



2008

NGO Pushback: The Use of Legal and Extralegal Means to Constrain Think Tanks & Civil Society Organizations

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McGann, James G., "NGO Pushback: The Use of Legal and Extralegal Means to Constrain Think Tanks & Civil Society Organizations" (2008). *TTCSP Global Go To Think Tank Index Reports*. 3.

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NGO Pushback: The Use of Legal and Extralegal Means to Constrain Think Tanks & Civil Society Organizations

The Think Tanks and Civil Societies Program
Data and Research for Policymakers and the Public



EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

In recent years, various political and social indicators have surfaced that highlight a mounting backlash in developing and transitional nations against the rise of civil society as well as the think tanks and other non-governmental organizations (NGOs) that are active within it. As part of a global trend against democratic avenues of participation, increasing state suppression of NGOs has appeared in nations ranging from Belarus to Tunisia. The rising prominence of domestic NGOs and their growing success at engaging the public has increasingly been met with threats from governments that seek to constrain their operations and, in extreme cases, to orchestrate their collapse. Historically, public policy think tanks in developing and transitioning countries have been key civil society actors: they often bring attention to critical policy issues, and help create legislation and regulations that provide all NGOs the space to operate freely. Since think tanks are often in the vanguard of civil society movements, they are frequently the primary targets of legal and extralegal restraints designed to limit their number, role, and influence. It is for this reason that we are giving them special consideration.

To examine the nature of this phenomenon, we will spotlight the case studies of five countries in hopes of shedding light on regional trends concerning the domestic operations of NGOs, with particular attention to indigenous think tanks and their role in the policy formulation process. For the nations of **China, Russia, Venezuela, Zimbabwe, and Egypt**, we will dissect the process of NGO pushback, first examining the growth of civil society within these nations, then extracting the causes and motivations behind corresponding state suppression, and finally delineating the legal and extralegal means of NGO containment. The report will conclude by identifying key

global trends among these five regions and offering a series of policy recommendations targeted at U.S. policymakers and the international community writ large.

Among our key findings, we offer a detailed picture of the rising use of both legal and extralegal means in restraining domestic NGOs. Common legal measures of governmental pushback include the following:

- *Registration Limitations*
- *Funding Restrictions*
- *Government Oversight/Monitoring*
- *Explicit Legal Restrictions on NGO Activities*

Alternatively, governments have also increased the range and penetration of extralegal measures targeted at the same domestic NGOs:

- *State Control of Media Outlets*
- *Suppression of Key Leaders*
- *Threats of Armed Force*
- *Underdeveloped Legal/Operating Environment*

Each of the five nations highlighted in this report have applied most, if not all, of these legal and extralegal approaches to their particular domestic situations. This report explores the specific application of these measures within these countries, beginning with China.

China

In China, for example, the government employs a series of measures, such as severe obstacles to obtaining registration and adequate funding, that restrict the capacity of domestic NGOs at all levels of operation. Overtly, the government mandates a strict system of official monitoring by the Ministry of Cultural Affairs that involves pairing each registered NGO with a government agency and soliciting annual reports from each organization. In fact, Chinese NGOs are subject to such a heightened degree of

governmental surveillance and regulation that they are only nominally “non-governmental” entities with supposedly independent and free agendas. Many Chinese NGOs have chosen to renounce their privileged non-profit status to escape stricter government scrutiny. These measures, catalyzed by the Tiananmen Square protests in 1989, were further strengthened by the ratification of the 1998 Regulations for Registration and Management of Social Organizations. Due to the nascent state of civil society in China, NGOs also operate under the extralegal constraints of the Chinese system, with limited rights to freedom of the press, an immature legal environment, loose adherence to the rule of law and virtually no means redressing the misapplication of regulations or legal or extra legal sanctions. While China has become increasingly accepting of NGOs that fill in critical regulatory gaps in social welfare or environmental protection, it remains wary of the threat posed by NGOs whose activities verge on political critique. For these NGOs and their leaders, the government has increasingly employed the use of violent extralegal mechanisms of repression.

Russia

China’s neighbor to the north, Russia, is also experiencing political and economic growing pains associated with the transition from the Soviet era toward a more democratic state. Consequently, its civil society has dealt with various obstacles and setbacks that continue to linger to the present day. The government of President Vladimir Putin—through tactics similar to recent rollbacks on freedom for the media and for the judicial system—has recently undertaken a program to inhibit the activities of NGOs. His successor, Dmitry Nikolaevich Medvedev, has shown no intention of altering the course set by President Putin. While both legislative and extralegal methods, including the

improper detainment of participants in NGO conferences during the 2006 G8 summit, have been employed, the responses from civil society prove that this nascent third sector is not willing to stand by in the presence of repression. Recent legal measures include a new NGO law, passed in 2006, that places restrictions on how NGOs and other civil society organizations (CSOs) are registered and funded by foreign supporters.

Venezuela

Governmental pressure on NGOs is not restricted to Eurasia: halfway across the world, the Venezuelan government is similarly engaged in increasing repression against NGOs. Although the international community judged the re-election of Hugo Chavez in December 2006 to be generally free and fair, mounting concerns have surfaced over the repression of civil society and the consolidation of power under the executive branch. Employing both legal and extralegal measures in its effort to regulate popular political participation and expression, the Chavez government has attacked the basic freedoms of association, expression, and engagement. Notably, in June 2006 the Venezuelan National Assembly (AN) pre-approved the International Cooperation Law (NGO Law), which threatened to impede the progress of over 4,000 CSOs active in the country.¹ The law focused on cumbersome re-registration of civic organizations, intrusive monitoring mechanisms, and restrictions on funding. Extralegal measures to constrain NGOs have persisted, ranging from the harassment of civic leaders to indirect use of pro-government militia and the violent suppression of peaceful protest. Strict legislation targeting media

¹ CIVICUS Resources and Services | Media Releases. "CIVICUS Urges Venezuelan Government to Reconsider Proposed Law." CIVICUS: World Alliance for Citizen Participation, 7 Aug 2006. Accessed 6 Jun 2008 <<http://www.civicus.org/new/media/CIVICUSurgesVenezuelan.doc>>.

outlets has handicapped the press, encouraging an atmosphere of self-censorship and limiting the dissemination of views that oppose those of the government.

Zimbabwe

Similarly but arguably more extremely, the state of Zimbabwe faces two serious challenges: a deep economic recession and a repressive autocratic government. Due to the extended period of economic hardship, relief work has become an important component in sustaining much of the population. This increased importance of NGOs and CSOs to Zimbabwean citizens means that these groups have been particularly vulnerable to attacks from the insecure government. President Mugabe has long alleged these groups to be either aligned with his political opposition or working for foreign interests. These accusations had led to substantial government restrictions on these groups—including new legislation, increased surveillance, and acts of violence directed toward civil society activists—even before the contentious elections of March 2008. Since then, however, the Zimbabwean government has escalated restrictive measures to an outright ban on all NGOs operating in the country, despite the vital necessity of humanitarian aid from these groups, as a part of what aid workers and human rights groups claim is “the governing party’s strategy to clear the countryside of witnesses to its brutal efforts to decimate the political opposition.”² Curtailing NGO operations thus seems to be one way in which the ruling party is keeping democracy at bay in Zimbabwe. Restricting NGOs allows the Mugabe regime, to the detriment of the well-being and liberty of its subjects, to limit the influence of civil society and accumulate power.

² Dugger, Celia W. “Zimbabwe Tells All Aid Groups to Halt Efforts.” *New York Times* 6 Jun 2008. Accessed 6 Jun 2008 <<http://www.nytimes.com/2008/06/06/world/africa/06zimbabwe.html>>.

Egypt

Lastly, we will be examining how the Egyptian government under Mubarak has engaged in NGO pushback to hinder the process of reform and liberalization within the state. NGOs in Egypt have been challenged with the dual tasks of resisting the consolidated power of the national government and attracting the attention of an international system that generally views Egypt as a “moderate” Arab state. By employing legal and extralegal measures that fly under the radar of the world community thanks to the close relationship between Egypt and the United States, the Mubarak regime has blocked many of the efforts of civil society. Recent legislative maneuvers, including Law 84/2002, allow the government to rein in NGOs at every stage of their operations, through any obstacle from registration hurdles to funding surveillance to bureaucratic labyrinths. Furthermore, the legal role of Egypt’s robust security services in matters pertaining to NGOs is not well defined, and Egyptian punishments target the collective, not the individual. These conditions create a climate of fear that all-too-common extralegal measures such as arbitrary arrests, beatings, and torture will be inflicted upon any individual associated with activity deemed unlawful, or even simply political.

Key Findings and Conclusions

From these five case studies, we have extracted several general findings about the nature of NGO operations. In terms of regime type, all five of these nations can be characterized as “backsliding” democracies or autocratic regimes with rulers who have embraced a stricter line with CSOs as the liberalization of political and economic life has progressed. The motivation for this tendency away from democratic reforms stems from several factors, including rising anti-American or anti-Western sentiments and fear of

political instability after the revolutionary model of the Color Revolutions and other democracy movements, which extend as far back as the overthrow of Marco's dictatorship in the Philippines, the fall of Gorbachev in Russia, and the Tiananmen Square protests in Beijing. In addition, domestic NGOs' ties to foreign donors and institutions have made governments more and more wary of these organizations and their increasing autonomy. Governments have, accordingly, put particular focus on restraining the voices of politically oriented NGOs whose practices may become threatening to the legitimacy of less democratic regimes. Our examination has also yielded insight into the use of both legal and extralegal measures of NGO pushback. While extralegal measures have always been at governmental disposal, the legal restrictions on NGO operations have intensified, particularly with regard to funding and taxation. Governments have also erected restrictive NGO registration and operation requirements.

To counter the growing backlash in developing and transitional states against domestic NGOs, we recommend the following policy action steps:

- At the international level, bilateral or multilateral organizations such as the United Nations, the European Union, and the Organization of American States can exert diplomatic pressure on governments who purposely impede the growth of civil society and the operation of NGOs. This pressure can take the form of official resolutions that highlight the mounting threat to domestic NGOs.
- Foreign governments and institutions that provide critical funding or other aid to governments that suppress domestic NGOs can also urge these nations to roll back repressive actions and increase the transparency of government activities.
- At the domestic level, NGOs can form regional networks to enhance their own strength and influence. These networks would expand the dissemination of their activities and enable them to engage in dialogue that may prove mutually reinforcing.
- NGOs should be proactive in increasing organizational transparency, adhering to internationally recognized standards for the operation of NGOs, and cultivating robust relationships with the public, so that they might strengthen their positions and thwart repressive governmental regulations.

- Foreign NGOs operating domestically can combine efforts with grassroots, indigenous NGOs to combat repressive legislation and other governmental action.

As key indicators of the state of civil society within a regime, the capacity of NGOs within developing and transitional nations must be safeguarded through the combined efforts of both international and local communities.

Over the last twenty years, think tanks and other CSOs have helped lead peaceful movements for political and economic reform around the world. Now these institutions are being threatened by governments that have developed systematic means of controlling the role and influence of NGOs. The similarity of the strategies employed by the five countries examined in this report is no coincidence, as the cases presented in this report clearly demonstrate. Think tanks and other NGOs are like a “canary in the mine”: if they cannot survive, all societal organizations—and indeed, all citizens—are threatened.

SUMMARY CHARTS OF LEGAL AND EXTRALEGAL MEASURES OF NGO PUSHBACK

China

	Legal Measures	Details
<input checked="" type="checkbox"/>	Registration limitations	NGOs must have at least \$12,000 and 50 members to register
<input checked="" type="checkbox"/>	Funding restrictions	No tax-exempt status; lack of institutionalized channels for public donations; ambiguous labeling of NPOs
<input checked="" type="checkbox"/>	Government oversight/monitoring	NGOs must register with and submit annual reports to Ministry of Cultural Affairs
<input checked="" type="checkbox"/>	Explicit restrictions on NGO operations	NGOs not allowed to open branches in other cities, and must pair up with a sponsoring government agency
	Extralegal Measures	
<input checked="" type="checkbox"/>	State control of media outlets	Censorship of internet and print publications
<input checked="" type="checkbox"/>	Suppression of key leaders	Arrests of leaders and others affiliated with democracy movements
<input checked="" type="checkbox"/>	Threats of armed force	Use of force against Falun Gong and other controversial citizens' groups
<input checked="" type="checkbox"/>	Underdeveloped legal environment	Poorly developed legal institutions and rule of law

Russia

	Legal Measures	Details
<input checked="" type="checkbox"/>	Registration limitations	2006 NGO law requires registration through Federal Registration Service
<input checked="" type="checkbox"/>	Funding restrictions	2006 NGO law; “double taxation” regime; no legal distinction between NGOs and for-profit entities
<input checked="" type="checkbox"/>	Government oversight/monitoring	2006 NGO law entails burdensome restrictions and bureaucracy
<input checked="" type="checkbox"/>	Explicit restrictions on NGO operations	2006 NGO law and other restrictions led to closure of multiple human rights NGOs in southwest Russia
	Extralegal Measures	
<input checked="" type="checkbox"/>	State control of media outlets	Media has been increasingly restricted since 2000
<input checked="" type="checkbox"/>	Suppression of key leaders	Would-be participants in G8 civil society conferences either discouraged from participating or forcefully removed from trains en-route
<input checked="" type="checkbox"/>	Threats of armed force	Threats and intimidation used during 2006 G8 summit
<input checked="" type="checkbox"/>	Underdeveloped legal environment	Outdated tax code; regulations of funding and non-profit work are vague; philanthropic community young and underdeveloped

Venezuela

	Legal Measures	Details
<input checked="" type="checkbox"/>	Registration limitations	Draft of International Cooperation Law (NGO Law) provides for cumbersome registry system and mandatory re-registration at discretion of executive branch.
<input checked="" type="checkbox"/>	Funding restrictions	NGO Law imposes constraints on foreign donations; Chavez plans to require funding oversight through International Cooperation and Assistance Fund.
<input checked="" type="checkbox"/>	Government oversight/monitoring	Intensive financial and tax auditing; NGO Law grants executive branch power to evaluate and disassemble civil society organizations at will and requires CSOs to submit information regarding their activities, sources of funding, etc.
<input type="checkbox"/>	Explicit restrictions on NGO operations	N/A
	Extralegal Measures	
<input checked="" type="checkbox"/>	State control of media outlets	Controversial laws compel registration, promote self-censorship (Radio and Television Social Responsibility Bill), and provide for harsh fines (Penal Code Amendments).
<input checked="" type="checkbox"/>	Suppression of key leaders	Misapplication of law: Venezuelan court has, for example, charged leaders of the voter-education-oriented NPO Sumate on frivolous counts of conspiracy and treason
<input checked="" type="checkbox"/>	Threats of armed force	Violent suppression of peaceful protests; NGO leaders threatened with personal harm; assassination of NGO leaders
<input checked="" type="checkbox"/>	Underdeveloped legal environment	Continual expansion of executive branch powers; also, unconstitutional court packing procedures have resulted in a severely politicized judiciary

Zimbabwe

	Legal Measures	Details
<input checked="" type="checkbox"/>	Registration limitations	Council established to regulate registration. Registration compulsory—non-registered status has been criminalized
<input checked="" type="checkbox"/>	Funding restrictions	Minimum levels of funding and administration required to obtain registration
<input checked="" type="checkbox"/>	Government oversight/monitoring	Council has the responsibility to investigate violations of NGO protocol, the power to set protocol, and the power to dissolve organizations
<input checked="" type="checkbox"/>	Explicit restrictions on NGO operations	Government targets foreign NGOs and human rights NGOs
	Extralegal Measures	
<input checked="" type="checkbox"/>	State control of media outlets	Arrests, threats, and violence against the media restricts free flow of information
<input checked="" type="checkbox"/>	Suppression of key leaders	Violence targets political opposition leaders
<input checked="" type="checkbox"/>	Threats of armed force	Militants employed by the gov't and police threaten civil society activists
<input checked="" type="checkbox"/>	Underdeveloped legal environment	Possible implementation of NGO Bill of 2004 intimidates NGOs to self-restrict activity. Current laws are enforced arbitrarily. Unprovoked arrests are common

Egypt

	Legal Measures	Details
<input checked="" type="checkbox"/>	Registration limitations	All NGOs must register under the Ministry of Social Affairs. Approval or denial can be based on superfluous factors, and may take a long time
<input checked="" type="checkbox"/>	Funding restrictions	NGOs must have all foreign funding approved by Ministry of Social Affairs; few domestic resources for funding
<input checked="" type="checkbox"/>	Government oversight/monitoring	NGOs must get the Ministry of Social Affairs to approve its board members. They must also submit minutes from their meetings, and engage in activities that Ministry approves of
<input checked="" type="checkbox"/>	Explicit restrictions on NGO operations	If stated or implied goals of an NGO are questionable, NGO is subject to dissolution
	Extralegal Measures	
<input checked="" type="checkbox"/>	State control of media outlets	Many unwritten rules of conduct must be obeyed by press and in electronic media
<input checked="" type="checkbox"/>	Suppression of key leaders	Consistent arrest and detention of democracy activists, both secular (e.g. Ibrahim) and religious (e.g. Muslim Brotherhood)
<input checked="" type="checkbox"/>	Threats of armed force	Surveillance and arbitrary detention of civil society leaders, NGO activists, journalists, bloggers, etc.
<input checked="" type="checkbox"/>	Underdeveloped legal environment	Military courts & civilian courts overlap in cases of treason and state defamation; few resources exist for defense of NGO workers

ABOUT THE AUTHOR

James G. McGann, Ph.D. is the Assistant Director of the International Relations Program at the University of Pennsylvania. He is also a Senior Fellow and Director of the Think Tanks and Civil Societies Program at the Foreign Policy Research Institute in Philadelphia. For the last 20 years he has served as President of McGann Associates, a program and management consulting firm specializing in the challenges facing think tanks, policymakers, international organizations and philanthropic institutions.

Dr. McGann has served as a consultant and advisor to the World Bank, United Nations, United States Agency for International Development, Soros, Hewlett and Gates Foundations and foreign governments on the role of nongovernmental, public policy and public engagement organizations in civil society. He has served as the Senior Vice-President for the Executive Council on Foreign Diplomats, the public policy program officer for The Pew Charitable Trusts, the Assistant Director of the Institute of Politics, John F. Kennedy School of Government, at Harvard University, and a Senior Advisor to the Citizens Network for Foreign Affairs and the Society for International Development.

Among Dr. McGann's publications are *Competition for Dollars, Scholars and Influence In The Public Policy Research Industry* (University Press of America 1995), *The International Survey of Think Tanks* (FPRI, 1999), *Think Tanks and Civil Societies: Catalyst for Ideas and Action*, co-edited with Kent B. Weaver (Transaction Publishers 2000), *Comparative Think Tanks, Politics and Public Policy* (Edward Elgar 2005), *Think Tanks and Policy Advice in the U.S: Academics, Advisors and Advocates* (Routledge, 2007), *Think Tanks: Catalysts for Democratization and Market Reform* (Forthcoming), *Global Trends and Transitions: 2007 Survey of Think Tanks* (FRPI 2008), and *The Global Go To Think Tanks* (FPRI 2008).

Think Tank and Civil Societies Program

The Think Tanks and Civil Societies Program (TTCSP) at the Foreign Policy Research Institute examines the role policy institutes play in governments and in civil societies around the world. Often referred to as the '**think tank's think tank,**' TTCSP examines the evolving role and character of public policy research organizations. The Program is directed by James G. McGann, Ph.D. a Senior Fellow at FPRI and President of McGann Associates, a program and management consulting firm specializing in the challenges facing think tanks, international organizations and philanthropic institutions. Over the last 20 years the Think Tanks and Civil Societies Program has laid the foundation for a global initiative that will help bridge the gap between knowledge and policy in critical policy areas such as international peace and security, globalization and governance, international economics, environment, information and society, poverty alleviation and health. This international collaborative effort is designed to establish regional and international networks of policy institutes and communities that will improve policy making and strengthen democratic institutions and civil societies around the world. The Think Tanks and Civil Societies Program works with some of the leading scholars and practitioners from think tanks and universities in a variety of collaborative efforts and programs. If you would like additional information about our publications and programs contact JM@fpri.org.

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