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Importing Intimidation The Spread of Strategies to Restrict and Repress Civil Society in Latin America

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On January 10, 2006, the Russian Federation passed new legislation undermining the independence and restricting the activities of civil society organizations operating in the country. The new law created burdensome registration processes, established invasive oversight procedures, and called for detailed reporting about the relationships between domestic and international organizations active in Russia.

Russia's "NGO law," as it is commonly known, is part of a global trend that accelerated in recent years as a growing number of governments have sought to silence civil society organizations.

This backlash against civil society organizations reached Latin America in June 2006 when the Venezuelan National Assembly passed the first of two votes on the Ley de Cooperación Internacional (International Cooperation Law). Although this legislation has never received the second round of approval needed for it to become law, the bill sent a clear message to civil society organizations in Venezuela, proposing harsh limitations on fundraising and new bureaucracy-laden registration processes. While the International Cooperation Law has yet to be approved as of November 2009, legislators threaten its passage at random intervals in order to keep civil society on the defensive. Moreover, Venezuela's pending legislation opened the door for other countries in Latin America to launch similar efforts to restrict the activities of civil society organizations operating within their own borders. These restrictions have been increasingly common among Venezuela's allies, particularly Nicaragua, Bolivia, and Ecuador.

As governments in both Latin America and other regions have introduced new restrictions on civil society, they have often attempted to do so under the cloak of legitimate legal reform. However, as many scholars and international organizations – including the International Center for Not-for Profit Law and the World Movement for Democracy – have pointed out, countries' NGO laws are frequently in conflict with articles of their own constitutions and provisions of international agreements to which they are signatories.² Moreover, at the international level, a wide range of organizations committed to issues of human rights and the rule of law have pointed out that NGO laws violate various aspects of international law and recognized international norms.

² See "Defending Civil Society," World Movement for Democracy, February 2008, full report available at <http://www.wmd.org/defcivilsociety/about.html>; Vernon, Rebecca B., "Closing the Door on Aid," *The International Journal for Not-for-Profit Law*, Volume 11, Issue 4 (August 2009); Kamhi, Alison, "The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation," *The International Journal for Not-for-Profit Law*, Volume 9, Issue 1 (December 2006).

To highlight how NGO laws are becoming a commonly used strategy to restrict civil society, this paper will provide an overview of laws in several different countries. To first offer international context, there will be a brief examination of Russia's NGO law. This will be followed by analysis of the restrictions against civil society organizations in Venezuela, Bolivia, Ecuador, and Nicaragua. The paper will conclude with recommendations for further reading on the international standards that can be used in defense of civil society.

The Russian NGO Law

Starting with procedures to register a civil society organization, the Russian NGO law created a series of complex bureaucratic requests for documentation and reporting. Delays associated with the registration of international organizations forced several prominent institutions including Human Rights Watch, Amnesty International, and Doctors Without Borders to temporarily suspend their operations in Russia in October 2006.³ Furthermore, under this law, the Russian government can require organizations to present reporting about management structures, policy decisions, financial affairs, and accountability procedures.⁴ The government can also send representatives to observe organizations' internal meetings, including board meetings and routine daily discussions. The mere potential for such invasive levels of scrutiny places severe limitations on organizations' ability to operate independently and efficiently.

Although the Russian Federation was not the first country to create repressive regulations for NGOs, its prominent role on the world stage and ability to restrict civil society without yielding greatly to international criticism allows it to serve as an example for other countries seeking to silence voices of opposition within their own borders.

Venezuela's International Cooperation Law

In 2005, Venezuelan President Hugo Chávez began to take his anti-U.S. rhetoric to the international arena, establishing alliances with countries that oppose, or at least choose not to openly embrace, the United States. Against this backdrop, President Chávez began to broker a series of arms purchases with Russia that have eventually exceeded \$5 billion dollars. While bilateral military cooperation may not have led to

³ Kamhi, Alison, *supra* note 3.

⁴ Bourjaily, Natalia, *supra* note 5.

direct discussions of strategies to curtail civil society freedoms, President Chávez has repeatedly demonstrated an interest in aligning himself with Russia's leadership.

Similar to Russia's NGO law, Venezuela's International Cooperation Law stemmed from a desire to curb foreign influence in the country. The law would annul the current operating status of all domestic and international NGOs active in Venezuela and require them to complete a new registration process. In the interim, organizations would potentially have to suspend their activities as they await approval of their request for registration. Additionally, the law provides the national government with the sole authority to establish, via executive decree, which organizations can operate in the country and what forms of international cooperation would be permitted.⁵

In its attempts to regulate foreign influence, Venezuela's NGO law proposes broad limitations on international funding for domestic organizations. The law mandates the creation of a government-run "Fund for International Cooperation and Assistance" that would receive, assign, and distribute all foreign development funds entering the country, regardless of the donor or the intended recipient.⁶ By constructing a singular channel for all foreign funding, the International Cooperation Law would effectively outlaw the direct receipt of monetary assistance from abroad and cut off Venezuelan civil society organizations from a principal source of financial support. Consequently, these organizations would become increasingly dependent on the central government's Fund for International Cooperation and Assistance, decreasing their autonomy and leaving them subject to the discretionary decisions of a given administration.⁷ The stringent regulatory framework that this law would implement would further control NGOs' exchange of knowledge and expertise by requiring extensive reporting about their communication with international organizations and imposing an unlimited number of government inspections and audits.

Although Venezuela's International Cooperation Law remains in its draft form in the National Assembly, it poses significant risks to the existence of an independent civil society in the country.⁸

The Spread of NGO Restrictions among ALBA Member States

⁵ CIVICUS, *supra* note 13.

⁶ "Barred from the Debate: Restrictions on NGO Public Policy," *supra* note 2.

⁷ CIVICUS, *supra* note 13.

⁸ CIVICUS, *supra* note 13.

Launched in December 2004, the Bolivarian Alternative for the Americas (ALBA) started as a bilateral agreement between Venezuela and Cuba. With a stated goal of providing a platform for regional integration that was not solely based on free trade and commercial relations, the initiative quickly became identified with President Chávez's efforts to curb U.S. influence in Latin America. As President Chávez sought to build credibility and membership for ALBA, he turned to his closest allies in the region: Bolivia under President Evo Morales, Nicaragua under President Daniel Ortega, and Ecuador under President Rafael Correa.

In working to develop policies that eradicate poverty and improve social welfare for the region's citizens, ALBA's member states have called for strategies crafted solely by Latin American countries and have rejected outright cooperation with international development institutions and organizations. This has motivated ALBA countries to create a wide range of restrictions on the activities of domestic civil society organizations and their interaction with foreign counterparts.

President Morales issued a presidential decree in October 2007 that established new regulations for international cooperation in Bolivia. While it lacked many of the more invasive limitations proposed under Venezuela's International Cooperation Law, it instituted a series of restrictions aimed at undermining international financial support for Bolivian civil society organizations, specifically for activities that the government deems undesirable. The decree explicitly bans agencies of the Bolivian Government from channeling any bilateral foreign aid to local civil society organizations.⁹ It also provides the government with authority to review and overturn hiring decisions in all international agencies operating in Bolivia. Furthermore, the decree bans international organizations from providing any technical or financial assistance to Bolivian NGOs for activities that the government considers political or ideological in nature.¹⁰ However, it lacks formal guidance on what activities would fall into these broad categories.

At the start of 2009, the Ecuadorian Government introduced draft legislation for a Law Governing NGOs. The law proposes new registration procedures that provide no insight on the criteria that the government

⁹ International Center for Not-for-Profit Law, *supra* note 20

¹⁰ *Ibid.*

will use to evaluate applications and do not define a registration timeline.¹¹ The absence of such provisions could potentially permit the government to delay registration decision indefinitely, leading to a de facto denial of applications. The law also authorizes the government to withdraw the operating license and dissolve civil society organizations for a number of technical considerations including failing to complete or working outside the established objectives of the organization, as well as the inability to maintain a minimum number of members and staff.¹² In March 2009, decided to employ these regulations selectively and suspended the activities of Acción Ecológica (Ecological Action), a respected Ecuadorian environmental group.¹³ The decision prompted a response from the international community and the Government of Ecuador reinstated Acción Ecológica with a provisional license later that month.

Despite the fact that Bolivia and Ecuador have not pursued the extremes laid out under Russian law and proposed in Venezuela's International Cooperation Law, they nevertheless sent a clear signal to local organizations and the international community about the future direction of policy towards civil society.

Nicaragua's Manual on International Associations

In June 2009, tensions between the Nicaraguan Government and civil society organizations escalated as the government released draft copies of a manual entitled "Procedures for a Single Policy of Attention towards International Not-for-Profit Associations and Foreign Foundations." Prepared by the Ministry of Government and the Ministry of Foreign Relations, the manual outlines the need for greater restrictions on cooperation between domestic and international organizations.¹⁴

As in the cases discussed above, Nicaragua's manual on international associations states that only legally registered organizations can receive international cooperation and officially prohibits funding for social movements or informal organizations. While it doesn't explicitly call for new registration procedures similar to the Russian and Venezuela NGO laws, Nicaraguan civil society organizations have expressed concern that these regulations could be used to block the registration of new NGOs in the future.¹⁵ In

¹¹ Ibid.

¹² Ibid.

¹³ Burrows, Beth, "Letter to the Honorable Rafael Correa, President of Ecuador," Edmunds Institute, March 10, 2009, available at http://www.accionecologica.org/index.php?option=com_content&task=view&id=1034&Itemid=7551

¹⁴ "NGO Law Monitor: Nicaragua," International Center for Not-for-Profit Law, October 13, 2009, available at <http://www.icnl.org/knowledge/ngolawmonitor/nicaragua.htm>

¹⁵ Ibid.

terms of institutional composition, the manual places limits on the number of foreign citizens that can participate in the implementation of international development programs.¹⁶

Similar to the Russian and Venezuelan NGO laws, Nicaragua's manual on international associations focuses on limiting foreign influence inside its own borders. The manual proposes restrictions on all foreign funding for "political" activities that "run counter to or might influence national legislation."¹⁷ Given the use of broad, undefined terminology, Nicaraguan analysts have contended that this provision could be used to outlaw international support for organizations working on any public policy issue such as health, nutrition, and education.¹⁸

To enforce its proposed regulations, the Ministry of Foreign Affairs would be given the authority to oversee, in coordination with the international donor organization, the design and implementation of all development projects carried out in Nicaragua.¹⁹ The manual states that the Ministry of Foreign Affairs would establish new protocols to carry out this oversight, including mandatory reporting requirement and conducting field and office visits to review work.²⁰ Such invasive monitoring would essentially make the Nicaraguan Government a co-administrator in all international development projects and would consequently limit the autonomy of both foreign and domestic organizations working in the country. While a coordinated campaign by Nicaraguan civil society organizations has successfully delayed official implementation of the procedures outlined in the manual on international associations, the government has said it will reconsider its approval in late 2009.²¹

Conclusions

Civil society encompasses the space where a state's citizens obtain information and exchange opinion and ideas, thus it comes as no surprise that repressive governments would seek ways to curtail the development of relevant organizations. As laws and restrictions on NGOs proliferate in Latin America and globally, civil society organizations will increasingly need to develop a coordinated response, one which employs both

¹⁶ Ibid.

¹⁷ "Barred from the Debate: Restrictions on NGO Public Policy," supra note 2.

¹⁸ "*Defendiendo la Sociedad Civil*," supra note 28.

¹⁹ "*Defendiendo la Sociedad Civil*," supra note 28.

²⁰ Ibid.

²¹ As of April 2010, no new details have emerged regarding the Nicaraguan government's consideration of the law.

legal and advocacy strategies. With regard to a legal approach, a broad number of constitutions establish rights including freedom of association, freedom of expression, rights to privacy, and certain rights to employment arrangements that could provide a basis to challenge NGO laws in domestic courts. National legal strategies should also be reinforced by the myriad international declarations pertaining to the work of civil society organizations, including, but not limited to the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, as well as several regional declarations including the American Convention on Human Rights.

As NGOs push back against the creeping global trend of restrictions and repressive regulations, the emergence of this type of innovative advocacy tools, combined with new domestic and international legal precedent, will be crucial to the continued effort to defend the rights and freedoms of civil society globally.