

SHS Grant Project Summary: Authoritarian regimes are using the law to stifle dissent

Axe, Niamh; Gonzales-Gutierrez, Nathalia; Leal De Matos-Powell, Sara;
Ozer, Melis; Yilin, Su, Tiratsoo, Madeleine; Tertychnaya, Katerina*

August 2021

1 Project Summary

The right to assembly is entrenched in national constitutions. According to the Comparative Constitutions Project, in 2013, 97% of constitutions around the world provided for freedom of assembly, up from 67% just 30 years prior. At the same time, however, the authorities in non-democratic regimes continue to enact and enforce legislation that allows them to restrict protest. Indeed, while the share of non-democracies engaging in mass killings against their citizens has declined over time, the share of non-democracies violating the right to freedom of assembly has increased. 62% of non-democracies imposed moderate or severe restrictions on freedom of assembly and association in 1992. 84% of them did so in 2016. Drawing on evidence from countries in the post-Soviet region, Latin America, Africa, South-East Asia and Europe, we reviewed how governments in non-democracies commonly use the law to stifle dissent.

1.1 Regulating which groups can legally protest

Despite the right to freedom of assembly being a universal one, countries increasingly seek to prevent groups from taking to the streets. In several contexts, for example, only formally registered organisations can legally organise protest. By preventing civil society groups from registering as non-governmental organisations, the authorities in places like Turkmenistan and Chad criminalize these groups' political participation and justify their leaders' arrests. Indeed, it is estimated that in 2014, human-rights defending organisations faced restrictions signing up as organisations in a staggering 41% percent of all countries in the world. Using parliament-approved legislation, the authorities also seek to criminalize the activities of groups and organizations receiving foreign funding. Nicaragua's 2020 law for the Regulation of Foreign Agents, for example, requires groups receiving funding from abroad to register as 'foreign agents' and stifles their political participation.

1.2 Regulating where protest can take place

The law is also used to define 'acceptable' places for protest. Visible and easily accessible spaces, such as central city squares, are often set as 'out-of-bounds' for protest. Designated 'hyde-parks', in which protest is allowed,

*Axe, Gonzales-Gutierrez, Leal De Matos-Powell and Ozer, are undergraduate students at the Department of Political Science, UCL. Su and Tiratsoo are graduates of UCL. Tertychnaya is Assistant Professor in Comparative Politics.

are usually set in the outskirts of cities, minimising protest visibility, increasing the costs of protest participation, and dampening activists' ability to generate awareness of their demands. According to OVD-Info in the Russian cities of Nizhny Novgorod and Novosibirsk, 'out-of-bounds' areas make up a staggering 74% and 59% of the cities' overall territory. According to Venezuela's 2002 National Security Law, protest cannot take place in designated 'security zones', areas that encompass state television and radio stations, public infrastructure plants, military installations, and administrative offices. Such areas make up nearly 33% of national territory. What is more, the definition of 'acceptable' places for protest in the law is often vague, subject to arbitrary interpretation. For example, since 2008 in Kyrgyzstan demonstrations have been prohibited near "government entities", a designation that includes everything from the Parliament building to schools and gas pipelines.

1.3 Protest Notifications Used as Protest Authorizations

Across the world, protest organizers are usually required to notify the authorities ahead of certain types of protest. This is done to ensure that appropriate arrangements are in place ahead of an event. In illiberal settings, however, the authorities use protest notifications strategically, as a tool of political control. Mayors and administrators - groups rarely associated with protest repression - turn the protest notification review process into a de facto protest permit procedure. Notifying the authorities of a protest is not enough - activists also need to secure the authorities' approval. Protesting without a permit is illegal and carries sanctions for protest organizers and participants, ranging from fines to imprisonment. Russian legislation in 2012, for example, increased fines for participating in unauthorized demonstrations approximately 100-fold. Indeed, the authorities in contexts as diverse as Puerto Rico, Russia and Kenya, have been repeatedly shown to use permit requirements 'in a manner designed to redirect, dissuade, or prohibit demonstrations'. Across the countries we reviewed, protest authorisation requirements were consistently used in a politically motivated manner. In Chad, for example, the authorities commonly ban demonstrations organized by groups critical of the government but permit those in support of the incumbent. In Turkey, governors are able to postpone assemblies for a period of one month, on the grounds of 'safety, crime prevention, and public security', provisions commonly used against opposition-led activities.

1.4 National security and defamation laws used against demonstrators

In several non-democratic regimes, legislation is also used to designate protest and activists as 'threatening' to national security. Turkey's Anti-Terror Law, for example is disproportionately used to sanction the activities of Kurdish demonstrators. Anti-terrorism legislation is also used to target activists in El Salvador. Kazakhstan's law on extremism also prohibits "extremism" during rallies and demonstrations, but the lack of definition as to what constitutes extremism allows the law to be selectively applied against the regime's political opponents. In places like Thailand and Cambodia pro-democracy or environmental activists are targeted with royal insult or defamation laws.

Strategies of 'legal' repression have several advantages for authoritarian incumbents. Most importantly,

they are less likely to invite international and domestic outcry than strategies of repression that involve the use of coercion. Legal provisions setting the boundaries of ‘acceptable’ dissent could also allow the authorities to justify activists’ arrests, and dampen the reputational costs of brutal protest policing. Yet they can also backfire. People who see the law being used as an instrument of control may question its overall legitimacy. Growing restrictions on protest also create additional opportunities for disruption and may create a defiant, and even more resilient opposition.

Altogether, the law remains at the heart of contemporary coercion. The legal strategies of repression we reviewed involve limited coercion, yet are used to achieve similar ends as violent repression. Better documenting the diverse range of nonviolent repressive strategies used around the world is critical for defending democracy worldwide. While the dangers of 21st century authoritarianism are manifold, its insidiousness is perhaps its most threatening characteristic.