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The associational counter-revolution

Douglas Rutzen and Catherine Shea

In the early 1990s, an ‘associational revolution’ (to quote Lester Salamon’s phrase) swept through Central Europe and the former Soviet Union. Recently, however, there are signs that a counter-revolution is under way and spreading globally. A recent study by the International Center for Not-for-Profit Law (ICNL) found that countries in all regions have used the law to constrain civil society.¹ In this article, we summarize ICNL’s survey of challenges; a forthcoming ICNL study will examine possible responses.



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A number of countries have enacted or proposed laws that significantly restrict the activities of civil society organizations (CSOs). Such countries tend to exhibit one or more of the following characteristics:

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

In many countries, this trend almost certainly springs from the perception that CSOs played a fundamental role in the recent ‘colour’ revolutions in Georgia and Ukraine. Indeed, ICNL’s research has shown that governments often enact restrictive CSO legislation before elections. In addition, the US Administration’s focus on ‘democracy promotion’ has created concern about foreign funding of civil society. As Thomas Carothers states, ‘Some autocratic governments have won substantial public sympathy by arguing that opposition to Western democracy promotion is resistance not to democracy itself, but

to American interventionism.’² As such, it seems that autocratic leaders have sensed a political window of opportunity to crack down on civil society.

We must also recall that governmental restrictions on private initiative are nothing new. Authoritarian governments throughout history have sought to limit the space for civil society. Combined with pre-existing constraints, the current backlash threatens the growth and vibrancy of civil society.

Common legal barriers to civil society

Increasing government restrictions have posed obstacles to the ability of both foreign and domestic CSOs to form, operate and sustain themselves.

Limited rights to associate and form CSOs

In the most restrictive environments, governments effectively deny the right to associate by granting it on extremely limited terms. Saudi Arabia, Libya, Cuba, China and Vietnam fall into this category. In other countries, governments often closely control the registration process. Governments may insist that all groups, however small or informal, must register, or they may make registration difficult.

Tactics include excessive government discretion over the registration process, making registration expensive, inconvenient or burdensome; excessive delays in making decisions; and requiring re-registration every few years.

- ▶ In Azerbaijan, Ethiopia and Algeria, regulations governing the registration process are vague and leave great discretion to registration officials. As a result, CSOs are sometimes denied registration or experience long delays.
- ▶ In Belarus, the government has in recent years adopted a series of laws restricting both public gatherings and CSO activity. As a result, the government has significant discretion over the opaque registration process. Applicants can wait more than a year, only to be denied registration without explanation.

Inability to obtain foreign funding

For some years, ICNL has warned of an increasingly concerning trend, namely the use of foreign funding restrictions to restrain civil society. In Eritrea, for example, legislation introduced in 2005 restricts the ability of international agencies to directly fund local CSOs under most circumstances. In Uzbekistan in 2004, the government required CSOs to deposit foreign grants in one of two government-controlled

banks. This effectively obstructed the transfer of the vast majority of foreign grants to CSOs.

Also in 2004, Zimbabwe proposed a bill to prohibit local CSOs engaged in 'issues of governance' from accessing foreign funds and foreign CSOs involved in these activities from registering. In the event, Mugabe declined to sign the bill, but there is concern that it will be revived. Zimbabwe recently suggested a similar proposal at the inaugural session of the new UN Human Rights Council.

'Every revolution has its counter-revolution – that is a sign the revolution is for real.'

Arbitrary or discretionary termination and dissolution

Some countries retain substantial discretion to shut down CSOs and use this to quash opposition groups. In 2003 and 2004, Belarus government officials dissolved a significant number of leading CSOs. Similarly, Egypt's Law 84/2002 permits the supervising ministry to shut down an organization at any time on the grounds that it is 'threatening national unity' or 'violating public order or morals' – both broad and ambiguous criteria which give the government substantial discretion to terminate CSOs.

Arbitrary and stringent oversight and control

Once a CSO has been registered, governments may restrict their activities through unchecked oversight. Failure to comply with government demands may lead to daunting sanctions and penalties. In Turkey, until recently, the authorities had the right to send representatives to the meetings of associations, thus chilling any sort of advocacy activity. With the assistance of TUSEV, Turkish officials, ICNL, the EU and other partners, this law was recently amended. Again in Belarus, in 2003, a number of CSOs ceased operations due to harassment from government officials. In 2004, the government reportedly inspected and issued warnings to 800 others, and in some instances papers were confiscated.

Criminal penalties against individuals.

In some countries, individuals who are found responsible for certain CSO activities can be held criminally liable. In Egypt, Law 84/2002 imposes severe individual penalties, including up to three months in prison and a fine of up to 1,000 Egyptian pounds, for conducting CSO activity, affiliating with a foreign CSO network or association, or merging with another association without MOSA approval.

Conclusion

The news is not all bad, however. Turkey and Mexico, for example, have recently enacted more positive reforms, while CSOs throughout the world have at times been able to successfully counter these repressive government tactics. ICNL is cataloguing these strategies and plans to disseminate them to a wider audience. While not every strategy is effective in every country or circumstance, together they constitute a useful array of tools to protect basic rights against government incursion. Moreover, there is some solace in the words of C Wright Mills, who once said: 'Every revolution has its counter-revolution – that is a sign the revolution is for real.' @

1 The information in this article is based on a comprehensive study conducted by ICNL entitled *Constraints on Civil Society*, published January 2006. It has led to the publication of numerous other materials, including 'The Assault on

Democracy Assistance', in *The Journal of Democracy*, April/May 2006.

2 Thomas Carothers, 'The Backlash Against Democracy Promotion', in *Foreign Affairs*, March/April 2006.

Comment Filiz Bikmen

Having taken part in Turkish CSO law reform efforts, the 'counter-revolution' is an issue of particular concern and relevance for me, especially with regard to if and how civil society can counter this trend. Reading this article, I had flashbacks from a workshop Douglas Rutzen and I organized at the recent CIVICUS World Assembly in Glasgow, which discussed this specific challenge.

A proposed slate of restrictive legal provisions (including most issues mentioned in this article) were presented to two groups. One group took on the role of government officials and was tasked with defending the restrictions. They prepared a convincing list of justifications, including national security and public order concerns. A CSO group (among them CSO law reform experts), tasked with opposing the reforms, made a poignant case for civil society's significance but was unable to demonstrate how these provisions would negatively affect civil society. Nor were they able to propose alternative solutions to address the concerns that had led to the provisions in the first place.

We were all struck by the stark reality that without unity, clarity of message and an astute strategy, civil society will be unable to reverse the counter-revolution. CSOs must be able to obtain a better understanding of the government perspective in order to develop alternative solutions and avert proposals that will be more damaging to civil society. This presents an urgent call to arms, not only to CSOs to consider new tactics and strategies, but also to groups such as CIVICUS to rally support, and to organizations such as the UN and the EU to facilitate inter-governmental dialogue and discourage regressive legislation.

With apprehensive yet hopeful sentiment, I wish us the best of luck in this journey.