

GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

SPECIAL EDITION

*WAVE OF CONSTRAINT: RECENT DEVELOPMENTS IN VENEZUELA, ECUADOR, HONDURAS, IRAN,
BAHRAIN, AND CAMBODIA*

I. Introduction

Between November 22 and December 1, 2010, the International Center for Not-for-Profit Law received reports that Venezuela, Ecuador, Honduras, Iran were planning to amend their NGO laws to restrict the operations and activities of civil society, and that Bahrain had already done so. Shortly thereafter, news surfaced that Cambodia was also planning a restrictive new law governing NGOs.

The restrictions proposed in these laws will create a burdensome web of regulations for civil society groups and are evidence that the backlash against civil society is ongoing, transcending legal systems and political cultures. ICNL has received numerous requests for more information about these laws, which have captured the attention of civil society and governments alike. We are publishing this Special Edition of Global Trends, to focus on the most recent wave of proposed restrictions on civil society. This issue reflects the status of these laws as of late December 2010; ICNL will continue to post information on them on its NGO Law Monitor, www.icnl.org/ngolawmonitor, as events unfold.

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Venezuelan civil society is currently confronted with two laws – one just enacted, and one under consideration -- that would drastically curb the right to associate: the International Cooperation Law and the Law for Protection of Political Liberty and National Self-determination.

For most of the past decade, the Venezuelan government has increasingly restricted civic space. A 2009 Report by the Inter-American Commission on Human Rights (IACHR) chronicles the deteriorating climate for human rights. Among other issues, the Commission cited a “troubling trend of punishments, intimidation, and attacks on individuals in reprisal for expressing their dissent with official policy.” According to the IACHR report, the Chavez administration has used criminal charges to punish demonstrators and dissidents, stood by while human rights defenders were attacked and even killed, restricted the right to expression by closing media outlets and harassing journalists, and attempted to cut off financing of civil society groups.¹

In September 2010 parliamentary elections, the opposition parties won sufficient votes to deprive President Hugo Chávez's party of its two-thirds majority in the national assembly.² The new parliament will be seated in January, and until that time, the President still has a majority in the Assembly. On December 18, 2010, the Assembly approved to a law granting the President special powers to enact laws by decree for eighteen months, allowing him to circumvent the new legislature.³

The Law for Protection of Political Liberty and National Self-determination. The National Assembly on December 21, 2010 passed this law, which targets NGOs dedicated to the “defense of political rights” or other “political objectives.”⁴ Specifically, it precludes these organizations from possessing assets, or receiving any income, from foreign sources. Noncompliance could lead to a fine of double the amount received from the foreign source. In addition, these organizations reportedly will be prohibited from hosting a foreign citizen who speaks out in a manner that might offend State institutions or senior officials, or that might go against the exercise of State sovereignty. Noncompliance with this provision could subject representatives of the Venezuelan organization to monetary fines and a loss of “political rights” for five to eight years.⁵

¹Inter-American Commission on Human Rights, “Democracy and Human Rights in Venezuela” (December 30, 2009), <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>.

²Rory Carell, “Venezuela election loosens Hugo Chávez's grip on power,” *The Guardian*, September 28, 2010, <http://www.guardian.co.uk/world/2010/sep/27/hugo-chavez-congressional-election-venezuela>.

³Mery Mogollon and Chris Kraul, “Venezuela grants Chavez discretionary powers,” *Los Angeles Times*, December 18, 2010, <http://articles.latimes.com/2010/dec/18/world/la-fg-venezuela-chavez-20101218>.

⁴María De Lourdes Vásquez, “Aprueban ley que impide financiamiento internacional a ONG,” *El Universal*, December 21, 2010.

⁵The law was passed just hours before this issue went to press. The summary of its contents is based on the bill under consideration by the assembly. Further information will follow in the NGO Law Monitor, www.icnl.org/ngolawmonitor.

The International Cooperation Law. In 2006 the National Assembly introduced, and passed on first reading, a restrictive draft Law on International Cooperation. The legislature did not take further action, and the law was never enacted.

Following the 2010 elections, on November 25, Chavez made a speech imploring the National Assembly to make “a severe law” that would impede political and non-governmental organizations that are financed by the “Yankee Empire.”⁶ The Assembly took under consideration a revised version of the International Cooperation Law. The Foreign Affairs Permanent Committee of the National Assembly met on December 1 and released a statement saying it planned to begin a comprehensive review of the law during the second week of December.⁷

Venezuelan NGOs vigorously oppose the law, which they fear will ban international funding entirely, impeding their ability to garner sufficient financial resources to carry out their missions.⁸ The Inter-American Commission on Human Rights (IACHR) also expressed its concern that the law’s provisions will restrict the international funding needed by nongovernmental organizations.⁹

The law requires a vast array of organizations to register and subject themselves to highly discretionary government supervision if they engage in any international cooperation activity, broadly defined. The 2010 draft expands the type of organizations required to register under the law but is otherwise substantially similar to the 2006 draft. It contains the following provisions:

- **The law establishes a Fund for International Cooperation and Assistance** that will collect “inheritances, donations, transfers, and other resources received from other governments, international entities, cooperating sources, and national or foreign public and private institutions for purposes of supporting cooperation.” The Fund will potentially allow the government to collect international funds from donors and redirect them in accordance with national priorities as determined by the State. Venezuelan organizations will face serious restrictions on their ability to raise funds, particularly for activities that the government disfavors. This burden may disproportionately affect human rights defenders and advocacy organizations.
- **A new executive agency will be created to regulate international cooperation** with foreign states, international organizations, NGOs, and others and to “organize, direct, control, coordinate, pursue and evaluate all “activities of international cooperation” in Venezuela.

⁶[“Assembly to limit resources to NGOs involved in politics,”](http://politica.eluniversal.com/2010/11/25/pol_art_asamblea-limitara-re_2117747.shtml) *El Universal*, November 25, 2010, http://politica.eluniversal.com/2010/11/25/pol_art_asamblea-limitara-re_2117747.shtml.

⁷Agencia Venezolana Noticias, “Ley de Cooperación Internacional regulará financiamiento a ONGs,” December 2, 2010, <http://www.avn.info.ve/node/31630>.

⁸Christopher Toothaker, “Venezuelan NGOs fear restrictions on foreign funds,” *Associated Press*, November 25, 2010, <http://www.wtop.com/?nid=389&sid=2178235>.

⁹[“IACHR Concerned over International Cooperation Initiative in Venezuela,”](http://www.humanrights-defenders.org/2010/12/iachr-concerned-over-international-cooperation-initiative-in-venezuela/) Inter-American Commission for Human Rights, December 3, 2010, <http://www.humanrights-defenders.org/2010/12/iachr-concerned-over-international-cooperation-initiative-in-venezuela/>.

Because the agency's officials are chosen by the President, it will be able to create its own rules regarding how to register and regulate organizations. It is far from clear at this point how the agency will exercise its discretion and whether it will tolerate NGOs that do not support the President's policies.

- **The Law will prohibit Venezuelan groups from freely exchanging, in addition to money, goods, and services, “improvement of institutional capacities,” and “creation of human talent.”** This provision may be interpreted to regulate the exchange of ideas, information, and opinions with foreign counterparts related to the betterment of their organizations or staff. This would essentially cut off any technical assistance programs that domestic NGOs have with their branches or partner organizations abroad.
- **The Law creates a system of mandatory registration** in order for an organization to be recognized by the State as having the ability to engage in activities with foreign counterparts, as well as to receive money, goods, and services. These registration requirements appear to be in addition to the registration process required to create an organization. A wide range of organizations would be required to register, including organized communities, nongovernmental organizations, universities, corporations, entrepreneurial organizations, unions, and other “social agents regarding those activities related to the international cooperation.” This is a major change from the original draft of the law, which would have required only NGOs to register.

ECUADOR

In March 2008, President Rafael Correa issued Decree No. 982, which tightened Ecuador's already restrictive law governing NGOs. Among other restrictions, the decree authorized the Government to dissolve an NGO on discretionary grounds such as “compromising ... the interests of the State;” to demand virtually unlimited information from an NGO; and to post the names of every member of all registered NGOs on a publicly accessible website. Since that time, Ecuadoran NGOs have lobbied for changes to the laws and regulations governing their activities. They have developed a united statement asserting their rights to engage on matters of public policy and stating their concerns about the Decree along with recommendations for reform.

On December 1, 2010, the Government presented to Ecuadoran NGOs a draft law that is expected to be enacted in the near future. The draft law incorporates some of the changes recommended by the NGOs in their statement. However, it retains several of the Decree's most restrictive features and introduces problematic new provisions. Key issues include:

- **The law allows for excessive government discretion to dissolve NGOs.** Grounds for dissolution of an NGO include “political proselytizing,” “compromising ... the interests of the State,” and

non-compliance with accountability requirement of by-laws. These terms are largely undefined, leaving the government with broad discretion to determine what constitutes prohibited conduct. As a result, NGOs may be deterred from speaking out on particular public policy matters for fear of being accused of “political proselytizing.” In addition, the law permits dissolution if the organization’s board of directors lacks gender balance. NGOs with objectives that are of particular interest to one gender, such as support for breast cancer survivors or battered women, may find their continued survival threatened by requirement of gender balance among their leadership.

- **The law gives the government and the public access to the internal information of NGOs.** Citizens may demand “accountability” – undefined -- from any NGO that carries out public interest activities – also undefined -- or public services, or that manages public resources. NGOs must also hand over to government officials any information related to their activities, and must make their premises available for inspection so long as the officials provide advance notice. Without limits on these accountability obligations, the need to present documentation in response to repeated citizen or State demands could threaten the privacy rights of NGO members and inappropriately burden an NGO’s financial and human resources.
- **The law creates a “permanent plan” for purging NGOs.** All Government Ministries charged with NGO oversight are required to promptly develop plans for removing organizations from the NGO Registry. Purging is permitted for even slight technical infractions, if the response is not received in very short order, and the information demanded may itself be improper, given international standards. For example, NGOs are required to report the names, ID numbers, nationality, and addresses of every member – a substantial undertaking for NGOs with large memberships. If the government is dissatisfied with an NGO’s response to a request for this list, it can dissolve the NGO in as little as 15 days.

HONDURAS

Honduran NGOs have been advocating for a more enabling law governing their Sector for more than a decade. Their most recent effort resulted in a relatively progressive draft law that was widely vetted within and supported by the NGOs sector. NGOs encountered a number of setbacks in their efforts to obtain congressional action on their draft. It was twice introduced, but for years it was deferred in favor of other Congressional priorities.

In 2009, the draft was under consideration in Congress, but it was set aside in favor of a restrictive alternative marked up by the legislators. The NGO community then shifted its advocacy posture to defeating the restrictive draft. Later in 2009, President Zelaya was ousted in a coup that plunged the country into crisis, making progress on the NGO law impossible.

Once the constitutional crisis was resolved, NGOs put together a diverse coalition to support their draft, which was reintroduced with strong Congressional support in early November 2010. During the third week in November, the Minister of the Interior and Population introduced his own, far more restrictive bill.

If enacted, the Ministry draft would create a number of obstacles to NGO operations:

- **The activities of civil associations appear to be restricted to those in accord with the national development plan.** This limits the right of NGOs to work for legitimate causes that may not align with the government's development goals. Many NGO activities, such as monitoring government corruption or addressing human rights abuses might not be considered to fall within this limited category.
- **The law fails to provide information about the basis for approval or denial of registration; a timeline for the determination; or appeal rights for registration denials.** Without clear criteria for the grant or denial of a registration application, or a clear process, government officials would have wide latitude in determining which organizations may register, and NGOs will have no recourse when their applications are denied.
- **The rights and obligations of foreign NGOs are unclear under the proposed law.** All foreign NGOs could be required to register in Honduras before they are able to "operate" the country. The law does not explain what constitutes "operation." It is not clear, for example, whether a foreign NGO conducting a short-term technical assistance or assessment visit to Honduras would be required to register. The registration process is complex, and it would require foreign NGOs to undergo an unbounded investigation by Honduran consulate officials about the veracity of their application documents to ensure that the organization, its founders, or members do not have outstanding debts, and are of honorable repute. The law does not include any criteria or procedure for assessing applications for international NGOs to operate in Honduras, leaving it at the discretion of the Government to reject applications.
- **The law provides excessive governmental discretion to terminate NGOs.** The government would be allowed to terminate an organization if, among other reasons, it determines in its discretion that the organization has not fulfilled the purpose for which it was created; that the organization "exists only to receive public funds, and, therefore, does not operate normally;" or that a audit by the national government's supervision and control agencies finds "enough anomalies." These grounds for extinguishing the legal personality of an organization are too vague for principled application.

According to the Dutch NGO Arseh Sevom, a bill entitled *The Establishment and Supervision of NGOs* will soon be presented to the Parliament for approval.¹⁰ The bill was first brought before Iran’s Parliament in 2006, but was amended substantially in 2007 by a Parliamentary committee to include new restrictions; it is this revised bill that will be considered by the Parliament.¹¹

Iranian NGOs already operate under significant constraints. Particularly in the wake of the controversial 2009 presidential elections, a number of civil society groups have been subject to government harassment, closure and even arrests of staff and members.¹²

According to the preamble to the bill, the goal of the law is:

- *“Legal intervention in relations between NGOs and other spheres,*
- *Control of the relations of NGOs, distancing them from the political arena and from criticism of political power,*
- *Control of international relationships, intervention in the relations between NGOs and their stakeholders . . .”*¹³

The bill establishes a Supreme Committee that will have broad powers over NGOs, including authority to approve an NGO’s formation, to revoke an NGO’s license to operate, and approve requests for assemblies or demonstrations.¹⁴ It includes the following measures:

- **To be considered an “NGO” under the law, an organization must be established “within . . . the ideological and ethical foundations of the Islamic Republic of Iran.**¹⁵ This definition will provide broad discretion to the Supreme Committee to decline to license or to dissolve organizations that in its opinion do not meet an ideological or ethical litmus test.
- **The Supreme Committee has authority to issue and revoke registration permits to all existing Iranian NGOs.** New organizations will go through a comprehensive process of approval by the Ministry of Intelligence and the Supreme Committee. Long-standing Iranian NGOs will now be subject to the harsher approval process of the Supreme Committee and newly founded NGOs that are not in line with the government’s views may have their registration application rejected.

¹⁰Arseh Sevom, “Iran: Legalizing the Murder of Civil Society” December 2010, p. 5.

¹¹Ibid.

¹²Ibid. See also “[Iran: Crisis Deepening One Year After Disputed Elections](http://www.hrw.org/en/news/2010/06/10/iran-crisis-deepening-one-year-after-disputed-elections),” Human Rights Watch, June 10, 2010, <http://www.hrw.org/en/news/2010/06/10/iran-crisis-deepening-one-year-after-disputed-elections>.

¹³Arseh Sevom, “Iran: Legalizing the Murder of Civil Society” (December 2010), p. 7.

¹⁴Ibid at 6.

¹⁵Ibid at 8.

- **NGOs are required to be “nonpolitical,”** which means that they cannot engage in activities under the Political Parties Act, and also cannot participate in “social and political forums as an NGO to influence critical positions and campaign in favor or against individuals and political movements.”¹⁶ In addition, board members, founders, the executive director and inspectors of an NGO may not be affiliated with political parties or organizations, or groups considered “illegal and hostile.”¹⁷
- **Foreign or international NGOs will not be allowed to implement activities in Iran** or execute contracts with the government agencies, public institutions, or domestic NGOs unless they obtain the approval of the Supreme Committee as well as the permission of the Ministry of Foreign Affairs, Ministry of Intelligence, and special government agencies. Domestic NGOs are required to obtain permission from the Supreme Committee before entering into contracts or receiving aid from the UN agencies or other contributors.¹⁸ In addition, domestic NGOs require the Supreme Committee’s permission to become a member of an international organization or to participate in conferences or trainings abroad.¹⁹ NGOs will only be able to partner with foreign entities under severe limitations, if at all.

BAHRAIN

In the run up to Bahrain’s October 2010 parliamentary and municipal elections the government engaged in a widespread crackdown of civil society and opposition groups. Scores of opposition leaders and human rights activists were detained, and several prominent civil society leaders were charged with “conspiring to overthrow the government” and “working with international organizations.”²⁰ Detained opposition leaders were reportedly subjected to physical and psychological abuse.²¹ Leaders of NGOs were also prohibited from leaving Bahrain to participate in international meetings, including a session of the UN Human Rights Council.²²

¹⁶Ibid at 8.

¹⁷Ibid.

¹⁸Ibid at 11.

¹⁹Ibid at 7.

²⁰Joshua Colangelo-Bryan, “The Real Bahrain,” *Wall Street Journal*, October 19, 2010, <http://www.hrw.org/en/news/2010/10/19/real-bahrain>. Associated Press, “Religious forums to come under scrutiny in Bahrain,” *Gulf News*, September 6, 2010, <http://gulfnews.com/news/gulf/bahrain/religious-forums-to-come-under-scrutiny-in-bahrain-1.678461>. See also Christopher M Davidson and Kristian Coates, “Bahrain on the edge,” *Open Democracy*, October 19, 2010, <http://www.opendemocracy.net/christopher-davidson-kristian-coates-ulrichsen/bahrain-on-edge>.

²¹International Federation for Human Rights, “Acts of Physical and Psychological Torture Perpetrated Against Messrs. Abduljalil Al-Sengais and Abdulghani Ali Issa Al-Khanjar While in Detention, September 1, 2010, <http://www.fidh.org/Acts-of-physical-and-psychological-torture>.

²²International Federation for Human Rights, “Obstacles to Freedom of Movement and Violations of Freedom of Association,” October 1, 2010, <http://www.fidh.org/Obstacles-to-freedom-of-movement-and-violations>.

Moreover, several prominent NGOs were dissolved or forced to replace their governing boards with individuals appointed by the government. The government has the authority to take such actions under the Law on Associations, a highly restrictive law that gives the government extraordinary powers to control NGOs. These include the authority to deny a NGO the right to register, to imprison or fine persons who work on behalf of a group that does not register, and to deny organizations the ability to raise money abroad.

In the elections, Shi'a opposition groups won 18 of the 40 open seats in Parliament.²³ Thereafter, on November 14, 2010, the Law on Associations was amended. The amendments caught civil society off-guard, as there was no previous indication from the Bahraini government or parliament that such an amendment was under consideration. The amendments were published in the Official Gazette on November 25, 2010 and became effective on that date.

The amended law prohibits members of “political or social societies” from serving as the Board of Members of NGOs. Notably, members of the more powerful upper house of parliament or *Shura* Council are directly appointed by the King and, for that reason alone, are not considered to be affiliated with political societies. Neither are members of the ruling family, who make up the majority of the Executive Branch. Thus, while the prohibition can theoretically be applied against any form of political activism, it appears to be intended to target opposition movements that are predominantly Shi'a groups. Several prominent civil society organizations may be forced to replace their Board of Directors with individuals appointed directly by the Ministry of Social Development.

Cambodia

In August 2010, a draft law on NGOs/Associations was reportedly completed by an inter-ministerial committee. The Ministry of Interior issued an open call for support for a national consultation on the draft law. In response, NGO representatives sought assurances that the draft law be made available to the NGO community to allow for adequate review of the draft law and time for regional consultations at least one month prior to the planned national consultation.

On November 18, 2010, a “NGO National Consultative Workshop on NGO Law” was held in Phnom Penh, in anticipation of the release of the draft NGO Law during December. While the Government of Cambodia has suggested there will be a period of national consultation on the proposed legislation, the time frame for reviewing and disseminating the draft law before the consultation takes place appears to be very short and NGO representatives fear that the consultation will be in name only. The Government has agreed to an additional consultation workshop now scheduled for January 10, 2011.

The Draft Law was released on December 15, 2010. Key issues include:

²³“Winning 18 seats in the 40-member parliament,” Al Arabiya News Channel, October 24, 2010, <http://www.alarabiya.net/articles/2010/10/24/123480.html>.

- **The draft limits eligible founding members of both associations and NGOs to Cambodian nationals.** Consequently, the draft law excludes refugees, stateless persons and others in Cambodia from forming associations or domestic NGOs. This nationality requirement constitutes a clear infringement of freedom of association, which should be available to everyone (i.e., all individuals within the state’s territory and subject to its jurisdiction).
- **The draft law requires a high minimum membership for associations.** In order to form an association, 21 Cambodian national founders must be named as members, and at least 7 leaders must handle the registration process. A group of 15-20 individuals who wish to associate to pursue a legitimate collective purpose would not be permitted under the draft law to form an association as a legal entity. The interference is exacerbated as the law also prohibits unregistered groups from carrying out activities.
- **The draft law outlines an inadequate registration process, likely to impede the associations and NGOs from attaining legal entity status.** The draft law includes no clear and limited list of objective grounds for denial of registration. Consequently, government regulators may be able to deny registration on subjective and arbitrary grounds. The lack of such a safeguard could have a disproportionate impact on groups that engage in advocacy or expressive activity that supports unpopular causes or is openly critical of government policy or action. In addition, there are extensive documentation requirements, including “Profiles of the leaders” of the association and domestic NGO, a term which is undefined and could lead to open-ended inquiries by the government into the personal background of the leaders.
- **The draft law prohibits any activity conducted by unregistered associations and NGOs.** Registration is thus mandatory and unregistered groups are banned. This means that every group of individuals who gather together with a differing level of frequency and perform the broadest variety of imaginable activities, from trekking and football fans, to chess and silk weaving groups will be acting in violation of law.
- **The draft law provides inadequate standards to guide the government’s determination of suspension or termination of an association or NGO.** There is no requirement for the governmental authorities to provide notice and an opportunity to rectify problems prior to the suspension or termination, and there is no mention of a right to appeal after suspension or termination. The process of suspension and/or termination is thus open to government manipulation and overreaching.
- **The draft law erects barriers to the registration and activity of foreign NGOs.** To highlight just two issues: First, the draft law outlines a heavily bureaucratic, multi-staged registration process, which lacks procedural safeguards, and is therefore subject to delays and subjective, arbitrary and politicized decision-making. Second, the draft law requires mandatory collaboration with the Government of Cambodia, by stating that a foreign NGO “shall collaborate with relevant ministries or institutions of the Royal Government of Cambodia when preparing project plans,

implementing, monitoring, aggregating and evaluating the result of the implemented activities.” Thus, there appears to be no room for foreign NGOs to act independently of the Government in addressing public benefit goals or community needs.

- **The draft law places constraints on associations and NGOs through notification requirements.** First, associations and NGOs are required to “inform in writing the relevant municipal hall or provincial halls ...” when implementing activities in a given locale. This requirement, which is separate from and additional to the registration process, could amount to a real burden on program implementation. Second, associations and NGOs that “rotate or terminate or dismiss or remove its staff, members, president or leaders” must inform governmental authorities accordingly. Changes in membership occur frequently, and requiring notification every time a member joined or resigned from a group would be burdensome on organizations. Moreover, the disclosure of membership will chill the freedom of association in certain kinds of groups, such as associations of stigmatized individuals (e.g., HIV/AIDS sufferers) or groups seeking to advance human rights.

Conclusion

Civil society activists in Cambodia, Venezuela, Ecuador, Honduras, and Iran continue to work against the restrictive laws proposed in the final week of November 2010. ICNL continues to monitor the status of the draft laws in these countries, and will be posting further information on an ongoing basis on the NGO Law Monitor, www.icnl.org/ngolawmonitor.