



THE RIGHT TO DISSENT MUST BE AT THE HEART OF DEMOCRACIES

A Ten Country Report Written by Necessarily Anonymous Authors

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The Right to Dissent

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The ten countries which are the focus of this report have each evolved different political and legal systems which enable, hinder or prevent, in different degrees, their citizens to exercise the Right to Dissent.

In approaching potential writers for each Country Report, there were varying degrees of concern about being identified as a writer on this vital subject. These ranged from simply, " I can only write this on the condition of strict anonymity" to " Given the significant risks in my country at present, I would greatly welcome being anonymous".

As an expression of the current challenges to citizens simply writing about the severe risks and consequences that a growing number of citizens face in expressing their views of social, economic and climate justice and human rights, all authors of the ten Country Reports are anonymous.

We sincerely thank each one of them for the bravery they have shown in being at the heart of this report.

The Right to Dissent

In any society, if there is going to be change, it will take individuals, who come from different backgrounds to show a true concern about the human condition and the rights of people of different groups and the demands of those different groups.....and those individuals, who are devoted to facing this kind of system, must make people aware of the situation and search for possible better ways.

Ai Wei Wei, Chinese activist and artist¹

1 Quoted in: <https://theasiadialogue.com/2018/03/06/guo-jian-the-art-of-dissent/>

1. INTRODUCTION

Across the world, civil, civic and democratic space is shrinking. South and Southeast Asia are no exception.

In *The Right to Dissent* – an Asia Europe People’s Forum publication – , ten necessarily anonymous authors from the ASEAN countries Myanmar, Laos, Thailand, Cambodia, Malaysia, Indonesia and the Philippines, plus SAARC members Bangladesh, India and Pakistan, sketch the situation for citizens in relation to freedom of expression and assembly in their country, from an inside perspective.

They paint a picture of a backsliding of into authoritarianism, even in countries like the Philippines, India and Malaysia that established themselves as democracies from their liberation from colonial rule. Of the rule of law being abused to repress political, social and economic adversaries. Of disrespect for basic human rights and the vilification of human rights defenders² through fake news, defamation campaigns and internet and social media trolling. Of arbitrary arrests, unfair trials and detention. Of ill treatment at the hands of the police and the armed forces, of torture, extrajudicial killings and enforced disappearances.

Regimes across the region are changing and transforming legal systems in their favour: where they have existed, they are eroding the rights and freedoms sanctioned by law; bringing in new anti-democratic laws and amending existing ones; and suborning the judicial system of courts, judges and lawyers from the lowest to the highest levels.

The situation is worse in some countries than

² The United Nations define human rights defenders as persons acting “to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights”, adding that “[h]uman rights defenders address any human rights concerns, which can be as varied as, for example, summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment. Defenders are active in support of human rights as diverse as the rights to life, to food and water, to the highest attainable standard of health, to adequate housing, to a name and a nationality, to education, to freedom of movement and to non-discrimination. They sometimes address the rights of categories of persons, for example women’s rights, children’s rights, the rights of indigenous persons, the rights of refugees and internally displaced persons, the rights of lesbian, gay, bisexual, transgender and intersexual people, the rights of persons with disabilities and the rights of national of linguistic.” Source: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

in others: while authoritarian regimes such as the Lao PDR (Laos) continue to be as repressive as they were, most of the other countries are regressing in terms of civic and political liberties. In fact, all of the countries included in this report are characterised by an increasingly restrictive civic and civil society landscape. Even in Malaysia, the only country that – according to the indices shown below – shows some overall progress, the apparently positive trend masks a reality of increasing repression, restriction of the media, intimidation of opposition politicians, persecution of human rights defenders, and enforced disappearances.

Across the region, non-governmental and civil society organisations face physical harassment, intimidation and threats. Frequently, they are placed under excessive administrative burdens and forced to report and ask for official approval for their activities, which severely restricts them in their advocacy work. They are stigmatised as foreign agents, in particular when they receive support or funding from abroad, criminalised and disbanded when deemed too controversial or provocative by the authorities.

Activists, labour and environmental movement leaders, grassroots organisations and local communities engaging in social, environmental and resource conflicts face threats, (physical) harassment, extrajudicial violence and even murder – in particular when they come into conflict with vested interests of business conglomerates backed or controlled by the ruling political elite.

In most countries, there is a systematic crackdown on the press and on independent media outlets – if they existed at all. State-run or ruling party affiliated media willingly engage in defamation and smear campaigns of opposition or dissenting voices. In some cases, the authorities go as far as to openly call for violence against dissenters.

In several countries, a virulent nationalism is thrown into the mix to the detriment of ethnic minorities within those countries who, in the climate of repression, struggle to defend their interests.

Ever greater control over the media and educational institutions enables the authorities to justify and rationalise their repressive policies, practices and exclusivist ideologies and reduce the space for broad and independent reflection on social, environmental or economic policies.

This is transforming the region's human rights situation for the worse.

The climate of fear and intimidation that is being created leads to self-censorship, a reluctance to express critique and a steering clear of potentially sensitive activities. A climate in which there is increasingly limited space to hold the government, state institutions and corporations accountable.

But the ten authors, in their country reports, also offer glimmers of hope, stories of resilience and resistance. Of people refusing to be subdued and speaking out, against the odds. This is important: political elites leaning to authoritarianism and repression ought to be aware that societies that silence dissent deny themselves the opportunity to benefit from multiple views that stimulate creative thought and development and foster creative and inclusive solutions to problems. Thus, shrinking civic space blinds a society to wider-ranging interests and issues, and hence serves to deepen social, political, cultural and economic inequalities to the detriment of a country's development and integration into the global community.

All country reports echo the necessity for movements within the country to not abandon their struggles for social, economic and environmental justice. This is where the seeds for change must sprout and grow. However, human rights defenders and civil society activists decrying the situation in their own countries need the backup of the international community and action from bodies like the UN Human Rights Council. The severe and on-going clampdown on all forms of dissent and the ever-growing

curtailment of civic space flagged by the authors should be clearly and unequivocally condemned. All available instruments should be mobilised to support human rights defenders in the countries concerned and to sensitise their governments to the need to guarantee fundamental rights and permit the (re)opening of civic and civil society space so that people may exercise their fundamental rights of freedom of expression and assembly. Policymakers should have the courage to value the right and freedom for individuals or groups to publicly dissent within the law or even against the law to gain insights in the varied and at times conflicting needs of the different segments of society, and recognise the strong correlation between respect for human rights and civic space on the one hand and social stability, equitable wealth creation and sustainable human development on the other.

2. INDICES FOR SHRINKING CIVIC SPACE

The Universal Declaration on Human Rights adopted in 1948 establishes clear protections for the fundamental rights to freedom of association, peaceful assembly and expression. These are the cornerstones for the civic space required for open, transparent and democratic debates and processes to advance common interests and foster consideration for minority interests in a society. Civic space – defined as room for civil society organisations, activists and citizens to organize, participate and communicate in order to influence the economic and environmental conditions and the social and political structures, around them – is pivotal to democratic, humane societies.

The countries that are the focus of this report are all regressing in terms of the robust legal protections required to promote the rights to freedom of assembly, association and expression and avoid human rights violations. The mechanisms to hold public authorities and institutions to account are being dismantled. Civil society is being restricted and dissenting voices are being silenced, in disregard of their vital potential contributions to improving people’s

lives by defending economic, social, political, environmental, or cultural rights. A climate of fear and repression is being created in which people are afraid to express diverging opinions.

There are several indices that describe the erosion of civic space and rank countries in terms of their respect for civil liberties.

State of Democracy

The Democracy Index 2020³ of the Economist Intelligence Unit (EIU) ranks 167 countries according to five categories: electoral process and pluralism, the functioning of government, political participation, political culture, and civil liberties. Based on its scores, each country is categorised as either a full democracy, a flawed democracy, a hybrid regime or an authoritarian regime. For the ten countries in this report, this list reads as follows:

³ The full list, including an explanation of the methodology, can be accessed via <https://www.eiu.com/n/campaigns/democracy-index-2020/>

Democracy Index ranking: 2020

	REGIME	RANK (OUT OF 167)	ELECTORAL PROCESS AND PLURALISM	FUNCTIONING OF GOVERNMENT	POLITICAL PARTICIPATION	POLITICAL CULTURE	CIVIL LIBERTIES
Bangladesh	Hybrid	76	7.42	6.07	6.11	5.63	4.71
Cambodia	Authoritarian	130	0.00	3.93	3.89	5.63	2.06
India	Flawed democracy	53	8.67	7.14	6.67	5.00	5.59
Indonesia	Flawed democracy	64	7.92	7.50	6.11	4.38	5.59
Laos	Authoritarian	161	0.00	2.86	1.67	3.75	0.59
Malaysia	Flawed democracy	39	9.58	7.86	6.67	6.25	5.59
Myanmar	Authoritarian	135	1.75	3.93	2.78	4.38	2.35
Pakistan	Hybrid	105	5.67	5.36	3.33	2.50	4.71
Philippines	Flawed democracy	55	9.17	5.00	7.78	4.38	6.47
Thailand	Flawed democracy	73	7.00	5.00	6.67	6.25	6.76

* scale is 1.00 – 10.00, with 10 as best

Democracy Index scores 2006-2020

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2008	2006
Bangladesh	5.99	5.88	5.57	5.43	5.73	5.73	5.78	5.86	5.86	5.86	5.87	5.52	6.11
Cambodia	3.10	3.53	3.59	3.63	4.27	4.27	4.78	4.60	4.96	4.87	4.87	4.87	4.77
India	6.61	6.90	7.23	7.23	7.81	7.74	7.92	7.69	7.52	7.30	7.28	7.80	7.68
Indonesia	6.30	6.48	6.39	6.39	6.97	7.03	6.95	6.82	6.76	6.53	6.53	6.34	6.41
Laos	1.77	2.14	2.37	2.37	2.37	2.21	2.21	2.21	2.32	2.10	2.10	2.10	2.10
Malaysia	7.19	7.16	6.88	6.54	6.54	6.43	6.49	6.49	6.41	6.19	6.19	6.36	5.98
Myanmar	3.04	3.55	3.83	3.83	4.20	4.14	3.05	2.76	2.35	1.77	1.77	1.77	1.77
Pakistan	4.31	4.25	4.17	4.26	4.33	4.40	4.64	4.64	4.57	4.55	4.55	4.46	3.92
Philippines	6.56	6.64	6.71q	6.71	6.94	6.84	6.77	6.41	6.30	6.12	6.12	6.12	6.48
Thailand	6.04	6.32	4.63	4.63	4.92	5.09	5.39	6.25	6.55	6.55	6.55	6.81	5.67

* scale is 1.00 – 10.00, with 10 as best

The EIU notes that Asia/Australasia as a region made rapid progress along the Democracy Index’s indicators in the decade 2006-2016, but declined sharply in 2017. In 2020, the Covid measures led to further severe constraints on individual freedoms and liberties.⁴ The authors of the country reports in this paper express serious concerns about the proportionality and question whether they will be fully withdrawn once the pandemic is under control.

The **International Institute for Democracy and Electoral Assistance** (International IDEA), an intergovernmental organization that supports sustainable democracy worldwide, publishes Global State of Democracy Indices that look at 29 aspects of democracy. The way the 10 focus countries score can be seen at a glance in the images below (situation for 2019). International IDEA highlights that in all countries, in relation to certain aspects, there are “concerning developments from a democracy or human rights perspective. COVID-19 related measures or developments that violate human rights or democratic benchmarks, because they are

considered either disproportionate, unnecessary, illegal or indefinite” [red circle/exclamation mark] or developments to watch [white circle/magnifying glass]: “Potentially concerning COVID-19 related measures or developments to watch from a democracy and human rights perspective. These may lead to a violation of human rights or democracy benchmarks and be considered disproportionate, unnecessary, illegal or indefinite if enforced or maintained over time.”

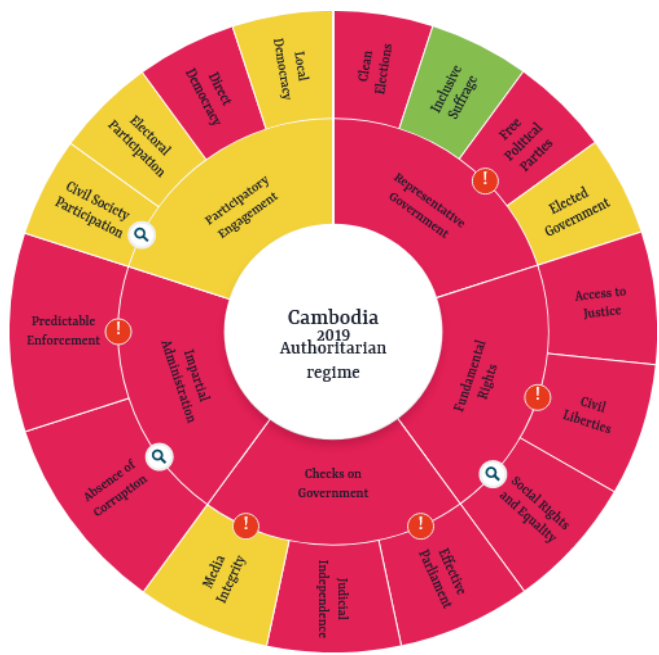
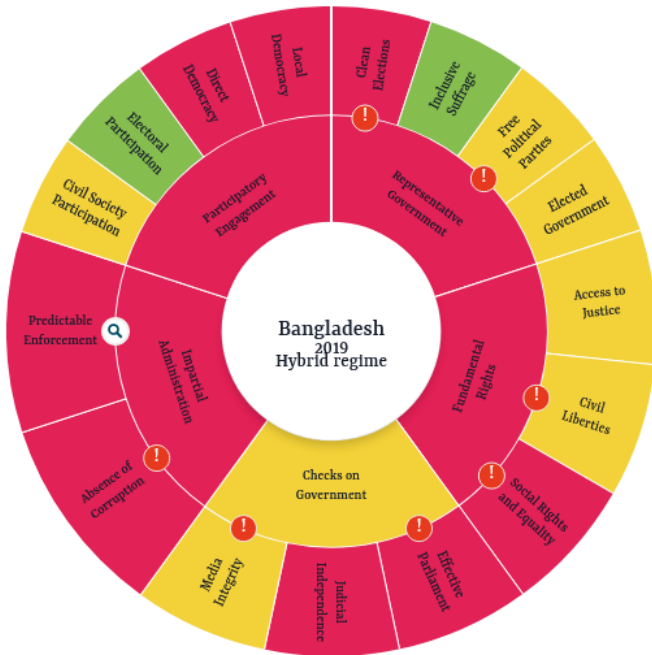
As IDEA scores pertain to the situation in 2019, it must be noted that Myanmar in 2021 can no longer be classified as a democracy. Following the coup of 2021, they country now has a military-controlled government.

⁴ Democracy Index 2020: In sickness and in health?, a report by The Economist Intelligence Unit, 2021, p.28

0.00 - 0.399 Low performance

0.40 - 0.70 Mid-range performance

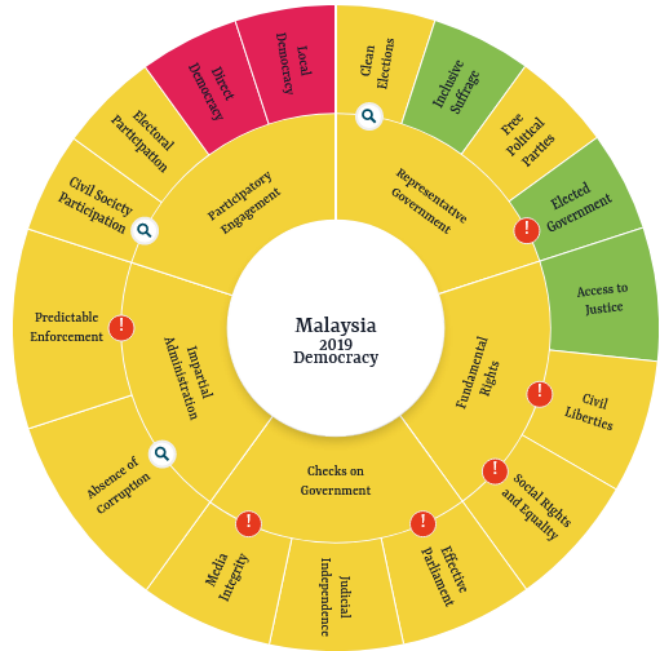
0.701 - 1.00 High performance



■ 0.00 - 0.399 Low performance

■ 0.40 - 0.70 Mid-range performance

■ 0.701 - 1.00 High performance



Civic Space

The Civicus Monitor for tracking civic space⁵ lists Malaysia and Indonesia as countries where civic space is obstructed. Pakistan, India, Bangladesh, Myanmar, Thailand, Cambodia and the Philippines are classified as 'repressed'. Laos counts as 'closed'. Because of the military coup of February 2021, Myanmar is on Civicus' Watch list as a country where there is a serious and rapid decline in respect for civic space.⁶ Bangladesh, Cambodia, India and the Philippines have also featured on the Civicus Watch List in the past four years.⁷

Working with regional coordinators and country experts; civil society organisations and academic institutions from across the world, the Bertelsman Transformation Index analyses and compares transformation processes towards democracy for 137 countries worldwide. The tables below lists how the BTI scores for the ten

countries highlighted in this report on five key political transformation criteria over the period 2006-2020.⁸ It shows how most of them have regressed in terms of their overall democracy status. Only Malaysia seems to show some minor improvements. Myanmar appears to show significant progress. However, the outlook for the country has worsened significantly since the military coup of 2021, that has halted the country's tentative steps towards a more democratic system in its tracks and has brought Myanmar back under the control of Myanmar's military: the Tadmaw. Thailand in particular stands out as a country where the situation has massively deteriorated since 2014 across all five indicators: free & fair elections, the freedoms of association and expression, civil rights and an independent judiciary. But even India that calls itself the world's largest democracy is slipping down the ladder and is now classified as a "flawed democracy" and an "electoral autocracy".⁹

5 <https://monitor.civicus.org/>

6 <https://monitor.civicus.org/watch-list/>

7 <https://monitor.civicus.org/WLArchive/>

8 Scale from 1 -10, with 10 being best. <https://www.bti-project.org/en/index/political-transformation.html>

9 <https://www.bbc.com/news/world-asia-india-56393944>

Bangladesh

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status*	87	80	73	62	55	57	66	49
Free & fair elections	4	5	6	8	8	8	7	7
Association/assembly rights	4	5	5	7	8	7	7	7
Freedom of expression	3	4	4	6	7	7	7	7
Independent judiciary	4	4	5	5	5	5	5	6
Civil rights	4	4	4	4	5	5	5	7

* Out of 137 countries assessed

Cambodia

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	118	103	98	103	101	93	84	85
Free & fair elections	2	3	3	4	4	5	5	5
Association/assembly rights	2	3	3	3	3	4	5	5
Freedom of expression	2	3	4	4	4	5	5	5
Independent judiciary	2	2	2	3	3	3	3	3
Civil rights	2	2	3	3	4	4	4	4

India

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	29	24	23	20	21	20	21	21
Free & fair elections	9	9	9	9	9	8	9	7
Association/assembly rights	6	7	9	10	10	10	10	10
Freedom of expression	6	7	7	8	9	9	9	9
Independent judiciary	7	7	7	8	8	8	8	8
Civil rights	6	6	7	7	7	7	7	7

Indonesia

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	52	43	37	38	39	37	54	54
Free & fair elections	8	8	8	9	9	9	9	9
Association/assembly rights	6	7	7	7	7	8	8	8
Freedom of expression	6	6	6	6	7	7	6	7
Independent judiciary	5	5	5	5	5	6	5	5
Civil rights	6	6	6	6	7	7	7	7

Laos

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	122	118	120	121	121	120	117	111
Free & fair elections	1	1	1	1	1	1	2	1
Association/assembly rights	1	1	1	1	1	1	1	1
Freedom of expression	1	1	1	1	1	1	1	1
Independent judiciary	2	2	2	2	1	1	1	2
Civil rights	3	3	3	3	3	3	2	3

Malaysia

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	63	78	77	71	74	72	73	72
Free & fair elections	6	4	4	5	5	5	5	5
Association/assembly rights	5	4	4	4	5	5	5	5
Freedom of expression	6	4	4	5	5	5	6	5
Independent judiciary	5	4	4	5	5	5	5	5
Civil rights	6	5	5	6	6	6	7	6

Myanmar

Note: The outlook for Myanmar has changed radically since the military coup of February 2021

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	115	104	115	119	127	127	124	118
Free & fair elections	7	7	4	4	2	1	1	1
Association/assembly rights	4	5	4	4	2	1	1	1
Freedom of expression	4	5	5	5	1	1	1	1
Independent judiciary	3	3	3	2	1	1	1	1
Civil rights	2	3	2	1	1	1	1	1

Pakistan

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	102	98	100	110	111	104	104	94
Free & fair elections	6	6	6	6	6	6	4	4
Association/assembly rights	4	4	5	5	5	5	5	5
Freedom of expression	3	3	3	4	5	6	5	5
Independent judiciary	3	3	3	3	3	4	3	3
Civil rights	3	2	3	2	2	3	4	4

Philippines

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	68	50	40	40	49	62	57	40
Free & fair elections	7	7	7	7	7	6	6	7
Association/assembly rights	7	8	9	9	9	6	7	10
Freedom of expression	5	6	6	6	5	5	6	8
Independent judiciary	6	7	7	7	7	7	7	7
Civil rights	4	4	6	6	5	4	6	6

Thailand

	2020	2018	2016	2014	2012	2010	2008	2006
Ranking Democracy Status	115	110	110	75	82	69	75	42
Free & fair elections	1	1	1	6	6	6	2	7
Association/assembly rights	2	2	2	6	5	7	6	7
Freedom of expression	2	2	3	4	5	5	5	6
Independent judiciary	3	3	3	5	5	5	7	7
Civil rights	4	3	3	4	4	6	7	7

Civil Liberties

Freedom House rates people's access to political rights and civil liberties in 210 countries and territories through its annual Freedom in the World report.

	GLOBAL FREEDOMS*	Political rights	Civil liberties
Bangladesh	Partly free	15	24
Cambodia	Not free	5	19
India	Partly free	34	33
Indian Kashmir	Not free	7	20
Indonesia	Partly free	30	29
Laos	Not free	2	11
Pakistan	Partly free	15	22
Pakistani Kashmir	Not free	9	19
Philippines	Partly free	25	31
Malaysia	Partly free	21	30
Myanmar	Not free	13	15
Thailand	Not free	5	25

* Freedom House notes that Global freedom statuses are calculated on a weighted scale. See the methodology at <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology>.

	INTERNET FREEDOM*	Obstacles to access	Limits on content	Violation of user rights
Scores are based on a scale of 0 (least free) to 100 (most free)				
Bangladesh	Partly free	13	17	12
Cambodia	Partly free	12	18	13
India	Partly free	12	21	18
Indonesia	Partly free	14	18	17
Laos	Not included in the ranking			
Pakistan	Not free	5	14	7
Philippines	Partly free	16	26	22
Malaysia	Partly free	17	21	20
Myanmar	Not free	7	13	11
Thailand	Not free	16	12	7

* Scores are based on a scale of 0 (least free) to 100 (most free)

Right of Assembly

The Right of Peaceful Assembly website,¹⁰ managed by Centre for Human Rights of the University of Pretoria, analysis national law and practice governing the right of peaceful assembly in 199 countries. It summarises the situation in the ten countries in this report as follows:

- Bangladesh should refrain from excessive restrictions on the right of peaceful assembly and amend its national legislation to prohibit the use of firearms to disperse an unauthorised assembly.¹¹
- Cambodia should take the necessary measures to respect and protect the right of peaceful assembly in practice.¹²
- India has been increasingly restricting enjoyment of the right of peaceful assembly. Excessive force is used to disperse protests in Jammu and Kashmir.¹³
- The right of peaceful assembly has been widely respected in Indonesia but protests tend to be forcibly dispersed by the police, increasingly with the use of excessive force.¹⁴
- The right of peaceful assembly is not generally respected in Laos. The Penal Code is used to prohibit protests.¹⁵
- The right of peaceful assembly is not fully respected in Malaysia, particularly with respect to protests against the regime. Protests may be forcibly dispersed by the police.¹⁶
- Myanmar does not respect the right of peaceful assembly. A de jure notification regime under national law is treated by the authorities as an authorisation regime. Unarmed protesters continued to be murdered by the regime as of May 2021.¹⁷
- The right of peaceful assembly in Pakistan is restricted. Police may forcibly disperse protests.¹⁸
- The right of peaceful assembly is widely respected in the Philippines although the police may forcibly disperse protests and COVID-19 restrictions were applied inconsistently.¹⁹
- The right of peaceful assembly is not respected in practice in Thailand. Protests tend to be forcibly dispersed by the police, often using excessive force.²⁰

10 <https://www.rightofassembly.info/>

11 <https://www.rightofassembly.info/country/bangladesh>

12 <https://www.rightofassembly.info/country/cambodia>

13 <https://www.rightofassembly.info/country/india> (last updated: 08-05-2021; accessed: 11-05-2021)

14 <https://www.rightofassembly.info/country/indonesia> (last updated: 08-05-2021; accessed: 11-05-2021)

15 <https://www.rightofassembly.info/country/laos> (last updated: 10-05-2021; accessed: 11-05-2021)

16 <https://www.rightofassembly.info/country/malaysia> (last updated: 10-05-2021; accessed: 11-05-2021)

17 <https://www.rightofassembly.info/country/myanmar> (last updated: 10-05-2021; accessed: 11-05-2021)

18 <https://www.rightofassembly.info/country/pakistan> (last updated: 10-05-2021; accessed: 11-05-2021)

19 <https://www.rightofassembly.info/country/philippines> (last updated: 10-05-2021; accessed: 11-05-2021)

20 <https://www.rightofassembly.info/country/thailand> (last updated: 10-05-2021; accessed: 11-05-2021)

Freedom of the Press

All of these countries are also slipping in terms of freedom of the press. The World Press Freedom Index, compiled by Reporters Without Borders, signals that in 73% of the 180 countries ranked by the organization, press freedom is completely blocked or seriously impeded. This includes the ten countries that are the focus of this report. They all sit in the bottom rankings of the 2021 World Press Freedom Index:²¹

	2021	2020	2019	2018	2017
Indonesia	113	119	124	124	124
Malaysia	119	101	123	145	144
Thailand	137	140	136	140	142
Philippines	138	136	134	133	127
Myanmar	140	139	138	137	131
India	142	142	140	138	136
Cambodia	144	144	143	142	132
Pakistan	145	145	142	139	139
Bangladesh	152	151	150	146	146
Laos	172	172	171	170	170

Malaysia has the questionable honour of being “the country that fell the furthest” in 2021, dropping 18 places in the index, where it now sits in 119th place.²² Pakistan, the Philippines and Bangladesh rank among the world’s deadliest countries for journalists and bloggers²³ and Laos ranks as an information “black hole”²⁴ with no room for freedom of expression or independent reporting whatsoever. Only Indonesia and Thailand show slight improvement. However, in all of the countries under scrutiny here, journalists are struggling to investigate and report sensitive stories.

21 <https://rsf.org/en/ranking>

22 <https://rsf.org/en/2021-world-press-freedom-index-journalism-vaccine-against-disinformation-blocked-more-130-countries>

23 <https://rsf.org/en/asia-pacific>

24 Ibid.

3. COUNTRY REPORTS

These indices offer an overview across a range of aspects relating to civic space and the right to dissent. However, dry statistics do not tell the whole story. The country reports in this report were compiled by people from the countries concerned that face the day-to-day repression and help to share the lived realities of the majority of citizens in their countries. They share this vital 'detail' from an inside perspective. They also offer stories of resistance and pointers on the scope for change.

The report concludes with essential recommendations for what actions could and should be taken at the international level to persuade the governments of these focus countries to move towards open debate, full political participation and consensual policymaking considering the interests, wants and needs of all segments of in society.

The authors have all, by necessity, requested to remain anonymous for security reasons. They are all well embedded in the struggles for the Right to Dissent in their respective countries.

This report is published at the occasion of the 13th Asia Europe People's Forum. We see this report as a living document and plan to build on these selected case studies and, in due course, also include country cases from Europe and other countries with movements and organisations who are part of the Asian Europe People's Forum.

3.1 The Right to Dissent – Country Report: BANGLADESH

Election manipulation and a dangerous climate for human rights defenders

On 26 March 2021, Bangladesh celebrated the golden jubilee of its independence. The country gained its independence from Pakistan on 16 December 1971, after a bloody nine-month liberation war that left 3 million people dead at the hands of the Pakistani military forces.

The country's road to democracy has been bumpy. When, in 1975, Bangabandhu Sheikh Mujibur Rahman, the leader of the liberation war, was brutally killed, the country came under the direct or indirect control of military dictators. But when the military dictator H. M Ershad was toppled in a mass uprising in 1990, Bangladesh embarked on a period of democratic transition, with periodic elections called by a non-party caretaker government. However, in 2006, the military again intervened in politics and the democratic journey was stalled. A military-backed civilian government took over, calling elections every five years from 2009. However, these were heavily rigged and always won by the same party, which has thus managed to stay in power for over 12 consecutive years. The process has been so controversial, that the people became disillusioned and the main opposition parties refrained from participating in the last couple of elections.

Formally, the Right to Dissent is recognized and safeguarded in the Constitution of Bangladesh. Article 39²⁵ of the Constitution guarantees every citizen to freedom of speech and expression as well as freedom of press, subject to reasonable restriction imposed by the law in the matters of interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. However, in reality, these rights are neither respected nor promoted by the state. There are laws in place that criminalise many forms of freedom of expression, particularly those legitimately practiced by human rights defenders, and impose heavy fines and prison sentences for legitimate forms of dissent.

Human Rights Defenders (HRDs) in Bangladesh face judicial harassment, arbitrary arrest, fabricated charges, abduction, physical attacks, torture and extrajudicial killings. Local extremist groups pledging allegiance to Al-Qaeda in the Indian Subcontinent often claimed responsibility for attacks targeting HRDs writing about women's rights, indigenous peoples' rights, freedom of religion and other human rights issues. However, the government proved disinclined to address the protection needs of HRDs. The authorities have so far failed to properly investigate most of the murders and impunity remains a serious concern.

²⁵ <http://bdlaws.minlaw.gov.bd/act-367/section-24587.html>

Muzzling the right to dissent

The Bangladeshi authorities have been using a combination of laws to curtail free speech, harassing critical journalists and censoring independent media outlets. Two laws in particular, the now-defunct Information Communication and Technology (ICT) Act, and its successor, the Digital Security Act, have been most frequently used to bring charges against online critics, activists and other dissenting voices. The Sedition Act and Official Secrets Act are also in use.

In many countries and similar to anti-terror laws, digital security or information technology legislation is seen as an opportunity to criminalize political opponents or other critical voices. For the Bangladeshi government, in the aftermath of a poorly run and ineffective anti-terror campaign, and in the face of increasing political opposition and criticism from civil society, the opportunity to legislate away freedom of expression and legitimate forms of dissent could not be missed. Passed in September 2018, the Digital Security Act (DSA) is overly broad and vague, and lacks legal certainty and precision – a perfect cocktail for abuse and for a free rein in selective and targeted application of the law. Application of the Act has been a serious impediment to the creation of a safe and enabling environment for freedom of expression and human rights defence in the country. It gives the government absolute power to initiate investigations into anyone whose activities are considered a ‘threat’ by giving law enforcement agencies power to arrest without a warrant, simply on suspicion that a crime has been committed through the use of social media. In addition, the Act allows the Government to order the removal and blocking of any information or data on the internet it deems necessary, making it a perfect instrument to silence those critical of its policies or sharing information on human rights violations in the country. It allows for invasive forms of surveillance by permitting authorities to ask service providers and other intermediaries for data without requiring a court-obtained warrant.

The DSA was passed in 2018 amid widespread criticism and condemnation from human rights defenders, students, activists, civil society organisations, and the international community. The Act has since been actively used as a tool to stifle and punish HRDs and other critical voices in Bangladesh. Since its enactment in 2018, over two thousand people have been charged under its draconian provisions. In 2020, in the context of the COVID-19, arrests under the Act

have markedly increased: as many as 457 people of all professions were prosecuted and arrested in 198 cases. Of this figure, 75 were journalists, while others included teachers, students, folk musicians and cultural artists among others. In comparison, in 2019, only 63 people were prosecuted under the DSA.²⁶ This shows a worrying trend of suppression of the legitimate defence of human rights online in the country.

DSA cases are politically motivated

The DSA provisions are very convenient for harassment and muzzling dissenting voices, as anyone from any corner of the country can file a case against a content’s writer and publisher.

A detailed analysis of the 197 cases of 2020 by the leading Bengaly daily newspaper Prothom Alo found that most of the cases were filed for “making adverse remarks” (kotukti), “defamation”, “sharing distorted images”, “spreading rumours” and “conspiracy against the state”. 80 percent of these cases were brought by leaders or activists of the ruling party or the police: of the 197 cases, 88 were filed by Awami League MPs, union council chairs and activists of youth, student and volunteer wings of the ruling party. A further 70 were filed by the police.

Criminal defamation is punishable by imprisonment of up to two years and/or a fine under the provisions of the Penal Code 1860. It is common practice to bring multiple suits for a single alleged defamatory incident. For example, in 2016, the editor of the leading English-language newspaper the Daily Star, Mahfuz Anam, was slammed with 83 separate cases, including 66 cases of criminal defamation relating to a single matter.²⁷

The experiences of HRDs who have been targeted under the ICT Act and the DSA indicate that in many instances the cases filed against them were initiated by individuals or bodies attempting to demonstrate their loyalty to the government and thus gain political capital. There have also been many cases filed by certain individuals as instructed by law enforcement agencies to target the leaders of social movements.

26 <https://www.thedailystar.net/frontpage/news/digital-security-act-misused-muzzle-dissent-2048837>

27 <https://www.thedailystar.net/frontpage/more-cases-summons-against-mahfuz-anam-576499>

Lack of institutional protection

Most alarming is the trend that the police will not refuse to take such cases when the plaintiff is in their -- or the ruling coalition's -- good books. Serious procedural flaws in dealing with DSA cases have emerged, where the accused was denied bail for long time or even died in custody allegedly due to torture and ill treatment. In most DSA cases, the accused are remanded in custody for several days to be interrogated and tortured. As under the DSA an offence only occurs when content has already been published, legal practitioners question the need for further interrogation altogether.

First Information Reports (FIRs) filed with the police are the first step towards any criminal proceeding. Falsification of FIRs or submission of template FIRs is common practise. For example, in the case of HRD Shahidul Alam it was falsely maintained that he said in al Jazeera interview that "the government does not have any mandate to continue" and "the present government must be overthrown."

The judiciary has so far failed to put a check on the abuse of the act. In the last seven years, 2,682 cases were filed at the Dhaka Cyber Tribunal—the only competent court to try cases under the Information Communication Technology (ICT Act) and the DSA. Up to September 2020, 990 of these cases had been disposed. Although close to half of these cases were ultimately dropped, pending this decision those accused remained in remand custody, subjected to ill treatment and torture. In many cases, the accused were exonerated as there was not enough evidence to support the charges. The state was only able to prove the charges in a mere 25 cases. Of these, 24 were filed under the ICT Act and only one under the DSA.

The failure of the justice system is clearly illustrated by the case of the writer Mustaq who died in custody after being held for nine months without trial. He was denied bail 7 times, while completion of the investigation kept being delayed with disregard for the prescribed legal procedures. The cartoonist Kishore, who was arrested alongside Mushtaq, was denied bail on six occasions. When he finally managed to obtain bail from the High Court, he had been held without trial for 270 days. In addition, there are numerous instances where DSA charges were only brought after people had already been arbitrarily arrested. Human Rights Defender Didar Bhuiin, to name but one, was picked up around 6 pm on 5 May 2020.

The charges against him were not filed until 11 pm on that same day and only communicated to him and 11 co-defendants when they appeared in court the next day.

Pressure on the press

Journalists are a prime target under the DSA. Members of the press have been charged for reporting on theft of relief goods, questioning Covid-19 measures, criticizing local MPs and public representatives, and land/property grabbing by local elites. In 2020, there were 48 cases against journalists for allegedly publishing fake news about MPs, public representatives and ruling party activists; 40 for objectionable posts against Bangabandhu (Bangladesh' first president, known as the 'Father of the Nation'), the current president, the prime minister and other key state officials; and 30 for passing adverse remarks against religion, hurting religious sentiments and spreading communal hatred.

Silencing activists

Human Rights Defenders in Bangladesh are operating in an increasingly repressive climate. CSO meetings, both indoors and outdoors, are heavily surveilled. The intelligence services take photos and videos and collect the names of organisers and participants. There is random online surveillance, phones are tapped, and content and telephone conversations are made public in purposefully manipulative ways.

Student or youth wings of the ruling party regularly attack protest rallies or campaigns, while the police act as bystanders or collude with these non-state goons. Despite photo and video evidence of such attacks, the perpetrators of violence against HRDs are not prosecuted.

Female Human Rights Defenders have been particularly vulnerable to harassment: many of them have been sexually assaulted.

Under the looming threat of arbitrary prosecution, Human Rights Defenders working on a wide variety of rights issues, including indigenous peoples' rights, economic social and cultural rights, women's rights, migrant rights, labour rights, LGBTI rights, freedom of expression, police brutality, extra-judicial killings and disappearances, and sexual and reproductive rights, have been decreasing their public activism and online writings in their area of expertise.

Casting suspicion on foreign-funded NGOs

In Bangladesh, government consultations with civil society are rare. The National Human Rights Commission (NHRCB) does not have any mechanism to facilitate dialogue between HRDs and the authorities. Like the government, the NHRCB only engages with selected and politically acceptable CSOs. Critical HRDs and media are blacklisted and not invited to any consultative events. This creates tension among CSOs and weakens the civil society movement in Bangladesh.

Foreign funded and independently operating CSOs are under much pressure. The Foreign Donations (Voluntary Activities) Regulation Bill (2016) restricts their scope of action. This Bill criminalises any foreign-funded NGO allegedly engaged in 'anti-state activities and finances extremism and terror activities', or makes "derogatory comments about the Constitution and constitutional institutions" of Bangladesh.

Any foreign-funded NGO must register with the NGO Affairs Bureau (NGOAB), which is directly supervised by the Prime Minister's Office.

They are required to submit reports and seek approval for all their activities before receiving a foreign grant. Their activities continue to be inspected, monitored and assessed. Also, the hiring of any foreign specialists or foreign advisors rests entirely on the approval of the NGOAB. The Bureau has the authority to cancel or withhold the legal registration of foreign-funded NGOs or ban their activities when suspected of offences under the Foreign Donations Act.

Call on the government: Embrace and protect dissenting voices!

Bangladesh owes its very emergence as an independent country to the contribution of dissenting voices who waged a prolonged campaign and struggle against the autocratic rulers of Pakistan. While both the country and the government in power celebrate the spirit of these freedom fighters, they themselves are showing increasing intolerance against their own critics.

Hence the government should:

1. Respect peoples' freedom of speech and expression;
2. Ensure an enabling environment where everyone can exercise their legitimate right to dissent;
3. Ensure that human rights defenders are permitted to carry out their peaceful and legitimate activities in defence of the rights of others, including through the exercise of the right to freedom of expression.
4. Review all the laws used to curb dissenting voices and bring them in line with the International Convention on Civil and Political Rights, to which Bangladesh is a party;
5. Ensure that national laws are sufficiently precise to avoid they can be used to arbitrarily target human rights defenders or their work
6. Conduct full and independent investigations against the perpetrators of violence against public protestors and end their impunity;
7. Immediately release all those arbitrarily arrested and detained for peacefully expressing their opinion.

3.2 The Right to Dissent – Country Report: CAMBODIA

Social and political challenges, shrinking of civic space

After the fall of the Khmer Rouge in 1979 and the end of the civil war in 1991, a new Constitution was passed in 1993, to create a democratic state respectful of universal human rights norms.

Over the past few years, there has been an increase in the use of repressive tactics in Cambodia – judicial harassment, arbitrary arrest and detention, threats and violence – to silence critics, including civil society, activists, journalist, and political opponents. The space for exercising fundamental rights to dissent and freedoms, including freedom of association, expression and assembly, has diminished, facilitated by the arbitrary application of laws governing these freedoms and the enactment of legislative amendments which further curtail them.

The Cambodian Center for Human Rights (CCHR) flags increasing restrictions on the freedom of association and the freedom of expression.²⁸ These fundamental rights are being seriously undermined by a combination of recent legal measures and initiatives by the government. The Covid-19 pandemic has been used to enact a state of emergency law that gives the authorities almost unfettered powers to further restrict fundamental freedoms. Human Rights Watch has issued warnings about the authorities using “inflammatory language against vulnerable groups and foreigners in the context of the coronavirus pandemic”, making them vulnerable to discrimination and violence.²⁹ UN human rights experts have called on Cambodia to review their approach to the Covid pandemic, expressing concerns that fundamental human rights are being undermined.³⁰

The current unprecedentedly wide-ranging and severe crackdown on civil liberties and human rights started in 2017. Opposition parties were hounded and opposition leaders were imprisoned or fled the country.³¹ Human rights defenders, journalists and activists continue

to face harassment and intimidation. Critics say democracy is being seriously derailed and the country is rapidly backsliding back into authoritarian rule. The government is currently openly using the Covid pandemic as a pretext to move the country towards totalitarian dictatorship.³²

Meanwhile, Cambodia continues to face huge civil, political and social challenges. Around 4.5 million people remain on the brink of poverty and highly vulnerable to economic and other external shocks³³. Key institutions, such as the judiciary and the military, are dominated by the executive which is largely controlled by the ruling party. The Hun Sen government is characterised by cronyism and corruption.³⁴ Cambodia has enacted policies to successfully attract foreign investment, in particular agriculture, garments, hydropower, infrastructure, mining and tourism. Many of the main companies in these sectors are controlled by family, friends and allies of prime minister Hun Sen. Therefore, it should come as no surprise that while the government has used the Covid crisis to introduce new laws and measures that curtail public and civic space, it has continued to generously facilitate trade and investment, particularly in the textile, garment and footwear industry, by implementing policy measures designed to mitigate the impact of Covid-19 on these sectors.³⁵ In 2016, Global Witness warned that ‘the Hun family are major gatekeepers to the influx of foreign capital into Cambodia , and the litany of abuses they are linked to pose significant legal, financial and reputational risk to companies and investors.’³⁶ Global Witness highlights the regime is linked to major international brands, including Apple, Visa, Procter & Gamble, Nestlé and Honda. These companies indirectly profit from cheap labour under a regime ‘that kills, intimidates or locks up its critics’.³⁷

32 <https://www.theguardian.com/global-development/2021/apr/19/cambodia-accused-of-using-covid-to-edge-towards-totalitarian-dictatorship>

33 <https://www.worldbank.org/en/country/cambodia/overview>, updated and accessed on April 14, 2021.

34 Cambodia is ranked 160 out of 179 countries in the Transparency International 2020 Corruption Perception Index. Corruption Perceptions Index 2020 for New Zealand - Transparency.org, accessed on April 14, 2021.

35 The government has, inter alia, provided tax holidays; facilitated the import of raw materials, accessories, and parts; waved employers' mandatory payments into the national social security fund; and implemented an electricity exemption and promotion plan.

36 <https://www.globalwitness.org/en/reports/hostile-takeover/>

37 Ibid.

28 Cambodian Center for Human Rights' fourth annual report on Cambodia Fundamental Freedoms Monitor: <https://cchrcambodia.org/admin/media/report/report/english/Fourth%20Annual%20Report%20of%20the%20Cambodia%20Fundamental%20Freedoms%20Monitor%202019-.pdf>

29 <https://www.hrw.org/news/2020/03/30/cambodia-fight-discrimination-amid-pandemic>

30 <https://cambodia.ohchr.org/en/news/un-experts-urge-cambodia-review-their-approach-covid-19>

31 <https://time.com/4999905/cambodia-hun-sen-election-crackdown/>

Repressive laws

In February 2018, five articles of the constitution were amended to include provisions³⁸ that potentially restrict the protection afforded to fundamental freedoms. In particular, Article 42 (2) New and 49 (2) New require political parties and every Khmer citizen respectively to uphold the national interest and require that they shall not conduct any activities which directly or indirectly affect the interests of the Kingdom of Cambodia and of Khmer citizens. The wording used is broad and vague, and it is not clear what legitimate aim is being protected.

Additionally, the Law on Amendment of Criminal Code on Lèse-majesté (Article 437)³⁹ stipulates that “insulting⁴⁰ the King will be subjected to one to five years imprisonment and a fine between US \$500 to US \$2,500”. The provision references Article 42 of the Criminal Code, which means that legal entities may be held criminally responsible for offences committed on their behalf by their organs or representatives⁴¹. Article 305 and 307 of the Criminal Code define “defamation⁴²” and “public insult⁴³” through public speech, writing or drawing, or audio-visual intended for public as punishable by a fine. Amended in 2010, Articles 494 and 495 define “criminal incitement” or “incitement to commit a felony or to disturb social security” is punishable by imprisonment from six months to five years, and fines⁴⁴.

The Press Law Articles 11 to 16⁴⁵ prohibit and punish with fines, and possible criminal liability under the Criminal Code, the publication and reproduction of any materials or any information that may affect the public order, national security and political stability.

The outbreak of Covid-19 has further exacerbated the climate of repression. In March 2020, the

government approved the draft of a state of emergency law, which was signed into law on April 29 by the acting Head of State, who is also the President of the Senate. Article 7-10 stipulate punishment with fines and a jail sentence from one month to ten years for obstructing or disobeying emergency measures⁴⁶. Moreover, the Law on Preventive Measures Against the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases, which was promulgated on 11 March 2021, allows 20-year prison terms and fines up to US \$5,000 for those convicted of violations. It also gives the government the power to ban or restrict any gathering or demonstration. Cambodia’s restrictive approach to the coronavirus crisis has led UN human rights experts to express their concern that the “harsh new legal and administrative measures [will] undermine fundamental human rights, including freedom of movement, peaceful assembly and the right to work.”⁴⁷

Silencing critics

In 2017, based on their previous and recent engagement in political parties, strikes and demonstrations on critical issues such as land tenure, evictions, environment and forest protection, and a minimum wage campaign, the government has cast suspicion on individuals, community groups and civil society institutions by labelling them as being part of a “Colour Revolution”. The Cambodian government presented this as a foreign-backed conspiracy to topple the legitimate and elected government and used it as a pretext to forcibly dissolve the CNRP (Cambodia National Rescue Party), Cambodia’s main opposition party.⁴⁸ The CNRP was running for the 2017 elections on a programme advocating for free and fair elections and a strengthening of freedom and human rights. The opposition party leader was arrested on accusations of treason, which led to the dissolution of the party and 118 senior officials⁴⁹ being banned from political activities for five years. Several CNRP politicians

38 For details, see Draft Penal Code Amendment related to Lèse-majesté and Constitutional Amendments Promulgated (freshnewsasia.com)

39 <https://www.hrw.org/news/2018/02/21/cambodia-reject-draft-amendments-constitution-and-criminal-code>

40 “Insulting” is defined as “any speeches, gestures, writings, paintings or objects that are affecting the dignity of individual person(s)”, and it applies to both individuals and legal entities.

41 Penal Code of the Kingdom of Cambodia, Article 42. http://www.sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf

42 Any allegation or charge made in bad faith which tends to injure the honour or reputation of a person or an institution.

43 Outrageous expression, term of contempt or any invective that does not involve any imputation of fact, through public speech.

44 <https://www.hrw.org/news/2010/12/23/cambodia-new-penal-code-undercuts-free-speech>

45 [https://sithi.org/admin/upload/law/Law%20on%20the%20Press%20\(1995\).ENG.pdf](https://sithi.org/admin/upload/law/Law%20on%20the%20Press%20(1995).ENG.pdf)

46 <https://www.interior.gov.kh/request/doc/url?path=1588269961.pdf>

47 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26985&LangID=E>

48 The Cambodian government published a video to this extent on YouTube: <https://www.youtube.com/watch?v=3PU2RHBEQK8>. The government also published 132-page publication on the threat of the Cambodian colour revolution, making the case for the disbanding of the Cambodia National Rescue Party: <https://www.phnompenhpost.com/national-politics/government-unit-publishes-132-page-treatise-threat-colour-revolution>

49 <https://www.phnompenhpost.com/national-post-depth-politics/one-year-cnrp-fate-unclear>

fled the country, saying the ban marked the end of democracy in Cambodia.⁵⁰

Fifteen radio channels considered critical of the government were closed down.⁵¹ After publishing what was to be its last edition under the headline of “Descent into Outright Dictatorship”, the international newspaper The Cambodia Daily was shut down over failing to pay the huge tax bill it was slammed with.⁵²

In 2019, the government held around 90 people⁵³ in (pre-trial) detention on politically motivated charges. Over 147⁵⁴ court and police summonses were issued against CNRP members and supporters and six prominent union leaders were convicted⁵⁵ on charges of initiating intentional violence and causing damage.

The government has been using the current Covid-19 crisis to continue to silence critics. There has been significant pressure on the media and several activists⁵⁶ and individuals⁵⁷ have been arrested over allegations of spreading fake news about the Covid-19 situation and inciting social unrest. For example, a man in Kampong Cham province was arrested⁵⁸ for “incitement to commit felony and insult” and “obstruction to the implementation of the measure” under Article 11 of the Law on Preventive Measures Against the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases,⁵⁹ after posting a video criticising government leaders over the strict measures to contain the spread of Covid-19.

The Cambodian League for the Promotion and Defense of Human Rights (LICADHO) documented around 40 cases in 2020 of journalists and activists being arrested, who reported and advocated on the issues related to the environment, forests and land, and who are considered critical of the government and the

ruling party.⁶⁰ The majority of these arrests were based on the charge of incitement, including to commit a felony or provoke social unrest under Articles 494 and 495 of the Criminal Code. Those arrested were mostly young people: LICADHO calls specific attention to this age group falling victim to violent arrests and facing the prospect of being locked away behind bars for many years for expressing their dissatisfaction with the government on social media and advocating for a freer and fairer society. LICADHO condemns this as ‘an attempt to stamp out the dream that tomorrow could be better than today’.⁶¹

Arbitrary arrests and unfair trials

In the second half of 2020, nineteen activists, artist and human rights defenders were arrested for peacefully exercising their constitutional rights to free expression and assembly.⁶² These arrests, reported by human rights organisations and media, were largely made by municipal or district/commune police. However, in some cases, the military police were involved. The arrests were mostly made without a warrant.⁶³ The authorities often held the arrested persons for an extended period of time before charging them.⁶⁴ Some of the arrestees were remanded to pre-trial detention. Cambodia has a bail system, but many prisoners, especially those without legal representation, have no opportunity to seek release on bail. Bail is routinely denied⁶⁵ by the authorities in politically sensitive cases.

The law requires police, prosecutors, and judges to investigate all complaints; however, in

50 <https://www.bbc.com/news/world-asia-42006828>

51 <https://www.phnompenhpost.com/national/government-closes-15-radio-stations>

52 Cambodian paper shuts with ‘dictatorship’ parting shot | Reuters
53 <https://www.hrw.org/world-report/2020/country-chapters/cambodia#>

54 Ibid.

55 Ibid. The six union leaders were handed suspended prison sentences of between eight months and four-and-a-half years and a collective 35 million Cambodian riels (US\$8,600) compensation payment to civil parties.

56 <https://www.rfa.org/english/news/cambodia/vaccine-03152021183359.html>

57 <https://www.phnompenhpost.com/national/two-charged-spreading-inciting-information-covid>

58 <https://www.khmertimeskh.com/50838104/glass-cutter-arrested-for-insulting-c-19-initiatives/>

59 <https://www.phnompenhpost.com/national/law-covid-19-control-takes-effect>

60 https://www.licadho-cambodia.org/reports/files/23320201218_Human%20Rights%20Defenders%20Report%202018_2020_EN.pdf, page 25-30.

61 Ibid. p. 5.

62 A timeline of recently imprisoned human rights defenders in Cambodia can be found at: <https://www.licadho-cambodia.org/articles/20200922/169/index.html>

63 According to the criminal procedures law, the judicial police are supposed to operate under the Prosecutor General of the Court of Appeals. The law requires police to obtain a warrant from an investigating judge prior making an arrest, unless police apprehend a suspect while in the act of committing a crime.

64 The law allows police to take a person into custody and conduct an investigation for 48 hours, excluding weekends and government holidays, before they must file charges or release a suspect. In felony cases, police may detain a suspect for additional 24 hours with the approval of a prosecutor.

65 The four detained staff of ADHOC were denied bail twice by the court of appeal. For further information, please access the link <https://www.omct.org/en/resources/urgent-interventions/conviction-of-four-senior-staff-members-of-the-cambodian-human-rights-and-development-association-adhoc>

practice judges and prosecutors rarely conduct an independent investigation. Presiding judges usually pass verdicts based on written reports from the police and witness testimonies. In some cases, the witnesses were not even present in the court room and witness statements alone formed the basis for the court's decision.

In 2016, human rights defenders Lim Mony, Ny Sokha, Nay Vanda, Yi Soksan and Ny Chakrya – all senior members of the Cambodian Human Rights and Development Association (ADHOC), founded by a group of former political prisoners aiming to address the absence of basic rights and freedoms in Cambodia – were arrested on charges of bribery. They were accused of trying to cover up an alleged affair of the then acting vice-president of the Cambodia National Rescue Party. The five ADHOC members would spend one year and two months in pre-trial detention before the investigation into the allegations was completed. Their case went to trial in August 2018 and they were sentenced to five years, with their pre-trial detention considered as time served and the remainder of the term suspended. They were denied legal counsel and tried in absence of main witnesses. The UN recognized their detention as arbitrary and that their right to a fair trial was being violated.⁶⁶ The trumped-up case against them can only be read as judicial harassment and political persecution, instigated by their work in defence of human rights in Cambodia.⁶⁷

Ministries directly involved in curtailing dissent

Various government ministries take an active part in silencing critics and restricting basic freedoms. The Ministry of Information revoked several licences of media outlets and journalism websites,⁶⁸ even though they had not been charged with any crime. Similarly, the Ministry of Interior used the Law on Associations and Non-Governmental Organisations, enacted in July 2015, to label civil society groups as 'unauthorised organisations'. The law criminalises unregistered groups and networks and makes registration dependent on a complex bureaucratic process.

Pressure on the press

The government has cracked down hard on independent media reporting. In 2020, 57 NGOs

66 <https://www.refworld.org/docid/5857be984.html>

67 For more details, see: <https://www.frontlinedefenders.org/en/case/five-adhoc-members-detained>

68 <https://www.licadho-cambodia.org/pressrelease.php?perm=452>

expressed their concern about journalists being targeted with fabricated incitement and defamation charges over their reporting and allegations of espionage and collaborating with foreign governments. The NGO statement highlights several cases of persecution of journalists. A particularly outrageous case was the 18-months prison sentence for inciting chaos that was handed to Sovann Rithy, the director of online news outlet TVFB. Rithy's crime? Publication of a direct quote from prime minister Hun Sen about the

economic impact of the Covid pandemic.⁶⁹ On the whole, the Covid crisis has been used to justify a further curtailment of the press on the pretext of the need to protect public order.

Repression of trade union rights

The International Trade Union Confederation (ITUC) slams the prosecution of trade unionist in Cambodia. The ITUC calls on Cambodia to stop silencing trade unions and labour protests. Recently, several union leaders were arrested in the country, including Rong Chhun, the president of the Cambodian Confederation of Unions (CCU) and Sor Saknika, president of the Cambodian Informal Labourers Association (CILA).⁷⁰ According to Human Rights Watch, the arrest without a warrant of Rong Chhun appears linked to his advocacy for land rights of villagers living on the Cambodia-Vietnam border.⁷¹

Activists and NGOs under threat

Activists speaking out against environmental destruction and natural resources exploitation are at risk in Cambodia: Recently, five members of the environmental group Mother Nature Cambodia received long prison sentences for protesting government plans to fill and privatize a major lake in the capital. Amnesty International recognises the five as prisoners of conscience, stating that "Mother Nature Cambodia activists have faced a litany of repression in recent years, with many activists arbitrarily charged and imprisoned [...] on baseless criminal charges of "incitement". The group has been accused of "causing chaos in society" and characterized as "illegal" by Cambodia's Ministry of Interior because it is not

69 <https://www.civicus.org/index.php/media-resources/news/4719-cambodia-s-government-should-stop-silencing-journalists-media-outlets>

70 <https://www.ituc-csi.org/cambodia-stop-repressing-unions>

71 <https://www.hrw.org/news/2020/08/04/cambodia-free-prominent-trade-union-leader>

registered under Cambodia's notorious NGO Law.⁷² This law, enacted in 2015, requires NGOs to report on their activities and finances on the penalty fines and restrictions. Organisations can be disbanded if their actions "jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of Cambodian society."⁷³ In January 2020, over 1,000 farmers and grassroots organisations from all over Cambodia came together for an 'ancient seeds' festival, initiated by, among others, the Cambodian Grassroots Cross-sector Network (CGCN).⁷⁴ A permit for this festival was granted only after a full month long of negotiations between the Siem Reap Land Community, well-known for its land tenure struggles, and the provincial authorities, including the provincial governor, commune and district authorities, cultural and religious departments and the police. However, despite official permission, some terms and language usage related to agriculture were restricted and banners were not allowed to be put up at the event.

Shrinking space for indigenous peoples

Cambodia is home to 24 different Indigenous Peoples, who constitute around 3% of the national population and live mainly in the highlands in the north-east of the country. Their territories cover approximately 25% of the national territory. The International Work Group for Indigenous Affairs (IWGIA) - a global human rights organisation dedicated to promoting, protecting and defending Indigenous Peoples' rights - writes that, driven by ongoing state and transnational corporate ventures for resource extraction (mainly mining, timber and agribusiness), "Cambodia's Indigenous Peoples continue to face discrimination and forced displacement from their lands, which is extinguishing them as distinct groups".⁷⁵ In Cambodia's restrictive climate, geared towards

72 <https://www.amnesty.org/en/latest/news/2021/05/cambodia-outrageous-conviction-of-five-environmental-activists-must-be-overturned/>

73 <https://www.loc.gov/law/foreign-news/article/cambodia-law-on-ngos-passed/>

74 The Cambodian Grassroots Cross Sector Network (CGCN) is comprised of a number of community networks, associations and groups who have been engaging together since mid-2011. CGCN are land activists; forestry activists; anti-eviction activists; farmers; fisher-folk; indigenous people; labour activists; women's rights activists; sex workers; LGBTQ; youth; artists and performers; and more. The Network engaged in learning and action initiatives shaped and driven by the needs of the affected communities and networks.

75 <https://iwgia.org/en/>

the protection of big business, there is little room for indigenous people to protest human rights violations and land-grabs by corporations.

Stories of resistance

Family members, opposition leaders and community networks have continued to protest against the arrests and unfair trials of the detainees at the courts and foreign embassies. Civil society organisations and unions also continue to push for the public space to organise, exercise rights and voice their needs and demands.

In 2019, around 500 participants from different backgrounds, including street vendors, sex and entertainment workers, domestic workers, women organisations, labour and trade unions came together to celebrate International Women's Day on March 8th at the National Olympic stadium.⁷⁶ On May 1st, thousands of workers and unions⁷⁷ and civil society organisations celebrated International Labour Day at Freedom Park and at the park in front of the Council for the Development of Cambodia (CDC) in Phnom Penh city and in different parts of the country.

Such events are always heavily guarded by the security forces, if they are not banned by the authorities; however, activists and communities continue to advocate for the civic space and freedom of expression, submitting their demands and statements to the relevant ministries and policy makers.

Call on the government to expand civic space and uphold basic freedoms

People's struggles for rights and freedoms continue to prevail amid the difficult situation and restriction of the legal environment. A number of collective statements issued by organisations and communities working on human, labour and resources rights are calling on the government to repeal and reform all restrictive legislation⁷⁸ and to drop the charges⁷⁹ and end the crackdown against activists.⁸⁰

76 https://www.licadho-cambodia.org/album/view_photo.php?cat=80

77 <https://www.phnompenhpost.com/national/may-day-marches-not-allowed>

78 https://cchrcambodia.org/media/files/press_release/688_jsccforodattcaccef_en.pdf

79 Joint statement on "End Criminalisation of Unionists" https://cchrcambodia.org/media/files/press_release/705_jsulcfe_en.pdf

80 Statement on "Release Imprisoned Activist and End Crackdown Against Young Cambodians" <https://www.licadho-cambodia.org/pressrelease.php?perm=464>

The main calls include for the government of Cambodia to

- Abide by their obligations under the Cambodian Constitution and international human rights law and ensure the rights of the Cambodian people to express legitimate criticism and peacefully advocate for themselves, their families and their communities;
- Repeal and reform repressive laws and to cease the use of incitement charges as a weapon to silence civil debate and strangle civic engagement;
- Protect and promote independent newspapers, radio stations, CSOs and political parties in the interest of ensuring peaceful dissent, pluralism, and open political debate as a democratic state;
- Enable workers to exercise their rights to freedom of association and collective bargaining, allow independent trade unions to freely operate in the interest of their members and stop criminalising legitimate union activity;
- End the arbitrary arrest and harassment of human rights defenders and release all human rights defenders locked up for exercising their fundamental rights.

3.3 The Right to Dissent – Country Report: INDIA

Hindu nationalism and a new architecture of authoritarianism

India today is not what India was before 2014, with all its warts, flaws, shortcomings and genuine critiques. The right-wing Hindu nationalists are at the helm of the central government with a brute majority in the legislature, in a majority of states and most public institutions; with corporate support and a largely non critical media, mindful to echo government speech. In other words, the Right has hegemony, contested primarily by the margins that include minorities, alternate media and voices amongst intellectuals, select journalists and several disparate groups.⁸¹ The right-wing nationalist agenda is to weaponize Hindu religion (promoting Hindutva- a 'fundamentalist' political/ideological version that many do not believe in⁸²), replace secular framing, centralize the quasi-federal structures, legislate/ implement citizenship laws that discriminate against Muslim minorities, hasten privatization and neoliberal reforms and unify a naturally plural society. These changes have led to protests, social unrest and critique. To curb this critique, the rights to freedom of speech, expression and peaceful public assembly are witnessing serious curbs. Criticism is cast as defamation at best and as sedition at the other end, with witch-hunts, surveillance, censorship, stigmatisation as 'anti-national', and othering in between. All forms of political (mass) protests and assembly are restricted through various legal processes. The right to unionise for labour, students and others are restricted through laws and practice. There is a sense of deep fear amongst minorities and

81 A brief explanation of what hegemony implies might be appropriate. It means two things.

A. That is to say, hegemony means dominance or rule by consent (which is organised) and coercion (through the use of threat and actual physical force). The first is the 'positive' side of what needs to be done and the second is the 'negative' side of what needs to be done.

B. Securing «consent» here means establishing your kind of, what Gramsci called, a «national-popular will». This is required because this is what helps to both mask the inescapable conflicts of interest and tensions between different social groups including classes and castes and to politically unify across these social, economic and cultural divides. Constructing a "national-popular will" means constructing a certain kind of nationalist discourse and getting it widely and deeply accepted. So it is neither a coincidence nor an accident that everywhere the form taken by the rise of rightwing authoritarian populisms, whether from above or below, is that they are Authoritarian Nationalisms.

82 <https://www.asianstudies.org/publications/eaa/archives/on-the-difference-between-hinduism-and-hindutva/>

non-conformists, in particular because a public culture of violence is acceptable to the regime.⁸³

Independent India, which adopted a democratic, federal, secular constitution and practice from 1947, was for decades surrounded by Asian countries that witnessed military dictatorships and authoritarian regimes. The new and fragile Indian democracy held out as democratic institutions were built, but with many flaws and setbacks. Minorities, the poor and lower castes were oppressed, often attacked and excluded. Armed conflicts and secession movements from Kashmir and the Northeast Indian borderlands, Maoists conflicts and cross border terrorism were dealt with through growing militarism. However, dissent and criticism was largely tolerated, except during the national emergency 1975-1977 and sectoral use anti-terror laws. Neoliberalism and globalisation adopted in the 1990s increased inequalities and polarization. The right-wing solution was to blame and target 'others', based on religious identity. This has resulted in support for conservative ideals and religiosity, and a strong backlash against minorities, feminist women, liberal and organic intellectuals, and traditional elites. India is moving towards a new architecture of authoritarianism and curbing dissent is at the heart of this transformation.

Constitutional rights trampled

Freedom of expression and the right to peaceful public assembly are guaranteed by the Indian Constitution. However, those who exercise these rights to criticise the government, face the risk of being charged under India's sedition law (Section 124A of the Indian Penal Code-IPC), that dates back to colonial times. According to legal watchdog Article 14, since Prime Minister Modi came to power in 2014 there has been a marked rise in sedition charges being brought against critics of the government, including opposition politicians, students, journalists, authors and academics. According to Article 14, 65% of the nearly 11,000 individuals in 816 sedition cases registered since 2010 were charged after 2014. Likewise,

96% of sedition cases filed against 405 Indians for criticizing politicians and governments

83 The Nation at: The Modi Government Is a Regime of Low-Intensity Terror | The Nation
<https://www.thenation.com/article/world/thomas-blom-hansen-interview/>

were registered after 2014.⁸⁴ This amounts to a 28% increase in seditious cases every year since 2014, compared to the period between 2010-2014. Most of these cases are related to protest movements.⁸⁵

Under the seditious law, those “inciting hatred”, contempt or disaffection towards the government potentially face sentences up to life imprisonment. A caveat is that it must be proven that the accused is intending or causing violence, so many cases do not hold up in court and convictions are very few.⁸⁶ But that hasn’t stopped the authorities from misusing this law to hound and intimidate critics.

- Seditious charges were filed against 67 Kashmiri students for cheering a Pakistani cricketer in a Pakistan-India cricket match (2014);
- Students of Jawaharlal Nehru University were charged with being ‘anti-national’ after organizing a poetry reading event (2016);
- Two female human rights defenders were granted bail in relation to being charged for seditious, only to be charged under the UAPA. They have been jailed for over 300 days, while evidence is still being collected by the police.⁸⁷

Charges under acts like the one dealing with incitement of hatred between communities (153A, IPC) or the Unlawful Activities (Prevention) Act (UAPA; 1967) are often added on to seditious charges. UAPA is criticized as a very broadly phrased anti-terrorist law that reverses the principle of ‘innocent until proven guilty’ and enables people being held without conviction, and as such has proved to be prone to arbitrary use against critics of the government. UAPA has been widely used against citizens criticizing chief ministers/the prime minister as well as against citizenship law protestors, environmental and tribal rights activists, cartoonists, journalists and so on. Between 2015-2019, 5,128 cases were lodged under UAPA.

84 149 people were charged with criticising the PM and 144 with criticising Uttar Pradesh’ chief minister Yogi Adityanath.

85 Kunal Purohit, ‘Our New Database shows a Rise in Seditious Cases in the Modi Era, Article 14, 2 February, 2021, available: <https://www.article-14.com/post/our-new-database-reveals-rise-in-seditious-cases-in-the-modi-era> Since May 2016, 245 cases of seditious have been filed by Assam Government alone. <https://thewire.in/rights/under-sonowal-government-245-seditious-cases-filed-in-assam>

86 <https://thediplomat.com/2021/03/indias-absurd-seditious-law-and-what-it-enables/>

87 See Report by Civicus at: <https://www.civicus.org/index.php/media-resources/news/4985-india-women-human-rights-defenders-still-in-pre-detention-after-300-days>

The Indian defamation law, falling under the arch of strategic law against public participation (SLAPP), is another instrument used to intimidate and silence a party from speaking publicly and fearlessly. The strategy is to bring exorbitant claims for damages and make allegations smearing and harassing activists and civil society with the aim to waste their time, exhaust their resources, and quash their morale by exerting psychological pressure. Defamation suits have been filed against alternate media sites,⁸⁸ women bringing claims of sexual harassment and opposition leaders alleging corruption.

Part of the playbook is deployment of the income tax authority, the Enforcement Directorate as a specialised financial investigation agency resorting under the Ministry of Finance - and the Central Bureau of Investigation to harass people that the regime is uncomfortable with. These agencies tend to knock on the doors of opposition leaders. Blatantly in the run up before the April 2021 state elections of Tamilnadu and West Bengal. Earlier in 2019 election, cases were launched against leaders in Maharashtra and others.⁸⁹

Politicisation of the police

In India, the police exercises the legal right to refuse permission for assemblies, public gatherings, protest marches, demonstrations and dharnas (sit-ins), on the grounds of crowd control and maintaining law and order. Under section 144 of the Indian Penal Code, such assemblies can be declared illegal and punishable in law by order of

88 Example the son of Home Minister Jay Shah against The Wire, lawsuits by powerful media house Times Now against Newslandre; by former minister M.J. Akbar against journalist Priya Ramani, who alleged sexual harassment by him, and so in. See: Rajshree Chandra, Defamation: The Weapon of Choice to Stifle Pursuit of Justice and Free Speech, The Wire, 11 March, 2021, at: <https://thewire.in/law/defamation-priya-ramani-metoo-slapp-free-speech-media>

Seven years of BJP rule has caused catastrophic damage to India’s civil liberties and political freedom. India’s position on international indices has steadily declined, with the recently-released Freedom House report downgrading the country’s status to only “partly free.” The government brooks no dissent, targeting the country’s few independent media houses, forcing out advocacy groups, and leading the world in internet shutdowns that seek to prevent the spread of information. <https://thediplomat.com/2021/03/indias-absurd-seditious-law-and-what-it-enables/> Low conviction rate. Law primarily used to hound and intimidate critics.

89 Express News Service, In poll playbook: Central agencies come knocking on opposition doors’, April 4, 2021, at <https://indianexpress.com/article/india/it-raid-ed-probe-state-assembly-elections-7257728/>

the police. Section 144 has been misused by the police in arbitrary ways throughout India on many occasions, and more so in recent times.

Since Prime Minister Modi has publicly labelled activists as 'professional protestors' and 'parasites', the police is less inclined to grant permission for public protests and it has become common practice for peaceful protestors to be hauled off to jails or to be released at distant sites so they have to trudge home.

The police in India is increasingly politicised, acting as an agency of the government in power, rather than as the guardian of the constitution, the rule of law and justice. It is common practice for the ruling parties use the police for their political convenience and their personal vendettas.⁹⁰ The biases and phobias of the police, (like Islamophobia, misogyny, patriarchal attitudes, etc.) match those of many ruling politicians. Civil society continues to report on the police looking away from incidents of sectarian and inter-community violence. 'Encounter killings' – the Indian term for extrajudicial killings by the police, tend to be overlooked. The police are also, and with impunity, party to arresting people on trumped up sedition charges – including hunting down students for using seditious language in social media posts. Suspects remain in custody while the police investigate their case – which can take months, or even years.

- In 2019, student leader Veewon Thokchom⁹¹ and literature academy award winner Hiren Gohain were charged with making seditious comments on social media. Veewon was released on bail. Pending the completion of the investigation into his case, as of the date of writing of this report, Gohain remains behind bars.⁹²

The current state of affairs has led a former Director General of Police to state: "It is high time that the unholy nexus between the politicians, bureaucrats, police and criminals is broken, that we debar presence of criminal background from entering the assemblies and parliament, that we restructure our police, giving it a functional autonomy, and build a robust criminal justice system."⁹³

90 <https://thewire.in/government/sordid-story-colonial-policing-independent-india>

91 https://www.huffpost.com/archive/in/entry/booked-for-sedition-police-now-want-student-leader-to-be-tried-in-manipur_in_5c6a3bc8e4b01757c36cc2fd?

92 Dr.Hiren Gohain &Ors V. State of Assam, Case number AB 120/2019.

93 Prakash Singh, 'Police need a makeover', Indian Express, April 3, 2021.

Moral policing: Vigilante groups and right-wing activists

Vigilante groups – largely male mobs who undertake the role of 'moral policing' and safeguarding religious (Hindu) 'sentiment' – are rampant in India. The police, as an extension of the regime, are either helpless or complicit in letting vigilantes threaten and intimidate dissenters.

Vigilante mobs are known to have harassed and injured Dalits and minorities that they allege violate 'Hindu sentiment', damage non-Hindu places of religious worship and public and private property. With intimidating slogans such as 'shoot the country's anti-nationals',⁹⁴ they instil fear and self-censorship on the creative expression of institutions and individuals, who feel their lives and livelihoods are being held to ransom by these hooligans, condoned and even sanctioned by the right-wing regime. Vigilante groups and right-wing activists have accused activists of sedition and being 'anti-national'. Artists like M.F. Hussain, student leaders such as Kanhaiya Kumar and Christian nuns travelling on trains have been harassed by vigilantes. Poor Muslims have been killed on vigilante accusations that they had killed cows sacred to Hindus. The careers of two young comedians were destroyed after they were accused of 'insulting Hindu deities'.⁹⁵ The student wing of the ruling BJP has been going around accusing fellow students of anti-nationalism.⁹⁶ These vigilante groups and actions thrive on the deeply embedded cultural approval of moral policing and society's acceptance of a level of acceptable militarism.

Restriction of academia

When the state signals that dissent is unacceptable, institutions headed by right wing cadres reign in free speech and target dissenters. Universities in India are now demanding students conform to state views. Aligarh Muslim University, JIMs University Jaipur have suspended students

94 This slogan was used by vigilante groups for JNU students, and before the Delhi riots in 2019, see Mannathukkaren above and Scroll.in Anurag Thakur leads 'Goli Maaro Saalon ko' slogans at rally, 27 January, 2020, at: <https://scroll.in/video/951289/watch-anurag-thakur-minister-of-state-for-finance-lead-goli-maaro-saalon-ko-slogans-at-rally>

95 News18, Munawar Faruqui Case: Co-accused Comedian Nalin Yadav Now Works as Labourer to Earn Rs 200 a Day. At:

96 Nissim Mannathikkaren, How did the state come to legitimize vigilante action? The Wire January 9, 2020, at: <https://thewire.in/law/jnu-caa-protests-abvp-bjp>

for a tweet that questioned army role.⁹⁷ The point is to restrict public conversation.⁹⁸ In academic institutions, discussions and seminars are censored, requiring certification by authorities.

Curbing the freedom of the press

Meanwhile, the Modi regime has been using financial and other pressures to control the fast-growing media sector, at the expense of press freedoms.⁹⁹ The ruling party influences social media with its IT cells that have the capacity to delegitimise critical voices and to promote image building and image destruction of opposition. Trolling, abuse and aggressive targeting on social media is widespread. Pressure tactics are effectively used so no negative or critical stories about the regime appear in the mainstream media¹⁰⁰ and newspapers tracking cases of 'hate crimes' by vigilante groups against minority communities have been taken down. A journalist, who was himself prosecuted over his Facebook posts, says: 'Every media company is directly or indirectly co-opted by the government'¹⁰¹ through control of advertising revenues and financial controls. While digital media space has some vibrant critics of the Modi regime, new laws to control digital space threaten to control and even end this.¹⁰²

Direct control has been exercised through restrictions on social media and internet access as in Kashmir, 2020.¹⁰³

Silencing the business community

The business community in India is dependent on state support. Critique by any business group has led to their isolation, targeting and silencing. The business community has put its head down and

97 See The Leaflet at Freedom of expression after Pulwama attack: Democracy can nurture both dissent and national security - TheLeaflet.

98 Freedom of expression after Pulwama attack: Democracy can nurture both dissent and national security - TheLeaflet

99 Report on 'Modi tightens his grip on media', Reporters without borders at: India | RSF

100 Sevanti Ninan, 'How India's news media have changed since 2014: Greater self-censorship, dogged digital resistance, Scroll.in 5 July, 2019. At <https://scroll.in/article/929461/greater-self-censorship-dogged-digital-resistance-how-indias-news-media-have-changed-since-2014>

101 Interview with Samrat Choudhury, Decemebr 11, 2020, at: www.article14.com

102 Mujib Masha; and Hari Kumar, India's new upstarts, March 21, 2021, New York Times at: India's News Upstarts Challenged Modi. New Rules Could Tame Them. - The New York Times (nytimes.com)

103 Internet shutdown news and report: a year in the fight to #KeepItOn (accessnow.org)

concerns itself primarily with economic reforms, profits and benefits.

Complicity of the judiciary?

The role of the judiciary has been varied. The courts and individual judges at the various levels of the Indian judiciary have in critical cases rejected sedition charges when there was no evidence to show that the person charged with sedition had in fact incited or caused violence.¹⁰⁴ At the same time, a significant number of judges, especially in the sessions courts, have failed to take corrective measures, unquestioningly accepting the police narrative of sedition.¹⁰⁵

Sedition laws target Muslims and activists

People have been charged with sedition for posting or sharing Facebook messages, criticizing party politicians or writing articles critical of the Indian development model. The majority of those charged with sedition are from the Muslim community. Sedition charges have also been brought against a wide variety of activists, including climate activists and protesters against corporate control and mining companies.¹⁰⁶

On 28 January 2021, 6 journalists and Shashi Taroor, the leader of the main opposition party where charged with sedition. People have been taken to court on sedition charges for staging a street play or cracking a joke. The actress Divya Spandana was charged with sedition for "appreciating the people of Pakistan".¹⁰⁷

These cases may sound absurd, but as they carry a maximum of life imprisonment they act as a strong deterrent. For sedition cases filed since

104 The Kedarnath and several cases have firmly established that sedition amounts to inciting and indulging in violence.

105 For example 8956 people from Kudankulam Village were slapped with sedition cases for protesting against a proposed nuclear plant, since 2011 onwards. Some of these cases have been dropped, while others remain till 2020.

106 Thoothukudi: Tamil Nadu's crackdown on anti-Sterlite protestors is at once terrifying and absurd (scroll.in)
Kanwaljeet Sandhu, India Today, 18, July, 2018 at: Exclusive: MHA data shows only 2 convicted under sedition law in 3 years - India News (indiatoday.in)

Father Stan Swamy & others, [scroll.in](https://www.firstpost.com/india/Activists-move-Jharkhand-HC-over-FIR-alleging-sedition-say-theyre-being-targeted-for-supporting-tribal-rights-India-News-Firstpost-Scroll.in-Chhattisgarh-journalist-booked-for-sharing-cartoon-on-SC-verdict-in-Loya-case-at-Sedition-case-Journalist-in-Chhattisgarh-booked-for-sharing-cartoon-on-SC-verdict-in-Loya-case-https://www.firstpost.com/india/Activists-move-Jharkhand-HC-over-FIR-alleging-sedition-say-theyre-being-targeted-for-supporting-tribal-rights-India-News-Firstpost-Scroll.in-Chhattisgarh-journalist-booked-for-sharing-cartoon-on-SC-verdict-in-Loya-case-at-Sedition-case-Journalist-in-Chhattisgarh-booked-for-sharing-cartoon-on-SC-verdict-in-Loya-case-scroll.in)

107 Soutik Biswas, Why India needs to get rid of its sedition law, 29 August 2016, BBC at <https://www.bbc.com/news/world-asia-india-37182206>

2014, the trial periods are extremely long and convictions very few. Between 2016-2020, there were only four convictions in sedition cases: in most cases, the police simply could not gather the evidence to substantiate the charges.¹⁰⁸ Lawyers confirm the government mainly uses such charges to silence dissent. The authorities are not interested in convictions, but in punishing 'show-piece dissenters'.¹⁰⁹ This has resulted in an atmosphere of fear, not only among minorities and writers: Ordinary citizens are increasingly denied their freedom of expression, especially if they do not conform to the views and ideology of the regime.

The adoption of the Citizenship Amendment Act (CAA) in 2019 led to a sharp rise in sedition cases: 194 cases were brought – more than the aggregate number filed in three years prior to the adoption of the CAA. These were mainly directed against members of the Muslim minority community protesting this discriminatory Act. The new citizenship law will mean deportation of Muslims if they cannot provide papers to prove their citizenship.¹¹⁰

Erosion of worker protections

In September 2020, India's labour laws were changed to include measures that limit the workers' right to freedom of association and collective bargaining and restrict workers right to strike. Indian trade unions voiced their concern about the dismantling of labour protections to the ILO.¹¹¹

Farmers' protests criminalized

Late 2020, India's farmers took to the streets to protest the new farming laws introduced in September 2020, that they fear will destroy their livelihoods. The authorities came down hard on the protesters, who have been subjected to police violence, charged with sedition and even labelled as terrorists. Nonetheless, several months in, the protests continue.

108 Jayant Sriram, 'Should the sedition law be scrapped?'. *The Hindu*, 6 March, 2020.

<https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece>

109 Sanjay Hegde, quoted in Jayant Sriram, 'Should the sedition law be scrapped?'. *The Hindu*, 6 March, 2020.

110 Achin Vanaik, CAA Laws, Who is an Indian Citizen? *The Leaflet*, September 17, 2020, At: <https://www.theleaflet.in/citizenship-amendment-act-who-is-an-indian-citizen/>

111 Neelima MS, India's labour law reforms without social dialogue are of concern: Interview with ILO's Corinne Vargha, *Caravan Magazine*, 9 December, 2020

Civil militarisation on the rise

In India, military practices and methods are used and propagated by civilian authorities.

Integral to this civil militarism is the popular national security discourse that labels dissent and difference as 'anti-national'. The hegemony of majoritarian Hindu nationalism generates widespread civil support for what is being done in the name of 'true' Indian democracy.

Force is used readily by state and civil institutions, with little accountability. The cultural wing of the ruling BJP party is a militarised body that conducts daily drills and semi-military-style training for its cadre.

In Jammu and Kashmir, both states with long-standing separatist ambitions, India's army operates with impunity under emergency powers granted to them by the central government that allow them to severely curtail civil liberties.

Curbs on civil society

Under the BJP regime, democratic rights have declined and civil society has increasingly come under attack. With an architecture of authoritarianism systematically being put in place, India is now seen internationally as a 'restricted' democracy¹¹² and an only 'partly free' society.¹¹³ The government does not appreciate being branded this way and has taken to closely policing international civil society groups that might be reporting on abuses. The offices of Amnesty International were raided and then forced to close operations. NGOs, women's and legal rights groups have come under increasing scrutiny, especially those that are supported by foreign donors. Many CSOs that had the permissions to receive foreign funds have seen these permissions revoked.

Light in the tunnel

The courts have in various instances refused to go along with the government's abuse of power. The Allahabad High Court (Uttar Pradesh State) quashed 30 of the 41 cases lodged against primarily Muslim young men for alleged cow slaughter – the cow being sacred to Hindus. The men had been charged under the National Security Act that allows the state to detain people without formal charge or trial. The Court

112 Civicus Reports at: <https://monitor.civicus.org/country/india/>

113 Report from Freedom House, reported in BBC 2021 at <https://www.bbc.com/news/world-asia-india-56249596>

maintained that many of these cases showed “non-application of mind”, stating that “... individual liberty guaranteed by the Constitution cannot be taken away without proper application of mind.”¹¹⁴

There have been more excellent judgments and remarks by judges. For example, by D.Y.Chandrachud, Justice of the Supreme Court of India, who said, ‘The Constitution fails when a cartoonist is jailed for sedition’ (2019).

Media bodies across the board have slammed the government for investigating journalists who were reporting the farmer protests on sedition-linked charges. The media organisations demanded that sedition laws be scrapped.

These are glimmers of hope that there still are those who continue to uphold the values of justice and stand up for the Indian Constitution.

Towards room for “ideas that offend, shock or disturb”

Sedition laws and related mechanisms like laws that prohibit peaceful public assembly support a system of command and control that forms a layer of institutional control within elected governments. The aim is to paralyse voices, organizations, movements, citizens that do not conform to the agenda of ruling political and economic elites.

These legal means enable institutional actions against civilians to control deviations from the policies and ideologies of the regime, to stifle public debate and to unify people’s thoughts, beliefs and actions. The government’s approach is backed by the press and news media (the fourth estate) and other non-state institutions that wield and manipulate significant social influence and have deep vested interests in the regime. These include corporations; social, cultural and party workers; and vigilante groups with deep vested interests in the regime.

India should take note of the European Court on Human Rights’ statement that a “democratic society should tolerate ideas that offend, shock or disturb the State or any sector of the population” and make every effort to uphold right to expression, freedom of peaceful assembly and related rights. To stop the country backsliding further into authoritarianism, all laws related to sedition should be annulled. The introduction of

114 Indian Express, 6 April, 2021 at: <https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>

anti-SLAPP¹¹⁵ statutes that include measures to penalize the abuse of the legal system is urgently required.

In the global governance context, international bodies should consider bringing the various statutes on freedom of expression and assembly together and pass a UN Security Council Resolution and clear international law on this.

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115 A strategic lawsuit against public participation (SLAPP) is a lawsuit intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. https://en.wikipedia.org/wiki/Strategic_lawsuit_against_public_participation

3.4 The Right to Dissent – Country report: INDONESIA

Backsliding of democracy

With the overthrow of Suharto's dictatorship in 1998, Indonesia made the transition to a democratic system of government. Indonesia has since proved to be a more stable democracy than many of its neighbours. However, in recent years, the country has experienced a backsliding and the quality of democracy has deteriorated significantly. The decline set in in the second term of Susilo Bambang Yudhoyono's presidency in 2009. It continued during Joko Widodo's first presidency, with further declines during his second term.¹¹⁶ One of the most significant setbacks occurred in 2014 when Indonesia's civil liberty ranking fell from 3 to 4, and Indonesia's status in the Freedom House index changed from "free" to "partially free".¹¹⁷

Indonesia's democratic fallback comes to the fore in several aspects, including 1) shrinking civic spaces, 2) a culture of violence, 3) neglect of the agenda for resolving cases of gross human rights violations 4) involvement of the security and defence forces in civil affairs, and 5) lack of public participation in the implementation of the legislative process.

Over the past year, there were 157 recorded incidents of violations, restrictions or attacks on civil liberties, including infringements of the freedom of association (4 events), the freedom of assembly (93 events), and freedom of expression (60 incidents), with police as the main actors in attacks on civil liberties.¹¹⁸

Mass protests are met with excessive force

In Indonesia, the state has consistently failed in providing effective access for the public to communicate their aspirations in relation to public policy. One of the few means left to voice an opinion is through mass action. Since 2019, there have been large demonstrations calling for political reform and an end to corruption under the banner of #ReformasiDikorupsi,

#RakyatBergerak, #TuntaskanReformasi across many of Indonesia's major cities, including Malang, Surabaya, Yogyakarta, Makassar, Palembang, Medan, Semarang, Bandung, Denpasar, Kendari, Tarakan, Samarinda, Banda Aceh, Palu and Jakarta.

Unfortunately, these demonstrations have increasingly been met with repressive force. Arbitrary arrests have been the order of the day and many of those detained have been subjected to torture. According to the Indonesian human rights NGO KontraS, 4,051 people were arrested for attending prohibited demonstrations or under forced dispersal orders.

Covid-19 used to silence dissent

The handling of the pandemic has laid bare the unhealthy dependence of civilian authorities on security, defence and intelligence services in addressing civilian challenges. The pandemic was also used to push through problematic regulations aimed at attracting investments, that threaten the interests of the most marginalised groups in society and were widely rejected by the community.

Between December 2019 – November 2020, there were over 300 incidents of restrictions or attacks on the right to freedom of expression, mainly in relation to the government's handling of the Covid pandemic and the Job Creation Law. In 2019, the Foundation of the Indonesian Legal Aid Institute (YLBHI) recorded 56 cases of police persecution against civilians, with 601 victims.¹¹⁹

The outbreak of the COVID-19 pandemic has been used as a justification to further shrink civic space. Covid measures have been used as an excuse for the violation of basic human rights. Critics have been criminalised and health protocol violators have faced excessive punishment. To handle the pandemic, the government relies heavily on security, defence, and intelligence institutions lacking key competences in this field, with adverse impacts for the population and an undermining effect on the resilience of Indonesian democracy.

The police has issued several Circulars, ostensibly to assist in preventing the spread of Covid-19. However, one of these circulars¹²⁰

116 Edward Aspinall, "Twenty years of Indonesian Democracy – how many more?", New Mandala, accessed on December 28, 2020, <https://www.newmandala.org/20-years-reformasi/>

117 Freedom in The World 2014, Freedom House, accessed on December 24, 2020, <https://freedomhouse.org/sites/default/files/FIW2014%20Booklet.pdf>.

118 <https://www.thejakartapost.com/news/2020/10/20/kontras-warns-of-democratic-recession-after-jokowi-maruf-administrations-first-year.html>

119 <https://www.thejakartapost.com/news/2020/07/01/rights-groups-highlight-cases-of-police-brutality-on-national-polices-74th-anniversary.html>

120 Number ST 1100/iv/huk.7.1/2020

contains instructions to engage in cyber patrols and prosecuting people who spread ‘fake news’ that insults the President, government officials, and/or state institutions. This appears to have little to do with combatting the Covid pandemic, and is generally seen as an effort to instil fear and silence public expression of criticism towards the State.

The police also use Indonesia’s Information Law to silence dissenting voices. Article 27.3 and 28.2 (hate speech) in particular, are used as a tool for the repression of (religious) minorities and ordinary citizens criticising the police or the government.

Boosting post-Covid recovery by weakening human rights?

In the wake of the Covid pandemic, the Indonesian government brought in a new law on job creation to help reboot the post-pandemic economy. This Law Number 11/2020 on Job Creation, otherwise known as the Omnibus Bill, sparked a wave of strikes and protests. The law is set to relax worker protections and environmental laws in a bid to attract investment. The law has also been condemned by international trade unions and human rights organisations.

The International Trade Union Confederation (ITUC) slammed the bill for destabilising people’s lives and ruining their livelihoods so that foreign companies can extract wealth from the country.¹²¹ Environmentalists have raised concerns that the bill will seriously weaken environmental protections and is likely to lead to widespread deforestation.¹²²

Adding to the controversy is the fact that the legal process for its adoption was seriously flawed. Criticism from a broad range of organisations slamming this breach of democratic procedure¹²³ was largely ignored.

The protests against the Law on Job Creation were met with excessive force from the authorities. In October 2020, the police used expired tear gas, and recklessly shot rubber bullets at the crowd protesting the bill.

Vigilante forces

In 2020, Indonesia brought in a law – National Police Chief Regulation No. 4/2020 – that gives

121 <https://www.bbc.com/news/world-asia-54460090>

122 Ibid.

123 <https://indonesiaatmelbourne.unimelb.edu.au/major-procedural-flaws-mar-the-omnibus-law/>

the civilian security forces, known as Pram Swakarsa, certain limited police functions, under supervision of the police force. Amid concerns about (increasing) police brutality and a lack of accountability of the police force itself, there are serious concerns that it will be hard to hold these private actors to account in case of human rights violations.¹²⁴

The police are granted full discretion to set up what are in essence vigilante groups. The term Pram Swakarsa directly refers to the civilian armed groups that that set up to guard the Special Session of the Indonesian parliament during the popular uprising in 1998. The Pram Swakarsa were formed specifically to suppress critical movements and demonstrations, operating without any form of formal supervision or accountability.

Indonesian police are already operating in a climate of impunity, with police officers not being held accountable for their acts of violence. This raises doubts about the capability and will of the Police to supervise and hold accountable the members of Pram Swakarsa in case they abuse their authority. Deployment of the Pram Swakarsa may well lead to increased repression and violence against the community without a clear legal process. Also, these groups could be easily mobilized to serve other purposes than public security and public order, such as particular political interests.

Expanding police powers

The Commission for Missing Persons and Victims of Violence (Kontras) calls attention to the excessive force and violence used by the police. KontraS recorded 921 incidents of police brutality resulting in 1627 people being injured and 304 killed between July 2019 and June 2020.¹²⁵ However, this has not resulted in any kind of discourse on institutional reform with the aim to reduce incidents of police violence or an evaluation of the police’s internal monitoring and legal process mechanisms. On the contrary, the response has been to expand the duties, functions and influence of the Police and the Indonesian military forces (TNI). Several active

124 <https://www.thejakartapost.com/news/2020/09/23/rights-watchdog-doubts-police-accountability-inrepurposing-civil-security-apparatus.html>

125 “Rights groups highlight cases of police brutality on National Police’s 74th anniversary”, The Jakarta Post, 1 July 2020. <https://www.thejakartapost.com/news/2020/07/01/rights-groups-highlight-cases-of-police-brutality-on-national-polices-74th-anniversary.html>

police officers have been put in key positions in external institutions with no clear link to the National Police, positions that should be occupied by the State Civil Service (ASN).¹²⁶

No action to prevent attacks on civic space

The attacks and restrictions on civic space occur without significant correction from the state towards the officials who are responsible for these attacks and restrictions limiting the freedom of association, assembly and expression. The government's policies suppressing the freedom of opinion and expression have never been transparently evaluated against the principles of human rights, democracy and the rule of law.

With regard to civil liberties, the right to freedom of expression continues to be met with police repression, both in handling mass actions and enforcing the law on digitally expressed opinions. There are no serious efforts on the part of the authorities to look into 1) prosecution of statements unjustly labelled as insulting or hate speech, and 2) the use of disproportionate and unnecessary repressive measures against mass actions. Cyber-attacks against critics of the authorities are insufficiently investigated. There is a failure to identify the ones behind these attacks and the methods they use. Very little is being done to prevent future occurrence of such attacks .

An illustration: Reports from various regions where actions were organised against the Job Creation Law show that there were many incidents of excessive violence committed by police officers against the protesters.¹²⁷ A channel for collecting public documentation related to violence by the authorities in handling mass actions against the Job Creation Law opened by KontraS collected 1,900 cases, corroborated by 140 different photos and videos. There is no evidence to be found that any of the police officers involved have been investigated internally based on the police's own code of ethics or disciplinary regulations, or under criminal law. The failure of the police's internal correction mechanism to follow up on officers who commit excessive, disproportionate, and unnecessary violence opens the door for more potential violence in the future.

¹²⁶ <https://www.eastasiaforum.org/2020/10/06/the-indonesian-polices-dual-function-under-jokowi/>

¹²⁷ See more: <https://kontras.org/2020/10/25/temuan-tindakan-kekerasan-aparat-pembungkaman-negara-terhadap-aksi-aksi-protres-menolak-omnibus-law-di-berbagai-wilayah/>

The government has, however, continued to act decisively against anyone criticising the authorities, with the aim to scare off journalists, activists and protests from ordinary citizens. One high-level case was the arrest of public policy researcher, Ravi Patra. In April 2020, Ravi Patra's WhatsApp account was hacked and he was arrested by the police after publicly criticizing Jokowi's policy on the Omnibus Bill on Job Creation, the Information Law and the buzzer industry.

Buzz Marketing: a new method to attack dissenting voices

People criticising the government have increasingly come under attack on social media from cyber-trolls, known as 'buzzers' in Indonesia.¹²⁸ According to reports, these buzzers are paid and deployed to attack critical voices, mislead public perceptions, cover up irregularities in government performance and cover up human rights abuses by the government.¹²⁹ Suspicions of government involvement in buzzer attacks are rife.

Corruption Eradication Commission (KPK) investigator Novel Baswedan, who was blinded in one eye after an acid attack in 2018, was accused on social media of faking his case.¹³⁰ Baswedan had been engaged in exposing high-level corruption cases. When Bintang Emon, a well-known comedian, came to Baswedan's defence, he himself also became a target for buzzers, who accused him of being a drug user.

In September 2019, there were huge demonstrations under the banner "Reformasi Dikorupsi" (Corrupt Reform) to protest a number of problematic bills. The government used buzzers to silence activists supporting the movement. The accounts of scores of human rights activists, student activists and academics were hacked.¹³¹

Senior economist and ex-minister Kwok Kian Gie also came under buzzer attack after criticising the government for increasing debts during Joko Widodo's presidency. Kwok Kian Gie has indicated

¹²⁸ Also known as Buzz Marketers: social media influencers who are paid to spread propaganda and political narratives on social networks. See, for example: <https://www.abc.net.au/news/2018-08-13/indonesian-buzzers-paid-to-spread-propaganda-ahead-of-election/9928870>

¹²⁹ https://www.apc.org/sites/default/files/Report_Indonesia_20.11.19.pdf

¹³⁰ <https://www.thejakartapost.com/news/2019/11/08/pdi-p-politician-alleges-kpk-investigator-novel-faked-eye-injury.html>

¹³¹ https://www.apc.org/sites/default/files/Report_Indonesia_20.11.19.pdf

the buzzer attacks have made him afraid to express diverging opinions.¹³²

Meanwhile, the government has established a virtual police unit which began operating in February 2021. Critics say the virtual police is a new tool of repression in the digital world: instead of taking action against crimes perpetrated on social media, such as online sexual harassment and racism or online scams, the virtual police have mainly been targeting social media users who actively criticise the government.¹³³

Violence against journalists

The Indonesian Alliance of Independent Journalists (AJI) raises the alarm that the press freedom in Indonesia is deteriorating. The AJI says violence against journalists has been on the rise these past few years, reporting 90 cases of violence against journalists between May 2020 and May 2020. Journalists face intimidation, seizure of equipment, deletion of photos and videos, criminalisation and even murder.¹³⁴

According to the AJI, 70% of these attacks were committed by the police, and the remaining 30% by, inter alia, advocates, prosecutors and government officials. The AJI also signals many cases of sexual violence against female reporters. The AJI notes that the incidents of (sexual) violence against members of the press largely remain uninvestigated and rarely make it to court.¹³⁵

Journalists who write about corruption in the government in particular are a target for legal harassment under a 2018 amendment that bans public criticism of the government and the 2016 amendment to Law on Electronic Information and Transactions (ITE), which enables prosecution of journalists for insult, defamation and hate speech. So far, two journalists have been jailed under this law, which carries a maximum prison sentence of six years.¹³⁶ Reportedly, independent journalists are frequently intimidated by the government, receiving reprimand or unofficial warnings.¹³⁷

132 <https://netral.news/en/ive-never-been-this-afraid-of-regime-criticism.html>

133 <https://nasional.kompas.com/read/2021/05/06/16065971/kontras-sebut-virtual-police-jadi-alat-represi-baru>

134 <https://asiapacificreport.nz/2020/12/30/aji-slams-sharp-rise-in-violence-against-indonesian-journalists-84-cases/>

135 <https://www.cnnindonesia.com/nasional/20210503142708-12-637909/aji-90-jurnalis-korban-kekerasan-polisi-andil-70-persen>

136 <https://ipi.media/attacks-on-journalists-rise-in-indonesia/>

137 *Ibid.*

Indonesia plays deaf to international criticism of human rights violations in Papua

Human rights lawyer Veronica Koman and journalist Dandhy Dwi Laksono fell victim to Indonesia's application of its information Law to curtail political dissent. They were charged under this law and had to defend themselves before a judge (in two separate cases) for sharing information on social media about civil unrest in Papua where several people were killed and hundreds injured.

Over the years, there have been statements or recommendations from various countries regarding human rights violations by Indonesia. However, Indonesia continues to reject any criticism for the international community.

In a recent incident at the 75th UN General Assembly on 26 September, 2020, Indonesia had a run-in with the Prime Minister of Vanuatu, Bob Loughman, when he raised the issue of human rights violations in Papua committed by Indonesia. Loughman called attention to the fact that to date there has been no progress in cases of human rights violations in Papua, and he urged the Indonesian government to approve requests from leaders of Pacific countries to allow the UN Human Rights Commission to visit Papua.¹³⁸ Indonesian diplomats responded by asking Vanuatu to take care of the responsibilities of their own country before interfering into Indonesia's domestic affairs. The diplomat even emphasized that Vanuatu cannot represent Papuans and should stop fantasising about being one of them.¹³⁹

Meanwhile, Indonesia has been restricting civic space in Papua by slowing down or cutting off the internet in Papua, under the pretext of preventing the circulation on social media of what the police say was fake news about racist attacks against Papuan students in Indonesia. These alleged hoaxes triggered riots in the West-Papuan city of Manokwari spreading to various cities in 2019.

Non-governmental organisations branded 'foreign agents'

NGOs in Indonesia operate under the legacy of the repressive system built under Suharto's New Order regime. They continue to be stigmatised

138 <https://tirto.id/ada-apa-dengan-vanuatu-papua-barat-dan-indonesia-f5zF> diakses pada 30 November 2020.

139 <https://www.antarane.ws.com/berita/1751021/jawab-tuduhan-pelanggaran-ham-ri-tegaskan-vanuatu-bukan-wakil-papua> diakses pada 30 November 2020.

as foreign spies as most of their funds derive from foreign organisations. For example, when environmental NGOs demanded that palm oil companies be held responsible for forest fires in 2015, the government accused the NGOs of being foreign agents who wanted to block Indonesia's exports.

In 2017, parliament approved an amendment of the 2013 Law on Societal Organisations, which enables the government to ban any organisation deemed to oppose 'national unity' (Pancasila). This reduces the space for political activism and peaceful advocacy, for example for political solutions to the struggle for independence in Papua and the Maluku islands.¹⁴⁰ This year, police intelligence and security chief Paulus Waterpauw accused NGOs of promoting separatism and inflaming the situation in Papua.¹⁴¹

Turning challenges into opportunities

The current climate of intimidation, discrimination and attacks against activists and (grassroots) movements is aimed at silencing dissent. However, there is a growing realization among the general public that the policies of repression from the government put the whole of society at risk. Many segments of society are open to joining initiatives to persuade the state to take responsibility in protecting basic human rights. The engagement of youth groups and other civil society organisations remains strong.

Civil society can use the situation to its advantage by adopting flexible advocacy strategies to anticipate the challenges of the political environment and consistently navigate the political turbulences and changing dynamics guided by human rights, democratic values and principles as the leading parameters and reference points. By joining forces and in good collaboration with independent media and journalists, the various stakeholders at local and international level can maximise pressure on state auxiliary bodies to fulfil their responsibilities.

Working with influencers such as artists, musicians, intellectuals, senior activists, grassroots leaders (labour, informal, religious), progressive politicians and others can also help to build strong social movements. Social media platforms can be used to start mutual conversations with social media influencers in order to disseminate

advocacy issues, critical responses, and human rights reports. Constituencies can be broadened by thinking out of the box, for example by organising theatre performances and music concerts involving new popular musicians and artists to bring human rights campaigns to millennials and 'Generation Z'.

Respect dissenting opinions, in the public interest

The Indonesian authorities must respect, protect and fulfil the rights to dissent and protest. Dissenting opinions are important to develop ideas and influence decision-making in the public interest. It is vital that the repression of the state apparatus comes to an end and civil liberties are improved in the coming years. Cyber-attack practices must be thoroughly investigated and the perpetrators brought to justice and policies that limit the right to freedom of expression must be immediately revoked. In terms of sentencing, Indonesia ought to catch up with other countries and immediately abolish the death penalty. With a judicial system that is still prone to unfair trials, its application simply carries too high a risk.

The situation in Papua deserves special attention, where the number of extrajudicial killings is on the rise, autonomy-activists are being labelled as 'terrorists' and NGOs are openly accused by police officers of 'inflaming the situation in Papua', without any evidence or giving details about those NGOs.

140 <https://www.newmandala.org/jokowi-forges-tool-repression/>

141 <https://www.cnnindonesia.com/nasional/20210511004141-20-641139/kabaintelkam-polri-lsm-ikut-panaskan-situasi-di-papua>

3.5 The Right to Dissent – Country report: LAOS

Authoritarian regime

Lao PDR is a one-party state in which the ruling Lao People's Revolutionary Party (LPRP) dominates all aspects of politics and harshly restricts civil liberties. Political freedoms are non-existent. Authorities use legislations, media control, surveillance of civil society and intimidation tactics to maintain an environment that secures the regime. Under these conditions, there is no truly independent civil society, news coverage is weak and heavy sentences threaten any critique against the state, resulting in a widespread chilling effect and self-censorship.¹⁴²

The perception of most civil servants and citizens of the Pak-Lat (Party-State) is described in this one phrase as if the two institutions were one and the same.¹⁴³ Most of information about Party proceedings, its decisions and its definitions of its role and responsibilities are made in secret and citizens won't know about them until they're officially announced to the public.

Laos is boosting its economy by increasing the foreign direct investment (FDI) from a long list of countries like Thailand, Vietnam, South Korea, China, etc., especially in the natural resource and industry sectors. However, the construction of a number of large hydropower dams, land concessions and expanding mining activities have an enormous impact and cause serious human rights violations. The benefits accrue to the wealthy elites, while local communities are driven from their land to make way for these projects and deprived of access to vital natural resources. People protesting these landgrabs run the risk of being arbitrarily arrested and detained without charge.

No voices of dissent in politics

The constitution of Laos¹⁴⁴ legally establishes a set of authorities that resemble the traditional differentiation among executive, legislative, and judicial branches of government.

142 Manushya Foundation, "the 3rd UPR Cycle Lao PDR 2020": <https://www.manushyafoundation.org/lao-pdr-upr-factsheets>

143 PDA Chagnon, Rumpf, Van Gansberghe, Binh, Governance and participation in Laos, SIDA Asia Division, 2003: https://publikationer.sida.se/contentassets/136b3ec257224f139b85f926bccd4e48/governance-and-participation-in-laos_577.pdf

144 https://en.wikipedia.org/wiki/Constitution_of_Laos

The National Assembly represents the rights, powers and interests of the multi-ethnic people. As the country's legislative body, it has the right to make decisions on fundamental issues and to oversee the work of the government, the people's courts, and the Office of the Public Prosecutor. All laws in Laos will go through the Nation Assembly for debating and approval process.

There is no space for opposition in Lao politics. In the current National Assembly, 144 of the 149 seats are held by LPRP members, with only five taken by independents. Although these are not official party members, they are carefully vetted and need to be approved to run in the election by the Laos Front for National Development (previously the Laos Front for National Construction), an opaque government-affiliated political organization. As a result, no alternative voices are ever heard in the Lao parliament.¹⁴⁵

The Lao People's Revolutionary Party (LPRP) exercises full control on multiple levels, in a top-down approach from the central to the local.

According to Article 44 of the Laos' constitution,¹⁴⁶ Lao citizens have the right and freedom of speech, press and assembly. But in reality, freedom of speech in Laos is very limited and citizens can easily run into trouble should they comment on or criticize activities related to, for example, national development or the corruption issue.

There is a persistent system of party secrecy and the internal security apparatus¹⁴⁷ – which extends to the level of district, kumban (village cluster or sub-district) and village – enhances party-state oversight of its citizens. In most villages, leaders are elected under the guidance of the one-Party system. As a result, the people have to be careful and cannot have differing views when there are orders or decisions already made handed down from the central level.

Repressive 'rule of law'

Laos is keen to portray the country as a state governed by 'the rule of law'. To that end, the government is planning to enact and amend some 96 laws over the next five years.

145 The Diplomat, "Laos' Pointless Election": <https://thediplomat.com/2021/02/laos-pointless-election/>, dated February 19, 2021

146 https://www.parliament.go.th/ewtadmin/ewt/ac/ewt_dl_link.php?nid=119&filename=parsystem2

147 <https://www.tandfonline.com/doi/full/10.1080/00472336.2018.1494849>

The legal system in Laos is not determined by a democratic parliament or by legal precedent, but by the arbitrary rule of Laos's single party. Only a very limited number of laws are subject to a public consultation process that enables citizens or civil society to provide comments or suggestions. However, there is no way to establish if and how public submissions are taken into consideration or whether these consultations are simply put on for show.

Laws to tackle corruption, monitor government performance and protection of the rights of citizens are very weakly enforced. Freedom of expression or voicing opinions opposing the government remains severely restricted. Dissent is punishable under a variety of laws and human rights violations remain the order of the day.

Police impunity

Chapter III of Laos' Constitution emphasises the importance of "national defence and security" and obliges all organisations and Lao citizens to "protect the independence, sovereignty, and territorial integrity of the nation". Article 32 states that "the national defence and security forces must improve and strengthen themselves" and be the "main forces to ensure national stability, peace and social order". Article 33 further stipulates that there must be a "strong military department in order to ensure implementation of tasks and contribution to national development".

The Lao Government stresses that according to Article 10 of the Law on the People's Security Force, Laos police are responsible for preventing and suppressing any act of violence on Lao territory; preventing crimes and maintaining peace and security; securing the safety of state organizations; protecting lives and interests of the multi-ethnic people; protecting institutions, national social and economic infrastructures, national and international protocols; protecting embassies and international organizations; and ensuring the safety of foreigners living in Laos.¹⁴⁸

Police and security forces commit human rights abuses, including searches without warrant, arbitrary arrest and illegal detention, ill treatment and torture of detainees, with impunity.¹⁴⁹

In prison, those held there can expect to be subjected to ill treatment, lack of food and

medical facilities and torture.¹⁵⁰ Meanwhile, the response of the police and the military to crimes, even violent crimes, tends to be limited and slow. However, questioning their role in public or in the media is not an option. Praising them is applauded, but complaining is a no-go.

In an April 5, 2021 speech commemorating the 60th anniversary of the public security force in the capital Vientiane, Lao President Thongloun Sisoulith called on security personnel to be role models, build trust, [and] be a force that people can rely on. "Police must protect people and must be fair to people", said Thongloun. He also stressed that people should be encouraged to report the wrongdoings of the police and other authorities, in particular any malpractice that endangers their community or the general public. The police should refrain from taking action to scare people off or to stop them from reporting.¹⁵¹

However, in the same speech, Thongloun warned of evil forces seeking to topple the country's one-party government with speech critical of its leadership on Facebook and other social media platforms and called on the authorities to use whatever means necessary to disrupt such efforts.

This statement from the new president caused confusion. People felt it contradicted the message that people should feel encouraged to report police or government malpractice. In particular because there is no mechanism in Laos to guarantee the people's safety when they report such issues, in particular when related to human right abuses or government involvement in corruption.

Courts in the pocket of the ruling party

The constitution of Laos provides for freedom of speech, assembly, and religion, although, in practice, organized political speech and activities are severely restricted. The constitution also contains provisions designed to guarantee the independence of judges and prosecutors, but in practice the courts appear to be subject to the influence of other government agencies. Major decisions are often made in secret and many people in Laos say that the courts are wracked by corruption and subject to LPRP influence.

148 The Law on Police Use of Force, Laos: <https://www.policinglaw.info/country/laos>

149 <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/laos/>

150 <https://freedomhouse.org/country/laos/freedom-world/2020>

151 Laotians 'Confused' by President Urging Police Whistleblowing, Threatening Social Media Use: <https://www.rfa.org/english/news/laos/president-04122021153932.html>

Echoing widespread public opinion, members of the National Assembly have commented on the lack of transparency regarding court rulings, in particular when dealing with cases of government malpractice and corruption. Such decisions are always taken behind closed doors and there is no way to assess the basis for a verdict or the sanctions imposed.

At the same time, ordinary people struggle to obtain recourse to the law when they get embroiled in conflicts over landgrabs with public authorities and corporations. People frequently see their land taken to make way for development projects. When they try to file complaints, the judicial process is non-responsive and very slow. Meanwhile, those who file complaints, especially where the authorities are involved, do so in peril of their own lives. There is a widespread feeling that the Lao justice system discriminates against ordinary people and is only there to serve the state and investors.

State control of the media

Laos has one of the most restrictive media environments in the world. In 2021, Reporters Without Borders¹⁵² ranked Laos 172 out of 180 on its annual Press Freedom Index, behind countries such as Cuba and Iran. In the report it says that the ruling Lao People's Revolutionary Party (LPRP) exercises absolute control over the media. The only time Lao people get to see a semblance of pluralism is when the national TV channels broadcast national assembly sessions, in which differences between the LPRP factions are sometimes expressed.

The Government of Lao PDR exercises absolute control over the media, including TV, radio and printed publications, through the Ministry of Information, Culture and Tourism. Due to the strict media controls, many Lao people lack access to information and face restricted expression. Nearly all media organizations in Laos are government-owned and some Laotian journalists are party members attached to the government.

The official news agencies supply information to other media outlets under strict control of Ministry of Information and Culture. On sensitive topics, media are only allowed to reflect government policy and refrain from critical analysis of political issues. Content must be approved by the government in advance, except on non-sensitive topics, including business, society, culture,

152 <https://rsf.org/en/laos>

tourism and non-political issues. However, news media may face penalties after publication if the government disapproves of content or labels it as 'against the interest of the nation'. Hence, self-censorship is widespread.

State media not only serve to promote government agenda. They're also the channels used to remind people not to criticize the government on the penalty of risk being accused of spreading false information, acting against the development of the country, displaying a lack of loyalty towards the nation or even being branded a traitor to the nation.

Restrictions on social media

Rather than making progress towards more freedom of the press, surveillance of citizens is tightening. Social media are on the rise in Laos and give some space for Lao citizens to express their opinions about politics and development in Laos, but there is a limit to what and how much they can say, especially in relation to government performance, politics, corruption and development projects. Those voicing concerns face harsh repercussions. An example:

In 2019, Ms. Houayheuang Xayabouly¹⁵³ posted a Facebook Live, criticizing the government's slow response in providing relief to people affected by heavy flooding and calling on the government to prevent this from happening in the future. Her live video was shared and went viral among Lao communities. Ms Xayabouly was arrested by police soon after on charges of spreading false information about government. She is currently serving five years in prison for propaganda against the government of Laos. There are concerns about her well-being as there is no public information about her situation.¹⁵⁴

In July 2019, news outlets that disseminate material through social media networks were ordered to register with the government,¹⁵⁵ which threatened fines and prison sentences for those who did not comply; the Information Ministry claimed the move was meant to arrest the spread of "fake news."

153 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25397>

154 A UN letter of concern went out to the government of Laos on 13 July 2020: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25397>

155 <https://freedomhouse.org/country/laos/freedom-world/2020>

Surveillance of civil society and forced disappearances

NGOs in Laos are monitored every step of the way. It is impossible for any organization based in Laos, including international NGOs and non-profit associations, to implement activities or work to support local communities without registering and agreeing a memorandum of understanding with the government as their counterpart. Organisations cannot go beyond what was agreed in the MOU. This severely limits the issues organisations can work on.

Local and international civil society groups are kept under surveillance. Pro-democracy activists, human rights defenders, activists, lawyers who defend victims or help local communities gain access to justice in relation to government projects and progressive NGO are watched and monitored closely by the Lao authorities. In recent years, ordinary citizens voicing (strong) opinions about the government have also increasingly been targeted, in particular when they post comments criticising corruption of government officials on social media.

In December of 2012, the enforced disappearance of internationally acclaimed community development worker Sombath Somphone¹⁵⁶ had a severe chilling effect on Lao civil society. Sombath Somphone disappeared weeks after co-organising the 2012 Asia Europe Peoples' Forum (AEPF) in Vientiane. His enforced disappearance, which continues to have a severe chilling effect on civil society, underscores the extremely limited extent to which people in Laos can speak out about issues related to politics or human rights. Even in big international forums like the AEPF, NGOs and civil society organisations have to be very careful about what they can and cannot say as everything is being checked by the government.

Since Sombath Somphone's disappearance, the government has placed severe restrictions on the rights to freedom of expression, association and peaceful assembly, muzzled the media and in a 2014 Internet decree sharply limited the types of information that can be shared publicly.

In Laos, critical voices are typically silenced, arrested, put in jail, go missing or even forcefully disappeared. Concerned for the safety of themselves or others, people are afraid to speak out and continue to work on human rights issues in Laos. Lao civil society organisations are afraid to endorse international actions or

¹⁵⁶ <https://www.sombath.org/en/>

petitions regarding human rights in the country or the region. By necessity, it has to be left to international organisations like the UN and others to speak out about issues in areas such as health, poverty, education, environment, etc. However, there is no or rarely shared international solidarity regarding the human rights violations and trampling of democracy in Laos.

Lao even monitors its citizens when they are outside the country: Human Rights Watch reports that 'pro-democracy activists and dissidents who fled political persecution in Laos have [...] been at grave risk in neighbouring countries'.¹⁵⁷ A case in point is that of Od Savayong, a prominent critic of the Lao government, who lived as a refugee in Bangkok, from where he was disappeared in 2019 and hasn't been heard from since.¹⁵⁸ Two years prior, in 2017, Laos sentenced three human rights defenders who took part in a demonstration outside the Lao embassy in Thailand to express their concerns over the human rights situation on their country to lengthy prison sentences. The three were handed sentences of 12-20 years in prison for betrayal of the nation, propaganda against the state and attending a gathering aimed at causing social disorder. The UN has condemned their detention as arbitrary and says they were denied access to a lawyer and did not receive a fair trial.¹⁵⁹ The Lao government appears to use such draconian sentences to instil fear among human rights defenders and stop them from flagging human rights violations.

Ethnic and religious repression

Khmu, Brou and Hmong ethnic minorities as part of the Protestant Christian community in the country have been subject to arrests, detentions, destruction of churches, forced renunciations and 're-education'.¹⁶⁰ Christians are treated with suspicion by the authorities as agents of Western imperialism. The Hmong in particular are branded with this stigma, as they allied with the Americans during the Vietnam war. Although the national government recently passed a law that gives Christians a little more room to practice their religion, there are media reports that in rural areas, Christians are still being oppressed.¹⁶¹ The Unrepresented Nations and

¹⁵⁷ <https://www.hrw.org/news/2019/11/16/laos-democracy-activists-arrested>

¹⁵⁸ <https://www.hrw.org/news/2019/09/07/thailand-lao-refugee-feared-disappeared>

¹⁵⁹ <https://monitor.civicus.org/country/laos/>

¹⁶⁰ <https://minorityrights.org/country/laos/>

¹⁶¹ <http://www.asianews.it/news-en/Laos-to-raise-awareness-about-new-law-protecting-Christian-minority-51172.html>

Peoples Organisation (UNPO) that Hmong living in remote jungle areas are forced to live a life on the run from the military. The military forces destroy temporary shelters and crops of Hmong people, depriving them of shelter and food. UNPO reports indications that chemical weapons have been used against Hmong communities. Hmong women are vulnerable to sexual abuses during military attacks, trafficking and sexual enslavement.¹⁶²

No freedom of assembly

There is no space for opposition in Laos and criticism of any kind is not condoned. Freedom of assembly is protected under the Lao constitution, but in practice it is severely restricted, curtailed. The 2020 Freedom in the World index reports that those deemed to be participating in unsanctioned gatherings can receive lengthy prison sentences.¹⁶³

Changes for the better?

A positive note amidst the climate of repression is that people in Laos are aware that the news they receive in their country is one-sided and heavily censored and that many are seeking to be better informed by turning to media outlets from abroad. In Thailand, the media are less heavily censored and offer a wider variety of viewpoints. Despite restrictive laws, the Internet and social media are also offering people a wider window on the world. The number of active social media users increased from 19% in 2016 to 49.1% in 2021.¹⁶⁴ Many Laotians see that social media help them to access information more effectively compared to the traditional media. They are also able to use these platforms to express their opinion, something the official media don't allow them to do. Access to information is a starting point for advocacy for reform.

Also, there have been some very tentative steps towards more accountability.

While there is no access to information laws¹⁶⁵ in Laos, the 2012 Law on Making Legislation increased legislative transparency by requiring bills proposed at the central and provincial levels to be published for comment for 60 days and, once passed, to be posted for 15 days before coming into force.

162 <https://unpo.org/article/21143>

163 <https://freedomhouse.org/country/laos/freedom-world/2020>

164 <https://www.statista.com/statistics/883733/laos-social-media-penetration/>

165 <https://freedomhouse.org/country/laos/freedom-world/2020>

More recently, the Politburo recently adopted a resolution to split the State Inspection Authority (SIA)¹⁶⁶ from the government's oversight. This means the SIA is now an independent body under the supervision of the Lao president. With this change, it's expected that the SIA will assume a more independent role in carrying out investigations into state bodies.¹⁶⁷ It remains to be seen what its performance will be as it continues to resort under the single-party state. However, it fuels some hope among the people that there might be some real improvement of the government, in particular in relation to the tackling of corruption.

In 2019, the UN Special Rapporteur on extreme poverty and human rights signalled as a positive that the Lao government "has begun engaging with international human rights mechanisms and issuing invitations to special rapporteurs, after a long hiatus." However, it remains to be seen where this will lead. The special rapporteur has called on Laos to establish a national institution for the promotion and protection of human rights.¹⁶⁸ The very fact that a UN rapporteur was allowed to visit Laos is a signal of hope to many people in Laos.

Stepping stones to a more open society

The international community cannot tacitly condone the absence of any kind of civic space, the permanent restriction of the freedoms of expression and assembly and the criminalisation of human rights defenders in Laos.

As a least developed country, Laos strongly depends on aid and funding from international organisations. This gives donors leverage to help persuade the government to improve the human rights situation in Laos. International donors should make their funding conditional on transparency and the observance and protection of basic human rights.

The international community should do more to support organisations and individuals fighting for human rights in Laos. International organisations can and must play a vital role in ensuring that the voices of all those within the country who risk

166 The SIA was previously called the Government Inspection Authority (GIA) and was overseen by the government.

167 State inspection body to have more independence, date modified 13th May 2021: https://www.vientianetimes.org.la/freeContent/FreeContent_State60.php

168 Report of the Special Rapporteur on extreme poverty and human rights on his visit to the Lao People's Democratic Republic, 2019; accessible at: <https://undocs.org/A/HRC/41/39/Add.2>

harassment or even their lives in commenting on government policies and government agenda are amplified and heard.

International organisations might also facilitate more secure spaces for human rights defenders or citizens in Laos to participate in international calls or forums so that they can be sure that they can safely make themselves heard. This is vital to ensure grassroots activists can freely and openly share their concerns about government policies and the human rights situation in the country.

Support from the international community may help to foster an environment where civil society in Laos can come together. Civil society organisations in Laos need to build mutual trust and support each other to further human rights and freedom of expression for the Laotian people. CSOs must rally to the side of communities and citizens facing harassment, threats and abuse and offer them assistance: CSOs must primarily work for the people and the community and not for themselves.

The government must involve the voices of citizens in the legislative process by creating a channel for people to have their say and comment on proposed laws and regulations. Such a channel for public consultation must be inclusive and transparent. It should not be limited to organisations or sector-based associations, but should be accessible to the wider public to submit their views and perspectives.

Similarly, the state should create a platform or mechanism that will allow citizens to make constructive or critical comments on government performance or others issues related to human rights.

For this to happen, the government must recognise that allowing citizens to offer their critical perspectives is a constructive approach that will help ensure better performance. The government should stop seeing involvement of the people as a threat that must be blocked.

Also, the government must recognise that there are human rights abuses taking place in the country and that there is a need to establish mechanisms that will ensure people can have access to justice without fear and that their complaints will be addressed in a fair and transparent process.

The international community can assist by pressing the Lao government to create a safe and enabling environment for civic freedoms, to repeal or amend laws that violate international human rights standards and obligations, and to address the existing climate of impunity for such violations.

3.6 The Right to Dissent – Country Report: MALAYSIA

Covid as an excuse to tighten the reins: State of emergency and suspension of Parliament

In the wake of the Covid pandemic, Malaysia's Prime Minister, Muhyiddin Yassin, declared a state of emergency in January 2021 after one failed attempt to do so three months earlier. This was then followed by the suspension of Parliament.

Although the rising number of Covid-19 cases was used as the pretext to convince the King to give his consent to the measure, political experts opined the move was to keep Muhyiddin in power despite his government having lost seats in Parliament due to political defections.¹⁶⁹

The ruling party Parti Pribumi Bersatu Malaysia (PPBM)'s Supreme Council member has hit out at the 90 ASEAM MPs and former elected representatives who urged the King and the Prime Minister to allow Parliament to reconvene. He said Malaysia did not need the interference of foreign politicians in determining its direction and observed that some Opposition politicians "loved" to invite foreign intervention, adding that this was a "desperate" move by "selling" Malaysia to foreign politicians.¹⁷⁰

The Centre for Human Rights and Advocacy (CENTHRA) also criticised the ASEAN Parliamentarians for Human Rights' (APHR) for breaching the regional grouping's non-interference policy. CENTHRA research fellow, Dr Abdul Hamid Abdul Murad, urged the parliamentarians to immediately rescind their call to the King to reconvene the Parliament and to apologise to Malaysians and citizens of ASEAN nations for interfering into Malaysia's internal affairs.¹⁷¹

The state of emergency has been used to embolden the military and give the government free access to the National Trust Fund (KWAN). The emergency ordinance which, among other

things, indefinitely suspends Parliament (when parks and gyms remain open) as well as elections, and the tapping into KWAN were all fashioned as measures to curb rising Covid-19 infections.

Combatting Covid with national development funds

On a positive note, at least ten Malaysian companies came forward during the start of the Covid-19 pandemic to extend aid as a way of giving back to society. Masks, sanitisers, food aid, financial assistance to frontline workers, medical support, surgical gloves and financial assistance to SMEs were some of the initiatives undertaken by them.¹⁷²

Meanwhile, the government has approved amendments to the National Trust Fund Act 1988 to allow withdrawals for Covid-19 vaccines and other related expenses. Given the suspension of Parliament, dipping into the savings of the national petroleum company Petronas can be done without scrutiny or accountability. It also allows for the ruling parties to use the funds for political purposes such as gearing up for the next elections, once the Covid-19 vaccine rollout is completed. And if Parliament has not been reconvened, and chances are it will not have been, then there will be no accountability as to how these funds were used. Klang lawmaker Charles Santiago has raised concerns that this may signal the possibility of the government freely dipping into the total RM16 billion in the National Trust Fund (KWAN).¹⁷³ The KWAN funds were originally earmarked to be used for national development purposes only.

Re-instating the Special Affairs Department (JASA), widely seen as a government propaganda tool, with a cash inflow of 40 million ringgit, was also justified as a means to disseminate information about Covid-19 to the people. Opposition Members of Parliament dismiss these claims, voicing suspicions that Prime Minister

169 BBC News. 2021. Malaysia declares Covid state of emergency amid political challenges. [online] Available at: <https://www.bbc.com/news/55625448> [Accessed 13 April 2021].

170 Hisamudin, H., 2021. Take threats against Nur Sajat, transgender community seriously, say activists. [online] Free Malaysia Today (FMT). Available at: <https://www.freemalaysiatoday.com/category/nation/2021/03/05/take-threats-against-nur-sajat-transgender-community-seriously-say-activists/> [Accessed 24 April 2021].

171 Reporters, F., 2021. Mind your own business, PPBM man tells Asean MPs. [online] Free Malaysia Today (FMT). Available at: <https://www.freemalaysiatoday.com/category/nation/2021/02/17/mind-your-own-business-ppbm-man-tells-asean-mps/> [Accessed 24 April 2021]

172 Kong, W. and Yap, E., 2020. 10 Malaysian companies that give back to the community during Covid-19. [online] Optionstheedge.com. Available at: <https://www.optionstheedge.com/topic/people/10-malaysian-companies-give-back-community-during-covid-19> [Accessed 14 April 2021].

173 Reporters, F., 2021. Criticism mounts over move to dip into national trust fund for vaccines. [online] Free Malaysia Today (FMT). Available at: <https://www.freemalaysiatoday.com/category/nation/2021/04/22/criticism-mounts-over-move-to-dip-into-national-trust-fund-for-vaccines/> [Accessed 14 April 2021]

Muhyiddin is channelling funds to strengthen his party machinery.¹⁷⁴

Restraints on the media

Media access to Parliament was limited to 15 news agencies, side-lining all online media. This prompted media watchdog Centre for Independent Journalism to warn that Covid-19 must not be used as an excuse to restrict access and limit media freedom. The organisation said this would also deny the public its access to Parliamentary proceedings.¹⁷⁵

An anti-fake news law was passed under Emergency (Essential Powers) Ordinance 2021, which is set to increase jail sentences for the spreading of 'fake news'. Journalists, rights groups and lawyers have condemned this move, saying it's a recipe for abuse.¹⁷⁶

Outgoing Law Minister Takiyuddin Hassan has already stated that claiming the government sought to declare an emergency because it had lost its majority in Parliament violates the fake news ordinance.

Media bias

A 112-page report by elections watchdog Bersih, Pusat Komnas and Suaram pointed out biased media coverage during the last election in 2018. Many of the politically-owned media organisations outrightly favoured the-then government, Barisan Nasional.¹⁷⁷

This bias has continued till to date, pushing Dr Mahathir Mohamad to mull the possibility of capping stakes in media companies by political parties to 10% as a way of ensuring media

freedom, when he became Prime Minister again in 2018.¹⁷⁸

Meanwhile, opposition lawmaker Charles Santiago and Steven Gan of the Malaysiakini news website were summoned for police questioning for criticising a Supreme Court decision which found the country's first online newspaper guilty of contempt.¹⁷⁹

Doubts about the judiciary

Questions were raised about the independence of the judiciary when former Deputy Prime Minister Anwar Ibrahim was convicted for corruption and twice for sodomy.¹⁸⁰ Malaysia's courts were again criticised when Malaysiakini, the country's first online newspaper, was found guilty of contempt by the Federal Court in 2021.

Suspensions of partisan tendencies in the judiciary are particularly problematic in light of the rising tide of intimidation and repression in Malaysia.

Repressive laws and a climate of fear

Malaysian authorities intimidate and harass journalists, activists, and opposition figures to create a climate of fear. A range of repressive laws is being used to shrink civic space, including:

- a. Emergency (Essential Powers) Ordinance 2021
- b. Sedition Act 1948
- c. Communications and Multimedia Act 1998
- d. Peaceful Assembly Act 2012
- e. University and University College Act 1971
- f. Official Secrets Act 1972
- g. Printing Press and Publication Act 1984
- h. Security Offences (Special Measures) Act 2012
- i. Prevention of Crime Act 1959
- j. Prevention of Terrorism Act 2015
- k. Contempt of Court

174 Palansamy, Y., 2020. Putrajaya cuts RM45m from Budget 2021 allocations for controversial Jasa unit | Malay Mail. [online] Malaymail.com. Available at: <<https://www.malaymail.com/news/malaysia/2020/12/10/putrajaya-cuts-rm45m-from-budget-2021-allocations-for-controversial-jasa-un/1930708>> [Accessed 14 April 2021].

175 NST Online. 2020. Journalists decry restriction on media access to Parliament | New Straits Times. [online] Available at: <<https://www.nst.com.my/news/nation/2020/10/633015/journalists-decry-restriction-media-access-parliament>> [Accessed 13 April 2021].

176 Zsombor, P., 2021. Malaysia Uses Emergency Powers to Impose 'Fake News' Law. [online] Voice of America. Available at: <<https://www.voanews.com/press-freedom/malaysia-uses-emergency-powers-impose-fake-news-law>> [Accessed 13 April 2021].

177 Kaur, M., 2018. EC revamp, media bias among problems to solve, says new report on GE14. [online] Free Malaysia Today (FMT). Available at: <<https://www.freemalaysiatoday.com/category/nation/2018/07/13/ec-revamp-media-bias-among-problems-to-solve-says-new-report-on-ge14/>> [Accessed 14 April 2021].

178 Tan, C., 2018. Mahathir moves to free Malaysian media from political parties. [online] Nikkei Asia. Available at: <<https://asia.nikkei.com/Politics/Malaysia-in-transition/Mahathir-moves-to-free-Malaysian-media-from-political-parties>> [Accessed 14 April 2021].

179 Reporters, F., 2021. Cops haul up Santiago over comments on Malaysiakini verdict. [online] Free Malaysia Today (FMT). Available at: <<https://www.freemalaysiatoday.com/category/nation/2021/02/25/cops-haul-up-santiago-over-comments-on-malaysiakini-verdict/>> [Accessed 13 April 2021].

180 Ahmad, R., 2010. Malaysia's courts in the dock over Anwar trial. [online] U.S. Available at: <<https://www.reuters.com/article/us-malaysia-anwar-courts-analysis-idUSTRE6100MW20100201>> [Accessed 13 April 2021].

TYPES OF CASES BROUGHT UNDER THE SEDITION ACT AND CMA

TYPE OF OFFENCE	NUMBER OF CASES OPENED
Insulting the king/royalty	20
Insulting political institutions	14
Insulting the implementation of COVID-19 or MCO measures	13
Insulting religion (Islam/the Prophet Muhammad)	7
Insulting national symbols	4
Insulting comments on race	3
'Fake news'	3
Others	2

These laws are stretched beyond their legitimate aims and purpose and impermissibly widely interpreted, leading to restrictions, repression, disproportionate responses and arbitrary government.

Throughout 2020, authorities aggressively applied the Sedition Act 1948 and Communications and Multimedia Act 1998 (CMA) to investigate, arrest, charge and convict individuals who criticized government officials, Malaysian royalty, or shared opinions about race and religion.

In March 2021, the leader of the opposition, Anwar Ibrahim, voiced concerns that the Malaysian Anti-Corruption Commission was being used to intimidate opposition lawmakers in support of the ruling government.¹⁸¹

Between March 2020 and February 2021, ARTICLE 19 and CIVICUS recorded 66 cases involving 77 individuals who had been investigated or charged for exercising their right to freedom of expression. Over this period, at least 12 people were convicted under the CMA.¹⁸²

181 Finance, I., Releases, C., Art, L., Use, T., Us, G., Us, C., Us, A., Card, R. and Policy, E., 2021. Anwar: Stop using MACC to intimidate MPs. [online] The Malaysian Reserve. Available at: <<https://themalaysianreserve.com/2021/03/17/anwar-stop-using-macc-to-intimidate-mps/>> [Accessed 13 April 2021].

182 ARTICLE 19. 2021. Malaysia: Fundamental freedoms in decline under Perikatan Nasional government - ARTICLE 19. [online] Available at: <<https://www.article19.org/resources/malaysia-fundamental-freedoms-in-decline-under-perikatan-nasional-government/>> [Accessed 13 April 2021].

Persecution of activists and human rights defenders

Human rights defenders face investigation and prosecution, most commonly under Section 233 of the Communications and Multimedia Act (CMA). From January to May 2020, 262 sedition cases were reported and 143 cases were opened under CMA. A month later, then-opposition MP Xavier Jayakumar was investigated under sedition laws after criticizing the government for not convening a full parliamentary session¹⁸³ and limiting the recent sitting of Parliament to a speech by the King.¹⁸⁴ A local student body, UMANY, is being investigated for sending out a statement to all lawmakers urging them not to unquestioningly support the 2021 Budget, despite the King advising all to do so. A lack of support for the budget would have delegitimised Prime Minister Muhyiddin's government to the benefit of opposition forces, supported by civil society, fighting against corruption and abuses of power.¹⁸⁵

183 Malaymail.com. 2020. Police to call Dr Xavier over alleged statement with elements of sedition | Malay Mail. [online] Available at: <<https://www.malaymail.com/news/malaysia/2020/05/20/police-to-call-xavier-over-alleged-statement-with-elements-of-sedition/1868083>> [Accessed 19 April 2021].

184 Human Rights Watch. 2020. Malaysia: New Government Backslides on Free Speech. [online] Available at: <<https://www.hrw.org/news/2020/06/10/malaysia-new-government-backslides-free-speech>> [Accessed 13 April 2021].

185 Amnesty Malaysia. 2021. Joint Statement: Civil Society Call For An End to Intimidation and Harassment Tactics Against UMANY and

Activist Cynthia Gabriel was investigated for accusing the government of trading favours for political support.

In March 2020, activist Fadhah Nadwa Fikri was investigated for a social media post calling for demonstrations against the change in government. Fadhah and 18 other activists were later investigated for failing to provide notice for a protest.

Human rights defender Sevan Doraisamy faced on-going harassment from the police for backing an article written by fellow activist and lawyer Fadhah Nadwa Fikri¹⁸⁶ in which she encouraged politicians to stand with the people instead of siding with the ruling elite, and for organising a forum to discuss preventive laws being used to curb dissent.¹⁸⁷

The police also probed 11 organisers and participants of the Undi18 protest that followed the announcement by the Election Commission that the process of lowering the voting age to eighteen would be delayed until September 2022.¹⁸⁸

In June, prominent anti-corruption campaigner Cynthia Gabriel was investigated for accusing the government of trading favours for political support. That same month, former radio personality Patrick Teoh was charged under the CMA for a social media post allegedly insulting the royalty.¹⁸⁹ One month later a jobless man was jailed for 26 months under CMA for insulting Islam.¹⁹⁰ In April 2021, famous graphic artist

Fahmi Reza was investigated by the police under CMA for insulting the Queen through a satire.^{191 192}

The situation, activists say, is dire and signals Malaysia's regression into its authoritarian past.¹⁹³

Enforced disappearances

The climate of fear does not stop at intimidation. It has been questioned whether the police are involved in enforced disappearances.¹⁹⁴ Malaysia's National Human Rights Commission (SUHAKAM) looked into the cases of Pastor Raymond Koh and Amri Che Mat and came to the conclusion they are victims of forced disappearance. Pastor Raymond's NGO was once investigated for converting Muslims to Christianity.¹⁹⁵ Amri was accused of spreading Shia Islam, considered deviant by the Malaysian government.¹⁹⁶ A special task force was set up to investigate SUHAKAM's report, but no findings were made public.

SUHAKAM has accused the Special Branch, the intelligence agency of the police force, of being responsible for the disappearance of Pastor Raymond Koh and Amri Che Mat. The Special Branch only answers to the police chief and is widely known to infiltrate public gatherings, places of worship, political gatherings, universities and press conferences to gather information and intelligence. The Special Branch's political division conducts propaganda campaigns for the government. During the trial of former Deputy

malaysia/2020/06/14/former-dj-patrick-teoh-charged-over-facebook-remarks-against-johor-crown-pr/1875306> [Accessed 19 April 2021].

Associated Individuals - Amnesty Malaysia. [online] Available at: <<https://www.amnesty.my/2020/11/12/civil-society-call-for-an-end-to-intimidation-and-harassment-tactics-against-umany-and-associated-individuals/>> [Accessed 13 April 2021].

186 Aiman, A., 2018. Suaram's Sevan Doraisamy quizzed over activist's article. [online] Free Malaysia Today (FMT). Available at: <<https://www.freemalaysiatoday.com/category/nation/2018/12/06/suarams-sevan-doraisamy-quizzed-over-activists-article/>> [Accessed 14 April 2021].

187 Front Line Defenders. 2019. Judicial harassment of Sevan Doraisamy. [online] Available at: <<https://www.frontlinedefenders.org/en/case/judicial-harassment-sevan-doraisamy>> [Accessed 14 April 2021].

188 Adam, A., 2021. 'Where is our vote?' Youths sit for 18 minutes in front of Parliament to protest the delay of Undi18 | Malay Mail. [online] Malaymail.com. Available at: <<https://www.malaymail.com/news/malaysia/2021/03/27/where-is-our-vote-youths-sit-for-18-minutes-in-front-of-parliament-to-prote/1961533>> [Accessed 13 April 2021].

189 Malaymail.com. 2020. Police to call Dr Xavier over alleged statement with elements of sedition | Malay Mail. [online] Available at: <<https://www.malaymail.com/news/malaysia/2020/05/20/police-to-call-xavier-over-alleged-statement-with-elements-of-sedition/1868083>> [Accessed 19 April 2021].

190 Tan, B., 2020. Former DJ Patrick Teoh charged over Facebook remarks against Johor crown prince | Malay Mail. [online] Malaymail.com. Available at: <<https://www.malaymail.com/news/>

191 Reuters. 2021. Malaysian police arrest artist for allegedly insulting queen with Spotify playlist. [online] Available at: <<https://www.reuters.com/lifestyle/malaysian-police-arrest-artist-allegedly-insulting-queen-with-spotify-playlist-2021-04-24/>> [Accessed 14 April 2021].

192 Jufri, J., 2020. Man jailed 26 months for insulting Islam, Prophet Muhammad » The Capital Post. [online] The Capital Post. Available at: <<https://www.capitalpost.com.my/2020/07/17/man-jailed-26-months-for-insulting-islam-prophet-muhammad/?fbclid=IwAR0JGH9vGU7rC9nJ4l5JZzCnblXPhA0yEzUTQOesL-lzUgD7z5MRQHFzFk#.YIY8c5Mza8U>> [Accessed 19 April 2021].

193 Amnesty.org. 2020. Raft of police investigations in Malaysia are a blatant attempt to intimidate peaceful protesters. [online] Available at: <<https://www.amnesty.org/en/latest/news/2020/03/malaysia-raft-police-investigations-blatant-attempt-intimidate-peaceful-protesters/>> [Accessed 19 April 2021].

194 Reporters, F., 2021. Is police cartel linked to disappearances, asks group. [online] Free Malaysia Today (FMT). Available at: <<https://www.freemalaysiatoday.com/category/nation/2021/04/02/is-police-cartel-linked-to-disappearances-asks-group/>> [Accessed 13 April 2021].

195 USCIRF. 2021. Raymond Koh. [online] Available at: <<https://www.uscirf.gov/religious-prisoners-conscience/raymond-koh>> [Accessed 13 April 2021].

196 USCIRF. 2021. Amri Che Mat. [online] Available at: <<https://www.uscirf.gov/amri-che-mat>> [Accessed 13 April 2021].

Prime Minister and current Opposition Chief Anwar Ibrahim, it was revealed the agency also engaged in “turning over operations” to make political opponents change their stands.¹⁹⁷

In addition to forced disappearances, incidents of prisoners being subjected to torture or even killed in custody have been reported. Such cases rarely lead to any action taken against the police.¹⁹⁸

Hate speech and xenophobia

The government response to the COVID-19 pandemic has been particularly harsh on refugees and migrant workers. In 2020, authorities turned away two Rohingya boats with hundreds of people. Activists raising concerns about the well-being of those turned back prompted a huge backlash from Malaysians.

The country saw well-coordinated and unprecedented levels of hate speech and xenophobia against the Rohingya. In May last year, 84 civil society organisations wrote a letter to Muhyiddin Yassin requesting him to address the hate speech against the Rohingya, which was started by social media trolls in April of the same year.¹⁹⁹ This saw artists from refugee communities pull back from the annual refugee festival fearing even more hate and online threats.²⁰⁰ Zafar Ahmad Abdul Ghani, a Rohingya, received death threats and threats of violence following the circulation of fake news about him on social media. The posts said Zafar was demanding Malaysian citizenship, condemning the Malaysian government and

hitting out against the Malay Muslims.²⁰¹ Heidy Quah, a refugee rights activist, was interviewed by the police over her FB post detailing the dire conditions of immigration detention centres. She also received threats online.²⁰² South China Morning Post reporter Tashny Sukumaran was investigated by the police for reporting on police raids of migrant workers and refugees.²⁰³ Another journalist, Boo Su-Lyn, is being investigated for publishing the findings of an inquiry into a fire at a hospital in 2016 that left six dead.²⁰⁴

Al-Jazeera staff faced sustained online harassment after releasing a documentary video titled “Locked Up in Malaysia’s Lockdown”, which looked at the treatment of hundreds of migrant workers and refugees detained during the pandemic.²⁰⁵ On top of being accused of sedition and defamation, Al Jazeera’s reporters became the target of abusive messages and death threats. The personal details of current and former staff were published online, in a serious breach of privacy which could potentially expose them to great risk in the future.

The safety of those interviewed in the documentary also came under threat as they were subjected to abusive online harassment and hate speech.²⁰⁶

197 Sentinel, A., 2019. Malaysia’s Special Branch and the Deep State. [online] Asiasentinel.com. Available at: <<https://www.asiasentinel.com/p/malaysia-special-branch-deep-state>> [Accessed 13 April 2021].

198 Malaysia 2019 Human Rights Report, United States Department of State: Bureau of Democracy, Human Rights and Labor <https://www.state.gov/wp-content/uploads/2020/02/MALAYSIA-2019-HUMAN-RIGHTS-REPORT.pdf>

199 Human Rights Watch. 2020. Joint Letter Re: End Violent Threats and Anti-Rohingya Campaign. [online] Available at: <<https://www.hrw.org/news/2020/05/11/joint-letter-re-end-violent-threats-and-anti-rohingya-campaign>> [Accessed 25 April 2021].

200 Tan, M., 2020. Yahoo is now a part of Verizon Media. [online] Malaysia.news.yahoo.com. Available at: <https://malaysia.news.yahoo.com/fear-xenophobic-backlash-refugee-artists-034559587.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAIWh-KhOPWtCHRJcqTFOMWk0uv-r3fbQ2l-GQ_FeZfTgRRwnjbtZDOX8k2pR2uJw4MglXLkzEv7Ud6vPjy-lzCxc4gUzVWvV_FG8777In-trkvN-unWyl2s4y44mkoQLdURfszS-ot4B5_f4jSkbh9TUjWx3AsvlaSTrocCZ2xz> [Accessed 14 April 2021].

201 Reporters, F., 2020. Rohingya spokesman lives in fear after fake news on citizenship sparks death threats. [online] Free Malaysia Today (FMT). Available at: <<https://www.freemalaysiatoday.com/category/nation/2020/04/24/rohingya-spokesman-lives-in-fear-after-fake-news-on-citizenship-sparks-death-threats/>> [Accessed 13 April 2021].

202 Malaymail.com. 2020. Police question activist over Facebook posting on alleged mistreatment of refugees in Immigration detention centres | Malay Mail. [online] Available at: <<https://www.malaymail.com/news/malaysia/2020/07/07/police-question-activist-over-facebook-posting-on-alleged-mistreatment-of-r/1882358>> [Accessed 14 April 2021].

203 Yusof, T. and Perimbanayagam, K., 2020. Cops probing South China Morning Post reporter over migrant raid article | New Straits Times. [online] NST Online. Available at: <<https://www.nst.com.my/news/nation/2020/05/589549/cops-probing-south-china-morning-post-reporter-over-migrant-raid-article>> [Accessed 14 April 2021].

204 Ifj.org. 2020. Malaysia: Police question journalist over articles on hospital fire inquiry / IFJ. [online] Available at: <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/malaysia-police-question-journalist-over-articles-on-hospital-fire-inquiry.html>> [Accessed 14 April 2021].

205 Aljazeera.com. 2020. Al Jazeera journalists questioned over Malaysia documentary. [online] Available at: <<https://www.aljazeera.com/news/2020/7/10/al-jazeera-journalists-questioned-over-malaysia-documentary>> [Accessed 14 April 2021].

206 Human Rights Watch. 2020. Joint Letter Re: End Violent Threats and Anti-Rohingya Campaign. [online] Available at: <<https://www.hrw.org/news/2020/05/11/joint-letter-re-end-violent-threats-and-anti-rohingya-campaign>> [Accessed 25 April 2021].

Military policing operations against undocumented migrants

The Emergency (Essential Powers) Ordinance has endowed the military with police powers, ensuring the government and military can act with almost complete immunity. Military officers monitor the country's borders and are equipped with the powers to arrest and detain undocumented migrants – ostensibly as part of movement control orders aimed at containing the spread of Covid. International human rights organisation Human Rights Watch has said such wide-ranging powers may give rise to abuse, given the already existing hostility against migrant workers in the country.²⁰⁷ Human Rights Watch also warns that the Military forces are not trained to arrest and detain civilians in a manner that respects rights, which increases the likelihood of the use of excessive force.

LGBT community under threat

The government continues to persecute the LGBT community. The Minister for Islamic Affairs, Zulkifli Mohamad, released a statement online that gave “full license” to religious authorities to arrest and “rehabilitate” them. He will also be seeking Parliamentary consent for harsher punishment and a nod for conversion therapy.²⁰⁸

LGBT people also face popular resentment, especially when religious beliefs come into the mix. Transwoman Nur Sajat hinted during a live broadcast on her now-deactivated Instagram account about converting out of Islam. Her announcement prompted a backlash from netizens, with some threatening to kill her. She continues to be hunted down by the police and more than 100 religious enforcement officers for failing to appear in court for a case brought against her three years ago for insulting Islam.²⁰⁹ In the analysis of Thilaga Sulathireh from Justice

207 Human Rights Watch. 2021. Malaysia: Urgently Revise Emergency Ordinance. [online] Available at: <<https://www.hrw.org/news/2021/01/21/malaysia-urgently-revise-emergency-ordinance>> [Accessed 13 April 2021].

208 NOORSHAHRIZAM, S., 2021. Civil groups chide minister Zulkifli's insistence on harsher laws against LGBT, endorsement of conversion therapy | Malay Mail. [online] Malaymail.com. Available at: <<https://www.malaymail.com/news/malaysia/2021/04/07/civil-groups-chide-minister-zulkiflis-insistence-on-harsher-laws-against-lg/1964595>> [Accessed 14 April 2021].

209 Dzulkiably, D., 2021. Cops say joining hunt for Nur Sajat following request from Selangor Islamic enforcers | Malay Mail. [online] Malaymail.com. Available at: <<https://www.malaymail.com/news/malaysia/2021/03/20/cops-say-joining-hunt-for-nur-sajat-following-request-from-selangor-islamic/1959377>> [Accessed 13 April 2021].

for Sisters, these extreme actions are legitimised by patriarchal interpretations of religion and laws that criminalise persons based on their gender identity, religious beliefs or lack thereof, and freedom of expression.²¹⁰

However, there are some positives:

In February 2021 Malaysia's highest court ruled that a state law banning consensual same-sex conduct was unconstitutional. Homosexuality is a crime in predominantly Muslim Malaysia and so, the ruling leaves intact a federal statute criminalizing same-sex relations. However, it does offer some respite to gay men and women who faced constant harassment from state-approved morality police. The case goes back to a 2018 raid on a private residence in Selangor, in which state religious enforcement officials arrested 11 men on charges of “attempting” gay sex, under the Shariah enactment. The following year, a court convicted five of the men and sentenced them to fines, imprisonment, and six strokes of the cane each. One of them appealed, arguing that the enactment of section 28 of the Shariah Act was ultra vires, or beyond the state's powers, because under Malaysia's constitution only the federal government may legislate some aspects of criminal law. The nine-judge panel supported this argument.²¹¹

Recommendations

- The practice of stretching laws beyond their legitimate aims and purposes to increase restrictions on civic space must be brought to an immediate end; repressive laws must be abolished and a moratorium instituted on their use;
- A Malaysian Media Council must be set up to ensure press freedom and freedom of information. Freedom of information will allow journalists and newsrooms to work free from fear, censorship and harassment. This

210 Al Jazeera Media Network. 2020. Al Jazeera shocked by the response from Malaysian authorities to its documentary 'Locked Up in Malaysia's Lockdown' and worried about the safety of its staff. [online] Available at: <<https://network.aljazeera.net/pressroom/al-jazeera-shocked-response-malaysian-authorities-its-documentary-%E2%80%98locked-malaysia%E2%80%99s>> [Accessed 24 April 2021].

211 Bala Krishnan, D., 2021. 90 Asean MPs slammed for interfering in Malaysia's affairs | New Straits Times. [online] NST Online. Available at: <<https://www.nst.com.my/news/nation/2021/02/666598/90-asean-mps-slammed-interfering-malysias-affairs>> [Accessed 24 April 2021].

will ensure credible, accurate and factual reporting and increase public support for the local media.

- Establishment of an effective Independent Police Complaints & Misconduct Commission (IPCMC) is urgently needed. The 2019 Bill that looks into setting up the IPCMC must be re-tabled, in place of the watered-down 2020 Independent Police Conduct Commission (IPCC) Bill that replaced it. The original IPCMC Bill lists five functions that the IPCMC will have, namely to promote integrity within the police force as well as to advise the government and recommend measures for such promotion of integrity; to protect public interest by dealing with police misconduct; to formulate and put in place mechanisms for the detection, investigation and prevention of police misconduct; and to “exercise disciplinary control” over the police.²¹² The Bill also includes disciplinary proceedings to deal

212 Ghoshal, N., 2021. Malaysia's Highest Court Strikes Down State Gay Sex Ban. [online] Human Rights Watch. Available at: <<https://www.hrw.org/news/2021/02/25/malysias-highest-court-strikes-down-state-gay-sex-ban>> [Accessed 24 April 2021].

with misconduct and the punishments that can be meted out to errant police officers.

- The Human Rights Commission of Malaysia (SUHAKAM) must be endowed with enforcement powers. Strengthening the Human Rights Commission's mandate, power and resources is pivotal to increase the effectiveness of the SUHAKAM Act as a human rights statute, clarify ambiguous provisions and bring the Act fully in line with the Paris Principles.²¹³

213 Lim, I., 2019. So what exactly is the IPCMC Bill all about and why it is important | Malay Mail. [online] Malaymail.com. Available at: <<https://www.malaymail.com/news/malaysia/2019/07/23/so-what-exactly-is-the-ipcmc-bill-all-about-and-why-it-is-important/1773903>> [Accessed 24 April 2021].

3.7 The Right to Dissent – Country report: MYANMAR

Backsliding into military authoritarian rule

The February 2021 coup d'état in Myanmar has wrenched the entire country back to overt military control and imposed an almost totalitarian system of state control. The formation of the military dominated State Administration Council (SAC) is a clear throwback to previous systems of military authoritarian rule that have repressed the diverse society since 1962. The Myanmar armed forces, or Tatmadaw, took two decades to write a constitution and a raft of laws that would preserve their institutional independence, financial power, immunity from prosecution, and ensure that amending key provisions of that constitution would be impossible. It preserved three key ministerial posts and 25 percent of unelected seats. A hybrid system of government was formed, first through a pro-military civilian administration elected in 2010, then the landslide victory by the Tatmadaw's long-term nemesis Aung San Suu Kyi and the National League for Democracy (NLD) in 2015. Suu Kyi and her party did very little to dismantle the police state they inherited, repealing few repressive laws, making no headway in amending the 2008 constitution, and marginalizing both urban civil society and especially ethnic communities still suffering the effects of decades of armed conflict and repression. Another landslide victory amidst the Covid-19 pandemic in November 2020 returned the NLD with a massive majority from a surprisingly large voter turnout, and very mixed results from ethnic political parties. Post-election, there were fears that the NLD had become in effect a one-party state with little incentive to reach out to marginalized or oppressed communities, to seek the genuine peace and reconciliation it had largely ignored in its first term, and pursue its own privileged platform of economic and social reforms, the pace of which was always predicated on its bargaining with the omnipresent Tatmadaw. The numbers of people charged and incarcerated under laws repressing freedom of expression and assembly slowly rose during the NLD government to greater numbers than under its predecessors, with few in the NLD speaking out on the right to dissent, despite decades of persecution by the Tatmadaw.

Pretence of a return to stability and business as usual

The SAC and Tatmadaw are a predominantly military formation. Their main 'objectives' of the SAC mirror those from previous junta's, with almost exactly the same wording. Press conferences and speeches by senior officials all claim success in Covid-19 prevention, stabilizing law and order from 'terrorists and rioters', and warn of any disruption of national 'peace and tranquility'. As in the past, the entire structure of administration will be overseen at a senior level by serving military officers, with many local bureaucrats either retired military personnel or veterans of previous regimes and clear loyalty to, or innate fear of, the Tatmadaw. There is a pretence of a civilian advisory council and a government cabinet. In one of the signs of the SAC seeking a 'return to normal', the Minister of Social Welfare, Relief and Resettlement, Daw Thet Khaing, chaired a meeting in early April to pass the long moribund Violence Against Women Law. First drafted in 2013, the law had essentially been put on hold by the NLD, despite significant work by Myanmar women's rights groups to lobby the government.

Protests met with lethal force

The coup sparked major nationwide protests against military rule and the arrest of President U Win Myint and Aung San Suu Kyi and many other elected officials. There were a number of pro-coup rallies held in Yangon but these were clearly staged events.

In three months of resistance against the coup an estimated 3,000 people have been arrested, and over 700 killed. During February, many protests in Yangon, Mandalay and many other towns, including the capital Naypyidaw, were peaceful, festive, innovative, and inclusive, bringing together medical professionals, workers from industrial zones, artists, bank employees, bodybuilders,²¹⁴ food-delivery bike riders, engineers, and on occasion, members of the security forces. The labour movement has been particularly visible and active. The protests included marches, night-time vigils,

214 Groups of bodybuilders protested with their shirts off. Some days later, overweight and out-of-shape men staged their own protest with their shirts off, in solidarity.

public performances, all under the broad banner of the Civil Disobedience Movement (CDM) which called on people to boycott work and any action that would legitimize the SAC. The security forces responded with increasing violence during March, using water cannon and tear gas. Individual cases of security forces shooting live rounds at civilians were initially few, the first casualty being 19-year old Myat Thet Khaing in Naypyidaw in mid-February. The violent methods soon included deployment of army snipers and a clear pattern of head shots, most clearly in the case of 19-year Kyal Sin in Mandalay on March 3, when 38 people were killed around the country. In mid-March, a major military operation in the industrial estates of Hlaing Thayar saw dozens of protestors and striking workers killed and an exodus of civilians out of the area. On March 27, Armed Forces Day, with a major military parade in Naypyidaw, nationwide protests resulted in over 90 deaths. On April 9, 82 civilians were killed in Bago by a security crackdown. At some points in March, there were hundreds of diverse protests throughout Myanmar, uncoordinated apart from general messages of 'themes' open to local interpretation. The security forces cracked down hard on many regional towns such as Kalay, Dawei, Monywa, Myeik, and in Taunggyi, Myitkyina and Mawlamyine.

Building on a history of repressive laws

Dissent in Burma has long been repressed using a raft of colonial era laws and contemporary laws that provide a cornucopia of choice for laying charges on people exercising basic rights. The NLD government was remiss in its failure to repeal or amend many of these laws, which continued to be used against many people during the NLD's first term, just as they had against the party and its supporters for over 25 years, including new legislation under the 2013 Telecommunications Law, and the Peaceful Procession Law. The Penal Code is a hangover from British colonialism, and Section 505 is a sweeping category of inciting division in the military or social unrest in which many dissidents have been charged.

Martial law and death sentences

The post-coup legal framework is extremely harsh, with martial law being declared in many places of protest, and some civilians being

sentenced to death under military tribunals. Two weeks after the coup, the SAC made significant amendments to the Penal Code, specifically broadening out provisions of Section 505 and Section 124 a, b, c and d, which could punish anyone obstructing the security forces in their duties to 20 years, or seven years for obstructing a government civil servant. Amendments to the Code of Criminal Procedure Law make these offenses non-bailable and do not require an arrest warrant. Further amendments were made to the Electronic Transactions Law and the Ward or Village Tract Administration Law, in effect a tightening of an already restrictive apparatus. Added onto existing and SAC-enhanced repressive laws are often seemingly obscure provisions such as those imposed on Aung San Suu Kyi for unregistered communications equipment, or Covid-19 related measures such as breaches of the National Disaster Management Law. Legal repression in Burma is malleable, and as one legal scholar observed, it is 'rule by law' not rule of law. This legal framework is even more worrying with the establishment on March 15 of military tribunals that are formed by Tatmadaw commanders, where alleged offenders are tried without representation, and subject to the death penalty. Reports that 19 protestors arrested in early April and sentenced to death for alleged violence in Yangon weeks before have not been seen since the early 1990s use of these tribunals.

Police violence

The repression of the post-coup protests has largely been a Myanmar Police Force (MPF) led operation, with tactical Tatmadaw back-up. Yet many of the police forces are paramilitary Combat Police Battalions, and many protestors suspect that many 'police' are actually soldiers in police uniforms, and there is no doubt the military is in full control (the police come under the Ministry of Home Affairs, a ministerial position preserved for the Tatmadaw). This subterfuge supports state propaganda that asserts minimum use of force up to international standards is being used. Yet there has been multiple use of clearly distinguishable units of Light Infantry Division (LID) troops, including snipers, violently suppressing protests and arresting civilians, often using live ammunition and at times hand grenades and rocket propelled grenades (RPGs). Many slain protesters were shot in the head, a clear tactic to intimidate protestors. The behaviour of the police and military mirrors the sort of violence experienced in Burma during

protests in 2007 and 1988, but also against ethnic civilians throughout the country for several decades. This includes not just beatings and extra-judicial execution, but rampant looting and destruction of property. Ethnic civilians in conflict zones have been subject to Tatmadaw airstrikes and indiscriminate artillery fire not just over the post-coup period, but for several years while an ostensible nationwide peace process made little progress under the NLD, which did little to challenge the military culture of impunity. This approach to pacification was witnessed in its most extreme form against the Rohingya Muslims of Rakhine State in 2017, a mass military ethnic cleansing that elicited little condemnation from (progressive) civil society throughout Myanmar.

Local resistance

The participation by vigilantes or auxiliaries has been a feature of past repression in Burma, including a group called the Swan Arr Shin (Masters of Force) used against the NLD members.

The release of 23,000 prisoners in mid-February led to fears of widespread disorder and the spread of vigilante violence that justified security force action. The SAC have presented a pretence of a legitimate response to widespread protests with what it claims is proportionate police force, and there has been little role for local thugs to act. One reason could be the sheer number of local resistance formed against the SAC, neighbourhood watch committees formed by local residents throughout urban areas have stood guard against intrusions by unknown men, often thwarting night-time raids by the police, and in some cases actively driving out SAC-appointed local government administrators, in effect taking day to day control of their suburbs. Slowly, the security forces have re-established control of neighbourhoods and torn down barricades, but many citizens still refuse to cooperate with the SAC administration and officials.

Arbitrary arrests, torture and killings

Since the morning of the coup d'état, the SAC has targeted a broad cross-section of society for its arrests, very similar to patterns of past military regimes where arrest and detention were designed to spread fear and intimidation, and includes persecution and harassment of family members of dissidents. Scores of NLD members have been arrested, many of whom

have spent previous stints in prison. Members of the NLD have been arrested and allegedly killed in custody, apparently through torture, including U Khin Maung Latt (58), and Zaw Myatt Lynn (46), whose corpses were released to their families showing clear signs of torture.

According to the lists compiled by the Assistance Association of Political Prisoners Burma (AAPPB), other prisoners detained included scores of members of the Union Electoral Commission (UEC) from national and local levels, local administrators and many protesters arrested in waves of night raids throughout the country or during protests.

On March 24, 628 people were released from Yangon's Insein Prison, but arrests throughout the country continued. State media issued wanted posters for scores of Myanmar celebrities and artists who had expressed support for the anti-coup protests and were now facing Penal Code 505 charges. In early April, famous male model Paing Takhon was arrested, as was celebrated comedian Zarganar who has been in and out of prison on various charges since 1988. Prominent women's rights activists such as Thin Thin Aung, arrested on April 8 and sent to the Yay Kyi Eaing interrogation centre, were also targeted. Over 20 members of Myanmar's independent media have been arrested and many others forced into exile or driven underground. Many seasoned activists and leaders of newly formed general strike committees were forced underground into hiding in urban areas, or fled to areas controlled by ethnic armed organizations (EAOs) or to neighbouring countries.

The security forces have employed tactics used for decades in arresting wanted dissidents, raiding homes and taking family members as hostages if the main target is not there. In Bago, after the mass killing, families are being charged US\$100 to collect the corpses of relatives.

Charges against political opponents

The February 1 coup was staged ostensibly under Section 417 of the Constitution declaring a state of emergency. The SAC's justifications for the coup are as multifarious as they are absurd. The major claim is of widespread electoral fraud in the 2020 election, which has included the presentation of exhaustive documentation to claim 10 million votes were fake. The Tatmadaw had prepared a narrative of electoral irregularities during 2020 that slowly grew in the months leading to the formation of the new government

scheduled for February 1. Just days before the coup, Senior General Min Aung Hlaing made public comments that if the 2008 Constitution was not being followed it should be scrapped: in retrospect a clear indication of an impending coup. Other charges, against Suu Kyi and several NLD appointed chief ministers involve corruption charges, a common method to merge legal measures and financial impropriety to discredit political opponents. The legal process will likely be protracted as SAC authorities lay extra charges against senior officials, a commonplace tactic of the past thirty years.

Hate speech and limited freedom of expression

For the past decade in Myanmar, provisions of the 2013 Telecommunications Law have been used to limit freedom of expression and target criticism of the Tatmadaw and NLD from a range of dissidents, whilst rampant hate-speech had been disseminated by ultra-nationalists and Buddhist monks with little sanction. Facebook has been a notorious enabler of the spread of hate speech, especially against the Rohingya Muslims in 2017 and also used by ultra-nationalists to spread anti-NLD and Suu Kyi rumours, often with little action by Facebook. In 2016, the NLD government pursued consultations with civil society over a proposed anti-hate speech law, which went through various drafts and titles, and became increasingly secretive. Rights groups were highly critical of drafts that set out to criminalize freedom of expression and impose prison terms for breaches of the law. The drafting responsibilities were handed to a committee under the auspices of the Ministry of Home Affairs, a clear indication of the military's interest in legislation that involved social control. The bill was scheduled to pass in 2020, but was not cleared by the national parliament ahead of the November polls.

Dissenting voices: finding ways to be heard

If Myanmar continues to slide into Tatmadaw enforced isolationism, the ability of dissident networks to mobilize domestically and with international allies will face numerous challenges. The ability of transnational solidarity networks to directly engage with dissidents inside Myanmar will be inhibited by the functioning of a police state, and the use of interrogation, torture and

intimidation that were a routine feature of the 1988–2011 regimes. The ability of Western donors to support progressive dissidents will face numerous challenges, especially with the poor state of the banking system in Myanmar and state surveillance now much more potent than before. However, Myanmar has taken a gigantic leap forward in access to digital networks, and there is much greater capacity to circumvent surveillance and get information to networks. The SAC's cutting of access to the internet has disrupted activities, but it has by no means impeded them. Telecoms providers, the two state owned firms MPT and Mytel, will comply with restrictive measures, and so will the two foreign firms Telenor and Ooredoo, but protestors, journalists, activists and others still manage to get the message out. Possibly cooperation not just with China and Russia, but potentially also Thailand and India will make the resumption of cross-border assistance for civil disobedience very difficult, and the possibility of the resumption of a 'Thai/Myanmar' resistance complex that was formed between 1988 to 2010 will be physically harder, but progress in remote working and access to 'remote management' techniques make exiled mobilization possible. And then of course, the possibility of a regional online Tea Alliance solidarity network that offers potential to draw from activists in various countries will be a major morale booster.

Parallel government aimed at ending military takeover

The Committee Representing the Pyidaungsu Hluttaw (CRPH), formed by elected members of parliament from the 2020 polls, and including defecting members of the Myanmar bureaucracy such as the Ambassador to the United Nations in New York, have attempted to establish a parallel government, and symbolically abolished the 2008 Constitution. The main aim of the CRPH and many of the other CDM movement and strike committees is an end to military rule, repealing the constitution, and the restitution of the 2020 elected parliaments. The CRPH has developed a federal Charter.

Moving towards an intersectional counter-revolution?

Some of the hopeful developments post-coup are in the alliances and cooperation being formed between various groups. One is the General

Strike Committee of Nationalities (GSCN) which involves dozens of ethnic youth, women, peace and environment groups, many of whom have cooperated and have become well known to each other over the past decade. The GSCN calls for what it terms 'intersectional revolution', the "total uprooting of military institution, militarism, and military dictatorship that has been built on extreme nationalism, sexism, patriarchy, and religious extremism." Many of these groups were at the forefront of critiquing both the military and the NLD over the past ten years and standing up for promoting rights and democracy, right to land and other natural resources and legal reform. They have already established a clandestine 'Federal Radio' station and cooperated in numerous protests nationwide. The work of established rights groups such as Assistance Association for Political Prisoners Burma (AAPPB), established in 1999 - many of which had been marginalized during the decade of openness and their advocacy for political prisoners rebuffed - has demonstrated clearly that a fusion between experienced activists from generations past have much to hand down to the new generation, and have valuable lessons on sustaining clandestine networks of information, documentation and experience with international advocacy forums.

Hope for the future

Myanmar faces immense challenges to fundamental freedoms in the coming years, but many younger people who have experienced a decade of openness, interconnectivity, and development will continue to challenge military rule, often in innovative and disparate ways. Resistance will come in many forms, from civil disobedience, political mobilization, media, and the growing calls for an armed resistance against the Tatmadaw.

Moving forward

Inclusion of many disparate voices and organizations is essential to ending military rule and upholding rights and democracy. Traditional forms of engagement with the military, either through the United Nations, ASEAN, envoys or special rapporteurs, will no longer work in Myanmar: More formalized mediation that often excludes dissidents will be deeply unpopular and could potentially backfire.

Western donors need to sharply reorient their funding priorities to support civil society, including women's groups, environmental groups, free speech advocates, and especially independent media and ethnic media in Myanmar. The post-2020 period had large scale development plans and committed funding for major infrastructure projects. These large projects through the international financial institutions (IFIs) and the UN Development Programme can no longer be supported. Humanitarian aid and support for the promotion of fundamental freedoms must take priority with donors, who must side with pro-democracy movements.

3.8 The Right to Dissent – Country Report: PAKISTAN

Toxic nationalism: no room for dissent

Pakistan is in the midst of a difficult era in terms of human rights violations. Since 2018, the country has been governed by what critics term a “hybrid regime”, characterised by a civilian set-up under the tutelage of the country’s powerful military. The current regime was established after the July 2018 elections, which were widely viewed as rigged and the results were dismissed by the opposition parties. The new regime, led by Prime Minister Imran Khan, has indulged in various rights violations, including the muzzling of media, use of sedition laws against dissidents, a continuation of the policy of enforced disappearances and attacks on critical thought in academic institutions.

The accelerating authoritarianism of the regime is matched by an increasing discourse against human rights defenders and dissidents across the country. The current government has popularized the notion of an alleged “fifth generation war” being waged against Pakistan, in which it claims that the real danger to the sovereignty of the country are “fifth columnists”, who are involved in propaganda against the government. This implies that all those who uphold the sanctity of the constitution and the right to dissent are viewed as enemy agents, removing them from the legitimate political community.

The act of positing dissenting citizens outside the framework of the nation-state permits state and non-state actors to exercise unrestrained violence upon individuals with impunity-- with support from large sections of society. This mass hysteria, involving blind adherence to a toxic nationalism, shapes the dangerous context in which dissenters are operating in contemporary Pakistan. They are immediately labelled agents of hostile countries in order to delegitimize their criticisms of the prevailing situation in the country. We are thus dealing with a government that not only attacks opponents, but makes their point of view illegible in front of the broader public.

In this report, we will highlight 5 areas where the hybrid regime has imposed a crackdown on dissidents. This includes attacks on young people, women activists, the media, academics, as well as the terrifying policy of enforced disappearances.

Pakistan’s youth bulge: a law and order problem?

Over 60% of Pakistan’s population are young people. This youth bulge poses a serious challenge to the security and stability of Pakistan: the country is unable to provide sufficient jobs to absorb the many new entrants into the labour market and remains ill-equipped to provide adequate education, housing and recreation activities for its young people. This results in increasing unrest and agitation among young people. But instead of listening to their grievances, the state is inclined to view young people primarily as a law and order problem.

A number of examples illustrate the intensifying crackdown on youth activists. In January 2018, clashes erupted at University of Punjab (Lahore) when students of the minority ethnic Pashtun group were attacked by a state-backed Islamist organization called Islami Jamiat Tuleba. The state responded by charging the Pashtun students with terrorism under the Anti-Terrorism Act.

While students were released on bail after a week incarcerated, the use of anti-terror legislation against student activists signalled increasing pressure on student groups.

In 2019, student groups across the country marched for the restoration of student unions, which have been banned since 1984 by the military dictator General Zia ul Haq deemed them a national security threat. The student mobilisations, which took place in 54 cities on 29th November, were lauded by all sections of society, including the Prime Minister Imran Khan. The day after the event, one of the student organizers, Alamgir Wazir, was abducted by security forces and was later charged with sedition. Other organizers - Farooq Tariq, Iqbal Lala, Mohammad Shabbir, and Ammar Ali Jan - were also charged with sedition. The sedition law is a remnant of the colonial era and carries a life sentence.

During the COVID-19 pandemic, students have regularly protested against the lack of adequate internet facilities and the poor quality of online education. In January 2021, student protests erupted against attempts by universities to conduct physical exams at the peak of the second wave of COVID-19 and for charging full tuition despite the poor quality of education.

In an unprecedented move, police forces joined private guards of universities in brutally suppressing protests on campuses. Later, the police and intelligence agencies raided the house of a student leader, where they abducted and held five students for two days before registering a case against them. The incident led to a massive outcry as lawyers filed a petition of habeas corpus in the Lahore High Court. The student leaders were released after five days of incarceration, but the incident underscores once more the precarity of student activists under the current regime.

Abuse of power against women's rights

Pakistan ranks 153rd on the Global Gender Gap Index, highlighting the pervasive abuse of power faced by women. Two recent instances from earlier this year are emblematic of the scale of challenges faced by women's rights activists in the wake of organized attempts to silence them.

The first concerns this year's "Aurat March" (Women's March) that takes place every year on International Women's Day. The event has always provoked strong reactions from conservative sections of society, who see it as an attempt to undermine the country's religious moorings. However, this year, the widespread conservative sentiment against the march converged with the authoritarianism of the state. Government officials had already expressed unease at the mention of "taboo" topics, such as enforced disappearances and the military's excesses in Khyber Pakhtunkhwa, Balochistan, Gilgit Baltistan and other peripheral regions. The state proceeded to aid right-wing groups in forging a smear campaign against organizers of the Aurat March. Doctored footage and images of the Aurat March were published, showing participants as chanting anti-religion slogans. This footage was used to galvanise religious groups into circulating religious decrees calling for the murder of the organizers. In response, the Peshawar High Court ordered the police to register blasphemy cases, which carry the death penalty, against the organizers. Lawyers of those charged have submitted a reply and the case is now pending in the Islamabad High Court. But the issue has forced the organizers to go underground, highlighting the mortal threat that allegations of blasphemy pose to activists.

The #MeToo allegations against singer/actor Ali Zafar who was accused by his colleague, the

singer Meesha Shafi, of sexual harassment further highlight the climate of disregard for women's rights. When several other female artists and ordinary citizens came forward with their stories of harassment by Mr Zafar, the accused actor turned to the Federal Investigation Agency (FIA) to issue gag orders against anyone speaking out against him on social media. A number of women were sent notices by Ali Zafar for defamation, forcing them to regularly appear in court while being shamed by the media. Meesha Shafi was charged under the Pakistan Electronic Crime Act and section 109 of the Pakistan Penal Code for allegedly 'falsely' accusing Mr Zafar of sexual harassment, risking a three year jail term.²¹⁵ Meanwhile, the Pakistani government has seen fit to grant Ali Zafar the "Pride of Performance" award this year.²¹⁶ Human rights groups have condemned the misuse of the legal system to silence the victims, rebuking the intimate relationship between misogyny, government and state institutions.

Media subject of intimidation and censorship

A recent report by Reporters without Borders shows Pakistan slipping three rungs further down the ladder on the World Press Freedom Index, where it now sits at number 145 out of 180. This dismal performance is linked to the increasing instances of censorship and intimidation faced by journalists opposing the regime. Soon after the new regime came to power, the intelligence services began putting pressure on media channels to dismiss anchors and journalists who were critical of the government. Senior figures such as Imtiaz Alam, Talat Hussain, Sana Bucha, Nusrat Javed and Matiullah Jan were dismissed by their media houses due to pressure from the regime.

This situation has led to a stifling of discussion on television, particularly on any issue related to the military. One of the most popular TV networks, Geo Television, had to deal with sustained blackouts by cable operators over its critical coverage of the military's involvement in politics. Earlier, in 2014, Hamid Mir, a senior anchor on Geo, was shot in Karachi. Mir's family accused the intelligence agencies of orchestrating this murder attempt.

²¹⁵ <https://www.india.com/entertainment/pakistan-news-ali-zafar-metoo-case-meesha-shafi-can-face-3-years-of-imprisonment-final-verdict-on-march-27-4493002/>

²¹⁶ <https://dailytimes.com.pk/738546/arif-alvi-confers-pride-of-performance-award-on-ali-zafar/>

The case is still pending in the Supreme Court of Pakistan.

In July last year, Matiullah Jan, another journalist critical of the Pakistan military, was abducted from his house and taken to an unknown location. No case was launched against him. He was simply lost in the murky territory of “missing persons”. Campaigns on social media and protests by journalists ensured Jan’s release in just over 12 hours. He subsequently narrated how he was tortured and was told to never report on the Pakistan military again. His case is illustrative of the precarious situation faced by journalists across Pakistan.

Ethnic minorities: victims of aggressive nationalism

The current regime is promoting an aggressive brand of Pakistani nationalism. It entails a fictitious imagining of a glorious Muslim past that serves as an antecedent for our nation-state. This fiction completely disregards the multiple constituent parts of cultural, ethnic and regional histories that do not conform to the national narrative. The divergent stories of different cultures have always been a point of tension in the universalizing narratives of the state. Many martial laws and other authoritarian measures have been justified in the name of securing the nation against “separatist” elements. It is precisely this anxiety over the country’s ethnic fault lines that led to the tragic military operation against the Bengali people in 1971 and eventually the creation of Bangladesh.

Fears of separatism and foreign threats have proliferated in the psyche of the state with ethnic minorities as its biggest victims. In Balochistan, several young people have been abducted, tortured and killed on allegations of separatism. One of the most painful incidents that emerged from the province was in August 2020, involving Hayat Baloch, a student at the University of Karachi. Baloch was visiting his family in Turbat, Balochistan during the summer vacation. One day, he was helping his parents with the gardening in front of their house, when military personnel arrived, dragged Baloch onto the street and shot him dead in front of his parents. It was later revealed that the military suspected Baloch of being a separatist, a claim that was later proven to be false.

Similar incidents have occurred in the restless Pashtun belt, which has experienced multiple military operations in the past two decades. Over

the past two years, a powerful movement called the Pashtun Tahaffuz Movement (PTM), led by the charismatic 28-year-old Manzoor Pashteen, came to life in the tribal areas and subsequently spread across the country. Its demands included an end to military presence in Pashtun territory, the termination of state support to factions of the Taliban, the release of all missing persons, recognition of the locals’ rights to the region’s resources, clearing the area of landmines and the setting up of a truth and reconciliation commission. Instead of listening to the demands of this peaceful movement, the government repeatedly arrested its members and labelled the movement a foreign conspiracy.

In June 2019, the military attacked a number of protestors in the Pashtun area of Khar Qamar. Instead of investigating the incident, the regime launched fabricated cases against MPs Mohsin Dawar and Ali Wazir, both PTM members who were leading the protests. Both leaders were arrested and remained incarcerated for 4 months. In January 2020, Manzoor Pashteen, the leader of the PTM movement, was arrested on sedition charges. Protestors in Islamabad who were demonstrating against the incarceration of Pashteen were also arrested by the police and also charged with sedition. The next day, Mohsin Abdali, a student leader from Lahore who raised his voice in protest against the Islamabad arrests, was forcefully abducted by armed, masked police officers and unknown officials in plain clothes.

Ali Wazir was arrested again over a “seditious” speech he delivered in Karachi late last year. More than 40 members of the PTM remain incarcerated on trumped up charges. Similarly, hundreds of people in Sindh, Balochistan, Gilgit-Baltistan and Kashmir remain missing or incarcerated based on false accusations. These instances demonstrate the inherent danger to those who speak up for ethnic minorities in the country.

Academia treated with suspicion

The current regime has slashed health and education budgets. In an unprecedented attack, teachers protesting the resulting job insecurity in Islamabad in December 2020 were met with tear-gas.²¹⁷

Meanwhile, Pakistan’s campuses remain under a cloud of fear as the regime considers universities as a frontline in the aforementioned fifth generation war.

²¹⁷ Around that time at the end of 2020, tear-gas was also used against protesting trade unionists in Islamabad and farmers in Lahore, leaving one farmer dead.

The regime is actively censoring and stifling dissent in academia. A blatant example is the conference on the separation of East Pakistan and the founding of the state of Bangladesh that the Lahore University of Management Science intended to hold on 23-24 March 2021. As soon as the event was announced, a social media campaign was launched that dubbed the academic event 'a conspiracy against Pakistan'. The administrators of the university were threatened by officials of the regime and forced the department to cancel the entire event.

In March 2020, Zaigham Abbas, a lecturer at the Government College University, was fired from his position. The reason given was that he organized a talk on Kashmir that did not conform to the state narrative. In June 2020, Professor Pervez Hoodbony and Professor Ammar Ali Jan were fired from Forman Christian College Lahore for "brainwashing" students against the state.

Such incidents are symptomatic of the pressure faced by academics in Pakistan.

Widespread practice of enforced disappearances

Pakistan has a history of forced disappearances, dating back to the start of the 'War on Terror' in the early 2000s. Initially, individuals belonging to militant religious groups were the main target of forced abductions, but its scope was soon extended to various political opponents.

The policy is particularly rampant in Balochistan and the former Federally Administered Tribal Areas (FATA), where hundreds of people have gone missing. In recent years, the policy has also been used against Sindhis, Muhajirs, Punjabis and Shia minorities.

Mudassar Naaru, a Punjabi poet and journalist, went missing in August 2018, after he wrote scathing critiques of the alleged rigging that took place in the July 2018 elections. Naaru remains missing and his family continues facing threats for speaking up for him.

The country's student movements are also a target. Several student activists, including Amar Fayyaz (Karachi) and Mohsin Abdali (Lahore), were abducted last year. In early April 2021, Sarmad Sultan, a historian and social media activist critical of the establishment, was abducted for 48 hours for his fact-based tweets criticizing the official version of history in Pakistan. These three students were each released shortly thereafter due to public pressure, but the episodes were

emblematic of the growing crackdown on dissenting voices.

The policy of enforced disappearances acts as the vanishing ink that both reveals and hides the crimes of the state. The regime treats critical citizens as enemies in a war, suspending all of their constitutionally guaranteed rights. Across the country, families of missing persons are protesting for the return of their loved ones, but their pleas are falling on deaf ears as the state continues its abhorrent policy. Recently, hundreds of Baloch men and women staged a sit-in in Islamabad against the policy of enforced disappearances. Instead of listening to the demands of protestors, nine young Balochi sympathisers were arrested for participating in the sit-in.

The ever-looming threat of enforced disappearance is a challenge for human rights defenders and critics in Pakistan as it has a cumulative effect of creating panic among the entire activist community.

Boosting the rights of the people

Pakistan's current hybrid regime is fundamentally opposed to any form of dissent in the country. It has been presenting a fictitious image of the country's past and present, prescribing that all individuals conform to its definition. Those who do not accept the regime's monopoly over ideas or politics are labelled enemies of the state and subjected to both judicial and extra-judicial coercion. In order to avoid increasing authoritarianism and chaos in Pakistan, more emphasis on implementing the constitutionally guaranteed rights of citizens is urgently needed. There also needs to be a Truth and Reconciliation Commission mediated by internal and external actors in order to provide justice to the affectees of suppression of dissent in Pakistan. We are seeing the erosion of the dignity of the people of this country under a callous regime that uses its hyper masculine notion of nationalism over the rights of the people. Only an internationalist strategy can surmount these challenges in a meaningful way.

3.9 The Right to Dissent - Country Report: THE PHILIPPINES

'It is my job to scare people, to intimidate people, and to kill people,'

President Rodrigo Duterte²¹⁸

The Duterte regime - the rule of lawlessness and violence

In May 9, 2016, 16 million Filipinos elected Rodrigo Duterte as the president of the Philippines. Duterte capitalised on the disappointment of the people, who, despite promises of progress, had only grown poorer under previous governments. Under their development model rooted in the plundering of natural resources for profit, predominantly favouring the big corporations and foreign investors, it was mainly the rich who became richer. Duterte positioned himself as a man of the people – cleverly masking that in the 30 years that he had been in power in Davao City he and his family had become very much part of the elite the people were distrustful of. Capitalising on the fact that he was from Mindanao and not Manila and by speaking in the Visayan language, dressed in an informal attire, he cleverly disassociated himself from the liberal traditional politicians, and the people were drawn to his “pang-masa” (for the masses) appeal.

However, even before his election, resistance to Duterte’s particular brand of politics was already mounting – particularly from women activists. The World of March of Women–Pilipinas held series of actions against Duterte – they filed a complaint with the Gender Ombud of the Commission on Human Rights against the “rape jokes”, and sexist and misogynist statements Duterte notoriously put forward in his campaign. In response to the complaint, Duterte alleged the women were paid to do this, and said “You go to hell.” Despite death and rape threats issued, the women activists went out on the streets and campaigned against Duterte, declaring “Women Resist the Neo-Fascists”.

Meanwhile, Duterte’s election has meant little improvement for the poor. His regime has been characterised by arbitrary violence, brutality, and a flaunting of all human rights and rule of law. General lawlessness on the part of the police and security forces is being encouraged. Arbitrary

arrests, extrajudicial killings and enforced disappearances are the order of the day.

Now, with elections coming up in 22 and Duterte ineligible for re-election under the Philippine Constitution there is an opportunity to choose a new path. At the same time, 4 years of Duterte-ism have cut deeply into the psyche of Filipino society and won’t be easily overcome. ‘Dutertismo’ has deeply damaged the democratic institutions; judiciary has been used to prosecute political rivals; congress has been used to pass laws that violate the right to dissent; executive agencies have been used to spread hate and disinformation and aggressively ‘red-tag’ opponents; and state forces have been mobilized to enforce violence. Duterte has demonized human rights and human rights activists; he has celebrated sexism and machismo; he has normalized violence and killings. The challenge for the country post-election is how to heal the wounds of Duterte’s toxic legacy of violence, militarism and misogyny.

Duterte’s war on drugs

When Duterte came to power in 2016, his main campaign promise was to clamp down on crime and drugs. Duterte has made consistent moves to bring the security forces over to his side, by referring to them as “my police”, “my men”, “my military” and co-opting the police and the military by promising them salary raises and medical services.^{219 220}

The Philippine National Police (PNP) then took up Duterte’s war on drugs and in about 6 months, more than 7,000 people were killed.²²¹ The Philippine Daily Inquirer kept a Kill List naming the victims of the war on drugs,²²² which underscores the marked and unmistakable surge in the killing of suspected criminals since 2016.

218 March 10, 2020 General Assembly of the League of Municipalities of the Philippines <https://www.rappler.com/nation/duterte-says-job-to-kill>

219 <https://www.rappler.com/nation/duterte-500-million-pesos-military-equipment-hospital-building-afp>

220 <https://newsinfo.inquirer.net/821504/duterte-gives-soldiers-cops-huge-pay-hike>

221 <https://www.amnesty.org.uk/philippines-president-duterte-war-on-drugs-thousands-killed>

222 <https://newsinfo.inquirer.net/794598/kill-list-drugs-duterte>

The surge in killings, mostly from poor communities, earned heavy criticisms from lawmakers, human rights communities, national and abroad, and later on, the public in general.

Duterte was quick to declare he would take full responsibility for any death that has occurred in the execution of the drug war²²³, reassuring the police that he was “ready to go to jail for them.”²²⁴ Moreover, Duterte has also offered the police a legal loophole: “NANLABAN” or “resisted, fought back”. In such cases, the police or the military have the license to kill. Duterte tells the police that they are “free to kill the idiots” when they are “placing in jeopardy the lives of my policemen, and of course, the military.”²²⁵

Human Rights Watch, looking into police killings, found “that the official police reports of these incidents invariably asserted self-defense to justify police killings, contrary to eyewitness accounts that portray the killings as cold-blooded murders or unarmed drug suspects in custody” and that “the policy routinely planted guns, spent ammunition, and drug packets next to the victims’ bodies.”²²⁶

These killings are carried out with impunity. Only in the case of the killing of the 17-year old Kian delos Santos has there ever been a conviction. CCTV footage showed how Kian, kneeling with his hands tied, was shot by 3 policemen. This kindled a public outrage which forced the prosecution.²²⁷

War on the poor

Duterte’s war on drugs has turned out to be a war against the poor. The president has been turning a blind eye, or even protecting drug lords who are in his inner circle. The majority of those killed as drug criminals are from poor communities.

Duterte’s election promises that might have had a positive impact on the lives of the lower strata in society remain unfulfilled. Towards the end of his term, the people face job insecurity, hunger and inadequate protection. While the numbers of unemployed rose to 4 million in January 2021,²²⁸

223 <https://apnews.com/article/asia-pacific-philippines-rodrido-duterte-manila-crime-4b47dbd244d4e67e231e0fbfeb5db383>

224 <https://www.reuters.com/article/us-philippines-drugs-idUSKBN13W1C3>

225 <https://www.reuters.com/article/us-philippines-drugs-idUSKCN1B80D5>

226 <https://www.hrw.org/report/2017/03/02/license-kill/philippine-police-killings-dutertes-war-drugs> (last accessed April 10, 2021)

227 <https://www.cnn.com/2020/06/04/near-impunity-for-drug-war-killings-in-philippines-un-report-says.html> (last accessed April 10, 2021)

228 <https://psa.gov.ph/content/employment-situation-january-2021>

the prices of basic commodities are going up. Almost 7.6 million households did not have enough food to eat at least once in the previous three months, and 2.2 million of these families experienced “severe hunger”.²²⁹ Farmers and fisherfolk are struggling as they face land and ocean grabbing practices and competition from rising imports of agricultural products. Indigenous communities are confronted with mega-projects such as Chico Irrigation River Project and the Kaliwa Dam, which are aggressively pushed by the government and backed by Chinese investments.

Notably, a few weeks ago, Duterte lifted the 9 year long moratorium on issuing new mining permits.²³⁰ This move aggravates existing land conflicts, militarisation in mining areas, and exacerbates food insecurity. This means more protests, and therefore, more violent attacks.

More empty promises

While Duterte has been publicly lambasting corruption, corrupt practices within the government continued and even flourished. There is no integrity, just a deeply embedded culture of impunity and double standards in penalties and punishment. The Duterte administration’s militaristic response to the Covid pandemic further amplified the lack of just government.

Duterte’s commitment to end the armed conflict with the Communist Party of the Philippines (CPP) and continue the peace transition process with the Moro Islamic Liberation Front (MILF) has so far also turned out to be nothing but empty words.

Weaponisation of the law

Duterte’s regime is characterised by arbitrary violence, brutality, and a flaunting of all human rights and rule of law. General lawlessness on the part of the police and security forces is being encouraged. Arbitrary arrests and executions are the order of the day.

Instead of upholding the rule of law as a means to protect the rights of the people, ensure peace and order and ensuring the accountability of duty bearers, Duterte has been using the law as a weapon in his war on drugs. The Duterte

(Last opened in April 26, 2021).

229 <https://www.france24.com/en/live-news/20201209-record-hunger-in-the-philippines-as-covid-restrictions-bite> (Last opened in April 26, 2021).

230 <https://www.officialgazette.gov.ph/2021/04/14/executive-order-no-130-s-2021/>

government has insidiously used laws to restrict people's rights and curtail the freedoms of citizens.

In 2016, a state of national emergency was declared in Mindanao²³¹, lending more power to the military, with chilling effects on the mounting criticism of the extra-judicial killings. In 2017, martial law was implemented in Mindanao and the writ of habeas corpus suspended, with the purported objective to quell terrorism. However, over two years of martial law only resulted in the killing of indigenous people and land rights activists – justified as military encounters with rebels.

In 2018, a new memorandum increased the powers of the police and the military to suppress violence. Under the memorandum, Duterte deployed more troops and police to the provinces of Samar, Negros and Bicol to “suppress lawless violence and acts of terror.”²³² The memorandum also specifies when warrantless arrests can be made. An earlier Act already equipped the Chief of Police and Deputy Director of Criminal and Investigation and Detection Group (CIDG) with subpoena powers, removing exclusive jurisdiction from the Courts.²³³ A National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) was created,²³⁴ which quickly became the lead agency in red-tagging community leaders, activists, journalists, lawyers, religious and artists expressing discontent, criticism and direct opposition to the government's programs and pronouncements. Duterte's opponents – including human rights defenders – are either labelled “yellow” for liberals and members of the elite or “red” for those who are in some way aligned with the communist party CCP or alleged front organisations for terrorists. Harsh and violent attacks against these dissenting voices are framed and justified as counter-insurgency or anti-terrorist measures. Activists and communities as ‘combatants’ which makes them vulnerable to attacks by the military. The NTF-ELCAC's operates on a wide scale and funds community-based organisations to act as local surveillance for any suspicious activities or personalities, causing division within communities.²³⁵

A new Anti-Terror Law was passed in the height of pandemic. This law is disturbingly vague

231 Sept 4, 2016 Proclamation No. 55

232 <https://www.rappler.com/nation/duterte-orders-more-military-police-troops-samar-bicol-negros-island>

233 March 1, 2018 : Republic Act 10973

234 Under Executive Order No. 70, December 4, 2018

235 PAHRA, 2020.

in its definition of terrorism and is used to silence dissenting voices. It is draconic in that it criminalises intent rather than actual acts of terror. According to human rights lawyer Atty. Chel Diokno “the law allows the State to simply presume the existence of intent from the citizen's acts, even if the acts themselves do not constitute a crime.”²³⁶ De facto, this means that any action can be deemed an act of terror by the government, and any one, a terrorist.

The law also created the Anti-Terror Council (ATC) which has the authority to designate persons as “terrorists” and publish their names on government websites and in the newspapers on a mere “reasonable ground of suspicion”.²³⁷ The law further infringes on the freedom of speech with its definition of inciting to commit terrorism which includes speeches, proclamations, writings, banners, etc. The 2012 cybercrime law²³⁸ has also been used against journalists and human rights defenders.

The Bayanihan Law,²³⁹ enacted in March 2020 in response to COVID 19, grants the President emergency powers to combat the pandemic. The law contains provisions that penalize spreading “fake news” or false information²⁴⁰ and has been used to arrest groups and individuals protesting the lack of support for food, livelihood and health of the marginalized – both online and off line. One of the earlier cases was that of the arrest of the members of an urban poor village, San Roque in Quezon City, when they came out in the streets to demand food and assistance.²⁴¹ Tuwali indigenous people protesting mining operations in their area and defending their lands were arrested and charged with violation of the quarantine protocols. In 2019, international environment watchdog Global Witness ranked the Philippines as “the most dangerous country for environmental activists”,²⁴² recording at least 119 environmental and land rights activists killed in the first 3 years of Duterte's administration.²⁴³ 27 per cent of these attacks were related to mining

236 Oral Argument at the Supreme Court on the petition against the Anti-Terror Law, Feb. 2, 2021

237 <https://www.doj.gov.ph/files/2020/news%20articles/IRR%20ATA%202020%20-%20CTC.PDF>

238 Sept. 2012 Republic Act 10175

239 BAYANIHAN HEAL AS ONE ACT (RA 11469)

240 Sec. 6 (f), Rep. Act 11469 (Bayanihan Heal as One Act)

241 <https://cnnphilippines.com/news/2020/4/1/quezon-city-protesters-arrested-.html> (last opened April 22, 2021)

242 <https://globalnation.inquirer.net/180127/113-environmental-activists-killed-since-duterte-assumed-office-intl-group#ixzz6tkluVt16>

243 <https://news.mongabay.com/2020/07/2019-was-the-deadliest-year-ever-for-environmental-activists-watchdog-group-says/> (last accessed on April 20, 2021)

operations, and almost one third of those killed belonged to indigenous minorities.²⁴⁴ A number of killing of dissenting indigenous leaders took place under the guise of military operations against the NPA.

Silencing dissent

Under the Duterte administration, human rights have been demonised and human rights defenders, activists and community leaders are facing obstruction, harassment, threats and violence. The Philippine Alliance of Human Rights (PAHRA) cites lawyers and human rights defenders being accused of kidnapping and human trafficking, perjury cases against human rights organisations such as Karapatan, Gabriela and Rural Missionaries; sedition charges against political opponent, lawyers and priests and numerous cyber-libel cases against environmental activists.²⁴⁵ Three years into the Duterte administration, 2370 human rights defenders had been charged. 539 of these were arrested and later released. 1831 activists and human rights defenders arrested since 2016 remain in custody.²⁴⁶

Human rights defenders, political oppositions, media people and community leaders face the threat of being taken to court on trumped up charges. These are meant to harass and smear the reputation of the people involved. Cases filed range from murder, libel, illegal possession of firearms and explosives, kidnapping, and recently, acts of terrorism. Apart from creating anxiety, they place a financial burden on those charged.

Senator Leila de Lima, a vocal critic of Duterte's war on drugs even in its early months, was charged with illegal drug trading. She has been in prison for 5 years now. In February 2021, she was acquitted in one of the three cases filed against her.

Chief Justice Maria Lourdes Sereno was removed from office after she opposed the declaration of martial law in Mindanao and questioned presidential actions such as the publication of list of public officials, including members of the court, linked to illegal drugs.²⁴⁷

244 <https://globalnation.inquirer.net/180127/113-environmental-activists-killed-since-duterte-assumed-office-intl-group#ixzz6tkluVt16>

245 PAHRA, Shrinking Space, Nov. 26, 2020.

246 <https://www.rappler.com/newsbreak/in-depth/duterte-halfway-mark-war-on-dissent-human-rights-defenders> (last opened April 20, 2021)

247 <https://www.nytimes.com/2018/05/11/world/asia/philippines-chief-justice-rodrigo-duterte.html>

Sr. Patricia Fox, an Australian nun who worked with labourers, farmers and indigenous peoples in the Philippines for more than 3 decades, was deported after she earlier joined a fact-finding mission on the alleged human rights violations against farmers by state forces in Mindanao, on charges that with her activism she's violated the terms of her visa.

In 2020, two indigenous men the Aeta community in Zambales, were the first charged with acts of terrorism under the new Anti-Terror Act, after they fled their community because of clashes between the military and the NPA.

The Matrix

President Duterte's government uses lists and matrices to brand people as terrorists, using unreferenced "intelligence".²⁴⁸ The lives of those whose names appear on such lists are endangered, with no clear basis, and no opportunity for the people to counter the allegations. The arbitrary identification of groups and individuals as terrorists or communists allows the government to monitor them more closely, intervene in their finances (track and freeze bank accounts), and legitimise violent attacks (raiding and killings) against them.

A list of 600 alleged communist guerillas issued by the Department of Justice (DOJ) included the names of then UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz and Joan Carling, co-convenor of the Indigenous Peoples Major Group on the Sustainable Development Goals. The list also included other indigenous leaders and farmers asserting their rights to their land.²⁴⁹

Next, the president went on air with a one-page matrix naming organizations and individuals who are supposedly plotting the ouster of his administration.²⁵⁰

The Philippine Human Rights Report 2020 submitted by the DOJ to the UN High Commissioner on Human Rights, included a matrix showing "CPP-Created Underground, Front Organizations, Alliances and Networks". These lists were heavily criticized, as most of the organisations named are legal human rights organizations. International humanitarian

248 <https://www.rappler.com/nation/doj-did-not-verify-names-people-before-seeking-terrorist-tag> (last accessed April 10, 2021)

249 <https://www.reuters.com/article/us-philippines-rebels-idUSKCN1GKODO> (last accessed April 10, 2021)

250 <https://thediplomat.com/2019/05/is-duterte-drumming-up-a-red-scare-in-the-philippines/> (last accessed April 10, 2021)

donors, including Save the Children, Canada Fund for Local Initiatives, Caritas Switzerland, Caritas Australia and USAID were tagged for allegedly supporting communist fronts.²⁵¹

Posters are regularly put up in public places, arbitrarily linking critics of the regime with the Philippines communist party CCP and the associated New People's Army (NPA) or tagging them as terrorists.

Those targeted include members of indigenous communities opposing mining operations and human rights lawyers. Monique Quisumbing-Ignacio, a judge who ordered the release of a red-tagged journalist and trade unionist, who were arrested by the police was another target.²⁵²

Extrajudicial killings

After President Duterte was sworn in as president, Gloria Capitan, leader of the campaign against coal mining in her community, was shot dead. Her death marked the beginning of extrajudicial killings of activists and community leaders under the Duterte government. This intensified when the peace talks with the CPP-NPA broke down in 2017. News sources have reported that the Philippines' government admits to 6,000 extrajudicial killings since Duterte's election. Human rights organisations put the figure at more than 20,000.²⁵³

2020 witnessed, inter alia, the cases of Randall Echanis, a longtime peasant leader and activist;²⁵⁴ Zara Alvarez, a human rights defender and the 13th member of human rights organization KARAPATAN who was killed under the Duterte administration;²⁵⁵ and the killing of red-tagged Dr. Rose Sancelan and husband.²⁵⁶ The year ended with the Tumandok Massacre, where 9 known indigenous leaders of the protest against the construction of the Jalaur Dam on Panay Island were killed in their homes on the same night, all supposedly resisting arrest. 18 other Tumandoks were arrested. Soon after the

251 Nov 5, 2019, House Committee on National Defense and Security

252 <https://www.gmanetwork.com/news/news/nation/780092/hits-poster-red-tagging-mandaluyong-judge-who-freed-journo-trade-unionist/story/> (last accessed April 20, 2021)

253 <https://www.theatlantic.com/international/archive/2020/02/philippines-rodrico-duterte-china/606754/>

254 <https://www.rappler.com/nation/anakpawis-chair-randy-echanis-killed-inside-quezon-city-home> (last accessed April 20, 2021)

255 <https://www.aljazeera.com/news/2020/8/19/human-rights-leader-killed-in-philippine-war-against-dissent> (last accessed April 20, 2021)

256 <https://newsinfo.inquirer.net/1374430/murder-of-red-tagged-doctor-husband-could-be-related-to-work-npa-police> (last accessed April 20, 2021)

killings, the village captain told the media that the Tumandok leaders had not been resisting arrest, and that no warrants were presented. A few weeks after, the village captain was shot dead. 2021 has already been marred by 'Bloody Sunday': on 7 March, 9 leaders from the labour sector, fishing and indigenous communities were shot dead in their homes, on the same pretext nanlaban or resisting arrest.²⁵⁷

Lawyers, journalists, religious leaders and activists targeted

So far, under the Duterte regime, 61 lawyers have been killed. According to the Free Legal Assistance Group, a group of human rights lawyers, this number is "higher than all the recorded deadly attacks on lawyers in the last 50 years under the six previous presidents. Most were killed while doing their job."²⁵⁸

The 2020 Global Impunity Index ranks the Philippines as the 7th deadliest country for journalists, trailing Mexico, Afghanistan, South Sudan, Iraq, Syria and Somalia. According to the Center for Media Freedom and Responsibility (CMFR), as of November 2020, 19 journalists had been murdered in the 4 years under Duterte.²⁵⁹

In 2018, President Duterte joked that "bishops should be killed" as they do nothing but criticize his government. In that same year, three Catholic priests were killed within 6 months. The Church believes the killings were because the priests were outspoken critics of Duterte's war on drugs.²⁶⁰ Several others have death threats, and have been victims of assassination attempts. Two other pastors were killed, the most recent in March 2021.

In April 2021, Jesus Passon Jr., a member of Kadamay Negros, an urban poor group fighting for better housing and other social needs of the marginalized, was shot dead in broad daylight. Jesus Passon is the 11th activist killed since March 2021.²⁶¹

257 https://www.onenews.ph/who-were-killed-on-bloody-sunday-labor-leader-fisherfolk-housing-rights-activists-dumagat-men?fbclid=IwAR29LY7oVPyRVPxycqN9shh4lwdMUWn1WUJXfcj aUuCzMXbBq18_QZKPXw (last opened in April 19, 2021)

258 <https://www.aljazeera.com/news/2021/4/1/record-number-of-philipino-lawyers-killed-under-dutertes-reign> (last opened in April 19, 2021)

259 <https://news.abs-cbn.com/spotlight/11/23/20/19-journos-killed-in-4-years-of-duterte-admin-watchdog> (last opened in April 19, 2021)

260 <https://www.worldreligionnews.com/religion-news/3-priests-murdered-philippines-criticizing-president-duterte> (last opened in April 19, 2021)

261 <https://www.rappler.com/nation/urban-poor-leader-passon-killed->

Desaparecidos

There have also been frequent forced disappearances. The organization Families of Victims of Involuntary Disappearance (FIND) recorded 127 cases during the five-year rule of Duterte, compared to 32 under the previous Aquino administration. FIND classifies 65 as politically-motivated and 44 drug-war related; 17 were disappeared for unknown reasons; and one over non-compliance with a quarantine directive.²⁶²

There are no official orders that these killings and enforced disappearances can be traced to. But there is more than enough documentation – both written and on video – of President Duterte issuing threats and encouraging the arrest and killing of activists and human rights defenders, saying things like “If they are obstructing justice, you shoot them.”²⁶³

Duterte has also issued threats against bishops who criticize him²⁶⁴, students and members of the academe,²⁶⁵ as well as UN officials.²⁶⁶ He consistently links his critics to the leftist groups. Recently, he easily dismissed those asking for support in the Covid crisis as rebels, telling them that if they caused trouble or riots he would order them detained until the end of the pandemic or have them sent “to the grave”.²⁶⁷

Duterte has lashed out against female rebels in particular. Displaying a vitriolic misogyny, he has said: “We will not kill you. We will just shoot you in the vagina”, going on to say that without their vaginas, women would be “useless”.²⁶⁸

Attacks on press freedom

The Philippines ranks 138th out of 180 nations in the World Press Freedom Index for 2021 by the Reporters Without Borders (RSF). The Philippines

negros-occidental (last accessed April 20, 2021)

262 Nilda Castillo, Chair of FIND, presentation during the briefing with the US embassy and other diplomats, March 26, 2021.

263 <https://www.theguardian.com/world/2017/aug/17/human-rights-watch-philippines-president-duterte-threat>

264 <https://www.aljazeera.com/news/2018/12/5/philippines-duterte-kill-those-useless-bishops> (last opened April 25, 2021)

265 <https://www.rappler.com/nation/duterte-response-academic-strike-threatens-defund-university-philippines> (last opened April 25, 2021)

266 <https://www.rappler.com/newsbreak/iq/rodrigo-duterte-tirades-threats-statements-against-united-nations> (last opened April 25, 2021).

267 <https://www.rappler.com/nation/duterte-orders-troops-shoot-kill-coronavirus-quarantine-violators> (Last opened April 25, 2021)

268 <https://www.theguardian.com/world/2018/feb/13/philippines-rodrigo-duterte-orders-soldiers-to-shoot-female-rebels-in-the-vagina> (Last opened April 25, 2021)

dropped in the index, which ranks 180 countries according to the level of freedom given to the journalists, for the fourth consecutive year.²⁶⁹

Journalists are being red-tagged and harassed online. Alternative news websites and the site of the National Union of Journalists of the Philippines face persistent cyber attacks. There is continuing judicial harassment against RAPPLER’s Maria Ressa, who, as the founder of the digital news site RAPPLER, is a leader in the fight for freedom of the press in the Philippines.

At the height of the lockdown in 2020, the Congress, led by Duterte’s supporters, shut down the country’s largest news network ABS-CBN.

Spreading hate and disinformation

Military officials and other state officials use their personal Facebook pages and other social media to name individuals and organizations as communists/terrorists. They post pictures and accusations against tribal leaders, artists, showbiz personalities, members of the academe, lawyers, journalists,

even religious leaders, whenever they express criticism. The military officials always act innocent, saying these are not official statements, but simply expressions of their personal opinion.²⁷⁰

Trolling has been institutionalized with the Philippine Communications Operations Office (PCOO) and the National Task Force to End Local Communist Armed Conflict (NT-ELCAC). These offices regularly disseminate hate-filled messages against human rights organizations and activists, spreading false information and red-tagging them. Trolls then spread these posts and statements and in synchronized manner invade the social media accounts of these organizations and individuals with threats, hate-filled messages, and false information. This vilification of individuals activists, their organizations and even their families puts their lives and safety in danger.

Clampdown on NGOs

Under Duterte, the law is being used to monitor, and impede the free and full operations of civil society organizations. CSOs are required to register with

269 <https://www.rappler.com/nation/philippines-rankings-world-press-freedom-index-2021> (last opened in April 22, 2021)

270 <https://www.rappler.com/nation/senate-report-says-parlade-undermining-duterte-anti-communist-campaign> (last accessed april 10, 2021)

the local authorities and the barangays – the Philippines’ smallest administrative unit – are instructed to take note which CSOs or human rights organizations are providing assistance and documenting extra-judicial killings. An Act to prevent violent extremism, introduced in 2016,²⁷¹ enables the vetting and regular monitoring of the programmes of civil society organisations and international agencies. Non-profit organisations must conform to an enhanced registration and monitoring system which is being justified as necessary to protect NPOs from money laundering and terrorist financing abuse.²⁷² All accredited diplomatic missions in the Philippines have been informed that all foreign government funding intended for Philippine non-government organizations, regardless of mode of disbursement, transfer or download of funds, shall be coursed through the Department of Foreign Affairs for appropriate clearance.²⁷³

In March this year, UCCP HARAN, an organisation providing refuge for internally displaced indigenous people, had its bank accounts frozen by the Anti-Money Laundering Council (AMLC) for allegedly financing terrorism. In 2020, this also happened to the religious group Rural Missionaries Philippines (RMP) as one of the petitioners against the Anti-Terror Law.

NGOs have come under surveillance and threats from the security forces. There have been reports of death threats sent by SMS to staff of Task Force Detainees (TFD); the hacking of websites of outspoken organizations – PAHRA, iDEFEND, HRonline, Women’s Legal and Human Rights Bureau (WLB), among others; tapping of mobile phones tapped; and trolling and threats on the social media accounts of NGOs and individual human rights activists.²⁷⁴

In 2020, there were reports of military “visits” and actual raids of NGOs, including BMFI, an organization promoting equity-based development and sustainable peace;²⁷⁵ social justice organization Balaod Mindanaw;²⁷⁶ and the progressive political grouping Bayan Muna.²⁷⁷

271 DILG MC 2019-116 (July 24, 2016)

272 Securities and Exchange Commission (SEC) Memorandum Circular #15 (2018)

273 Note Verbale of the Department of Foreign Affairs (Note no 2021-0592/ Feb. 5, 2021)

274 As reported by PAHRA.

275 <https://balaymindanaw.org/main/about-bmfi/Bala>

276 <https://balaod.org/about-us/>

277 PAHRA, 2020.

Stories of resistance

Duterte appears to enjoy continued popularity in the Philippines. However, people are increasingly and courageously expressing disagreement with the killings in his war on drugs, his subservience to China, his attacks against women.²⁷⁸ The peoples movements for international solidarity are broadening and getting stronger.

Duterte’s strategy of isolating and silencing his critics with threats, harassments and killings is not working. Instead, human rights defenders, activists, civil and non-governmental organisations political blocs, and shades of left form alliances and create platforms for united actions against the growing tyranny of the Duterte government.

Human rights lawyers, members of the academe, women, indigenous peoples and journalists, among others, have filed 37 petitions against the Anti-Terror Law with the Supreme Court, citing unconstitutionality and potential for abuse and human rights violations. Filing such petitions is not without danger. This public stand against Duterte invites more threats and harassment, not just against the handling lawyers of the petitions, but also against the petitioners themselves.

In June 2020, amidst lockdown and threats of arrests, hundreds of activists took to the streets to protest the passage of the Anti-Terror Law.²⁷⁹ It was the first of a series of big mobilizations in different cities and communities across the country against this law, and red-tagging, during the quarantine, online and offline. The online protests form an important means for ordinary, unorganised people to protest – posting their own sentiments, and using hashtags - **#StoptheKillings #JunkTerrorLaw #ScrapTerrorLaw**.

Some of the media have remained vigilant against reporting false information, persistently conducting thorough fact checks, especially regarding individuals and organizations that have been red-tagged.

There are also courageous individual acts of resistance from within the State. For example, Judge Monique Quisumbing-Ignacio²⁸⁰ and a few of her fellow-judges from the lower courts who have dismissed cases filed against activists. The Supreme Court has condemned the rising

278 <https://www.theatlantic.com/international/archive/2020/02/philippines-rodrigo-duterte-china/606754/> (Last opened in April 26, 2021)

279 <http://www.asahi.com/ajw/articles/13452732> (Last opened April 26, 2021)

280 Ibid, 21.

number of killings of lawyers and threats against judges, and said it would look at institutional changes within the judiciary to better protect them.²⁸¹

There are, of course, the opposition members of the Senate and House of Congress. A senate hearing was conducted on the “red-tagging” of activists, media people, religious, human rights defenders, and lately, even against community pantry organizers²⁸² by the military (in particular the NTF ELCAC), and a bill was filed to criminalize red-tagging.²⁸³ Recently, several Senators called for a defunding or at least a review of the NTF ECLAC’s budget. Taking such political stands is not without risk. Vocal Duterte opponents like Leni Robredo – Duterte’s vice-president but a member of the opposition Liberal Party – have been charged with “inciting sedition”.

Condemnation from the international community

The international community had condemned Duterte’s war on drugs and his administration’s heavy-handed responses. The UN Human Rights Council has voiced concerns over the serious human rights violations in the Philippines, the arbitrary detentions, extra-judicial killings and the vilification of dissent and called for the “persistent impunity and formidable barriers to accessing justice [...] to be urgently addressed.”²⁸⁴ However, this has so far not resulted in the desired independent international investigation on the human rights violations in the country, only in more “technical cooperation” between the UN and the Philippine government.²⁸⁵

Duterte is being investigated for crimes against humanity by the International Criminal Court in the Hague²⁸⁶ – a first for a president in office and not something to be proud of. However, Duterte continues to assert that the focus on human rights is just an attempt “to discredit the popularly elected government that continues to

enjoy widespread approval and support.”²⁸⁷ Quid pro quo diplomacy has led countries with major human rights issues to continue to express support to Duterte government, as long as their own transgressions are left alone. Others have taken stronger positions against the Duterte regime. The European Parliament has called on the European Commission to withdraw the Philippines’ GSP+ preferences until the human rights situation improves.²⁸⁸

The way forward

The right to dissent is a universal right, and is protected by international laws and in the Philippine Bill of Rights, which states “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances.”

But the Duterte regime uses laws as weapons against its critics, and human rights defenders and has passed bills to criminalise dissent and institutionalize impunity for human rights violations.

Duterte is in his last year, with the national elections happening in May 2022. One year is still very long under a fascist regime. As the election year approaches, more violence is anticipated, especially against the opposition blocs.

To ensure the 2022 elections can be an opportunity for progressive positive changes in governance in the country, the people of the Philippines:

- Broaden and deepen international solidarity
- Intensify the call for a probing independent international investigation into the continuing human rights violations;
- Broaden the public discourse on human rights and the right to dissent and defend our human rights.
- Ensure and promote protection mechanisms for activists, human rights defenders and community leaders

Continued activism, education and critical analysis, a tenacious assertion of people’s rights, the persistent forging of peoples’ solidarity will help re-set the Philippines on a path towards respect, human rights and dignity for all.

287 <https://news.un.org/en/story/2020/09/1073072> (Last opened in April 26, 2021).

288 https://www.europarl.europa.eu/doceo/document/RC-9-2020-0290_EN.html?fbclid=IwARODwwoAuoOFzLlqXzUZ_JSKtZsomVHTosdacpg29JgvBEvv00PKLZemdmA

281 <https://www.rappler.com/nation/supreme-court-looks-institutional-change-protect-lawyers-after-pressure> (last opened in April 26, 2021)

282 <https://newsinfo.inquirer.net/1422156/despite-red-tagging-community-pantries-rise-to-350-says-advocate> (last opened in April 26, 2021)

283 <https://newsinfo.inquirer.net/1411501/drilon-bill-to-outlaw-red-tagging-filed-cheered> (last opened in April 26, 2021)

284 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25924&LangID=E> (Last opened in April 26, 2021)

285 <https://www.rappler.com/nation/un-human-rights-council-resolution-technical-assistance-philippines-killings-abuses>

286 See and <https://www.nytimes.com/2020/12/15/world/asia/philippines-duterte-drugs-icc.html>

3.10 The Right to Dissent - Country Report: THAILAND

A state dominated by the military

In 2019, Thailand held its first general election since the coup d'état of 2014, that installed General Prayut Chan-o-cha as prime minister. Rather than signalling a return to democracy, the election process was widely considered to be flawed, with rules designed to prolong military rule. Thailand continues to suffer under the authoritarian legacy of 2014 – 2019 when Thailand was governed by a military junta known as the National Council for Peace and Order (NCPO). Before the military NCPO government stepped down, it enacted a 20-year National Strategic Plan to ensure its continued political influence after the election.²⁸⁹ The Prayut regime's second term also continues the NCPO's populist schemes to boost its popularity.

Co-optation of political and business elites

During the 5-year military administration, political and business elites in Thailand were deeply tied to the military's authoritative power. After the 2019 election, the business community, the nation's leading conglomerates in particular, continues to be very close to the regime. This is underscored by the 622 million baht (22 million dollars) raised at a fundraising banquet for the then newly formed military-aligned Palang Pracharat Party (PPRP) by their business allies.²⁹⁰ Although the scandal was exposed, the Election Commission dismissed the case as not violating electoral rules. In March 2020, Deputy Prime Minister Prawit Wongsuwan was accused of receiving large donations from the country's billionaires through the 'Five Provinces Bordering Forest Preservation Foundation' of which he is the chairperson. Opposition movements released information about government projects and land concessions that were given to these businesses in return.²⁹¹ In January 2021, the government again came under scrutiny for its procurement of the low-efficacy, but expensive Sinovac vaccine that the Thai CP Group conglomerate is

heavily invested in.²⁹² The Sinovac vaccine is also controversial for the frequency of side-effects, including severe allergic reactions.²⁹³

Grip on the government

General Prayut Chan-o-cha's second term is the consequence of the larger strategy to militarize the Thai society through an authoritarian culture and leadership.

The 2017 Constitution drawn up by the military junta has helped to set up a semi-dictatorial political structure. Notwithstanding the public voting for the 500 member House of Representatives, under the Constitution, the 250 members of the Senate are appointed by the military. This allows the military to keep a tight grip on national politics and the economy. It also paved the way for the return of general Prayut Chan-o-cha as prime minister. The 250 appointed senators – all ex-generals and retired conservatives – ensure that any opposition in the 750-member Parliament can always be outvoted. In their 5-year term, the current Senate could also sway the vote on who will be Thailand's prime minister.²⁹⁴

Meanwhile, the junta holds the country in a tight grip with repressive laws. Opposition forces, including pro-democracy activists, opposition parties, academia, journalists, lawyers, and active citizens, are under a constant threat of criminal and civil charges being laid against them – such as violations of the Computer Crime Act, the Public Assemblies Act, as well as allegations of sedition – should they criticise the government.

Tight control of the media

The military and government control the ownership of the nationwide media, leading to the mainstream media tempering their critique of those in power and journalists practicing self-censorship.²⁹⁵ The media consistently fail

289 The Straits Times. 22 April 2017. "Concerns over Thailand's 20-year plan." <https://www.straitstimes.com/asia/se-asia/concerns-over-thailands-20-year-plan>

290 Asia Times. 13 December 2019. "Thailand's 'five families' prop and imperil Prayut." <https://asiatimes.com/2019/12/thailands-five-families-prop-and-imperil-prayut/>

291 Prachatai. 12 March 2020. "Here's why Twitter users boycott 7-eleven." <https://prachatai.com/english/node/8399>

292 Bangkok Post. 18 January 2021. "The inoculation challenge." <https://www.bangkokpost.com/business/2052615/the-inoculation-challenge>

293 Bangkok Post. 22 April 2021. "Sinovac jab 'safe to use.'" <https://www.bangkokpost.com/thailand/general/2103395/sinovac-jab-safe-to-use>

294 Bangkok Post. 28 January 2019. "Explainer: The appointed Senate." <https://www.bangkokpost.com/thailand/politics/1617850/explainer-the-appointed-senate>

295 BBC. 2 June 2014. "Thailand profile – media." <https://www.bbc.com/news/world-asia-15639421>

to report on controversial issues such as the growing civic movement's calls for reform of the monarchy.²⁹⁶

Junta-aligned media as the mouthpiece of the government

These past years, the junta-aligned right-wing mass media played a role as the government's mouthpiece in discrediting opposition parties as well as pro-democracy mobilizations. These news outlets pretend to protect the status quo, while provoking people with the use of phrases like 'hurting the nation's feelings,' 'crossing the line,' or 'being third-party sponsored.'²⁹⁷ During the first days of human rights activist Wanchalearn Satsaksit's disappearance, pro-government media and ultra-royalist influencers ran a slander campaign against him in an attempt to divert public pressure away from an immediate and thorough investigation.²⁹⁸

State-sponsored social media trolling

The army is behind large scale state-sponsored social media trolling as part of its information operations. During the 2020 no-confidence debate, in which the opposition in the Thai parliament accused the government of mismanagement, the Future Forward Party exposed confessions and private LINE chats where officials encouraged the dissemination of fake news and propaganda in a campaign to defame the rivals of the military government, including opposition MPs, women/human rights defenders, and pro-democracy activists.

Protests meet with police violence and arbitrary mass arrests

The government's tight grip on the media could not prevent the outbreak of wide-spread youth-led protests throughout the country, when, in

February 2020, Thailand's Constitutional Court dissolved the pro-democratic Future Forward Party and banned 16 of its leaders from politics for 10 years. Protestors called for the resignation of General Prayut Chan-o-cha and the dissolution of the House, the drafting of a new constitution, and reform of the monarchy. Once the utmost forbidden political issue in the country, demands for monarchy reform were suddenly everywhere, both online and offline. Thailand's law on lèse-majesté (Section 112 of the Thai Criminal Code), which had been suspended since 2017 at the request of the king himself,²⁹⁹ was immediately re-introduced to intimidate and arbitrarily detain critics. According to Thai Lawyers for Human Rights (TLHR), between November 2020 – April 2021, at least 84 individuals in 77 lawsuits were prosecuted on charges of royal defamation.³⁰⁰ Overall, in 2020, more than 500 people, including 29 children, were arrested and/or charged for exercising their rights to protest. In 2021, the Thai police has to date already dispersed 12 peaceful protests, according to Amnesty International.³⁰¹ There have been reports of a sharp rise in arbitrary mass arrests, police violence and indiscriminate attacks on peaceful protestors for allegedly violating the ban on gatherings during the state of emergency. The COVID-19 measures have been used muzzle and criminalise political expression and rallies.³⁰² Meanwhile, displaying blatant disregard for Covid-19 measures, a minister, a house representative, a number of high-level officials and the Japanese ambassador all contracted COVID-19 when congregating in an elitist club lounge where important deals are frequently made, known as 'the cabinet house number two'.³⁰³ In general, General Prayut Chan-o-cha, General Prawit Wongsuwan, and other cabinet members act with intolerable arrogance and superiority when interacting with the public. In March 2021, General Prayut sprayed

296 Khaosod English. 16 November 2020. "Opinion: Mainstream Thai Press Must Adapt, or Fade Into Irrelevance." <https://www.khaosodenglish.com/opinion/2020/11/16/opinion-mainstream-thai-press-must-adapt-or-fade-into-irrelevance/>

297 Thai Enquirer. 12 August 2020. "Right-wing Thai media takes aim at student protesters arguing Monday's rally had crossed the line." <https://www.thaienquirer.com/16913/right-wing-thai-media-takes-aim-at-student-protesters-arguing-mondays-rally-had-crossed-the-line/>

298 Thai Enquirer. 10 June 2020. "Opinion: Government officials and pro-government media are trying to destroy Wanchalearn's character; it is nothing new." <https://www.thaienquirer.com/14200/government-officials-and-pro-government-media-are-trying-to-destroy-wanchalearns-character-it-is-nothing-new/>

299 Thai Enquirer. 25 November 2020. "The return of Article 112 means an increase in royalist witchhunts." <https://www.thaienquirer.com/21066/the-return-of-article-112-means-an-increase-in-royalist-witchhunts/>

300 Thai Lawyers for Human Rights (TLHR). 17 December 2020. "The Number of Prosecutions under "Lèse Majesté" in 2020-2021." <https://tlhr2014.com/en/archives/24103>

301 Amnesty International. 29 March 2021. "Thailand: Authorities must halt relentless repression of dissent in Thailand." <https://www.amnesty.or.th/en/latest/news/900>

302 Amnesty International. 23 March 2021. "Thailand: Children rights to protest, and their rights must be protected." <https://www.amnesty.or.th/en/latest/news/896>

303 Coconuts Bangkok. 8 April 2021. "Pimp-turned-whistleblower Chuvit blames 'VVIPS' who pack Thonglor Titty clubs for Endless COVID." <https://coconuts.co/bangkok/news/pimp-turned-whistleblower-chuvit-blames-vvips-who-pack-thonglor-titty-clubs-for-endless-covid-video/>

disinfectant alcohol on reporters, telling them to mind their own business.³⁰⁴ At the same time, the military government continues to underline civilians' duty to respect 'law and order'. This sits uncomfortably with the authorities' own widespread violations of citizens' rights under the junta's laws and orders.

Repressive laws to muzzle political dissent

Under the National Council for Peace and Order (NCPO), Article 44 of the interim constitution ultimately granted the junta absolute powers to detain and prosecute opponents as well as issue any order without legal and administrative procedures. Freedom of assembly was systematically limited and political gatherings banned under the notorious NCPO Head Order No. 3/2015 on Maintaining Public Order and National Security and the Public Assembly Act.³⁰⁵ Political expression was curtailed by Acts on Computer Crimes, Sedition and Royal Defamation, with hundreds of charges brought against individuals under the NCPO's reign.

Civic space has continued to shrink in post-coup Thailand. While the freedom of opinion and expression is already severely curtailed, the government is expected to bring in more repressive laws to further reign in the freedom of expression. After the rise of the 2020 protest movement, the authorities reintroduced the *lèse-majesté* law carrying lengthy prison terms to suppress critics of the monarchy. Charges of sedition continue to be the other main tool to silence critical voices. The state of emergency that was called in the wake of the Covid-19 pandemic is being used to ban political assembly and prosecute political expression and anti-government movements.³⁰⁶ Under the post-2019 regime, the NCPO-enacted Public Assembly Act also remains highly problematic, because of how it controls, prohibits, and criminalises public expression in public spaces.³⁰⁷ In March

304 Bangkok Post. 13 March 2021. "PM sorry for his spray 'joke.'" <https://www.bangkokpost.com/thailand/general/2082787/pm-sorry-for-his-spray-joke>

305 Prachatai. 3 September 2018. "NCPO Head Order No. 3/2015 and Public Assembly Act: the systematic limitation of freedom." <https://prachatai.com/english/node/7807>

306 TLHR. 2 April 2021. "A Year-Long Emergency for Combatting COVID-19: Impacts on Freedom of Association." <https://tlhr2014.com/en/archives/27882>

307 OHCHR. Situation of the Freedom of Peaceful Assembly in Thailand: Joint submission to the UN Human Rights Committee for the drafting of its General Comment No.37 on Article 21 (right of peaceful assembly) of the ICCPR. <https://www.ohchr.org/>

2021, the Government approved the new Official Information Act, which contains vague and broadly phrased prohibitions on the disclosure of information that is deemed harmful to the monarchy and national security.³⁰⁸

Police repression

The police respond to public protests with disproportionate and indiscriminate use of force. Police violence to disband political rallies only intensified after the election in 2019. In 2020/21, riot police have deployed water canon with irritating chemicals, tear gas and rubber bullets against demonstrators, even when rallies mainly comprised youngsters and children.³⁰⁹ Mass arrests have been on the increase. For example, early March 2021, newspapers wrote about the arbitrary arrest at a pro-democracy rally of at least 48 people, including members of the 'WeVo' (WeVolunteer) activist group even though they were not on site acting as guards at the protest that day.³¹⁰

Continuing systematic oppression

The current repressive actions by the police build on the systematic suppression of dissidents under the NCPO's military rule (2014 – 2019) by means of repressive laws, orders and announcements by the junta, 'attitude adjustment programs' and trying civilians in military courts, alongside intimidation, surveillance and harassment, arbitrary arrests and detentions, as well as torture in custody.³¹¹ The security forces make use of systematic 'information operations' that include trolls and fake news, to defame human rights defenders, attack women peace activists and fan hatred between Buddhists and Muslims. Despite signing the Convention on the Elimination of All Forms of Discrimination against Women (Cedaw), the state is a perpetrator of

[Documents/HRBodies/CCPR/GCArticle21/NGO_Thai_Civil_Society_Orgs_.docx](#)

308 The Standard. 25 March 2021. "The Cabinet approved new Official Information Act prohibiting disclosure of information harmful to the monarchy and national security." <https://thestandard.co/do-not-disclose-information-damage-institution-security-information/>

309 The Guardian. 21 March 2021. "Thailand protests: scores injured as police clash with pro-democracy activists." <https://www.theguardian.com/world/2021/mar/21/thailand-protests-scores-injured-as-police-clash-with-pro-democracy-activists>

310 Bangkok Post. 8 March 2021. "Bail denied for WeVo guard leader." <https://www.bangkokpost.com/thailand/politics/2080247/bail-denied-for-wevo-guard-leader>

311 TLHR. 18 July 2019. "Five years under NCPO, isn't that enough? Recommendations to eliminate the effects of the coup." <https://tlhr2014.com/en/archives/13035>

violence against grassroots women resisting state attempts to take over their land and natural resources; condones discrimination of women from ethnic communities, migrant workers and refugees, citing concerns about state security and religious beliefs; and treats female sex workers as criminals.³¹² In October 2020, Twitter took down 926 Thai accounts linked to state-run information operations that specifically targeted pro-democracy movements and opposition parties and their allies.³¹³

Forced disappearances and civilians tried in military courts

From the 2014 coup d'état, besides trying civilians in military courts, a number of outlawed methods have been applied to silence critics of the status quo, including the enforced disappearances of Thai political exiles in Laos and Cambodia who were vocal in their criticism of the Monarchy.

According to TLHR, between 2016 -2020, six exiles were forcefully disappeared – three of whom were involved with a group called the 'Thai Federation'.³¹⁴ On 4 June 2020, the alleged state-sponsored abduction of human rights activist Wanchalearm Satsaksit triggered the second wave of demonstrations that year and publicly questioned the involvement of Thailand's 'unquestionable' institution in a series of murders and disappearances outside the country. Since the rise to power of the National Council for Peace and Order (NCPO), there have been at least 18 complaints of torture in army custody.³¹⁵ In the six years following the coup, 104 individuals were forced into self-imposed exile abroad over fears of persecution by the military junta. At least 28 political prisoners remain imprisoned even after the 2019 general election.³¹⁶

312 Bangkok Post. 9 March 2020. Govt gets Fs for protecting women. <https://www.bangkokpost.com/opinion/opinion/1874484/govt-gets-fs-for-protecting-women>

313 Prachatai. 12 October 2020. "Royal Thai Army linked to 926 Information Operation accounts, says Twitter." <https://prachatai.com/english/node/8836>

314 iLaw. 1 October 2019. "The ideas of "Thai Federation," the origins of 6 serious lawsuits, 17 defendants, 4 people disappeared." <https://freedom.ilaw.or.th/en/blog/ideas-%E2%80%99Cthai-federation%E2%80%9D-origins-6-serious-lawsuits-17-defendants-4-people-disappeared>

315 TLHR. 18 July 2019. "Five years under NCPO, isn't that enough? Recommendations to eliminate the effects of the coup." <https://tlhr2014.com/en/archives/13035>

316 TLHR. 22 May 2020. "As if the NCPO Never Left: Six Years After the Coup and the Persistence of Human Rights Violations." <https://tlhr2014.com/en/archives/17808>

Extrajudicial violence against human rights defenders

Human rights defenders working both on civil and political rights as well as on land issues and natural resources face violence from vigilante groups. Gunmen and gang attacks take place against activists working on land grabbing and community struggles against agribusiness and extractive industries across the country. In 2021, violence against protesters, in particular demonstrations called by a Telegram-organized group called 'Redem' (Restart Democracy), has been on the increase, with reports of people being beaten and even shot.

There are concerns about complicity of the authorities: In May 2019, three prominent pro-democracy activists were assaulted multiple times. The police failed to arrest their assailants and there were serious suspicions the state was involved in the attacks.³¹⁷

The judiciary as a political tool

Government opponents that are brought to trial are confronted with a judiciary system is highly partisan, both in terms of its judges and politically motivated decisions. As Constitutional Court judges are appointed by the junta-installed Senate, the junta has been able to engage in 'lawfare', using the Constitutional Court as a political tool to legitimize authoritarian rule, suppress opposition parties and get rid of political rivals and opponents. In early 2020, the Constitutional Court's dissolution of the Future Forward Party was criticised for its political motive and sparked rallies across the country.

In politically motivated lawsuits, particularly those dealing with sedition and lèse-majesté charges, the Court routinely rejects defendants' right to bail and does not guarantee a fair trial.³¹⁸ At least 24 children have been charged under these harsh-punishment allegations, the youngest being only 14-year-old.³¹⁹

The military-senate's appointment of judges and top-ranking personnel not only jeopardises the impartiality of the Constitutional Court, but also of other constitutional organisations such as the

317 Human Rights Watch. 4 June 2019. "Thailand: 3 Junta Critics Assaulted in Past Month." <https://www.hrw.org/news/2019/06/04/thailand-3-junta-critics-assaulted-past-month>

318 Prachatai. 10 April 2021. "Only one of three lèse-majesté detainees allowed bail." <https://prachatai.com/english/node/9176>

319 Amnesty International. 23 March 2021. "Thailand: Children rights to protest, and their rights must be protected." <https://www.amnesty.or.th/en/latest/news/896>

Election Commission of Thailand, the National Anti-Corruption Commission and as the National Human Rights Commission.

Intimidation and harassment of political opponents

Pro-democracy movement and supporters are the main target of the semi-authoritarian rule in Thailand. Political opponents, notably the Future Forward Party, have faced several political lawsuits, dissolution of their party and bans from politics.

Human rights defenders, lawyers, activists, and journalists alike are facing lawsuits, intimidation, and harassment for legitimately doing their work.

Social movement leaders from peasant communities and trade unions are subject to surveillance along with other existing threats for their struggles.

Students and young people, some only middle-school age, have been targeted for their leading roles in the political movement. They are being monitored, harassed, charged, and jailed under harsh punishment laws such as sedition and *lèse-majesté*. There are scores of reports of parents disowning their children and schools rejecting students' enrolment because of their political expression, particularly with regard to the monarchy. At present, twenty students and activists detained under *lèse-majesté* and other political charges have been repeatedly refused the right to bail and some may face hundreds of years imprisonment for their peaceful criticism.³²⁰

Critical civil society labelled as traitors

Suspicious are cast on critical civil society groups and NGOs receiving foreign funding, labelling them as traitors. Active civil and political rights organizations such as iLaw have had to deal with social media trolling flagging their international donors in an attempt to illegitimise their work. In 2017, TLHR human rights lawyer Sirikan Charoensiri was charged with giving false information regarding a criminal offence. There are strong suspicions that this links back to her organisation's submitting a report and cooperating with the UN human rights mechanism.³²¹

³²⁰ TLHR. 9 April 2021. "Numbers of political detainees being held in detention, while awaiting trial in 2021." <https://tlhr2014.com/en/?p=28155>

³²¹ Bangkok Post. 12 September 2018. "UN decries 'shameful' reprisals

In February 2021, the government approved in principle several new bills that authorise the state to financially monitor NGOs and regulate their activities. According to a government spokeswoman, future violators of the law will face criminal prosecution.³²²

Hope for the future: Young people's fearless defiance

The 2020 youth-led mobilizations undoubtedly constitute a historic moment in Thailand's civic and political struggles. The youth's defiance and fearlessness to speak out about the country's oppression and against its oppressors is an endless inspiration. Their call for reform of the monarchy addresses an issue that has always been a complete taboo.

Youth activists have also stood firm on non-violence as the strategy for mobilisation. This has won them a public support unseen since the 2010 Red-Shirt political assemblies.

In the course of 15 years of political unrest, civil society has also come up with new instruments and organisations to enable the pro-democracy and human rights movement. An example is the founding of human rights lawyers' organisations that provide legal assistance, compile documentation and engage in rights campaigns and advocacy with international human rights monitoring mechanisms. The birth of new media also helps accelerate the growth of civil society and transparency culture. As digital natives, their mobilization happens swiftly across social media platforms to disseminate campaign's information and support the protests nationwide.

on rights activists." <https://www.bangkokpost.com/thailand/general/1538706/un-decries-shameful-reprisals-on-rights-activists>

³²² Bangkok Post. 24 February 2021. "Govt to regulate all NGPs." <https://www.bangkokpost.com/thailand/general/2073783/govt-to-regulate-all-ngos>

Recommendations on how to move forward

In summary, despite the 2019 General Election, Thailand is not a democracy. The country continues to be ruled by a semi-dictatorial regime under a Constitution written by the military. There was a heavy crackdown on the 2020-2021 political mobilizations demanding that the Prayut Administration step down and dissolve the House, the reform of the monarchy and the drafting of a new Constitution. In addition to police violence, the government has resorted to legal harassment, including the return of Section 112, arbitrary arrests and detention to discourage political expression.³²³

Ending the legal and political structures and the culture of impunity that constitute the NCPO's legacy requires the reform of national security sector and restriction of the army's powers, as well as reform of the justice system and compensation for the victims of the 2014 coup.³²⁴ For the future, Thailand must establish a new system that prevents the abuse of state power, and restores democracy and rule of law.

323 TLHR. 12 January 2021. "2020: The Year of Protests, Ceiling Breaking, and Political Lawsuits." <https://tlhr2014.com/en/archives/24956>

324 TLHR. 22 May 2020. "As if the NCPO Never Left: Six Years After the Coup and the Persistence of Human Rights Violations." <https://tlhr2014.com/en/archives/17808>

4. CONCLUSION

The ten countries that are the foundation of this report can be roughly classified into 3 broad categories of governing systems (a) those that had functioning democratic systems, fairly autonomous institutions, civil administrations in control of the military: (India, Philippines, Malaysia, Bangladesh); (b) elected democratic systems with strong military influence and control, (Pakistan, Thailand, Indonesia; Myanmar after the 2008 constitution allowed for multi-party elections); (c) countries that have authoritarian systems with no semblance of democracy (Cambodia, Laos, Myanmar after the coup of February 2021). Categories (a) and (b) can be called hybrid regimes where elements of democracy, authoritarian control and militarism co-exist, though the variables and levels differ in each regime.

Notwithstanding the type of regime, all of the countries concerned witnessed a backslide of democratic institutions, processes and values. Their governments and ruling parties all display tendencies to resort to similar, increasingly authoritarian strategies, tactics and policies to maintain and strengthen their control over their states, their resources and the peoples within their territories.

It comes as no surprise that the ruling elite of deeply authoritarian states should ride roughshod over the fundamental social, economic, political and cultural rights of their citizens. It is more shocking when, hand in glove with the national and international corporate and business interests they are entangled and enmeshed with, the very elected and appointed representatives of citizens in countries that maintain a semblance of democracy are enabling their own states to be the primary perpetrators of human and democratic rights abuses. In particular when one considers that the rights

that are being trampled by the authorities are, more often than not, enshrined in the laws and constitutions of these countries.

The possibilities to resist these abuses, individually and collectively, are themselves being structurally and methodically constricted and delegitimised. Ironically this is often happening through abuses of legal and law enforcement systems and processes. This is often accompanied by omnipresent climates of fear through the construction of discourses that 'criminalise' dissent and the expression of difference to the 'norm'.

The countries in this report - notably the hybrid regimes, where some hope of democratic revival is possible - share a number of characteristics:

1. All these countries have followed neo-liberal privatization since the 1990s.
2. All these countries exercise the principle of majoritarianism and exclusion of minority communities. Politics and society show an increase of intolerance of dissent and the 'other'.
3. Opposition parties are restricted or disbanded; their members are faced with legal prosecution, often on the basis of trumped-up charges and frequently see themselves forced to go into exile abroad.
4. In the last few years, all these countries have witnessed the rise/dominance of fundamentalist and identity-based ideologies embedded in the political mainstream.
5. Across the board, civic spaces are steadily shrinking and governments use variety of tactics to shut down civic action, civil society organizations and public conversation.

6. Human rights violations and police/military crimes take place in an atmosphere of impunity;
7. Justice systems are partial to the regime in power and slow for all others, but especially slow for human right defenders. The process of getting justice is a punishment in itself. The rule of law ends where official ideology asserts.
8. Lawyers who argue for citizens accused by the state face retaliation from the government in all these countries. Thus the right to legal representation is attacked and therefore vetoed.
9. A culture of violence, with vigilante groups targeting dissenters and critics of the regime, is allowed if not encouraged to thrive, as long as the groups associated with the violence are affiliated with the ruling party or exercise violence in the name of hegemonic idea of religious sentiment.

The regimes in all of the ten countries have an agenda to carve majoritarian, singular, centralised power and leadership. The instruments and methods used are similar and involve curbing dissent, prohibiting the right to assembly, and restricting free speech.

An array of laws is mobilised and often stretched beyond their original purpose to charge dissenters with sedition, causing chaos and social disorder or inter-community violence. Draconian anti-terror laws are also brought into play. In addition, dissenters are being silenced by means of cyber-intimidation, such as hacking, abusing, threatening, and even online torture. Civic spaces have shrunk significantly and governments have cracked down on NGOs and social movements.

Dissent is vilified by the authorities and in the (right-wing) media. Human rights defenders are frequently depicted as foreign agents, advocating for 'western' concepts that do not match 'eastern' civilizational values. Dissent is framed as 'anti-national'. The loyalty of freethinkers and activists to the nation state is questioned. Their views and causes are delegitimised as a threat to national sovereignty. They are branded as 'parasites', or worse, as traitors and are subject to attacks by state institutions as well as by vigilante forces.

From climate to social justice activists, all are targeted. But there has been a clampdown on youth activists in particular for seeking creative difference and question prevailing policies. In most of these countries, liberated and progressive women have also experienced a severe backlash: the Covid-19 pandemic has put a greater burden on women and women's movements have witnessed a decline since permissions for public assembly are denied. Minority and indigenous communities in these countries often live in fear of persecution and violence. Authorities are not above fuelling ethnic violence, particularly when corporate interests and control over land and resources come into play. Enforced disappearances, arbitrary arrests, long jail sentences and various kinds of abuse by legal and vigilante groups have created an atmosphere of fear and silenced vocal critics.

Reasoned critics of regimes, human rights defenders, activists and independent media are the first line of defence when other freedoms are violated. And in the midst of adversity, hope remains: Significant resistance and assertions for right to dissent and democratic rights exist in all the countries, at different levels. Even in the face of harsh repression, community networks, associations and activists on the frontlines of social, political, ecological and economic

struggles, independent journalists and social media influencers, academics, lawyers, jurists and leaders of progressive peoples' movements continue to speak out and advocate for change in their national contexts.

All of the country files in this report echo that change must come from within. Local human rights defenders are well aware of the vital importance of people within a country coming together at the local and national level and finding the courage to stand up and speak out against oppression. Change can only come about if the people succeed in building networks of trust and strength to continue to voice their needs and grievances in the face of repression, and it depends on their resilience in persuading the authorities to listen.

In this context, we reiterate what we put forward in the introduction to this report:

Policymakers should have the courage to value the right and freedom for individuals or groups to publicly dissent within the law or even against the law as a means to gain insights in the varied and at times conflicting needs of the different segments of society, and to recognise the strong correlation between respect for human rights and civic space on the one hand and social stability, equitable wealth creation and sustainable human development on the other.

Call for support from the international community: Amplify human rights defenders' voices and enshrine the right to dissent in international law

At the same time, human rights defenders brave enough to resist in countries where civic space is shrinking and those who speak out must fear for repercussions derive strength from international solidarity and intersectional linkages and need the support of the international community.

International NGOs and civil society organisations can and must play a vital role in ensuring that the voices of all those within the country who risk harassment or even their lives in commenting on government policies and government agenda are amplified and heard. They must facilitate secure spaces for national/grassroots activists to freely and openly share their concerns about the government policies and the human rights situation in the country.

Meanwhile, the international community should take to heart the admonition put forward in the country file for Laos, one of the most repressed countries in the region, that it cannot tacitly condone the absence of any kind of civic space, the permanent restriction of the freedoms of expression and assembly and the criminalisation of human rights defenders in the countries addressed in this report nor anywhere else. It should, where and whenever it can, use its leverage to press governments to repeal or amend laws that violate international human rights standards and obligations, and to address the existing climate of impunity for such violations.

In the global governance context, the international community should urgently consider engaging in a collective effort to call into being a United Nations-rooted treaty or convention that protects

the Right to Dissent. Currently, the guarantee of the right to dissent and to participate in peaceful protest is not found in any single formulated right in international law, but rather is firmly anchored in a number of distinct but interconnected and mutually enforcing fundamental rights.³²⁵ The various statutes on freedom of expression and assembly should be brought together to ensure potential recourse to international law.³²⁶

Practical steps forward: Launching a Right to Dissent Coalition

To achieve an appropriate United Nations level resolution, treaty or convention, it is recommended that a Right to Dissent Coalition is established. This should bring together a coalition of international lawyers, human rights activists and organisations, academics, and involve where possible elected representatives and, in due course, governments.

To progress this initiative three steps need to be taken:

- i. Establish, as a matter of urgency, the most inclusive and appropriate ways of bringing together such a coalition;
- ii. Establish a cross- continent secretariat with supporting resources and transparent governance;
- iii. Develop, engaging inclusively with all coalition members, a strategy to achieve the appropriate United Nations-level resolution, treaty or convention, for the Right to Dissent.

325 Lawyers' Rights Watch Canada, *The Right to Dissent*, 2016. [Right-To-Dissent-PDF.pdf](#)

326 There are important precedents to learn from including the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997 and effected from 1999) and the United Nations Security Council Resolution 1325 (2000) which calls for the adoption of a gender perspective to consider the special needs of women and girls during conflict, repatriation and resettlement rehabilitation, reintegration and post-conflict reconstruction.



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