom of assembly and litigation.

To support implementation of these standards on the national level, we co-organised and took part in four multi-stakeholder webinars throughout the year, with the participation of former and current Human Rights Committee members, to present the standards included in the GC – such as protection for digitally-mediated assemblies, private assemblies and assemblies for non-expressive purposes – and raise awareness of their ground-breaking significance as well as to discuss how civil society organisations played a crucial role in helping the GC's drafting. Through training we also increased capacity of partners from the Eastern Partnership and Balkan region so they can use these safeguards in their own contexts. We also published 3 factsheets on explaining the General Comment as it relates to digitally mediated assemblies among other issues.

Finally, we co-organised an event on the issue at the global convening RightsCon 2021, which prompted a lively debate and questions from civil society participants attending from all four world regions, including representatives from Asia (India), Africa and Latin America, on how the protections for digitally mediated assemblies set out in the GC can be raised for advocacy purposes and litigation. Together with CSI partners, we prepared a video highlighting the General Comment and its contribution to digital freedoms, which was launched and disseminated at RightsCon 2021.

Improving the environment of digital fundraising

Philanthropy amplifies the power of people to create a better world. It supports activism and engagement of individuals and communities in that process. Philanthropy is also key for the existence of grassroot activists, social movements, CSOs, who tirelessly work to help shape open societies, provide services and protect our rights and freedoms.

Therefore, an enabling legal environment is key for private giving to materialise and reach its purpose. In 2021 we deepened the knowledge-base and empowered local stakeholders to advocate for a better environment for philanthropy. We have achieved this through 1) organising a series of webinars; 2) launching comparative research, facilitating expert discussions and formulating Good Practices in the area of digital fundraising; 3) providing technical assistance support to local partners to counter restrictive measures or promote positive reforms; and 4) contributing to regional policy discussions that affect digital fundraising. For example, we published a comparative research on the potential and risks of using digital technologies in fundraising.

The research helps CSOs, fundraisers and policymakers to think through how the environment can be further improved for digital fundraising in their countries. As a follow up to the research we launched a series of expert discussion on this topic. For example, we worked with colleagues in Ukraine to map the legal framework and technical steps on how to raise funds via digital technologies to support CSOs' activities in the country. Further, ECNL experts shared comparative experiences and resources on philanthropy during a meeting with CSOs in Mexico, where we discussed strategies on how to overcome some of the CSO challenges to access funding. All the accumulated knowledge was integrated into a set of Good Practices in Digital Fundraising that aim to create some standards that CSOs and other stakeholders can follow when using digital fundraising tools. It is divided into two sections based on the stakeholders they are addressed to: 1) regulators, meaning state authorities or decision makers and 2) fundraising practitioners. As a result of our work, we built the knowledge of hundreds of CSOs on key topics affecting the environment for philanthropy through following our webinars and other events. We convened a community of experts on digital fundraising and fundraising practitioners who exchanged experiences and contributed to building a common knowledge on digital fundraising.

Reforming counter-terrorism and anti-money laundering regulations globally

United Nations and Counter-Terrorism (CT): In 2020, ECNL joined a coalition of CSOs advocating for better standards regarding CT and their protection of civic space and human rights at the UN level. We are one of the key core group members, which steer the coalition's strategy and advocacy engagement. This effort is coordinated with the UN Special Rapporteur on human rights and CT.

The CSO coalition aims to address several issues, some of them linking closely to civic space: lack of transparency in CT legislation/policy processes, lack of participation from civil society in the UN CT mechanisms, use of CT measures to restrict civic space, expansion of bodies and mechanisms dealing with the issue from soft-law perspective and new synergies that bring in the work and standards of the Financial Action Task Force (FATF) into the UN system, sometimes to detriment of civil society.

With the coalition, we engaged in the 7th review of the Global Counter-Terrorism Strategy (GCTS) resolution. As part of this process we developed joint proposals, held repeated meetings with member states around the process, organised townhall events for CSOs and member states, took part in meetings by member states. As a result, the GCTS resolution contains improved language on civic space and human rights. ECNL's Executive Director delivered keynote remarks at a high-level opening panel hosted by the UN Office of Counterterrorism (OCT) and the Spanish UN Mission emphasising that we need to move from assumptions of threats to the evidence of threats of terrorism if we are to ensure that counter-terrorism measures do not harm civic freedoms and human rights.

Financial Action Task Force (FATF): ECNL continued collaborating with the Global NPO Coalition on FATF and its core group to ensure FATF standards do not harm civic space. ECNL coordinated the Coalition's input into the FATF latest initiative and call for evidence and examples of restrictive laws, implementation and practices that hamper civic space in the name of FATF standards. This is a part of the newly launched FATF's work stream on unintended consequences for non-profit sector (civil society) in general.

Jointly with partners from the Global Coalition, ECNL also developed materials for the new cycle of FATF trainings for country evaluators and governments that implement FATF standards on negative impact of FATF standards on CSO work. We complied international human rights standards on freedom of assembly, association, participation that should be respected, check lists and examples on common over-regulation in the name of AML/CFT and good practice examples we have collected while working directly on country level during the years. Here is some positive feedback from the FATF on the package:

> *"I find everything under the 'Overview of restrictions connected to Recommendation 8' in the second document to be super compelling and very informative for our assessors. ... The country examples that were provided in the third document fit directly into what we're looking for in our standards training course."*

Keeping civic space healthy: COVID and emergency powers

During the COVID-19 pandemic, states introduced new security-related legislations or used emergency powers to further restrict civic freedoms and human rights under the cover of fighting the pandemic.

To increase understanding of the trend, support development of policy solutions and strategies for a greater protection of civic freedoms while combating COVID-19, we provided a undertook research on the impact of securitised responses on civil space in times of COVID-19. We also co-hosted a Human Rights Council side event in February 2021 with the UN Special Rapporteur on freedom of assembly and prominent civil society partners on what the UN should do to end the misuse of security measures.

Building on data and research drawing from the ECNL-ICNL COVID-19 Civic Freedom Tracker, we also engaged in other initiatives to generate learning and produce recommendations. For example, we produced a briefer on how other stakeholders, such as the OECD, could better respond to the threat of emergency powers on civic space. In our policy brief to the European Union, we critically assess the approach of the Commission and formulate targeted recommendations to improve the forthcoming EU Rule of Law Review Cycles. ECNL with partners developed a report for the European Economic and Social Committee analysing how the COVID-19 pandemic has affected the work of CSOs across Europe and solutions implemented in individual EU Member States to support CSOs to exercise their fundamental rights and freedoms. Our advocacy paper to the UN Human Rights Committee (HRCommittee) provides recommendations on how to better hold Member States accountable in the International Covenant on Civil and Political Rights Review Cycle for their use of emergency measures and the impact on civic freedoms. The HRCommittee members well received and expressed appreciation of our recommendations, which they agreed to include in their country reviews. ECNL also highlighted the importance of a healthy civic space to democracy in post-COVID times at sessions we moderated at the Paris Peace Forum 2021.

We also engaged with coalition partners to strengthen protections in global standard setting bodies. As a result of one such effort, the key Human Rights Council 47th session resolutions contain strong language calling for heightened protection of online and offline civic space even in times of emergencies and instruct the OHCHR to conduct mapping exercises, consultations and prepare reports to follow up on states' obligations.

Monitoring trends, transforming laws and practices

Civil society groups increasingly use the online space and digital communication technologies for their activism and protests. To support them in identifying how technology is used and impacts the freedom of assembly we started to develop a tool to monitor the digital aspects of protests. The tool will allow non-tech CSOs to collect data about online protests and assess how government or private actors facilitate or restrict them. We also supported partners in Moldova and North Macedonia to undertake efforts to monitor digitally mediated assemblies and raise awareness of the importance of technology for the exercise for the freedom.

Our CSO Meter measures key areas of civil society environment in six Eastern Partnership countries. Based on the monitoring results, partners can have a clear plan of progressive law reforms needed in their countries. In 2021, we increased the group of CSOs who use the CSO Meter by establishing the regional CSO Meter Hub. The Hub now consists of 22 CSOs-members and serves as community of practice with vibrant and diverse knowledge and skills. We also expanded the scope of issues in the monitoring, so that it addresses critical new areas of concern for the enabling environment, such as digital rights, digitally-mediated assemblies, digital fundraising and climate activism. We also introduced a new system of scoring in the methodology to help track and compare complex developments in the CSO environment in a simplified and understandable way. The first monitoring reports based on this methodology are launched in spring 2022.

Supporting CSOs to protect operations and resources

For CSOs under pressure, it is often vital to get concise, up-to-date and easily navigable information on how registration, employment, taxation, cross border operations and banking is working in different jurisdictions. That is why ECNL, in cooperation with pro bono lawyers, over the year expanded its Handbook on Registration of CSOs to include at least 30 countries. We also created a separate guide on banking regulations in selected European countries that gives information on requirements for opening and managing a bank account. We also released a comparative table with legal profiles on selected European countries. The Handbook so far has proven particularly useful to partners in MENA, Eastern Europe, Asia. Most recently we have utilised its information to support partners in Ukraine and the region.

Empowering civil society through sharing and learning

ECNL launched an online platform with resources on critical drivers that affect civic space. The Learning Center is designed to walk users through the complex web of issues that impact civil society work on specific topic (currently on AI and on counter-terrorism). Through videos and explainers, it provides learning opportunity on how these issues translate to civic space restrictions and illustrates examples of CSO responses.

Protecting civic freedoms on the national level

ECNL provides support to CSOs in the countries where restrictive provisions on civic freedoms are tabled or enforced. In 2021 we submitted legal opinion on a new draft "Anti-Terrorism Act" in Austria and assessed the UK policing bill from an international human rights perspective. This analytical work supports CSOs in their advocacy or litigation. We also undertake efforts to create good practices and support partners to increase understanding of how global trends and new developments may impact their ability to exercise the freedoms of association and assembly and help them develop strategies for engagement.

Examples of successful initiatives include:
- In Denmark we worked with partners to help them identify the best arguments and strategic approach for their advocacy when the so-called "security-creating assembly ban", posing a serious threat and unnecessary restrictions to freedom of assembly, was introduced. In the end in June 2021 the proposal was voted down in Parliament.
- In Serbia, ECNL provided assistance to CSO partners investigated by authorities using AML/CFT powers to obtain banking information on prominent watchdogs, activists and media outlets. We helped them submit complaint to the UN Special Rapporteurs who expressed concern about Serbian authorities' practice. The FATF too responded with valid and clear criticism. FATF reiterated that "*it is in direct contradiction to the FATF Standards and categorically unacceptable if its measures are exploited and used to oppress human rights under the pretext of counter-terrorism.*" This important response will help CSOs globally to advocate against the abuse of AML/CFT legislation to crack down on civic space.
- In Turkey, ECNL assisted local CSOs raising arguments and coordinate with international bodies about a new law limiting online money collections and increasing government oversight based on AML/CFT justification. The concerns have been addressed by the UN Special Rapporteurs and also by the FATF. Turkey has been placed under increased monitoring by the FATF. This is an important message for other countries too: if they over-regulate civil society, they will not be able to claim being compliant with international AML/CFT standards.
- In North Macedonia together with the Association Konekt and the Financial Intelligence Office (FIO) of the Government, we co-created a good practice model for collaboration between governments and civil society in developing risk assessments for counter-terrorism financing purposes. As a result the Government adopted a "NPO Risk Assessment on Terrorism Financing" which identifies actual risks and integrates measures that should not harm civil society. ECNL also supported the Associaton Konekt to launch a multi-stakeholder dialogue between banks, civil society and the government in order to identify the challenges in the flow of funding and remove obstacles for easier financial transactions for civil society.
- In Moldova, together with the Legal Resources Centre from Moldova (LRCM), ECNL co-organised a workshop on digital technologies and policies that impact civic space. Our objective was to prepare CSOs (and specifically those that work on human rights issues) to engage in the discussions around AI regulation in Moldova so that they can ensure that AI policies include safeguards for fundamental rights and freedoms. But the first task was to de-mystify what is AI and how it may impact human rights. Participants left the workshop with a list of the most important steps to be taken to ensure AI policies in Moldova are developed based on human rights norms and standards. As one participant stated:

> *"before the event, I had no idea what is AI. Now I have a list of tasks to do and people to talk to".*

- In **Ukraine**, ECNL worked with national partner CEDEM to support them to investigage and increase understanding on how the use of digital technologies and AI affect civil society groups. As a result, CEDEM has become a leader in AI policy and established a core group of CSOs and independent AI experts. CEDEM has engaged in discussions with the Ministry of Digital Transformation on the need to introduce a human rights approach to the AI regulation. It also succeded in bringing together CSOs, businesses and authorities. CEDEM's resources, including the webinars, the analytical materials and the infographics proved to be popular tools to increase understanding of the impact of AI on human rights and civil society and reached over 87.000 people.
- In **Nigeria and Uganda** ECNL worked closely with national CSO partners from our Global Expert Hub on FATF to address the freezing of the bank accounts of prominent civil society activists amidst the ongoing protest initiative. We provided expertise to support their advocacy, include arguments and raise attention in international bodies. As a result, of their effort the FATF reviewed the work of Uganda, and civil society is more equipped to counter-arguments and actions by state officials. And the FATF also issued a public statement on Uganda: *"FATF is monitoring Uganda's oversight of the NPO sector. Uganda is urged to apply the risk-based approach to supervision of NPOs in line with the FATF Standards".*

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