

THE BACKLASH AGAINST DEMOCRACY ASSISTANCE

A Report prepared by the National Endowment for Democracy
for Senator Richard G. Lugar, Chairman
Committee on Foreign Relations
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**National Endowment
for Democracy**

Supporting freedom around the world

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CONTENTS

Executive Summary	2
Introduction	4
The context, nature, and extent of threats to democracy assistance	6
Legal and extra-legal measures against democracy assistance	15
Implications for the <i>modus operandi</i> of democracy assistance groups	31
Democracy assistance groups' responses to changing circumstances	34
Conclusion: suggested responses for congressional action	38
Appendix A: At a Glance: Repression and Restrictions	40
Appendix B: ICNL Summary of Legislative Restrictions	41
Appendix C: Letter from Senator Richard G. Lugar, Chairman, Committee on Foreign Relations	51

Executive Summary

Since the National Endowment for Democracy's inception, the environment for democracy promotion work has changed profoundly, both domestically and globally. Most developments have been positive, justifying the NED's mission, validating its approaches, and facilitating continuing work in the field.

These changes include:

- a dramatic increase in the number of viable democracies, providing regional partners and improving access to previously closed states, particularly in the former Soviet bloc;
- the collapse of any viable alternative to democracy as a legitimate political order;
- a robust bipartisan consensus within the U.S. on the desirability and effectiveness of democracy assistance through non-governmental efforts;
- the expansion and increasing international acceptance of democracy assistance; and
- the growing cooperation among democracies in providing such assistance.

Yet certain adverse factors have arisen which, while not threatening to reverse the historic trend towards democracy, do present challenges to democracy assistance, both operationally and politically. These include:

- the emergence of semi-authoritarian hybrid regimes characterized by superficially democratic processes that disguise and help legitimate authoritarian rule;
- the emergence of new actors and agencies committed to undermining, countering, and reversing democratic progress; and
- new restrictive measures of a legal and extra-legal nature, specifically directed against democracy promotion groups (the principal focus of this report).

Foreign governments' efforts to impede democracy assistance—from legal constraints on NGOs to extra-legal forms of harassment—have recently intensified and now seriously impede democracy assistance in a number of states. This backlash is particularly pronounced in the former Soviet states of Eurasia, as well as in China, Venezuela, Egypt, and Zimbabwe. Representatives of democracy assistance NGOs have been harassed, offices closed, and staff expelled. Even more vulnerable are local grantees and project partners who have been threatened, assaulted, prosecuted, imprisoned, and even killed. In addition to impeding democracy assistance efforts, regimes are adopting pro-active approaches, channeling funds to anti-democratic forces and using ersatz NGOs to frustrate genuine democratization. All of this has had a “chilling effect” on democracy assistance, intimidating some groups and activists, and making it more difficult for them to receive and utilize international assistance and solidarity.

Yet despite these disturbing developments, which in some cases are prompting practitioners in the field to revert to methods used in closed societies during the 1980s, democracy assistance NGOs are active today in more countries than ever before. The new climate has actually validated the mission and the nongovernmental structure of the NED “family,” which has proven its ability to work effectively in sensitive and repressive political climates.

Democracy assistance NGOs have always been active within a diverse range of states—from closed societies to fragile or emerging democracies—for which the strategies, operating procedures and funding arrangements honed over more than 20 years remain relevant and effective. The NED family in particular has extensive experience of channeling assistance to dissidents, labor unions, human rights activists, and other advocates for democratic change within repressive societies.

Consequently, in response to the new backlash, Congress should:

- ensure that adequate funds for democracy assistance are appropriated, and be wary of rewarding regimes for ostensibly democratic but cosmetic change;
- urge the Administration, along with other members of the G8, to issue a memorandum raising concerns over Russia’s democratic retrenchment;
- promote a rigorous policy of linkage, by associating a state’s treatment of democrats and civil society groups to the political and economic dimensions of interstate relations, including: tightening eligibility criteria for membership of international associations of democracies; and making foreign assistance and trade benefits conditional on democratic performance; and
- encourage the Administration, working through the Community of Democracies, to gain acceptance of democracy promotion as a normative practice within the international system. The Community, in turn, should reaffirm and further elaborate its founding Warsaw Declaration, which endorsed democracy promotion, and seek approval for the Declaration from governments, parliaments, regional forums and global institutions, including the United Nations.

Introduction

The following report is a response to the concerns raised by Senator Lugar in his letter of November 8, 2005, to Carl Gershman, President of the National Endowment for Democracy, about reports of foreign governments' efforts to impede U.S. programs for democracy assistance. At that time, particular concern was expressed about restrictions on democracy assistance in such countries as Belarus, Uzbekistan, Egypt, Zimbabwe, Venezuela, and China. Subsequent developments, including legislation in Russia that will impose new restrictions on nongovernmental organizations, have further highlighted this disturbing trend. (For Lugar letter, see Appendix C, page 51.)

These moves seriously threaten the ability of democrats abroad, operating peacefully and openly to continue to work with U.S. organizations that receive congressional funding in order to carry out their mandate. In order for the Senate Foreign Relations Committee to fully assess this problem and the challenges it poses to U.S.-based democracy assistance groups, NED, drawing on the experience of its grantees, including its four affiliated institutes¹ and other democracy promotion groups, will address the following issues:

- the context, nature, and extent of the threats to democratic assistance;
- the specific measures being deployed by authoritarian regimes;
- the challenges these threats pose to democracy assistance groups;
- the responses of democracy assistance groups to these challenges; and
- recommendations for appropriate Congressional action to address this problem.

In responding to the terms of reference, our focus has been primarily on authoritarian and semi-authoritarian (or “hybrid”) regimes that have been the prime source of the backlash against democracy assistance.² Accordingly, we only occasionally refer to highly repressive dictatorships or “closed societies,” like Cuba, North Korea, or Burma, that have long suppressed independent civil society groups.

Drawing on research generously made available for this report from Douglas Rutzen and Cathy Shea, President and Program Director, respectively, of the International Center for Not-for-Profit Law,³ we follow ICNL's categorization of the principal measures deployed against democracy assistance (detailed in the appendix), as follows:

1. restrictions on the right to associate and freedom to form NGOs;⁴
2. impediments to registration and denial of legal status;
3. restrictions on foreign funding and domestic financing;
4. ongoing threats through use of discretionary power;

1 NED's four “core institutes” are the National Democratic Institute for International Affairs, the International Republican Institute, the American Center for International Labor Solidarity, and the Center for International Private Enterprise, which represent the two major American political parties, the labor movement, and the business community, respectively.

2 This report uses the terms democracy promotion and democracy assistance interchangeably. Similarly, the term democracy promotion groups is used to incorporate the key organizations in the field, from the NED “family” of institutes to groups such as Freedom House, the Open Society Institute and Internews.

3 For further details of ICNL's distinctive and pioneering work on these issues, go to <http://www.icnl.org>.

4 For the purposes of this report, the term nongovernmental organization or “NGO” is deemed to be synonymous with civil society organization or “CSO,” and to incorporate the range of groups engaged in democracy assistance and related activities, from advocacy groups or election monitors to labor unions and business associations.

5. restrictions on political activities;
6. arbitrary interference in NGO internal affairs;
7. establishment of “parallel” organizations or ersatz NGOs; and
8. harassment, prosecution, and deportation of civil society activists.

We caution against unwarranted generalizations. Circumstances differ markedly from country to country even—one might say especially—in regions like the post-Soviet republics where democracy assistance has encountered apparently similar restrictions. The impact of new restrictions and, in most cases, the nature of appropriate responses, tends to be country-specific and sensitive to local context.

The context, nature, and extent of threats to democracy assistance

Repressive regimes have always sought to prohibit, frustrate or undermine the activities of democratic and civil society groups and individual activists. Under the totalitarian regimes of the twentieth century, political repression took extreme forms, including the mass arrest, incarceration, and physical liquidation of opponents. With the demise of most closed or severely repressive regimes, the more egregious forms of political repression are less prevalent. Some states—the likes of North Korea, Burma, Cuba, Saudi Arabia, Syria, and some Central Asian post-Soviet states—continue to adopt severely repressive practices. But the universality and normative appeal of democracy, combined with the collapse of serious ideological or political rivals to constitutional liberalism, have led even authoritarian regimes to seek a semblance of democratic legitimacy through, for example, periodic elections, however flawed, and the maintenance of an ostensibly independent civil society.

More recently, however, the “color revolutions” in Serbia, Georgia, Ukraine and, arguably, Kyrgyzstan have demonstrably alarmed authoritarian governments, alerting them to the precariousness of their hybrid, pseudo-democratic regimes. “Ukraine’s Orange Revolution was Russia’s 9/11,” argues Ivan Krastev of Bulgaria’s Centre for Liberal Strategies.⁵ The scenario of popular protests, mobilized through opposition groups and NGOs, pressuring ruling elites to surrender state power has had a chastening effect and prompted a reassessment of strategies and “political technologies” required to maintain authoritarian rule.

A paradigm shift has taken place in authoritarian regimes’ perspectives and strategies since Ukraine’s democratic revolution—and not only in Russia. “In our country, there will be no pink or orange, or even banana revolution,” President Alexandr Lukashenka of Belarus commented. “All [those] colored revolutions are pure and simple banditry,” he said. Kazakhstan’s President Nursultan Nazarbaev warned foreign NGOs to stay away from internal political affairs, prompting the Kazakh parliament to introduce a measure placing severe restrictions on NGO activity. Nazarbaev justified parliament’s move, declaring that “they have seen the dangers that arose in neighboring countries when foreign NGOs insolently pumped in money and destabilized society. The state was defenseless against this.”

Authoritarian regimes in Central Asia and elsewhere take the view that democracy promotion is being used by the U.S. and other democracies in the West to advance foreign policy interests. As a leading State Department official noted upon returning from Moscow, Kremlin officials believe that the “U.S. government or the West directs the activities of NGOs in order to weaken Russia, or in order to advance, as one Russian said, ‘your own geopolitical games in our neighborhood’.”⁶

In this respect, it is important to stress that the offensive against democratization, and particularly against forms of internationally-funded democracy assistance, predates the color revolutions. Yet Ukraine’s Orange Revolution in particular has clearly accentuated existing trends and prompted a more aggressive and coordinated response on the part of the world’s authoritarians and autocrats. Indeed, there

⁵ “Russia’s post-orange empire”, Ivan Krastev, *Open Democracy*, 20 October 2005. http://www.opendemocracy.net/democracy-europe_constitution/postorange_2947.jsp.

⁶ Interview with Barry Lowenkron, Assistant Secretary for Democracy, Human Rights and Labor, U.S. State Department, broadcast on Radio Free Europe/Radio Liberty 1 February 2006.

are indications of collusion among regimes seeking to undermine democracy assistance and independent civil society groups. There is a marked similarity between legislation restricting NGO activity, for instance, including Tajikistan's draft Law on Public Organizations (Associations), which manifestly duplicates provisions in Russia's new anti-NGO statute.⁷

Similarly alarmed by the color revolutions, China has tightened controls on international NGOs. The Foreign Ministry's Bureau of International Organizations has set up a new unit to review the work of foreign NGOs in China. The regime reportedly sent researchers to Uzbekistan, Kyrgyzstan, Ukraine, Georgia, and Belarus to assess the role of prodemocracy NGOs and to propose countermeasures.⁸

Beijing's communist authorities have upgraded censorship techniques, "intimidating both political dissidents and American companies alike," according to a recent report.⁹ They are also exporting their techniques to other repressive regimes. Belarusian dictator Alexandr Lukashenka reportedly acquired China's latest internet monitoring and control technology while in Beijing in December 2005.

A further indication of inter-governmental coordination is the Shanghai Cooperation Organization (SCO), comprising Russia, China, Kyrgyzstan, Kazakhstan, Uzbekistan, and Tajikistan. At the July 2005 bilateral Russia-China summit in Moscow, Vladimir Putin and Hu Jintao issued an open attack on democracy promotion in a declaration that explicitly rejected attempts to "ignore objective processes of social development of sovereign states and impose on them alien models of social and political systems." The Russian and Chinese leaders left their bilateral meeting to join the SCO summit in Astana, Kazakhstan, which issued a statement insisting, in a slightly coded critique of democracy assistance, that "concrete models of social development cannot be exported" and that "the right of every people to its own path of development must be fully guaranteed."

The range of legal and extra-legal measures designed to undermine democracy assistance range from constraints to cooptation, from coercion to closure. Many states are manifestly repressive toward independent NGOs and other organizations representing autonomous civil society. But other countries maintain a more ambiguous position, adopting a posture of "repressive tolerance" by allowing civil society groups to operate with a degree of autonomy but in a context of operational and political restrictions, including the threat of arbitrary interference or even dissolution.

The regimes of the broader Middle East have almost perfected this model, softening the reality of authoritarian rule by permitting a degree of political space for relatively tame or managed NGOs while undermining or harassing genuinely independent or assertive groups. In Egypt, for example, the government is "adept at selective enforcement of laws," reports one democracy promotion group.¹⁰ "We and others are monitored by the security and intelligence offices," this group reports. "In every event or conference, security officers are there, sometimes announcing their identity and many other times without identifying themselves."

Since NED's inception, the context and environment of its work has changed profoundly, both domestically and globally. Most changes have been positive, justifying its mission, validating its

⁷ After the International Center for Not-for-Profit Law interceded with Tajik authorities, the government postponed consideration of the draft law.

⁸ "China keeps a nervous eye on colour revolutions," *Sidney Morning Herald*, 15 August 2005.

⁹ "Democracy's Slow Boat to China," Ying Ma, *Wall Street Journal*, 15 February 2006.

¹⁰ Unattributed quotes are taken from interviews conducted with NED and institute staffs.

approaches and facilitating continuing work in the field. These include:

- a. the dramatic increase in the number of viable democracies since 1983, providing regional partners and improving access to previously closed states, particularly in the former Soviet bloc;
- b. domestically, a robust bipartisan consensus on the value, legitimacy, and political integrity of democracy assistance;
- c. internationally, the collapse of any viable social or systemic alternative to democracy as a legitimate and sustainable political order and the widespread acceptance of the utility and legitimacy of democracy assistance; and
- d. the emergence of new actors and institutions in the democracy promotion field, both governmental/intergovernmental and within civil society, which enhance the diversity of approaches and offset criticisms that democracy promotion is an instrument to advance narrow American interests.

We examine these contextual factors in more detail before outlining the democracy promotion community's responses to these fresh challenges and concluding with recommendations for Congressional action.

a. The expansion of democracy

Since the NED's inception in 1983, large swathes of Central and Eastern Europe, Africa, Asia, and Latin America have undergone democratic transitions. Despite the evidence of a backlash in certain regions and states, the opportunities available for democracy promotion have never been as extensive. "We are active today in countries, particularly in the Middle East, that we barely imagined entering until a few years ago," notes a NED institute regional director.

Considerable work remains to be done, especially in assisting democratic reform in Africa, in the broader Middle East, in Central Asia and, of course, in the world's remaining closed societies. Furthermore, recent backsliding in Russia and Central Asia is a salutary reminder of the often-neglected but critical work of democratic consolidation in which democracy promotion groups specialize, including institutional development, civil society engagement, and party-strengthening.

b. Unrivalled legitimacy of democracy.

As democracy has spread, it has acquired the status of the only broadly legitimate form of government. Today, about three-fifths of all the world's states—121 of 193 by Freedom House reckoning—are democracies. The collapse of twentieth century totalitarianism removed not only the greatest threats to democracy but also the only systemic and ideological alternatives. Similarly, democratization has largely undermined East Asian exceptionalism and transformed the tiger economies that once seemed to present modernizing authoritarianism as an alternative to democracy for developing economies. Singapore still represents this model and, to some extent, China may be seen as an updated version, offering economic growth—development, not democracy—as an excuse for maintaining authoritarian rule. But even these

regimes and their would-be emulators claim to represent or aspire to a variant of democracy, not a serious alternative.¹¹

No model of governance with broad normative appeal or legitimacy currently rivals democracy, and the validity of democracy assistance is now widely accepted. The doctrine of state sovereignty has ceased to be an absolute principle of international relations, while the active promotion of democracy has acquired the status of a new norm of international behavior.¹² Democracy is now widely accepted as the only political system that guarantees personal liberties and human rights, protects individuals against arbitrary and intrusive government, facilitates human and economic development, and is strongly associated with peaceful relations between and within states.

c. Domestic bipartisanship and international consensus

Since NED's inception, and after a period of highly-contested political debates, its approach and democracy assistance more generally have gained bipartisan support in the Congress and the broader public and even internationally. Most Europeans, for example, support democracy assistance, with some 74 percent of Europeans believing that their governments should promote democracy in other countries, compared to 22 percent who disagreed. By contrast, only 51 percent of Americans did so, 76 percent of which were Republicans and 43 percent Democrats, according to a recent Transatlantic Trends survey based on polling data from the U.S., UK, France, Germany, Italy, the Netherlands, Poland, Portugal, Slovakia, Spain, and Turkey.¹³ Support levels rise in both the U.S. and Europe when reference shifts from policy to specific instruments of democracy assistance, including election monitoring and NGO funding. Both Americans and Europeans prefer civil society-oriented "soft power" approaches as a means of spreading democracy.

Domestically, a bipartisan consensus has emerged on the importance of democracy promotion. Indeed, the consensus on the desirability and legitimacy of democracy promotion and civil society-oriented approaches in particular now extends beyond the United States. For example, Javier Solana, the European Union's High Representative for Common Foreign and Security Policy, insists that foreign powers can and should play a role in promoting democratization in the Middle East. While democratic movements must be "home-grown and adapted to local conditions," he contends, foreign agencies "can help create a context conducive to political change. Once change is under way, they can support and reward reformist forces."¹⁴

Furthermore, the advantages of a nongovernmental approach are informing and inspiring current efforts to restructure the EU's work in this field, principally through its European Initiative for Democracy and Human Rights (EIDHR). Under the European Commission's provisional program for democracy and human rights, it is proposing to focus on countries suppressing fundamental freedoms, citing Burma,

11 Even the theocratic regime of Iran is wary of the "Chinese model," if conservative commentator Amir Mohebian is indicative of opinion. "We accept democracy. We know at present that we can survive and save our Islamic Revolution only by ruling in a democratic manner," he said in a Reuters interview (25 February 2004). "Democracy is not against our system, but there are versions of democracy."

12 See "Democracy as Policy Goal and Universal Value," Carl Gershman, *Whitehead Journal of Diplomacy and International Relations*, pp. 19-38, Winter-Spring 2005; "Democracy Promotion as a World Value," Michael McFaul, *The Washington Quarterly*, 28:1, pp. 147-163, Winter 2004-05; "Universal Democracy?" Larry Diamond, *Policy Review*, pp. 119, June 2003.

13 *Transatlantic Trends*, German Marshall Fund/Compagnia di San Paolo, 2005.

14 *Financial Times*, 13 March 2005.

Belarus, Cuba, Zimbabwe, and Iran alongside several countries in Central Asia and the Arab world. Its proposals stress the importance of “involving local civil society organizations,” and recognizing that “international or regional partners could play an appropriate intermediary role.” These approaches have been emphasized by the NED family both in its own work and in representations to the European Parliament, where leading parliamentarians have been campaigning for a “European NED.”

d. New actors in the democracy promotion field

Recent years have seen the emergence of new actors in the democracy promotion field, both governmental/intergovernmental (the EU and the UN Democracy Fund), within civil society (including NED-like initiatives in Canada, Australia, Taiwan, Western Europe, and the new democracies of Central and Eastern Europe) and government-civil society partnerships like the Democracy Assistance Dialogue that emerged from the G8 summit at Sea Island, Georgia.

This growing diversity contradicts and undermines those critics and detractors who argue that democracy promotion is an instrument of U.S. foreign policy—a weapon of foreign policy *realpolitik* wrapped in the clothing of Wilsonian idealism. These claims are heard from those for whom democracy assistance is designed to promote U.S. interests and undermine its adversaries overseas, from those for whom it is a form of wasteful idealism, and from foreign governments, particularly authoritarian regimes, that pick up on these arguments to portray democracy assistance as an unacceptable and illegitimate form of interference in their internal affairs and a violation of national sovereignty.

However, here, too, the context has shifted dramatically, undermining these claims. First, not only has democracy become widely accepted as a universal norm, but the international community is now more readily inclined to accept the legitimacy of intervention in the event of gross violations of human rights even when this transgresses state sovereignty.¹⁵ Second, the field of democracy promotion now extends well beyond the U.S. For example, the European Union has emerged as a key player, spurred by the need to consolidate democracy in its post-communist eastern periphery, especially as these states became candidates for EU accession. And, on July 4, 2005, UN Secretary-General Kofi Annan initiated the UN Democracy Fund that draws on the General Assembly’s commitment to promote and consolidate new and restored democracies. India has emerged as a leader of the 26 countries so far committed to support the fund.

Finally, the German party foundations, which predate NED, have been joined by a growing number of democracy promotion groups, openly drawing inspiration from the NED model, such as the UK’s Westminster Foundation for Democracy, the Taiwan Foundation for Democracy, and civil society groups from post-communist societies, particularly Poland and the Czech and Slovak republics. The latter have campaigned aggressively within the EU for a strong commitment to democracy promotion.¹⁶

The aforementioned trends have had a profoundly positive impact on the domestic and global

¹⁵ *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Gareth Evans, et al (2001).

¹⁶ Of Europe’s 32 democracy assistance foundations, Germany’s party-based groups still account for the lion’s share of the combined annual budget with some €358 million (\$430 million) from a combined annual budget of €400 million (\$480 million). Only seven foundations have an annual budget over €10 million and twelve get by on less than one million. Source: *Mapping European Democracy Assistance*, Netherlands Institute for International Relations, December 2005.

environment in which NED, its institutes, and the wider democracy promotion community operate. In many respects, it is the very success of democracy promotion efforts that has prompted the current backlash, confirming that democratization is neither an uncontested field nor a one-way process.

Disturbing counter-trends and tendencies have emerged in part as a reaction to the success of democracy promotion in general and, in some cases, to the efficacy of the *modus operandi* of NED and its institutes in particular. These adverse factors are detailed below. While such adverse factors do not threaten a reversal of the historic trend towards democracy, they do represent serious setbacks in specific countries and regions, particularly in the former Soviet Union, and also present serious challenges to democracy promotion groups, operationally and politically.

a) The “political gray zone” of illiberal democracy.

While the number of democracies is at a historic high, the overall picture is complicated by the emergence—and in some regions the prevalence—of semi-authoritarian or “hybrid regimes” in which superficial democratic processes, including quasi-free elections, serve to disguise and help to legitimate continued authoritarianism. The number of these regimes has actually grown as a consequence of the third wave of democratization, as democratic transitions have stalled and many countries entered a “political gray zone” of illiberal democracy, and as the result of backsliding by former electoral democracies.¹⁷

Estimates suggest that there are some 45-60 hybrid regimes—between a quarter and a third of all states. Such states are characterized by official control and manipulation of electoral machinery, disenfranchisement of potential opposition voters, centralization of power in the executive, a weak legislature, a judiciary lacking independence, high levels of corruption, government-controlled media, serious human rights violations, and weak rule of law.

Hybrid regimes hold out the prospect of incremental change while cultivating strategies for postponing genuine democracy. The Arab world’s authoritarian and autocratic regimes have almost perfected this form of deferred democracy, ensuring that change, purportedly gradual, in fact remains glacial.¹⁸ “Illustrative of the state of affairs throughout the Middle East,” says a regional analyst, is “the all-too-familiar image of regimes using their considerable power to manage, deflect, co-opt, and repress opposition under the guise of reform.”¹⁹

The leaders of such regimes, alarmed at what they see as a new threat to their power, have stepped up measures to prevent a repetition of such events in their own countries. This is the new political context, comprising a concerted backlash against domestic democracy movements as well as against international democracy assistance, which is portrayed as an illegitimate form of intervention, the purpose of which is not to promote democracy but to overthrow hostile regimes.

17 “The End of the Transition Paradigm,” Thomas Carothers, *Journal of Democracy* 13.1 (2002) 5-21.

18 Tunisia’s President Zine al-Abidine ben Ali has shown the region’s regimes how to maintain authoritarian rule for decades while allowing multi-candidate presidential elections that legitimize the regime without allowing genuine choice. Leaders within Egypt’s ruling National Democratic Party, for example, are tempted by the prospect of a “Chinese model” of elite-friendly, market-driven technocratic change within an authoritarian framework. “The Soviet Communists were not able to adapt to new realities and for this reason they collapsed,” says one NDP reformist. “The Chinese, however, have been able to change from within.” *The Financial Times*, 6 September 2005.

19 “What Does Democracy Look Like? How to spot real change in the Middle East,” Steven A. Cook. *Slate.com* 24 August 2005.

b) “Democracy retardation”: an emerging trend?

The color revolutions are increasingly invoked and exploited by repressive regimes to portray democracy assistance as a form of “regime change by stealth” and to justify clamping down on allegedly subversive activities. Democracy promotion is increasingly confronting new actors and agencies, largely associated with authoritarian “petro-states,” committed to undermining, countering and reversing liberal democracy’s progress. This almost amounts to a rival “democracy retardation” or “democracy perversion” movement, incorporating ersatz democracy promotion groups (as in Russia); increased funding for radical Islamist groups from Saudi/Wahabbi, Iranian, Syrian and related sources; and reported Venezuelan financing of radical populist, nationalist, or “Bolivarian” parties across Latin America.

The backlash has had the inadvertent consequence of acting as a forceful reminder that democracy promotion is not an uncontested field or a one-way process. Further indications of this are the Russian Duma’s recent announcement that it is to establish its own “democracy promotion” agency, the Kremlin’s huge if unsuccessful investment to secure Ukraine’s 2004 election for Prime Minister Viktor Yanukovich, and the growing influence of its “political technologists” (some of whom worked and acquired their skills and expertise with U.S. democracy promotion groups).²⁰

“A lot of this [backlash] is traceable back to Russia,” says one democracy assistance veteran, long active in the region. “They see the color revolutions as part of a strategy for ejecting Russia from its near-abroad.” In November 2005, the Russian Duma voted to allocate 500 million rubles (\$17.4 million) to “promote civil society” and defend the rights of Russians in the Baltic states. The fund, for pro-regime groups, was seen as a response to a vote by the U.S. Congress earlier in the month to allocate \$4 million for political party building in Russia.

We should also highlight the extensive support given to anti-democratic forces by an array of regimes that aim to counteract or undermine the recent wave of democratic gains, particularly in developing economies. Venezuela’s Hugo Chavez has reportedly invested considerable sums in supporting Cuba, subsidizing the election campaign of Bolivia’s newly-elected president Evo Morales, and funding other radical or populist groups in Latin America.²¹

Similarly, Iran and Syria provide considerable financial support to Hezbollah and Hamas. While these subsidies are not normally considered a form of democracy assistance, there is little doubt that the medical facilities and other social welfare services provided by Hezbollah and Hamas, for instance, significantly enhanced their political legitimacy and reputation, and were a salient factor in the Islamists’ recent election successes. The broader Middle East’s ruling elites have provided considerably more assistance to Islamist groups than the West has provided to the region’s beleaguered democrats and liberals.

20 During the Ukrainian presidential election of 2004, for example, Gleb Pavlovsky’s Russian Press Club, posing as a nongovernmental forum, served as a conduit for Russian interference in the election. Through his Foundation for Effective Policy, Pavlovsky serves as a consultant to President Putin and he has been closely associated with electoral malpractice and violations in Belarus, Russia, and Ukraine. Sergei Markov, who ran the Club’s analytical division, is another “political technologist” who has helped swing elections Moscow’s way in other former Soviet republics. “[L]ook at what the U.S. is doing here [in Ukraine]—supporting foundations, analytical centers, round tables. It’s how contemporary foreign policy is pursued. And it’s exactly what we’re doing.” Markov openly conceded.

21 “Chávez’s Venezuela,” Phil Gunson, *Current History*, February 2006.

One of the Gulf States sought to justify a refusal to register the operations of a democracy assistance group with the argument that this would set a precedent for the Iranians to open an office to agitate among the country's Shi'a. The difference is, of course, that the U.S. group was running programs for a wide range of political forces, including pro-government and opposition, rather than promoting a partisan agenda. Yet the anecdote provides an instructive warning: the United States cannot afford to cede this terrain to anti-democratic forces, or to accept the argument that democracy assistance is a form of alien interference in sovereign states and, by extension, an instrument of U.S. foreign policy.

c) Democracy Promotion: Not “Regime Change”

The association of democracy assistance with regime change is a position taken by honest, if impatient, advocates of democracy as well as by more malicious critics. This misleading equation has been taken up by authoritarian rulers to deny the legitimacy of democracy assistance and to portray these efforts as an instrument of foreign policy designed to undermine U.S. adversaries. The National Democratic Institute, for instance, reports that “American NGOs in particular are being associated with the color revolutions and have been singled out in Chinese news reports.”

Democracy assistance is, of course, neither a European nor a U.S. conspiracy.²² Contrary to the claims of authoritarian regimes, there is little evidence that the advanced democracies of the West, whether singly or collectively, utilize democracy assistance programs as a lever for regime change. Arguably, the advanced democracies have in fact failed to maintain a consistent or well-resourced commitment to democracy promotion.²³

Regime change and democracy assistance are not synonymous. Democracy assistance does not actively promote domestic policy agendas or champion opposition forces. Democracy is the purpose of democracy assistance groups' efforts, and the fall or removal of a non-democratic regime does not automatically produce democracy as an outcome. The replacement of Batista by Castro or the Shah by Khomeini makes that clear.

Democracy assistance focuses not on determining *outcomes* but on enhancing democratic institutions, practices, and culture. Ending a dictatorship can provide the space and opportunity for people to build democracy, but that is inevitably a long-term and arduous task, entailing a long-term process of work, learning, and the cultivation of civic values and nurturing of institutions of governance that enable pluralist societies to resolve differences through peaceful means.

The equation of democracy promotion with regime change by commentators and some practitioners in the West has been unhelpful and has played into the hands of authoritarian regimes. In fact, democracy assistance groups generally play a restraining role, cautioning groups impatient for regime change that

²² “Westerners did not create or control the Ukrainian democratic movement but rather supported its cause on the margins,” says Michael McFaul, a leading expert and former practitioner in the field. Democracy promotion groups “do not have a recipe for revolution,” he notes. “If the domestic conditions aren’t ripe, there will be no democratic breakthrough, no matter how crafted the technical assistance or how strategically invested the small grants. In fact, Western democracy promoters work in most developing democracies in the world, yet democratic transitions are rare.”

“‘Meddling’ In Ukraine: Democracy is not an American plot,” *The Washington Post*, 21 December 2004).

²³ “Implementation has often been inconsistent, tentative, and hypocritical,” notes Arch Puddington of Freedom House. In Ukraine, for example, the advanced democracies “did nothing more than insist that basic election standards be fulfilled, but this modest gesture contributed to the year’s most important gain for freedom.”

democratization is a process, not an event, and one that requires long-term investment to secure genuine, sustainable change.

Yet the relative success and dramatic visibility of the color revolutions does present a “genuine conundrum” for democracy promotion groups. While regime change rhetoric is used to legitimize the authoritarians’ backlash, the elevation of democracy promotion as a guiding principle and objective of U.S. foreign policy, combined with demonstrably successful and U.S.-assisted transitions, resonates strongly with domestic decision-makers—and funding agencies.

Formulaic regime change approaches reveal a mechanistic approach to democratization, suggesting that popular movements can be artificially manufactured and that resources determine success. They not only overrate the influence of U.S. funding and organizations but also underplay the significance of independent forces and neglect the countervailing powers of authoritarianism.

Nevertheless, democracy assistance organizations face a new reality, one that is dramatically different from the conditions in which they operated during the years following the revolutions of 1989. This should remind us that advancing democracy is a struggle, not a process of social engineering; and that what democrats on the front lines need is practical assistance and political solidarity.

Legal and Extra-Legal Measures against Democracy Assistance

The following section focuses largely on legal restrictions being imposed on democracy assistance NGOs. It draws heavily on research made available for this report from Douglas Rutzen and Cathy Shea, President and Program Director, respectively, of the International Center for Not-for-Profit Law.²⁴ In practice, of course, legal constraints are supplemented and reinforced by extra-legal sanctions, ranging from surveillance and harassment to expulsion of democracy assistance NGOs and even the killing of local partners.

We gauge and describe the impact of such measures principally with reference to the experience of NED's core institutes. Indeed, the prevalence and the range of legal and extra-legal measures are indicated by the experience of the AFL-CIO's Solidarity Center, the NED's labor affiliate. "There is no region or sub-region where the Solidarity Center and its trade union partners do not encounter obstacles to implementing or improving democratic principles," it reports. The Solidarity Center cites impediments ranging "from the petty and subtle to the threatening and physical," including: denial of visas, entry and other travel restrictions (Zimbabwe, Russia, Kazakhstan, Uzbekistan); delays or denials in issuing resident permits (Nigeria); arbitrary investigations by intelligence service and special police forces (Bangladesh, Cambodia); surveillance and burglaries of union and Solidarity Center offices (Indonesia, Nigeria); assassinations, detention, and arrest of union members and elected leaders (Colombia, Cambodia); extra-legal actions to de-register democratic unions (Venezuela); denial of accreditation to trade union election monitoring teams (Zimbabwe); closure of Solidarity Center offices (Belarus, Russia); legislation to stop local NGOs from receiving outside funding (Zimbabwe); and new initiatives to punitively tax Solidarity Center and other NGO staffs (Thailand).

Nor are U.S.-based democracy assistance groups and their grantees or partners the only groups affected. The UK's Westminster Foundation for Democracy reports that restrictive measures are resulting in "an inability of local partners to obtain licences to operate, censorship, interrogation, travel restrictions, office raids, dismissals, seizing of electronic office equipment and paper files, unreasonably rigorous bureaucratic and financial controls, and detention."

In addition to legal constraints, many regimes seek to impede democracy assistance NGOs and related groups through unofficial means, from the creation and mobilization of pseudo-NGOs in an attempt to contest and confuse public and international opinion to the deployment of thugs or auxiliary forces—as in Cuba and Egypt—to assault, intimidate or harass activists. In Uzbekistan, for instance, a Freedom House training session was disrupted by 15 protesters who forced their way into the seminar and accused Freedom House of being Wahhabi Islamist extremists and enemies of the Uzbek state.

Egyptian NGOs are impeded by restrictive laws and the "extra-legal" actions of the Security Services, according to a report by Human Rights Watch (HRW).²⁵ Civil society groups face severe restrictions under the law governing NGOs. The security services scrutinize and harass civil society activists even though the law does not accord them any such powers," says the report. HRW cites instances of the security services rejecting NGO registrations, determining the composition of NGO boards, harassing activists, and interfering with funding.

²⁴ For further details of ICNL's distinctive and pioneering work on these issues, go to <http://www.icnl.org/>.

²⁵ "Margins of Repression: State Limits on Nongovernmental Organization Activism," Human Rights Watch, New York, 2005.

The issue of NGO harassment is assuming greater political salience, and not only within the world of democracy assistance organizations and civil society. The Russian government's new measures against independent NGOs acquired diplomatic significance as senior figures from the State Department prevailed upon the Putin regime to refrain from more restrictive measures. The issue is unlikely to fade given Russia's accession to the chair of the G8 grouping of advanced industrial democracies.

Furthermore, as the Bush Administration continues to make democracy promotion a foreign policy priority, it is increasingly likely to confront resistance from autocrats and authoritarians. At the November 2005 Forum for the Future in Bahrain, for instance, the question of NGO independence prompted Egypt to veto a final declaration and sabotage the launch of a Foundation for the Future designed to promote democratic change within the region. A draft declaration pledged delegates "to expand democratic practices, to enlarge participation in political and public life, (and) to foster the roles of civil society including NGOs." But participants failed to agree to the draft after Cairo insisted that NGOs be "legally registered in accordance with the laws of the country." Egypt's foreign minister complained that the U.S. and Europeans wanted "an open season for everybody," a *carte blanche* for funding political NGOs through which "anybody can acquire anything from anybody at any time."

The developments outlined above "are not isolated events," observes the International Center for Not-for-Profit Law, noting that "recently, over twenty countries have introduced restrictive legislation aimed at weakening civil society," joining "scores of others with existing laws, policies, and practices that stifle the work of civil society organizations (NGOs)." The study, produced by ICNL specifically for this report, reveals that a number of countries have enacted or proposed laws that significantly restrict the activities of civil society (the appendix to this report details ICNL research covering the relevant countries, laws, and provisions). "We are witnessing a marked increase in the use of restrictions on NGO formation, operation, and financing by foreign governments," ICNL contends. These restrictions pose serious obstacles to both foreign and domestic civil society groups' ability to form, function effectively, and sustain themselves.

Restrictive provisions are found in virtually every region of the world, but tend to be more prevalent in the Middle East, Africa, Asia, and the New Independent States (NIS) of the former Soviet Union. As the ICNL notes, states with restrictive laws tend to exhibit one or more of the following characteristics:

- a 'closed' or command economy;
- government by leaders with autocratic tendencies;
- political dissent—either internal or within a neighboring country—is considered a threat to the current regime or incumbent party;
- concerns about religious fundamentalism or, more specifically, jihadist Islam;
- a contagion or copy-cat effect of similar legislation or practices introduced across neighboring regimes;
- a record of human rights abuse; and
- a purported concern about foreign influence or interference.

The rationale for the proposal and enactment of repressive measures varies with context and circumstance. Governments often propose an "official" rationalization for a proposed law that does not match the reasons perceived by the international community and local civil society groups. The threat of terrorism is increasingly invoked to justify clampdowns and to deflect international criticism. For

example, the Russian government has described its new NGO law as necessary to regulate the NGO sector, counter terrorism, and stop money laundering. In Thailand, opposition, media, and civic groups are constrained by an emergency law promulgated in July 2005 by Prime Minister Thaksin Shinawatra purportedly to curb Islamist violence in the Muslim south. The Emergency Powers Law allows the Thai government to impose curfews, detain people without charge, and ban public gatherings.

Under the guise of a crackdown on money laundering, the Uzbekistan government effectively stopped the transfer of foreign funds to all Uzbek civil society groups. A resolution of the council of ministers requires NGOs to report activities to a “bank council” before releasing funds. The banking sector is so tightly controlled that it would be impossible to make these transfers. In short, NGOs and business associations are simply not able to function legally using foreign funds.

In some cases, restrictive legislation is projected as an attempt to improve NGO governance and regulation or to curb malpractices. However, in virtually all of the cases cited, the means deployed are more restrictive than necessary to fight NGO malpractice or poor governance, and are often contrary to obligations to protect the right to free association required by the country’s constitution or under international conventions.

Restrictive laws are often a continuation of long-standing patterns of repressive government tactics (e.g., Belarus, Zimbabwe). In some cases, the recent initiatives appear to be motivated by a desire to forestall political opposition. Indeed, ICNL research indicates that governments often enact restrictive NGO legislation before elections, recognizing the critical role that civil society can play in advancing democracy.

Most democracy assistance groups have experienced the following legal and extra-legal constraints: restrictions on the right to associate and freedom to form NGOs; impediments to registration and denial of legal status; restrictions on foreign funding and domestic financing; ongoing threats through use of discretionary power; restrictions on political activities; arbitrary interference in NGO internal affairs; establishment of “parallel” organizations or *ersatz* NGOs; and the harassment, prosecution, and deportation of civil society activists.

Some of these measures may appear at first glance to be relatively benign, neutral, or legitimate attempts to regulate civil society. Some authoritarian regimes claim that not only is it appropriate to limit foreign interference in domestic politics—as most advanced democracies do—but falsely claim that their newly restrictive measures are based on legislation already in effect in established democracies.

Of course, governments may legitimately seek to regulate foreign funding of domestic political actors and/or to regulate NGOs prone to malpractice or poor governance. But this is where context and intent matter. Most democracies have regulations governing and, to some extent, restricting foreign funding and interference in domestic political affairs. But they exist in a context of genuine political pluralism and institutional checks and balances. Nor, of course, are they designed or intended to suffocate or impede relatively young and still-fragile civil society organizations.

In this context, many of the following measures present serious impediments to the effective delivery of democracy assistance. Moreover, while democracy assistance groups’ experience with closed societies suggests these obstacles can be overcome or circumvented, they still threaten to retard the development of civil society and the emergence of democratic institutions, practices, and culture, particularly in hybrid states.

1. Restrictions on the right to associate and freedom to form NGOs.

As noted above, relatively few regimes are as despotic as North Korea, Burma, Cuba, and Saudi Arabia, although some of the post-Soviet states of Central Asia are severely repressive and intolerant of political opposition. In **Saudi Arabia**, for example, civil society groups enjoy only limited rights of association; genuinely independent NGOs are effectively banned. In **China** and **Vietnam**, NGO operations are strictly monitored and controlled, and subject to arbitrary interference by the authorities. In **Vietnam**, for instance, NGOs must obtain an operating license and the Vietnamese authorities routinely intervene in NGOs' internal affairs and governance, often insisting on the prerogative to appoint (or otherwise veto) personnel.

Cuba

Cuba has had a long-standing policy of systematically harassing and impeding civil society groups that refuse to conform to the regime's Marxist-Leninist orthodoxy. In practical terms, government-sponsored NGOs are mere extensions of or, in the case of the official unions, "transmission belts" for the ruling communist party.

The regime goes to great lengths to inhibit external support, including intimidation, propaganda, mob violence, overseas covert activities, and repression of dissidents linked to foreign-supported NGOs. The regime recently refused permission for the Women in White human rights group to leave the island to receive the European Parliament's prestigious Andrei Sakharov prize for human rights. Havana frequently unleashes the auxiliary vigilantes of its Committees to Defend the Revolution against dissidents, as in August 2005 when supporters of President Fidel Castro staged an aggressive demonstration outside the home of Vladimiro Roca and prevented members of his Todos Unidos (All United) opposition group from meeting. The action came in response to a call from Castro to block opposition activity.

The communist authorities allow a limited degree of political space for opposition or civil society groups, partly to soften its totalitarian image but also to facilitate the identification and monitoring of dissident elements and, to an extent, to play "divide and rule" with rival dissident groups. For example, the authorities permitted a May 2005 civil society forum even though Havana's communist authorities detailed and expelled several European politicians and activists seeking to attend the gathering organized by the Assembly for the Promotion of Civil Society in Cuba. A Czech Senator and German parliamentarian were expelled in a move declared unacceptable by the European Commission. But commentators noted that the meeting also provoked division among the island's dissidents.

Independent civil society groups have nevertheless been organized by dissidents on the island and by Cubans in exile, who in recent years have shown a greater propensity to collaborate. Though generally not permitted to operate in Cuba, many foreign NGOs (mostly from the United States and Europe) collaborate with and support Cuban civil society groups in exile and on the island.²⁶ Experienced foreign NGOs and Cuban exile groups continue to carry out their work by adopting operational strategies that are secure and effective in this closed and restrictive environment.

²⁶ The Cuban Democratic Directorate's *Steps to Freedom*, an analysis of civil resistance in Cuba, details 1,805 acts of non-violent protest and the formation of 19 independent libraries, seven new civil society groups, 14 independent labor unions and 11 independent newsletters, amongst other initiatives, from February 2004 through January 2005.

2. *Impediments to registration and denial of legal status.*

Many governments closely guard the process by which NGOs can register, i.e., become a legal entity with the associated legal rights and prerogatives. Governments insist that groups, even some as small or informal as a neighborhood association, must register, allowing authorities to monitor groups' activities. Regimes make registration difficult, impeding the ability of civil society organizations, particularly advocacy groups, to function effectively or even to exist. Tactics include making registration prohibitively expensive and/or unduly burdensome in terms of the type and amount of information required; excessive delays in making registration decisions; and requiring frequent re-registration, giving authorities the right to revisit organizations' licenses to operate.

In short, governments demand official registration as a condition of operation but impede NGOs' ability to secure legal status, allowing authorities to use the process as an opportunity to intervene, monitor, and impede NGO activity. In **Azerbaijan**, **Ethiopia**, and **Algeria**, as ICNL reports, regulations governing registration are kept deliberately vague, giving considerable discretion to officials. Consequently, NGOs have difficulty registering; some are denied registration while others experience long delays or repeated requests for further information. In Azerbaijan, the registration of local NGOs has, in effect, been suspended as a result of overly discretionary implementation of registration laws.

In March 2005, Ethiopia's Ministry of Foreign Affairs instructed representatives of the International Republican Institute, National Democratic Institute, and IFES (formerly the International Foundation for Election Systems) to cease operations and leave Ethiopia within 48 hours. The Ministry of Foreign Affairs expressed the view that they were operating illegally, even though all three groups had made a good faith effort to register both through the Ethiopian Embassy in Washington, D.C. and through the Ministry of Justice in Addis Ababa.

Tajikistan has been holding international organizations in limbo by neither refusing nor granting registration. As a consequence, groups like NDI and Freedom House are operating with local staff and cannot get visas for international personnel. All NGOs in Tajikistan's Ferghana Valley have been put through audits and re-registration following the Andijon massacre in Kyrgyzstan.

In **Belarus**, the government exercises considerable discretion over the registration process through a National Commission on Registration of Public Associations that advises, through a notably opaque process, the Ministry of Justice on which organizations it should allow to register. The law requires authorities to respond within one month to registration requests, says ICNL, but NGOs have waited over a year only to be denied registration without explanation. Unregistered status renders activists and organizations vulnerable to capricious and punitive actions on the part of the security services. On March 3, 2006, the Belarusian KGB arrested four election observers from an unregistered NGO associated with the European Network of Election Monitoring Organizations (ENEMO) which is funded by the National Democratic Institute.

Russia's NGO law, even as amended following protests, requires foreign and *de facto* domestic NGOs to re-register with a state agency which will examine their activities before determining whether they can continue operations.²⁷ The measure allows the Federal Registration Service, an agency of the

²⁷ While technically domestic NGOs are not required to re-register, they are obliged to change their by-laws and submit the changes for official approval, a process civil society groups fear will effectively amount to re-registration. See ICNL's Analysis of Russian NGO Law, <http://www.icnl.org/knowledge/news/2006/02-28.htm>

Justice Ministry, to invoke threats to the “constitutional order” to justify terminating funding of certain activities. Government officials enjoy an unprecedented degree of discretion for deeming programs or projects detrimental to Russia’s national interests. Registration officials can exercise prerogatives to close the offices of any foreign NGO undertaking programs that do not have the objective of “defending the constitutional system, morals, public health, rights and lawful interest of other people, [or] guaranteeing the defense capacity and security of the state.”

Restrictions on working with “unregistered” groups in Uzbekistan

In December 2003, the Uzbekistan Ministry of Foreign Affairs (MFA) instructed the International Republican Institute to cease working with “illegal organizations,” meaning all unregistered political parties. The country’s foreign minister personally accused the International Republican Institute (IRI) of promoting a coalition of “anti-government forces that wish to overthrow the constitutional order of Uzbekistan,” and advised IRI to take the Uzbek government’s views on this seriously and “act accordingly.” Consequently, IRI postponed a scheduled seminar on “Government Mechanisms for Registration” for political activists.

Selected international organizations were instructed to reapply for accreditation through the Ministry of Justice (instead of the Foreign Ministry) and to turn in current MFA accreditation cards before March 1, 2004. Under these circumstances, the U.S. Embassy recommended that IRI take a break from activity in order to assess the situation and plan for 2004.

In April 2004, IRI received its official registration certificate, accompanied by a letter from the Ministry of Justice listing IRI’s alleged violations and a warning that registration would be canceled if IRI continued training activities with non-registered groups. In May 2004, the justice minister warned IRI that it was breaking the law by working with the unregistered parties Erk and Birlik. In response to the justice minister’s statement, IRI suspended initiative group training for non-registered movements.

In November 2004, the Ministry of Justice, verbally and in writing, warned IRI not to have contact with or extend any kind of assistance to unregistered political movements. This warning came after IRI had hosted, at its office, individual consultations between a Ukrainian consultant and Uzbek activists seeking to run as candidates in the December 2004 Oliy Majlis election.

3. Restrictions on foreign funding and domestic financing

Restrictions on foreign funding of domestic civil society groups are increasingly common and government attempts to legitimize and gain support for these constraints are frequently couched in *faux* patriotic or xenophobic terms. In this respect, authoritarian regimes gain a “two-fer.” They impose technical restrictions on civil society groups’ ability to function while undermining them politically by suggesting that they are agents of or otherwise represent alien interests.

Russia, Venezuela, Egypt and Zimbabwe provide perhaps the most blatant and pernicious instances of this trend. “We are against overseas funding for the political activities [of NGOs] in Russia,” President Vladimir V. Putin has stated. “For some of these organizations the main objective has become to receive funds from influential foreign and domestic foundations,” he claims, insisting that “for others the aim is to serve dubious groups and commercial interests.”

In Venezuela, CIPE has noted various types of NGO harassment. “While not much of this can be attributed to specific laws (though that may yet happen),” CIPE notes, intimidation takes various forms including “harassment or the threat of it in the form of financial and tax audits” of grantees.

The regime of Hugo Chavez is prosecuting civil society activists from *Súmate*, a voter education NGO, on charges of “conspiracy” resulting from a NED grant to promote education on electoral rights prior to the 2004 recall referendum. The regime has openly insisted that receipt of foreign funds is in itself subversive. “It is one thing to be involved in politics, and quite another to solicit support from a foreign government to intervene in internal affairs of the country,” says Luisa Ortega, a state prosecutor with Venezuela’s National Council. “There is conclusive proof in the contract with the accused for financial support from NED that shows intent to conduct politics against the current government,” stated Ortega. Article 10 of the recent criminal code reform bill specified that anyone who supplies or receives funds from abroad to conspire against the integrity of the territory of the republic or government institutions, or to destabilize social peace, may be punished with sentences of 20 to 30 years in jail. Although that provision was ultimately withdrawn from the bill, legal experts suggest that its provisions can still be interpreted to the same effect.

There has been “a renewed effort to limit voices calling for political reform” in Egypt, the International Republican Institute reports. In the spring of 2005, the Egyptian government provoked imams at major Cairo mosques to incite attacks against leading democrats and human rights activists, alleging that they represented “infidel” interests (see box, page 30). Any NGO that receives foreign assistance can expect a delay in release of such funds ranging from six months to more than a year, thus jeopardizing the success of the intended program.

Introducing a 2004 bill that would prohibit civil society groups from accessing foreign funds, Zimbabwe’s President Robert Mugabe declared that his government “cannot allow [NGOs] to be conduits or instruments of foreign interference in our national affairs.” Local civil society groups involved in “issues of governance” are prohibited from accessing foreign funds. Foreign NGOs engaged in governance issues are denied registration. In March 2005, the authorities threatened to de-register some 30 NGOs for failing to reveal details of donor funds. Under Zimbabwe’s 2002 Political Parties Act, it is illegal for any party or its members to accept foreign donations, whether directly from a donor or indirectly through a third party, including technical assistance.

More generally, ICNL research identifies a wide range of legislative measures used to restrict foreign funding, including requirements that:

- NGOs must receive prior government permission to receive foreign funding (sometimes on a donation- by-donation basis, imposing further administrative burdens on thinly-stretched organizational resources);
- NGOs must not only register but frequently re-register with the government, and a government-controlled commission decides whether the organization will be allowed to receive foreign funding;
- overseas funding must be channeled through government agencies or via designated bank accounts that are easily monitored or even frozen;
- foreign funds are subjected to punitively high taxation; and
- foreign funding is restricted to a limited percentage of an NGO’s total income.

In **Belarus**, an August 2005 presidential edict prohibits organizations and individuals from receiving and using foreign assistance for “preparing and conducting elections and referenda; recalling deputies and members of the Council of the Republic; staging gatherings, rallies, street marches, demonstrations, picketing, or strikes; producing and distributing campaign materials; and any other forms of mass politicking among the population.” Regulations adopted in 2004 imposed reporting and approval mechanisms that ensure government control over donor funds and projects. NGOs are required to pay up to 30 percent tax on foreign aid, a stipulation that has prompted some overseas donors to reconsider the viability of financial support to Belarusian civil society.

Eritrea’s 2005 NGO Administration Proclamation prohibits the UN and other international agencies from funding civil society groups under most circumstances and requires that all donor funds be channeled through government ministries. The proclamation imposed taxes on food aid and other donations, outlawed NGO operations in fields other than relief and rehabilitation, and imposed onerous reporting requirements.

Article 15 of **Uzbekistan**’s 2004 law “On Funding Political Parties” states that political parties may not receive donations from any international entity in the form of money, property, services, grants, technology, travel and fees for attending trainings, seminars, and conferences. The government effectively assumed control of NGOs’ foreign funding by requiring them to deposit funds in government-controlled banks, thereby allowing monitoring and control of financial transfers. “Within a short time following enactment of these provisions,” the ICNL observes, “the government had obstructed the transfer of over 80 percent of foreign grants to NGOs.” The system operates according to unwritten policies and oral instructions, making it difficult for NGOs to follow the rules or appeal adverse decisions. More recently, the government suspended the operations of foreign-based democracy and governance organizations that partnered with or funded local groups, and has refused to register others.

In **Nepal**, King Gyanendra’s government imposed a new Code of Conduct for NGOs, requiring groups to obtain prior approval of the monarch’s Social Welfare Council for any bilateral or multilateral assistance for programs. The 15-point code of conduct, introduced in November 2005 against widespread opposition, affects over 200 international NGOs and 3,000 civil society groups operating in Nepal.

4. Ongoing threats through use of discretionary power.

Some regimes retain discretionary powers to shut down civil society groups, keeping NGOs in a precarious condition—a political limbo—in which they are apparently tolerated but remain vulnerable to arbitrary termination. Even if powers of dissolution are rarely invoked, the availability of these options often has the effect of inhibiting NGO activity and effectiveness.

In 2004, **Belarus** enacted provisions allowing the regime to close an NGO for violating laws restricting the use of foreign funds or for demonstrating in violation of a law curtailing mass meetings. In 2003, government officials dissolved 51 leading civil society groups, and in 2004 a further 20 groups were terminated. In 2004, Minsk refused renewal of registration permits for Counterpart and IREX, two U.S.-based organizations implementing U.S. government-funded programs. A December 2005 measure introduces severe penalties for activities deemed conducive to fomenting “revolution” in Belarus, notes

the ICNL, specifically:

- training people to take part in “group activities that flagrantly violate the public peace” and for financing such training would carry a jail sentence of up to six months or a prison sentence of up to two years;
- training people to take part in “mass riots” or its financing would carry a jail sentence of up to six months or a prison sentence of up to three years;
- appeals to a foreign country, a foreign or international organization to act “to the detriment of” the country’s “security, sovereignty and territorial integrity,” as well as the distribution of material containing these appeals, would carry a jail sentence of six to 36 months or a prison sentence of two to five years; and
- distribution of similar appeals via the media would carry a prison sentence of two to five years.

A new article to the Criminal Code, titled “Discrediting the Republic of Belarus,” establishes a jail sentence of up to six months or a prison sentence of up to two years for “providing a foreign country, a foreign or international organization with patently false information about the political, economic, social, military and international situation of the Republic of Belarus, the legal position of citizens in the Republic of Belarus, and its governmental agencies.” The measure toughens punishment for an appeal made in public for power seizure or a “violent change of the constitutional system,” with a jail sentence of six months or a prison sentence of up to three years.

Under **Egypt’s** Law 84/2002, the supervising ministry can close an organization at any time on the grounds that it is deemed to be “threatening national unity” or “violating public order or morals.” These typically broad and ambiguous terms give the government substantial discretion to close or otherwise harass civil society groups.

After domestic protests and diplomatic pressure secured amendments to draconian draft legislation, **Russia’s** NGO law no longer requires foreign-based NGOs to register as Russian organizations. But the operations of foreign NGOs may still be closed if they are deemed to violate “Russia’s sovereignty, independence, territorial integrity, national unity and originality, cultural heritage, and national interests.” The definitions in this provision have been left vague, leaving much to the discretion of the Ministry of Justice and a new regulatory authority.

To avoid political protests and diplomatic embarrassment, the new law is unlikely to be fully implemented until after the July 2006 G8 Summit, which will be chaired by Russia. But Russian NGOs suggest that the likely impact can be gauged from the Kremlin’s recent actions. The authorities recently froze the assets of the Russian PEN Center after accusing the writers’ advocacy group of failing to pay \$80,000 in taxes on Moscow land that the group does not even own.

The Russian-Chechen Friendship Society, a NED grantee, has seen its volunteers kidnapped and tortured, and four of them killed. In February 2006, Stanislav Dmitrievsky, the society’s director, was convicted of inciting ethnic hatred and sentenced to four years of probation for publishing the comments of Chechen leaders. His conviction followed a government tax demand that deemed the group’s grant income to be profit and imposed an administrative charge that accused the society of failing to provide appropriate financial records—records that had already been seized by tax inspectors.

When the **Ethiopian** government objected to the programming of the Addis Ababa Chamber of Commerce's radio program, "The Voice of Addis," the program was taken off the air for a period of about three months. The Center for International Private Enterprise (CIPE) reports that the government felt that it had "sent a message" through this action, making a complete close-down of the program or station unnecessary. The Ethiopian government also insisted that the Chamber's membership policies be changed to allow for regime-friendly sectoral associations to be included. CIPE reports that "a general feeling of nervousness prevails broadly in the country's private sector, and business people seem to be waiting for the other shoe to drop."

5. Restrictions on political activities

NGOs are frequently required to refrain from activities broadly defined as political, a severe if not disabling obstacle to democracy assistance groups. Even non-partisan or largely technical activities are vulnerable to malicious or willful misinterpretation, rendering activists and organizations vulnerable to potentially severe penalties.

One disturbing dimension of this trend is the attempt by governments to equate democracy assistance with oppositional activity, "regime change," or political subversion. *A propos* restrictions on NGOs proposed in 2004, for example, **Zimbabwe's** public service minister claimed that civil society groups funded "anti-government activities, in the name of democratization." The law bans foreign NGOs concerned principally with "issues of governance," and denies registration to groups receiving foreign funding for "promotion and protection of human rights and political governance issues." Some 300 local and 30 international NGOs were active in Zimbabwe at the end of 2004 but new legislation has paralyzed civil society groups involved in human rights and civic voter education.

In **Kazakhstan**, ICNL reports, the law prohibits "foreigners, persons without citizenship, or foreign legal entities and international organizations" from engaging in "activities that support (or make possible) the nomination and election of candidates, political parties, nomination of parties to the party list or the achieving of a specific result during elections." Penalties for violating the prohibition include fines (for individuals and organizations) and deportation of the individuals involved.

6. Arbitrary interference in NGO internal affairs.

Even when civil society groups are allowed to form and secure official registration, governments continue to restrict their activities through unchecked oversight authority and interference in NGOs' internal affairs. Failure to comply with government demands may prompt sanctions and penalties. Civil society groups are frequently impeded and harassed by bureaucratic red tape, visits by the tax inspectorate, and other below-the-radar tactics.

Despite amendments to draft proposals, made after international protests and diplomatic representations, **Russia's** NGO law still allows officials to utilize less public means of intimidating political opponents. The registration authority enjoys discretionary power to audit the activities and finances of non-commercial organizations, request documents, and attend meetings, including internal strategy or policy discussions.

China: Permitting NGOs, Constraining Civil Society

Foreign and domestic NGOs have experienced a marked deterioration in the political climate in China. The International Republican Institute, for example, works with a number of NGOs and civil society groups in China, focusing on women's grassroots political participation, capacity-building, legal rights, electoral rights education for ethnic minorities, and legal advocacy for persons living with HIV/AIDS. For the most part, its programs in China have been able to continue despite the deteriorating political climate, but over the past year, restrictions have been imposed in a number of areas, including NGO registration and activities.

In recent months, two of a democracy promotion group's local program partners have been physically assaulted, reportedly by local police/government officials or individuals hired by the local authorities. Both partners were engaged in voter rights education and investigating election fraud.

In China, one province holding village elections at the end of this year has enacted new regulations prohibiting NGOs, or anyone except officials from the provincial government, from monitoring elections. IRI has trained China's first-ever group of independent election monitors. These monitors come from all over China, and the group's charter explicitly prohibits them from working in their own home provinces, as a safeguard against possible conflicts of interest and corruption. The new regulation, especially if duplicated in other provinces, will effectively prevent independent and impartial election monitors from functioning.

In late 2005, a Beijing-based rights activist (who is also a NED grantee) was forced to flee abroad after being evicted from her apartment and receiving an order to vacate the premises of her independent institute. In a related development, a blind civil society activist who exposed official abuses under China's single-child policy was beaten by local officials, while lawyers trying to mediate with local government were attacked by unidentified thugs. These events reflect official anxiety at the growing number of protests, especially in poverty-stricken rural areas, with farmers and peasants mobilizing against pollution, corrupt government, and illegal land seizures.

*Beijing is particularly concerned with preventing dissident intellectuals from linking up with a mass base. Potentially, this would be "a greater and far more serious challenge to the party" than the dissent of establishment intellectuals during the Mao era or the 1980s, says Merle Goldman, author of *From Comrade to Citizen: the Struggle for Political Rights in China*. Over 80 percent of China's villages—half the country's population—vote for village heads and councils. Grass-roots, village-based initiatives could eventually prompt a transition akin to Taiwan and Korea where authoritarian pluralism gave way to democracy "through pressure from below that the top leadership eventually was unable to ignore."*

Even technical assistance projects are suffering as a result of the Chinese authorities' approach. The National Democratic Institute reports that a local partner asked to cancel plans for a training program on legislative oversight of administrative budgets at the provincial level. The reason given for postponement, reports NDI, was the partner's concern regarding "working with a U.S.-funded project in light of the Chinese government's unease over the role U.S. NGOs played in the color revolutions."

A long-time partner of one U.S. democracy promotion group postponed an international symposium, citing

anxieties about working with an American organization on a sensitive topic. “The chill is pervasive and widespread,” one democracy promotion group reports, “and we are concerned about the future impact on both long-term and future programming.”

*The regime welcomes international NGOs’ activities in certain social spheres, like public health, where they compensate for state spending shortfalls. But it is less comfortable with foreign funding of domestic NGOs. In 2005, Beijing required some 200 domestic NGOs to re-register as enterprises, prohibiting them from defining themselves as “research institutes” which made it more difficult to raise foreign funds as non-profit organizations. “It’s using soft methods to narrow the space NGOs can exist in,” one activist recently told Reuters. “The authorities are worried a civil society would bring about a strong force that challenges its rule.”*²⁸

7. *Establishment of “parallel” organizations or ersatz NGOs*

Repressive governments have sought to undermine the NGO sector by establishing ersatz or captive NGOs, or Government-Organized NGOs (GONGOs). Governments use these organizations to appear supportive of civil society, to channel funding to preferred causes and away from opposition groups, and to discredit independent NGOs or opposition groups by claiming that government-affiliated organizations represent “legitimate” civil society. The **Zimbabwe** Electoral Commission, for example, appointed by President Robert Mugabe to serve as an independent electoral authority, took over the provision and control of voter education, impeding foreign assistance to NGOs that had previously led voter education programs. In **Uzbekistan**, some 300 civil society groups formed an umbrella organization called the National Association of NGOs of Uzbekistan (NANUZ). Only about half of these organizations conduct genuine activities, according to a source of the ICNL. In **Venezuela**, the Chávez regime has organized a wide range of parallel Chavista groups which deliberately confuse and cloud the issues by taking a pro-government line in international meetings.

While the parliament of **Kazakhstan** helped fend off attempts to curb the activities of NGOs, the business sector faces a threat to its autonomy. Local government officials have pressured businesses and associations to join “Atamekent,” a state-sponsored umbrella association, making membership virtually mandatory. CIPE associates report that Atamekent is being financed by Mr. Kilibayev, President Nazarbayev’s son-in-law, a wealthy oil tycoon with little political standing. It is believed that Kilibayev will eventually head Atamekent and turn the association into a political party. CIPE’s partners in Kazakhstan are alarmed by this trend since they do not wish to be affiliated with such a party and reportedly fear the business community will be forced into these political affiliations.

²⁸ “The party’s refined strategy of ‘selective repression’ targets only those who openly challenge its authority while leaving the general public alone. China is one of the few authoritarian states where homosexuality and cross-dressing are permitted, but political dissent is not.” The Dark Side of China’s Rise, by Minxin Pei, Foreign Policy, March/April 2006.
7 February, 2006. <http://mobile.alertnet.org/thenews/newsdesk/PEK342977.htm>

Tunisia: a Far Cry From Civil Society

In Tunisia, state-sponsored GONGOs monitor the activities of independent NGOs while GONGO representatives attend conferences and other civil society events to collect intelligence for government agencies monitoring independent NGOs. In a 2004 assessment mission to Tunisia, one democracy assistance group was told by senior government officials that if it wished to operate in the country, it would be expected to work with government appointed groups and not with independent bodies. Independent NGOs are often unable to register and it remains technically illegal for groups to receive funding from foreign sources.

Government interference in the activities of Tunisian NGOs is commonplace and severely limits independent actors' ability to work outside the field of officially sanctioned associational life. There are essentially two types of NGOs in Tunisia: those that operate with the support of the government and ruling Constitutional Democratic Rally Party (Rassemblement Constitutionnel Democratique); and those attempting to operate independently. Civil society groups in the latter category face government interference in planned activities, harassment of members and program beneficiaries, and over-zealous scrutiny of financial records are widespread.

A common government practice to limit the work of independent actors is denial of meeting permits and/or registration. Independent actors are frequently threatened with prosecution for accepting international donor funds, and public castigation in the government-inspired press is used to discredit and harass activists. At the same time, official NGOs are promoted as part of the government's international public relations strategy to demonstrate the existence of civil society in Tunisia. These organizations' personnel, widely known to include members of the mukhabarat intelligence services, represent official Tunisian positions at various international forums and are used to crowd-out independent actors.

Tunisian authorities continue to freeze the assets and otherwise impede the work of the Arab Institute for Human Rights more than a year after authorities informed the institute that a financial audit requiring the freeze would take a few days. The Tunisian government invoked anti-terrorism and money laundering laws to justify further restrictions, including disabling internet, faxes, and mail. The Arab Program for Human Rights Activists believes the regime is pressuring the Institute because it is hostile to leading human rights activist Khamees Kaseela, who represents the Tunisian Association for the Defense of Human Rights on APHRA's board.

8. Harassment, prosecution, and deportation of civil society activists

Individuals engaged in certain NGO activities can be held criminally liable and fined or imprisoned. Such provisions are designed to discourage active participation in civil society groups and have a chilling effect on individuals seeking to exercise their right to associate or participate in political or civil society affairs. Britain's Westminster Foundation for Democracy reports that as a consequence of harassment in **Belarus** and **Zimbabwe**, training and other programs are often held either in private homes or abroad (increasing the cost of activities). Even then, participants are frequently harassed after attendance.

China offers a clear and disturbing instance of enhanced state interference and harassment of NGOs, particularly by the Ministry of State Security. Beijing's concern about the "colored revolutions" and the potential role of civil society groups in fostering political change is well-documented. NGOs have been visited by state security representatives asking about sources of funding, specifically mentioning certain American funders, including NED, IRI, and NDI. The Ministry of Civil Affairs (MoCA), the government body responsible for registering NGOs, recently stopped processing applications for NGO registration.

IRI reports that in recent months two of its program partners in China have been physically assaulted, reportedly by local police/government officials or individuals hired by local authorities. Both individuals were engaged in legal, nonviolent activities of voter rights education and investigating election fraud. The view of IRI's partner is that they were targeted for speaking to domestic and foreign reporters about election fraud. Activists who cross borders to participate in protests are usually dealt with harshly, as the government believes that only if protests are kept separate will they continue to be manageable.

In **Belarus**, a law signed by the president in December 2005 provides for prison sentences for individuals who train others to participate in street protests, engage them to act against Belarusian sovereignty, or tell lies about the country. Organizing activities on the part of a suspended or closed non-governmental organization or a foundation, or taking part in such a group carries a jail sentence of up to six months or a prison sentence of up to two years. Even prior to the new legislation, NGOs faced acute problems. Some 78 civil society groups ceased operations in Belarus in 2003 following harassment by government officials, the ICNL reports. In 2004, the government inspected and issued warnings to 800 others. The national security agencies and the Office of Public Associations questioned and searched a number of civil society groups and, in some cases, confiscated publications and print materials. Such inspections make it nearly impossible for organizations to focus on their primary activities.

In **Cuba**, officials use the provisions of the Law for the Protection of National Independence and the Economy of Cuba, which outlaws "counterrevolutionary" or "subversive" activities, to harass dissidents and human rights activists. In **Uzbekistan**, approximately 200 domestic nonprofit organizations have been closed. A number of international NGOs, including Freedom House, Internews, and the Open Society Institute, have been expelled from the country. International media, including the BBC and Radio Free Europe/Radio Liberty, have also been forced out. Several U.S. organizations have been under criminal investigation for alleged violations, such as having an unregistered logo and failing to register specific activities (as opposed to their organizations) with the government. These investigations have involved in some cases questioning of individual staff members for up to 12 hours at a time, and prosecution of individuals remains a threat.

In February 2005, Uzbekistan's Ministry of Justice informed IRI's Resident Country Director Greg Stephenson that he would not receive accreditation and would have to depart the country by June. The next two months were spent trying to get the decision reversed, but ultimately the lack of accreditation prevented Mr. Stephenson from carrying out IRI programming. IRI maintained an office in Tashkent in 2005, but has conducted no programming since the resident country director was denied accreditation in February of this year. IRI hopes to conduct activist training and network consulting for a young adult group in early 2006. Even before the Andijon massacre, Freedom House employees in Uzbekistan were targeted by the authorities. "Our local staffs, nearly all of them, have been interrogated and harassed,

including one of our senior program managers,” a program director said.

Punitive legal actions are another form of harassment, notably in **Singapore**. In February 2006, opposition politician Chee Soon Juan, secretary general of the Singapore Democratic Party, was bankrupted and, as a consequence, barred from contesting political office, following a punitive defamation suit brought by former prime ministers Lee Kuan Yew and Goh Chok Tong. Chee was barred from traveling to the World Movement for Democracy’s Istanbul assembly in May 2006 when immigration agents impounded his passport.

As noted above, civil society activists who engaged in voter education prior to **Venezuela**’s presidential recall referendum are currently facing charges of conspiracy against the state for receiving U.S. funds. If convicted of treason, Alejandro Plaz and Maria Corina Machado face up to 16 years in jail. Civil society groups complain that the Venezuelan authorities are seeking to paint efforts to uphold the constitution as a conspiracy to undermine the government.

In **Russia**, NGOs associated with international democracy and human rights groups are frequently subject to harassment through inspections and criminal investigations. The field director of one democracy assistance group was detained on arrival at the airport for no apparent reason and would not have been able to re-enter Russia had the U.S. Ambassador not intervened. Later, she was effectively deported from the country after authorities refused to prolong her registration without explanation.

Egypt: Legal Restrictions, Extra-Legal Harassment

Non-governmental organizations in Egypt face severe restrictions both under a law governing their activities and by the “extra-legal role” of the country’s Security Services. Security Services regularly harass civil society activists even though the law does not accord them such powers.

Egypt’s Law 84/2002 imposes severe penalties on individuals for non-compliance with its provisions, according to the ICNL. Penalties range from up to one year in prison and a fine of up to 10,000 Egyptian pounds (\$1,740) for establishing an association that threatens “national unity” or violates “public order or morals;” up to six months in prison and a fine of up to £E 2,000 (\$350) for conducting NGO activity without following legally-prescribed regulations, conducting activity despite a court ruling dissolving or suspending an association, or collecting or sending funds abroad without official permission; and up to three months in prison and a fine of up to £E 1,000 for conducting NGO activity without a license, affiliating with a foreign NGO network or association without MOSA permission, or merging with another association without MOSA approval.

In the spring of 2005 the Egyptian government prompted imams from prominent mosques to incite attacks against leading democrats and human rights activists. The move followed allegations of alien interference in Egyptian politics that emerged after outgoing U.S. Ambassador David Welch announced \$1 million worth of grants to prodemocracy NGOs. Grant recipients included the Ibn Khaldoun Center for Development Studies, headed by Saad Eddin Ibrahim, for a project on political and electoral rights; the United Group, headed by human rights activist Negad al Borai, for a project to promote transparent elections in 2005; the Egyptian Association for Developing and Disseminating Legal Awareness, founded for a project promoting democracy among political parties; and the Egyptian Association for Supporting Democracy that aims to raise awareness about democracy in young people.

The United Group’s al Borai rejected criticism of U.S. funding. “We will deal with anyone who supports our interests,” he told Cairo magazine.²⁹ “It is normal that funding orientation for Egypt becomes inclined towards democratization when the country is facing parliamentary elections soon.” So it was perhaps predictable that Ibrahim and al Borai became the targets of orchestrated attacks by imams in Cairo’s leading mosques.³⁰ Imams at the el Fath and el Nour mosques among others explicitly named Ibrahim and al Borai as “traitors” and criticized as an “American infidel idea” their calls for the Egyptian constitution to be amended to require term limits and constrain presidential powers. Secularist writer Farag Fawda was killed in June 1992 after a similar campaign accused him of apostasy and treason.

Local commentators were quick to note the hypocritical stance of the ruling National Democratic Party towards U.S. aid.³¹ “The United States that the NDP mobilized the opposition against is the same United States that gives NDP governments almost \$2 billion in economic and military assistance every year;” noted Mohamed El-Sayed Said of Al-Ahram’s Political and Strategic Studies Centre.

²⁹ 24 March 2005.

³⁰ See March 2005 Index on Censorship: <http://www.indexonline.org/en/news/articles/2005/1/egypt-state-hand-seen-behind-mosque-hate-spe.shtml>

³¹ See Al-Ahram, 3 - 9 March 2005: <http://weekly.ahram.org.eg/2005/732/ec9.htm>

Implications for the *modus operandi* of democracy assistance groups

The impact of the above measures on democracy assistance is, to use a phrase frequently used by respondents, one of a “chilling effect,” with some democratic activists and groups deterred and intimidated from engaging with U.S., European and other sources of democracy assistance and solidarity. In China, for example, NDI reports that “local partners are becoming more fearful to be publicly associated with activities supported and funded by international NGOs, particularly American organizations.”

The backlash acts as a “deterrent to activism or engagement,” reports the Solidarity Center, whether “to join unions or engage in actions aimed at promoting democracy.” Anti-NGO measures send “clear messages to civil society organizations to restrict or terminate their activities,” the labor center argues, prompting a weakening of organizations’ ability to pursue their agendas.

Democracy assistance groups are consistent in stressing that the backlash against democracy assistance predates the color revolutions, particularly in Russia. It was in December 2002, for example, several months before Georgia’s Rose Revolution, that U.S. Peace Corps representatives were expelled from Moscow and the representative of the AFL-CIO’s Solidarity Center was refused re-entry into Russia, leading to the eventual closure of its office.

While programs often continue in the face of repressive actions, partners and grantees nevertheless become more cautious, circumspect, and wary of adopting a high profile. In some countries, for example, NED grantees have asked program officers not to visit them for fear of drawing the attention of the authorities. In other instances, prospective program partners or grantees have suggested that while they need external assistance and are willing to work with or accept grants from democracy promotion groups, the risks are too great to do so.

Yet these instances are relatively rare and practitioners in the field are not encountering obstacles qualitatively different from challenges previously experienced (and generally overcome) in closed or authoritarian societies. What does seem to be different and problematic is, first, the emergence of a twilight zone of uncertainty in which programs are prone to arbitrary interference or cancellation; and, second, the growing prevalence of low-intensity harassment, including arbitrary tax inspections, onerous reporting requirements, and ostentatious surveillance by security services.

Democracy promotion groups do not pursue uniform strategies and vary widely in their programmatic focus and specialties, from civil society engagement to political party development. The NED’s discretionary grants program, for example, occupies a distinctive niche in the field of democracy promotion, acting as a “venture capital” facility, providing assistance to cutting edge initiatives, particularly those requiring rapid intervention, and including ostensibly marginal or high-risk groups operating in exile or in exceptionally difficult circumstances.

Consequently, the impact of new restrictions varies among different groups engaged in democracy promotion. For example, some organizations, including the NED’s core institutes, tend to establish in-country offices when engaged in institutional development or other forms of medium- to long-term programming requiring sustained and frequent engagement with local partners or state institutions. This

makes groups particularly vulnerable within authoritarian or backsliding regimes that have in recent years expressed their hostility to democracy promotion by closing the groups' offices and expelling staff.

In the case of the closure of the Solidarity Center's Moscow office, for example, or the expulsion of the Open Society Institute, Freedom House, and IREX from Uzbekistan, democracy promotion groups are forced to relocate to adjacent territories or adopt "semi-detached" forms of engagement with grantees or partners, including provision of assistance through third parties. These measures have less impact on initiatives like the NED's discretionary grants program that relies on direct grant aid, focusing resources on local activists and groups, and which rarely requires a local presence in the field. Democracy assistance donors are nonetheless affected by new restrictions on funding and, to some extent, disadvantaged by distance. Unlike field-based groups, including NED's institutes, they are not usually in a position to reassure or placate suspicious local authorities by establishing relationships or providing access to programs.

By contrast, operating organizations such as NED's institutes often face the delicate issue of deciding whether to establish or continue a presence in a particular country. Yet even where government measures inhibit or dilute program activity, institutes report that the local presence of a democracy promotion group can help dilute or deflect repressive measures, providing a degree of protection or insulation for local activists and groups.

The recent backlash against democracy assistance, says the head of one democracy promotion group, "is disturbing and it is real but it is not uniform." There has been serious regression in Russia and other areas of the post-Soviet space, especially in Central Asia and Belarus. But even in Eurasia, groups are active in countries like Kazakhstan that during Soviet times were off limits for democracy assistance programs.

In other areas, the trend lines are largely positive. There has not yet been a concerted pushback in the broader Middle East, for example, according to the regional director of one democracy assistance group. "We are active in 10 countries in the region, including some – like Kuwait, Yemen and Bahrain – that would have been unimaginable until recently," he notes. It is a sign of progress, for example, that groups are complaining that the Saudi authorities are not as responsive as they should be.

Advantages of nongovernmental status.

The new repressive climate in certain states has highlighted the benefits of non-governmental and civil society-based approaches. Maintaining and highlighting independence from government, such initiatives demonstrate that democracy promotion is most effectively undertaken by non-governmental organizations, particularly in regions like the Middle East and Central Asia where official U.S. support is sometimes shunned.

Unlike official government agencies, often constrained by diplomatic or security considerations, democracy promotion NGOs, operating openly but largely below the radar screen, are able to avoid compromising the integrity and efficacy of programs. Groups like NED are able to engage and fund unlicensed organizations that tend to undertake cutting edge programs but cannot ordinarily access

official funds. Democracy promotion groups are “not constrained by the stringent rules of formal diplomacy,” notes Ken Wollack, NDI’s director.³² Perhaps even more important, he continues, “in countries where one of the primary issues being addressed is the paucity of autonomous civic and political institutions, the fundamental idea that government ought not to control all aspects of society can be undermined by a too-visible donor government hand in the development and implementation of democracy programs.”

Recent increases in funding have improved and diversified opportunities for democracy assistance. This, in turn, has facilitated diverse yet complementary programming that could not otherwise be sustained by a centralized system. Funding by NED, for example, says one institute director, has allowed institutes “to respond quickly and flexibly to emerging opportunities and sudden problems in rapidly shifting political environments.” Furthermore, he notes, NED can operate effectively in or around closed societies where direct government engagement is more difficult and politically sensitive.

Nongovernmental groups have a greater facility in adapting flexibly and swiftly to deteriorating or repressive conditions. When democracy assistance aid is primarily channeled through official conduits, using bilateral agreements, its impact and effectiveness are blunted. In some regimes, governmental programs’ reliance on the approval of host-country authorities virtually guarantees that such programs will be compromised. This is particularly the case in regions where governments impose strict controls over ostensibly independent NGOs or insist that democracy aid be channeled through tame and unrepresentative GONGOS.³³

32 Statement to the Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights, U.S. House of Representatives, July 7, 2004.

33 The European Union’s Barcelona Process, largely focused on reforming the Arab states on its southern periphery, commits signatories to “develop the rule of law and democracy.” But critics note that since 1995 the EU has transferred roughly €1 billion (\$1.2 billion) a year, largely through state-to-state mechanisms, to neighboring authoritarian regimes without generating the anticipated quid pro quo of economic and democratic reform.

Democracy assistance groups' responses to changing circumstances

Democracy assistance groups have in some circumstances been forced to change their *modus operandi* and adapt practices they have previously employed in formerly or currently closed societies. Such efforts include financing in partnership with non-American groups, running trainings and other programs in adjacent territories, and channeling support through exile groups. Different contexts demand different responses, but democracy assistance NGOs have always worked within a diverse range of situations and states—closed societies, authoritarian and semi-authoritarian or hybrid regimes, and fragile or emerging democracies—for which the strategies, operating procedures, and funding arrangements honed over more than 20 years remain relevant and effective.

NED in particular has extensive experience of channeling aid and assistance to dissidents, labor unions, intellectual and civic groups, and other agencies for democratic change. For example, cross-border programs that require ample coordination and expertise are run by NGOs based in Poland, Slovakia, the Czech Republic, and Lithuania, which aid media and human rights groups in Belarus and farther afield in Central Asia. Similar work is undertaken by civil society groups in East and Southeast Asia.

Many of these initiatives take advantage of the internet and other forms of communication that were unavailable to democratic activists in the communist bloc only two decades ago. New technologies and forms of communication, including the internet, e-mail, and cellular and satellite phone technologies have dramatically improved the provision of information and facilitated innovative funding of democrats in closed, authoritarian, or backsliding societies.³⁴ They have enhanced contact and coordination between actors, such as democracy promotion groups, donors, funders, grantees, and project partners. Lower air travel costs have also allowed more frequent and more direct contact with local groups and activists, vastly improving mutual knowledge, trust, and information exchange while also enhancing program monitoring. Thus, while new restrictions undoubtedly impede or at least complicate the provision of democracy assistance, in other respects conditions have actually improved.

Back to the future—reviving “old” practices: Perhaps the most significant difference with the period of NED’s founding is the disturbing emergence of “backsliding” or regressing regimes, exemplified by Russia. In the case of these states reverting to authoritarian practices, democracy assistance groups and their local partners are exposed and vulnerable to restrictions or sanctions, ranging from harassment to prosecution or expulsion. It is in these circumstances that democracy assistance groups are often adapting practices employed in formerly or currently authoritarian societies.

Assuring local authorities: Generally, even in some backsliding regimes, democracy assistance groups are able to pursue programs. But they are obliged to spend more time and make greater efforts in engaging official authorities, providing guarantees—through communication, transparency and access to programs—that they are not promoting a partisan or oppositional agenda. “We do more to explain who we are,” says one Russia-Eurasia specialist. “We need to negotiate access to the political space

³⁴ Authoritarian regimes have of course sought to control or suppress such means of relatively safe and open communication. China’s attempts to monitor and censor Internet-based information and communication, with the regrettable pro-active connivance of U.S.-based companies, are also being duplicated elsewhere. But such efforts are already starting to unravel given the ability of activists and ordinary citizens to circumvent authoritarian states’ restrictive practices.

that is still there.” The focus is on securing a degree of political insulation, providing assurances that democracy assistance is not designed to undermine the existing government or otherwise foment regime change.

By explaining programs in advance and through greater transparency, officials can be reassured that democracy assistance activities are not subversive in intent. In one case, such transparency helped counter rumors that a student leaders’ delegation was going to Ukraine to learn revolutionary mobilization techniques when the program’s focus was election observation. Engaging members of governing parties or other elite officials in programs provides similar assurances and has a confidence-building effect without, however, necessarily changing an agency’s relationship with its grassroots partners or grantees. Indeed, grantees also benefit from a degree of political protection afforded by these official relations.

Mobilizing diplomatic support: In responding to new restrictions on their operations, democracy assistance actors have also sought Congressional interventions and, on occasion, intervention by influential individuals (NDI, for example, has been able to call on its chair, Madeleine Albright to utilize political relationships cultivated during her period of office as Secretary of State). It is something of a “diplomatic dance” with the authorities, suggests one democracy promotion agency, as in one Central Asian country when officials sought to withdraw accreditation to election observers (participants from various countries across post-Soviet Eurasia) or when tax police adopted harassment tactics. The agency defused the issue by engaging the U.S. ambassador, the State Department, the country’s ambassador in Washington, and “more sensitive, reform-oriented” elements in the country’s foreign ministry.

Responding to local priorities: Local project partners and grantees are, of course, the most vulnerable to repressive measures. Nevertheless, civil society groups and other groups that engage with U.S.-funded democracy promotion groups tend to be of such political caliber that they are not readily intimidated by authorities’ official hostility. “The kinds of groups that openly work with us,” says one democracy promoter, “are fairly resilient and don’t scare easily.” There is relatively little evidence of current or prospective grantees declining to accept support from, or otherwise engage with, U.S. democracy promotion groups, either because of fear of official sanctions or retribution. In some cases, to the contrary, reports one democracy promotion group, “their fear is that we will capitulate and leave.”

Common responses and strategies: Democracy promotion groups have enhanced communication and coordination between civil society groups in the field, developing common responses and strategies in the face of new restrictions. However, there is a marked division and contrast between the more politically-oriented or cutting-edge actors, and other civil society actors, including contractors, issue-oriented NGOs (women’s health or child welfare, for instance) and academic or other exchange-oriented groups, that steer clear of activities challenging local authorities.

Entrenching democratic consolidation: Hybrid or semi-authoritarian regimes highlight the imperatives of consolidating new democracies. These are countries where democratic institutions were only recently established and remain fragile, but where there is some support within the state for entrenching democratic consolidation. Democracy promotion groups have been making particular efforts in these states to engage reform-minded elements within state bureaucracies where backsliding is an ever-present possibility. Special emphasis is being placed on efforts to make governments

more accountable and transparent in their functioning; generating, supporting, and sharing innovative solutions to problems of consolidation; increasing broad-based participation in the political process; and strengthening political parties' capacity and transparency.

Sharing lessons, generalizing best practice: Activists from new democracies have been engaged by democracy promotion groups (sometimes employed as staff) to work in countries where their personal and practical experience has considerable resonance and helps further puncture the myth that democracy promotion is an attempt by the West or the U.S. to impose democracy. “As a practical matter, peoples making the transition to democracy require diverse experiences,” says Lorne Craner, IRI’s director.³⁵ “The experiences of democrats from other nations, from new and established democracies alike, are often more relevant than our own.”

IRI’s Iraq program, for example, engages staff from Central and Eastern Europe, drawing on their recent experiences with democracy-building in their own countries. NDI has assisted in building a domestic and regional capacity for election monitoring involving some 18 civic organizations from 16 countries in Eastern Europe and the former Soviet Union that have come together under the banner of the European Network of Election Monitoring Organizations (ENEMO) to observe elections in Ukraine and Kyrgyzstan.

Benefits of “venture capital” approach: The backlash in some states has confirmed that democracy assistance groups do help sustain the morale and organizational fabric of democrats and civil society activists even during periods of disillusion or repression. In doing so, they maintain communications and relationships that allow them to provide additional critical assistance when circumstances change, creating opportunities for more energetic interventions.

The mobilizations in Kiev and in other Ukrainian cities during the Orange Revolution, for example, demonstrated the latent vibrancy and resilience of these groups just a few years after some commentators had lamented the fact that civil society was so frail that Ukrainians rarely defended their own interests.³⁶ Such instances also serve as a reminder that NED and its institutes actively invested resources in sustaining democratic and civil society groups for 15 years prior to the Orange Revolution, demonstrating the need for a long-term approach. In addition, these breakthroughs confirm the benefits of a “venture capital” approach whereby “seed funding” is provided to democratic and civil society groups in countries and contexts that initially appear unpromising for democratic change.

Greater transatlantic, multilateral coordination: New restrictions on democracy assistance, often accompanied by anti-American rhetoric (as in Egypt, for example), highlight the importance of promoting multilateral approaches that help reduce the “Made in U.S.A” profile of democracy assistance and also leverage additional resources. Recently, for example, leading Egyptian democrats and civil society figures joined U.S., European, and Middle Eastern democracy assistance activists to form the Egyptian Democracy Support Network in advance of the 2005 legislative election. The initiative itself was conceived at the Brussels conference of another multilateral initiative, the Transatlantic Democracy Network. An Egyptian Task Force will monitor Egypt’s democratization and the network’s international

³⁵ Statement to the Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights, U.S. House of Representatives, July 7, 2004.

³⁶ See, for example, Problems with Economic Transformation in Ukraine, Anders Åslund, Carnegie Endowment for International Peace. <http://www.ceip.org/people/aslDubrovnik.html>.

members will provide technical, financial, and other means of support as the Egyptian team requests. Significantly, a temporary disruption of the Network's founding conference in Alexandria by individuals associated with the state security services was ended only when authorities were informed of the presence of high-level participants from Europe and the United States.

New regional initiatives for advancing democracy: The democracy assistance community is increasingly building upon democratic breakthroughs in Poland and other new democracies to develop regional initiatives that engage democrats in neighboring autocracies. The Borjomi Declaration issued in August 2005 by President Mikheil Saakashvili of Georgia and Viktor Yushchenko of Ukraine is highly significant. It calls for broadening the horizon of European and Euro-Atlantic integration to the entire Baltic-Black Sea-Caspian area and for the creation within the region of a new Community of Democratic Choice. In a different vein, activists in Central Asia are taking advantage of the recent gains in Kyrgyzstan to provide a safe haven for training young leaders and facilitating communications and the circulation of information.

International democracy assistance networks: Such developments are helping to cultivate international networks of support for democracy activists, including the World Movement for Democracy, which protest restrictions on political rights and take actions to support victims of political repression and their families, including moral solidarity, legal assistance, and material sustenance. Such networks also foster the sharing information among democracy assistance organizations and the development of a sense of common purpose.

Conclusion: Suggested Responses for Congressional Action

It is worth recalling that the backlash against democracy promotion inadvertently acts as a reminder that this is not an uncontested field or a one-way process and that it is the success of our efforts that has prompted the current reaction. The effort of authoritarian regimes to stifle the internal instruments of reform is indeed a troubling development that bears careful monitoring. Yet the evidence of democracy assistance groups' resourcefulness and adaptability, allied with the remarkable resilience and application of grassroots democratic activists, provide strong grounds for cautious optimism that these challenges will be overcome. In this process, the support of the U.S. Congress will be a significant factor.

- Congress should promote a rigorous policy of linkage by tying a state's treatment of democrats and independent civil society organizations to the political and economic dimensions of interstate relations, including: tightening eligibility criteria for membership of international associations of democracies; symbolic meetings with dissidents, democracy activists, and opposition leaders; and conditioning foreign assistance and trade benefits on democratic performance.
- Congress should encourage the Administration, working through the Community of Democracies, to gain acceptance of democracy promotion as a normative practice within the evolving international system of transnational bodies, democracy-assistance organizations, grassroots NGOs and sovereign states. The Community needs to reaffirm and further elaborate, in light of recent developments, its founding Warsaw Declaration, which endorsed democracy promotion, and to seek approval for the Declaration from governments and parliaments around the world, as well as by regional bodies and global institutions, including the United Nations.
- Congress should seek to ensure and increase assistance for democratic political parties, nongovernmental organizations, and independent media in repressive or hybrid regimes while placing severe restrictions on all forms of U.S. aid to these states and, in appropriate cases, prohibiting U.S. government agencies from providing loans and investment to the governments concerned, except on humanitarian grounds.³⁷
- While holding out incentives for genuine democratic change, Congress should be cautious about rewarding authoritarian regimes for ostensibly democratic but cosmetic change.
- As a matter of course, and where security concerns permit, American embassies and visiting delegations should seek to engage and extend support to democratic and human rights activists, dissidents, and other appropriate figures.
- Congress should urge the Administration to issue, with other members of the G8, a memorandum raising concerns over Russia's democratic retrenchment.
- While Congress should support increases in direct funding for democracy assistance programs, it should also consider encouraging forms of indirect or other forms of innovative funding, such as overseas study abroad programs with honoraria that can sustain activists on their return.
- Congress should promote international broadcasting, including radio and webcasting as well as Internet connectivity and e-mail programming, to authoritarian and backsliding regimes, as well as more traditional forms of book mailings and cultural exchanges. This could extend

³⁷ The Belarus Democracy Act of 2004, passed unanimously by both the U.S. House of Representatives and the U.S. Senate, provides a suitable model and precedent.

to the distribution of “social software” —cell phones, wireless laptops, etc.—to encourage engagement with grassroots and democratic forces.

- In partnership with other advanced democracies, particularly the European Union, and with appropriate civil society groups, Congress should encourage the Community of Democracies to consider the establishment of an observatory or monitoring agency to gauge democratic progress and determine the political nature of regimes. Employing a rigorous methodology and taxonomy, the award of democratic credentials to a regime should determine their eligibility for membership of bodies like the G8, OSCE, the projected UN Democracy Caucus, and the Community of Democracies itself.³⁸

³⁸ It is a matter of concern that Russia and Venezuela remain members of the Community of Democracies despite severe violations of democratic norms and practices, including the harassment and prosecution of human rights and democracy assistance NGOs.

Appendix A

At a Glance: Repression and Restrictions

Country	Democracy assistance and independent NGOs effectively prohibited	Democracy assistance and independent NGOs severely restricted	Democracy assistance and independent NGOs largely tolerated but subject to arbitrary interference and/or harassment
Algeria		√	
Azerbaijan		√	
Bahrain		√	
Belarus	√		
Burma	√		
China		√	
Cuba	√		
Egypt		√	
Eritrea	√		
Ethiopia	√		
Jordan			√
Kazakhstan			√
Laos		√	
Libya	√		
Morocco			√
Nepal		√	
North	√		
Saudi	√		
Sudan	√		
Syria	√		
Tanzania			√
Tunisia		√	
Turkmenistan		√	
Uganda		√	
Uzbekistan	√		
Venezuela		√	
Vietnam		√	
Zambia		√	
Zimbabwe	√		

Appendix B: International Center for Not-for-Profit Law

Summary of Restrictions

Chart 1: Select Recent Initiatives

Africa					
Country	Year	Law	Status	Description	Effects
Eritrea	2005	NGO Administration Proclamation (No.145/2005)	Enacted	The proclamation imposes taxes on aid, restricts the relief and rehabilitation work of NGOs, increases reporting requirements for foreign and local organizations and limits international agencies from directly funding local NGOs.	There currently are no independent political parties, media or human rights monitoring NGOs operating; if measures result in closure of NGOs, independent civil society infrastructure will be eradicated.
Sudan	2005	Organization of Humanitarian and Voluntary Work Act	President El Bashir signed a provisional Presidential Decree titled "Organization of Humanitarian Work Act, 2005." The act was scheduled to be presented for mid-Nov session of the Khartoum parliament.	The draft law would give the government the right to cancel an organization's registration for violating "the general policies of the State in connection with the voluntary humanitarian work." If an organization's registration is canceled, the decree does not provide for an appeals process to an administrative or judicial body. If an organization's registration is canceled, all of its assets and funds can be confiscated by the government. No independent organization can receive funds or donations from foreign sources without advance approval by the government. There are severe penalties for any individual who is involved with an organization that violates the law, including expulsion of foreign aid or human rights workers, prohibition from any further aid related work, and confiscation of funds.	The organizations directly affected by the Act were not given an opportunity to review the draft and provide comments. The Act affects both local and international organizations that provide humanitarian aid and monitor human rights and gives government ministers broad and unchecked power to close summarily organizations and place heavy restrictions on receipt of foreign funding.
Uganda	2006	Non Government Organisations Registration (Amendment) Act 2006	First submitted to Parliament in December 2000, the bill is now awaiting presidential assent.	The act requires NGOs to have a valid permit to operate in Uganda, in addition to registering periodically. The Minister of Internal Affairs determines the duration of the permit. The law empowers Government to refuse registration to an NGO on grounds that its objectives "are in contravention of any Government plan, policy or public interest." The term 'public interest' is not defined. Individuals can be held responsible and imprisoned for actions of their organizations.	The law potentially criminalizes civil society organizations. The rationale for NGOs to acquire permits as well as certificates of registration is not clear. It is feared that the bureaucracy normally involved in renewing permits would delay and hamper the operations and work plans of NGOs. The law confers significant power on the Minister, who can exempt an organization from provisions of the statute in emergency situations. The sole power to handle appeals has also been invested in the Minister. Members of Uganda's NGO Forum have asked President Museveni not to assent to the Act, saying the law was passed in parliament without consultation with stakeholders. NGOs are particularly concerned about the provision preventing NGOs from membership on the supervisory NGO board and the role of security agencies on the NGO Board.
Zambia	2005	Draft NGO Bill	Review	The Bill gives powers to the Minister to "issue directives to the Registrar of Societies, and the Registrar is compelled to carry out the action." These directives include the de-registering of NGOs. The "Registrar or an authorized officer may at any time order any organization to furnish, within a specified time, the duly audited accounts of the organization."	The NGO community is concerned that the legislation will be used to suppress NGOs since the bill invests unilateral power in the Minister. The government did not consult the NGO community in the development of the legislation.

Zimbabwe	2004	NGO Bill	Bill passed by Parliament, but President Mugabe has refused to sign it into law and referred back to Parliament for further discussion	Clause 17 of the Bill states that no local non-governmental organization shall receive any foreign funding or donation to carry out activities involving or including issues of governance- defined as the promotion and protection of human rights and political governance issues. The bill would establish a non-governmental Council that would oversee: (a) a registration process for NGOs; (b) the formulation of a code of conduct for NGOs; (c) the adherence to the code of conduct (i.e. administrative and financial obligations). The Council would comprise of representatives that will have to be approved by the Minister of Public Service, Labour and Social Welfare. The Minister may decline any person nominated.	The bill has raised the fear that government, through the Council, could deny registration to organizations likely to be critical of the government. The need to re-register annually is another point of criticism. It is considered cumbersome, potentially costly and disruptive, and it is feared that it could lead to 'self-censorship' by organizations seeking re-registration. Specifically the clauses that no foreign NGO shall be registered for the sole purpose of supporting governance (defined as human rights and political governance) and that no local NGO may receive foreign funding for governance activities have been denounced by critics as infringing on fundamental freedoms and rights.
Asia					
Country	Year	Law	Status	Description	Effects
Bangladesh	2005	Foreign Donations (Voluntary Activities) Regulation (Amendment) Bill, 2004	Withdrawn from consideration by Parliament	The bill prohibited "political activity" by NGOs. Under this legislation, an NGO would have been required to obtain prior approval from the NGO Affairs Bureau for all project expenditures. The proposed legislation empowered the government to cancel NGOs' registration and dissolve them.	This bill would have granted the government much greater control over the operations of NGOs in Bangladesh.
East Timor	2004	Law on Freedom, Assembly and Demonstration	Passed by Parliament	Section 5 of the law includes prohibitions on "demonstrations with the intent of questioning constitutional order" and "demonstrations whose objective constitutes contempt of the good reputation and respect due to the Head of State and other officeholders of the State institutions."	The broadly worded law could be used arbitrarily to crack down on political opposition and dissenters and be used to restrict lawful activities by political parties and nongovernmental organizations.
India	2005	Foreign Contribution (Management and Control) Bill, 2005 to replace the Foreign Contribution Regulation Act (FCRA), 1976	Referred to the Group of Ministers by the Cabinet	The bill restricts foreign contributions to the voluntary sector and gives great discretion to the Central Government to regulate foreign funding. The Central Government may prohibit any person or organization...from accepting any foreign contribution. The law also stipulates that organizations shall receive foreign contribution in a single account only through such one of the branches of a scheduled bank in the State as it may specify in his application for grant of certificate of registration or prior permission. The proposed bill would require re-registration of already registered organizations within two years and would require associations to obtain a renewal certificate once every five years. The proposed bill includes provisions that would allow for the suspension and cancellation of registration certificate and the offense committed would be criminal rather than civil. The bill also prohibits associations from spending more than 30% of their annual donations on administrative expenses.	Earlier in 2005, nine NGOs were banned from receiving foreign funding for having serious audit gaps. However, many of these organizations have recently advocated positions contrary to the government stance on certain issues. Some groups also suggest that there may be a religious motive and Christian groups in India are strongly opposing the bill, which includes a provision prohibiting conversion by 'inducement or force.'
Nepal	2005	Code of Conduct	Review - law suspended Nov 05 by Supreme Court while it decides whether to allow a petition to continue	The new Code of Conduct stipulates that "no campaigning of political party/ group or thought, or attempts of political influence on others in institutionalized way" is allowed. Preaching religious conversion or speaking for or against religions in institutionalized manner is not allowed. The legislation would require all organizations to submit their reports and financial statement to District Administration Office, District Development Committee, SWC and the donor agencies.	The code has been denounced as a tool to curtail civil liberties and democratic rights. In addition, NGOs have objected to the code because it was drawn up without NGO consultation.

Latin America					
Country	Year	Law	Status	Description	Effects
Venezuela	2005	Penal Code Amendments	Enacted	Chapter III, Section II of the Venezuelan Reform of the Penal Code proposes a set of guidelines to deal with those that engage in sabotage against the fundamental and strategic structures of the State. Article 9 states that anyone who engages in activity that tends to interrupt the normal activity of the State's strategic and fundamental structures would be imprisoned for 16-18 years. Article 9 adds that if the sabotage is conducted in collaboration with the media the sentence will include a fine and a one fourth increase in the prison time. In addition, if the sabotage occurs with the financial support or economic participation of any foreign organization, company, medium, or power, the fine, sentence, or both, will increase by two thirds. These provisions would apply to every legal personality listed in Article 19 of the Civil Code, except the nation and its political entities, including churches, universities, moral bodies with public character, associations, corporations, and foundations.	The recent amendments to Venezuela's Criminal Code may stifle press criticism of government authorities and restrict the public's ability to monitor government actions. The code provides many ambiguities that would allow the government to exercise discretion in many cases, including the lack of definition of "sabotage of fundamental and strategic structures."
Middle East					
Country	Year	Law	Status	Description	Effects
Egypt	2003	Law on Associations	Enacted	Under Law 84 / 2002, the Ministry of Insurance and Social Affairs (MOSA) has the authority to refuse application of or dissolve any NGO at any time if finds that the organization is "threatening national unity" or "violating public order or morals." Foreign NGOs are not allowed to operate in Egypt without securing the permission of the Ministry of Foreign Affairs. The law prohibits NGOs from making many internal decisions without first obtaining government approval. NGOs are not allowed to expand their work into any new "project areas" that were not a part of their original charters, and they are prohibited from collecting funds from abroad or affiliating with foreign or domestic groups or unions without MOSA permission.	Civil society groups face severe restrictions under the law governing non-governmental organizations. The most serious barrier to meaningful freedom of association in Egypt is the extra-legal role of the security services. Human Rights Watch documented numerous cases where the security services rejected NGO registrations, decided who could serve on NGO boards of directors, harassed NGO activists, and interfered with donations reaching the groups.
Iraq	2003	Coalition Provision Authority Order Number 45	Adopted	All NGOs wishing to operate in Iraq are required to obtain a license from the NGO Assistance Office. Registration is mandatory and informal groups are explicitly prohibited from operating any "programs." All domestic NGOs must provide the NGO Office with a mass of information: a "complete statement of revenue and expenses and assets and liabilities for the current year and the previous three years" or, if the NGO has existed for less than four years, "financial data for the current year and projected budget for the next two years"; a list of the names and addresses of any donors or non-bank lenders of funds to the NGO; and "a report on [the] proposed program [of the NGO] prepared in consultation with the Relevant Ministry and budget for the first year of its activities." Under the provision, all NGOs must be "non-political." CPA Order 45 gives the government the right to "suspend or revoke a registration of an NGO if the NGO violates any provision" of the Order. If an NGO continues to operate after suspension or revocation of its license, the government can confiscate all of its property.	

Jordan	2005	Professional Associations Draft Law	Parliament has not yet voted on the law	This draft law would require professional associations to obtain pre-written approval from the Interior Ministry to hold public gatherings and to limit their topics of discussion at any of their professional meetings, councils and committee meetings exclusively to "professional matters." The new draft law also would create a government-controlled disciplinary structure with the authority to punish and suspend members from the practice of their profession for a variety of vague, ill-defined infractions, including "directing an association out of its professional mandate" or "harming the honor of a profession."	Jordanian law requires journalists and others to join these professional associations as a condition to the practice of their profession. The draft law covers 12 professional associations that have more than 120,000 active members. The associations include journalists, lawyers, doctors, engineers, artists as well as other professionals. This law threatens association members with the loss of their livelihood if they criticize the government or hold a meeting without government permission.
Jordan	2004	Law of Social, Developmental and Charitable Associations	Review	Jordan's draft law on Social, Developmental, and Charitable Associations contains provisions that strictly limit the ability of social and development organizations to receive foreign assistance, requiring them to get the permission of the Prime Minister to receive foreign funds, and affording substantial discretion to the Prime Minister to determine if a funding agreement is "justified." Under this law, foreign organizations and their branches would not be able to raise funds within Jordan and would be barred from government funding. The law would increase the required number of founding members from seven to twenty-five. The draft law gives the Ministry of Social Development broad discretionary powers to supervise social and development organizations, including the right to enter upon the premises of an organization without notice or other procedural protections for the organizations. It appears to allow for criminal penalties for the violation of any article of the law, regardless of the seriousness of the offense or the intent of the organization's leaders.	The restrictions on foreign funding would create significant financial problems for NGOs. The provisions about foreign organizations would prohibit these branches from developing local means of support and discourage them from becoming sustainable local institutions. The large number of members needed to form an organization will discourage many organizations, particularly those with lesser known or unpopular causes, from organizing. These and other provisions of the draft threaten to restrict the development of Jordanian civil society organizations, undermining the important contributions these organizations make to health, education, social welfare, and other aspects of the country's development.
Jordan	2002	Voluntary Organizations (Societies) Law	The law did not pass Parliament.	The proposed law will require approval from the Minister of Social Development for virtually all essential actions of an organization. The law requires that a voluntary society have a minimum of 50 members, and that it be prohibited from seeking political goals. The law would require minimum capitalization of 50,000 Dinars (or about \$70,000 US) to establish a voluntary society. The law would also severely limit the rights of organizations to choose their own leadership. The law "would be applicable to all voluntary societies already established, which would have one year to come within its terms."	If enacted, it would make it extremely difficult for voluntary societies to operate and come into compliance with the terms of minimum membership. The law would grant much greater control to the government in regulating the activities of the societies. The cost of establishment is extremely high and would greatly hinder a societies ability to register.
Newly Independent States					
Country	Year	Law	Status	Description	Effects
Azerbaijan	2003	Amendments to the Law on Grants	Enacted	The Law requires that NGOs register their grants. The law requires that an organization pay 27% of its monthly consolidated payroll into the Social Insurance Fund. This requirement is imposed in addition to an income tax of between 30-35% so that NGOs pay approximately 60% of salaries in tax.	While this has created logistical problems, as registration documents must be translated, notarized, and submitted to the Ministry of Justice, it has not prevented the majority of NGOs from receiving or using foreign grants. Nevertheless, NGOs fear that if they register their grants, they may be targeted by the tax authorities, and are therefore reluctant to register. This high rate of taxation not only discourages employees from working for NGOs, which are not able to pay high salaries to start with, but also impedes philanthropy, as donors are reluctant to give when significant portions of their funds will be used for taxes instead of programs.

Belarus	2005	"On Completing and Amending some Legislative Acts of the Republic of Belarus to increase accountability for actions aimed against humans and public order"	Passed (final reading) 2Dec05; President Lukashenko signed into law on 14Dec05	The bill would amend the Criminal Code and the Criminal Procedure Code by introducing prison sentences for training people to take part in street protests, telling lies about Belarus to foreign countries or asking them to act against the country's "sovereignty."	Opposition says it will have little effect on their ability to operate, as their activities are already severely restricted in law. This raises deeper concerns rather than assuages concerns regarding the legislation.
Belarus	2005	Presidential Decree #460 of October 22, 2003 as amended by Presidential Decree #382 of August 17, 2005 "On International Technical Aid Granted to the Republic of Belarus"	Enacted	The amendments to the decree classifies events organized with donor funding such as conferences, seminars and public debates as "technical assistance" and requires their registration with the government. The registration procedure is unclear, lengthy, and subjective. The decree also forbids use of technical assistance for preparing and conducting elections and referenda, recalling deputies and members of the Council of the Republic, staging gatherings, rallies, street marches, demonstrations, picketing, strikes, producing and distributing political campaign materials.	These reporting and approval mechanisms give the government greater control over domestic NGOs and their funding mechanisms. The decree also hinders the ability of NGOs to participate in any public advocacy.
Belarus	2005	Presidential Edict #300 of July 1, 2005 "On provision and use of gratuitous (sponsorship) aid"	Enacted	The edict bans the provision of aid for "anti-constitutional" goals and stipulates the process and reporting requirements on provision and use of domestic aid.	The decree further hinders the ability of NGOs to participate in any public advocacy.
Belarus	2005	Resolution #49 dated September 13, 2005 from Ministry of Justice "On some aspects of creation and public association and their unions"	Enacted	The resolution stipulates that all civic initiatives, coalitions, and movements are subject to formal registration.	This decree issues one more way for the Belarusian government to restrict NGOs.
Belarus	2005	Presidential Edict #320 "On establishment, activity, and liquidation of foundations"	Enacted	The edict substantially increases registration fees and orders foundations to bring their charters in line with the new regulations by May 1, 2006	This decree issues one more way for the Belarusian government to restrict NGOs and makes it very cost prohibitive to register and form an NGO in Belarus.
Belarus	2004	Law on Public Associations	Enacted	The law allows the authorities to suspend the activity of any NGO for up to six months and liquidate an organization for a single violation of the law on public mass events and 'illegal' use of foreign aid. The law obliges NGOs to present annual reports to authorities about their members and activities. It legalizes the authorities of the National Commission on Registration (Re-registration) of NGOs which de-facto has already been acting in Belarus from 1999. The composition of the Commission is authorized by the President of the country and is not transparent to the public.	NGOs could already be dissolved for violating the law on mass meetings. Under the new amendments, NGOs can also be dissolved for violating the new foreign aid regulations, the new amend
Belarus	2003	Presidential Decree #24 of November 28, 2003 "On Obtaining and Using Foreign Gratuitous Aid"	Enacted	This regulation defines foreign aid and creates a separate procedure for the registration and use of foreign aid. Under this decree, NGOs must pay up to a 30% tax on foreign aid.	These separate reporting and approval mechanisms give the government greater control over foreign funds. Due to the high tax on foreign aid, many donors choose not to give to Belarusian organizations.

Kazakhstan	2005	On the Activities of international and foreign noncommercial organizations in the Republic of Kazakhstan	Defeated: passed by parliament, sent by president for review by constitutional council who ruled it unconstitutional	The Draft Laws included the requirement that all international and foreign organizations operating in Kazakhstan re-register, prohibition on free expression of opinion, and the receipt and distribution of information by international and foreign organizations in Kazakhstan, excessive requirements placed on branches and representative offices of foreign international organizations and local non-commercial organizations, and impracticable responsibilities placed on local executive government bodies, increased reporting requirements for branches and representative offices of foreign and international organizations, and discrimination against foreign citizens and persons without citizenship. The laws were not put into place because the Constitutional Council issued a decree stating that the two laws conflicted with the Constitution of the Republic of Kazakhstan.	If enacted, there were great concerns that the law would threaten democracy and human rights, especially the freedom of association. While the constitutional court rejected the law, the rejection was based on more procedural grounds rather than substantive grounds. Therefore, it is believed that further legislation on the same topic may be considered.
Russia	2005	Federal Law # 18-FZ On Introducing Amendments to Certain Legislative Acts of the Russian Federation.	Signed by President Vladimir Putin on January 10, 2006, and comes into effect within 90 days of its official publication on January 17.	The new law establishes new requirements for public associations (PAs), non-commercial organizations (NCOs), and foreign nongovernmental non-commercial organizations (FNNOs). The major changes include: a new requirement that a foreign national or stateless person must be domiciled in the RF in order to found, participate, or join a PA or NCO; widening the grounds on which the registration authority ("Rosregistration") may deny registration, including if its "goals and objectives . . . create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation"; increasing the reporting burden on groups by, among other things, requiring them to identify all funds received from foreign sources and report on how they are allocated or used.	The Law's new provisions will affect significantly both Russian and foreign organizations carrying out activities in Russia. It is difficult to anticipate all of the law's possible ramifications since they will depend on how its ambiguous provisions are interpreted and implemented. The development of appropriate regulations, forms, and guidelines yet to be promulgated could alleviate or, more likely, accentuate the anticipated burdens on NGOs.
Russia	2004	Tax Code	Changed - the major restrictive provisions were eliminated before enactment	The draft amendments included requirements that Russian non-commercial organizations (NCOs) to be included on the government-approved list, in order for their contributions to recipients, including other NCOs, to qualify as tax-exempt grants (that is, tax exempt for recipients); foreign donors to go through the procedure currently applied for gratuitous assistance, in order for their contributions to recipients, including other NCOs, to qualify as tax-exempt grants; and the exclusion of foreign individuals from potential grant makers.	These provisions were removed from the final version of the bill as enacted after the third reading in the Duma.
Russia	2003	Federal Law On Counteracting Extremist Activity	Enacted	The law prohibits advocacy of extreme political positions, imposes liability on organizations that do not disavow the "extremist" statements of their members, and allows government authorities to suspend, without court order, social and religious organizations and political parties.	The law includes a vague definition of "extremist activity," giving the government power to broadly mark activities of NGOs as extremist and dissolve those that advocate positions counter to the State's.
Turkmenistan	2003	Law on Public Associations	Enacted	All NGOs receiving or having received foreign funds or grants, including humanitarian and technical assistance, must record these at the State Agency on Foreign Investment and the justice ministry.	The law has had a negative impact on NGO development by giving government officials greater control over the sector. The requirement that NGOs register all of their grants has forced many organizations to discontinue activities.
Uzbekistan	2005	Law on non-governmental non-commercial organizations	Enacted	The law requires that all NGOs deposit their funds with two government-controlled banks.	Since the reforms were enacted, the government has stopped over 80% of foreign grants to NGOs.
Uzbekistan	2004	Presidential Decree on Women NGOs	Enacted	The decree required that all women's organizations, which make up 70-80% of all NGOs to re-register with the Ministry of Justice.	Some organizations chose not to re-register and cease their activities. For those that did choose to re-register, the registration process was lengthy.

Chart 2: Select Long-Term Restrictions

Africa					
Country	Year	Law	Status	Description	Effects
Equatorial Guinea	1999	Act No. 1 of 1999	Enacted	Act No. 1 of 1999 defines NGO-Government relations, but the law restricts NGOs precluding them from engaging in promoting, monitoring or engaging in any human rights activities. While the Constitution grants the freedom of association, in practice, freedom of association is restricted. Government authority must be obtained for gatherings with political purposes if there are more than ten individuals.	There are not any domestic human rights organizations operating in Equatorial Guinea. International NGOs are few and are banned from promoting or defending human rights.
Ethiopia	1960	Civil Code	Enacted	The Ethiopian legal system does not recognize private, voluntary nonprofit organizations, commonly referred to as nongovernmental organizations (NGOs), as a distinct legal entity. The legal practice has been to assimilate NGOs as civil associations as defined in the 1960 civil code of Ethiopia, and to regulate them accordingly. All associations must register with the Associations' Registration Office, which is one of the main Departments in Ministry of Justice. Foreign organizations must re-register every five years. The government often closes down or severely restricts nongovernmental organizations whose programs are deemed to have the potential to challenge the political dominance of the ruling party and related government programs.	Over the past few years, several local and foreign organizations have been shut down by the government. The reasons given by the government have included problems with registration and that the programs challenge the State.
Tanzania	2002 as amended in 2005	NGO Act	Enacted	Sections 35 and 36 of the Act contain penal provisions for even minor breaches of the Act, and of the not-yet drafted "code of conduct." For example, use of an improper registration form would serve as an offence punishable by imprisonment. The amendments include extremely complex and difficult registration requirements for International NGOs in Sections 12 (3) and (4).	The law is generally an improvement over the laws in place earlier, and has been further improved greatly since its inception in 2002 by NGO-supported amendments enacted in June 2005. Local and international NGOs continue to lobby to change the remaining restrictive provisions in the law.
Asia					
Country	Year	Law	Status	Description	Effects
Burma	1999	Law on Associations	Enacted	Burma remains one of the most repressive countries in Asia. The authoritarian military government, the State Peace and Development Council (SPDC), restricts the basic rights and freedoms of all Burmese. In general the right of association exists only for government-approved organizations, including trade associations and professional bodies. Few secular nonprofit organizations exist, and those that do exist take special care to act in accordance with government policy.	After the 1990 crackdown by the Burmese military on democracy activists, including the election-winning National League for Democracy (NLD) and its leader, Daw Aung San Suu Kyi, many Burmese democracy activists fled to Thailand for safety.
China	1998	Regulations for Registration and Management of Social Organizations	Enacted	Progress in legal regulation of NGOs in China has been uneven and the application and enforcement are often guided by political imperatives, such as the restrictive rules that were passed post-Tiananmen in 1990, and most recently, enforcement of more restrictive regulations because of concerns over the Falun Gong. There is no smooth or transparent registration system, nor any legally guaranteed "right" to exist. To register under current rules, NGO's are required to find an organizational sponsor, which is usually a government agency carrying out work in a similar subject area. The Ministry of Civil Affairs, the key "registration management agency," has significant legal power over social organizations. It may issue warnings, order organizational changes or cancel an NGO's registration if the Ministry feels that the NGO has engaged in any misconduct.	While many Chinese NGO's face obstacles to registration, it appears that numerous organizations find ways to carry out activities either as unregistered entities or as "corporations". The institutional problems facing Chinese NGO's, in particular their uncertain legal standing and scarce funding, greatly complicate the ability of the NGO's to attract quality employees. NGO's face the risk of being shut down by the government at any point if their activities appear the least threatening to the government.

Laos	1991 (Constitution)	Constitution and Penal Code	Enacted	Article 31 of the Laos Constitution states that “Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the law.” These rights are limited by the Lao Penal Code which forbids to slander the State, distort party or state policies, incite disorder, or propagate information or opinions that weaken the State and participation in an organization for the purpose of demonstrations, protest marches, or other acts that cause “turmoil or social instability,” providing for imprisonment of between one and five years.	There are very few domestic NGOs in operation in Laos, however there are several international organizations and international bodies operating programs in Laos.
North Korea	1972 as amended in 1998	Constitution	Enacted	The concept of “Nongovernmental Organization” in a totalitarian regime like North Korea is nonexistent. Foreign NGOs are subject to continual suspicion and are generally not allowed a permanent working place in North Korea. Citizens are denied freedom of speech, the press, assembly, and association.	
Viet Nam	2003	Decree of Government “Regulations on the Organization, Operations and Management of Associations”	Enacted	In July 2003 the Government of Viet Nam issued the Decree of Government “Regulations on the Organization, Operations and Management of Associations.” This decree was directed to “regulate the organization, operations and state management of associations. The newly issued decree was largely based on the 1957 Ordinance on Associations. In general the new decree provides for significant degree of control by government authority at all levels. Associations registered under the decree effectively continue to serve as agencies of government ministries.	At present, there are relatively few NGOs in Viet Nam since the legal and policy framework for their existence remains largely dated and extremely limited. With few exceptions, at all levels of government from the central down to the district, village and commune, only government entities are available to respond to social and economic needs. These include both the most Ministries and mass organizations. The mass organizations are state managed, staffed and controlled. Operating under the current legal and policy framework there are about 30 officially recognized NGOs that are affiliated with either a Government Ministry or mass organization.
Latin America					
Country	Year	Law	Status	Description	Effects
Cuba	1999	Law 88 - Law for the Protection of National Independence and the Economy of Cuba	Enacted	Law 88 establishes stiff penalties for those found guilty of vaguely defined “counterrevolutionary” or “subversive” activities. Sentences of up to 20 years can and have been meted out under Law 88 for actions that fall within internationally-recognized rights, such as freedom of speech, assembly and association.	The law is applied to clamp down on dissidents, human rights activists and members of civil society.
Cuba	1992	Associations Law - Article 53 of the 1976 Constitution and Article 54 of the 1992 Constitution (text not changed)	Enacted	Cuba’s Justice Ministry grants legal status only to associations willing to accept broad state interference in their activities, including the broad authority to terminate the organization. Under the Associations Law, members of human rights groups, professional organizations of doctors, economists, and teachers, independent labor unions, women’s rights groups, and other independent organizations risk prosecution simply for belonging to their group or for carrying out any activities without authorization. Persons involved in unauthorized associations risk criminal sanctions ranging from three months to a year in addition to significant fines.	Cuban legal measures and actions stifle freedom of association for independent labor unions, human rights groups, professional associations, and others. Cuba’s Associations Law effectively bars the legalization of any genuinely independent organization, requiring associations to accept broad state interference in their activities and arbitrary state authority to shut them down. The government’s denial of legal recognition to opposition groups leaves the members of unauthorized groups at risk of arrest and prosecution. Cuba also subjects members of independent organizations to frequent harassment, arrests, and detentions.

Middle East					
Country	Year	Law	Status	Description	Effects
Algeria	1990	Associations Act 90-31	Enacted	Act 90-31 defines associations as “individuals or legal entities” that “form a group on a contractual basis for non-profit purposes,” and requires them to obtain a license from the government prior to formation. Foreign donations must be pre-approved by the Ministry of the Interior. Act 90-31 allows the government to dissolve or suspend any NGO, but in order to do so the Interior Ministry must first obtain a court order stating that the NGO has violated a major provision of the law. Act 90-31 provides for between three months’ and two years’ imprisonment and a fine for any individual who “directs, administers, or promotes” or “encourage[s] the meeting of members” in “a non-accredited, suspended, or dissolved association.”	This requirement of mandatory licensing is an unnecessary and discouraging burden for NGOs, the vast majority of which are informal organizations with no need for legal personality or government supervision. This clause restricting foreign funding essentially allows the Interior Ministry to starve NGOs of a major source of funding. While the Interior Ministry must obtain a court order to dissolve an NGO, the Ministry is often able to easily obtain this order from the courts.
Jordan	1966 as amended in 1978	Societies and Social Bodies Law	Enacted	No NGO can form or conduct operations in the Kingdom of Jordan without express written permission from the Minister of Social Development. The process of obtaining this permission is excessively long and complicated. Foreign NGOs may be authorized under the same licensing procedures, but they face the added imposition of any “conditions and restrictions which [the Minister of Social Development] imposes.” The Minister’s decisions in this realm are unrestrained; he or she can “refuse to allow any foreign body or society to work in the Kingdom [or] impose on it any conditions which he sees proper.” The Minister of Social Development can order the dissolution of any licensed NGO without judicial oversight and without an appeals process. The Ministry of Social Development is free to send representatives to observe any meeting or election, and to inspect any and all records kept at the NGO at any time. Under this law, NGOs must notify the Ministry of any election at least 15 days in advance and reserving the right of Ministry officials to attend the election “to be certain that [it] goes on in compliance with the [NGO’s] Articles of Association.”	Law 33 / 1966 empowers the Ministry of Social Development to license and de-license NGOs based on the discretionary judgments of ministry officials. The NGO law gives the executive branch the power to act without interference from the legislative or judicial branches. And though the Ministry of Social Development does not often use its powers under Law 33 / 1966, the fact remains that it can. A reminder of this reality came recently, when, amidst strong international criticism, the Ministry moved to shut down the Jordanian Society for Citizen’s Rights for an alleged violation of Law 33 / 1966. It was the first NGO to be closed by the government since 1989.
Libya	1972	Law 71 of 1972	Enacted	The Libyan Constitution contains no guarantee of a right to association. The sole statutory right of association comes from Law 71 of 1972, which grants individuals the right to associate only through institutions run by the government, such as the National Trade Unions’ Federation. Any NGO or otherwise independent organization is “contrary to the revolution” and therefore illegal; members are subject to extreme criminal punishments, including execution.	Few local and international NGOs operate in Libya.
Morocco	1973	Decree No. 1-58-376	Enacted	While NGOs can comment on public policy, “associations ... which in any way pursue a political activity” are subject to special requirements, including being composed of only Moroccan citizens and being run only with domestically earned assets. Decree No. 1-58-376 leaves discretion to the Interior Ministry to dissolve associations. The law does not provide for any right of appeal to the courts, and the Interior Ministry’s decision is not required to be made in writing. Notably, any NGOs that “are incompatible with the law or good morals or which might aim to tamper with the unity of the national soil or the royal system of government are null and void.” Foreign NGOs (defined as any NGO in which half the members, or any of the officers, are non-Moroccan) are subject to several additional rules and regulations, and “the government is allowed to object to the founding of [any] foreign association.” Almost every section of Decree No. 1-58-376 contains a criminal punishment for violating provisions as outlined in the law.	NGOs are able to function in Morocco under these provisions, but are greatly restricted in their activities.

Saudi Arabia	1992	Basic Law	Enacted	The 1992 Basic Law (Nizam) serves as an informal constitution, but it fails to guarantee any basic human rights; it makes no mention of freedom of expression, religion, or association. The very few NGOs that do exist were established by separate royal decrees; otherwise, no legal framework exists for establishing new NGOs. The government also allows some professional associations to form, but they too are subject to absolute government control.	Few local and international NGOs operate in Saudi Arabia.
Syria	1958	Law on Associations	Enacted	Private associations are required to register with authorities, and requests for registration are usually denied, presumably on political grounds. The Government usually grants registration to groups not engaged in political or other activities deemed sensitive. However, state interference in associational activities is allowed under the law. The government often attends the meetings of associations. Control is kept with the Ministry of Labour and in the Ministry of Interior. All associations are required to send their financial and other records to the Ministry of Labour. The law requires that associations request permission from the government to undertake most activities.	There are very few independent nongovernmental organizations (NGOs) and the Government does not allow domestic human rights groups to exist legally.
Tunisia	Amended 1992	Law on Associations	Enacted	The Constitution provides for freedom of association; however, the Government generally does not respect this right in practice, particularly for groups deemed critical of its policies. The law requires that new NGOs submit an application to the Government in order to gain recognition, and to operate legally. The Government routinely and arbitrarily blocked the registration of new independent NGOs by refusing to provide receipts for their registration applications. Without such a receipt, NGOs were unable to counter the Government's assertions that they had not applied to register, and therefore were not allowed to operate. In such cases, NGOs could be shut down, their property seized, and their members prosecuted for "membership in an illegal organization." All NGO's are required to notify the Government of meetings to be held in public spaces at least 3 days in advance and to submit lists of all meeting participants to the Ministry of Interior.	To regulate the activities of NGOs, the Tunisian government created its own NGOs (governmental NGOs or GNGOs), staffed by members of the general intelligence services (mukhabarat), to attend conferences and monitor what was being said about Tunisia (particularly by representatives of Tunisian NGOs).
United Arab Emirates	1999	Law on Associations	Enacted	All nongovernmental organizations (NGOs) are required to register with the Ministry of Labor and Social Affairs. Private associations must follow the Government's censorship guidelines and receive prior government approval before publishing any material. Participation by NGO members in any event outside the country is restricted. Participants must obtain government permission before attending such events, even if they are not speakers. Domestic NGOs are required to register with the Government and are subject to many regulations and restrictions, particularly those regulating the investigating and publishing of their findings.	Most citizen associations are subsidized by the Government and are organized for economic, religious, labor, social, cultural, athletic, and other purposes. There are no political organizations, political parties, independent human rights groups, or trade unions.
Newly Independent States					
Country	Year	Law	Status	Description	Effects
Azerbaijan	2003	Law on State Registration of Legal Entities	Enacted	NGO registration remains problematic. Of the 2935 NGOs operating in Azerbaijan, only 1769 were registered by the Ministry of Justice and 962 remain unregistered. According to the 2004 NGO Sustainability Index for Central and Eastern Europe and Eurasia, registration of NGOs has been de facto suspended for the past few years and anecdotal evidence suggests that few NGOs successfully registered in 2004.	Inconsistent application of the law creates restrictions according to affiliations, activities, and geographic area of operation. The ban on NGO participation in political activities has been applied so inconsistently and at times so broadly, that it has had a chilling effect on NGOs engaged in advocacy activities.

Appendix C: Letter from Senator Richard G. Lugar, Chairman, Committee on Foreign Relations

RICHARD G. LUGAR, INDIANA, CHAIRMAN

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

November 8, 2005

Mr. Carl Gershman
President
National Endowment for Democracy
1101 15th Street, N.W., Suite 700
Washington, D.C. 20005

Dear Carl:

The Senate Foreign Relations Committee is concerned about the increasing number of reports it has received on the efforts of certain foreign governments to thwart U.S.-originated support for grassroots democratic organizations in their countries. Such support, which has rightfully become the centerpiece of our nation's international outreach, is authorized in the National Endowment for Democracy Act (PL 98-164, as amended) and other public laws.

The following examples have come to our attention: in Belarus, the government has issued a decree prohibiting organizations and individuals from receiving foreign technical assistance for purposes deemed "unconstitutional"; in Uzbekistan, media registration requirements block the publication of the newsletters of nongovernmental organizations (NGOs), which are also prevented from receiving transfers wired to their bank accounts; and in Russia, where President Putin has announced his opposition to foreign funding of domestic organizations for "political" purposes, at least three NGOs are being subjected to various forms of harassment by the tax police.

We have also learned of proposed legislation to block foreign democracy-related program assistance in Egypt, Zimbabwe, and Venezuela. We are deeply concerned by reports that a recent meeting of democracy supporters in Alexandria, Egypt, called to discuss the forthcoming legislative elections, was disrupted by individuals subsequently identified as associates of the state security services. In the case of Venezuela, the leadership of the NGO SUMATE is being prosecuted on conspiracy charges for receiving grant funds from NED to conduct voter education workshops, and its leaders have now been banned from leaving the country. We also hear of continuing efforts in China to restrict the activities of those international NGOs it has allowed to work in the country.

We take these developments seriously, inasmuch as they threaten the ability of democrats, operating peacefully and openly, to continue working with U.S. organizations that receive congressional funding to carry out their mandates. In order for the Committee to fully assess this problem and the challenges it poses to groups such as the Endowment, we would ask that the NED and its four core Institutes assist the Committee in gathering information that would answer the following questions:

- How widespread is the problem of threats to democratic assistance in and beyond the countries mentioned above? What precise measures (overt and not) are being employed by autocratic regimes?
- What has been the impact of such measures on domestic democratic NGO's, independent media, and/or opposition political parties?
- Have NED and its core Institutes developed coherent criteria to assess and evaluate the level of intimidation and fear autocratic regimes subject their citizens to when they move against dissenters and pro-democracy activists?
- Is there evidence that these regimes are communicating and/or collaborating with one another in developing means of blocking or otherwise undermining democracy assistance?
- What short, medium, and long term challenges do these threats pose to NED and others providing democracy assistance around the world? What has been the reaction of the above mentioned foreign governments to concerned requests for information and clarification?
- How have foreign NGO's that have been beneficiaries of our assistance sought support and solidarity from NED in order to counter the campaign of a few governments against U.S.-supported pro-democracy activists?
- Have we done enough to ensure that the U.S.-based media stays focused and informed on the most egregious instances of abuse of citizens' rights to live in freedom?
- What can Congress do to adequately highlight and address this problem?

In order to assist the Committee in finding answers to these questions, we would suggest that NED undertake a survey of threats to democratic assistance around the world and then report back to the Committee as quickly as possible. Once the report is completed, it would be our intention to discuss with you and NED's affiliated Institutes the appropriate means by which to address this serious problem.

My staff and I look forward to working with you in the weeks ahead.

Sincerely,



Richard G. Lugar
Chairman

RGL/cmk



**National Endowment
for Democracy**

Supporting freedom around the world

The National Endowment for Democracy

1101 Fifteenth Street, N.W., Suite 700

Washington, D.C. 20036

Tel: (202) 293-9072

Fax: (202) 223-6042

Web site: <http://www.ned.org>

E-mail: info@ned.org