

Promoting an enabling civil society environment

Understanding the concept, policy environment and its linkages with LGBTI
civil society protected rights

Working Paper

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This paper is part of the process stated by ILGA Europe with the view to gain a better understanding of the “shrinking space” and CSO enabling environment” policy debates. ILGA Europe intends to contribute to the Human Rights Democracy Network (HRDN) debates on the matter with the objective to possibly forge a middle term action plan covering advocacy and programmer development.

TABLE OF CONTENTS

INTRODUCTION	2
1. FRAMING THE CONCEPT AND MAPPING THE ENVIRONMENT	3
2. REVIEWING THE INTERNATIONAL NORMATIVE POLICY ENVIRONMENT AND THE EU POLICY FRAMEWORK;	9
3. EXPLORING THE SITUATION OF LGBT ORGANIZATIONS WITH RESPECT TO THE THEIR RIGHTS TO OPERATE IN AN ENABLING ENVIRONMENT –SELECTED STATES AND PRACTICES ;	16
4.. RECOMMENDATIONS.....	20
ANNEXES	22

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INTRODUCTION

In 2012 the European Union (EU) reinforced its commitment to foster a dynamic, pluralistic and competent civil society and articulated three priorities for support:

- To enhance efforts to promote a conducive environment for CSOs in partner Countries;
- To promote a meaningful and structured participation of CSOs in domestic Policies of partner countries, in the EU programming cycle and in international Processes;
- To increase local CSOs' capacity to perform their roles as independent development actors more effectively;¹

However, whilst this EU policy framework provides an important baseline, recent research carried during the last ten years has shown a disturbing trend towards what the Human rights and Democracy network (HRDN) has called: *“an increasingly restricted space for independent civil society as well as outright threats to individuals and organization’s”*.

Evidence exists, at various levels, to suggest failure of many States to uphold their obligation to ensure sound democratic participation of CSOs in the public arena and protect human rights defenders. While these observable trends are global, EU member states, EU accession countries and countries part of the EU Neighborhood Policy are far from immune from these phenomena. HRDN considers the issue of ‘shrinking space’ as a point of critical concern *“which underpins the work of all human rights, development and democracy organizations”*².

¹ The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations- COM(2012) 492 final

² Cf draft paper under the title of “The Closing space for civil society : a rights based approach for action ” HRDN –september 2014”

Further analysis and research needs to be undertaken to address this in more depth. Facing the issues at hand, the intention of ILGA Europe is to contribute to the HRDN debates studying and exchanging about the described phenomena with the objective to possibly forge a middle term action plan covering advocacy and programmer development.

This draft working paper is divided in the following sub-sections:

1. Framing the concept and mapping the policy environment
2. Reviewing the in international normative policy environment and the EU policy framework;
3. Exploring the situation of LGBT organizations with respect to their right to operate in an enabling environment-selected states and practices;
4. Recommendations

1. FRAMING THE CONCEPT AND MAPPING THE ENVIRONMENT

After decades of growing global reach, the field of international support for democracy and human rights has been facing a worrisome trend around the developing and post-communist worlds. Governments have been erecting legal and logistical barriers to externally sponsored democracy and rights programs mostly run by NGOs.

Host states have started to publicly vilifying international aid groups harassing or expelling such groups altogether. Of particular concern to many national and international democracy and rights activists were the spread of new laws restricting “foreign funding” for domestic nongovernmental organizations (NGOs). Organizations involved in development aid of democracy support, ACT Alliance, CIDSE but also the Carnegie

Endowment for International peace a US based think-thank, have been monitoring these developments. Those organizations have published recent reports on this issue: *“Shrinking Political Space for Civil Society Action” (2011)* and *“Democracy in Action: Protecting Civil Society Space” (2012)* and *“Closing space. Democracy and Human rights support under fire” (2012)-Carnegie Endowment for International Peace.*

The Carnegie Endowment fund for International Peace³ has recognized that:

- **Pushback trend is global.** The phenomenon no longer emanates from only a few countries and is not only directed at a narrow part of the democracy aid community. Dozens of governments around the world, democratic as well as authoritarian, are lashing out at a wide spectrum of democracy programs and groups.
- **Trend is lasting.** Restrictive measures against international support for democracy and rights are not temporary setbacks. Pushback results from fundamental changes in international politics that are likely to persist for the foreseeable future.

³“Closing space. Democracy and Human rights support under fire” (2012)-Carnegie Endowment for International Peace-2014

- **The response is inadequate.** International reactions to the pushback phenomenon include diplomatic pressure, attempts to strengthen the international normative framework of freedom of association, and new adaptive programming.
- But competing interests, diverging donor perspectives, and a lack of coordination have weakened responses.

1.1 Clarifying the concept of “Shrinking political space”

“Shrinking political space” has been defined by social researchers as: *“an environment of reduced opportunities for CSOs and NGOs to undertake a wide range of public actions”*⁴ Specifically, this can mean different things in different contexts corresponding to the nature of the state and the political regime, the policies and actions of different state and non-state actors, and the characteristics of CSOs and NGOs. Three types of political contexts exist with certain characteristics wherein the operational space of NGOs and CSOs is circumscribed:

a) authoritarian states) hybrid or relatively developed democracies viewing the CSO-sector as an obstacle related, in particular, to human rights and c) war zones, where state power is fundamentally contested.

While the nature of the restrictions on civil society space varies from country to country, some trends have emerged which are:

- Exclusion from participation in policy making
- Feeling unsafe and stigmatized
- Peaceful protest restricted
- Limitations and exclusion from funding.
- Restrictions through legislation

More specifically, HRDN⁵ has identified four key areas for attention:

- **The legal environment:** laws and standards define the space for civil society both through the domestication of international and regional human rights standards and through – on the negative side- laws that specifically target the operation of non-government organizations. Freedom of expression, opinion, assembly and association are the four cornerstones but other areas such as the right to a fair trial have particular relevance, for example, for individual human rights defenders. On the other side, laws that actively limit the operation or financing of civil society organizations are becoming more widespread, as well as those that disguise limitations through registration requirements and increasing and unattainable demands for reporting.

⁴ Shrinking Political Space of Civil Society Action—ActAlliance-2011

⁵ Cf draft paper under the title of “The Closing space for civil society : a rights based approach for action ” HRDN – September 2014

- **The policy environment:** In practice extra-legal measures including personal intimidation, harassment and sometimes criminalization of human rights defenders as well as arbitrary raids and audits also shape civil society space in many countries including where legal frameworks exist to protect civil society, such as the EU. Counterterrorism measures, particularly listing of armed groups and associated criminalization of engagement with those groups pose a specific challenge to civil society organizations.
- **Funding:** civil society organizations rely on multiple funding sources and limiting any one can have a significant impact on the health and sustainability of the sector. Restrictions range from rules that prohibit organizations from accessing foreign funds to limiting the environment such that international organizations are unable to establish field offices and in turn provide domestic funding. In addition, burdensome measures that lead to excessive scrutiny of civil society in the context of anti-terrorism financing such as included in FATF⁶ are proving to be problematic.
- **Participation:** The active participation of civil society is crucial for inclusive and participatory governance. Campaigns aimed at undermining or diminishing the role of civil society discredit organizations and individuals, and limit their capacity to actively participate in decision making processes. Particular groups of human rights defenders often suffer additional discrimination, further preventing their participation in public life.

1.2. Clarifying the concept of “CSO enabling environment”.

The concept and debates related to the enabling environment saw light in the nineties within the international aid CSO community and were part of the efforts undertaken to analyze and draw attention to the threats faced by CSO's around the world.

In the CIVICUS ⁷“State of Civil Society Report” published in April 2013, the environment for civil society was broadly defined as *“the conditions within which civil society works”* > CIVICUS has long used a working definition of civil society as being: *“the arena, outside of the family, the state, and the market, which is created by individual and collective actions, organizations and institutions to advance shared interests.”*

It follows from this working definition of civil society that the environment for civil society: *«is made up of the forces that shape and influence the size, extent and functioning of that arena»⁸.*

⁶ Developed out of a G7 initiative in 1990, ‘Financial Action Task Force (FATF) 40+9’ Recommendations on combating money laundering (AML) and countering the financing of terrorism (CFT) are now an integral part of the global ‘good governance’ agenda. More than 180 states have now signed up to what is in practice, if not in law, a global convention.

⁷ CIVICUS: World Alliance for Citizen Participation is an international alliance of civil society organizations and activists working to strengthen citizen action and civil society throughout the world, especially in areas where participatory democracy and citizens’ freedom of association are challenged.

⁸ In 2012, CIVICUS started to develop a new tool for assessing the enabling environment for civil society, called : Enabling Environment Index (see section 1.5)

In general the international development community has considered an enabling environment for civil society to be “the *political and policy context within which civil society organizations operate with particular interest paid to areas that can be controlled by the state and that relate to governance*”⁹. The EEI¹⁰ defines the enabling environment as “a set of conditions that impact on the capacity of citizens (whether individually or in an organized fashion) to participate and engage in the civil society arena in a sustained and voluntary manner.”¹¹”

There are at least two notable features of this definition. One is the adoption of the capability approach, which “emphasizes the underlying conditions that make individuals ‘capable’ of fulfilling their own goals. This approach considers the quality of the “demand” side of the environment (i.e. the readiness of CSOs and citizens) to be as important as the “supply” side (i.e. governance and policy measures that directly affect civil society).

As such, this approach recognizes the role of socio-economic and socio-cultural factors as key components of the enabling environment for civil society (see section 1.5).

1.3 Brief milestones of the development of the enabling environment policy debate.

⇒ 1990: Aga Khan Foundation and others initiated discussions about the enabling environment for civil society.
⇒ February 2003 & March 2005. Key stakeholders agreed to encourage civil society participation in the coordination of aid strategies at the First High Level Forum on Aid Effectiveness and the Second High Level Forum on Aid Effectiveness held in Rome (2003) and Paris (2005) respectively.
⇒ June 2008- Formation of the Open Forum for CSO Development Effectiveness and Enabling Environment, a global CSO platform to improve the impact of CSO development work and advocate for more favorable government policies and practices for CSOs.
⇒ September 2008. At the Third High Level Forum on Aid Effectiveness in Accra, Ghana, CSOs for the first time were recognized as independent development actors in their own right. Countries, territories and international organizations agreed in the Accra Agenda for Action to work with CSOs to provide an enabling environment that maximizes their contributions to development.
⇒ October 2008- BetterAid, a platform to improve the capacity of civil society to engage in aid effectiveness policy, and Open Forum started to act as the twin civil society fora to engage with the post-Accra international process on aid and development effectiveness.

⁹ CIVICUS Enabling Environment Index-2013

¹⁰ (see section 1.5)

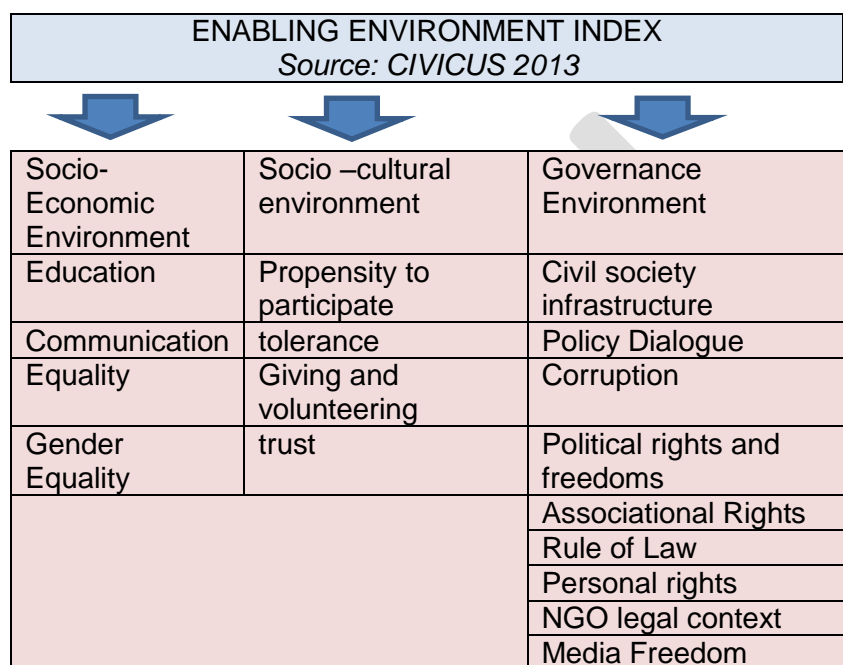
¹¹ CIVICUS Enabling Environment Index-2013-(see section 1.5)

<p>⇒ March 2011. The Multi-stakeholder Task Team on Civil Society Development Effectiveness and Enabling Environment outlined the following fundamental rights guaranteed in regional and international instruments for protection: freedom of association, freedom of expression, the right to operate free from unwarranted State interference, the right to communicate and cooperate, the right to seek and secure funding, and the State’s duty to protect.</p>
<p>⇒ June 2011. Open Forum adopted the Seem Reap CSO Consensus on the International Framework for CSO Development Effectiveness. It defines an “enabling environment” as: the political and policy context created by governments, official donors and other development actors that affect the ways CSOs may carry out their work. It defines “enabling standards” as: <i>“a set of inter-related good practices by donors and governments – in the legal, regulatory, fiscal, informational, political and cultural areas – that support the capacity of CSO development actors to engage in development processes in a sustained and effective manner”.</i></p>
<p>⇒ December 2011. At the Fourth High Level Forum on Aid Effectiveness in Busan, South Korea¹², it was agreed in the Busan Partnership for Effective Development Cooperation that countries, territories and international organizations would implement fully their respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, consistent with agreed international rights, that maximizes the contributions of CSOs to development.</p>
<p>⇒ June 2012. The Working Party on Aid Effectiveness agreed on a set of indicators, targets and processes for the monitoring of the Busan commitments. The enabling environment is one of 10 global indicators. This indicator will monitor whether civil society operates within an environment that maximizes its engagement in and contribution to development.</p>
<p>⇒ December 2012. CSOs launched the CSO Platform for Development Effectiveness (CPDE). The CPDE is the successor civil society platform to the Open Forum/Better Aid processes.</p>

¹² The Busan Global Partnership for Effective Development Cooperation is the multilateral agreement resulting from the 4th High Level Forum on Aid Effectiveness (HLF4), 29 November to 1 December 2011 in Busan, Republic of Korea, agreed by civil society organizations as well as partner’s governments, traditional donors, South South cooperators, the BRICS, and private donors. For civil society, the Busan agreement is a milestone as it is the first time that civil society organizations participated in negotiations as full and equal participants alongside the other development actors.

1.4 Typologies and models for assessing the enabling environment

1.4.1 The CIVICUS enabling environment index



1.4.2 The BCSDN’ Monitoring Matrix on Enabling Environment for Civil Society Development

The Monitoring Matrix on Enabling Environment for Civil Society Development (herein “the monitoring matrix”) was developed in 2013 by the Balkan Civil Society Development Network¹³. The monitoring matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSO with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey. The development of the principles, standards and indicators have been done with consideration of the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix is organized around three areas, each divided by sub-areas.

¹³ The Balkan Civil Society Development Network (BCSDN) is a network of civil society organizations from 10 countries and territories in South East Europe (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Romania, Montenegro, Slovenia, Serbia and Turkey. Mission is to empower the civil society and influence European and national policies towards more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans.

The main areas are:

1. Basic Legal Guarantees of Freedoms;
2. Framework for CSOs' Financial Viability and Sustainability
3. Government – CSO Relationship.

The areas are defined by key principles which are further elaborated by specific standards. In order to enable local CSOs, donors or other interested parties to review and monitor the legal environment and practices of its application, the standards are further explained through indicators.

The first area is 'Basic Legal Guarantees of Freedoms'. This addresses issues which are core to the existence of civil society – the fundamental freedom of everybody to join together, to improve their lives, and to pursue common goals and dreams: the freedom of association in conjunction with the freedom to assemble and the freedom of individuals or groups to express their opinions.

The second area of the Matrix details the types of resources that are typically used by CSOs, in the form of financial benefits (tax benefits, income generation, philanthropy and state support) and human resources (reliance on employees and volunteers). The main principles in this section highlight that CSOs and donors should enjoy favorable tax treatment to support CSO's ability to generate their own income and mobilize local resources.

The third and last area is focused on the relationship between CSOs and the government, although the principles could also apply to the relationship with parliament and local authorities.

2. REVIEWING THE INTERNATIONAL NORMATIVE ENVIRONMENT AND THE EU POLICY FRAMEWORK

When it comes to protecting civil society space and promoting an enabling environment, most international human rights instruments include provisions which are directly relevant to the protection of public freedoms.

2.1 United Nations

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights provide for the rights to freedom of opinion and expression, peaceful assembly and association, and participation in public life.

The International Covenant on Economic, Social and Cultural Rights provides for the right to form or take part (or not take part) in a trade union and to participate in cultural life. The Convention on the Elimination of All Forms of Discrimination against Women provides for the right of women to participate in political, economic and cultural life.

The Convention on the Elimination of Racial Discrimination prohibits discrimination in relation to the rights protected under the two Covenants. The Convention on the Rights of Persons with disabilities also guarantees the rights to freedom of opinion and expression, and access to information, participation in political and public life, as well as in cultural life.

Other relevant human rights instruments include:

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

“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 1):

UN Declaration on Human Rights Defenders (1999)

The Declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the International Covenant on Civil and Political Rights.

The Declaration provides for the support and protection of human rights defenders in the context of their work. It does not create new rights but instead articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders. It gives attention, for example, to access to funding by organizations of human rights defenders and to the gathering and exchange of information on human rights standards and their violation.

The Declaration outlines some specific duties of States and the responsibilities of everyone with regard to defending human rights, in addition to explaining its relationship with national law. The Declaration’s provisions provide specific protections to human rights defenders, including notably the rights:

- To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;

- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
 - To offer and provide professionally qualified legal assistance or other advice and assistance in defense of human rights;
 - To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
 - To unhindered access to and communication with non-governmental and intergovernmental organizations;
 - To benefit from an effective remedy;
 - To the lawful exercise of the occupation or profession of human rights defender;
 - To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
 - To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad)
- While the UN Declaration is not a legally binding text, advocates argue that its adoption by the General Assembly represents a strong global political commitment to the principles enshrined.

⇒ **Human rights Council**

The Human Rights Council has adopted a number of resolutions related to safe and enabling environment for civil society actors, including, inter alia, resolutions 12/2 of 1 October 2009, on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, 12/16 of 2 October 2009 on freedom of opinion and expression, 21/16 of 27 September 2012, on the rights to freedom of peaceful assembly and of association, 22/6 and 22/10 of 21 March 2013 on the promotion and protection of human rights in the context of peaceful protests.

⇒ **Universal Periodic Review**

Recommendations to States undergoing the universal periodic review have often included a focus on the State's relationship with civil society, and its national consultation processes. Independent experts of human rights treaty bodies and special procedures have continued to raise issues related to civil society

⇒ **UNHCHR**

Throughout her mandate, the High Commissioner for Human Rights has advocated for a safe and enabling environment for civil society to be guaranteed at all levels. Strengthening civil society actors, including by creating space for their engagement in the promotion and protection of human rights, has been one of the major achievements of OHCHR in the past twenty years, and will continue to remain in focus in the years to come.

2.2 Council of Europe

The Council of Europe's recommendations "**On the Legal Status of Nongovernmental Organizations in Europe**" specify that "NGOs should be free to solicit and receive funding—cash or in-kind donations—not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties."

2.3 OSCE

The OSCE's Copenhagen Document (1990) states that individuals and groups must be allowed to "have unhindered access to and communication with similar bodies within and outside their countries and with international organizations ,to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary contributions from national and international sources as provided for by law."

2.4 Busan Partnership for Effective Development Cooperation (2011)

The Busan Partnership for Effective Development Cooperation signed at the Fourth High-level Forum on Aid Effectiveness in Busan (South Korea) in November 2011, states that civil society organizations (CSOs) "play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation".

2.5. European Union

⇒ **The Charter of Fundamental Rights of the European Union (the Charter)**

Signed and proclaimed in 2000 it is the reference binding EU document which combines in a single text the whole range of civil, political, economic and social rights and certain "third generation" rights.

It aggregates existing rights that were previously scattered over a range of sources including the European Convention on Human Rights and Fundamental Freedoms (ECHR) and other Council of Europe (COE), United Nations (UN) and International Labor Organization (ILO) agreements.

We shall draw attention to certain specific rights such as Freedom of expression and information (article 11) Article 12 Freedom of assembly and of association (Article 12), and the whole "equality section" which contains notably the right to non- discrimination "*on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation*" (article 21).

⇒ **EU Guidelines on human rights defenders (2008)**¹⁴

The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights.

The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means of supporting and assisting human rights defenders. An important element of the Guidelines is to support for the Special Procedures of the UN Human Rights Council, including the UN Special Rapporteur on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders.

⇒ **EU Strategic Framework on Human Rights and Democracy (2012)**

The Strategic Framework sets out the principles, objectives and priorities designed to improve the effectiveness and consistency of the EU policy in the next ten years. This framework is put into practice through the Action Plan, which brings together 97 actions under 36 headings for implementation until 31 December 2014. Some of its key messages are the preponderance of human rights throughout EU policy; the promotion of the universality of human rights or the work with bilateral partners and multilateral institutions. Of key importance is the commitment to a “genuine partnership with civil society, including at the local level” (action point 2). effective support to Human Rights Defenders (action point 18), 24. Freedom of expression online and offline (Action point 24),

⇒ **EU development aid**

In line with the **EU consensus on development (2005)**, the **Agenda for change (2012)** has set out the EU’s approach based on “targeted conditionality” in line with good governance, democracy, respect for human rights. The place of CSOs in sustainable development is an important objective of EU development policy...

⇒ **EC Communication “The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations” (2012)**

In 2012 the Commission adopted the new Communication “The Roots of Democracy and Sustainable Development: Europe’s Engagement with Civil Society in External Relations». The Communication sets out a new policy for an enhanced and more strategic EU engagement with civil society, with a focus on local CSOs. It covers the different roles they can play ranging from promoting inclusive policy-making, accountability and transparency to their action in service delivery and in inclusive and sustainable growth.

¹⁴ For its external action, the EU has developed an extensive human rights 'toolbox'. It includes human rights guidelines, demarches and declarations, Council decisions, human rights dialogues, a detailed Strategic Framework on Human rights and democracy further support those efforts (see page 12).

the Communication puts forward three priorities for EU support:

- To enhance efforts to promote a conducive environment for CSOs in partner countries.
- To promote a meaningful and structured participation of CSOs in domestic policies of partner countries, in the EU programming cycle and in international processes.
- To increase local CSOs' capacity to perform their roles as independent development actors more effectively.

⇒ **European Neighborhood Policy**

At the last review of its European Neighborhood Policy in 2010-11, the EU introduced the “more-for-more” principle: the EU will develop stronger partnerships and offer greater incentives to countries that make more progress towards democratic reform – free and fair elections, freedom of expression, of assembly and of association, judicial independence, fight against corruption and democratic control over the armed forces. Increased EU support to its neighbors is conditional. It will depend on progress in building and consolidating democracy and respect for the rule of law.

⇒ **Guidelines for EU support to Civil society in enlargement countries, 2014-2020**

In this document, the EC has confirmed the key role played by civil society in making a substantial contribution to helping candidate and accession countries to understand the need for political reform and supporting the transposition of the EU acquires notably when it comes to promoting the rule of law, democratic governance, fundamental rights, enhancing transparency or fighting corruption. The EU guidelines states that a country wishing to join the EU needs to ensure “a CSO conducive environment” which means to have an appropriate legal, judicial and administrative environment for exercising the freedoms of expression, assembly and association. This includes rights for CSOs such free and independent operation and cooperation between citizens and the absence of disproportionate or unwarranted state interference. The enabling financial environment is also needed to make it possible to transpose these rights into practice. The Commission will offer a combination of political and financial support to meet these priorities, in its political support the Commission will encourage enlargement countries to make legislation more conducive for civil society.⁴

The Commission will develop a set of objectives, results and indicators for EU support to civil society which will allow for the measurement of progress at country level as well across the enlargement region, including also from a gender perspective. A framework is enclosed with the guidelines. The monitoring and evaluation system will include a yearly regional meeting with the involvement of CSOs to analyses the state of play and advancement towards targets.¹⁵

⇒ **EU Guidelines to promote the enjoyment of all human rights by Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) persons (2013)**

This EU guidelines details EU strategy of support of LGBTI rights in its external relations. The guidelines recall the international human rights standard and EU legislative framework concerned with the enjoyment and protection of LGBT human rights.

¹⁵Cu Enlargement Guidelines for EU support to civil society in enlargement countries, 2014-2020-december 2013

The guidelines provide a checklist for assessing LGBTI human rights issues and now explicitly cover the rights of transgender and intersex people. The rights of LGBTI human rights defenders should be considered when monitoring the situation of human rights defenders in third countries.

Point 8 of the guidelines the EU mentions that” *it is committed to advancing the human rights of LGBTI persons... by taking into account the local realities in which human rights defenders need to advance their struggle*’.

The guidelines are for use by EU staff around the world and by EU countries' national embassies in connection with human rights country strategies and reports, demarches and public statements, individual cases, court hearings and prison visits, political dialogues, international mechanisms and efforts by civil society provide a checklist for assessing LGBTI human rights issues and now explicitly cover the rights of transgender and intersex people.

⇒ **EU Human Rights Guidelines on Freedom of Expression “Online and Offline”(2014)**

These guidelines intend to promote and protecting freedom of opinion and expression. The approach is guided by the universality, indivisibility, inter-relatedness and interdependence of all human rights, whether civil, political, economic, social or cultural.

The Guidelines explain the international human rights standards on freedom of opinion and expression and provide political and operational guidance to officials and staff of the EU Institutions and EU Member States for their work in third countries and in multilateral fora as well as in contacts with international organizations, civil society and other stakeholders. The Guidelines also provide officials and staff with practical guidance on how to contribute to preventing potential violations of freedom of opinion and expression, how to analyses concrete cases and to react effectively when violations occur in order to protect and promote freedom of opinion and expression in the EU’s external action. They also outline how and in what strictly prescribed circumstances the freedom of opinion and expression can be limited.

3. EXPLORING THE SITUATION OF LGBT ORGANIZATIONS WITH RESPECT TO THEIR RIGHTS TO OPERATE IN AN ENABLING ENVIRONMENT - SELECTED STATES AND PRACTICES

This section intends to explore the forms through which LGBTI organizations are affected by the situation of the so called "shrinking space" within the EU, in countries preparing for the EU enlargement process and or as part of the European Neighborhood policy. . The methodology for conducting this exercise was based on four parallel processes:

- An informal facilitated discussion with ILGA Europe staff on 23 September 2014;
- A questionnaire sent to ILGA membership in the course of October 2014 to selected countries where evidence has shown manifestations of a so called shrinking space for LGBTI organizations.
- A short structured exchange during the forthcoming ILGA Europe Annual Assembly taking place from 8th to 11th of October 2014 in Riga (Latvia).

3.1. Shrinking space workshop during ILGA' Europe Annual Conference in Riga – October 2014

During ILGA Europe Annual Assembly held in Riga, a workshop was held under the title **"Shrinking spaces for civil society LGBTI organizations, Are LGBTI Public Freedoms under threat? How do we respond?"**

The workshop saw the participation of 55 attendees coming from various EU member states. EU Eastern Neighborhood countries and Russia. The essentials of the "shrinking space concept" were presented during this workshop and included the contributions from Antonio Mihajlov Subversive Front – Association for critical approach to gender and sexuality (Macedonia) and Tamás Dombos, Háttér Society (Hungary). The workshop was an opportunity for participants from countries as diverse as Macedonia, Hungary, Serbia, Spain, Turkey, Russia, Armenia and other post-soviet countries to signal developments which risk violating basic human rights such as right to liberty, freedom of association, freedom of expression and information as well as freedom of the press and wider media, and are becoming increasingly alarming.

The disablement of the legal environment for NGOs and the questioning of their legitimacy is becoming a significant and worrying trend. The case of Hungary an EU member state is in this context quite representative of the trends that were being observed which include : a restriction to participate in policy making processes, the destabilizations of the NGO legal environment through a series of steps which include the restructuring funding schemes and priorities, the demonization of foreign donors , the conduction of financial investigations against NGOs, receiving money from EEA/ Norway Grants, a restricted access to public media along with self-censorships.

The situation of Macedonia presented by Antonio Mihajlov from the Subversive Front has signaled some worrying developments which include notably increased restrictions to the freedom of assembly and freedom of expression, attacks against LGBTI human rights defenders during peaceful demonstrations. The negative public image of NGOs is fueled by negative discourses voiced by political leaders towards the LGBTI community and organization's within a mainstream public opinion where a lack of civil engagement prevails and which is not conducive to the empowerment of civil society role in the public arena. Heterosexuality and conservative patriarchal values are also still very much engrained in the private life/family sphere, in educational institutions and in the media and this contributes to creating a hostile and intimidating environment for LGBTIs CSOs.

Exchanges further held in the workshop have enabled participants to voice their concerns and identify commonalities and trends related to CSO's shrinking space which is particularly prevalent in the post-soviet countries. Trends are characterized by increased nationalist, anti-western rhetoric. States are vilifying human rights and, in particular, LGBTI rights depicted as "western values" and LGBTI activists are labelled as 'enemies of the nation' and 'destroying family values'. Newspapers are publishing 'black lists' with LGBTI activists and organization's named and shamed. Armenia is increasing its ties with Russia in various aspects of its public policies and there is fear among local CSOs that this will result more crackdowns on civil society.

The security of LGBTIs Human rights defenders being at risk is being raised as part of the shrinking space concerns by most participants from post-soviet countries but also Serbia or Macedonia

Support from international organizations are being seen as generally positive for local LGBTI groups as it is seen as an opportunity to shed light on the restrictions of rights affecting CSOs.

Freedom of expression & association is not fully guaranteed in many countries. Increased financial regulations are used as means to control the activities of CSOs. The development of "cross-border solidarities addressing "shrinking space" manifestations have been identified as important means to enable the LGBT rights movement to act in a less isolated manner joining forces with other Human rights organization's on a topic which relates to the role of civil society as a necessary democratic force in public space.

3.2 LGBTI organizations experiences of civil society restricted space.

ILGA Europe latest progress reports 2014 submitted in the context of the EU enlargement process have been already signaling the worrisome developments related to the situation for LGBTI people and its participation in public space has remained difficult. The right to freedom of assembly of LGBTI people was violated in many instances or could not be guaranteed due to security issues (Serbia, FYR, BIH, and Turkey).. Physical attacks and threats against members of the LGBTI community also continued to be high with the position of LGBTI human rights defenders increasingly being at risk (Serbia, FYR, BIH, Turkey, and Montenegro).

A questionnaire has been sent to selected member states including Hungary, RFY Macedonia, Russia, Ukraine, and Turkey and intending to capture the perceptions of ILGA's membership with regard to their experiences of shrinking space manifestations in their country.

The questionnaire was structured in two parts: The first part contained open answers questions. The second part (see questionnaire structure and results in annex 2) contained questions addressing 5 principles that characterize the so called enabling environment. For the open questions part of the questionnaire, ILGA Europe member's statements provided useful testimonies of the experiences of LGBTI CSOs and which are summarized below:

In Ukraine, under the pressure of the EU, new opportunities have arisen in terms of CSOs' right to operate but the development of extreme right political movements is constraining. In **Russia**, restrictive laws, such as the one on 'foreign agents' hinder the work of organizations (those not under government control) and the work of the independent media. The government pressures LGBT civil society activists in many different ways, including by use of force and disproportionate legal charges. Amendments to the legal NGO framework create additional hurdles in the functioning of the civil society sector. The limitation of media pluralism has resulted with increased difficulties for LGBT organizations and other human rights organizations to have a voice in public debate which amounts to a form of tacit censorship.

In Macedonia, the homophobic and transphobic rhetoric is still very present in the media and the political discourses and this is affecting the environment in which the LGBTI organizations operate. In addition, there is no state funding of LGBTI programs or organizations. There is also a lack of involvement of LGBT CSOs in policy making consultations.

The case of **Hungary** an EU member state deserves special attention with several manifestations of shrinking space including:

- **Restricting the engagement** of NGOs to participate in policy making processes (no targeted consultations with LGBTI NGOs),
- **Destabilizing of the NGO legal environment** with the adoption of a new Civil Code and new law on civil organizations which forces all organizations to rewrite their bylaws.
- **Restructuring funding schemes and priorities.** The State NGO fund (Nemzeti Civil Alapprogram, NCA) supervised by elected by NGOs was abolished, new funding mechanism (Nemzeti Együttműködési Alap, NEA) under control of government delegates and government-friendly NGOs
- **Defining new human rights priorities for funding** which fall under the "National Togetherness" priority. Funding allocations is centered on projects for ethnic Hungarians living outside Hungary and family values. Projects related to LGBT issues are labelled as "hardly within the aims of the call or designated as "not important" (e.g. statement by State Secretary for Religious, Minority and Civil Affairs Soltész on July 28, 2014 calling LGBT projects "promoting uselessness and lack of values")
- **Demonizing organization's receiving money from foreign sources.** NGOs financed by foreign donors are denounced as "political activists serving foreign interests" (foreign companies taxed by the Hungarian government) (speech by Viktor Orbán on July 25, 2014)
- **Conducting financial investigations against NGOs having received funding from EEA/ Norway Grants**

- **Bringing limitation to the freedom of assembly.** In 2011 and 2012 the Police banned the Pride March arguing it is a disproportionate hindrance of traffic, in both cases the Court found the ban unlawful, and the March could take place; in the fall 2014 the Court found that the Police acted in a discriminative way when banning the Pride.

3.2.1 Shrinking space trends affecting LGBTI organizations in the medium and long term

In **Hungary**, Anti-NGO rhetoric, particularly addressed to LGBTI groups, depicted as being on the rise. In **Macedonia**, trends are described as worrisome and might further constrain the space of LGBT's activism and engagement, prohibiting the so-called "homosexual propaganda" and promoting the family and traditional values agenda". In **Russia**, the 'shrinking space' can be a catalyst force for more unity among civil society actors but bears counter effects that could lead many LGBT CSOs to pursue their activities "underground".

3.2.2 Needs of LGBT civil society organizations

There is a quite widespread consensus emerging from ILGA member's responses concerning the needs of LGBTI civil society those are:

- **Funding** Organizations need to have a number of alternative funding streams both from foreign and national sources which can make them less dependent from state owned funds. Access to ENI (The European Neighborhood Instrument) in the case of Russia and Ukraine and IPA in the case of accession countries are key instruments in this regard
- **Human rights.** Shrinking space is clearly intertwined with the full enjoyment of LGBTI human rights whether it relates to freedom of assembly, anti-discrimination and hates speech provisions. Protection needs to be provided to LGBT activists which are at risks. Protection should include both in country support as human rights defender and possibility to leave the country.
- **Advocacy support.** Shrinking space manifestations require the political attention and support from EU and other inter-governmental bodies.
- **Civil society coalition building** Support is also needed from International non-governmental organizations (EU) and civil society coalition building with other civil society actors on targeted actions related to civil society shrinking space
- **Policy participation.** Participation of LGBTI NGOs in policy making needs to be further improved.

4. RECOMMENDATIONS

- The issue of “civil society’s “restricted space or shrinking space”¹⁶ is clearly intertwined with the negative obligation incumbent on states not to interfere with the enjoyment of certain human rights and the positive obligation of the afore states to protect and promote human rights.
- Indeed and this is being observed in the context of the screening of the transposition of EU fundamental rights acquis by candidate or accession countries, restricted CSO space is not an issue that is to be carried in isolation from fundamental rights mainstreaming.
- A country where the democratic rule of law is weakened or threatened, will see limitations brought to civil society space but also to other protected human rights; the right not to be discriminated against on the basis of race, sexual orientation, age, disability, religion, gender, right to liberty and security, freedom of Religion, women’s Rights or media freedom.

This section suggests preliminary policy recommendation which should set the ground for ILGA’ Europe forward looking reflex ion and future action plan.

1. **Acknowledging “Shrinking space” as an element of ILGA Europe internal strategy**
 - Integrating clearly “the fostering of an enabling environment” as a critical element of the organization strategic positioning
2. **Monitoring “Shrinking space developments**
 - Engaging ILGA membership to monitor developments in their country;
 - Regularly compiling and developing knowledge on trends;
 - Integrating “a civil society shirking space monitoring process” in ILGA Europe yearly Rainbow map and annual review;
 - Consistently monitoring laws within the EU (with ILGA Europe membership),
3. **Advancing research on LGBTI’s organizations, Civil Society Shrinking Space and Human rights and exploring funding partnership’s with Human Rights and Pro-Democracy foundations**
 Developing knowledge based action research projects with deeper analysis of the interplay between civil society space and LGBTIs human rights within and outside EU borders

¹⁶ “Shrinking political space” has been defined by social researchers as: “an environment of reduced opportunities for CSOs and NGOs to undertake a wide range of public actions” cf Shrinking Political Space of Civil Society Action-Act Alliance-2011

4. Building targeted “NGO diplomacy advocacy”

NGO diplomacy approach should seek to urge the EU to renew efforts to vigorously defend the space for civil society both externally but also within its own borders.

Evaluation should be made about the activities conducted by the EU EASE in the context of the implementation of the EU Strategic Framework on Human Rights and Democracy¹⁷ (sections 2 and 22).

5. Developing targeted advocacy approaches using the EU external HR tool box

(LGBTI Guidelines, Freedom of expression, Guidelines, EU defenders Guidelines, Human rights Country reports drawn by the EU delegations, bilateral dialogues) in the context of the **EU Eastern partnership policy and financial instruments (ENI)** and the **EU relations with Russia**

6. Screening the implementation of the Guidelines for EU support to civil society in enlargement countries, 2014-2020 and exploring further how those guidelines will feed into the yearly enlargement progress reports and the Enlargement negotiations process

7. Building coalitions with HRDN members

Exploring the development of specific regional or country based advocacy efforts can be developed with HRDN members building on the HRDN “4 point framework” (legal framework, Policy making, Funding, Participation).

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¹⁷ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

ANNEX I

This annex provide for more information on the “enabling environment” attributes building on the work carried by CIVICUS.

The CIVICUS ‘State of Civil Society report 2013¹⁸’ has outlined that key aspects of the so called “enabling environment”:

A. CSOs’ legitimacy, transparency and accountability: Civil society groups should make efforts to be transparent and accountable to their stakeholders, to derive their legitimacy from endorsement by their stakeholders;

B. Building connections, coalitions and solidarity: There should be multiple connections and collaborations between different civil society groups and individuals, and collaborative platforms and coalitions at different levels;

C. The legal and regulatory environment: CSO laws should be clear and well-defined. The registration process should be quick, easy and inexpensive. The state’s laws, regulations and policies on civil society should make it easy for civil society groups to form, operate free from interference, express their views, communicate, convene, cooperate and seek resources;

D. Political environment: governments and politicians should recognize civil society as a legitimate social and political actor and provide systematic opportunities for state and civil society institutions to work together;

E. Public attitudes and perception: There should be tolerance of people and groups who have different viewpoints and identities; and it should be easy for all people to participate in civil society;

F. Corruption: There should be no tolerance of corruption amongst state officials, political actors, people in business and civil society personnel;

G. Communications and technology: There should be reliable, cheap and widespread access to communications platforms and technologies;

H. Resources: Civil society groups should be able to access resources from a range of sustainable sources, including domestically, and to define their own activities, rather than have these defined by funding is.

¹⁸ Cf.-CIVICUS 2013-Enabling Environment Index

ANNEX II

This questionnaire has been using the model and standards provided by the **«Monitoring Matrix on Enabling Environment for Civil Society Development- the Tool-Kit»** published by **Balkan Civil Society Development Network (BCSDN)**-January 2013 - www.balkancsd.net

PRINCIPLES	STANDARDS	AVERAGE SCORE 0 no standard, 2, poor, 5 adequate very good
FREEDOM OF ASSOCIATION	<ul style="list-style-type: none"> • All individuals and legal entities can freely establish, join and participate in informal and/or registered organizations offline and online without any discrimination based on sexual orientation, and gender identity • The legal framework provides guarantees against state interference in internal matters of associations, foundations and other types of non-profit entities. • There are no cases of unwarranted state interference in internal matters of LGBTI associations. • LGBTI CSOs can freely seek and secure financial resources to support their activities <ul style="list-style-type: none"> ○ domestic funding ○ foreign funding 	Average score : 3,6
FREEDOM OF ASSEMBLY AND EXPRESSION	<ul style="list-style-type: none"> • All individuals and legal entities can freely establish, join and participate in informal and/or registered organizations offline and online without any discrimination based on sexual orientation, and gender identity • The legal framework provides guarantees against state interference in internal matters of associations, foundations and other types of non-profit entities. • There are no cases of unwarranted state interference in internal matters of LGBTI associations. • LGBTI CSOs can freely seek and secure financial resources to support their activities 	

FREEDOM OF ASSEMBLY AND EXPRESSION	<ul style="list-style-type: none"> • The legal framework is based on international standards and provides the right for freedom of assembly and expression for all without any discrimination. • There are no cases of violation of the freedom of assembly, and any LGBTI group of people can assemble at desired place and time, in line with the legal provisions. • Restrictions are justified with explanations of the reason for each restriction, which is promptly communicated in writing to the organizer to guarantee the possibility of appeal. • LGBTI CSO representatives enjoy the right to freedom of expression on matters they support and they are critical of. • There are no cases of violation of the right to freedom of expression for all. • The state authorities put in place if needed safety and security measures protecting LGBTI CSOs during gatherings. • LGBTI CSO representatives enjoy the right to freedom of expression on matters they support and they are critical of. • There are no cases of violation of the right to freedom of expression for all. • The state authorities put in place if needed safety and security measures protecting LGBTI CSOs during gatherings. 	Average score: 2,9
FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINIBILITY	<ul style="list-style-type: none"> • There is a law or national policy (document) that regulates state support for institutional development for CSOs, project support. • There is a national-level mechanism for distribution of public funds to CSOs. • Public funds for CSOs are clearly planned within the state budget. • There are clear procedures for CSO participation in all phases of the public funding cycle. • Available public funding responds to the needs of the LGBTI CSO sector. • There are no restrictions (e.g. administrative or financial burden, preapprovals, or channeling such funds via specific bodies) on LGBTI CSOs to receive foreign funding. 	Average score: 3,3
FRAMEWORK FOR POLICY DIALOGUE-	<ul style="list-style-type: none"> • There are strategic documents dealing with state –CSO relationship and CSO development and they embrace measures that have been developed in consultation with LGBTI organizations or recommended by CSOs. • CSOs from different areas and notably the LGBTI sector regularly participate in all phases of the strategic document development, implementation and evaluation. • There is a national level institution or mechanism with a 	0,4

	<p>mandate to facilitate cooperation with CSOs (e.g., Unit/Office for cooperation; contact points in ministries; council).</p> <ul style="list-style-type: none"> • LGBTI CSOs are regularly consulted and involved in processes and decision making by the competent institution or mechanism(s). 	
COLLABORATION IN SERVICE PROVISION	<ul style="list-style-type: none"> • Public institutions routinely invite all interested CSOs, including LGBTI organisations to comment on policy/legal initiatives at an early stage. • LGBTI CSOs are provided with adequate information on the content of the draft documents and details of the consultation with sufficient time to respond. • Written feedback on the results of consultations is made publicly available by public institutions. • There are clear guidelines on how to ensure appropriate representation from LGBTI civil society, based on transparent and pre-determined criteria. • Decision-making and advisory bodies on issues and policies relevant for civil society generally include LGBTI CSO representatives. • LGBTI CSO representatives in these bodies are enabled to freely present and defend their positions, without being sanctioned. • LGBTI CSO representatives are selected through selection processes which are considered fair and transparent. 	0
PUBLIC ATTITUDES AND PERCEPTIONS, PUBLIC ATTITUDES AND PERCEPTIONS /SOCIAL CULTURAL ENVIRONMENT	<ul style="list-style-type: none"> • LGBTI CSOs are able to obtain contracts in competition with other providers and are engaged in various services (e.g., education, health, research, and training). • LGBTI CSOs are included in all stages of developing and providing services (needs assessment, determining the services that best address the needs, monitoring and evaluation). • The societal environment is open to people and groups who have different viewpoints and identities; and it is easy for all people to participate in civil society 	2,6

COMMENTS

While, the 8 returned questionnaires do not allow us to draw definitive conclusions, they provide useful markers of the situation experienced by CSOs organizations on the ground. Average scores range from “**non-existent to poor**” for matters related to **policy dialogue and collaboration in service provision**. Average scores are higher for matters related to **freedom of association, freedom of assembly and expression and CSO’s financial viability and sustainability**.