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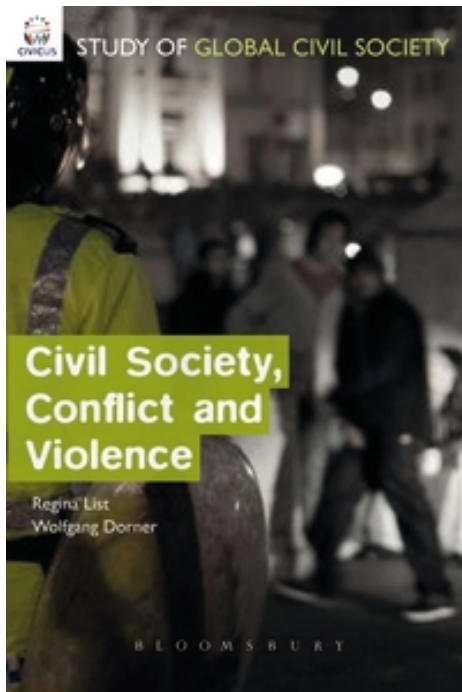
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Chapter 6. The Law, Security and Civil Society Freedoms

Mandeep S. Tiwana and Brett J. Kyle

Introduction

In the past decade, civil society space across the globe has been challenged by pressing concerns about national security. The analysis in this chapter demonstrates that CSOs in the twenty-five countries of the CSI examined for this volume report a range of restrictive legal environments and illegitimate attacks from their local or central governments. International law provides for fundamental freedoms of association, but these guarantees have come under attack. As the data presented in this chapter show, CSOs in both democratic and non-democratic states report notable restrictions on their activities.

This chapter proceeds as follows. First, it outlines recent trends in legal measures related to security and civil society in order to highlight contemporary challenges facing CSOs across the world. Next, the chapter discusses international legal standards meant to safeguard civil society space. Third, drawing on the CSI Organizational Survey, this chapter analyzes CSO responses to questions concerning the legal environment and illegitimate attacks. It then provides evidence from CSI country reports to further illuminate these findings in the descriptive statistics. Finally, the chapter concludes with reflections on the analysis, recommendations for future research and policy recommendations for CSOs.

Overview of recent trends

The relationship between security and civil society freedoms has always been a tenuous one. As a general rule, in times of peace when security concerns are minimal, the law and its application lean towards greater enjoyment of the rights to free expression, association and assembly which together make up core civil society freedoms. Conversely, there is less tolerance for divergent or alternative views during times of war and political and social unrest.

Moreover, civil society's role as a counterbalance to state power and its work in safeguarding minority interests – often in the face of popular opinion – make it particularly vulnerable in comparison to other sectors of society during conflicts. This chapter discusses the impact of heightened security concerns over the last decade that have precipitated what many civil society observers have termed a 'global backlash' against civil society (Howell 2010; Bloodgood & Tremblay-Boire 2010).

CSI findings affirm that CSOs in many countries, particularly those engaged in advocacy and human rights work, face restrictions on their activities through legal measures, as well as through harassment and attacks from central or local governments. Decreasing space for CSOs to operate and fewer opportunities to participate in governance processes are major, particular challenges for CSOs working in situations of conflict (Poskitt & DuFranc 2011).

In these present times, when a large number of states are engaged in the global 'war on terror', the impetus for many of the current negative trends can be traced to former United States President Bush's famous statement to the Joint Session of the United States Congress: 'You are either with us or you are with the terrorists', which set the tone for the implementation of United Nations Security Council Resolution 1,373. This resolution, which was pushed through soon after 11 September 2001, among other things, obliges all UN member states to:

1. Monitor and clamp down on financing for terrorist acts.
2. Refrain from active and passive support for terrorism.
3. Exchange information regarding terrorist activities.
4. Prevent the movement of terrorists or their groups by effective border controls.
5. Increase international cooperation to deny safe haven to anyone indulging in terrorist acts.

Although the original intention behind the resolution was to protect people from acts of terrorism, its impact and unintended consequences have been harmful to civil liberties and human rights. In their zest to protect their security, a number of western democracies have introduced stringent laws which impact negatively on fundamental freedoms. This has seriously eroded such countries' credibility as traditional champions of fundamental freedoms and denied them the legitimacy to pressure authoritarian regimes and undemocratic leaders against silencing civil society voices in their own countries, which has in turn given breathing space to dictators bent on perpetuating their power.

Notably, the changed global dynamics have had a negative effect on civil society groups and their operating environment. There has been a proliferation of laws and policies to prevent civil society groups from being formed, carrying out their legitimate activities and accessing resources. Reports abound about intimidation and the impeding of civil society groups from carrying out their work through raids, bureaucratic red tape, bans and arbitrary closures. Jailing of activists, physical attacks, torture and even assassinations have been recorded. A number of studies by different civil society groups, and observations by senior UN officials, help to identify these trends.

On International Human Rights Day in December 2010, the usually reticent UN Secretary General, Ban Ki-Moon, dedicated his message to the courage of human rights defenders who, he said, continue their work despite multiple risks. He also emphasized that states bear the primary responsibility to protect human rights advocates (Ki-Moon 2010). Earlier in September 2010, the UN High Commissioner for Human Rights, Navi Pillay, made an appeal to the UN Human Rights Council to take action to address the trend in restriction on civil society space. 'Special procedures mandate holders, press reports and advocates consistently point out that human rights defenders, journalists and civil society activists in all regions of the world face threats to their lives and security because of their work' (Pillay 2010).

In the atmosphere of growing intolerance for dissenting viewpoints, the persistence of autocratic governments and the reversal of democratization efforts in some states, the most telling observation of the trend to conflate civil society with threats to security comes from the UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya. In her 2008–2009 report on the security of human rights defenders and various protection measures to guarantee their physical safety, she has identified a number of 'worrying trends'. These include stigmatization of human rights defenders and their growing categorization as 'terrorists', 'enemies of the state' or 'political opponents' by state authorities and state-owned media, which contributes to the perception that defenders are 'legitimate targets for abuse by state and non-state actors' (Sekaggya 2009).

CIVICUS has observed in a report on the clampdown on civil society space in 2009–10 that, 'What began as a knee-jerk reaction to a horrific event in 2001 (9/11), assumed a life of its own by the end of the decade when the full force of the unrelenting onslaught on fundamental freedoms through security and other regulatory measures assumed global prominence' (Tiwana and Belay 2010). These findings are supported by a number of civil society studies. For instance, Human Rights Watch, in its 2010 report, mentioned that the reaction against activists exposing human rights abuses grew particularly intense in 2009 (Human Rights Watch 2010: 1). Freedom House reported that 2009 was the fourth consecutive year in which global freedom suffered a decline – the longest consecutive period of setbacks for civil and political freedoms in the nearly forty-year history of the report (Freedom House 2010). Regional studies and monitoring by the Commonwealth Human Rights Initiative (2009), the East and Horn of Africa Human Rights Defenders Project (2009) and the Euro-Mediterranean Network (2010) provide additional evidence for this trend of narrowing space.

The International Center for Not-for-Profit Law in its inaugural issue of Global Trends in NGO Law, published in March 2009, points out that 'despite the increasing attention paid to the backlash against civil society and democracy, many governments continue to use the legislative tools at their disposal to control and restrict NGOs. A number of the laws considered or enacted in the past two years have raised serious questions as to their compliance with international norms governing the right to free association as well as the practical obstacles that they raise to NGO operations' (International Center for Not-for-Profit Law 2009).

Despite the negative trends, there have been some positive recent developments at the United Nations which hold promise that the roll-back on civil society space can be reversed. Firstly, as highlighted above, senior UN officials have publicly expressed their unease with these trends. Secondly, the UN Human Rights Council, which replaced the UN Commission on Human Rights, has emerged as an important space for civil society to leverage influence on governments to address their concerns. Thirdly, in September 2010, a landmark resolution on the Freedom of Peaceful Assembly and Association was passed by consensus by the forty-seven members of the United Nations Human Rights Council (2010). The resolution recognizes the role of civil society in the achievement of the aims and principles of the United Nations. It also for the first time creates a Special Rapporteur on the rights to freedom of peaceful assembly and association with an extensive list of responsibilities that include reporting on violations.

To enable a full understanding of the type of violations of civil society freedoms that are taking place at present, it is useful to examine the international legal framework that should guarantee civil society space.

Universal legal standards for the protection of civil society space

The International Bill of Rights safeguards civil society space through broad protections for freedoms of expression, association and assembly, most notably in the International Covenant on Civil and Political Rights (ICCPR) to which all CSI countries – with the exception of Kosovo, which is not yet a UN member – are a party (UN International Covenant on Civil and Political Rights 1966).

Article 19 of the ICCPR guarantees the freedom to hold opinions without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. Article 21 guarantees the freedom of peaceful assembly. Article 22 guarantees the freedom of association with others including the right to join and form trade unions.

The ICCPR generally discourages the placing of restrictions on the three freedoms. A set of narrow grounds are prescribed for placing restrictions on these freedoms. They include 'national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others'. Restrictions on the freedoms of association and assembly must be through legislation and stand the test of being 'necessary in a democratic society'.

Additional protections for civil society to operate are contained in a host of international legal instruments and principles adopted by the UN and the International Labour Organization. Furthermore, regional and other intergovernmental groupings such as the African Union, the Organization of American States, the League of Arab States, the European Union, the Commonwealth and others have articulated their own standards with regard to civil society. Some of these are legally enforceable while others hold great persuasive value for member states (CIVICUS 2010a).

In 1999, an attempt was made to collate the protections afforded to civil society in various UN documents through the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders 1999). Although not a binding legal instrument, the declaration is a statement of intent by the UN General Assembly to protect the rights of human rights defenders. It contains a comprehensive menu of civil society freedoms. These include the following rights:

1. To seek the protection and realization of human rights at the national and international levels.
2. To conduct human rights work individually and in association with others.
3. To form associations and non-governmental organizations.
4. To meet or assemble peacefully.
5. To seek, obtain, receive and hold information relating to human rights.
6. To develop and discuss new human rights ideas and principles and to advocate their acceptance.
7. To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights.
8. To make complaints about official policies and acts relating to human rights and to have such complaints reviewed.
9. To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights.
10. To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations.
11. To have unhindered access to and communication with non-governmental and intergovernmental organizations.

12. To benefit from an effective remedy.
13. To have the lawful exercise of the occupation or profession of human rights defender.
14. To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the state that result in violations of human rights.
15. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).

Civil society groups themselves have also been engaged in articulating standards to protect their own space. In 2008, the International Center for Not-for-Profit Law (ICNL) and the World Movement for Democracy (WMD) sought to provide greater clarity to international standards regarding the protection of civil society space by developing a set of six principles based on international legal provisions and progressive case law from UN and regional human rights bodies (International Center for Not-for-Profit Law and the World Movement for Democracy 2008). Civil society groups have been advocating with governments across the world for incorporation of these principles into domestic law to safeguard civil society space. They include:

1. The right to entry (which includes the right to form, join and participate in a CSO; to associate informally without the need to obtain legal personality; and the right to seek and obtain legal status).
2. The right to operate free from unwarranted state interference (which includes protection against unwarranted state interference in a CSO's work; intrusion into its internal governance; and violation of privacy).
3. The right to free expression (which includes the right of civil society representatives individually or through their organizations to express themselves freely).
4. The right to communication and cooperation (which includes the right to receive and impart information regardless of frontiers and the right to form and participate in networks and coalitions).
5. The right to seek and secure resources (which includes the right to solicit and receive funding from legal sources domestically and abroad).
6. The state duty to protect: the state has a duty to promote respect for human rights and fundamental freedoms, and the obligation to protect the rights of CSOs. The state's duty is both negative (i.e. to refrain from interference with human rights and fundamental freedoms), and positive (i.e. to ensure respect for human rights and fundamental freedoms). The state duty to protect also applies to certain inter-governmental organizations, including, of course, the United Nations.

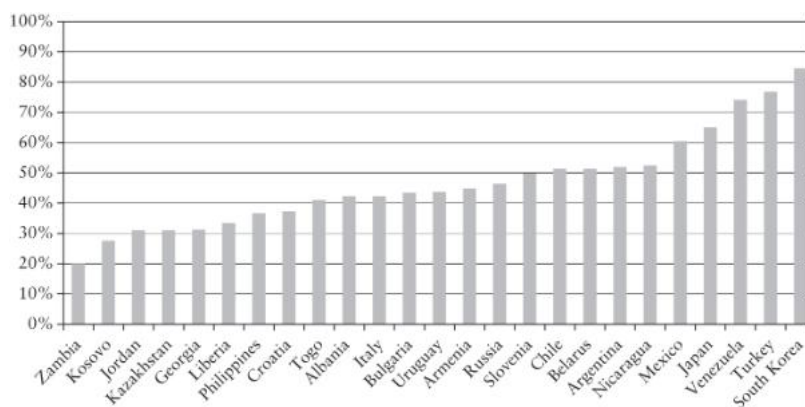
The UN Declaration on Human Rights Defenders and the principles developed by ICNL-WMD not only give life to the provisions of the ICCPR on the freedoms of expression, association and assembly; they also provide civil society activists with a comprehensive framework on which to base their demands for adequate operational space, which is particularly contested in conflict situations.

External environment for civil society – law as a tool to restrict civil society space

Having provided an overview of recent trends and universal standards for the protection of civil society space, the main part of this chapter now turns to the question of whether the statement that civil society space is shrinking can be supported by the quantitative and qualitative data gathered using the CSI methodology in the twenty-five countries examined for this volume. The search for quantitative evidence focuses on two questions from the CSI Organizational Survey that are assumed to gauge best whether two principal legal means to limit the work of civil society, i.e. (i) the introduction of laws and bills that negatively impact on the freedoms of expression, association and assembly and (ii) the use of the law to bring criminal sanctions against civil society activists, were broadly used.

With regard to the introduction of laws and bills that negatively impact on the freedoms of expression, association and assembly, data from the CSI 2008–2011 Organizational Survey indicate that 47 per cent of respondents believe that their country's regulations and laws for civil society are at least 'quite limiting'. Eleven per cent of the respondents had a perception of extremely high levels of restrictions being placed on civil society. Particularly high percentages of organizations reported a restrictive ('quite limiting' or 'highly restrictive')

Figure 6.1. Percentage of organizations reporting restrictive legal environment by country



legal environment in Japan (65 per cent), Venezuela (74 per cent), Turkey (77 per cent) and South Korea (84 per cent). Figure 6.1 charts the percentages of organizations in each of the twenty-five countries in the dataset drawn on for this volume of the CSI answering that regulations and laws for civil society are either 'highly restrictive' or 'quite limiting'.^[63]

The data demonstrate that there is variation in the perception of the legal environment in which civil society operates across the CSI countries. Nevertheless, it is clear that substantial percentages of CSOs in all countries feel that they are operating in the face of laws and regulations that limit civil society space in one way or another.

Human rights defenders may be especially vulnerable to restrictions and limitations. In countries where groups identifying as NGOs, civic groups and human rights organizations feel more limited than non-human rights groups, the state may be acting selectively against these groups in order to avoid accountability for human rights violations in general. Figure 6.2 illustrates the responses of these organizations alone. In many cases, such as Turkey and South Korea, the percentage of groups identifying as 'NGOs, civic groups and human rights organizations' that indicate an unfavourable legal environment matches closely the perception reported by all organizations. Eighty-four per cent of all South Korean CSOs indicated restrictive or limiting laws, while eighty-six per cent of human rights organizations in the country reported the same. Human rights groups in Turkey also reported only slightly higher rates of perceived restrictions than did all the CSOs in the country – 81 per cent versus 77 per cent. Other countries' human rights organizations, however, reported dealing with unfavourable laws at a substantially higher rate than the national average for CSOs. Most notably, the legal environment was considered restrictive in

Figure 6.2. Percentage of NGOs, civic groups, and human rights organizations reporting restrictive legal environment by country

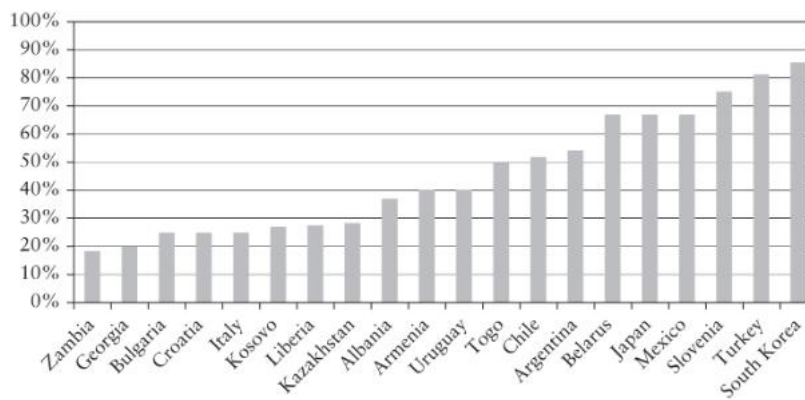
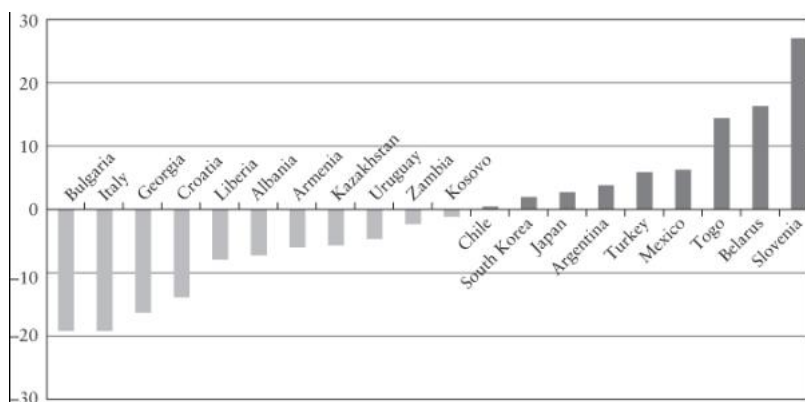


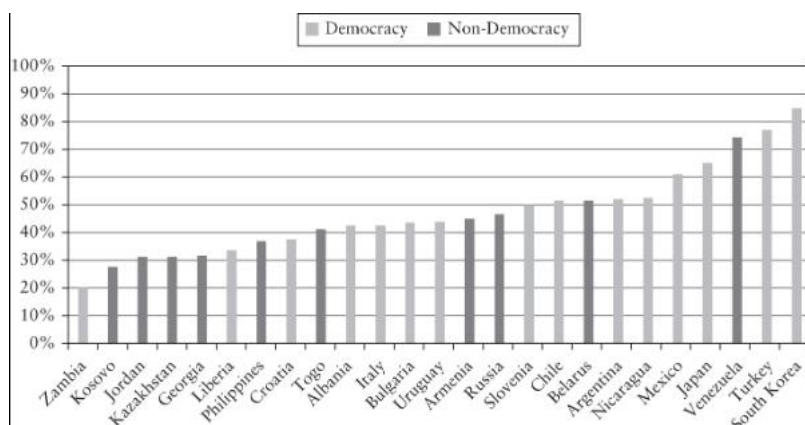
Figure 6.3. Percentage difference between NGOs, civic groups and human rights organizations and all other organizations reporting restrictive legal environment by country



Belarus and Slovenia by human rights groups at the rate of 15 to 20 per cent more than non-human rights groups, suggesting that human rights defenders in these countries face especially difficult conditions, even in comparison to other CSOs.

It does not seem to be universally true that human rights organizations perceive the legal framework to be more restrictive than other groups, however. In states such as Bulgaria and Italy, the average negative response among human rights groups is considerably lower than that from non-human rights groups. Figure 6.3 illustrates the difference in perception among these different types of groups in the CSI countries.^[64]

Figure 6.4. Percentage of all organizations reporting restrictive legal environment by country and regime type



While non-democratic states might be expected to clamp down on civil society space more readily than open, democratic states, in fact the variation in legal environment transcends regime type. Figure 6.4 presents the same data as Figure 6.1, but differentiates between the countries that are considered by Freedom House to be electoral democracies and those that are not. Freedom House defines the following countries in this book's dataset as electoral democracies: Albania, Argentina, Bulgaria, Chile, Croatia, Italy, Japan, Liberia, Mexico, Nicaragua, Slovenia, South Korea, Turkey, Uruguay and Zambia; the following are defined as not being electoral democracies: Armenia, Belarus, Georgia, Jordan, Kazakhstan, Kosovo, Philippines, Russia, Togo and Venezuela (Freedom House 2010). As Figure 6.4 shows, non-democratic states are distributed across the range of responses. Different regime types do not cluster in any noticeable manner or illustrate a clear, consistent association with particular levels of restrictions in civil society. Democratic countries such as South Korea, Turkey and Japan are widely perceived by the CSOs polled to have restrictive legal environments, while non-democracies such as Kosovo, Jordan, Kazakhstan and Georgia have much lower levels. However, other non-democracies such as Belarus and Venezuela are more consistent with hypothetical expectations, whereby CSOs perceive restrictions at high rates. Thus, the picture painted by the quantitative data merits further investigation in order to better explain the situation on the ground in each state.

The legal restrictions facing CSOs are multi-faceted, as limitations have been placed on civil society through laws and bills pertaining to counter-terrorism, NGO regulation, international cooperation and the media. Analyses of law and policy impacting on civil society freedoms reveal that in many instances, although the restrictions were sought to be justified in the name of protecting security or national interests, in reality their intent appeared to be curtailing civil society space.

In Zambia, the new Non-Government Organization (NGO) law introduced in August 2009 undermined the independence of CSOs by vesting a government-dominated NGO registration board with far-reaching powers. These include: (i) the power to approve the area of work of NGOs, which could allow the government to determine their thematic and geographic areas of functioning and exercise control over their affairs; (ii) the power to provide policy guidelines to harmonize the activities of NGOs with the national

development plan, which could effectively co-opt NGOs into assisting in the fulfilment of the political priorities of the government; and (iii) the power to advise on strategies for efficient planning and coordination of activities of NGOs, which could effectively treat NGOs as government subsidiaries as opposed to independent entities free to formulate and execute their action plans in line with identified priorities.

This potential high level of co-optation and potential corresponding fear of official sanction may explain the hesitancy of Zambian CSOs to report an unfavourable environment. The NGO Law and the long-standing Societies Act give the state significant potential power over civil society groups, including the ability to 'cancel the registration of any society' (Zambia Council for Social Development 2011). Other public security legislation makes the police responsible for regulating public gatherings, allowing them to limit freedom of assembly and association in the name of public order. Laws in Zambia also prevent CSOs from accepting funding from foreign sources without the written consent of the president. This provision interferes with funding opportunities and technical assistance that might otherwise be available to civil society in Zambia.

In December 2010, President Hugo Chavez of Venezuela urged the National Assembly to adopt a 'severe law' to effectively block foreign funding for a wide range of NGOs which, in his opinion, were ideologically opposed to official policies and could destabilize the government. Venezuela's International Cooperation Bill, under consideration by the National Assembly at the time of writing, would require CSOs to seek additional permission from the authorities to obtain funds from abroad. It would also significantly reinforce the scope for executive control over CSOs by creating an Agency for International Cooperation with wide-ranging powers to control the receipt and disbursement of international funds. In essence, the bill seeks to deny CSOs critical of official policies access to much needed funds from abroad (CIVICUS 2011).

In addition to these measures, Venezuela has widened the scope of libel laws and increased the punishment for libel, with the effect of intimidating political opponents and generally inhibiting free speech. The erosion of horizontal accountability, the checks and balances necessary to maintain separation of powers among branches of government (O'Donnell 1994), has increasingly given President Chavez the ability to use other instruments of the state, including the judiciary, to impede opposition. According to the 2008–2011 CSI country report for Venezuela, 'Organizations are disqualified and threatened, aiming at minimising their impact by promoting self-censorship. The criminalisation of protests shows a triangle formed by the Attorney General, the Courts and security forces to judicially intimidate demonstrators' (SINERGIA 2011). CSOs do not operate in a favourable environment here, as they were clear to report in the CSI survey. It is striking that, as in Jordan and Nicaragua, none of the groups surveyed in Venezuela identify themselves as NGOs, civic groups and human rights organizations. One can interpret this situation as suggesting that in these countries the more critical organizations have been silenced or are forced to operate under a different label.

In Nicaragua, the leftist government, fearing that the ideological challenge posed to it by civil society was a security risk, sought to place restrictions on foreign organizations' involvement and influence in or financing of what they believed to be activities of a 'partisan political nature'. Additionally, the authorities put together onerous rules on international cooperation for CSOs which created a web of bureaucratic red tape requiring multiple permissions from ministries and government departments, which has most probably had the effect of impeding vocal civil society groups from engaging in partnerships with foreign organizations. Although not officially enacted, officials who met with a CIVICUS fact-finding team that visited the country in January 2010 stated that provisions of the manual were being implemented.

In Belarus, authorities continued to employ a novel way to criminalize the work of civil society organizations through Article 193.1 of the criminal code. This provision prescribes imprisonment from six months to two years for participation in the activities of an unregistered political party, foundation, civil or religious organization. A number of CSOs involved in the protection and promotion of human rights have been denied registration by the authorities, thereby making their legitimate activities illegal. For instance, on 28 May 2009, Nasha Viasna, a human rights group, was denied registration for the third time by the Ministry of Justice. On 9 April 2009, the Belarusian Assembly of Pro-Democratic NGOs was denied registration for the second time. Other organizations that have been refused registration are the civil liberties group Berascejskaya Viasna, the youth group MODES, the cultural group Spadchyna, the Party of Freedom and Progress, the Belarusian Christian Democracy Party, the Belarusian Party of the Working People and the Youth Christian Social Union, all of which are active proponents of civil and political freedoms (CIVICUS 2009a).

In Jordan, the gradual opening up of the political environment in the 1990s created a favourable environment for CSOs which was later endangered by the presumed threat of terrorism. Anti-terror laws have been used to restrict free speech and the freedom of assembly. 'The adoption of hundreds of temporary laws under the pretext of confronting terrorism and Islamic extremism' has eroded civil society space and allowed security forces to exercise far-reaching control over the public sphere (Al Urdun Al Jadid Research Center 2011). The Anti-Terrorism Act of 2006 gives the state the power to arrest citizens and detain them for thirty days without trial. As with Zambia, Jordan clearly has a legal framework unfavourable to civil society, yet the percentage of CSOs reporting that they perceive their nation's laws and regulations to be limiting is relatively low. The uncertainty of the political environment may be responsible for this apparently paradoxical finding; it may be that it is mostly those organizations that support the official line that have been able to survive the turbulent political situation.

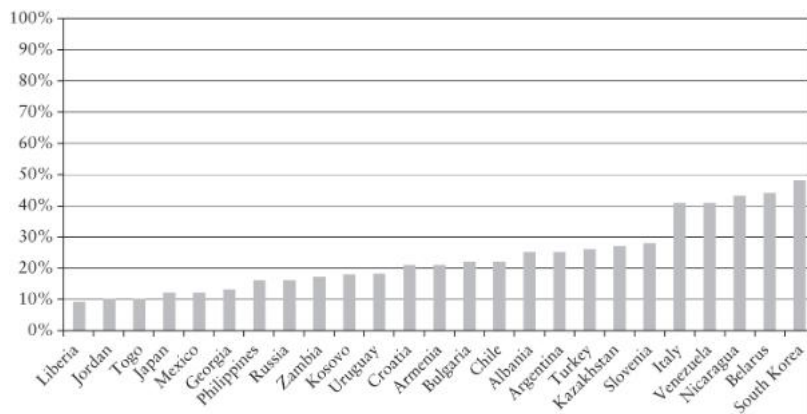
Preceding this current trend, national security concerns have been used in South Korea for decades to regulate civil society space and place limits on the national discourse. The formal state of war that persists between North and South Korea gives the country clear motivation for maintaining particular security measures, but the National Security Law that was enacted more than fifty years ago 'has been widely misused to detain people who posed no threat to security' and to persecute citizens who 'pose a threat to established political views' (Jo, Joo & Lee 2006). Thus, despite South Korea's credentials as an economically successful country, CSOs are inclined to report that laws and regulations are restrictive, giving it the highest percentage of CSOs offering a negative assessment (84 per cent) in the twenty-five country CSI dataset for this volume.

Similarly, in Kosovo, persistent security threats, in the form of inter-ethnic tensions, produce a political and legal environment in which public security can be used to justify interference in civil society space. The 2008 constitution formalizes this dynamic between the two issues, and in particular, 'freedom of assembly has occasionally been restricted for security reasons' (Kosovar Civil Society Foundation 2011). Nevertheless, there have been successes in safeguarding civil society space. A proposed NGO Law, which would have restricted the not-for-profit sector, was defeated in 2010 through lobbying and advocacy efforts.

Finally, in Kazakhstan, authorities require that CSOs publish a report on their activities and present it to state officials on an annual basis. This kind of monitoring from the state clearly interferes with a group's ability to freely express its views, as it implies making a CSO's funding and indeed existence contingent on keeping on the right side of the authorities (Public Policy Research Center 2011). Acts such as these lend credence to the perception that the Kazakh government has deliberately sought to amplify threats from religious radical groups as a way of silencing political opposition and maintaining its hold on power (Oliker 2007).

On the second matter, regarding the use of criminal sanctions against civil society activists, CIVICUS' ongoing monitoring reveals that a number of civil

Figure 6.5. Percentage of all organizations reporting illegitimate restriction or attack by country



society activists were imprisoned on the basis of seemingly politically motivated prosecutions and flawed trials to prevent them from continuing their work to highlight human rights violations. A common occurrence has been the labelling of the detained activists as supporters or members of terrorist or rebel groups, although in some cases legal

sanctions have been brought against them through regular provisions of criminal law rather than terrorism-related laws. Evidently, many detained activists have been denied basic due process rights and subjected to abuse by the detaining authorities.

Notably, data from the CSI Organizational Survey reveals that 21 per cent of the respondents stated that their organization had faced illegitimate restrictions or attacks by either local or central government. The responses from South Korea (48 per cent), Belarus (44 per cent), Nicaragua (43 per cent), Venezuela (41 per cent) and Italy (41 per cent), with many other states in the 20–30 per cent range, reflect that illegitimate restrictions or attacks by the authorities appear to be a method of controlling activities of some CSOs (Figure 6.5). Thus, not only do CSOs in many countries face legal frameworks that hamper their operations, but also they experience attacks from the state that go beyond the measures of law.

As with the reports on CSO representatives' perceptions of laws and regulations, it is instructive to consider the particular conditions confronting NGOs, civic groups and human rights organizations. Figure 6.6 and 6.7 demonstrate that these organizations may face a different constellation of issues in their work. While countries such as Belarus have consistently high rates of CSOs – both human rights related and not – reporting attacks, states such as Albania, Bulgaria and Mexico are different. In these countries, reporting of illegal attacks is 20 to 30 per cent higher amongst NGOs, civic groups and human rights organizations as compared to other CSOs, suggesting that human rights defenders are in particularly grave danger in these countries.

Figure 6.6. Percentage of NGOs, civic groups and human rights organizations reporting illegitimate restriction or attack by country

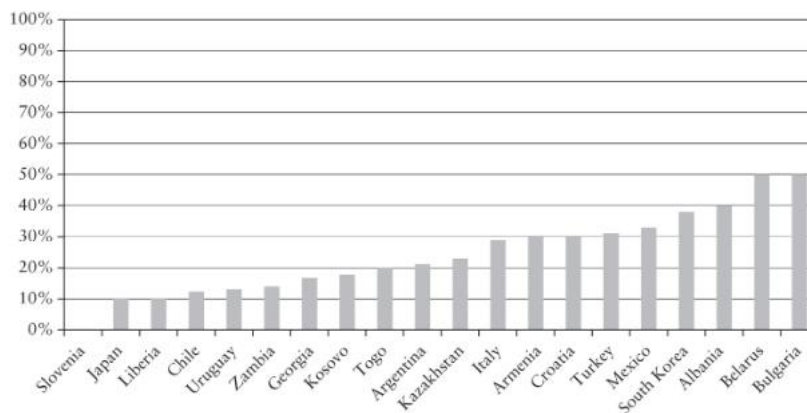
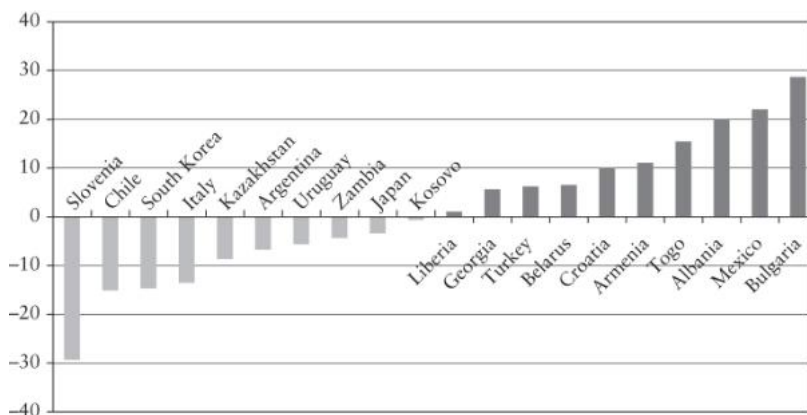


Figure 6.7. Percentage difference between NGOs, civic groups and human rights organizations and all other organizations reporting illegitimate restriction or attack by country



Once again, the division of regime type does not seem to display especially notable patterns or consistent associations between attacks on civil society and one form of government across the country cases (Figure 6.8). Rather, some democracies and non-democracies at the high end of the spectrum have roughly similar levels of CSO response to the question of whether or not they have experienced attacks. Further, non-democracies are scattered across the range of countries, once more troubling the notion that regime type alone can explain the patterns of state behaviour or CSO perceptions, and suggesting that international civil society needs to scrutinize the behaviours of

Figure 6.8. Percentage of all organizations reporting illegitimate restriction or attack by country and regime type

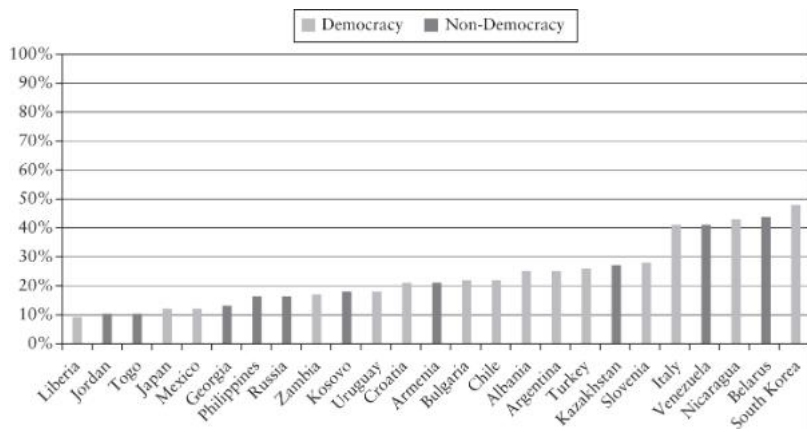
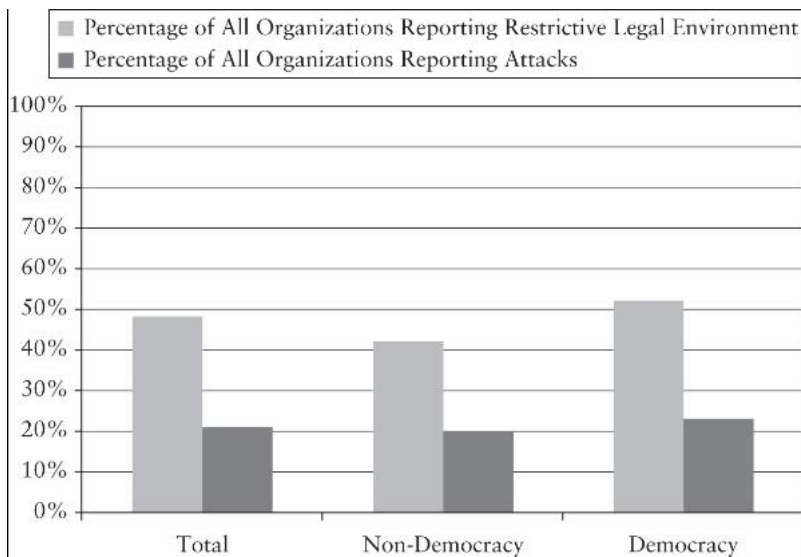


Figure 6.9. Percentage of all organizations reporting restrictive legal environments and attack by country and regime type



recognized democracies as well as non-democracies. In the aggregate, CSOs under democratic and non-democratic governments responded with similar frequency that they had been the victims of attack. Figure 6.8 illustrates this point. The comparison between perception of regulation and experience with attacks reveals that CSOs in electoral democracies report more restrictive laws and regulations than those in the states considered non-democracies.

Additionally, CIVICUS' monitoring of individual cases in some CSI countries affirms the use of the law as a tool to persecute vocal civil society activists. Following are some examples.

In the Philippines, where civil society groups are involved in highlighting abuses by government forces in counter-insurgency operations against leftist guerrillas and Islamist militants, a group of forty-three community health workers and medical practitioners (popularly known as the 'Morong 43') were detained in February 2010 when they were arrested during a training exercise on medical practices. Security forces entered their training premises on the basis of a defective search warrant and accused them of being in possession of weapons and explosives, which is inconsistent with their peaceful work as community activists. It was only after sustained pressure from within and outside the Philippines that the authorities agreed to release the Morong 43 after the lapse of a considerable period of time in December 2010 (CIVICUS 2009b).

In April 2010, the offices of the Socio-Ecological Union (SEU), an environmental NGO based in Samara, Russia, were raided by the police in connection with alleged criminal charges of extremism against Sergey Simak, the Co-Chair of the organization. Staff from the regional branches of the Department for Economic Crimes and the Centre for the Combat of Extremism seized his computer and documents, which are alleged to have been used for criminal purposes. Police sources stated that the motivation for the case arose from protests over the felling of trees (CIVICUS 2010c).

In Azerbaijan, two pro-democracy bloggers were sentenced to prison terms of two and two and a half years, ostensibly on charges of indulging in hooliganism for allegedly getting into a brawl at a restaurant. The two had fallen foul of the authorities after they posted a satirical video on the internet. Although they were finally released from prison, the fact that they could be treated in a cavalier manner by the authorities remains a key point of concern (Allnut 2010).

In Kazakhstan, human rights defender, Yvgeny Zhovtis was handed a four year sentence in an accident case following a trial riddled with multiple infirmities. These included: (i) failure to inform Mr Zhovtis promptly and in detail that he was being considered a suspect; (ii) denial by the court of the accused person's right to examine and challenge the forensic evidence presented at trial; (iii) denial of adequate time to prepare a defence (the defence attorneys of Mr Zhovtis were only given forty minutes by the court to prepare their closing statements, which cannot be considered adequate time in light of the seriousness of the charges); and (iv) return of a guilty verdict against Mr Zhovtis with a lengthy-typed judgment only fifteen minutes after the adjournment of the trial. This raises the question of whether the court had enough time to reflect upon the rationale for the decision after the conclusion of the trial (CIVICUS 2009b).

Two Greenpeace activists in Japan, Junichi Sato and Toru Suzuki, were handed one year suspended sentences in September 2010 for their role in carrying out a public interest investigation into corruption in the Japanese whaling industry. Despite their uncovering of embezzlement, smuggling and illegal trading at the expense of Japanese taxpayers, the court chose to convict them. They were accused of trespassing and stealing a box of whale meat to film its contents as part of their public interest investigation into Japan's whaling programme. The box was handed over to the police before it was reported lost. They were also subjected to a twenty-six day detention that the UN Working Group on Arbitrary Detention described as a breach of their human rights and politically motivated, along with a lengthy two-year prosecution (CIVICUS 2008).

Conclusions and recommendations

Responses from CSOs in the CSI regarding national legal environments illustrate the sometimes contentious relationship between states and civil society. State legal regulations provide the framework in which CSOs operate and, as the CSI attests, some states have an enabling framework while others limit civil society space. As demonstrated above, there is a wide range of responses from CSOs in different countries regarding the legal framework in which they operate, from states in which fewer than 20 per cent of CSOs report a restrictive legal environment to those where more than 70 per cent of CSOs feel that the legal environment is restrictive. A slightly smaller range exists for organizations reporting attack by local or central government, from less than 10 per cent to almost 50 per cent. Neither the legal environment nor attacks by the government are easily explained by regime type. Organizations in electoral democracies and non-electoral democracies among the twenty-five CSI countries considered in this volume report levels across the range of responses, without notable clustering of one type of regime or patterns of behaviour.

In order to better understand why regime type is not a good predictor of organizations' responses, future research should explore alternate explanations for the range of perceptions reported in the CSI. Further research in this area can shed light on the relationship between government institutions and CSO perceptions. In addition, the differences between the rates at which organizations report a restrictive legal environment and the rates of illegitimate attacks in all countries merit additional inquiry. From the CSI data, there does not appear to be a consistent relationship between the two measures. Restrictive laws and attacks from government forces might be expected to be used in concert in those countries seeking to clamp down on civil society space, but that pattern does not appear. Equally, an inverse relationship between the two measures is not borne out in the data. A state that has weakened civil society through the law may not need to resort to force, but this also is not uniformly found in the data. Finally, future research on civil society space must consider the interaction of CSOs across national borders.

While the CSI evaluates the state of civil society at the country level, transnational linkages affect the ability of CSOs to operate and to support one another across political boundaries. The passing of the landmark resolution on the Freedom of Peaceful Assembly and Association, discussed above, came about through the involvement of a number of multi-national civil society actors and governments working together. It underscores both the value and power of international solidarity in protecting civil society space. Another CSI indicator – on the international connections of CSOs – scores consistently low, at only 15 per cent across twenty-four countries.^[65] It could be that deficiencies in international connections are making it easier for national governments to define unopposed their domestic civil society parameters. One follow-up this suggests for agencies concerned with domestic civil society space is to support and strengthen transnational civil society connections, to encourage international solidarity and enhanced ability to monitor abuses.

From a practitioner's perspective, variation in civil society space from one state to the next presents an opportunity for groups in different parts of the world to take advantage of the wisdom gained from divergent experiences in new ways. Contemporary challenges may force a re-thinking of the traditional understanding of how CSOs interact with each other. Where security legislation has freshly encroached upon civil society space in highly stable electoral democracies, civil society in these countries could perhaps consider studying and learning from the survival tactics of their peers in non-electoral democracies who likely have considerable experience in negotiating turbulent political waters.

Additionally, to counter the tightening of civil society space, CSOs should re-think the old division between human rights organizations and service delivery groups, given the potential differences in perceptions between human rights organizations and other CSOs explored above. A number of groups traditionally viewed as development or service delivery organizations have now had to incorporate human rights and advocacy into their work. CSOs have affirmed this through the 'Istanbul Principles' on CSO Development Effectiveness developed after extensive consultations by civil society groups across the globe (Open Forum for CSO Development Effectiveness 2010). The first principle for effective development is titled: 'Respect and Promote Human Rights and Social Justice'. Thus, the convergence of missions among groups that previously identified themselves in different terms may actually present another opportunity for the strengthening of civil society as CSOs from different segments of civil society increasingly work together toward a unified set of goals.

Lastly, there is the need to clearly articulate, through international law, the extent of freedoms of expression, association and assembly. As a legally binding international instrument and as international customary law, the ICCPR needs to go much further than providing broad protections for civil society against state power. It is therefore imperative that the General Comments made by the Human Rights Committee – the body of experts tasked with overseeing the implementation of the ICCPR – elaborate in detail the full scope of these freedoms in line with the provisions contained in the UN Declaration on Human Rights Defenders and the principles developed by civil society for their own protection, even in the face of justifications for civil society restriction drawn from narratives of conflict and insecurity. So far this has not happened to the extent required in the case of the freedoms of association and peaceful assembly.

Notably, negative trends on restrictions on civil society have been widely acknowledged and roundly criticized at multiple forums, including the United Nations. With the information and recommendations presented here, civil society, cutting across borders, has the opportunity and evidence for solidarity, mutual support and self defence.

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