

GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

BARRED FROM THE DEBATE: RESTRICTIONS ON NGO PUBLIC POLICY ACTIVITIES

Letter from the Editor

Civil society -- civil groups hold their governments to high standards. And I know -- because this audience includes Americans who've been critical of me... They told me I was wrong. And in some cases they changed my mind; in some cases they didn't. And that's okay, because we're not going to agree on everything -- but I know this: Their voices and their views and their criticism ultimately will make my decisions better... And we'll find out: Are there ways of doing what we need to do that conform to our deepest held values and our ideals, and that are sustainable over the long term? That makes our country stronger in the long term, and I wouldn't want it any other way.

- President Obama at U.S. - Russian Civil Society Summit¹

Civil society representatives, individually and through their organizations, enjoy the right to freedom of expression.² Freedom of expression encompasses not only freedom of speech and media, but also freedom of thought, culture, and intellectual inquiry. At the individual level, freedom of expression guarantees everyone's right to speak and write openly without state interference, including the right to take a stance on government actions. But at a broader societal level, freedom of expression is also considered "a necessary pre-condition to good government, and thus also for economic and social progress."³ Freedom of expression enables open debate among political factions, allowing constituents to form opinions about their strengths and weaknesses and to vote accordingly. It allows individuals, acting alone or in concert, to raise concerns with the government, facilitating peaceful and effective

¹ Remarks by President Barack Obama at Parallel Civil Society Summit, Moscow, Russia, July 7, 2009
http://www.whitehouse.gov/the_press_office/REMARKS-BY-THE-PRESIDENT-AT-PARALLEL-CIVIL-SOCIETY-SUMMIT/

² See for example: Universal Declaration of Human Rights (1948) (Article 19); International Covenant on Civil and Political Rights (1966) (Article 19); European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) (Article 10). See also *Freedom and Democracy Party (OZDEP) v. Turkey*, (European Court of Human Rights Application No. 23885/94), 8 December 1999 ("the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association").

³ Article XIX, *Central Asian Pocketbook on Freedom of Expression* (London 2006), p. 21.

resolution of problems.⁴ Without an appropriate means to voice dissent, disenfranchised citizens “will eventually make their grievances known, and it may be in radical and destructive ways” that could “result in the disillusionment with democracy itself.”⁵ Free expression contributes to well-considered policies and laws, as public debate informs the choice of solutions to policy issues, and ensures “buy-in” from those who will be governed by the resulting policy or law.⁶ Freedom of expression is also necessary to the preservation of other human rights by allowing for scrutiny of human rights abuses as well as advocacy for the protection of such rights.⁷

NGOs can play an important role in advancing free expression by giving individuals vehicles to collectively voice their opinions and participate in public policy debates. As Sha Zukang, United Nations Under-Secretary-General for Economic and Social Affairs to the Civil Society Forum, stated, “[c]ivil society organizations who reach out to marginalized persons and groups help to give them voice, so that their concerns can be heard.”⁸ For many NGOs, particularly those engaged in human rights and democracy promotion, the ability to speak freely, raise awareness and engage in advocacy is fundamental to fulfilling their missions. NGOs shape public policy by challenging government law or policy, and advocating for human rights and fundamental freedoms.⁹

In this third issue of *Global Trends in NGO Law* we address how enacted or proposed legislation affecting public policy activities of NGOs threatens the freedom of expression by stifling civil society’s voice. We begin by examining laws that restrict public policy activities of NGOs. We then consider other restrictive provisions of NGO laws that have a chilling effect on free expression. We next look at laws of general applicability that may chill freedom of expression and how they affect civil society’s ability to participate in public debate. Finally, we consider the international legal framework governing the Freedom of Expression.

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⁴ See generally, *id.* pp. 21-22.

⁵ Joseph Proietti, *The Promise and Peril of Democracy* (Summary), *The International Journal of Not-for-Profit Law* Volume 7, Issue 2, (February 2005) citing former U.S. President Jimmy Carter’s speech to a panel of ambassadors to the Organization of American States as the inaugural speaker for the Lecture Series of the Americas, available at http://www.icnl.org/KNOWLEDGE/ijnl/vol7iss2/special_2.htm.

⁶ See Article 19, *Central Asian Pocketbook*, p. 22 (October 2006) available at <http://www.article19.org/pdfs/tools/central-asian-pocketbook.pdf>.

⁷ *Id.*

⁸ Statement by Mr. Sha Zukang, Under-Secretary-General for Economic and Social Affairs to the Civil Society Forum, *Social Integration: Building a Society for All*, (New York, February 3, 2009) available at http://www.un.org/esa//desa/ousg/statements/2009/20090203_civil_society_forum.html

⁹ See Anne Marie Slaughter, *The Idea That is America: Keeping Faith with Our Values in a Dangerous World*, p.59 (2007).

Introduction

On May 1, 2009, one month before presidential elections were to be held in Iran, Jelveh Javaheri was arrested when security officials came to search her home in Tehran without a warrant. She has since been charged with “acting against state security” with the aim of “disrupting public order and security” by virtue of her membership in the One Million Signatures Campaign, a civil society campaign by women in Iran to collect one million signatures in support of changing discriminatory laws against women in their country.¹⁰

In March 2009, a Honduran NGO released a report accusing members of the Honduran Congress of corruption. Within days, the Congress replaced an NGO-supported draft law with a highly restrictive draft that prohibited NGOs from, among other things, engaging in activities that could “influence the public in relation to a particular political party, candidate or ideological tendency.”¹¹

These are but two recent examples of government actions seeking to restrict civil society groups from participating in debate on public policy matters. In the past several years a number of governments have directly sought to limit NGOs from engaging in activities in which they might affect public policy. These restrictions have taken the form of (1) “international cooperation laws” that limit international support, including exchanges of knowledge or skill; (2) broad and ambiguous restrictions on NGO input in the policy making process; and (3) broad and ambiguous restrictions on “political” activities, giving government officials significant discretion to penalize those whose speech is deemed troublesome. Restrictions on the ability of NGOs to participate in public policy activities have also arisen in laws governing the registration and activities of NGOs, as well as in laws of general applicability.

I. Restrictions on Public Policy Activities of NGOs

A number of countries have proposed or adopted laws that directly restrict NGOs from expressing opinions or exchanging information about important public issues. Consider the following examples:

Restrictions on the Exchange of Knowledge

- In July 2009, members of the Foreign Relations Committee in the **Peruvian** Congress proposed amendments to Peru’s legal framework on International Technical Cooperation (ITC). The proposed amendments would explicitly allow the government to interfere in contacts between Peruvians and foreign persons that involve, among other examples, “grassroots movements and any *support of a partisan ideological nature,*” or protection of human rights, even if those contacts involved the simple transfer of knowledge or experience. The amendments impede the ability of people both to express their thoughts and to “receive any information and to hear

¹⁰ Amnesty International, *Iran's presidential election amid unrest and ongoing human rights violations*, (June 5, 2009), available at <http://www.amnesty.org/en/news-and-updates/news/iran-presidential-election-amid-unrest-and-ongoing-human-rights-violations-20090605>.

¹¹ Dictamen de la Ley de las Organizaciones no Gubernamentales, Article 3(a), (March 3, 2009).

the expression of the thoughts of others.”¹² The amendments are currently before the Peruvian Congress and are expected to be considered later this year.

- The **Venezuelan** National Assembly stated in March 2009 that it will renew consideration of a draft Law on International Cooperation. This law, if enacted, will give the President and Cabinet of Venezuela unprecedented authority to organize, control, direct, and coordinate all “activities of international cooperation,” including, among other things, transfers of “resources and skills.” Under the draft law, NGOs engaging with their foreign counterparts would be required to provide detailed reports and submit to Government inspections and audits, which might invite harassment and abuse of NGOs. All foreign funds would have to be routed through a “Fund for International Cooperation and Assistance,” allowing the Government discretion to determine which local organizations could receive foreign resources. Like the Peruvian amendments, to the extent that “resources and skills” includes the transfer of knowledge and experience as well as funds and material goods, the draft law impinges on the right to freedom of expression.

Attempted Restrictions on Public Policy Activities of NGOs

- In February 2009, the Parliament of the **Kyrgyz Republic** proposed “Amendments to the Law of the Kyrgyz Republic on Noncommercial Organizations.” This proposed law would have prohibited NGOs from participating in, among other things, “activity in the processes of nationwide reform.” The law’s definition of “activity in the process of nationwide reform” included a prohibition on the “introduction of proposals to the state bodies on improvement of the system of administration of state and public affairs.” If enacted, NGOs would have been prohibited from directly offering suggestions to the government for improvement to the welfare system, the public health system, or the education system. The law was withdrawn shortly after its introduction.
- A “Draft Manual on International Cooperation” proposed in May 2009 by the **Nicaraguan** government would have prohibited foreign NGOs from participating in or financing “political” activities that “run counter to or might influence national legislation.” A foreign NGO that holds a workshop attended by legislators in which participants discuss how better laws could facilitate medical care in rural communities could be said to have “influence” on legislation. Similarly, if a foreign NGO funds a local group to produce an analysis of the laws and regulations governing access to clean water, and the report identifies deficiencies in the laws, it could be said to “run counter” to national legislation. Following an intensive advocacy campaign by NGOs, the

¹² Inter-American Court of Human Rights, Advisory Opinion OC-5/85, (Series A), No. 5 (1985) (compulsory membership of journalists in a professional association represented a restriction of freedom of expression under Articles 13 and 29 of the American Convention on Human Rights).

Nicaraguan government deferred consideration of the draft manual until at least the end of 2009.

- The **Honduran** Congress proposed a law in March 2009 that would have prohibited all NGOs from engaging in "activities ... that might influence citizens in relation to a particular political party, candidacy, or ideological tendency (emphasis added)."¹³ This draft law, like the Nicaraguan draft manual, includes within its scope a broad range of public policy activities, and could be used at the government's discretion to silence expression of particular viewpoints. The term "ideological tendency" is a vague and undefined concept susceptible to arbitrary and discriminatory interpretation. So, for example, the law could be used to silence an NGO promoting any measures the government does not agree with on the grounds that it would "influence citizens in relation to a particular . . . ideological tendency." Following intensive NGO advocacy, debate on the draft law was suspended.

Broad Restrictions on "Political Activities"

- **Egyptian** law prohibits all "political activities" of NGOs. However, the Egyptian government does not differentiate between a political campaign for office and public policy activities.¹⁴ One example is the case of the Egyptian Association Against Torture. The Administrative Judiciary Court refused to register the association on December 15, 2005 because the court decided that the group's mission to pressure the government to eliminate torture in police stations and prisons was "political activity"; consequently, the association was prohibited from launching its activities.¹⁵
- **India** prohibits all NGOs receiving foreign funding from participating in activities associated with any political party.¹⁶ "Over the years, the Foreign Contribution (Regulation) Act (FCRA) has been used to block funding for and harass organizations that have exercised their lawful right of questioning or criticizing government policies and practices."¹⁷

¹³ Dictamen de la Ley de las Organizaciones no Gubernamentales, Article 3(a), (March 3, 2009).

¹⁴ Regulations indicate that prohibited political activities include "advocating the program of one of the political parties, contributing to electoral campaigns, and putting forth candidates for office." Regulations to Law No. 84/2002 on Non-Governmental Organizations (Article 25).

¹⁵ Mohamed Agati, *Undermining Standards of Good Governance: Egypt's NGO Law and Its Impact on the Transparency and Accountability of CSOs*, The International Journal of Not-for-Profit Law Volume 9, Issue 2, (April 2007), available at http://www.icnl.org/KNOWLEDGE/ijnl/vol9iss2/special_4.htm.

¹⁶ FOREIGN CONTRIBUTION (REGULATION) ACT, 5(1) Explanation (1976) available at <http://www.fcraforngos.org/act.pdf>.

¹⁷ Human Rights Watch, *Letter to Prime Minister Manmohan Singh of India about the Foreign Contribution (Regulation) Act* (April 9, 2008), available at <http://www.hrw.org/en/news/2008/04/09/human-rights-watch-letter-prime-minister-manmohan-singh-india>.

II. Other Provisions of NGO Laws Restricting Freedom of Expression

Other provisions of NGO laws may also chill free expression. Laws may, for example, provide governments with discretion to deny registration to NGOs, or restrict funding for NGOs engaged in human rights or advocacy activities - essentially starving those NGOs that speak out of critical resources - and ultimately inhibiting NGO representatives from espousing controversial views for fear of retribution. These provisions are often vaguely worded and provide governments with broad discretion to intervene in an NGO's activities.

- The **Ethiopian** government enacted a law in 2009 that restricts NGOs that receive more than 10% of their financing from foreign sources from engaging in activities related to “the advancement of human and democratic rights... the promotion of the equality of nations, nationalities and peoples and that of gender and religion... the promotion of the rights of the disabled and children’s rights... the promotion of conflict resolution or reconciliation... [and] the promotion of the efficiency of the justice and law enforcement services.”¹⁸ Prohibiting NGOs that receive more than a token amount of funding from abroad from participating in essentially all human rights and advocacy activities creates a significant burden on human rights and other designated types of organizations as it is nearly impossible for these organizations to raise the necessary funds domestically. This provision will silence civil society in Ethiopia by starving NGOs of resources, essentially extinguishing their right to expression.
- Justifying the need for 2006 amendment to the NGO laws, **Russia’s** then President Vladimir Putin accused NGOs of being “instruments of foreign states to carry out [their] policies” toward Russia and for providing opportunities for foreign “secret financing” of election campaigns.¹⁹ The law allowed the government to refuse to register NGOs where the organization is deemed to threaten Russia's “national unity, uniqueness and cultural heritage.” Organizations could be dissolved for the same reason. In practice, this provision allowed the government to silence dissenting viewpoints by refusing to register or forcibly closing NGOs. In a positive development, in June of 2009, the law was amended and the provision allowing the government to refuse to register NGOs where the organization is deemed to threaten Russia's “national unity, uniqueness and cultural heritage” was removed.²⁰ The amendments were drafted by a

¹⁸ *Proclamation for the Registration and Regulation of Charities and Societies* Article 14(2)(j-n) (February 2009).

¹⁹ Vladimir Putin addressing the Munich Conference on Security in February 2007. Full transcript of Putin’s speech (Russian only) available at http://www.kremlin.ru/appears/2007/02/10/1737_type63374type63376type63377type63381type82634_118097.shtml.

²⁰ The State Duma adopted amendments to Russian Federal Law No. 7-FZ of January 12, 1996, “On Non-Commercial Organizations” (NGO Law), which came into force on August 1, 2009.

presidential working group that included representatives from the justice ministry, the Duma, the Federal Council and civil society.²¹

III. Laws of General Applicability that Restrict NGO Speech

Some laws of general applicability that limit the right to free expression, such as those governing defamation and access to the internet, often have significant implications for the NGO sector.²²

Defamation and Libel Laws

The UN Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo, expressed concern about “the trend of increasing the scope of defamation laws to include the protection of subjective values, such as a sense of national identity, religions, State symbols, institutions or even representatives such as the Head of State.”²³ The Special Rapporteur reiterated that “the provisions on protection of reputation contained in international human rights law are designed to protect individuals, not abstract values or institutions.”²⁴

Freedom of expression is subject only to narrowly drawn restrictions which are necessary to protect legitimate interests, including the rights or reputations of persons.²⁵ If these restrictions are not narrowly construed, they can be misused by a government to impede public debate. For example, defamation laws, particularly those that seek to protect “national image,” have been used by some governments to target NGOs and their representatives as a means to restrict public debate on government actions or policies. The chilling effect of these laws on expression of opposition to government policies can be especially severe where the law allows criminal sanctions for defamation. Several international courts have determined that governments and politicians are required to tolerate potentially defamatory scrutiny where matters of public concern are at stake.²⁶

²¹ Eberhard Schneider, *Russian domestic policy*, EU-Russia Centre (July 20, 2009), available at <http://www.eu-russiacentre.org/our-publications/column/russian-domestic-policy.html>

²² “Voluntary, non-governmental human rights and civic groups must play an important role because these communities, by definition, are the ones to stand up against manipulation and censorship.” Guardian Interview with Vaclav Havel, *Freedom of Expression is Imperative to Democracy*, Observer.co.uk, (April, 28 2002), available at <http://www.guardian.co.uk/media/2002/apr/28/pressandpublishing.observercampaignpressfreedom>.

²³ Ambeyi Ligabo, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, (February, 28 2008), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/112/10/PDF/G0811210.pdf?OpenElement>

²⁴ *Id.*

²⁵ See Article 19, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, available at <http://www.article19.org/pdfs/standards/definingdefamation.pdf>.

²⁶ See Bonnie Docherty, *Defamation Law: Positive Jurisprudence*, Harvard Human Rights Journal Issue 13 (October 2008) citing *The Lingens Case*, 103 Eur. Ct. H.R. (ser. A) at 26, *Castells v. Spain* 236 Eur. Ct. H.R. (ser. A) (1992), *Thorgeirson v. Iceland* 39 Eur. Ct. H.R. (ser. A) (1992), *Die Spoorbond v. South African Railways* SALR 999, 1012–13 (S. Afr.) (Schreiner, J.A., concurring) (1946), available at <http://www.law.harvard.edu/students/orgs/hrj/iss13/docherty.shtml>.

- Saad Eddin Ibrahim, one of **Egypt's** leading human rights and democracy activists, was arrested, prosecuted, and imprisoned in 2000 for, among other things, allegedly “defaming Egypt's image abroad” – a violation of the Egyptian Criminal Code.²⁷ His defense team claimed that the real motive behind the government’s prosecution was his outspoken criticism of President Hosni Mubarak and his administration.²⁸ Mr. Ibrahim was tried three times but ultimately acquitted by the High Court of Justice in 2003²⁹ after substantial international pressure was exerted on the Mubarak regime. Several years later, a series of hisba³⁰ lawsuits were brought against Mr. Ibrahim by individual Egyptian citizens, and on August 2, 2008 an Egyptian court sentenced Ibrahim to two years imprisonment for again “defaming Egypt,” this time under the hisba doctrine. At least a dozen additional hisba cases remain pending against Mr. Ibrahim.
- Despite a 2004 law that eliminated prison sentences for offenses by the press, persons who voice dissent still face harsh criminal punishment in the **Ivory Coast**. The 2004 law continued to permit criminal fines for “offense against the president of the republic (Article 74) by a defamatory allegation about his/her public as well as private life that might affect his/her dignity.”³¹ In early 2008, Antoine Assalé Tiémoko, the head of an Ivorian NGO that fights social injustice, was sentenced to a year in prison for “libeling government officials” in an op-ed he authored about judicial corruption in a local paper.³²
- Fahd Al-Qarni, a **Yemeni** human rights and pro-democracy activist, who uses comedy and song as a way to voice dissent, has faced repeated charges of “insulting the president.”³³ The original charges, for which he was pardoned by the president, stem from recordings made by Mr. Al-Qarni in which he is critical of government policies.³⁴
- **Russian** President Dmitry Medvedev recently created a commission to fight what he calls, “the falsification of Russian history.” According to the decree that created the commission, the government believes falsifications are being made “to diminish the international prestige of

²⁷ *Exiled Egyptian activist sentenced*, Al Jazeera.net, (August 11, 2008), available at <http://english.aljazeera.net/news/middleeast/2008/08/20088211650154352.html>.

²⁸ *Id.*

²⁹ Committee on Human Rights, *Saad Eddin Ibrahim Is Acquitted*, (March 18, 2003), available at http://sites.nationalacademies.org/PGA/humanrights/PGA_051772.

³⁰ Hisba lawsuits are an early form of Islamic law that enabled “individuals to discuss matters of religion in the public arena” but which have recently been used to “silence dissent and stifle civic engagement.” See <http://bikyamasr.wordpress.com/2009/07/16/bm-analysis-the-rise-of-the-hisba/> for more information.

³¹ USAID, *Media Sustainability Index 2006-2007*, p. 99.

³² Reporters Without Borders, *NGO activist gets a year in prison for libel and contempt of court*, (January 10, 2008), available at <http://www.unhcr.org/refworld/docid/47a83e1924.html>

³³ *Prisoner Organization: a voice for the voiceless*, Yemen Times Online, available at <http://yementimes.com/article.shtml?i=1261&p=report&a=2>; see also *Singer and comedian Fahd al Qarni to face renewed charges of “insulting the president,”* available at http://www.ifex.org/yemen/2009/02/17/singer_and_comedian_fahd_al_qarni/.

³⁴ *Id.*

Russia.”³⁵ Specifically, Sergei Shoigu, the emergency situations minister, has called for the criminalization of “[the belittlement of] the role of the USSR in the Second World War.”³⁶ Janusz Bugajski, Director of the New European Democracies Program Center for Strategic and International Studies (CSIS), has suggested, “this would open the door to possible legal campaigns against political leaders in neighboring countries, including Ukraine, Georgia, and the three Baltic states, who challenge Russia's distorted version of history.”³⁷

- 2006 amendments to the **Belarusian** criminal code provided that “fraudulent representation of the political, economic, social, military or international situation of [...] Belarus” is regarded as “discrediting Belarus” and subject to punishment of up to six months of detention or two years of imprisonment.³⁸ As a result, in May 2006, the court of the Minsk city Peshamaiski district sentenced young oppositionist Arthur Finkevich to two years of enforced labor for authoring graffiti that read “We Want a New One!” on walls in the Belarusian capital.³⁹

Restrictions on Internet Access

It has been observed that the internet and civil society have an interdependent relationship -- the growth and success of one results in growth and success for the other.⁴⁰ The Internet has tremendous potential for fostering democratic participation, giving voice to the voiceless⁴¹ and allowing citizens and organizations from all over the world to exchange ideas on important issues. The power of the internet to facilitate expression by civil society is on the rise, however, “internet censorship and surveillance are growing global phenomena.”⁴²

- Since at least 1996 **China** has actively restricted access to the Internet. As reported by the Associated Press, China has issued Internet controls ordering service providers to screen private e-mail for political content and holding them responsible for subversive postings on their web sites. . .⁴³ Under these rules, general portal sites must install security programs to screen and

³⁵ Galina Stoylarova, *With Apologies to Orwell*, Transitions Online (May 28, 2009) available at www.tol.cz/look/TOL/printf.tpl?IdLanguage=1&IdPublication=4&NrIssue=323&NrS.

³⁶ *Id.*

³⁷ Janusz Bugajski, *Op-ed: KREMLIN'S CRIME: Is Russia determined to repeat its history?* The Wall Street Journal Europe, (June 11, 2009) available at <http://action-ukraine-report.blogspot.com/2009/06/aur937-june-21-russias-battle-with.html#a1>.

³⁸ International Helsinki Federation for Human Rights and the Belarusian Helsinki Committee, *FREEDOM OF EXPRESSION IN BELARUS from the Second Supplementary Human Dimension Meeting on Freedom of the Media: Protection of Journalists and Access to Information*, Vienna, 13-14 July 2006.

³⁹ *Id.*

⁴⁰ Guobin Yang, *The Co-Evolution of the Internet and Civil Society in China*, Asian Survey 43 (3) pp. 405-422 (2003).

⁴¹ Global Internet Liberty Campaign, *Regardless of Frontiers: Protecting the Human Right to Freedom of Expression on the Global Internet*, p. 6, (September 1998) available at http://www.cdt.org/gilc/Regardless_of_Frontiers.pdf.

⁴² See Open Net Initiative at <http://opennet.net/>.

⁴³ Associated Press, *China Tightens Web Controls* (January 1, 2002) available at <http://www.wired.com/politics/law/news/2002/01/49855>.

copy all e-mail messages sent or received by users.⁴⁴ Those containing 'sensitive materials' must be turned over to authorities. Providers are also responsible for erasing all prohibited content posted on their web sites, including online chat rooms and bulletin boards. The new rules include a long list of banned content," including, a prohibition on writings that "hurt China's reputation."⁴⁵ Under these provisions, an NGO is prohibited from exchanging over the internet any information that could be perceived as harmful to China's reputation.

- **Thailand** is one of the few remaining countries in the world to prosecute crimes of lèse majesté; individuals who insult, defame, or threaten the Thai royal family can be sentenced to up to fifteen years of imprisonment.⁴⁶ Lèse majesté has begun to form the basis for the blocking and removal of Thai web sites.⁴⁷ The Ministry of Information and Communication Technology indicated that it has shut down more than 2,000 websites alleged to have contained lèse majesté material, and considers the crackdown policy a priority.⁴⁸ Thus any NGO that uses the internet to discuss critical issues regarding the Thai royal family could become a target for government action.
- In April 2009, the **Iranian** parliament passed amendments to the Press Law that extended its coverage to content found on the internet. The Press law outlines broad restrictions on speech, including prohibitions on "promoting subjects that might damage the foundation of the Islamic Republic ... or encouraging and instigating individuals and groups to act against the security, dignity and interests of the Islamic Republic of Iran."⁴⁹ Given the ambiguous wording of the amendments, critics say that any web site that can be viewed by the public may also fall within the new definition, allowing greater discretion to the government to inhibit freedom of expression over the internet. This restriction may have a particularly negative impact on NGOs that espouse unpopular views using websites. According to the Open Net Initiative, Iran employs one of the most extensive internet filtering systems in the world.⁵⁰ During the 2009 presidential elections the government blocked access to a number of sites including Facebook, YouTube, and Twitter.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Open Net Initiative, *Thailand* available at <http://opennet.net/research/profiles/thailand>.

⁴⁷ Article 19, *Impact of Defamation law on Freedom of Expression in Thailand* available at <http://www.article19.org/pdfs/analysis/thailand-impact-of-defamation-law-on-freedom-of-expression.pdf>.

⁴⁸ *Id.*

⁴⁹ *Press Law of the Islamic Republic of Iran*, Article 6, available at http://www.parstimes.com/law/press_law.html.

⁵⁰ Open Net Initiative, *Iran* available at <http://opennet.net/research/profiles/iran>.

IV. Legal Framework

International law recognizes that everyone has the right to freedom of expression and opinion.⁵¹ For example, Article 19 of the ICCPR protects the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [one's] choice.⁵² As the Inter-American Court on Human Rights has recognized with respect to the equivalent provision of the American Convention on Human Rights:

*These words establish literally that persons under the protection of the Convention not only have the right and freedom to express their own thoughts, but that they also have the right and freedom to seek, receive, and impart information and ideas of all kinds. Consequently, when an individual's freedom of expression is illegally restricted, not only is it that individual's right that is being violated, but also the right of everyone to "receive" information and ideas. . . . In fact, this right requires first that no persons be arbitrarily impaired or prevented from expressing their thoughts, and in this way it represents an individual right. But it also implies a collective right to receive any information and to hear the expression of the thoughts of others.*⁵³

Articles 19 and 20 of the ICCPR set out the very limited conditions under which a restriction on the right to free expression is permissible. The restriction must be prescribed by law and necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.⁵⁴ In addition, any propaganda for war, and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.⁵⁵

Freedom of expression is also necessary to the preservation of other human rights. The U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms⁵⁶ recognizes this concept in its inclusive list of the activities protected by the right to free expression, which include "to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms," and "to submit to governmental bodies and agencies . . . criticism and proposals for improving their functioning

⁵¹ International Covenant of Civil and Political Rights (ICCPR) (Article 19); Universal Declaration of Human Rights (UDHR) (Article 19) (1948); European Convention on Human Rights (Article 10) (1950) (ECHR); African (Banjul) Charter on Human and Peoples' Rights (ACHPR) (Article 9) (1982); American Convention on Human Rights (ACHR) (Article 13) (1978); and Arab Charter on Human Rights (Article 32).

⁵² ICCPR Article 19(2).

⁵³ Inter-American Court of Human Rights, Advisory Opinion OC-5/85, (Series A), No. 5 (1985) (compulsory membership of journalists in a professional association represented a restriction of freedom of expression under Articles 13 and 29 of the American Convention on Human Rights).

⁵⁴ *Id.*

⁵⁵ ICCPR Article 20.

⁵⁶ Adopted by the U.N. General Assembly in Resolution 53/144 (December, 9 1998) available at <http://www.ohchr.org/English/law/freedom.htm>.

and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”⁵⁷

The laws discussed above raise concerns under the ICCPR and other conventions protecting the right to free expression:

- Restrictions on transfers of knowledge and information such as those posed by international cooperation laws explicitly allow the government to interfere in contacts between a country’s residents and foreign persons, impeding the ability of people both to express their thoughts and to “receive any information and to hear the expression of the thoughts of others, regardless of frontiers.”⁵⁸
- Legal restrictions on NGO activities using vague terminology such as “influence . . . ideological tendencies”(Honduras) or “activity in the processes of nationwide reform” (Kyrgyzstan), or broadly prohibiting NGO “political” activity chill free expression and allow government significant discretion in determining what speech it will allow and what speech it will punish. The ICCPR Human Rights Committee recognized this problem in its review of the Russian law, “Combating Extremist Activities,” explaining that “the definition of ‘extremist activity’ . . . is too vague to protect individuals and associations against arbitrariness in its application.”⁵⁹
- Restrictions that directly or indirectly limit NGOs from engaging in certain activities, such as human rights defense, not only impinge upon the right to associate, but also impede the right of people, individually and through their organizations, to speak out on matters of public concern.

Conclusion

Restrictions on NGO public policy activities deprive individuals of an important vehicle for educating themselves and voicing their opinions on important issues. The absence of critical voices weakens the resulting policies, and by extension, effective governance. Governments, along with civil society organizations and the public, stand to gain by removing barriers to NGO participation in public policy development.

We invite you to submit comments and reports of emerging issues in your country by visiting <http://www.icnl.org/globaltrends/>.

⁵⁷ *Id.* The complete list is found at Articles 6-9.

⁵⁸ ICCPR Article 19.

⁵⁹ ICCPR, Human Rights Committee, A/59/40 vol. I (2003) 20 at para. 64 (20).