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**Challenges and Opportunities to Promote
More Enabling Legal Environments for Civil
Society Organizations:**

A Look at Six Latin American Countries

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Legal Environments for Civil Society Organizations:
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I. Introduction

In July 2015, more than 70 representatives of civil society organizations (CSOs) from diverse Panamanian provinces and indigenous territories held a Dialogue with key authorities in the Executive Branch and National Assembly regarding the legal environment for the country's civil society sector. The event organizers facilitated a conversation regarding legal problems revealed in a study on relevant legislation and a survey of 50 CSOs regarding their practical experience with implementation of the laws. The research documented, for example, great discretion in granting legal personality to CSOs with routine delays of up to two or more years; difficulties in obtaining access to public funding and monitoring the use of that funding by CSOs; and several laws that establish mechanisms for civic participation in public policymaking that are not being implemented.

The organizers reported that it made a big impression on the public officials to learn that Panamanian law regulating CSOs compares unfavorably with the norms of other countries in the region where the same study and survey were conducted.¹ As a result of the Dialogue, the participants representing civil society and the State agreed to establish a technical working group in the coming months to draft a CSO Law and a proposal to create a Secretariat for Civil Society, among other points. They identified more than a dozen reforms based on international law and best practices that should be considered for the new law, and developed a consensus plan for achieving the objectives by key dates.

A month later, a similar Dialogue was held in Argentina between approximately 130 CSO leaders, active and retired public officials, legislators and their assistants, academics, and representatives of international cooperation agencies, among others. For the organizers, it was a critical moment for promoting dialogue on the legal environment for CSOs: reforms to the Civil and Commercial Code were just entering into force, with little-known new limitations on the formation and operation of organizations. Moreover, the country was anticipating important changes in the Legislative and Executive Branches following elections in the coming months that could provide a favorable context for reforms.

The organizers facilitated reflection on the legal environment and possibilities for improving it through presentations on Argentine laws that regulate CSOs and implementation practices, as well as presentations on the same topics with regard to Chile, Brazil, and Mexico. The presentations raised awareness among high-ranking public officials on the negative impact on CSOs due to various problematic regulations, and received commitments of collaboration from some to work in the future towards proposals for legal reforms.² Importantly, they were able to incorporate additional members and inject new energy into an existing small working group that had promoted legal reforms for years without much impact. Now, this group has a concrete short-term plan of action for developing proposed reforms on priority topics, and a timeframe for advocacy that includes formal direct

¹ Observation made by an organizer, Karla Pinder, and shared with ICNL in October 2015.

² Observation made by an organizer, Pedro Gecik, and shared with ICNL in October 2015.

conversations with presidential and legislative candidates regarding the importance of an enabling legal framework for CSOs.

Partners in Bolivia also held a Dialogue at the same time, utilizing identical research tools but in a much more complex political environment. In previous weeks, the Vice-President, Minister of Autonomies, and other senior Executive Branch officials had issued declarations accusing certain CSOs of carrying out activities motivated by political and foreign interests. In addition, there was a climate of great legal uncertainty due to a 2013 law that required all existing CSOs to obtain re-recognition of their legal personality according to the new law's provisions. This law, which has been poorly understood and implemented by CSOs and civil servants since its publication, establishes incompliance with any of its provisions as grounds for forced dissolution, among other restrictions.

Despite the climate of accusations and threats – and notwithstanding the objections of some CSOs that did not consider the moment to be propitious – the organizers held a Dialogue with the State which they consider was beneficial to the civil society sector. Not only did several high level officials including the head of the Unit for Granting and Registering Legal Personality participate, but the authorities were given space in the program to present their vision regarding regulation of the sector. Civil society participants thus had an opportunity to speak face-to-face with the officials in charge of implementing the law. They presented statistics and anecdotes revealed in the CSO survey which reflect concrete problems with the law's requirements and the way in which it is being implemented.

The head of the Unit for Granting and Registering Legal Personality responded by publically recognizing that the decree that implements the law is flawed, and invited the CSO representatives to discuss improvements. Although the same official appeared to show some degree of openness to dialogue, the fact that she denied that there are any problems with the law itself as opposed to the implementing decree demonstrates that the opening is limited. In addition, the representative of the autonomous government of Pando publicly stated that all CSOs must reflect conformity with national and departmental development plans in their by-laws as a condition for undertaking activities in that department. This on-the-record statement was evidence of challenges to the survival of CSOs with objectives and perspectives that are independent of the ruling party.

These three recent experiences demonstrate that significant problems exist in the legal environment for CSOs in diverse countries in the region. They also demonstrate that even in a hostile environment, advances toward reforms are possible through conversations between civil society and the State that are grounded in legal principles; technical, non-partisan information regarding the law and implementation practices in the country; and comparable data regarding the legislation and its implementation in influential countries.

Objectives and Methodology of Study

Freedom of Association

Everyone shall have the right to freedom of association with others . . . No restrictions may be placed on the exercise of this right other than those which are prescribed by 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. . . .

International Covenant on Civil and Political Rights, Article 22.

In the Americas and around the world, individuals join together to collectively confront shared problems. The fundamental right of freedom of association, enshrined in several international human rights instruments,³ requires States to respect and promote full enjoyment of the right to collaborate in associations and other legal forms of CSOs. However, as is reflected in these recent experiences, in Latin American countries with different ideological, demographic, and economic characteristics, the legal environment in which CSOs operate limits the exercise of freedom of association, or does not promote it in a transparent fashion.

The International Center for Not-for-Profit Law (ICNL) has accompanied human rights defenders in the hemisphere in promoting and defending freedom of association. We have seen, as demonstrated in the experiences described above, that organized CSOs can advance reforms in the legal environment through *well-informed* technical dialogue with the State. An essential element, in our opinion, has been to facilitate access to *sufficiently persuasive information* in order to:

- *Minimize partisanship and polarization in the debate* – for example, by demonstrating that the call for reforms is grounded in fundamental universal rights rather than opposition politics;
- *Demonstrate the negative practical impact that restrictive, confusing, inefficient, or poorly-implemented norms have on CSOs and the communities they benefit* – for example, through data obtained in interviews with lawyers, accountants, and CSO representatives; and
- *Present alternative and more enabling laws and practices* – especially models of laws and practices that are being implemented with better results in other countries.

With generous support from the Open Society Foundations and collaboration from teams of experts,⁴ ICNL conducted this study with the goal of helping to produce this type of information. We hope that it will contribute to more favorable environments for civil society in the region.

³ Article 16 of the American Convention on Human Rights (American Convention; available at https://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos.pdf) guarantees the right to freedom of association in terms that are almost identical to Article 22 of the International Covenant on Civil and Political Rights (ICCPR; see: <http://www.ohchr.org/SP/ProfessionalInterest/Pages/CCPR.aspx>). These two instruments have been ratified by all of the countries of the Americas with the following exceptions: ICCPR: Antigua and Barbuda, San Kitts and Nevis, and Saint Lucia; American Convention: Antigua and Barbuda, Bahamas, Belize, Canada, United States, Guyana, San Kitts and Nevis, Saint Lucia, and St. Vicente and the Grenadines. In addition, Venezuela and Trinidad and Tobago have renounced the American Convention.

⁴ ICNL recognizes and extends its appreciation to the experts who contributed to this comparative study. Their final reports are attached to this report as annexes and the backing documents for their research are available at: www.icnl.org. The experts are: Argentina: Pedro Gecik and Guillermo Canova; Bolivia: Ramiro Orias, Antonio Peres, and Moira Vargas; Brazil: Eduardo Szazi and Paula Raccanello Storto; Chile: Felipe Viveros and Francisco Soto; Mexico: Miguel de la Vega and Artemisa Montes; and Panama: Magaly Castillo and Karla Pinder.

Regarding the first point, reports of the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (the UN Special Rapporteur) and the Inter-American Commission on Human Rights (IACHR) provide interpretations of the right to freedom of association. These reports, which we cite throughout this study, are valuable tools for guiding States on how to comply with their obligations under international law, and help human rights defenders and civil society in general understand and demand their right to freedom of association. Nonetheless, some of the standards contained in the reports are very general. For example, the IACHR explains that States must “ensure that the registration of human rights organizations will be *processed quickly and that only the documents needed to obtain the information appropriate for registering will be required.*”⁵ What does “quickly” mean, and what are the “needed documents” for registering? As demonstrated below, significant discrepancies exist among the countries studied in terms of the length of the registration process and the documents required, and delayed procedures and burdensome requirements seriously affect CSO operations. One of the objectives of this study is to provide relevant data to international human rights mechanisms regarding the situation of freedom of association in the region. We hope that this information will help inform richer and clearer interpretations of this right in future reports.

The study’s methodology was designed to satisfy the demand for this type of information on the legal environments for civil society in the region:

- The study was conducted in six representative countries in the Americas – Mexico, Panama, Bolivia, Chile, Argentina, and Brazil – that were strategically selected to reflect the diversity of the region. The results of the study demonstrate that there are, in fact, limits to freedom of association in countries governed from various ideological orientations. The information compiled does not, therefore, lend itself to disqualification as intended to criticize a particular government or political bloc. It is our hope that the information and analyses of these six representative countries will contribute to comparative studies in other countries in the region.
- To facilitate comparative documentation of the legal environment for CSOs, the teams of experts in each participating country utilized an identical two-part research tool: the first part consists of a matrix with questions on the letter of the law in force; the second part consists of a CSO survey regarding the organizations’ experiences with enforcement of the law. For example, using the first part of the research tool, the experts determined if the law establishes a time limit for legal personality. In the second part, the survey asked the CSOs how much time passed between submitting their application and receiving legal personality, as well as the practical impact on the organization of any delay. Each team was required to gather survey responses from CSOs of diverse legal form, size, thematic area, and location. The teams in large countries had the goal of gathering at least 100 completed surveys, while other teams had the goal of gathering at least 50 surveys. The two-part research tool is available as an annex to this report. We hope the information compiled will be useful to researchers interested in carrying out comparative analysis of the legal environment for CSOs in other countries in the region.
- The teams of experts were selected due to their extensive expertise in the laws governing CSOs in their respective countries. The teams applied their experience in collectively refining both the questions regarding the law as well as the CSO survey. The experts reached consensus on the research tool, which contributed to similar application of relevant questions in the six countries.

⁵ IACHR, *Second Report on the Situation of Female and Male Human Rights Defenders in the Americas*, ¶ 173 (emphasis added) (2011; from this point forward, “*Second Report on the Situation of Defenders*,” available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>).

- Given that the right to freedom of association requires States not only to abstain from limiting the right, but also to promote its exercise, the study examines both aspects.⁶ The questions regarding the law and implementation practices covered three topics:
 - CSO lifecycles;
 - CSO access to public funding; and
 - CSOs participation in public policymaking.

Once they had completed their research, each team of experts was responsible for facilitating a national dialogue among representatives of diverse CSOs, the State, and other sectors. The objective was to share their reports on the laws and CSO experiences, and attempt to advance an agenda of possible reforms beginning in the short term. The project methodology sought to ensure presentation of persuasive information in the Dialogues in the following manner:

- To facilitate consideration of the country findings in the non-partisan context of international law, ICNL presented basic freedom of association standards to the experts, along with a list of useful UN Special Rapporteur and IACHR publications, among other sources.
- To promote Dialogues informed by comparative information from the other participating countries, ICNL convened the experts for a meeting in which they discussed the most important results of each of their investigations. This meeting coincided with the Mexican Dialogue. The host team took advantage of the other experts' presence in the Dialogue, ensuring that each contributed findings and perspectives in small group discussions.⁷
- Lastly, ICNL facilitated a collective assessment among the experts of the techniques used in the Mexican Dialogue to present data on the legal environment and to make progress toward a reform agenda. The meeting concluded with a discussion on how each team would apply the lessons learned to prepare and lead Dialogues appropriate to each national context.

The positive influence of this methodology is reflected in the brief descriptions of the Dialogues above and later in this report. The national Dialogues were technical and legal in nature and solidly grounded in national and comparative data, contributing to progress toward legal reforms for the civil society sector.

Organization of this Report

We present below a summary of the project results, beginning with the principal findings from the six country reports on the legal norms and their practical impact on CSOs.⁸ These reports reveal the great complexity and diversity of the legal frameworks, the practical problems confronted by CSOs, and civil society perceptions of the environments in which they operate.⁹ An illustrative example is the contrast

⁶ IACHR, *Second Report on the Situation of Female and Male Human Rights Defenders in the Americas*, 30OEA/Ser.L/V/II.124, (March 7, 2006) (available at:

<http://www.cidh.oas.org/countryrep/Defensores/defensoresindice.htm>).

⁷ This level of exchange was not practical for the rest of the Dialogues. Nevertheless, the Argentine experts were so convinced of the persuasive power of international experts with public officials and CSOs from their country that they raised the necessary funds to invite representatives from Mexico, Chile, and Brazil to their Dialogue.

⁸ The six national reports are available as annexes to this report.

⁹ The reports and their annexes, together with the research tool utilized in their preparation, are available on the ICNL website. We hope they will serve as model and resources for similar comparative studies in other countries in the region.

between the Panamanian and Brazilian responses regarding the duration of the process for obtaining CSO legal personality and its impact on the organizations. The Panamanian team measured the duration of the administrative process not in weeks or months, but rather, in years. The Panamanian report concluded that “47% of the CSOs experienced delays, *even though they did not recognize them as such*, due to the fact that it took them *more than one year* to obtain legal personality.”¹⁰ In Brazil, where the procedure entails a simple and rapid notification, the team reported that it had received “many calls from people who did not understand the reason for [the questions on the duration of the procedure], as it seemed to them to be an irrelevant issue.”¹¹

The principal findings are presented in sections corresponding to the three study topics: the regulation of (a) CSO lifecycles; (b) CSO access to public funds; and (c) CSO participation in public policymaking. To facilitate analysis of the findings from the perspective of international law, we provide interpretations of the right to freedom of association published by the UN Special Rapporteur and the IACHR that are relevant to the legal matters addressed.¹² We also identify several regional trends that limit the right to freedom of association but are not addressed clearly in those standards. In those cases, we note that it would be useful to have more precise interpretations in future publications of the international human rights mechanisms.

After exploring the problems and significant trends in the legal environments for CSOs, we present a summary of the national Dialogues in the six countries. The summaries reflect the creativity of the six teams in constructing spaces conducive to dialogue between the civil society sector and the State, taking into account the political context of the country. The summaries demonstrate, for example, how the teams:

¹⁰ Castillo and Pinder, et al., *Entorno legal y situación de las OSC en Panamá: Informe de país 2015* [Legal Environment and the Situation of CSOs in Panama: 2015 Country Report] (from this point forward, *PanaMainan Report*), p. 28 (emphasis added).

¹¹ Szazi and Raccanello Storto, *Investigación sobre el marco legal de las organizaciones de la sociedad civil en Latinoamérica: Informe del equipo de Brasil* [Research on the Legal Framework of Latin American Civil Society Organizations: Report of the Brazil Team] (from this point forward, *Brazilian Report*), p. 2.

¹² In addition to the *Second Report on the Situation of Defenders* of the IACHR, previously cited, *Informe del Relator Especial de la ONU Maina Kiai sobre los derechos a la libertad de reunión pacífica y de asociación*, A/HRC/20/27 [Report of UN Special Rapporteur Maina Kiai on the Rights to Freedom of Peaceful Assembly and of Association], (May 21, 2012), available at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_sp.pdf;

Informe del Relator Especial de la ONU Maina Kiai sobre los derechos a la libertad de reunión pacífica y de asociación, A/70/266 [Report of UN Special Rapporteur Maina Kiai on the Rights to Freedom of Peaceful Assembly and of Association], (August 4 2015), available at: http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_SP.pdf;

and *Informe del Relator Especial de la ONU Maina Kiai sobre los derechos a la libertad de reunión pacífica y de asociación*, A/HRC/23/39 [Report of the UN Special Rapporteur Maina Kiai on the Rights to Freedom of Peaceful Assembly and of Association], (April 24, 2013), available at: http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-23-39_funding_SP.pdf.

- Incorporated representatives of the various branches of the State in the Dialogues to advance reforms, not only in administrative procedures or in legislation, but also in the application of justice by the judiciary;
- Identified and invited senior officials of key institutions, thereby promoting direct dialogue between CSOs and officials who are best-placed to collaborate on eventual reforms;
- Reduced the number of invitees so as to make productive dialogue possible in a context of growing State hostility toward the civil society sector;
- Took advantage of important meetings between CSOs and the State that had already been planned to add the need for legal reforms to the agenda, thereby ensuring the participation of principal actors while at the same time economizing resources; and
- Mobilized resources from allies in the civil, academic, and private sectors, obtaining meeting halls, meals, and even international flights to contribute to stronger events; among other important lessons learned.

Lastly, we present the results of the Dialogues, including ideas for reform agendas and commitments made by Dialogue participants to advance them. For representatives of civil society and other sectors who seek a more favorable legal environment for CSOs, these events offer a menu of possible concrete actions and techniques to promote collaboration between CSOs and public officials on potential reforms.

II. Regulations Governing CSOs, Implementation Practices, and their Impact

While States are free to regulate the registration and oversight of organizations ... the right to associate freely without interference requires that States ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations.

IACHR, *Second Report on the Situation of Human Rights Defenders*, ¶ 163.

A. CSO Lifecycles

To a greater or lesser degree, many of the laws that govern CSO lifecycle in the six countries studied tend to *impede, delay, or limit* the creation and functioning of the organizations. Some of the key trends, reflected below, include:

- Norms governing CSO lifecycles found in various laws, decrees, and administrative rules and regulations that are internally inconsistent;
- Redundant requirements to register with multiple State entities, or obligations to reobtain recognition of already-granted legal personality according to new rules;
- Ambiguous criteria and procedures for granting legal personality that are implemented with great discretion;
- Vague and disproportionate grounds for forced dissolution; and
- Barriers to obtaining donations from abroad.

The reports also present isolated examples of enabling regulations – for example, the agile and non-discretionary Brazilian system for granting legal personality – as well as extremely restrictive examples,

such as Bolivian regulations and practices requiring explicit conformity with State policies in CSO by-laws. Both trends as well as significant examples are summarized below.

1. Legal basis

[T]he principle of legality also requires restrictions to be formulated previously, in an express, accurate, and restrictive manner to afford legal certainty to individuals.

IACHR, *Second Report on the Situation of Human Rights Defenders*, ¶ 165.

Each of the six countries studied has at least one constitutional provision guaranteeing freedom of association. Only one country, Chile, has one single framework law that regulates CSO lifecycles: Law 20.500 on Associations and Citizen Participation in Public Management, which modified the title of the Civil Code that corresponds to legal entities. In August 2015, Argentina consolidated the laws governing associations, simple associations, and foundations in consecutive articles of a reformed Civil and Commercial Code.

The trend in the six countries and in the region overall is for CSOs to be governed by various norms effective at the national and departmental levels or their equivalent – commonly with provisions that lack internal consistency. The Panamanian team identified, apart from the Constitution and Civil Code, no fewer than three laws and three decrees that all regulate the CSO lifecycle, without considering fiscal matters.¹³ As of March 2013, Bolivia’s Law No. 351 and its regulations govern several aspects of the lifecycles of CSOs operating in more than one department; according to the country team, they are inconsistent with the corresponding provisions of the Civil Code.¹⁴ CSOs that only operate within one department are governed according to provisions established by the autonomous departmental governments. A different Supreme Decree regulates associations or foundations that undertake activities to promote and aid social development. In Mexico, apart from the Civil Code, the two most influential laws in the lives of CSOs have not been fully harmonized: the Law on the Promotion of Civil Society Organization Activities (the Promotion Law) regulates “civil society organizations,” while provisions of the Income Tax Law regulate “non-profit organizations,” and the definitions in the two laws do not match. As reflected in the Mexican example, it is important to note that other laws, such as fiscal legislation, and not just the norms on granting CSO legal personality, are frequently responsible for significant confusion or restrictions on CSOs.¹⁵ Reforms to promote organization and consistency of

[The Bolivian CSOs surveyed] have called attention to the grave problem of CSO legal uncertainty, and confirm the existence of a profound legal mess, with regulations crossing, overlapping, and contradicting each other; the confusion is well known, and they feel this could be dangerous in the medium term.

Bolivian Report, p. 53.

¹³ *Panamanian Report*, p. 11.

¹⁴ Orias, Peres, and Vargas, *Final Bolivia Report* (from this point forward, *Bolivian Report*), p. 5. The Bolivian team explains: “The Civil Code (Article 52-2) defines associations and foundations as collective persons . . . Unfortunately, and despite being procedural norms, Law No. 351 and Supreme Decree No. 1597 make a complete abstraction of the Code, and, creating a new legal typology, refer to non-governmental organizations, foundations, and non-profit civil entities.” *Ibid*, p. 7.

¹⁵ In Brazil, for example, the Civil Code is the foundational law governing the life of CSOs, while the Public Registries Law regulates the process for registering and updating by-laws as well as the minutes of elections of officers. The

dispersed laws that regulate CSOs would contribute to creating environments that provide legal certainty.¹⁶

2. The Right to Associate Informally

Individuals involved in unregistered associations should indeed be free to carry out any activities... This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as means to quell dissenting views or beliefs

Report of the UN Special Rapporteur. May 21, 2012, ¶ 56.

Although the focus of this section is on the requirements and procedures for obtaining and maintaining legal personality, we refer first to the right of persons to associate informally. This right is officially recognized in almost all of the countries studied; nonetheless, there are important exceptions and contradictions. In Bolivia, the Civil Code explicitly recognizes “de-facto associations” and “committees without legal personality,” yet other norms require formality: the new Law No. 351 that regulates CSO legal personality requires institutional networks and coordinating bodies – associations of CSOs – to obtain formal recognition, and another regulation requires CSOs to register donations received by CSOs from multilateral financial organizations, cooperation agencies, governments, and non-governmental organizations (NGOs) – a procedure which requires the CSO to be previously registered with the State.¹⁷ In Panama, CSOs are required by law to obtain legal personality and be listed in the Public Registry as preconditions to present themselves publicly and act as associations. According to the Panamanian team, the law does not establish any sanction in case of violation, and in practice the requirement is not being enforced by the State.¹⁸ Nevertheless, there is a latent risk that this requirement could be implemented to prohibit informal associations. Reforms to eliminate required registration with the State as a prior condition for establishing and operating associations would ensure conformity with international standards on freedom of association.¹⁹

3. Requirements and procedures for obtaining legal personality

The procedure to establish an association as a legal entity varies from one country to another ... The Special Rapporteur considers as best practice procedures which are simple, non-onerous or even free of charge (e.g. Bulgaria) and expeditious (e.g. Japan where registration applications may be directly filled in online).

Report of the UN Special Rapporteur. May 21, 2012, ¶ 57.

Brazilian team notes with great concern, however, the complex requirements imposed on CSOs by other laws such as the Law on Access to Information, the Anti-Corruption Law, and the Law on Access to Public Funding (the Law on the CSO Regulatory Framework, or MROSC Law). *Brazilian Report*, p. 23. The consultations with Bolivian organizations also reveal a perception of growing control of CSOs on the part of the Social Security Funds [*Cajas de Seguridad Social*] and fiscal authorities: “Non-profit entities are exempt from paying taxes on real estate, but every four years they must file for a renewal and every time it becomes more difficult, every time the procedure is more complicated . . . And these are elements that little by little will strangle NGOs.” *Bolivian Report*, p. 53.

¹⁶ See IACHR, *Second Report on the Situation of Defenders*, ¶ 165.

¹⁷ *Bolivian Report*, p. 6.

¹⁸ *Panamanian Report*, p. 16.

¹⁹ See *Report of the UN Special Rapporteur* of May 21, 2012, ¶ 56.

a. Notification Procedures

As noted by the UN Special Rapporteur at the global level, there are significant differences in the systems for granting CSO legal personality among the six Latin American countries studied. The Brazilian legal system grants legal personality according to a notification procedure: CSOs are recognized automatically upon registering their by-laws with a notary service, without the need for governmental authorization. At a practical level, CSOs should register with the federal tax authority in addition to obtaining legal personality in order to open bank accounts and enter into contracts with third parties. The Brazilian team reports that the notification process takes approximately 10 days and the federal fiscal registration another 20 days.²⁰

The Chilean system for granting legal personality was reformed in 2011 by Law 20.500. Since then, to legally establish a CSO an organization must present its articles of incorporation in a public or private legal instrument signed in the presence of a notary, Civil Registry official, or municipal civil servant authorized by the mayor. The CSO then has 30 days to file a copy of the authorized articles of incorporation with the Office of the Municipal Secretary in the jurisdiction where the organization is being established. The Municipal Secretary has 30 days to object in writing based on noncompliance with a legal requirement; once this period has elapsed without observation, it is understood that no objection exists and the CSO's legal personality is registered in the Civil Registry.²¹ As with the Brazilian system, the Chilean procedure represents a notification system with simple procedures that are relatively inexpensive and expeditious.²²

33.7% [of the CSOs surveyed] declared that their cost to obtain legal personality was "zero."

Chilean Report, p. 17.

b. Prior authorization procedures

The majority of the countries in this study – and in the region – use prior authorization systems for granting legal personality or complex systems for granting a CSO the status required to receive certain State incentives and benefits (an issue addressed in another section of this report). The prior authorization systems analyzed tend to include the following key characteristics:

- Limitations on who can found a CSO;
- Complex, centralized procedures with no effective time limits for the State to process applications;

For us Brazilians, other Latin American countries' systems are very strange and exotic, given that they condition obtaining legal personality on a civil servant's discretionary act.

Brazilian Report, p. 2.

²⁰ *Brazilian Report, p. 2.*

²¹ Viveros and Soto, *Informe final: Proyecto estudio sobre ambientes legales e instituciones favorables para las organizaciones de la sociedad civil en Chile* [Final Report: Study Project on Legal Environments and Institutions Favorable to Civil Society Organizations in Chile] (from this point forward, *Chilean Report*), pp. 10-11. The Report notes practical problems with the registration system due to a lack of funding for its correct implementation. *"Among the most profound negative aspects is the precariousness of the information platform of the National Registry of Non-Profit Legal Entities, which currently is just one gigantic Excel form which is progressively filled in as data accumulates, not in alphabetical order or any other order that allows for its administration, reference, or rational search for information; omission of essential information fields that are required by law, such as reforms to by-laws, which generates uncertainty regarding the database itself; frequent errors in data digitization; etc."* *Chilean Report, p. 18.*

²² The Chilean team contrasts this agile system under the new law with typical delays of months or even years under the previous legal system. *Ibid.*, p. 16.

- Long and ambiguous requirements related to the documentation that must be submitted; and
- Significant discretion in the evaluation of requests.

As reflected in the expert teams' analyses, these common limitations and others found in only one of the countries studied grant great discretion to civil servants implementing the norms, with significant consequences for CSOs. At a minimum, CSOs must dedicate a significant portion of their financial and human resources to administrative procedures instead of to their social objectives. The CSOs in several of the countries studied suffer from delays and forced changes to their by-laws for discriminatory reasons. In one country, CSOs are forced to demonstrate conformity with the public policies of the State as a prerequisite for receiving legal personality.

Founders – There are legal barriers for some persons who wish to found a CSO. In Argentina, the law limits the ability of foreigners to establish their own associations with members of their own selection. This is because CSOs are prohibited from imposing restrictions on the admittance or rights of Argentine members, regardless of their national origin; similarly, CSOs are precluded from limiting the rights of Argentine members for not expressing themselves in a foreign language within the organization.²³ With few exceptions, the directors of CSOs legally established in Panama must be comprised exclusively of Panamanians.²⁴ In Bolivia, by contrast, current law permits any legal adult to found a CSO. The studies do not reveal high numbers of minimum members to found a CSO: the norms either do not establish any number, as in the Bolivian case, or they establish an implicit floor by specifying a minimum number of members on the board of directors – five, in the case of Argentina.

Procedures and Costs – Prior to addressing the obligatory content of requests for legal personality, it is important to consider legally established application procedures and their consequences for CSOs. Any group of individuals wishing to establish a formal association in Panama must carry out all required steps before civil servants in the capital city.²⁵ Bolivian CSOs seeking to operate in more than one department are also subject to centralized procedures in the capital city.²⁶ In Argentina the process is partially decentralized – all required application steps must be conducted in provincial capital cities. For organizations located in a country's interior – particularly indigenous communities and other groups in remote areas – these requirements can considerably raise the cost of applying for legal personality.

Another significant procedural requirement is the mandatory use of lawyers, accountants, and notaries for preparing and submitting requests for legal personality. In Argentina, a “ruling of prequalification from a professional” is required as part of an application for legal personality.²⁷ The Panamanian norms require organizations to be represented by a lawyer in all proceedings.²⁸ This obligation entails enormous costs for many CSOs because, as we explain below, CSOs typically appear before civil servants on multiple occasions to eventually obtain legal personality.

As a general observation, fees for lawyers and other professionals can be high for many CSOs, particularly when proceedings are complex due to confusing or contradictory regulations. In Argentina,

²³ Gecik and Canova, *Informe final proyecto de investigación capítulo Argentina 2014-2015* [Final Report for the Research Project: Argentina Chapter] (from this point forward, *Argentine Report*), p. 5.

²⁴ *Panamanian Report*, p. 18.

²⁵ *Ibid.*, p. 14.

²⁶ *Bolivian Report*, p. 9.

²⁷ *Argentine Report*, p. 4.

²⁸ *Panamanian Report*, p. 17.

the Civil and Commercial Code has recognized the legal category of “simple associations” – entities without legal personality but with rights. Creating a simple association has entailed less complex, and thus less expensive, procedures. Nevertheless, changes in the Code introduced in August 2015 impose greater controls on simple associations regarding their articles of incorporation and internal governance, in turn increasing their cost. In the opinion of the Argentine team, *“Even if the intention is reasonable, this legal figure – notwithstanding its greater flexibility in comparison with civil associations – will remain beyond the reach of thousands of community-based organizations that often lack the human, administrative, and economic resources needed to obtain even his legal form. For this reason, they will continue to act informally, with correspondingly greater risks and responsibilities.”*²⁹

Another characteristic shared by three of the studied countries with prior authorization systems – Argentina, Panama, and Bolivia – is the absence of effective legal time limits for civil servants to review applications. The Panamanian team insists that *there are not even mechanisms for encouraging the State to issue a determination accepting or rejecting an application*, which allows the process to stretch out for an unlimited period of time.³⁰ These delays entail economic, administrative, and programmatic costs, such as the following mentioned by surveyed CSOs:

- *They affected our fundraising;*
- *We couldn’t open a bank account;*
- *It was not possible to sign contracts of any kind;*
- *Administrative management of the association was difficult;*
- *We could not receive donations, nor could we perform studies on the prevalence of HIV in our country.*³¹

The Supreme Decree that implements Bolivia’s Law No. 351 establishes a period of 60 business days to review CSO applications. The Bolivian team notes, however, that the State has no time limit to reject a request, issue a report required to substantiate a resolution recognizing a CSO’s legal personality, or draft the resolution itself.³² Even though experience with implementation of Law No. 351 is limited in the case of CSOs seeking legal personality for the first time, it is fair to anticipate that the lack of time limits for these procedures will entail delays in the formation of Bolivian CSOs.³³ Reforms to eliminate centralization, required professional representation for all procedures, the lack of time limits for State action, and other problems noted here are among steps necessary to promote simple, inexpensive, and rapid procedures for obtaining CSO legal personality.³⁴

Fifty-three percent of the surveyed CSOs with legal personality received their recognition in less than one year. Forty-two percent completed the process in a period of one to two years. Six percent declared that they had to wait three years or more to obtain recognition as legal entities. ... On the other extreme, Panamá Avanza, an organization whose only activity consisted of conducting political proselytization in favor of the government of the former President, obtained legal personality in just a few days during the 2009-2014 government term.

Panamanian Report, pp. 27, 29.

²⁹ *Argentine Report*, pp. 10-11.

³⁰ *Panamanian Report*, p. 17. In contrast, CSOs must correct any observation made by the State within three months or their request will be rejected. *Ibid.*, p. 20.

³¹ *Ibid.*, p. 29.

³² *Bolivian Report*, p. 15.

³³ The Bolivian team was unable to document how long the process is taking in practice for new CSOs. *Ibid.*, p. 35. Nonetheless, one of the organizations without legal personality surveyed *“declared that due to the norms and difficulties they have faced in the application process, they felt as though they were walking on slippery terrain. This was due to the great uncertainty in the process. They have asked themselves whether it is worth continuing*

Inequitability in the treatment of businesses and associations often begins with the regulation of the entities' very ability to exist. In many countries, the differences between registering businesses and associations can be vast and registration can often be more burdensome for the latter. ... The Special Rapporteur finds no compelling reason for this differentiation.

Report of the UN Special Rapporteur, August 4, 2015, ¶ 22.

This overview demonstrates that *procedural fees charged by the State should not be the central point of analysis* regarding the economic burden of seeking CSO legal personality. In fact, in Panama the State does not impose any official application fee, yet in practice, obtaining legal personality is far from free for CSOs. In countries where the State charges an application fee, it is interesting to compare what CSOs and for-profit entities pay for similar procedures. The Argentine team reports that the official fees for several steps in the application process total the equivalent of between US\$28 and US\$45, depending on the type of CSO, while the equivalent fees for commercial associations are about 10 times higher – around US\$4,000.³⁵ In Bolivia, the relationship is the reverse. The cost of inclusion in the Commerce Registry does not exceed Bs. 350.00 (approximately US\$50), while the cost for a non-governmental organization (NGO) that works in more than one department to obtain and register its legal personality is Bs. 7,700, and the cost for the same procedure for an NGO “coordinating body” (network) or foundation is Bs. 15,000.³⁶

Country	Observations on Costs Associated with CSO Applications for Legal Personality with Approximate Amounts in US\$
Argentina	The costs vary according to the type of CSO; in general: <ul style="list-style-type: none"> - Professional fees: \$165 - Application fees: \$193 - Travel costs: \$16 - Personnel costs: \$30 - Other expenses: \$123
Bolivia	Official application fees only, according to the type of CSO: <ul style="list-style-type: none"> - Social organizations: \$389 - Non-governmental organizations: \$1,135 - Foundations: \$895 - Non-profit entities: \$564 - Coordinating bodies of social organizations for forming federations, confederations, national councils, committees, and central offices, among other coordinating bodies of a national nature: \$557 - Coordinating bodies of non-governmental organizations and foundations for forming institutional networks: \$2,162

work, and have decreased the rhythm of their activities. They are internally reflecting on what the fate of the organization will be.” Ibid., pp. 37-38.

³⁴ See *Report of the UN Special Rapporteur* of May 12, 2012, ¶ 57.

³⁵ *Argentine Report*, p. 4.

³⁶ *Bolivian Report*, pp. 10-11.

	- Coordinating bodies of non-governmental organizations for forming institutional networks: \$1,458
Brazil	The cost of registering does not exceed \$50; however the costs associated with lawyers' professional fees can exceed \$800.
Chile	33.7% of the CSOs surveyed confirm that their cost to obtain legal personality was "zero;" 28% of the CSOs had notarial or procedural costs or professional fees that varied from the equivalent of \$10 to \$1,350.
Mexico	Approximately \$1,748, which includes the professional fees of a notary and lawyer, as well as personnel expenses.
Panama	32% of the CSOs surveyed said that the cost was less than \$500 and 37% of the organizations said it ran from \$500 to \$1,000, which includes legal fees. Additional notary and Public Registry fees vary from \$250 to \$500.

Source: Created by ICNL based on the country reports.

In sum, and as reflected in the table above, the official and unofficial costs to CSOs to obtain legal personality tend to be considerable. Legal reforms ensuring economical procedures without markedly greater costs for CSOs than businesses would advance legal environments that conform to international standards on freedom of association.³⁷

The States must also ensure that the registration of human rights organizations will be processed quickly and that only the documents needed to obtain the information appropriate for registering will be required.

IACHR, Second Report on the Situation of Human Rights Defenders, ¶ 173.

Required Documentation – The studies reveal two key legal issues regarding the documentation that must accompany requests for legal personality: (a) the type and quantity of required documents and data; and (b) the obligatory content of the most important document – the organization's by-laws. Both are linked to the issue of discretion in the review of applications, an issue we discuss in the next section.

As demonstrated in the following table, there are some typical requirements, as well as others that are unusual or completely open to State discretion:

Documentation Required for Legal Personality Requests		
Panama³⁸	Argentina³⁹	Bolivia⁴⁰
Power of attorney and application (presented by a lawyer)	Form to authorize operation as a legal entity	Notarized power of attorney from the legal representative
Act constituting the entity	Ruling of prequalification from a notary	Public document constituting the entity
Reservation of name	Reservation of name	Certificate to reserve name
Minutes approving by-laws	Articles of incorporation	Minutes approving by-laws and

³⁷ See *Report of the UN Special Rapporteur* of August 4, 2015, ¶¶ 22, 57.

³⁸ *Panamanian Report*, p. 18.

³⁹ *Argentine Report*, p. 5.

⁴⁰ *Bolivian Report*, p. 12.

		internal regulations
List of members of the board of directors	Information on founders	List of members comprising collective entity
By-laws	By-laws	By-laws (in hardcopy and digital form)
<i>Work plan for the first five years</i>		
	Sworn declaration of politically exposed persons	
	Proof of deposit of assets, or notarized certification confirming those contributions	
		<i>Others determined by the competent entity at the central level of the State, in accordance with Regulations</i>
		Notarized minutes of founding
		Notarized minutes of election and assumption of power by the directorate or other representative body
		Internal regulations (in hardcopy and digital form)
		List of members
		Valid identification cards of the members
		Proof of payment of procedure
		Certificate of non-indebtedness pending at the central level of the State of the members of the directorate

Source: Created by ICNL based on the country reports.

Regarding *by-laws*, the norms contain extensive required elements, including specific information that may be difficult for a nascent organization to determine. The Panamanian norms, for example, contain 17 obligatory elements that must be included in by-laws. Similar to the requirement for submitting a five year work plan with its application, a CSO must also include in its by-laws precise determinations regarding its institutional life at a time when it has just begun to undertake activities, for example:

- Exact address;
- Geographic area of operations;
- Detailed objectives and goals, principal activities to be undertaken, and the means for achieving them;
- Description of assets; and
- The methods for publications, among others.⁴¹

⁴¹ *Panamanian Report*, p. 19.

Another Panamanian law – little-known and, according to that country’s team, passed without the participation of civil society – establishes that all CSO by-laws must explicitly permit admission and participation of women and men on equal terms at all levels of management.⁴²

Bolivia’s Law No. 351 controversially requires NGOs and foundations to specify *in their by-laws* the organization’s contribution to the country’s social development. The Supreme Decree that implements the law provides that in order to comply with this requirement, organizations must specify the scope of their activities aimed at contributing to economic social development, “*taking into account the guidelines established in national planning, national policies, and sector policies.*”⁴³ This obligation to incorporate into CSO by-laws references to national and sector public policies which, by their very nature, are changeable and require periodic updates, is unique in the region. (We address the legal issues surrounding the right of persons to freely determine the scope of their activities in other sections of this report.) These provisions have been included in a constitutional challenge filed by Bolivia’s Human Rights Ombudsman. As of this writing, the Constitutional Court has not issued a ruling in the case.

These examples reflect typical trends in the region in the processes for requesting legal personality. How much time is too long to wait for a determination on a CSO application? At what point are documentation requirements – including demands for personal data on members of the association – considered excessive? International human rights mechanisms could provide clearer guidance on these matters.

Discretion in Evaluating Applications.

The exercise of the right of association may be subject only to such restrictions established by law that have a legitimate purpose and that, ultimately, may be necessary [and proportionate] in a democratic society.

IACHR, *Second Report on the Situation of Human Rights Defenders*, ¶164 [bracketed language in Spanish version].

Apart from the extensive lists of detailed and discretionary requirements for CSO legal personality in several of the countries studied, it is necessary to consider other norms that add ambiguous or discretionary grounds for rejecting applications. Argentina, for example, has administrative regulations with open-ended grounds for rejecting CSO applications for legal personality. Some of the most striking include:

- The existence of opposing groups which make it impossible for the organization to fulfill its purpose;
- That the entity proposes to subsist solely on fees for the services it renders or on State subsidies; or

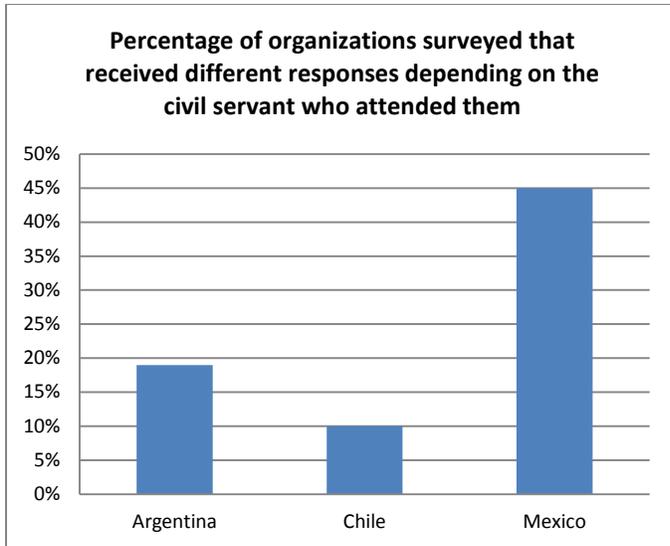
⁴² *Ibid.*, p. 22.

⁴³ *Bolivian Report*, p. 14.

- The possibility of holding assemblies that are not in-person or by teleconference.⁴⁴

Each of these grounds lends itself to discretionary interpretation.

Especially problematic is the Bolivian requirement to explicitly incorporate into a CSO’s by-laws the organization’s contribution to the country’s economic social development, taking into account national and sector policies. In practice, these discretionary norms often result in repeated rejections of applications based on the subjective criteria of the particular civil servant who deals with the organization and who demands modifications to by-laws and other submitted documents.



In practice, the process for granting legal personality is a burdensome and slow exercise of modifying proposed by-laws and rules as a consequence of discretionary and arbitrary actions on the part of civil servants in charge, who impose revisions that go beyond what is required in the norms.

Bolivian Report, p. 15.

Source: Created by ICNL based on CSO survey responses submitted with the country reports.

In Panama, part of the evaluation of applications for legal personality performed by the Ministry of Government and Justice consists of a consultation with the State entity that regulates the organization’s field of action to “certify the viability of this recognition.”⁴⁵ There are no fixed criteria, time limits, or constraints on the discretion of officials with the Ministry of Interior and Justice or the corresponding State entity in carrying out the consultation.⁴⁶ This nontransparent procedure could be a factor contributing to delays in processing applications for legal personality.

34% of the CSOs [surveyed] declared that they had made changes to their by-laws during the registration process at the request of the Ministry of the Interior.

Panamanian Report, p. 30.

One ground for rejecting applications which has been particularly problematic in the countries studied is the requirement to conform to *morality and good customs*. A surveyed Panamanian CSO dedicated to LGBT rights reported that the process for requesting its legal personality took *nine years* because “the entity responsible for approving the by-laws claimed that its focus was contrary to public morality [and] to the moral and Christian values of Panamanian society.”⁴⁷ This CSO and another that works with the

⁴⁴ *Argentine Report*, p. 5.

⁴⁵ *Panamanian Report*, p. 15.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p. 30.

same community reported that “they didn’t receive explanations or determinations they could appeal.”⁴⁸ One Bolivian CSO that also works on LGBT matters reported delays in its request due to a discretionary determination by a civil servant who argued that the organization’s name was discriminatory because it contained the word “maricas” [queers]. According to the CSO representative, the civil servant asserted that the State only granted legal personality to “serious institutions.”⁴⁹ Legal reforms eliminating ambiguous and discretionary grounds for rejecting CSO applications for legal personality – such as the ones described based on nationality, language, or sexual orientation – would remove restrictions on freedom of association that are not “necessary in a democratic society.”⁵⁰

4. Additional requirements for legal personality registration or recognition

The free and full exercise of freedom of association also imposes upon the State the duty to create the legal and factual conditions for human rights defenders to be able to freely perform their work.

IACHR, *Second Report on the Situation of Human Rights Defenders*, ¶157.

A common trait of several of the countries studied is the need for CSOs to fulfill redundant registration requirements before the same or different authorities, each exercising discretion in reviewing the registration documentation. This includes applications for inclusion in multiple registries to gain access to different public benefits, as well as obligations to reapply for recognition of already-granted legal personality according to the terms of new legislation. Lengthy application procedures force CSOs to dedicate their resources to redundant administrative tasks. They also contribute to legal insecurity for CSOs which must operate without the formal legal recognition required to perform certain activities, comply with requirements imposed by other State entities, hire third parties, receive donations with tax incentives, maintain bank accounts, and more. They reflect the diversity of norms that can affect the full exercise of freedom of association.

We begin with Mexico, where the simple procedure for obtaining legal personality as a civil association or other legal form under the Civil Code⁵¹ becomes a much more complicated process for thousands of CSOs due to the implications of additional laws. In order to gain access to public funding and other State incentives, CSOs must not only have legal personality, but also obtain a Unique Registration Code (*Clave Única de Registro* or CLUNI) in accordance with the Promotion Law. If a CSO’s by-laws do not specify at least one of the activities covered by the Promotion Law, as well as other required elements such as the

⁴⁸ *Ibid.*, p. 29.

⁴⁹ *Bolivian Report*, p. 39.

⁵⁰ See IACHR, *Second Report on the Situation of Defenders*, ¶164.

⁵¹ In order to obtain legal personality, CSOs must record their by-laws in the presence of a notary public and present prior authorization from the Ministry of the Economy to use their proposed name. Next, CSOs must register with the fiscal authority as a taxpayer and with the Public Registry of Property for the purpose of entering into contracts with third parties. The Mexican team cited a Mexican legal expert who notes that “regarding registration in the Public Registry of Property in order to establish an organization, there has been no documented case of a CSO whose registration has been rejected.” The team adds that this was not reported as a problem by any of the organizations consulted for this study. De la Vega and Montes, *Impacto de la normatividad en el desarrollo de la sociedad civil mexicana* [Impact of Regulations on the Development of Mexican Civil Society (from this point forward, *Mexican Report*), pp. 10-11, 15.

manner of liquidating assets acquired with public funds in the event of dissolution, the organization's request for a CLUNI will be rejected.

If CSOs additionally wish to obtain the status of Authorized Donee under the Income Tax Law, which qualifies them to receive tax-deductible donations, among other benefits, they must apply with the fiscal authority, the Tax Administration Service (*Servicio de Administración Tributaria* or SAT). This application process typically requires modifications to CSO by-laws. Potential Authorized Donees must also request from a State entity related to their field of activities a document that *certifies or proves* that the organization does, in fact, carry out its stated social activities or purposes.⁵² Obtaining this documentation from one State agency plus the SAT's review both entail the exercise of discretion and delays in processing Authorized Donee applications.

Recent reforms have substantially harmonized the eligibility requirements for obtaining a CLUNI and Authorized Donee status; however, the redundant procedures for applying for these separate official recognitions still entail significant costs to CSOs in terms of time and human and financial resources. Mexican CSOs consider, for example, that CLUNI status should also satisfy the SAT's requirement for verification of the CSO's activities. This reform would simplify and reduce the costs of the process for obtaining Authorized Donee status.⁵³

The Mexican team reports that according to the CSO surveys, obtaining legal personality and a CLUNI can take, on average, from one to four weeks, while obtaining Authorized Donee status typically takes between six months to a year.⁵⁴ Fifty percent of the organizations surveyed had to modify their by-laws when requesting a CLUNI or Authorized Donee status. The Mexican team concludes that *"the fact that half of the CSOs had to modify their by-laws is a double indicator. On the part of the organizations, they don't know or don't ensure that their social objective and the clauses on non-distribution of dividends and dissolution are consistent with applicable norms, which often become grounds for rejecting their applications. On the part of the authorities, it can indicate a prevalence of discretionality in criteria and obstacles and difficult procedures for accrediting Authorized Donee activities."*⁵⁵

The Panamanian team highlights a redundant application procedure: after receiving recognition of its legal personality, a CSO must also register in the Public Registry in order for the legal personality to become valid. The team observes that "[t]his procedure is considered to be repetitive and unnecessary. It especially affects organizations in the country's interior, which in addition to the costs of the procedure before the Public Registry, must [also] cover travel costs on repeated occasions.⁵⁶ Legal reforms for reducing bureaucracy and redundant and costly application procedures would help create *more favorable legal and factual conditions for CSOs.*⁵⁷

Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities.

Report of the UN Special Rapporteur, May 21, 2012, ¶ 62.

⁵² *Ibid.*, p. 21.

⁵³ *Ibid.*, pp. 20-21.

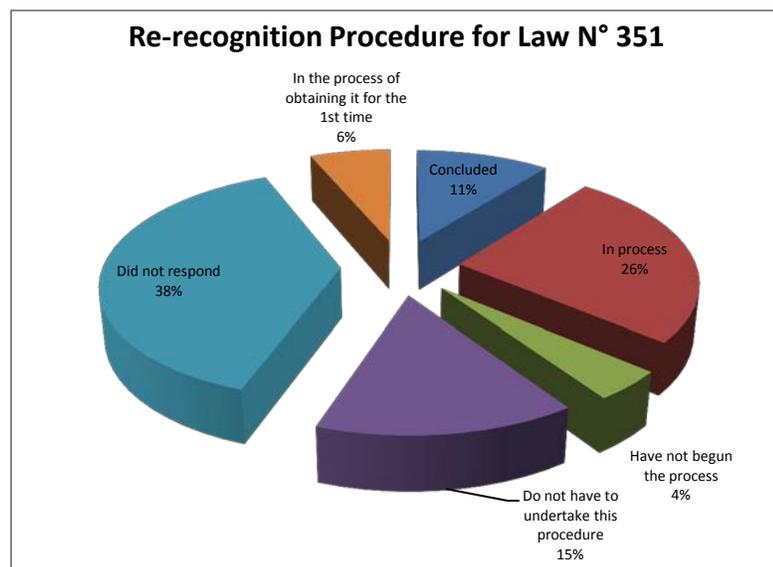
⁵⁴ *Ibid.*, p. 18.

⁵⁵ *Ibid.*

⁵⁶ *Panamanian Report*, p. 15.

⁵⁷ See IACHR, *Second Report on the Situation of Defenders*, ¶157.

We conclude with Bolivia, where the Supreme Decree that implements Law No. 351 requires all existing organizations that implement activities in more than one department to obtain re-recognition of their already-granted legal personality according to the provisions of the new norms. The CSOs surveyed reveal the sensitivity of this re-recognition requirement: as the graph⁵⁸ below demonstrates, 38% declined to even answer a question about the status of the organization’s application for re-recognition. In mid-2015, approximately two years after its approval, only 11% of CSOs reported that they had completed the re-recognition process.



The review of re-recognition applications is characterized by officials’ insistence that CSOs make changes to their by-laws – among other reasons, to specify the CSOs’ contribution to the country’s social economic development, in accordance with development plans, and to describe more precisely the “objectives, goals, and even the mission of the organization.”⁵⁹ The Bolivian team explains: *“All of the organizations that took the survey that had been asked to change their by-laws declared that when a civil servant asked them to make changes, they were never told of the possibility of appealing; on the contrary, they understood that they were required to make the requested changes if they wished to continue with the process of obtaining re-recognition of their legal personality, and that otherwise, the process would stall.”*⁶⁰

The surveyed CSOs commented that the costs of the re-recognition process have been very high, as well as unanticipated, *“which has required revisions to their budgets because none of the international*

⁵⁸ *Bolivian Report*, p. 30.

⁵⁹ *Ibid.*, p. 38.

⁶⁰ *Ibid.*, pp. 39-40. The six reports reflect that it is common that the rights to appeal are regulated in the administrative procedural legislation, rather than in the specific regulations governing CSOs. See, for example, *Mexican Report*, p. 19.

donors will fund changes to by-laws – especially for re-recognition when the CSO already has legal personality.”⁶¹ According to the CSOs surveyed, the cost of the re-recognition process varied between US\$287 and a maximum of approximately US\$12,000. The organization reporting the most costly process spelled out the following expenses: legal services (US\$1,000); official fees (US\$2,477); travel (US\$1,197, corresponding to two board members and one coordinator); personnel costs (US\$2,446 for a half-time coordination position for five months); and holding an Extraordinary National Assembly (US\$4,912).⁶² The CSOs surveyed reported other non-monetary costs of the delays and legal uncertainty related to applying for re-recognition of their legal personality:

- *It was impossible to apply for a tax exemption;*
- *We were disadvantaged applying for some projects funded by international donors; and*
- *We could not present a certificate of re-recognition when requested by private entities and the State, such as banks, tax offices, and Social Security.*

The Bolivian team characterizes the result as “operational strangulation” of CSOs.⁶³ Reforms to eliminate requirements to obtain “re-recognition” of by-laws would reduce the risks of arbitrary rejections or interruptions in CSO activities.⁶⁴

5. Oversight and monitoring

The States should refrain from promoting laws and policies that use vague, imprecise, and broad definitions of the legitimate motives for restricting the establishment and operation of human rights organizations.

IACHR, Second Report on the Situation of Human Rights Defenders, ¶165.

The study considered several issues related to State oversight and monitoring of CSOs, as well as how relationships between the organizations and their supervising agencies may affect the CSOs’ capacity to carry out their missions. In particular, the six teams analyzed the requirements and procedures for submitting CSO information to State entities and the implications of this oversight for the organizations. The teams also explored CSO perceptions regarding their relationships with supervising agencies, with a focus on contexts of corruption and discriminatory treatment.

It is noteworthy that two of the countries with legal frameworks considered most favorable for CSOs, Mexico and Chile, grant the State *virtually unlimited* discretion regarding the information it can demand from organizations. For example, Mexican CSOs with a CLUNI must submit annual reports on activities implemented and fulfillment of organizational purposes, together with financial information on their situation, *especially*, though not exclusively, regarding their use of public funding.⁶⁵ In addition, those CSOs must

⁶¹ *Bolivian Report*, p. 35.

⁶² *Ibid.*

⁶³ *Ibid.*, p. 38.

⁶⁴ See *Report of the UN Special Rapporteur* of May 21, 2012, ¶ 62.

⁶⁵ *Mexican Report*, p. 24.

*“provide whatever information may be required of them by the competent authority regarding their goals, by-laws, programs, activities, beneficiaries, sources of national or foreign funding or both, assets, administrative and financial operation, and use of any public support and incentives they receive.”*⁶⁶

Similarly, according to the Chilean team, the Ministry of Justice “can require CSO representatives to submit for their examination minutes of assembly meetings and directors’ sessions; approved accounts and meeting minutes; accounting, inventory, and payroll books; *as well as any other information regarding the execution of their activities.*”⁶⁷ This type of open-ended legal authority to demand information lends itself to abuse, although it was not identified as a problem by the surveyed CSOs.

The countries vary in terms of the quantity and frequency of required reports, as well as the State entity that receives the reports. In Argentina, for example, CSOs report their accounting balances – and in the case of foundations, their action plans and budgets – to the Office of Legal Entities of the province in which they are registered.⁶⁸ The Bolivian experts note that once CSOs that carry out activities in more than one department register with the Ministry of Autonomies, there technically does not exist another State agency responsible for overseeing them. The experts point out, however, that in practice, the requirement to obtain re-recognition of legal personality under Law No. 351 and its regulations implies oversight on the part of the same Ministry – particularly related to the grounds for dissolution, which is addressed in the next section of this report.⁶⁹

The teams sought to quantify the typical cost to CSOs to prepare the required reports. According to the Mexican CSOs surveyed, the average annual cost of preparing the financial, activities, and impact reports required by governmental authorities is US\$4,000;⁷⁰ for Brazilian CSOs, the estimate ranged from US\$3,000 to US\$25,000, depending on the size of the CSO.⁷¹ In Chile, norms impose greater auditing and reporting requirements only on CSOs with assets above a given amount.⁷² In some countries, such as Brazil and Mexico, easily accessed online forms have facilitated compliance and reduced the administrative and financial burden of preparing the reports. In Panama, however, the requirement to submit on-line monthly reports has been criticized by CSOs, not only for the required reporting, but also because compliance is impossible for many organizations that do not even have a computer or internet access.⁷³ Reforms to specify the precise documentation that CSOs must maintain and submit to oversight bodies, with simple and flexible procedures for complying with accountability requirements, could reduce illegitimate limitations on CSO operations.⁷⁴

⁶⁶ *Ibid.*

⁶⁷ *Chilean Report*, p. 13.

⁶⁸ *Argentine Report*, p. 4.

⁶⁹ *Bolivian Report*, p. 8. Organizations registered as NGOs must also report to the Vice-Minister of Public Investment and External Financing of the Ministry of Development Planning every three years on their activities performed and projects planned for the following three-year period. *Ibid.*, p. 40.

⁷⁰ *Mexican Report*, p. 25.

⁷¹ *Brazilian Report*, p. 18.

⁷² *Chilean Report*, p. 14.

⁷³ *Panamanian Report*, p. 32.

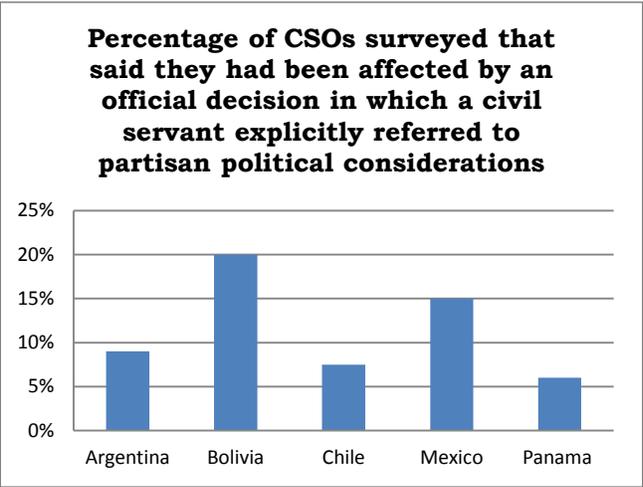
⁷⁴ See IACHR, *Second Report on the Situation of Defenders*, ¶165.

There is a tendency in the region, reflected in some of the countries analyzed, to impose open-ended requirements regarding the information that CSOs must maintain and submit to authorities. What level of official access to organizations' data is excessive for a law that regulates the lifecycle of CSOs?

It is vital that Government officials act in good faith, in a timely and non-selective manner.

Report of the UN Special Rapporteur. May 21, 2012, ¶ 57.

One positive finding of the study is that despite the great discretion exercised by civil servants, few surveyed CSO representatives reported that they had received a demand for a bribe.⁷⁵ It was common, in contrast, that a small though significant percentage of CSOs reported discriminatory treatment, for example, for partisan reasons.



Source: Created by ICNL based on CSO survey responses submitted with the country reports.

Although attacks and campaigns against civil society were constant during the 2009-2014 period, the truth is that they were directly aimed at specific leaders of organizations dedicated to fighting corruption and to judicial reform. Audits and oversight intensify when the interested parties are in opposition, and the information gathered by State institutions in such processes has been utilized arbitrarily for political ends.

Panamanian Report, p. 34.

The Brazilian team does not describe a climate of harassment but rather, “a great discomfort among Brazilian CSOs, although it cannot be said that it originates from a governmental intention to silence them or fight them, as is seen in other countries, given that the federal government presents itself as an ally of CSOs. It seems to us, the researchers who carried out this investigation, survey, and dialogue, that all of this is an expression of the Brazilian *zeitgeist*. *The spirit of our time, the current Brazilian*

⁷⁵ It is noteworthy that few CSOs surveyed reported having been asked for a bribe; only the surveys from Mexico and Brazil revealed significant experiences with corruption, however it was reported by less than 10% of the CSOs surveyed. Supporting documentation on survey results; *Brazilian Report*, p. 5.

intellectual and cultural climate, appears to be profoundly suspicious of institutions, with a mix of dismay, apathy, and broken dreams, and that also affects CSOs . . .”⁷⁶ Legal reforms to incorporate more precise requirements would contribute to less discretionary legal frameworks, with fewer opportunities for selective and discriminatory treatment.⁷⁷

Forced dissolution and other sanctions

Involuntary dissolution and suspension are perhaps the most serious sanctions that the authorities can impose on an organization. They should be used only when other, less restrictive measures would be insufficient and should be guided by the principles of proportionality and necessity. Moreover, associations should have the right to appeal decisions regarding suspension or dissolution before an independent and impartial court.

Report of the UN Special Rapporteur, August 4, 2015, ¶ 38.

In several of the countries studied, the norms governing forced dissolution of a CSO establish relatively clear and limited grounds which reflect that they are applied in severe cases and with protections for affected CSOs. For example, Chilean legislation establishes that a CSO can be dissolved against the will of its members “through an enforceable judicial sentence, in the event the court declares that the organization is prohibited by the Constitution or by law, or has gravely broken its by-laws, or has completely achieved its purpose, or due to the impossibility of achieving it, and for the rest of the reasons set forth in the by-laws and laws. . . . The judicial sentence that declares the forced dissolution of a CSO can only be issued at trial begun by demand of the State Defense Council in brief and summary proceedings, which will carry out the action following a well-founded request by the Ministry of Justice.”⁷⁸

It is noteworthy, however, that in *one-half of the countries studied*, current laws authorize the State to forcibly dissolve a CSO for ambiguous reasons or for minor violations, in some cases without clear procedures that guarantee due process rights.

Ambiguous or Disproportionate Grounds for Forced Dissolution Identified by the Teams		
Argentina ⁷⁹	Panama ⁸⁰	Bolivia ⁸¹
If the measure “becomes necessary to defend the public interest”	When “there is information” that the entity is dedicated to illicit activities, and even when the activities are licit but contrary to the objectives and purposes established in its by-laws	Incompliance with the provisions of Law No. 351 and its regulations

⁷⁶ *Brazilian Report*, p. 6.

⁷⁷ See *Report of the UN Special Rapporteur* of May 21, 2012, ¶ 57.

⁷⁸ *Chilean Report*, p. 15. According to the Brazilian team, the forced dissolution of a CSO in the country “only occurs after a definitive judicial ruling, in a trial in which full rights to defense and appeal have been ensured. Dissolution only occurs in situations in which criminal purposes and practices are verified.” *Brazilian Report*, p. 4.

⁷⁹ *Argentine Report*, p. 7.

⁸⁰ *Panamanian Report*, pp. 25-27.

⁸¹ *Bolivian Report*, pp. 19-20.

	<i>When “grounds exist that justify its dissolution”</i>	<i>Due to necessity or public interest, as declared by law by the Plurinational Legislative Assembly</i>
	<i>When a CSO does not comply with its obligation to explicitly incorporate into its by-laws the possibility for men and women to participate in conditions of equality</i>	<i>Due to implementing different activities or dedicating itself to a different field of activities than indicated in its by-laws</i>
		<i>Due to transfer or sale of its legal personality</i>
		<i>Due to an enforceable criminal sentence when the competent judicial authority confirms that the members who represent the collective entity are performing activities which threaten public security or order or have committed illicit acts during the exercise of their responsibilities</i>
		<i>Due to in compliance with sector policies and/or regulations, as reported by the Ministry of that area</i>

Neither the Argentine nor the Panamanian team reported cases in which the ambiguous provisions have been implemented to dissolve a CSO. The fact that the State has the authority to shut down an organization because “it becomes necessary” or because “there is justification” places excessive discretion in the hands of public officials. The grounds for forced dissolution listed in Law No. 351 and the Supreme Decree which implements it are noteworthy for several reasons. The Bolivian team notes that the final grounds cited *“respond to a clear objective to control, by establishing that the administrative authority can arrange for the extinction of an organization due to in compliance with sector policies and/or regulations which the majority of the time are not even obeyed by the central government.”*⁸²

Unlike the Bolivian norms, the legislation that regulates CSOs in several of the countries studied considers proportionality in sanctions. Mexico’s Promotion Law, for example, establishes four sanctions in order of severity: warning, fine, suspension, and cancelation of registration.⁸³ According to the Mexican team, “The main infractions deal with improper use of public resources or violation of the criteria regarding not

While no legal personality has yet been revoked, the Ministry of Autonomies has already issued warnings via public declarations that it is possible to close NGOs that do not comply with the aforementioned points of Law 351 and its regulations. There have already been 38 NGOs that were recently declared to be “irregular” and cannot perform financial activities because they have not completed the procedure for re-recognition of their legal personalities.

Bolivian Report, p. 71

⁸² Bolivian Report, p. 21.

⁸³ Mexican Report, pp. 27-28.

distributing the dividends (not-for-profit CSOs), partisan political activities, or religious proselytization. If a CSO utilizes funds for activities that are inconsistent with its organizational purpose, that is also punishable.”⁸⁴ Argentina also has tiered sanctions, starting with (a) a warning, (b) a published warning whose cost is borne by the offender, and (c) a fine which is determined in accordance with the gravity of the act and takes into account the capital and net worth of the entity.⁸⁵ Reform of the grounds for dissolution to eliminate reasons related to technical, minor, or ambiguous errors; the illegal actions of individuals; or strategic, legal decisions made by CSOs will contribute to a legal framework with the proportionality, specificity, and legitimacy required under international law.⁸⁶

Provisions requiring CSOs to ensure gender balance or equality in CSO membership, similar to the Panamanian norm, have appeared in effective or proposed legislation in the region. International standards could be explicit in defining if they are “necessary in a democratic society” for one of the reasons established in the ICCPR or American Convention.

There is also a growing trend to require CSOs to reform their by-laws so as to state their objectives with specificity. These provisions highlight the significance of the grounds for dissolution due to performing activities which do not fit within the organizational purpose established in the by-laws. What level of detail is appropriate, and what amount of flexibility should CSOs have to interpret their organizational purposes?

Financial sustainability

[I]n addition to facilitating the registration of organizations, freedom of association includes the right “to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right.”

IACHR, Second Report on the Situation of Human Rights Defenders, ¶175.

A critical legal issue for many organizations relates to their capacity to raise the funds necessary to put their activities in motion. We consider here two sources of funding for ensuring CSO sustainability: international funding and economic activities carried out by the organizations. The six country reports reveal that several State laws and policies impact CSOs’ ability to gain access to international cooperation or perform income-generating activities. Access to public financing is discussed in the next part of the study.

⁸⁴ *Ibid.*

⁸⁵ *Argentine Report*, p. 8.

⁸⁶ See *Report of the UN Special Rapporteur* of August 4, 2015, ¶ 38.

a. Access to funding from international donors

The Special Rapporteur has ... underlined that the ability to seek, secure and use resources – from domestic, foreign and international sources – is essential to the existence and effective operations of any association, no matter how small.

Report of the UN Special Rapporteur, August 4, 2015, ¶167.

None of the country reports identify legislation that fully restricts CSO access to international cooperation; the closest is a Bolivian provision which prohibits donations “entailing ideological and political restrictions.”⁸⁷ By contrast, the reports present a variety of norms that regulate *the way international funds must be received or must be reported*. These requirements have an important impact on CSOs. For example:

- In Argentina, banking regulations require that transfers of international funds to CSOs be solely administered by the Central Bank, which delivers the donations in pesos at the official exchange rate, typically weeks after the funds were wired.⁸⁸
- In Mexico, 2013 anti-money laundering legislation treats donations to CSOs as “vulnerable activities” and requires CSOs to create and maintain for five years dossiers containing personal data on their donors.⁸⁹
- In Panama, CSOs are required to publish information about their donations on a website and update it monthly.⁹⁰

In Argentina and Mexico, these regulations are prejudicial to CSOs. In the former, organizations only receive their funds after delays (and at an unfavorable official exchange rate).⁹¹ The Mexican team believes that “the availability of international funding suffered a series of setbacks in recent years as a result of the enactment of [the anti-money laundering law].”⁹² In Panama, by contrast, the team considers that the norm – which could impose a significant administrative and financial burden on many CSOs – is not affecting them in practice because it is not being implemented: “*The truth is that the majority of organizations do not have websites and do not know that they are required to publish this information. Even when there is a legal obligation to publish all of the information on the web about donations received, neither the [tax authority] nor any other public agency is overseeing that this norm is obeyed.*”⁹³

⁸⁷ *Bolivian Report*, p. 17.

⁸⁸ *Argentine Report*, p. 6.

⁸⁹ *Mexican Report*, pp. 21-22.

⁹⁰ *Panamanian Report*, p. 24.

⁹¹ *Argentine Report*, p. 6.

⁹² *Mexican Report*, p. 21.

⁹³ *Panamanian Report*, p. 32.

The dependence on international cooperation among CSOs surveyed varied from country to country – from 24% of the CSOs in Mexico⁹⁴ to 88% in Bolivia.⁹⁵ Several of the teams report that the amount of cooperation provided to national CSOs is declining; the Panamanian team cited the country’s level of economic growth and donor countries’ economic problems as an explanation.⁹⁶ The *Bolivian Report* mentions these factors, though it also points to State policies such as the expulsion of a foreign donor and harassment by high-ranking civil servants of CSOs that receive funds from abroad – particularly from the United States Agency for International Development – to explain the decrease in access to foreign funding: “On repeated occasions, different government representatives have accused some CSOs of having certain political interests, defending the interests of imperialism, and threatening the Bolivian government.”⁹⁷ Considering the degree of dependency on international cooperation among CSOs in several countries, legal reforms to eliminate disincentives to international donations would better enable CSOs to carry out their missions.⁹⁸

[Surveyed CSOs] also mentioned the political situation and legal insecurity faced by CSOs as reasons for the decrease in funding. In December [2013], the Bolivian government expelled the Danish NGO IBIS, an organization that works . . . with indigenous organizations, universities, research institutions, and institutions focused on governance, education, and others, based on accusations that it had carried out “intolerable” political actions against the government and financed divisions among indigenous social organizations.

Bolivian Report, p. 48.

Countries throughout the region are implementing new anti-money laundering laws with intrusive and onerous requirements for CSOs and their donors. States assert that those provisions are required by international norms. Greater guidance on the part of international human rights mechanisms could help States to balance their interest in combatting money laundering and their obligation to promote freedom of association.

b. Access to funding through economic activities

The limitations on CSO access to foreign financing highlight the importance of diversifying their funding sources; generating income through economic activities is an important option. In none of the six countries studied are CSOs prohibited from undertaking income-generating activities. The *Bolivian Report* indicates that the law is silent on the permissibility of self-financing through economic activities, and that in fact, many CSOs sell services, books, and handicrafts.⁹⁹ In both Bolivia and Mexico, the teams note that the capacity of CSOs to perform economic activities is not a matter of permissibility but

⁹⁴ *Mexican Report*, p. 22.

⁹⁵ *Bolivian Report*, p. 47.

⁹⁶ *Panamanian Report*, p. 36.

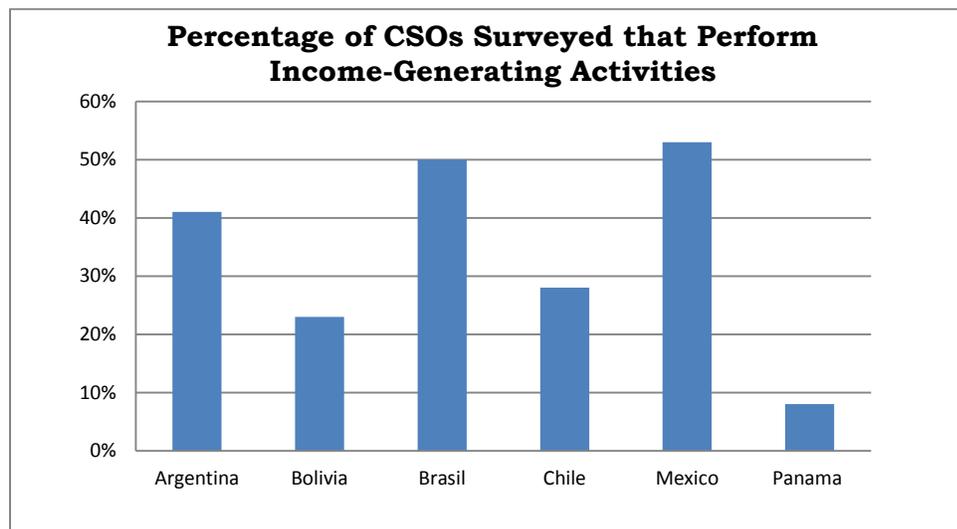
⁹⁷ *Bolivian Report*, p. 44.

⁹⁸ See IACHR, *Second Report on the Situation of Defenders*, ¶175; See also *Report of the UN Special Rapporteur of August 4, 2015*, ¶67.

⁹⁹ *Bolivian Report*, p. 17.

rather of fiscal treatment – specifically, the fear of losing their tax-exempt status (an issue that lies outside the scope of this comparative study).¹⁰⁰

The Brazilian team notes that the legislation “permits CSOs to carry out commercial activities, such as the provision of services or sale of goods; however, these activities must be consistent with the purposes stated in the by-laws, and the financial result may not be distributed to directors, members, or third parties, but rather, must be wholly invested in those same statutory purposes.”¹⁰¹ In Chile, all earnings must be reinvested in the organization’s corporate purpose.¹⁰² The new Argentine Civil and Commercial Code establishes that a non-governmental association “cannot pursue profit *as its primary purpose*.” The Argentine team criticizes this provision because it lacks the conditions of the Brazilian and Chilean legislation: “[T]his implies that it could do so as a secondary or incidental purpose. . . . It is different to admit the possibility that, in order to fulfill their objectives, the entities may perform ‘profitable’ activities, as long as those activities are proportionate to the organization’s social activities and the income generated is utilized exclusively for statutory purposes and is not distributed among their members.”¹⁰³ This ambiguity could have consequences for CSOs, such as, for example, erosion of trust in the sector due to the perception of disloyal competition with commercial entities.



Source: Created by ICNL based on CSO survey responses submitted with the country reports.

According to the surveys, in some of the countries studied very few CSOs are generating resources for their sustainability by performing economic activities. There could be several explanations, including lack of knowledge or capacity, or the ineffectiveness of tax incentives that were not analyzed in this study. At least in the six countries studied, the explanation is not because CSOs are not permitted to generate their own funds by carrying out economic activities. Legal reforms to facilitate and promote

¹⁰⁰ Even though it is beyond the scope of the comparative study, several of the country reports consider the fiscal treatment of economic activities performed by CSOs.

¹⁰¹ *Brazilian Report*, p. 4.

¹⁰² *Chilean Report*, p. 10.

¹⁰³ *Argentine Report*, p. 10.

this option for sustainability would help create an environment in which CSOs have access to the funding necessary to set into motion their activities and programs.¹⁰⁴

B. CSO access to public funding

In the countries studied and in the region in general, States provide public funds to CSOs with the goals of promoting the sector, improving or diversifying provision of basic services, providing incentives for research on matters of public interest, and more. The six teams examined the norms governing public financing of CSOs in their respective countries; they also requested comments from CSOs and others regarding experiences with the legally established systems for applying for contracts, obtaining awards, and overseeing CSOs' use of public funds.

The reports reveal profound differences among the countries in the degrees of formality and transparency of those legal systems. As we discuss below, the Chilean team indicates that public funding programs for CSOs “are governed by rules for competition or bidding, which in essence entail competition with equal opportunity for awarding projects and resources.”¹⁰⁵ By contrast, the norms identified by the Bolivian team “do not develop a regime of systematic and rigorous eligibility for applying for grants or contracts financed with public funds.”¹⁰⁶ The surveys administered by these two teams reveal the practical impact on CSOs of these systems: only 9% of the Bolivian CSOs reported that they had received public funding,¹⁰⁷ compared with 86% of the Chilean CSOs.¹⁰⁸ The reports also reveal that while a country may have a general legal framework that is favorable for granting public funds to CSOs, if it leaves implementation to the discretion of each State agency, as occurs in Mexico, or has a limited thematic scope, as is the case in Panama, the system will be less relevant to the sector.

Legal and practical issues in public financing of CSOs

The legal systems for publically funding CSOs are, to a great degree, a reflection of the general relationship between civil society and the State. Brazil's Law 13019, was approved in 2014 in order to increase transparency and promote collaboration – including contracts and donations – between the State and CSOs. It was born in a context of corruption scandals which continue to affect each sector's perceptions of the other.

This lack of trust can partially explain the repeated extensions of Law 13019's effective date – its entrance into force has now been delayed a total of 540 days, until January 2016. According to official explanations, the delay is necessary to permit “complex structural adjustments.” Despite a process that featured extensive public debate regarding the Law's implementing regulation, its content is still not known.¹⁰⁹ For these reasons, this study does not

“Criminalization” is the word used in the sector to describe a context of distrust by the State which, as a result, imposes ever more controls on CSOs. The legislative evolution expresses this perception, given that all of the recent laws – including Law 13019 regarding accessing public funds – have created more requirements and too much ‘proof of good behavior’ . . .

Brazilian Report, p. 26.

¹⁰⁴ See IACHR, *Second Report on the Situation of Defenders*, ¶175.

¹⁰⁵ *Chilean Report*, p. 21.

¹⁰⁶ *Bolivian Report*, p. 24.

¹⁰⁷ *Ibid.*, p. 55.

¹⁰⁸ *Chilean Report*, p. 22.

¹⁰⁹ *Brazilian Report*, p. 4.

evaluate either the provisions or implementation practices of this new comprehensive Brazilian law on public financing for CSOs.

Country	CSOs that stated they have applied for government grants or contracts	CSOs that responded affirmatively to the previous question and confirmed that the criteria for applying were available to the public
Argentina	66.7%	61%
Bolivia	9%	9%
Chile	66.3%	-
Mexico	35%	-
Panama	6%	-

Source: Created by ICNL based on CSO survey responses submitted with the country reports.

The studies reveal great diversity in the degree of formality of the countries' public funding systems, with the following characteristics and consequences for CSOs:

Minimal formality feeds a perception that the system is implemented based on political criteria: Bolivia and Argentina – According to the Bolivian team, legislation regulating CSOs mentions the possibility of obtaining public funds only in very general terms; specific laws provide for funding to organizations for limited purposes.¹¹⁰ The team confirms that no general criteria exist for CSO eligibility or selection; in practice, decisions are based on political factors that are not appealable, although in theory administrative law would apply.¹¹¹ The team notes that it is more common for the State to hire CSOs for consultancies or technical assistance on matters in which the organizations' independence is not questioned, and not on matters of policy advocacy.¹¹² The context is similar in Argentina, where the team notes that no norms govern State funding of CSOs, but rather, "several national ministries issue subsidies, the majority based on *political criteria and great discretion*."¹¹³ Only 61% of the Argentine CSOs surveyed believe the criteria utilized for granting subsidies or contracts were available to the public.¹¹⁴

System with clear criteria, but non-transparent determinations and limited relevance: Panama – Panama has established a formal system: the National Office on State Subsidies was created in 2002 to regulate allocation of subsidies to CSOs, with particular attention on those that serve the most vulnerable groups. According to the organizations surveyed by the Panamanian team that have obtained public funds, "the procedures, rules, and laws for applying for grants are understood and . . . capacity-building modules exist for those receiving State subsidies."¹¹⁵ The positive impact of this formal system could be limited in practice, however, because *only 10% of the CSOs surveyed declared they had received public funds*.¹¹⁶ The Panamanian team presents two possible explanations for this low level of participation: (1) the lack of transparency in awards and monitoring, reflected in the fact

¹¹⁰ *Bolivian Report*, p. 23.

¹¹¹ *Ibid.*, p. 24.

¹¹² *Ibid.*, pp. 55-56..

¹¹³ *Argentine Report*, p. 8.

¹¹⁴ *Ibid.*, p. 17.

¹¹⁵ *Panamanian Report*, p. 43.

¹¹⁶ *Ibid.*, p. 42.

that 86% of the CSOs surveyed reported not knowing if the information regarding State grants or contracts was available to the public; and (2) the low probability that the State provides subsidies to organizations dedicated to issues unrelated to poverty alleviation, such as the environment, democracy promotion, or the fight against corruption.¹¹⁷

Criteria and procedures that, while formal, are applied at the discretion of State entities: Mexico – The Mexican team describes a formal federal system that grants great discretion to the various State entities to establish – or not – Rules of Procedure (ROP) to promote equity, efficiency, and transparency in public funding of CSOs. On one hand, the team identifies the Joint Social Investment Program of the National Social Development Institute (INDESOL) as a program that works well granting public funding to CSOs registered under the Promotion Law. In general, the team considers that the ROPs establish very specific, even rigorous, requirements for submitting proposals and providing accountability in the use of public funds.¹¹⁸ The surveys corroborate this perception: 91% of the CSOs surveyed stated that the criteria were publically available.¹¹⁹

Nonetheless, the team emphasizes that 30% of all public financing supposedly given to the civil society sector – more than 2,000 million pesos in 2014 – is channeled through agencies that do not follow INDESOL’s good practices and have opted to not utilize ROPs.¹²⁰ In addition, they warn that several public agencies grant funds designated for CSOs to “associations comprised of the government itself, or that are a part of the governmental structure.”¹²¹ The Mexican team shares other criticisms regarding the rules for contracting, such as technical requirements for applications that are difficult for many CSOs; limits on the use of funds for paying permanent staff; and the obligation to use all funds granted within only one year.¹²² At the end of the day, they estimate that as a result of these reasons, less than 15% of the 30,000 CSOs registered under the Promotion Law receive public funds.

An efficient and transparent system, but oriented more towards contracting than promotion: Chile – Lastly, on the other end of the spectrum of formality is the Chilean system. The team identifies a variety of mechanisms for granting funds to CSOs, including regulated or discretionary grants; resources awarded through public or private bidding processes; or direct allocation. The mechanisms do not require a prior determination of eligibility as in

Support for CSO activities in the form of public funds continues to be one of the big pending themes for improvement in the civil society agenda. It symbolizes a permanent struggle for modifications, some within the legal framework and others in practice through Rules of Procedure (ROPs), and above all, through actions to counteract the discretion and delivery of the majority of funding – recorded as if it had been provided to CSOs – to organizations that are a part of the governmental structure. In general, public funding still shows signs of inequity and a lack of transparency as constant features.

Mexican Report, p. 30.

[T]he many responses confirm the widespread perception in the civil society sector, reiterated in recent decades, that the Chilean State uses CSOs (in a good way, but also oftentimes abusively) as executors of its pre-established, pre-designed programs, that is, as mere contractors or providers of social services that the State is responsible for delivering.

Chilean Report, pp. 23-24.

¹¹⁷ *Ibid.*, pp. 42-43.

¹¹⁸ *Mexican Report*, p. 36.

¹¹⁹ Results from surveys reflected in Matrix B, an appendix to the *Mexican Report*.

¹²⁰ *Mexican Report*, p. 31.

¹²¹ *Ibid.*, p. 31-32.

¹²² *Ibid.*, pp. 40-41.

Mexico; any CSO that fulfills the formal and transparent requirements can request public financing.¹²³

These practices have engendered trust due to their impartial application – 90% of the CSOs that participated in the survey expressed the opinion that partisan political motives do not affect awards of public funds.¹²⁴ The programs are criticized, however, for: (a) being too directed by the State, which limits the independence and initiative of CSOs; and (b) being detrimental to small CSOs by applying the same standards for evaluating proposals, without taking into account the size of the organization.¹²⁵

The lack of transparency in granting public funds to CSOs damages the public perception of the civil society sector and is a factor in the increasing hostility faced by the sector. Contributions by international human rights mechanisms of good practices in public financing of CSOs could contribute to improving the environment in which the organizations operate, and thereby promote the full exercise of freedom of association.

C. Participation of CSOs in Public Policy Development

[A]mong other liberties, associations have the freedom to advocate for electoral and broader policy reforms; to discuss issues of public concern and contribute to public debate; to monitor and observe election processes...

Report of the UN Special Rapporteur, August 7, 2013, ¶ 43.

The six reports demonstrate a variety of legally-established mechanisms for encouraging and channeling the participation of organized persons on public policy matters. Some of the mechanisms cited are: public consultations, plebiscites, referenda, and constitutional challenges. The study also investigated the regulations governing CSO activities within the electoral context. The observations of surveyed CSOs regarding their experiences in public policymaking reveal that in practice many do, in fact, take significant advantage of formal and informal channels of participation.

Affirmative responses of surveyed CSOs regarding their participation in public policymaking					
COUNTRY	CSOs that have met with public officials to present a proposed law or public policy	CSOs that have presented an <i>amicus curiae</i> or participated in a public hearing in judicial proceedings	CSOs that have served at some point on a commission or other organ with representatives of civil society and government in order to formulate public policies	CSOs that have campaigned for plebiscites or referenda	CSOs that have participated in electoral processes

¹²³ *Chilean Report*, p. 21.

¹²⁴ *Ibid.*, p. 23.

¹²⁵ *Ibid.*, p. 25.

Argentina	50%	13%	26%	5%	3%
Bolivia	87%	36%	64%	21%	32%
Chile	56.2%	9%	53%	9%	3%
Mexico	68%	47%	51%	13%	17%

Source: Created by ICNL based on CSO survey responses submitted with the country reports.

The teams highlight legal reform victories – such as Chilean Law 20.500 of 2011, which recognizes the right to popular participation in policies, plans, programs, and actions – and transcendent participation experiences – such as the mass mobilization of Mexicans in a plebiscite that brought important political rights to citizens of the Federal District. They also identify limits to these paths to civic participation and describe the disenchantment of many surveyed CSOs who question the practical value of participating in non-binding mechanisms when they see no impact from their contributions.

Guarantees and restrictions – The six countries have constitutional provisions recognizing citizen participation – for example, the Argentine Constitution of 1994 “highlights the extraordinary legitimacy of civil society associations as a symbol of their social impact.”¹²⁶ However, the reports identify laws that by design or in practice exclude some CSOs from participating in formulating public policy. The Mexican team criticizes the fact that the Promotion Law, which enables CSOs to participate “in the social auditing mechanisms established or operated by agencies and entities” of the State *explicitly excludes from such participation those CSOs without legal personality*, such as influential informal social movements and networks.¹²⁷ The *Bolivian Report* demonstrates that, notwithstanding the constitutional guarantees of participation rights for associations, the Law on Social Participation and Control solely promotes the participation of social movements and *excludes civil entities, foundations, and NGOs*.¹²⁸ Despite this restriction, the survey reveals that Bolivian CSOs in fact exert influence on public policies: 87% state that they have met with public officials to submit a proposed law or policy.¹²⁹

[L]aw No. 351 establishes that the by-laws of NGOs and foundations must also mention their contribution to economic-social development and establish an obligatory affiliation with official economic-social development policy. Thus, what really exists is an obligation to adhere to governmental policies, rather than the right to participate in their creation or oversee their execution.

Bolivian Report, p. 25.

Mechanisms for Participation

Two of the reports describe legislation that requires the Executive Branch to implement programs for channeling participation, without dictating the form they should take. Chile’s previously mentioned Law 20.500 charges ministries and other central government entities with establishing “‘general regulations’ containing formal and specific modalities for participation by persons and organizations within the sphere of their authority.”¹³⁰ Panama’s Law on Transparency and Public Management also requires the

¹²⁶ *Argentine Report*, p. 9.

¹²⁷ *Mexican Report*, p. 46. At the same time, the Mexican team celebrates a recent legal victory: an amendment to the Mexican Income Tax Law that eliminates a prohibition against influencing legislation by CSOs that are authorized to receive tax-deductible donations. *Ibid.* p. 54.

¹²⁸ *Bolivian Report*, p. 25.

¹²⁹ *Ibid.*, p. 59.

¹³⁰ *Chilean Report*, p. 26.

State to inform and consult citizens, and lists the following mechanisms: public consultations, public hearings, fora, workshops, and direct participation.¹³¹ More common in the countries studied are specific laws regarding a particular mechanism for participation. Below, we present examples of these legal mechanisms, together with practical experiences related to their implementation.

Public Hearings or Consultations

- *Environmental regulations, Panama* – The Panamanian team considers that some environmental norms establish detailed mechanisms for popular participation. The team cites executive decrees that require as a component of a project’s environmental impact statement: (a) interviews or surveys of residents of affected communities; (b) formal consultations; and (c) public forums, depending on the size of the project.¹³² Nonetheless, they note the limited implementation of these mechanisms, highlighting an environmental law approved in 1998 that created the National Consultative Commission and Provincial and District Consultative Commissions, all with CSO representation, which after all these years are still not operational.¹³³ The report shares some of the criticisms of the mechanisms expressed by the surveyed CSOs:
 - *It’s almost always the case that the majority are government NGOs.*
 - *The criteria [for selection of CSO participants] are accessible, but they are bureaucratic and convening participants remains in the hands of public officials or institutions.*
 - *They are very elitist spaces.*¹³⁴
- *Citizen Consultation, Chile* – In accordance with Law 20.500, administrative bodies are required to (a) note matters of civic interest on which they must seek public opinion; and (b) hold consultations at their discretion or upon citizens’ request, in an “informed, pluralistic, and representative” manner.¹³⁵ The Chilean team notes a criticism of the citizen consultations based on their non-binding nature: *“More categorical are the opinions in which these instances are dismissed as useless or, even worse, for manipulating CSOs in order to legitimize decisions that those in power have already adopted.”*¹³⁶

Regarding CSO participation in commissions or bodies in which civil society has space in the debate on public policies, 50% [of surveyed CSOs] say that these types of spaces do, in fact, exist. Of the 25 organizations that say that they do exist . . . only four say that in general the procedures are accessible to the public.

Panamanian Report, p. 51.

One of the most relevant findings of the field research relates to the high value and knowledge that exists regarding participation in public management and formation of councils or other consultative bodies. Surely this is more proof of the impact of Law 20.500, this time in terms of the legal mandate to establish civil society councils in all State administrative bodies.

Chilean Report, p. 29.

¹³¹ *Panamanian Report*, pp. 44-45. The *Mexican Report* highlights a similar law, though only effective at the local level: Title Four of the 1998 Law on Citizen Participation for the Federal District, which includes a list of options for channeling the participation of CSOs and citizens: plebiscites, referenda, citizen consultations, and public hearings. The team indicates that some of these mechanisms have been selectively implemented to facilitate participation of groups that are affiliated with local officials, while excluding other organizations. *Mexican Report*, p. 42-43.

¹³² *Panamanian Report*, p. 45.

¹³³ *Ibid.*

¹³⁴ *Ibid.*, p. 51.

¹³⁵ *Chilean Report*, p. 27.

¹³⁶ *Ibid.*, p. 29.

- *Consultative Council on Public Policies, Argentina* – The *Argentine Report* notes that, although the Consultative Council on Public Policies has been established, “it practically does not function.”¹³⁷ The surveys demonstrate CSOs’ lack of knowledge of consultative spaces at the national or provincial level: when asked if “the eligibility criteria and selection procedures for these bodies are accessible to the public,” the responses were almost the same among the CSOs that answered “yes,” “no,” and “do not know” (36.4%, 31.8%, and 31.8%, respectively).¹³⁸

Binding Technical Councils

- *National Environment Council, Brazil* – The Brazilian team identifies this environmental council as an example of an effective constitutionally-established mechanism for defining, monitoring, and implementing public policies. Importantly, the National Environment Council *divides its seats equally* between representatives of the State and CSOs, which have the right to voice and vote in designing regulations.¹³⁹ Despite having channels for participation in decisions that are binding for the State, awareness of these opportunities is relatively limited among the CSOs surveyed: “*In terms of knowledge and participation in councils, commissions, or organs with representatives of civil society and the government, [36%] responded that they are aware of them and [22%] said they had participated in those bodies.*”¹⁴⁰
- *Office of the Comptroller General of the Federal District, Mexico* – The Mexican team identifies this local government mechanism for overseeing public spending as one in which citizens and CSOs exercise the rights to speak and to vote in decisions that are *binding* on the public administration. The team contrasts this channel for participation with the mechanism for public hearings established by the same Law on Citizen Participation in the Federal District. Echoing criticisms mentioned in other reports, the team references “*experiences in which the authorities use mechanisms for raising awareness on programs as if they were mechanisms for citizen participation. In this way, they purport that they received input from the citizenry, when in reality the only thing that they have done is publicize information about the project at the will and the convenience of the corresponding public entity.*”¹⁴¹

Bills/Plebiscites/Referenda

- *National Assembly Office for Promotion of Citizen Participation, Panama* – This program permits CSOs to propose bills, so long as they are sponsored by a national lawmaker, and facilitates bill submission online through a dedicated email account. Regarding other opportunities for influencing legislation such as plebiscites and referenda, the CSOs surveyed do not report a great degree of participation: *only 8% stated they had, in fact, participated in those mechanisms.*¹⁴²
- *Plebiscites and referenda, Federal District, Mexico* – The *Mexican Report* identifies these options, administered by the Electoral Institute of the Federal District, as a very demanding but effective way for civil society to influence critically important public policies. Initiatives must have the signatures of 0.4% of registered voters – more than 425,000 persons in 2015.¹⁴³ The report cites a great civil society victory achieved at the national level through a 1995

¹³⁷ *Argentine Report*, p. 9.

¹³⁸ *Ibid.*, p. 19.

¹³⁹ *Brazilian Report*, p. 7.

¹⁴⁰ *Ibid.*, p. 8.

¹⁴¹ *Mexican Report*, p. 45.

¹⁴² *Panamanian Report*, p. 52.

¹⁴³ *Mexican Report*, p. 42

plebiscite, resulting in constitutional reforms granting self-government rights to the residents of the capital city. Despite this positive experience, and perhaps reflecting the operational burden posed by such a large number of required signatures, 87% of surveyed CSOs responded that they had never participated in or utilized these tools.¹⁴⁴

Constitutional Challenges and Civic Participation in the Courts

- *Constitutional challenges filed by legal entities, Panama* – Any Panamanian legal entity has the right to submit constitutional challenges. According to the team, the CSOs surveyed that had participated in legal proceedings reported achieving significant impact through the courts.¹⁴⁵ This is not the case in all of the countries studied: the Mexican team reports that “[a]t no point are CSOs included among the possible parties in a constitutional challenge, not even in the capacity of interested third parties, because the organization could be considered to be promoting the interests of affected citizens or could itself be affected by [the challenged] norm.”¹⁴⁶ The *Bolivian Report* also states that CSOs are excluded from the list of parties that can submit constitutional challenges. Nonetheless, the CSOs surveyed commented that a group of national CSO networks prompted the Human Rights Ombudsman to challenge the constitutionality of Law No. 351, which regulates the civil sector.¹⁴⁷
- *Public hearings of the Supreme Court, Brazil* – The *Brazilian Report* presents a model of CSO participation that is unique in the study: the Supreme Court “holds public hearings prior to issuing rulings regarding any case that might affect the lives of the citizenry in general.”¹⁴⁸ The report also notes that the new Code of Civil Procedure facilitates submission of *amicus curiae* briefs by CSOs that are not parties to a case; none of the CSOs surveyed has taken advantage of this opportunity.¹⁴⁹

The freedom of associations to engage in activities related to the electoral process should ... be guaranteed to all associations, whether they are apolitical in their means and operations, partially or totally supportive of the Government or express criticism of Government policies.

Report of the UN Special Rapporteur, August 7, 2013, ¶ 46.

Electoral activities

- *Participation of CSOs in the “electoral process,” Bolivia* – The Electoral System Law “permits CSO participation in electoral campaigns under the modality of electoral accompaniment.”¹⁵⁰ The great majority of organizations surveyed stated they have not taken advantage of this opportunity: 68% of CSOs affirm they have not participated in electoral campaigns, and only 23% state they have participated as observers or by disseminating information related to the elections.¹⁵¹

[A]ll electoral authorities are required to guarantee the right to participation and civic oversight and civil society participates, directly and legally, through mechanisms established for civic oversight, accompaniment and financial and spending oversight.

Bolivian Report, p. 28.

¹⁴⁴ Data based on CSO survey responses that accompany the *Mexican Report*.

¹⁴⁵ *Panamanian Report*, p. 47.

¹⁴⁶ *Mexican Report*, p. 55.

¹⁴⁷ *Bolivian Report*, p. 53.

¹⁴⁸ *Brazilian Report*, pp. 7-8.

¹⁴⁹ *Ibid.*, p. 8.

¹⁵⁰ *Bolivian Report*, p. 28.

¹⁵¹ *Ibid.*, p. 64.

- *Regulation of political propaganda, Panama* – The Panamanian team indicates that norm governing acquisition of political propaganda is the means for restricting CSO actions in the electoral context, because only organizations registered with the Electoral Tribunal may do so.¹⁵² The team reveals that few CSOs – 16% of those interviewed – have participated in electoral campaigns, and they exclusively engaged in educational activities. “Among the organizations that said they had not participated, there seems to be a fear of being perceived as involved in partisan political matters, and they prefer to distance themselves from the political scene.”¹⁵³

The norms and practice related to CSO activities in the electoral context are far from the standard presented by the UN Special Rapporteur – in several countries studied as well as the region in general. Even where the law explicitly authorizes CSO participation as electoral observers and educators, it is a small minority of CSOs that fulfill this key role for democracy. In the electoral context – as in the contexts of mechanisms for civic oversight and consultation – regulations that clearly enumerate CSO rights along with greater State compliance with existing legislation would strengthen the role of civil society in public policy matters. Greater guidance to the States – especially from the Inter-American System of Human Rights – regarding the legitimate role of CSOs in these activities could contribute to a more favorable environment for the full exercise of freedom of association.

III. What can be Achieved in order to Improve the Legal Environment in which CSOs Operate? Multi-Sector Dialogues on Opportunities for Reforms

With data in hand on the norms that govern CSOs and their impact on organizations, the six teams next designed and held multi-sector Dialogues to promote well-informed conversations on opportunities to improve the legal environment for the sector. There were common elements in the Dialogues: all of the teams presented their findings on the three topics of the study – the regulations that govern CSO lifecycles, access to public financing, and participation in the development of public policy. Each of the teams presented these findings within the framework of international legal standards and comparative data from the other countries in this study. While the Dialogues included common elements, each had a unique design based on the national context and the experts’ judgement.

We present below a summary of the Dialogues as described in the six country reports. The Dialogue summaries offer lessons for civil society and State representatives interested in promoting enabling reforms for CSOs. A few overall observations follow:

Context: The teams took the local climate into account when they designed Dialogue methodologies and agendas to promote reforms. These included a pre-electoral period (Argentina); complex political changes that led to replacement of the directors of CSO oversight agencies (Chile); and growing attacks on the legitimacy of independent CSOs (Bolivia).

Convener: In more than half of the countries, the experts are linked to influential CSOs or firms with expertise in the promotion and defense of a more enabling legal environment for the civil society sector.

¹⁵² *Panamanian Report*, p. 47.

¹⁵³ *Ibid.*, p. 53.

In those cases, the experts or their organizations convened the Dialogue. In two countries (Argentina and Chile), the teams allied with other organizations and networks with demonstrated interest and leadership in CSO legal reforms, along with academic centers, to convene the Dialogues.

Audiences and Notable Participants: In general, the teams convened participants representing diverse CSOs from different regions of the country, together with representatives of oversight agencies, academics, CSO legal and accounting advisors, international cooperation agencies, and other sectors. The exception was Bolivia. To ensure a productive conversation with the State in an extremely complex context, the team decided to invite a smaller number of CSOs and influential networks, together with select national and local officials.

Principal Legal and Practical Challenges: The teams tailored the Dialogues to address the most relevant legal issues facing the sector in their respective countries. In Brazil, where CSOs do not report problems with lifecycle law implementation, the team's priority issue was regulation and judicial treatment of access to public funding. In Bolivia, the Dialogue concentrated on Law No. 351 and the negative impact its implementation has had on the sector. In the other countries, the Dialogues facilitated conversations regarding a variety of specific issues, including procedural delays in obtaining legal personality (Panama); inequity in public funding (Chile and Mexico); and the lack of mechanisms for CSO voices to be heard in debates on public policies – particularly those of indigenous communities (Argentina).

Methodologies and Innovations: Several of the teams held their Dialogues in university auditoriums or convened them in collaboration with one or more academic centers. These decisions contributed to raising the public profile of the events; lending them a technical, non-partisan character; and reducing their cost. In Brazil and Bolivia, among other countries, the teams ceded significant time in the Dialogue agendas to high-level public officials. This enabled the officials to present their vision on controlling law and respond to CSO concerns. The teams considered these face-to-face conversations very useful; they note in particular the importance of several controversial on-the-record statements made by officials regarding their interpretations of certain norms. In two of the Dialogues, experts from other participating countries presented their countries' experiences. These comparative perspectives facilitated reflection on the legal environment and possibilities for reform. Finally, two of the Dialogues were filmed so that they can be a resource for future advocacy activities; the Brazilian Dialogue is available on YouTube.

Principal Achievements and Commitments: Each team of experts reports a positive short-term impact from the Dialogues in advancing CSO legal reform agendas. The result repeated from each Dialogue is consensus on an agenda of necessary future reforms – in some cases with a plan for achieving them and in others, commitments made by public officials to collaborate on eventual reforms. The teams from Panama, Argentina, Chile, and Mexico reported that as a result of the Dialogues, working groups have been established or strengthened to advance reform initiatives. The working groups have agreed to perform tasks such as preparing a draft CSO law based on consensus positions reached in the Dialogue (Panama); advocacy with the principal candidates in coming elections regarding the importance of a favorable legal framework for the sector (Argentina); reforms to standardize definitions of CSOs eligible for public and private funding (Chile); and direct conversations with senior officials to discuss the lack of transparency and equity in awards of public funds allocated to CSOs (Mexico). The Bolivian team reported its satisfaction at having facilitated a face-to-face conversation between the sector and the State at such a difficult moment. The team also highlighted the State representative's commitment to hold a future Dialogue on regulatory reforms as a significant outcome. Finally, the Brazilian team reported that CSOs and their principal networks committed to disseminate and promote good practices

in transparency and accountability. These actions will help CSOs understand and comply with their legal obligations.

The National Dialogues¹⁵⁴

Argentina¹⁵⁵

Context:

- Pre-electoral context;
- Difficulties with the legal environment are not resolved by recent changes in the Civil and Commercial Code; and
- A variety of reform initiatives in recent years without significant results towards a more favorable legal and fiscal environment for CSOs.

Convener:

The National Dialogue was convened by various institutions in which the Argentine team experts serve as directors or advisors, together with other CSO networks, CSOs, and academic institutions. Some of the conveners have led or participated in initiatives to promote reforms.

Audience and Notable Participants:

Among the 130 participants were CSO leaders from organizations dedicated to varied issues and based in different regions; CSO professional advisors; federal and local public officials from the Office of the President, the tax authority, and the Ministry of Justice, among others; legislators and their assistants; and representatives of various universities.

Principal Legal and Practical Challenges:

Lifecycle:

- Incorporation of CSO lifecycle regulations as a chapter in the Civil and Commercial Code sets new requirements and reinforces State control over non-governmental associations and foundations;
- Oversight is not limited to legal compliance; it also includes review of CSOs based on merit, opportunity, and convenience;
- Redundant State bodies involved in awarding CSO legal personality as well as subsequent acts; and
- Recognition of simple associations without legal personality based on their articles of incorporation only; but new requirements for simple associations to adopt rigid internal rules and register, with the corresponding additional costs.

Access to Public Funding:

- The absence of transparent mechanisms for accessing public financing makes it difficult for organizations that

In recent years, problems have arisen in the regulatory framework that affect good CSO operations. The latest legal provisions that emerged from the unification of the Civil and Commercial Code . . . have not been favorable, given that they do not truly consider the needs of the social sector. We hope that the incoming authorities, who will assume power on December 10th, will have a closer and more proactive vision for this sector, to clearly favor and support its development. In any event, coordinated systematic advocacy work will be needed to put forward proposals appropriate to the new circumstances.

Argentine Report, p. 31.

¹⁵⁴ The summary that follows is informed by the country reports and conversations between ICNL and the experts.

¹⁵⁵ *Argentine Report*, pp. 20-31.

do obtain public funds to maintain their independence.

Participation in Public Policy:

- Difficulties ensuring that civil society voices are heard and taken into account, due to the lack of mechanisms for effective participation or participatory vehicles whose decisions carry weight; and
- Difficulties ensuring that indigenous communities are taken into account in public debates.

Methodologies and Innovations:

- Participation by members of the Mexican, Chilean, and Brazilian teams, together with a representative of Brazil's Office of the President, to share perspectives regarding norms in their respective countries and their participation in legal reforms;
- In-kind contributions for holding the event, including airline tickets for the international experts and an auditorium;
- Collaboration on the design and execution of the Dialogue between the team and other researchers who have led advocacy activities promoting reforms;
- Filming of the Dialogue for use in advocacy activities; and
- A focus on fiscal matters of interest to the team and participants.

Principal Achievements and Commitments:

- Consolidation of an expanded and strengthened Working Group comprised of some 10 individuals (lawyers and accountants), which has met several times since the Dialogue;
- Development of a list of proposed reforms for each of the Dialogue themes;
- Development of an Advocacy Plan that includes:
 - Arranging meetings with the officials of the Office on Legal Entities of the Inspector General of Justice, who attended the Dialogue, and with officials from the Federal Agency of Public Income; and
 - Interviewing presidential and congressional candidates in order to propose a legal framework to promote CSOs;
- An informal commitment of a high-ranking official to collaborate on preparing draft reforms; and
- As a long-term proposal, reforming legal procedures so that registration is the only requirement for obtaining CSO legal personality.

Bolivia¹⁵⁶

Context:

- Increasingly hostile public statements against the sector by high-ranking State officials;
- Threats to dissolve CSOs based on Law No. 351;
- Divisions among CSOs regarding the convenience of holding the Dialogue in such a climate; and
- A pending decision by the Constitutional Court in the constitutional challenge to Law No. 351.

Convener:

Fundación Construir, a CSO led by the Bolivian team members.

¹⁵⁶ *Bolivian Report*, pp. 65-72.

Audience and Notable Participants:

The 24 Dialogue participants were carefully selected representatives of Bolivian and international CSOs, cooperation agencies, and Government agencies. Participating public officials included the Chief of the Unit for Granting and Registering Legal Personalities, officials of the departments of La Paz and Pando, and the Office of the Human Rights Ombudsman.

Principal Legal and Practical Challenges:

Lifecycle:

- Delays in re-recognition of CSO legal personalities due to slow action by officials as well as poor advice provided to CSOs by their lawyers;
- High costs, both official and practical, related to re-recognition procedures, particularly for national networks that must convene assemblies in order to apply for re-recognition of their legal personalities;
- Practical difficulties in complying with requirements, especially for long-standing organizations that must locate old documents to apply for re-recognition; and
- Intervention in the internal affairs of CSOs, including the requirement that their by-laws and regulations must be in line with national and departmental development plans.

Methodologies and Innovations:

- To create conditions favorable for productive dialogue in a moment of complex political challenges and urgent CSO needs, the team reduced the numbers of participants and narrowed the discussion topics.
- Immediately after presentations on international and national legal standards on CSO oversight and the survey results, the Bolivian team invited senior officials to present their views on regulation of the sector.
- These presentations were followed by a round of questions and answers, discussion, and agreements and conclusions.

Achievements and Commitments:

- Public recognition by the Director of the Unit for Granting and Registering Legal Personalities that the regulations implementing Law No. 351 can be improved, along with an invitation to meet again to collaborate on reforms.
- Consensus on follow-up actions, including the need to convene an additional, broader meeting to allow for direct dialogue between different social organizations and the principal public institutions related to establishment and operation of CSOs, such

Currently, over the course of one month, high-level officials of the Executive Branch, such as Vice President Álvaro García Linera and Minister of Autonomies Hugo Siles, made public statements accusing certain foundations and NGOs of acting based on political and foreign interests. As a result of these statements came more, about auditing certain foundations and the possibility of taking away the legal personalities of those organizations that carry out activities beyond what is stated in their by-laws, or if they call into question the fulfillment of the government's objectives.

Bolivian Report, p. 65.

Both sectors that participated in the Dialogue listened to the presentations . . . followed by a round of questions and answers. The official in charge of the Legal Personality Unit of the Ministry of Autonomies was the first one to speak and she confirmed that there are certain flaws in the Regulatory Decree of Law 351, and that it is a matter of having on-going discussions between both sectors in order to reach agreement and consensus on some modification or some action in that respect, since as discussed, any laws can be improved and we can correct and improve the norm. Nonetheless, she was very clear when she warned that it is the Decree, and not the law, that must be reviewed and improved.

Bolivian Report, p. 68.

as the Chancellery, Ministry of Autonomies, the tax authority, and the Vice Ministry of Public Investment and External Financing (VIPFE).

- Consensus on the matters to address in this meeting, including:
 - Standardization of criteria for purposes of constituting a CSO, taxes, other procedures, and public-private financing;
 - Developing mechanisms for effective participation in public policymaking;
 - Transparency and access to information;
 - Administrative procedures along with their direct and indirect costs; and
 - Concrete proposals for modifying the norms.

Brazil¹⁵⁷

Context:

- In light of the fact legal personality is granted through a simple notification system, the norms governing the CSO lifecycle were not a priority matter for the Dialogue.
- Law 13019 on CSO access to public financing was approved in 2014 following significant CSO engagement with Congress; two days before the Dialogue, however, the effective date of the Law was postponed.
- Certain CSO tax exonerations are established as constitutional rights; as such they are treated as public expenditures in the State budget.

Convener:

The Brazilian team.

Audience and Notable Participants:

More than 70 people participated, representing CSOs; the executive, legislative, and judicial branches; academia; and more. The official from the General Secretariat of the Presidency who led negotiations and promotion of Law 13019 was a key representative of the executive branch; the judiciary was represented by a federal judge, among others.

Principal Legal and Practical Challenges:

Access to Public Financing:

- CSO sustainability with a focus on bills regarding CSO economic activities, endowment funds, and fiscal incentives to philanthropy by individuals;
- Trends in jurisprudence regarding CSO rights to tax exonerations;
- Innovations and challenges in the legal framework related to professionalization of CSOs; and
- Challenges for CSOs in complying with legal requirements for accountability and transparency in light of new legislation on access to information, anti-corruption, and Law 13019.

[T]he organizers of the meeting understood that a look at sustainability would be the driving force behind the agenda. [It would be] divided into one block on management, which would address innovations and challenges of the legal framework on matters such as professionalism and accountability, while another block would be devoted to sustainability, in which representatives from the three branches of government of the Republic would address bills regarding CSO sales of services and merchandise (executive), endowment funds and fiscal incentives for individuals' donations (legislative), and also recent court rulings and trends in jurisprudence on CSO rights to tax exonerations (judiciary).

Brazilian Report, p. 21-22.

¹⁵⁷ *Brazilian Report, pp. 21-28.*

Methodologies and Innovations:

- The event was held in the university auditorium of the *Pontificia Universidad Católica*;
- In-kind contributions from the university (facilities for holding the event) and from an international NGO, Civilis (lunch for the participants);
- The agenda included blocks of time for presentations by the Brazilian team and State representatives as well as debate; and
- The event was recorded and is available on YouTube.

Achievements and Commitments:

- An on-the-record and highly controversial statement by the participating federal judge of her legal interpretation that constitutional provisions regarding CSO tax exonerations do not confer an automatic right, but rather require an individualized analysis on the part of the court of the organizations, their goals, and their activities;
- Commitments by CSOs to review their internal practices in order to facilitate legal compliance;
- Commitments by CSO networks to promote development of benchmarks and a repository of best practices related to anti-corruption;
- Creation of an informal CSO network to advance an agenda for a new regulatory framework;
- Commitment on the part of the executive branch officials to maintain open and permanent dialogue with CSOs regarding proposals for legislative changes; and
- Initial steps to establish a course for judges in the National School for Magistrates on the legal framework for CSOs.

Chile¹⁵⁸

Context:

- Just prior to the planned date for the Dialogue, the President replaced the Minister and Assistant Secretary of the Ministry of the General Secretariat of Government. This change in key officials for the multi-sector Dialogue affected the dates, design, and participants of the event.

Convener:

The Chilean team organized and convened the Dialogue in alliance with several important CSO networks, including: the Chilean Association of NGOs, the Senate's Citizen Participation Roundtable, and the Law 20.500 Monitoring Roundtable, which focuses on an issue to this study: citizen participation.

Audience and Notable Participants:

The organizers convened two events, with 35 and 27 participants, respectively. Many of the surveyed CSOs participated, together with academics and high-ranking officials such as the Assistant Secretary of the Ministry of the General Secretariat of Government and the lawyer of the Office on Social Organizations.

Principal Legal and Practical Challenges:

Lifecycle:

- Problems with the registration system due to lack of financing for its administration.

Access to Public Financing:

- Inequity in awards, and concentration of public and private financing in few CSOs; and

¹⁵⁸ *Chilean Report*, pp. 2-3, 31-33.

- The need to standardize fiscal regulations which affect donations in order to promote more equitable distribution.

Methodologies and Innovations:

- Taking advantage of another meeting that had already been convened by the Law 20.500 Monitoring Roundtable to launch the Dialogue, thus ensuring participation of the target audience;
- Holding the first encounter on the campus of the *Universidad Central de Chile*;
- Convening a second meeting in collaboration with the Chilean Association of NGOs, Law 20.500 Monitoring Roundtable, and the Senate’s Citizen Participation Roundtable; and
- Invitations to serve as panelists to high-ranking officials, including the Chief of Public-Private Cooperation of the Ministry of Social Development; the Chief of the Department of Legal Entities of the Ministry of Justice; and the advisor to the Assistant Secretary of the Ministry of the General Secretariat of Government and future head of the Participation Unit of that State Sub-secretariat.

The cross-cutting presence of CSOs and CSO networks such as Accion and the Senate’s Citizen Participation Roundtable in the different phases of our national Dialogue promoted movement to generate spaces for deliberation that aim to create new channels for participating in Chile’s approaching constitutional debate.

Chilean Report, p. 30.

Achievements and Commitments:

In the short term:

- Establish a working group to resolve problems related to implementing Law 20.500, such as the weak management CSO data in the registry – the Chief of the Department of Legal Entities of the Ministry of Justice committed to participating and to seek the involvement of the Director of the Civil Registration Service; and
- Support reconsideration of a 2014 bill to create a unified system for tax benefits from donations made to non-profit entities.

In the medium term:

- Promote improvements in fiscal incentives for philanthropy that might benefit more CSOs; and
- Promote the standardized use of the legal category “public interest organizations” in all Chilean legislation so as to facilitate access to more opportunities for public and private financing for CSOs that meet the definition.

Mexico¹⁵⁹

Context:

- CSOs have spearheaded legal reforms aimed at improving the legal environment for the sector. Noteworthy recent achievements are harmonization of the Promotion Law and the Income Tax Law, which has contributed to eliminating barriers to CSO participation in the development of public policies; and
- Among current challenges is promoting reforms to stimulate more participation in the formulation of public policies, increase transparency in granting public funds to CSOs, and eliminate legal obstacles to donations.

¹⁵⁹ *Mexican Report*, pp. 2-3, 58-64.

Convener:

The Mexican team.

Audience and Notable Participants:

Among the 80 participants were representatives of civil society, government, academia, and international cooperation, who came from northern, northeastern, western, central, eastern, and southern Mexico. Among the participating public officials were the Director and Legal Director of INDESOL and the Executive Secretary of the Private Assistance Board of the Federal District.

Principal Legal and Practical Challenges:

Lifecycle:

- Reform the Anti-Money Laundering Law to reduce requirements for submitting donors' personal information; and
- Make it easier to obtain documentation certifying a CSO's activities.

Access to Public Financing:

- Reduce discretion and lack of transparency in awards of public funding;
- Make CSOs without legal personality eligible to receive public funding; and
- Reforms to permit multi-year awards to CSOs.

Participation in Public Policy:

- Reforms to make CSOs eligible to file constitutional challenges.

Methodologies and Innovations:

- A technical university that specializes in CSO administration contributed meeting space;
- The Director of INDESOL inaugurated the event; other senior public officials served as panelists; and
- International experts – the teams from the other five participating countries – participated in roundtables corresponding to the three themes of the study.

Achievements and Commitments:

- Creation of an advisory group of researchers to review, improve, and validate reform proposals;
- Preliminary mapping of actors in various sectors who should be included in dialogue and advocacy activities;
- Definition of an agenda for concrete reforms corresponding to each of the project themes;
- Meetings with INDESOL and the Ministry of Government to share our analysis on awards of public funds designated for CSOs to entities linked to the State;
- Meetings with the research centers of the three principal political parties to share preliminary reform proposals that could form the basis of bills;
- Technical assistance to the state government of Nuevo León to adapt reform proposals to the local context; and
- A search already initiated for funding to make this initiative sustainable.

With an advocacy plan drafted, we will proceed to carry out broader advocacy actions. These will be of two types: short-term actions dealing with public policies and regulation which do not require working with the Legislative Branch, and medium- and long-term actions aimed at achieving legislative reform which will require advocacy with legislators, consultations and forums with CSOs, and probably the involvement of broader civil society groups and participation of the media.

Mexican Report, pp. 58-59.

Panama¹⁶⁰

Context:

- Panamanian civil society is growing stronger and more influential within the country's legal, social, political, and institutional context; and
- Economic growth in Panama has led to a decrease in support to civil society from cooperation agencies and donors.

Convener:

Alianza Ciudadana Pro Justicia, a CSO led by a Panamanian team member.

Audience and Notable Participants:

Among the approximately 70 participants were civil society representatives from across the country, including the provinces of Darién, Colón, Coclé, and Chiriquí, as well as from the Ngäbe Buglé and Guna Yala indigenous territories. State representatives came from: the Human Rights Ombudsman's Office, the Ministry of Foreign Affairs, the National Assembly's Office of Citizen Participation, the Office of Subsidies of the Ministry of Social Development, and the National Authority on Transparency.

Principal Legal and Practical Challenges:

Lifecycle:

- Excessive discretion and delays in the procedure for obtaining legal personality;
- Norms found in various laws, executive decrees, and resolutions, the majority of which are unknown to CSOs;
- There is no CSO Law which covers and regulates the different types of organizations; and
- Regulations that force CSOs to publish the names of donors online.

Access to Public Financing:

- Difficulties accessing State funding.

Participation in Public Policy:

- Several laws that establish mechanisms for citizen participation are not being implemented.

Methodologies and Innovations:

- The Vice Minister of Government presented the opening speech for the Dialogue.

Achievements and Commitments:

- Participants agreed to work together to promote a new CSO Law and they identified 14 elements that should be included in a new law based on the Dialogue discussions;
- They approved an advocacy plan to promote a more favorable environment for citizen and CSO participation;
- Creation of a Ministry of Civil Society was identified as a priority next step; and
- Participants will meet again in another Consultation Forum in April 2016 with the goal of presenting a draft CSO Law.

In the Dialogue between civil society and State institutions, agreement was reached to create a technical working group to draft a proposed CSO Law and a Ministry of Civil Society to provide follow up to the consultation and advocacy plan, to achieve new regulations governing CSOs. The following commissions were created: i) Commission on Advocacy and Consultation; ii) Media and Social Networks; iii) Financing; iv) Legislative Reforms.

Panamanian Report, pp. 56-57.

¹⁶⁰ *Panamanian Report, pp. 55-60.*

III. Conclusion

The country reports from the six teams of experts reflect the variety and severity of barriers to the full exercise of freedom of association in the Americas. Our hope is that this summary will facilitate multi-sector dialogues on possible reforms – in the participating countries and in others throughout the region – that are informed by non-partisan analysis grounded in reliable data on the relevant norms, their practical impact on CSOs, and international and comparative law. As the Dialogue summaries demonstrate, these well-informed conversations can promote and shape legal reform initiatives and lay the groundwork for effective collaboration with key public officials. We also aimed to identify for international human rights mechanisms several trends related to freedom of association in which more precise interpretations could better guide CSOs and States on their respective rights and obligations. We hope that the regional and country reports will contribute to improving the legal environment for CSOs in the Americas.

Annexes: Country Reports