**Civil Society Submission to UN OHCHR practical recommendations on “good practices and lessons learned to create and maintain a safe and enabling environment for civil society”**

**Regional Focus: North America, Latin America and Caribbean**

**Civil society space is shrinking in the Americas and Caribbean**

In October 2015, the Civic Space Initiative[[1]](#footnote-1) hosted a roundtable discussion in Washington DC with a variety of civil society actors working to protect and expand civil society space in the Americas and Caribbean.[[2]](#footnote-2)

Participants agreed that, in common with global trends, space for civil society and in particular the exercise of the right to freedom of expression, access to information, association, peaceful assembly, and public participation is becoming increasingly limited. However, the purpose of the discussion was not to focus on the nature and various manifestations of the shrinking of civic space, but instead to highlight good practices and lessons learned in creating and maintaining a safe and enabling environment for civil society.

This submission highlights a number of observations and ‘good practice’ examples that should inform the formulation of OHCHR recommendations on this issue.[[3]](#footnote-3)

**“Positive” practices are limited**

Participants in the workshop observed that, depressingly, there were few “good news” stories in the region for protecting and expanding civil society space. Trends are overwhelmingly negative, ranging from worsening impunity for murders and attacks on civil society, to the violent repression of peaceful protests and limitations on the right to freedom of association.

Participants cautioned that any UN report focused on “good practices” should not obscure that the main lesson learned is that civil society space is shrinking and the consequences for civil society in the region are severe. In addition, though some initiatives listed below are “positive”, in relation to most there are serious reservations around the efficacy of implementation.

**The absence of regulation as a good practice**

Participants agreed that, in relation to the exercise of fundamental rights, the absence of regulation is in many cases a good practice enabling of civil society space.

It was observed that in many countries in the region, it is not necessary to be registered to work as a journalist or blogger, or to register as any other civil society actor.

Good practice includes the absence of criminal defamation (or *desacato*) laws in several countries. However, decriminalisation cannot be identified as a “trend” in the region since many countries, including established democracies like Brazil, have made increasing use of such laws. Nevertheless, it is worth noting the decriminalisation of defamation in Jamaica (2013), Grenada, and Antigua and Barbuda, is notable for the Caribbean region, as well as the decision of Bermuda’s Supreme Court finding criminal defamation unconstitutional (2011). Steps towards decriminalisation, including the removal of imprisonment as a punishment (Dominican Republic) were also noted during consutlations. The abuse of civil defamation by those in power, as well as disproportionate sanctions, remains a problem in silencing dissent.

In contrast to other regions in the world, participants noted that restrictions on foreign funding, or so-called “foreign agent” laws, were largely absent from the Americas and Caribbean, though concerns were expressed in relation to Venezuela and Ecuador. However, many participants shared experience of access to resources still being a serious issue in terms of sustainability for civil society organisations, with an absence of local philanthropy being one cause for this. In terms of positive practice, in Brazil a “litigation fund” to support environmental organisations has been established, funded by awards in environmental damages, consumer rights and some other public interest cases. Organisations can submit bids to the fund to support grants for small projects.

In relation to freedom of assembly, the absence of “permission” (as opposed to notification) requirements for peaceful assemblies was cited. However, restrictions on protest are observed across the region, including excessively burdensome “notification” procedures for protest. Responding to this are numerous civil society initiatives to support the documentation of abuses and encourage participants in protests to ensure their physical and digital safety.[[4]](#footnote-4)

**The need for positive legislation guaranteeing rights**

However, in some contexts legislating to make explicit the obligation of state actors to respect fundamental rights, served both an important declaratory and practical function. This is the case even where rights are guaranteed constitutionally, in particular where there has been a history of these rights not being respected.

In relation to the right to freedom of expression and privacy online, Brazil’s Marco Civil da Internet was put forward as a positive example, in contrast to a general trend of increasing censorship and surveillance.[[5]](#footnote-5)

In relation to the right to freedom of association, many regional laws on association place strong guarantees for civil society and include presumptions in favour of their operation. Uruguay’s NGO law was cited as an example here. Brazil and Chile’s systems that require notification rather than approval for where associations wish to register were also cited. In this respect, participants referred to the report of Latin American and Caribbean Network for Democracy (Redlad) “Good Practices on Freedom of Association in the Americas”, (March, 2015) shared in the origin Spanish with this submission.

**Where State intervention is necessary to safeguard civil society space**

Whereas the absence of regulation can be considered a good practice in generally, several participants pointed to areas where State intervention is necessary to safeguard civil society space. This is particularly the case where violence and attacks against civil society requires a tailored response, or where competitive markets close out civil society actors who are not motivated by profit but nevertheless provide essential services (in particular for economically disadvantaged, minority or other marginalised groups).

Laws and/or policies to protect human rights defenders, including those that create protected mechanisms, are seen in Mexico, Colombia, Brazil and Honduras, and a draft law is in progress in Guatemala. However, participants qualified this by pointing to serious implementation concerns, as impunity for murder and attacks against civil society remain high in each country.

Other laws in the region have sought to provide protection to specific vulnerable groups that have faced historic discrimination that continues. Chile’s Indigenous Peoples’ Act was cited as an example, as well as Ecuador’s law on ancestor land rights.

In relation to specific market interventions, spectrum allocation in the context of broadcasting laws was given as an example. Communication laws in Uruguay and Argentina were cited as examples of where the re-distribution of broadcast frequencies was being designed to weaken media monopolies (media concentration being a negative trend across the region). In contrast, some States abuse spectrum allocation to stifle open debate, though regional human rights mechanisms have been used to challenge this.[[6]](#footnote-6)

The majority of States in the region have laws or regulations providing for a right to access government held information.[[7]](#footnote-7) The adoption in Mexico of the progresive “General Law on Transparency” is a positive practice, though challenges in accessing government-held information are still acute.[[8]](#footnote-8)In Brazil, the provision in law that information regarding human rights violations cannot be kept secret was cited as a positive practice. While in Brazil implementation of the right to information law has been slow, progress has been seen.[[9]](#footnote-9) A positive practice addressing implementation was noted to be the use of information communication technologies in Brazil and Mexico to facilitate information requests to government bodies from civil society. In terms of addressing legacies of totalitarianism on the Continent, the opening up of the dictatorship’s archives in Brazil was also cited as a positive practice.

**Abuse of national security laws**

Broad national security concerns remain a concern in the region, and in Brazil draft legislation on terrorism is feared to pose a threat to the right to protest.[[10]](#footnote-10)

In the *Norin Catriman et al. v. Chile* (2014) decision, the Inter-American Court found that the application of Chile’s counter-terrorism law to restrict the conduct of indigenous land rights activists was a violation of the American Convention, including the right to freedom of expression. The case demonstrates the value of the Inter-American system in safeguarding rights essential to enabling civil society.

**Speaking out in favour of civil society**

In the United States of America, the Obama Administration’s “Stand with Civil Society” initiative was cited as a positive example, though more international than national in scope, of publicly recognizing the importance of civil society. At the regional level, the OAS General Assembly 2011 resolution on “Promoting the Right to Freedom of Assembly and Association in the Americas” was also cited as a positive political commitment.

General Assembly of the Organization of American States (OAS), dated June 7, 2011, adopted resolution no. 2680 "Promoting the Right to Freedom of Assembly and Association in the Americas", cited as a positive initiative at the regional level to push for more good practice in this field.

1. The Civic Space Initiative is a consortium of the International Centre for Not for Profit Law (ICNL), CIVICUS: World Alliance for Citizen Participation, ARTICLE 19, and the World Movement for Democracy. [↑](#footnote-ref-1)
2. This submission is drafted by ARTICLE 19. We are grateful to the participation at the consultation of: Nada Zohdy (Global Integrity); Ramiro Orias Arredondo (Fundacio Construir, Washington College of Law); Ryota Jonen (World Movement for Democracy); Denise Miranda Erazo (Open Government Partnership); Carolina Rossini (Public Knowledge); Melanie Penagos (Public Knowledge); Martin Franzini (Forum One); Morton Halperin (OSF); Jocelyn Nieva (ICNL); Zach Lampell (ICNL); Courtney Radsch (CPJ); Silvia Chocarro RFI); Swathi Balasubramanian (IREX); Kim Pham (IREX); Lauren Kitz (National Democratic Institute); Dru Menaker (Pen America); Deborah Brown (APC); Masha Rasner (Counterpart); Sami Al Amil (Counterpart); Rhonda Mays (IRI); Andrew Smith (ARTICLE 19); Quinn McKew (ARTICLE 19); Alex Brockwehl (Freedom House); Katherine Wikrent (Development Gateway); Trudy Huskamp Peterson (Human Rights Working Group); Rafael Uzgategui; Lexys Rendon; Inti Rodriguez. [↑](#footnote-ref-2)
3. As a preliminary concern, participants cautioned that many of their “lessons learned” are the ways to open space by finding legal means to circumvent laws or practices that are designed to restrict their activities. Thus many felt it would not be strategic for such information to be shared through a UN consultation with States that may use such information to close civil society space further. For this reason, these elements of the civil society discussion are excluded from the submission. [↑](#footnote-ref-3)
4. The Protestos project (in Portuguese): <https://protestos.org/> ; the #RompElMiedo project (in Spanish): <http://rompeelmiedo.tumblr.com/> [↑](#footnote-ref-4)
5. “Country Report: Brazil’s Marco Civil da Internet”, ARTICLE 19, 5 November 2015, available at: <https://www.article19.org/resources.php/resource/38175/en/country-report:-brazil's-marco-civil-da-internet> [↑](#footnote-ref-5)
6. Inter-American Court of Human Rights, *RCTV v. Venezuela* (2015), available at: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_293_esp.pdf> [↑](#footnote-ref-6)
7. See ARTICLE 19’s mapping project, available at: <https://www.article19.org/maps/> [↑](#footnote-ref-7)
8. “Mexico: Laws criminalizing the right of access to information are incompatible with an open government”, ARTICLE 19, 29 May 2015, available at: <https://www.article19.org/resources.php/resource/37980/en/mexico:-laws-criminalising-the-right-of-access-to-information-are-incompatible-with-an-open-government> [↑](#footnote-ref-8)
9. “Brazil: new report on access to information law in federal agencies”, ARTICLE 19 14 May 2015, available at: <https://www.article19.org/resources.php/resource/37967/en/brazil:-new-report-on-access-to-information-law-in-federal-agencies> [↑](#footnote-ref-9)
10. “Brazil: anti-terrorism bill threatens to restrict right to protest”, ARTICLE 19, 21 October 2015, available at: <https://www.article19.org/resources.php/resource/38156/en/brazil:-anti-terrorism-bill-threatens-to-restrict-right-to-protest> [↑](#footnote-ref-10)