

# Memorandum about Freedom of Association & Assembly

“Freedom of association & assembly – creating an adequate space for Civil Society and NGOs to operate”

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“Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.”<sup>1</sup>

## INTRODUCTION

Freedom of association is not a matter of good will or special concession from any government - it is an obligation. Freedom of association is a fundamental human right included in several human rights treaties, labour standards, in democratic governments among other international instruments. It is an obligation from the governments to respect the freedom to associate and avoid any threats to civil society organizations or activists. The Declaration on Human Rights Defenders guarantees that everyone has the right to meet peacefully; to form, join and participate in non-governmental organizations, associations and groups, and to communicate with non-governmental and intergovernmental bodies, such as the United Nations. Also, the Declaration specifically provides that everyone is entitled to these rights at the national and international levels, individually, and in association with others.

Over time, NGOs have been developing strategies to face terrible persecutions and limitations. Others developed creative alternatives or countermeasures against regulations, and some civil society organizations have been effectively using their networking capabilities.

When we decided to analyze the restrictions against “civil society”<sup>2</sup>, the first problem was the definition of civil society. In the traditional sense, we tend to associate civil society with everything that is not directly related to the branches of government, such as advocacy groups, non-profit organizations, and activist-lead initiatives. The problem with all of these definitions is where to include corporate entities, media conglomerates, and unions, among other groups, within the context of civil society. The popular term is non-governmental organization, which got broader use since its inclusion at the UN Charter, Chapter X, Article 71. Without semantic discussions about the meaning of civil, the main concern is the right to freedom of association. No matter which definition we use, it is clear that the majority of government officials are skeptical of advocacy groups monitoring government activities.

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Because of their critical role in promoting human rights awareness, defending rule of law, promoting democratic principles, defending the environment, educating and empowering citizens, promoting positive changes in terms of policies, and encouraging debate on the national and international level, many NGOs, activists, and democracy/human rights defenders find their rights violated by authoritarian governments and/or repressive regimes. Such governments resort to direct actions against groups and individuals, including intimidation and harassment, arbitrary arrest and detention, disappearances, torture, and other physical violence to other forms of repression, through national legislation, parallel repressive groups, use of corrupted/controlled judicial systems, and other non-physical activities by governments or followers of a regime. National laws and regulations violate the right to freedom of association<sup>3</sup> by imposing discriminatory restrictions on the right to obtain funding, requiring centralized control of international funds by the government entities, imposing ridiculous and bureaucratic registration or re-registration procedures, denying access to information, and limiting the areas of work.

The Canadian government advocates the creation and existence of organized civil society organizations, where as, in other countries, such as Zimbabwe, China, or Cuba, the government prohibits organized groups. Repressive regimes find the risks of allowing organized groups to publicly denounce human rights violations, educate people, attempt to reform public policy, etc... too great.

We found an ongoing backlash against democracy in several countries with direct and subtle efforts from governments to restrict the right of association and the space of civil society organizations, activists and interest groups.<sup>4</sup> Some governments claim that certain restrictions are necessary to protect sovereignty against foreign aggressors ("the evil empire"), enhance accountability of NGOs or fight against extremists, and coordinate foreign assistance or national security.

Sometimes the situation is more than paradoxical, especially in cases where "civil society" organizations promote democratic changes in transitional periods. Just as the new government mandates control, the officials begin imposing restrictions upon NGOs.<sup>5</sup>

This Memorandum looks to provide a view of current limitations for NGOs to operate, international legislation that protects civil society, and some guidelines and recommendations for NGOs and activists. It is an effort from the World Resources Institute's Institutions and Governance Program to increase the analysis of current backlash against civil society and provide recommendations to civil society organizations. With this paper we will:

- i. Summarize current backlash and risk against NGOs
- ii. Identify minimum conditions necessary for NGOs to operate freely and effectively in a country by summarizing international human rights instruments that guarantee freedom of association
- iii. Document barriers to establishing and nurturing these conditions, and
- iv. Through a tool kit, summarize best practices or knowledge at hand of NGOs to cope with repressive regimes and overcome the barriers they impose

Sadly for some autocrats, organized civil society groups have been part of the political/social activity for decades, and they tend to get stronger when you try to put more pressure on them. These groups have been evolving and have become more sophisticated. They have deepened

their knowledge and learned from other organizations through the globalization of information. From birdwatchers to environmental justice movements or from civil rights groups to more complex human rights transnational organizations. Civil Society goes beyond structures. Even with repression, machinations of government intelligence, restrictions to funding, and persecution, the number of organizations, their distribution by areas or geographic, size and membership continues to increase.<sup>6</sup> But the pressure is still there, and the actions from some governments against those groups have been evolving and becoming more sophisticated as well. Repressive and autocratic regimes are beginning to fear the power of organized civil society.

## Background

In addition to traditional authoritarian regimes, legislations, and activities against NGOs, new threats have emerged, in countries like China, Zimbabwe, Belarus, Cuba, and Burma, in what has been called Backlash against civil society. In this regard, the International Center for Not-for-Profit Law (ICNL), an organization dedicated to the promotion and protection of freedom of association and civil society worldwide, has been developing extensive research about recent laws and proposed laws aimed at restricting the operations of civil society. The ICNL found in a 2006 study<sup>7</sup> that "Over the past year, nineteen countries have introduced restrictive legislation aimed at weakening civil society. These countries join the more than 30 with existing laws, policies, and practices that stifle the work of civil society organizations (CSOs)".

Using the same rhetoric about national security and risk from NGOs controlled by external interests, new legislations from Venezuela, Zimbabwe, Sudan, Russia, Belarus and other countries keep amazing similarities in terms of their articles, restrictions and goals. These similarities among repressive and authoritarian regimes allow scholars to develop a classification of the barriers and restrictions against civil society.<sup>8</sup>

Two additional excellent reports, "Defending Civil Society" by the World Movement for Democracy and "Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations" by the International Center for Not-for-Profit Law, described with clear examples the restrictions and barriers against NGOs in several countries. Some of these examples are patterns, occurring in several countries with minor modifications. The restrictions and some examples are the following:

### I. Barriers to Entry

- **Limited Rights to Associate and Form NGOs:** Some restrictive governments do not grant the right to associate or form organizations.
  - China: no legally guaranteed "right" for a CSO to exist.<sup>9</sup>
  - Cuba: no legal right to association or to form democracy/human right groups.
  - Middle East: NGOs are closely controlled by the government; professional organizations, trade unions, and religious trusts, are subject to particularly substantial government interference. Mandatory licensing is common in the Middle East.<sup>10</sup>
- **Prohibitions against unregistered groups:** Limited registration to certain groups and any activity outside that it is illegal.
  - North Korea: any unauthorized assembly or association is regarded as a collective disturbance, and liable to punishment<sup>11</sup>

- Uzbekistan: the Administrative Liability Code makes it illegal to participate in the activity of an unregistered organization.<sup>12</sup>
- Belarus: the Law on Public Organizations ostensibly prohibits participation in unregistered groups<sup>13</sup>
- **Restrictions on founders:** Placing restrictions on eligible founders or requiring difficult-to-reach minimum thresholds for founders is one way to limit the freedom of association.
  - Turkmenistan: national-level associations can only be established with a minimum of 500 members.<sup>14</sup>
  - Macedonia, Malaysia, Thailand, Taiwan: only citizens may serve as founders of associations, thereby denying freedom of association to refugees, migrant workers, and stateless persons.<sup>15</sup>
  - Qatar: founders of an association must not only be Qatari nationals but also to be of "good conduct and reputation."<sup>16</sup>
- **Inability to register and secure the benefits of registration:** Registration is necessary for an organization to become and obtain the rights of a legal person. Some governments make registration so difficult that some groups are prevented from registering, imposing barriers to registration such as vague registration procedures, detailed, complex documentation requirements, prohibitively high registration fees, and excessive delays in the registration process.<sup>17</sup>
  - Azerbaijan, Ethiopia, and Algeria: regulations governing the registration process are vague and leave great discretion to the registration officials – CSOs face great delays and have difficulty registering<sup>18</sup>
  - United Arab Emirates: the government has actively discouraged the creation of human rights organizations by simply not responding to registration applications from such groups, sometimes for years<sup>19</sup>
  - Venezuela: Even when there is not a limitation for registration, Public Registries tend to reject registration from organizations with human rights or democratic objectives.
- **Vague grounds for denial of registration:** A common legal tool is the use of overbroad, vague grounds for denying registration applications; often no appeal mechanism is available.<sup>20</sup>
  - Bahrain: registration can be refused if "society does not need its services or if there are other associations that fulfill society's needs in the [same] field of activity."<sup>21</sup>
  - Russia: a gay rights organization was denied registration on the grounds that its work "undermines the sovereignty and territorial integrity of the Russian Federation in view of the reduction of the population."<sup>22</sup>
  - Malaysia: Registration may be denied according to the "the opinion of the Minister"<sup>23</sup>
- **Re-registration requirements:** Such requirements place a burden on civil society and provide the government with regular opportunities to deny registration.<sup>24</sup>
  - Sudan, Zimbabwe and Russia: laws require renovations and re-registration process.
  - Venezuela and Ecuador: the pending Cooperation Law includes a requirement of re-registration to all the NGOs
  - Nepal: With the Code of Conduct for "Social Organizations," NGOs face trouble and hassles in Chief District Officer's office while renewing license every year. The

government preaches that the NGOs must limit their work to 'philanthropy' and 'welfare'.<sup>25</sup>

- **Barriers for international organizations:** Some countries use legal barriers specifically to target international organizations, seeking to prevent or impede their operation inside the country.<sup>26</sup>
  - Jordan: international organizations may set up offices, subject to "any conditions and restrictions which [the Minister of Social Development] imposes."<sup>27</sup>
  - Belarus and Burma: the regimes prohibit international organizations operation in the country.
  - Governments in the Middle East are fairly controlling of international NGOs, international funding, and participation in international associations.<sup>28</sup>

## **II. Barriers to Operational Activity**

- **Direct (broadly worded) prohibitions against spheres of activity.**
  - Equatorial Guinea: NGOs are restricted from engaging in any human rights activities; governmental approval is required for any political gathering of more than 10 people.<sup>29</sup>
  - Tanzania: NGOs are told to "refrain from doing any act which is likely to cause misunderstanding" among indigenous or domestic NGOs.<sup>30</sup>
  - Several countries prohibit participation in "extremist" or "terrorist" activity without clearly defining these terms, allowing the state to block NGO activity in legitimate spheres.<sup>31</sup>
- **Invasive supervisory oversight:** The government has the right to intervene in NGO operations, including membership, vetoing members or introducing members of its own choice. Some governments restrict registered CSOs' activities regularly and continuously; failure to comply with government demands leads to sanctions and penalties.
  - Syria: state interference in associational activities is authorized by law; government representatives may attend association meetings; associations are required to obtain permission to undertake most activities.<sup>32</sup>
  - Vietnam: Decree 88, a law governing associations, provides for strict control over associations at all levels, effectively causing associations to act as agencies of government ministries.<sup>33</sup>
  - Russia: government control over the activities of organizations by authorizing registration authorities to audit their activities and finances and request any of the organization's documents at any time<sup>34</sup>
- **Harassment from Government Officials:** Government officials target opposition and NGOs to impede their activities:
  - Zimbabwe: The government persecute and harass human rights/democracy leaders and organizations
  - Russia: intrusive tax inspections to NGOs and burdensome report requirements. Government actions also created self-censorship.
  - Singapore: Some members of NGOs face tax evasion claims from governmental officials due their democracy building activities
  - Venezuela: The Inter-American Human Rights Commission admitted a case that claims that the government created the "Maisanta" list with oppositionists and critics to the regime as a "backlist" to deny jobs, public services and harass critics.

- **Criminal Penalties Against Individuals Associated with an Organization:** Individuals who are found responsible for certain NGO activities can be held criminally liable and fined or imprisoned, which discourages NGO participation.
  - Tanzania: The 2002 NGO Act contains penal provisions for even minor breaches of the Act (e.g., use of an inappropriate registration form is punishable by imprisonment). More disturbingly, the Act places the burden of proof in a criminal trial against NGO actors on the accused.<sup>35</sup>
  - Iran: "Suspended" sentences against civil society activists are used to avoid international condemnation for imprisoning activists while simultaneously discouraging them from future activism.<sup>36</sup>
  - Angola: in February 2007, a human rights campaigner was arrested while meeting with local civil society representatives and was reportedly charged with espionage.<sup>37</sup>
- **Arbitrary or Discretionary Termination and Dissolution:** Some governments use their significant discretion to shut down CSOs and use that discretion to quash opposition groups.
  - Egypt: Law 84/2002 permits the government to shut down organizations on the broad grounds of "threatening national unity" or "violating public order or morals," broad and ambiguous terms that afford the government substantial discretion to terminate CSOs.<sup>38</sup>
  - Argentina, the law permits the termination of an NGO when it is "necessary" or "in the best interests of the public."<sup>39</sup>
  - Burma: civic organizations are arbitrarily terminated.<sup>40</sup>
- **Establishment of "Parallel" Organizations:** Governments form or control their own CSOs (GONGOs) in order to undermine, discredit, and attract funding away from the legitimate CSO sector.
  - Slovakia: The Meciar government sponsored and funded a group of "parallel" organizations to compete with opposition CSOs.<sup>41</sup>
  - Tunisia: the government has established GONGOs with the aim of monitoring the activities of independent CSOs (GONGOs attend conferences and report on the activities of CSOs)<sup>42</sup>
  - Venezuela: The regime is funded through "Missions" and developed a broad base of para-governmental organizations to "balance" NGOs.
- **Lack of Protection:** Governments try to avoid direct harassment against NGOs, but it doesn't provide for any protection for democracy or human rights activists.
  - Colombia: Several claims about killings and harassments against union leaders and human right activist without proper investigation
  - Bolivia: Threats against NGO leaders without any judicial or governmental follow up or interest.

**III. Barriers to Speech and Advocacy:** Limitations upon free speech, public policy engagement, and advocacy can severely limit NGOs' effectiveness.<sup>43</sup>

- **Prior restraints and censorship/burdens on publication.**
  - United Arab Emirates: NGOs must respect censorship guidelines and to receive prior government approval before publishing any material.<sup>44</sup>
  - Uganda: NGOs wishing to publish human rights materials have them approved before publication.<sup>45</sup>

- **Defamation laws:** Laws regarding defamation are used to hinder free speech and protect powerful people from scrutiny.<sup>46</sup>
  - Cambodia: Defamation remains a criminal offence for which suspects can be arrested and are subjected to hefty fines or imprisonment.<sup>47</sup>
  - Venezuela: Laws enacting defamation were passed during 2005-2007.
- **Use of Government Controlled Media**
  - Venezuela: the government uses national controlled media (TV, Newspapers and Radio Stations) to threaten and defame NGOs leaders. It has not “renewed” licenses to private sector and increases their media through confiscations.
- **Broad, vague restrictions against advocacy:** Ambiguous terms are often used to restrict “political” activities or “extremist” activities, giving the government substantial discretion to punish those whose statements are deemed improper, which in turn serves to chill free expression.<sup>48</sup>
  - Nepal: a proposed Code of Conduct would have outlawed “attempts of political influence” on others.<sup>49</sup>
  - Russia: The Russian Law on Extremist Activity (2003) prohibits advocacy of extreme political positions and relies on a vague definition of “extremist activity.”<sup>50</sup>
- **Restrictions on freedom of assembly:** By making it difficult or even illegal for individuals and groups to gather or meet (i.e., to exercise freedom of assembly), the law directly hinders the ability of NGOs to plan and/or engage in advocacy activities.<sup>51</sup>
  - Singapore: any gathering of five or more people for non-social purposes is considered an illegal assembly.<sup>52</sup>
  - Paraguay: proposals for the modification of the penal code and an Anti-Terrorist Law which could result in the criminalization of social protest.<sup>53</sup>
  - Vanuatu: the current legislation does not provide a framework for the operation of customary forms of association.

**IV. Barriers to Contact and Communication:** These restrictions impede the ability of NGOs to receive and provide information, to meet and exchange ideas with their civil society counter-parts.<sup>54</sup>

- **Barriers to the creation of networks:** Existing legal entities may be limited in their freedom to, or prohibited from, forming groups, networks, coalitions or federations, or even prohibited from doing so.<sup>55</sup>
  - Tanzania: 2002 NGO Act 2002 effectively prevented any non-state-run umbrella groups from operating lawfully.<sup>56</sup>
  - Bosnia and Herzegovina: the government has simply refused for years to register umbrella groups.<sup>57</sup>
- **Barriers to international contact:** Governments prevent and inhibit international contact by controlling exit and entry into the country for nationals and internationals.<sup>58</sup>
  - United Arab Emirates: the 1999 Law on Associations restricts NGO members from participating in events outside the country without government permission.<sup>59</sup>
  - Uzbekistan: NGOs have been ordered to terminate their activities due to engaging in “close cooperation and providing assistance to the activists of non-registered organizations.”<sup>60</sup>
  - China: the government closed the China Development Brief (CDB), a publication which helped to connect Chinese non-profit organizations with potential foreign funding.<sup>61</sup>

**V. Barriers to Resources:** Some governments restrict the access of CSOs to foreign funding, ostensibly in order to reduce foreign influence.<sup>62</sup>

- **Prohibitions against certain categories of funding:**
  - Eritrea: Administration Proclamation No. 145/2005 that broadly restricts the U.N. and bilateral agencies from funding NGOs.<sup>63</sup>
  - Transnistria region of Moldova (2006): decree prohibiting foreign funding of NGOs<sup>64</sup>
- **Advance government approval:** More commonly, the law allows the receipt of foreign funding, but requires advance governmental approval.
  - Algeria: Foreign donations to associations must be pre-approved by the Ministry of Interior.<sup>65</sup>
  - Belarus (2004): regulations that impose among other things reporting and approval mechanisms that give the government control over donor funds and projects, tax foreign aid heavily<sup>66</sup>
  - Bolivia: The government requires pre-approval of funds and a deposit in favor of the government.
- **Routing Funding through the Government:**
  - Eritrea: Proclamation No. 145/2005 requires all donor funds to flow through government ministries, allowing NGOs to receive funding only if there are insufficient funds.<sup>67</sup>
  - Uzbekistan: in 2004, the government began requiring that foreign funding for NGOs be channelled through government-controlled banks, thereby allowing the monitoring of all money transfers, and affording the opportunity to extract part of the money transfer, whether through administrative fees, taxation or corruption. Reportedly, the Uzbek government has used this system to obstruct the transfer of at least 80% of foreign grants to NGOs.<sup>68</sup>
  - South Pacific States: there is an extensive practice of external funding being transferred through government departments, along with the governmental discretion in collecting customs duty and allocating funds.<sup>69</sup>

According to Salomon (1999), there are great similarities in the countries that have been enacted or proposed laws restrict the activities of civil society organizations (CSOs). Such countries tend to exhibit one or more of the following characteristics<sup>70</sup>:

- They have a 'closed' or command economy (China, Cuba) or are governed by leaders with autocratic tendencies (Libya, Zimbabwe).
- There is political dissension in the country or a neighbouring country that is perceived as threatening the current regime or incumbent party (Sudan, Ethiopia).
- There are concerns about religious fundamentalism (Egypt).
- Similar legislation or practices have been introduced elsewhere in the region (various countries in the former Soviet Union and the Middle East). In some cases this almost amounts to an 'exchange of worst practices.'
- They have a history of human rights abuses (North Korea).
- They are concerned about 'foreign involvement' (Venezuela).

## **International Legislation Protecting Freedom of Association and the Right for NGOs to Operate Freely and Without Harassments from any Government**

The fundamental rights for organizations and activists are in national constitutions and in the international body of legislation to protect human rights. All the major international and regional



treaties on human rights guarantee the right to freedom of association, some with specific provisions to protect activists and organizations. Here we will only include some instruments, but the protections have been extended through the jurisprudence of international courts, national constitutions and custom.

Freedom of association has been included as a fundamental human right, and it is protected by binding and non binding international/global instruments like the International Labour Organization (ILO)'s Freedom of Association and Protection of the Right to Organize Convention (ILO No. 87)<sup>71</sup> and Declaration on Fundamental Principles and Rights at Work<sup>72</sup>, the United Nations (UN) Universal Declaration of Human Rights<sup>73</sup>, the UN International Covenant for Civil and Political Rights (ICCPR)<sup>74</sup> and the UN International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>75</sup>

In terms of the rights of activists and organizations, among several instruments, the Human Rights Defenders Declaration provides that everyone has the right to "promote and strive for the protection and realization of human rights and fundamental freedoms" and promote and protect human rights at the national and the international level. It also includes several rights for NGOs and defenders, obligations for the governments and tools to guarantee the rights.<sup>76</sup> We can also see the threats against activists and NGOs as a form of discrimination in violation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>77</sup>

Due to the recent backlash in several countries, we can see that the doctrine and customs of civilized countries have established a more protectionist approach from the international community against the threats. At the Fourth ministerial meeting of the Community of Democracies in Mali, November 14-17, 2007, the ministries of foreign affairs and representatives from democratic countries signed the Bamako Consensus. The Consensus includes the following statements (38):

We underline that freedom of expression and association, and access to information and communication technologies, including the Internet, serve to strengthen civil society, enhance citizen participation, and provide a basis for protections against government abuse... (44). Support and encourage non-governmental organizations by urging countries to adopt legislation aimed at strengthening civil society and to ensure that registration, formation, funding and operation of non-governmental organizations and their peaceful activities be carried out... (45). Permit non-governmental organizations to carry out their peaceful activities without intimidation, to develop and maintain contact and cooperate with their own members and other elements of civil society at the national and international levels.

At the regional level, in Europe the freedom of association and the right of NGOs to work freely have been protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>78</sup> and more recently with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.<sup>79</sup> In The Americas, the American Convention on Human Rights<sup>80</sup> and the Inter-American Democratic Charter<sup>81</sup> protects and promotes association and participation as a guarantee for democracy. The Organization of American States has been promoting several instruments to protect civil society activists and organizations and guarantee their rights to participate at the national and regional

levels.<sup>82</sup> Even though the United States<sup>83</sup> did not sign the Convention, its constitution also guarantees the rights of association, just as Canada's constitution guarantees<sup>84</sup> and the constitutions from all the countries in the region.

African countries have also advanced as region, at least in terms of instruments, with a regional guarantee to the right for NGOs and activist to work freely. The African [Banjul] Charter on Human and Peoples' Rights<sup>85</sup> and the Kampala Declaration on Intellectual Freedom and Social Responsibility expressly guarantee freedom of association and the necessary safety net for activist and NGOs to perform their work as human right defenders, democracy promoters or intellectual group.<sup>86</sup>

Arab States have been showing improvements promoting freedom of association at the regional level with their Human Right Charter, which guarantees that every citizen has the right to "freely form and join associations with others".<sup>87</sup>

Not all the regions have regional instruments to protect NGOs and freedom of association, but even in the Asia-Pacific region, they have included human rights, democracy rights, and duties in their Charter of the Association of Southeast Asian Nations.<sup>88</sup>

## **International Principles Protecting Civil Society**

Due to the recurrent danger and limitations for NGOs and activists from some authoritarian regimes and the backlash in other countries, several attempts from civil society groups and governments, including the US government,<sup>89</sup> to develop basic guiding norms to protect civil society organizations and activists have been made.

We have to agree that an enormous knowledge has been developed to assist societies in defending their rights. After reviewing several proposals from civil society organizations and activists, the Defending Civil Society report summarized all the recommendations in just six (6) principles for protecting civil society:<sup>90</sup>

1. The right of NGOs to entry (right of individuals or groups to form or join NGOs)
2. The right to operate to fulfill their legal purposes without state interference
3. The right to free expression
4. The right to communication with domestic and international partners and participate in networks
5. The right to seek and secure resources
6. The state's positive obligation to protect the rights of NGOs.

### ***Toolkit (Survival Techniques applied by NGOs in restrictive scenarios)***

A comprehensive set of tools has been developed to assist NGOs in their effort to prevent and protect from Human Rights violations, and restore respect to Human Rights.<sup>91</sup>

#### **1. Challenge Restrictions in domestic and international courts and Human Rights Systems**

With respect to regulation related to the civil society sector, domestic laws can provide a juridical framework for the activities of civil society only if they increase participation, guarantee access of information, respect freedoms of association, respect all the principles for protecting civil society, respect the independence of the organizations and activists, and ensure the law is in full compliance with the international obligations of the state in the field of human rights and fundamental freedoms.<sup>92</sup> International human rights obligations are to be interpreted as comprising of all treaty-based and customary law obligations of the state, as well as human rights standards adopted within the United Nations system and by regional human rights bodies.<sup>93</sup>

- **Domestic Litigation:** In countries where the courts are reasonably independent and fair, domestic litigation is an effective way for NGOs to challenge legislative provisions that unduly restrict their operations. This approach is not effective in all countries, however. Even where courts are independent and fair, they may consume extreme amounts of time and resources. In other countries, going through domestic courts is simply a way to fulfill the requirement of exhausting domestic options before petitioning an international tribunal.<sup>94</sup>
  
- **Litigation before International Tribunals:** International tribunals have the mandate of protecting basic human rights guaranteed by international conventions. For example, Greek and Turkish association members and political parties who have brought cases before the European Court of Human Rights have obtained judgments against their governments ordering the legal registration of their organizations, setting key precedents interpreting the right of free association granted by the European Convention on Human Rights.<sup>95</sup>
  
- **National and International Human Rights Mechanisms**
  - National Mechanisms: In many countries, internal governmental entities are charged with the responsibility to monitor or enforce human rights law: ombudsmen, human rights commissions, truth commissions, and judicial regulatory bodies. Depending on the context, filing complaints with these bodies can be effective.
  - International Human Rights Mechanisms: The right to freedom of association is protected by numerous international covenants and treaties. Various international human rights mechanisms exist in order to ensure that these international instruments are respected:
    - The Human Rights Committee (established under the International Covenant on Civil and Political Rights)<sup>96</sup> accepts complaints and investigates human rights violations.<sup>97</sup>
    - The Special Representative of the UN Secretary General on Human Rights Defenders – this entity was established in 2000 to support the implementation of the 1998 Declaration on Human Rights Defenders, and to promote the rights set out in international human rights instruments, including the Universal Declaration and the ICCPR.<sup>98</sup>
    - UN Commission on Human Rights has established mechanisms for human rights violations complaints.<sup>99</sup>
  - Regional Human Rights Mechanisms:

- The Inter-American Commission on Human Rights examines complaints or petitions regarding specific cases of human rights violations (violations of the Charter of the OAS and the American Convention on Human Rights).<sup>100</sup>
  - The African Commission on Human and Peoples' Rights is a supranational body, tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent, based on the African Charter on Human and People's Rights.<sup>101</sup>
  - The European Court on Human Rights hears complaints against states party to the European Convention on Human Rights and Fundamental Freedoms, and empowered to issue judgments that are legally binding on states.<sup>102</sup>
- **Legal Triage:** Programs that provide legal defence to civil society workers can be effective; for example, ICNL provides legal consultants in Central Asian countries to assist organizations in registering and in meeting other legal requirements.<sup>103</sup>
    - These programs can also provoke negative reactions from the authorities in these countries, as occurred in Uzbekistan where the American Bar Association's Central European and Eurasian Law Initiative (ABA-CEELI) was shut down.<sup>104</sup>
    - However, in other circumstances, legal triage programs have been successful. For example, in Zimbabwe, the Media Lawyers Network, organized by the Media Institute of South Africa, provides legal counsel to journalists.<sup>105</sup> In Turkey, the Izmir Bar Association provides free services to victims of police torture and prosecutes torturers.<sup>106</sup> Under the Pinochet dictatorship in Chile, the Vicariate of Solidarity, with the aid of the Catholic Church, provided legal defence services.<sup>107</sup>
  - **Bilateral Investment Treaties ("BITs")<sup>108</sup>:** An alternate and not so explored route to fight against NGOs regulations is using the existing international regime governing economic activities, bilateral economic agreements, trade agreements and mechanisms to protect foreign investments. Even when the goal and structure of these agreements and trade structures are not specific to NGOs, they are oriented to for-profits. It is possible to use them in terms of protection of private property, protection of a specific activity, protection of non-profit investment in the specific country, claims for expropriation, breaches of the treaty obligation, claims for limitations in the free flux of money, among other initiatives. According with a recent publication from The International Center for Not-for-Profit Law (2007), International Investment Treaty Protection of Not-for-Profit Organizations, the NGO sector can take advantage of more than 2500 BITs. When regimes interfere with transfers of international funds, deny registration or re-registration of NGOs with nexus with international organizations or organizations in another country or seizes assets of the NGO due to "NGOs Laws", the organizations can claim breaches of contracts and can challenge with trade guarantees like free transfer of capital, fair and equitable treatment, full protection and security and national treatment and avoid interferences. There is also the possibility to use free trade dispute resolution systems.<sup>109</sup>

## 2. Challenge Legislation and defend basic principles

- **Use distraction techniques, delays and volunteer to be part of the discussions:** In some countries, like Mexico, NGOs prevented stricter regulations from becoming apart of

legislative/policy making procedure and recommended alternatives. NGOs must appear as always open to dialogue. In Spain, NGOs helped the government to develop regulations but only for the use of public funds. When scandals arise in the United States, Non Profits always initiate the process of self-regulation to prevent the claims for the need of stricter regulations. In Turkey and Mexico, a common effort among NGOs, academia and the government produced positive changes in regulations to the Non Profit Sector.

- **Campaigns to stop the regulations:** When the regulation only passes one of the approval stages, it is the perfect time to develop strategic planning and try to stop the regulation by using all the tools reflected in this Memorandum. An effective campaign from more than 117 Venezuelan NGOs stopped the “Cooperation Law” with the help of the international community, Canada’s Government, NED, INCL, European Union countries embassies and other actors.
- **Law Reform Campaigns:** CSOs and their partners can work to sponsor progressive domestic legislation governing their formation, operation, and sustainability. While this may be possible in states that show a trend towards liberalization, it may be particularly difficult in states that are actively oppressing civil society.<sup>110</sup> This has been effective in Peru and in a less efficient way in Russia.
- **Legislation to “organize” civil society or cooperation:** NGOs must fight to avoid any attempt of passing such legislation. At the very least, the need is to protect fundamental freedoms. The following elements must be necessary in the legislation governing CSOs or NGOs in order to ensure that fundamental freedoms of association, expression, and peaceful assembly are respected:
  - Creation of a CSO: CSOs should be allowed freely to come into existence; also, CSOs should not be required to obtain legal personality in order to engage in lawful activities.
  - Registration (or Incorporation) of CSOs: Registration should be quick, easy, and inexpensive for all persons (natural and legal).
  - Registration or Incorporation Organ: State organ responsible for giving legal existence to CSOs should be adequately staffed, even-handed; CSOs not allowed to register should be able to appeal their legality.
  - Public Registry: There should be a single, national registry of all CSOs that is accessible to the public.
  - Termination, Dissolution, and Liquidation: CSO should be permitted to voluntarily terminate itself; termination by the governmental supervisory organ should only happen for the most flagrant of violations; all involuntary terminations should be subject to objective judicial supervision.
  - Permitted Purposes and Activities:
    - Like other entities, CSOs should be permitted to engage in activities for the benefit of their members and in public benefit or “charitable” activities.
    - As key participants of public policy debate, CSOs should have the right to speak freely about all matters of public significance, including debate about and criticize existing or proposed state policies and actions.
    - Any CSO engaging in an activity (e.g., health care, education) that is subject to licensing or regulation by a state organ should be subject to the same generally applicable licensing and regulatory requirements and procedures that apply to activities of individuals, business organizations, or public organs.
  - Qualification for Public Benefit Status: where a separate state organ determines whether an organization qualifies for public benefit/charitable status, such an entity

should be an independent, mixed commission (with representatives of the public, the government, and the CSOs themselves), similar to the Charity Commission of England and Wales.<sup>111</sup>

- **Media Access:** CSOs should have access to media outlets (including state-owned media) to publicize their activities
3. **Public Action and Advocacy:** Public action and advocacy– that is, citizens coming together against repressive measures – may take various forms, such as demonstrations, letter-writing campaigns, public comment, and media campaigns.<sup>112</sup> Other means of advocacy include cyber-activism (i.e., blogs), SMS campaigns, and political lobbying.<sup>113</sup>
- **Domestic Public Action:** CSOs have successfully taken public action in various countries by rallying international and expert support, raising awareness of the restrictive provisions among stakeholders, organizing meetings, and attracting the attention of the media. In Kazakhstan, such action succeeded in inducing the government to rescind restrictive provisions of a recently proposed restrictive law. A public participation and voter turnout campaign in Slovakia led to the end of the authoritarian Meciar regime.<sup>114</sup>
  - **Mass mobilization** can be another effective tool. Organizing large groups of people to demonstrate is an effective way of protecting civil society. For example, the 2003 MJAFT! Campaign in Albania was successful in its attempt to mobilize the population to shake of citizen apathy and increase public demand for solutions to social problems.<sup>115</sup> In 2005, the Egyptian Movement for Change helped organize public demonstrations in Cairo opposing Hosni Mubarak's re-election.<sup>116</sup> A million students and teachers in Chile protested for educational reform in 2006.<sup>117</sup> **Strikes** and **boycotts** can also be effective types of direct public action.<sup>118</sup>

#### 4. Global advocacy, lobby and networking

- **International Diplomacy:** Diplomacy can be an effective tool through which leaders of other nations and international institutions can conduct open discussions with a government to dissuade it from pursuing repressive legislation, and offer political room for to allow a government the ability to change course publicly. Diplomatic persuasion for less restrictive legislation on the part of U.S. Secretary of State, Rice, resulted in a more liberal legislative regime.<sup>119</sup>
- **International pressure:** Publicly-applied pressure on the part of the international community can be effective in reversing the actions of repressive regimes towards CSOs. International support can also ease feelings of isolation among repressed groups, whose hope may be bolstered by the knowledge that the international community is fighting for their rights.<sup>120</sup>
- **Belong:** NGOs in countries like Iran, Venezuela, Zimbabwe, among others, have been demonstrating over the time the importance to register and participate in international and regional organizations. In Peru, during the Fujimori's authoritarian and repressive regime, NGOs were an active factor of change and were involved in several initiatives at the Organization of American States (OAS) and the Inter American Human Right System. The case is similar with the participation of NGOs from countries with authoritarian regimes and the opportunity and protection from the UN (registration at the ECOSOC takes time but it

gives the opportunity to participate and a voice) or regional organizations and with structured networks of civil society like Civicus<sup>121</sup> or CONGO.

- **Actions Directed to the International Community at Large:** <sup>122</sup>
  - Call on democratic governments and international organizations, including the United Nations, international financial institutions, and appropriate regional organizations, to recognize reports of such barriers to civil society
  - Urge established democracies and international organizations to reaffirm their commitments to democratic governance, rule of law, and respect for human rights, and develop consistent policies based on these principles.
  - Urge established democracies and international organizations to reaffirm that the proposed restrictions on freedom of association are subjected to the rigorous legal analytical test defined in Article 22 of the ICCPR (see Under Scrutiny section) and energetically publicize transgressions, particularly on the part of ICCPR signatories.
  - Urge democratic governments and international organizations to ensure and increase assistance for civil society organizations
  - Organize discussions and hearings in parliaments, congresses, and national assemblies to raise lawmakers' awareness of the issues and principles.
  - Encourage UN special rapporteurs to incorporate the principles outlined here into their reports and other UN documents.
  - Put pressure to Ministries of Foreign Affairs and UN representatives
- **Actions for Civil Society Organizations:**
  - Facilitate national and regional discussions on this topic.
  - Insist that proposed restrictions on freedom of association are subjected to the rigorous legal analytical test defined in Article 22 of the ICCPR and energetically pursue transgressions, particularly on the part of ICCPR signatories, through publicity and litigation in appropriate international courts.
  - Translate the report into local languages.
  - Use technologies and "virtual" space to conduct democracy and human rights work and to mobilize support for such work.
  - Go beyond the traditional NGOs circles and begin to include activities and information in other circles like schools, universities, professional groups, consulting groups, among others (expand networks)
- **Actions Directed to Democracy Assistance Organizations:**
  - Encourage democratic assistance foundations to facilitate national, regional, and international discussions among civil society groups to develop ideas for reforming legal frameworks for civil society work.
  - Insist that proposed restrictions on freedom of association are subjected to the rigorous legal analytical test defined in Article 22 of the ICCPR and energetically pursue transgressions, particularly on the part of ICCPR signatories, through publicity and litigation in appropriate international courts.
  - Ensure that democratic assistance foundations and organizations distribute reports such as the World Movement for Democracy's "Defending Civil Society" report to all of their partners and grantees around the world.

5. **Raising Public Awareness:** Civil society and its partners can work to raise international awareness of threats to the right to association and harassment of civil society groups.<sup>123</sup> By raising awareness effectively, local groups and coalitions can obtain support from the broader civil society community and from the public as well as from other nations and international bodies, leading to domestic and international pressure on the government.<sup>124</sup>
- **Popular Education:** Tactics used to reach a broad audience may include (1) the distribution of educational leaflets, brochures, and pamphlets, (2) the distribution of shirts, posters and stickers (such as the “Choose” T-shirts distributed before Belarus's 2001 presidential elections), (3) the use of artwork like caricatures, cartoons, sketches, and possibly graffiti to highlight issues, (4) the use of media and the internet, and (5) demonstrations. One innovative form of education is street theatre – plays meant to inform citizens about specific issues; for example, the Philippine Educational Theatre Association (PETA) has a long history of conducting theatre to raise awareness among communities in the Philippines.<sup>125</sup>
  - **Rights-Based Education:** Many NGOs engage in activities designed to raise awareness of the human and legal rights guaranteed to individuals living in repressive contexts. Right-based education can range from the distribution of easy-to-read educational material to the integration of educational rights in university curricula.<sup>126</sup>
  - **Training for Civil Society Activists:** A more targeted way to raise awareness is to run programs that provide legal training for those working in the civil society sector. Educating civil society practitioners on the legal framework in which they are working can help them operate in the complex and contradictory legal context in which they find themselves. The Asian Forum for Human Rights and Development<sup>127</sup> and Freedom House Mexico<sup>128</sup> are two examples of organizations that run such programs.
  - **Monitoring and Documentation:** A vital component of raising awareness is communicating to the world how exactly the state is violating the rights to freedom of association and expression and thereby threatening civil society. To do that, CSOs must monitor the situation through research, investigation, documentation, analysis, and reporting. For example, CIVICUS produces a monthly bulletin reporting on the state of civil society rights around the world.<sup>129</sup> Similarly, the International Freedom of Expression Exchange (IFEX)<sup>130</sup> runs a network that issues “action alerts” to expose media-freedom violations.<sup>131</sup> *Ratings Mechanisms* is a specific form of monitoring used to measure the compliance of governments with rights-based standards. For example, NGOs and well as various governments<sup>132</sup> produce regular publications offering comparative studies measuring progress and obstacles of democratization in countries around the world.<sup>133</sup>
  - **Use of Media:** Media – newspapers, radio, television, and the internet – is a powerful tool for protecting civil society and to reduce human rights violations. Media can raise awareness, expose violations, and mobilize support. In situations where the media is controlled by a repressive government, it may be helpful to attract the attention of international media.<sup>134</sup>



6. **Protective Alliances and Networks:** Whether they are formal or informal, national or international, networks facilitate information sharing and cooperation and may provide hope and protection from violence and oppression to organizations working within restrictive environments. Networks may communicate through meetings, email, or more formal umbrella groups. The benefits of inter-CSO networks include shared resources, enhanced profile, and a larger base of constituents. Networks enable international information-sharing and can have international leverage.<sup>135 136</sup>
  
7. **Direct Support to Victims of Violations:** In countries with particularly oppressive regimes where civil society activists are arrested or imprisoned, providing direct support to the victims can make an important difference. The South Africa Development Community has developed a program to help provide direct medical, legal, financial, and emotional support to journalists under pressure; this program could be emulated to support civil society workers as well as journalists.<sup>137</sup> In Sri Lanka, in addition to providing practical and logistical support for political prisoners and their families, the NGO Center for Human Rights and Development works for the release of political prisoners by widely disseminating their stories to the media.<sup>138</sup> Some proposals to create a special Global Fund for protecting NGOs have been also presented at the UN and other international organizations.
  
8. **Going Underground:** Where civil society organizations face an utter lack of legal space – “whether through denial of registration, termination, suspension of activities, prohibition, harassment, imprisonment, or some other cause”<sup>139</sup> – it may nevertheless be possible to persevere. Here are a few examples:
  - Polish *Solidarity* was established in 1980. As an umbrella group for a range of social and political causes united in their opposition to the communist regime, the organization was soon declared illegal and its leaders were arrested. Nevertheless, Solidarity continued to operate underground for almost a decade.<sup>140</sup>
  - The Czech civil initiative of *Charter 77* operated between 1977 and 1992. While its leaders were persecuted – some were imprisoned and forced into exile, many lost their jobs or their drivers' licenses, the organization continued operating and reporting governmental human rights violations in an atmosphere where organized opposition to the government was illegal.<sup>141</sup>
  - *Charter 77* has inspired other groups, such as Charter 97, a citizens' human rights organization fighting for democracy in Belarus.<sup>142</sup> Similarly, in Syria, where there is little legal room for civil society, informal groups meet to discuss political issues.<sup>143</sup>
  
9. **Create a Parallel Structure:** When a government decides to go against freedom of association and establish severe restrictions for the operation of NGOs, the best suggestion is to be creative. Belarusian NGOs now work underground or work only as “voluntary groups.” International cooperation comes to Belarus in the form of good and services and cooperation. Resources have been channeling through Ukraine or Czech Republic and other partner groups. NGO work in Burma's frontier helped to channel information through local leaders. Sometimes the alternative, when a regime decides to impose limitations upon NGOs, is to create a parallel company/for profit and manage the resources or administer resources with the company and the programs with the NGO. Venezuelan NGOs have been opening accounts in other countries to prevent more scrutiny from the government. In cases like China, Iran, Cuba, Burma, among others, several NGOs created an international organization based in another

country. For international cooperation, one of the alternatives is to help with printing materials (outside the country), setting up individual contracts (for the staffs) as consultants, organizing payment directly to services and products, among other indirect payments.

10. **Support alternate activities:** NGO laws typically regulate the activities of the NGOs and the international cooperation. In some cases, the alternative for funding can be the indirect support. Some NGOs participate in environment organized raffles, concerts, movie premiers, and other fundraising activities. The alternative for international cooperation is to help NGOs with the cost (by direct payments to service providers) or to contribute with cost of the artists, among other indirect support.
11. **Improve Efficiency, transparency and accountability of the NGOs:**<sup>144</sup> One of the tools is to achieve efficient and transparent NGOs to avoid false excuses for rejection from any regime.<sup>145</sup>
  - Integrity and Good Governance: Transparent and honest NGOs can prove that any action from the governments is against freedom of association and reverse any negative campaign from any regime.
  - Financial Sustainability: Improve the conditions necessary for the financial sustainability to prevent the effect of any restriction to international sources and avoid depending in only one source (diverse funding sources).
  - Accountability and Transparency: NGOs are accountable to their constituencies, to the public, donors and to the beneficiaries. Some private accountants provide pro-bono services to help NGOs to develop their own system and keep the organization transparent.
  - Reporting Generally. To the maximum feasible extent, all reports required of CSOs should be as simple to complete and as uniform among state organs as is possible.
12. **Self Regulation:** Nonprofit organizations adopt high standards of transparency and accountability within bilateral policy agreements (as distinct from regulatory or legislative measures) with a collective of voluntary sector representatives.<sup>146</sup> Some NGOs get together to develop codes of conduct or to propose some standards or frameworks. Some NGOs from Colombia have been joining their efforts to develop a common code of conduct and also develop transparency procedures for NGOs. They created a system of publicity of budgets and programs (on-line) of NGOs and audits inside the network. In other cases, transnational NGOs also developed codes of conduct and auditing process for NGOs and a certification process.
13. **Courage and faith:** One of the fundamental tools is to have faith in the work that the NGO performs and keep the courage to continue working and being innovative.
  - Courage in donors
  - Courage in activists
  - Courage in staff, directors and all the members of the NGOs
  - Courage in student groups
  - Courage in the media and journalists to challenge injustice

## Closing remarks

We are facing a terrible time for democracy in the world; authoritarian and populist leaders have been using elections to get into power and obtain a “legitimate” government. War attitudes and belligerency grows as bilateral and internal conflicts arise in our international community. In this process, we also see fear in the eyes of autocrats or authoritarians. This is with respect to the power of civil society and the obvious result of a backlash for human rights worldwide, in particular Freedom of Association.

Innovative approaches, coordination, common goals and courage can be the basic tools for the survival of NGOs under threats from the regimes, even in the case of totalitarian regimes. Experience has shown that national coordination with international support can stop (at the right moment) or be a tool for survival as well other initiatives.

Some organizations in repressive environments have been proving that it is possible to fight against terrible repressive regimes, like the cases of brave organizations in Cuba, China, Zimbabwe, among others. After decades of repression, exile and terror, the NGO leaders still there, building democracy and defending human rights. In some cases, activist has been accused of subversive, unpatriotic or agents of foreign countries. The Cuban dissident Ariel Hidalgo (1994) wrote the following illustrative view of social domination: “where the seeds of civil society exist, the social contradictions represented by legal means will, by necessity, emerge illegally, at the margins. Despite a rigid totalitarian structure, social forces that contest the regime are inevitable, such as parallel trade unions, human rights committees, and independent cultural, religious, and environmental associations. Thus even under totalitarianism, an opposition can arise with the proper preconditions.” <sup>147</sup>

Every regime has its own particularities, and in some cases, we can see positive success stopping NGOs laws, like in Venezuela or Peru. In these two countries, a positive internal and international campaign, with the help of donors and international organizations, forced the regimes to slow down the process to approve new legislations. In the case of Zimbabwe and Belarus, NGOs developed innovative strategies to keep working, the same in the case of Russia. In the Middle East, most states now recognize the importance of civil society and seek to expand NGO operations by providing incentives such as tax benefits. <sup>148</sup> Now it is almost impossible for a regime to impose restrictions to NGOs without paying the price. Two of the elements that convinced the Community of Democracies to exclude the government of Venezuela were the attacks to free media and the proposed legislation against NGOs. With a world moving faster with new technologies, sometimes it is a matter of time to break the backlash.

Even when the international community must help NGOs and improve networks, NGOs and activist cannot rely only on the possibilities of the international community or international legislation to improve the conditions in their countries or prevent for possible backlash in terms of democracy and freedom of association. They need to place more attention to local networks and work at the national and local levels with all the sectors. They also need to create ownership to the “International principles protecting civil society” and educate the international community about the role of organizations and activist as fundamental elements of a true democracy. It is important to go beyond the traditional NGOs circles and try to create better networks with universities, social groups, professional associations, schools, local governments, among other sectors.

We are together in a common effort for democracy worldwide, and NGOs have been facing challenges for a long time. We are sure that in this case we will reverse the backlash with networking, innovation, transparency and courage.

## End Notes

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1 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144, G.A. res.53/144, annex, 53 U.N. GAOR Supp., U.N. Doc. U.N. Doc. A/RES/53/144 (1999), Article 18(3)

2 "Civil society" constitutes that element outside of government and business sectors, both organized and essentially disorganized, that represents the engagement of people among and with one another to achieve their aspirations, meet their needs, and live creative, active, healthy lives. To define the term much more precisely actually works to limit it, when in fact the essential characteristic of "civil society" is its unlimited quality.

Douglas Rutzen and Catherine Shea. 2006. The associational counter-revolution. *Alliance Magazine* 11(3). [www.alliancemagazine.org](http://www.alliancemagazine.org)

3 Elements of Freedom of Association: A. The Right to Establish an Association with Legal Personality. This include the Right to Registration required in order for an NGO to attain legal personality; B. The Right to Join (Or Not to Join) an Organization; C. The Right to Request, Obtain and Manage Licit Financial Resources; D. The Right to Affiliate with Other National and International Organizations; E. The Duty of the governments to avoid Unreasonable Interference in Internal Governance. Source: The Neglected Right: Freedom of Association in International Human Rights Law

4 In a report, developed by the World Movement for Democracy Steering Committee and the International Center for Not for Profit Law (ICNL) called "Defending Civil Society" we had the opportunity to open consultations for all the regions with meetings in several cities and we found troublesome similarities among different regimes that persecute or imposed limitations/restrictions to civil society. That report came after an intensive consultation process worldwide. According with the report, legal constrains against civil society fall broadly into five categories:

- Barriers to entry (limited right to associate, prohibition against unregistered groups, restrictions on founders, burdensome registration/incorporation procedures, vague grounds for denial, re-registration requirements, barriers for international organizations)
- Barriers for operational Activity (direct prohibitions against spheres of activity, invasive supervisory oversight, government harassment, criminal sanctions against individuals, failure to protect individuals, termination and dissolution, establishment of GONGOs)
- Barriers to Speech and Advocacy (prior restrains and censorship, defamation laws, vague restrictions against advocacy, criminalization of dissent, restrictions on freedom of assembly)
- Barriers to contact and Communication (barriers to the creation of networks, barriers to international contact, barriers to communication, criminal sanctions against individuals)
- Barriers to resources (Prohibition against funding, advance government approval, routing founding through the government).
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5 In July 2006 I had a meeting at the UN/New York with Viktor Yushchenko, his government and the changes in Ukraine were a by-product of the "Orange Revolution", and when we asked him support against Russia, Venezuela, Zimbabwe, Iran, Egypt and other countries with limitations or persecutions against civil society organizations or activist, he basically said that "sometimes limitations are useful because you cannot have so powerful groups controlling each activity of the governments". More dramatic examples of reverse feeling toward NGOs and civil society, after successful civil society revolutions, we can see in Russia and more recently in Georgia.

6 Adong, Florence. 2008. Rising from the Ashes: The Rebirth of Civil Society in Authoritarian Political Environment. *The International Journal of Not-for-Profit Law* 10(3).

7 The International Center for Not-for-Profit Law. 2006. Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations. *The International Journal of Not-for-Profit Law* 8(4).

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8 That year, Russia adopted a new federal law amending the legal framework governing non-governmental organizations (NGOs) and giving the government greater control over NGO activity, Venezuela almost approved a "International Cooperation Law" that banned and restricted operation of NGOs, Sudan passed new bill which imposes restrictions on the work of NGOs operating in Sudan and grants discretionary power to the government over the operations of NGOs, Uzbekistan published a new law on charity which focus its attention in international donations, Peru's government tried to implement a legislation against NGOs, among other initiatives from countries without previous history of NGO's threatening.

9 "Recent Laws" supra note 7

10 Elbayar, Kareem. 2005. NGO Laws in Selected Arab State. *The International Journal of Not-for-Profit Law* 7(4).

11 International Center for Not-for-Profit Law (ICNL) and World Movement for Democracy Secretariat at the National Endowment for Democracy (NED). 2008. *Defending Civil Society: A Report of the World Movement for Democracy*.

12 "Defending Civil Society" supra note 11

13 "Defending Civil Society" supra note 11

14 "Defending Civil Society" supra note 11

15 "Defending Civil Society" supra note 11

16 "Defending Civil Society" supra note 11

17 "Defending Civil Society" supra note 11

18 "Recent Laws", supra note 7

19 "Defending Civil Society" supra note 11

20 "Defending Civil Society" supra note 11

21 "Defending Civil Society" supra note 11

22 "Defending Civil Society" supra note 11

23 "Defending Civil Society" supra note 11

24 "Defending Civil Society" supra note 11

25 Timsina, Netra. 2007. NGOs in Nepal: Social Responsibility and Governance System. <http://www.ong-ngo.org/spip.php?article1513>

26 "Defending Civil Society" supra note 11

27 "Defending Civil Society" supra note 11

28 Elbayar, Kareem. 2005. NGO Laws in Selected Arab States. *The International Journal of Not-for-Profit Law* 7(4).

29 "Defending Civil Society" supra note 11

30 "Defending Civil Society" supra note 11

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- 31 "Defending Civil Society" supra note 11
- 32 "Defending Civil Society" supra note 11
- 33 "Defending Civil Society" supra note 11
- 34 "Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations" supra note 7
- 35 "Defending Civil Society" supra note 11
- 36 "Defending Civil Society" supra note 11
- 37 "Defending Civil Society" supra note 11
- 38 "Recent Laws", supra note 7
- 39 "Defending Civil Society" supra note 11
- 40 "Defending Civil Society" supra note 11
- 41 "Recent Laws", supra note 7
- 42 "Recent Laws", supra note 7
- 43 "Defending Civil Society" supra note 11
- 44 "Defending Civil Society" supra note 11
- 45 "Defending Civil Society" supra note 11
- 46 "Defending Civil Society" supra note 11
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- 56 "Defending Civil Society" supra note 11
- 57 "Defending Civil Society" supra note 11
- 58 "Defending Civil Society" supra note 11
- 59 "Defending Civil Society" supra note 11
- 60 "Defending Civil Society" supra note 11
- 61 "Defending Civil Society" supra note 11
- 62 "Recent Laws", supra note 7
- 63 "Defending Civil Society" supra note 11
- 64 "Recent Laws", supra note 7
- 65 "Defending Civil Society" supra note 11
- 66 "Recent Laws", supra note 7
- 67 "Recent Laws", supra note 7
- 68 "Defending Civil Society" supra note 11
- 69 Klingelhofer, S et. al. 2001. Law and Civil Society in the South Pacific: The Rule of Law, Custom, and Civil Society in the South Pacific. *International Center for Not-for-Profit Law*.
- 70 Soloman, Lester M. et. al. 1999. Global Civil Society: Dimensions of the Nonprofit Sector. Johns Hopkins Center for Civil Society Studies.
- 71 International Labour Organization (ILO), Freedom of Association and Protection of the Right to Organize Convention (ILO No. 87), 68 U.N.T.S. 17, entered into force July 4, 1950. In its article 2 the Convention guarantee the "right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization"; it also included in its article 3 the "right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs" and the obligation to governments and public authorities to "refrain from any interference which would restrict this right or impede the lawful exercise thereof".
- 72 Declaration on Fundamental Principles and Rights at Work (86th Session, Geneva, June 1998): All members have the obligation of: (a) "freedom of association and effective recognition of the right to collective bargaining"
- 73 U.N. Universal Declaration of Human Rights, United Nations General Assembly resolution 217A (III), December 10, 1948 states,  
Article 20 (1) "Everyone has the right to freedom of peaceful assembly and association"  
Article 23 (4) "Everyone has the right to form and to join trade unions for the protection of his interests"
- 74 UN International Covenant for Civil and Political Rights (ICCPR), General Assembly resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976:  
Article 17. "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation"

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Article 21: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

Article 22 (1): Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

75 UN International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 1 (1). All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 8 (1)(a): The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

76 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders Declaration), General Assembly resolution 53/144, G.A. res.53/144, annex, 53 U.N. GAOR Supp., U.N. Doc. U.N. Doc. A/RES/53/144 (1999). This declaration it is a fundamental tool for NGOs and activist because it guarantees the following rights:

Article 1: The right of everyone to promote and protect human rights: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels"

Article 5: Freedom of assembly, association and the right to communicate: "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; (b) To form, join and participate in non-governmental organizations, associations or groups; (c) To communicate with non-governmental or intergovernmental organizations.

Article 6: The right to receive and disseminate information, and to draw public attention

Article 7: the right to develop and discuss new ideas, and to advocate their acceptance

Article 8: The right to participate in the government and the conduct of public affairs, and to submit proposals and criticism

Article 9: The right to be protected by the law and to have an effective remedy, the right to complain about official acts, the right to observe trials, and the right to unhindered access to international bodies

Article 12: The right to participate in peaceful activities publicizing human rights violations and to be protected against violence or adverse discrimination

Article 13: Right to receive funding and other resources "solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means" without any restrictions on funding.

Duties of the State—Articles 2, 9.5, 12.2, 14: The Declaration on Human Rights Defenders contains a number of very explicit provisions on the duty of the State, both to promote and protect human rights generally, and to guarantee the rights of human rights defenders., in particular, it's article 2 explicitly generate the responsibility of the state to promote and protect human rights, including the rights of human rights defenders

77 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>77</sup> International Convention on the Elimination of All Forms of Racial Discrimination (CERD), General Assembly resolution 2106A (XX), December 21, 1965, entered into force January 4, 1969

Article 2 (1). No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin.

Article 2 (2). No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

Article 6: No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

78 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) states, Article 11: "Everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interest." According with the European Court of Human Rights (See Sidiropoulos and others v. Greece, 10 July 1998, European Court of Human Rights, Reports and Decisions, 1998-IV, par. 40) this article also include the right to any individual to joint or participate in any association or group.



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79 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Fourth Ministerial Conference Environment For Europe, Aarhus, Denmark, 23 - 25 June 1998, Article 3 (4): "Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation".

80 American Convention on Human Rights, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

Article 15. Right of Assembly: The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

Article 16. Freedom of Association: Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

81 Inter-American Democratic Charter, Adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001

Article 6: It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

82 Citizen Participation and Strengthening of Democracy in the Americas, AG/RES. 2344 (XXXVII-O/07), Adopted at the OAS fourth plenary session, held on June 5, 2007: To urge member states to promote and foster diverse forms of participation by citizens, the community, and civil society in decision-making on integral development, so that they may contribute to finding solutions to the issues that affect them, to ensuring that the benefits of democracy are shared by society as a whole, and to strengthening and consolidating democracy and human rights.

83 USA Constitution, First Amendment protects the right to peaceably assemble, Freedom of association is guaranteed by the First Amendment to the U.S. Constitution. The relevant portion states, "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble."

84 Canadian Bill of Rights, Statutes Canada, 1960: "It is ... recognized and declared that "...in Canada there have existed and shall continue to exist ... the fundamental freedoms, namely, freedom of assembly and association." (Section 1 (e) of the Canadian Bill of Rights, Statutes Canada, 1960)

85 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

Article 10 (1): Every individual shall have the right to free association provided that he abides by the law.

Article 11: Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

86 The Kampala Declaration on Intellectual Freedom and Social Responsibility (1990)

Article 3: No African intellectual shall in any way be persecuted, harassed or intimidate for reasons only of his or her intellectual work. opinions gender, nationality ethnicity.

Article 10: All members of the intellectual community shall have the freedom of association, including the right to form and join trade unions. The right of association includes the right of peaceful assembly and the formation of groups, clubs and national and international associations.

87 Human Right Charter, League of Arab States, Revised Arab Charter on Human Rights, May 22, 2004, entered into force March 15, 2008.

Article 24: Every citizen has the right: 5. To freely form and join associations with others. 6. To freedom of association and peaceful assembly.

Article 35 (1). Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

88 Charter of the Association of Southeast Asian Nations

Article 2: (h) adherence to the rule of law, good governance, the principles of democracy and constitutional government; (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice

89 The US Department of State developed in 2006 the following recommendations:

1. Individuals should be permitted to form, join and participate in NGOs<sup>89</sup> of their choosing in the exercise of the rights to freedom of expression, peaceful assembly and association.

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2. Any restrictions which may be placed on the exercise by members of NGOs of the rights to freedom of expression, peaceful assembly and association must be consistent with international legal obligations.
  3. NGOs should be permitted to carry out their peaceful work in a hospitable environment free from fear of harassment, reprisal, intimidation and discrimination.
  4. Acknowledging governments' authority to regulate entities within their territory to promote welfare, such laws and administrative measures should protect – not impede – the peaceful operation of NGOs and be enforced in an apolitical, fair, transparent and consistent manner.
  5. Criminal and civil legal actions brought by governments against NGOs, like those brought against all individuals and organizations, should be based on tenets of due process and equality before the law.
  6. NGOs should be permitted to seek, receive, manage and administer for their peaceful activities financial support from domestic, foreign and international entities.
  7. NGOs should be free to seek, receive and impart information and ideas, including advocating their opinions to governments and the public within and outside the countries in which they are based.
  8. Governments should not interfere with NGOs' access to domestic- and foreign-based media.
  9. NGOs should be free to maintain contact and cooperate with their own members and other elements of civil society within and outside the countries in which they are based, as well as with governments and international bodies.
  10. Whenever the aforementioned NGO principles are violated, it is imperative that democratic nations act in their defense.

90 I certainly think that we need to include the right to participate and the right to have access to information.

91 Sources: "Safeguarding Civil Society" by David Moore - provides tools, mechanisms available to protect civil society, "Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations" By the International Center for Not-for-Profit Law and personal experience.

92 US Department of State, *Supra* Note 89

93 Closing statement of Human Rights First to the Working Group on Human Rights Defenders–March 4, 1998

94 "Recent Laws", *supra* note 7

95 "Recent Laws", *supra* note 7

96 The Human Rights Committee must be distinguished from the Commission on Human Rights, a Charter-based mechanism, and its replacement, the Human Rights Council. In contrast to the Commission on Human Rights, a political forum where states debated all human rights concerns (replaced by the Council in 2006), the Human Rights Committee is a treaty-based mechanism pertaining only to the International Covenant on Civil and Political Rights.

97 Moore, D. 2007. Safeguarding Civil Society in Politically Complex Environments. *The International Journal of Not-for-Profit Law* 9(3). The Human Rights Committee, [http://www.frontlinedefenders.org/manual/en/hrc\\_m.htm](http://www.frontlinedefenders.org/manual/en/hrc_m.htm).

98 See the Human Rights Committee, [http://www.frontlinedefenders.org/manual/en/hrc\\_m.htm](http://www.frontlinedefenders.org/manual/en/hrc_m.htm). See also Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/defenders/index.htm>.

99 See the Human Rights Committee, [http://www.frontlinedefenders.org/manual/en/hrc\\_m.htm](http://www.frontlinedefenders.org/manual/en/hrc_m.htm).

100 See the Human Rights Committee, [http://www.frontlinedefenders.org/manual/en/hrc\\_m.htm](http://www.frontlinedefenders.org/manual/en/hrc_m.htm). See also Inter-American Commission on Human Rights, <http://www.cidh.org/what.htm>.

101 Moore, *supra* note 97, See also African Commission on Human and Peoples' Right [http://en.wikipedia.org/wiki/African\\_Commission\\_on\\_Human\\_and\\_Peoples'\\_Rights](http://en.wikipedia.org/wiki/African_Commission_on_Human_and_Peoples'_Rights).

102 See the Human Rights Committee, [http://www.frontlinedefenders.org/manual/en/hrc\\_m.htm](http://www.frontlinedefenders.org/manual/en/hrc_m.htm). See also European Court of Human Rights, [http://www.en.wikipedia.org/wiki/European\\_Court\\_of\\_Human\\_Rights](http://www.en.wikipedia.org/wiki/European_Court_of_Human_Rights).

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103 "Recent Laws", supra note 7

104 See <http://www.rferl.org/content/Article/1143640.html>.

105 Moore, supra note 97; Campaigning for Freedom of Expression: A Handbook for Advocates, International Freedom of Expression Exchange (IFEX), p. 21.

106 Moore, supra note 97; Providing free legal services to victims of police torture, New Tactics in Human Rights <http://database.newtactics.org/NewTactics/CaseList.aspx>. Potential barriers to providing legal assistance in many countries are rules requiring legal assistance to be compensated. In such circumstances, it may be necessary to work with the legal profession to allow for pro bono legal services. Brazil's Instituto Pro Bono has worked to support such an effort in Brazil since 2001.

107 Moore, supra note 97; See Promoting Justice, pp. 65-66.

108 The International Center for Not-for-Profit Law, International Investment Treaty Protection of Not-for-Profit Organizations, June 2007, Regional NGO Law Rapid-Response Mechanism, Supported by USAID

109 The International Center for Not-for-Profit Law, International Investment Treaty Protection of Not-for-Profit Organizations, June 2007, Regional NGO Law Rapid-Response Mechanism, Supported by USAID

110 "Recent Laws", supra note 7

111 KC, Rajendra. 2003. *NGO's Development and Management: NGOs' Illusion and Reality*, Kathmandu: REDA .

112 "Recent Laws", supra note 7

113 "Recent Laws", supra note 7

114 "Recent Laws", supra note 7

115 See [http://www.mjft.org/en/ireth\\_mjft.htm](http://www.mjft.org/en/ireth_mjft.htm) and MJFT! Campaign "Things YOU Can Do" organizing manual.

116 Enough is not enough, Al-Ahram Weekly, <http://weekly.ahram.org.eg/print/2005/731/eg10.htm>; see also Washington Post editorial, <http://www.washingtonpost.com/wp-dyn/articles/A35379-2005Mar14.html>.

117 Moore, supra note 97; Chilean students end mass protest, News Limited, June 10, 2006.

118 Moore, supra note 97

119 "Recent Laws", supra note 7

120 "Recent Laws", supra note 7

121 On August 2006, CIVICUS expresses concern that Venezuela 's proposed "International. CIVICUS called on the government of Venezuela to: a. Withdraw the bill in its current form and, through a consultative process, engage with Venezuelan civil society organizations on appropriate revisions. b. Abide by your commitments to uphold and protect freedom of association, as recognized under Venezuela's Constitution (Article 52); the American Convention on Human Rights (Article 16); and the International Covenant on Civil and Political Rights (Article 22).

122 "Recent Laws", supra note 7

123 "Recent Laws", supra note 7

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124 Moore, supra note 97

125 Moore, supra note 97; Using street theater to inform the public about social issues, *New Tactics in Human Rights*  
<http://database.newtactics.org/NewTactics/CaseList.aspx>.

126 See [www.nqolaw.org](http://www.nqolaw.org).

127 See [www.forum-asia.org/activities/linkage/capacity/atss05/index.shtml](http://www.forum-asia.org/activities/linkage/capacity/atss05/index.shtml).

128 See [www.freedomhouse.org](http://www.freedomhouse.org). See also information on human rights training conducted by Zimbabwe Lawyers for Human Rights, [www.zlhr.org.zw](http://www.zlhr.org.zw).

129 See <http://www.civicus.org/csw/news.asp?section=updates&title=news.asp>.

130 Campaigning for Freedom of Expression: A Handbook for Advocates, *International Freedom of Expression Exchange (IFEX)*, p. 19.

131 Moore, supra note 97

132 See <http://www.freedomhouse.org>; <http://www.transparency.org>; <http://www.rsf.org>; [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex); <http://hrw.org/english/docs/2006/06/28/global14096.htm>.

133 Moore, supra note 97

134 Moore, supra note 97

135 Moore, supra note 97

136 Examples of such international networks include CIVICUS: World Alliance for Citizen Participation, International Women's Rights Action Watch (IWRAP); Peace Brigades International (PBI) promote civil society and human rights through statements of protest, letter writing campaigns, media campaigns, public demonstrations, fact-finding missions, and international accompaniment programs. In high-risk situations, CSOs sometimes work from exile, outside of the country; also, the Burma Lawyers' Council (BLC), operates from Bangkok, raising international awareness of the legal situation in Burma

137 Campaigning for Freedom of Expression: A Handbook for Advocates, *International Freedom of Expression Exchange (IFEX)*, pp. 19-23.

138 Sharing stories of political prisoners and their relatives to pressure for their release, *New Tactics in Human Rights*,  
<http://database.newtactics.org/NewTactics/CaseList.aspx>.

139 Moore, supra note 97

140 See <http://countrystudies.us/poland/81.htm> and [http://www.britannica.com/nobel/micro/555\\_63.html](http://www.britannica.com/nobel/micro/555_63.html).

141 See Charter 77, [http://en.wikipedia.org/wiki/Charter\\_77](http://en.wikipedia.org/wiki/Charter_77).

142 See Charter 97, [http://en.wikipedia.org/wiki/Charter\\_97](http://en.wikipedia.org/wiki/Charter_97).

143 Moore, supra note 97; Protecting Civil Society in Syria, Joe Pace, SyriaComment.com, February 22, 2006.

144 Klingelhofer, S et. al. 2001. Law and Civil Society in the South Pacific: The Rule of Law, Custom, and Civil Society in the South Pacific. *International Center for Not-for-Profit Law*.

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Pages 4-16 set out a fairly detailed discussion the elements that the legal framework governing Civil Society should cover: the way an organization comes into existence, the regulation of their existence, and particular activities of these organizations. The article also discusses to what extent these aspects should be governed (if at all).

145 In order to be accountable to the society, the NGOs should take the questions raised by the society seriously, and do its own evaluation in a regular basis. Unless the issues of transparency and accountability are implemented sternly in the NGOs, the social prestige of the NGOs cannot be elevated.

146 This practice started with the signing of a Compact in England and the rest of the UK in 1998, and has continued with the signing of the Voluntary Sector Accord in Canada in 2001, and similar agreements in Eastern Europe.

147 Adong, Florence. 2008. Rising from the Ashes: The Rebirth of Civil Society in Authoritarian Political Environment. *The International Journal of Not-for-Profit Law* 10(3).

148 Elbayar, Kareem. 2005. NGO Laws in Selected Arab States. *The International Journal of Not-for-Profit Law* 7(4).