



CIVIC SPACE

Challenges and Ways Forward

Working Paper Series Number 5: December 2018



FORUM-ASIA

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Civic Space: Challenges and Ways Forward

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Preface

Civic space includes different civic spaces. Civic space is primarily about the exercise of people's freedoms and rights in the public sphere. It is the exercise of freedoms and human rights that sustain and expand civic space. A vibrant civic space is what makes democracy work within a society and ensures a democratic and accountable state. Hence, the extent of the freedoms of expression, peaceful assembly, association, and religion or belief, is what defines the quality of civic space within a given society. Following previous working papers on business and human rights and Sustainable Development Goals (SDGs), this Working Paper of the Asian Forum for Human Rights and Development (FORUM-ASIA) seeks to highlight the experiences and perspectives on civic space from local and global contexts. Such understanding and appreciation of multiple contexts of civic space will help us to develop strategies to strengthen and revitalise civic space at the national, regional and global levels.

In many ways civic space is a crucial interface between people, society and the state being a source of its legitimacy. Without the liberal values of freedom, human rights,

justice and peace, there would be no civil society organisations and civic space arenas that make democracy and development work for all. With the emergence of populist authoritarianisms, hyper-nationalism and crony capitalist networks across Asia and beyond, civic space and civil society organisations are under attack for exercising or promoting rights, freedoms and justice. Such concerted attack on human rights defenders and civil society organisations is termed generally as 'shrinking of civic space'. For this, the revitalisation of civic space requires the protection of civil society organisations as well as human rights defenders demanding accountability from the states and promoting human rights.

The Working Paper Series of FORUM-ASIA is part of a strategic knowledge-action initiative for advocacy interventions and public education, bringing together theoretical perspectives as well as experiences of civic activism and civil societies on the ground. We hope that such analytical and experiential approach to knowledge will foster solidarity actions and advocacy for the promotion and

protection of civic space, human rights and sustainable development.

On behalf of the FORUM-ASIA team, I would like to express immense appreciation and gratitude to all contributors of this Working Paper, as well as all colleagues who worked together to produce

a quality knowledge initiative to advance freedom, rights, justice and sustainable development everywhere.

John Samuel

Executive Director

Asian Forum for Human Rights and Development (FORUM-ASIA)

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People Power Under Attack

A report based on data from the CIVICUS Monitor

*Cathal Gilbert, Josef Benedict**

Abstract

The CIVICUS Monitor is a research tool providing up-to-date data on the state of civil society freedoms across the world. Based on data collected in 2018, the article portrays an overall grim scenario for civic space and activists in Asia and beyond, highlighting both positive and negative developments. The article includes graphics and text from the report 'People Power Under Attack', a global analysis of threats to fundamental freedoms published by CIVICUS in November 2018.

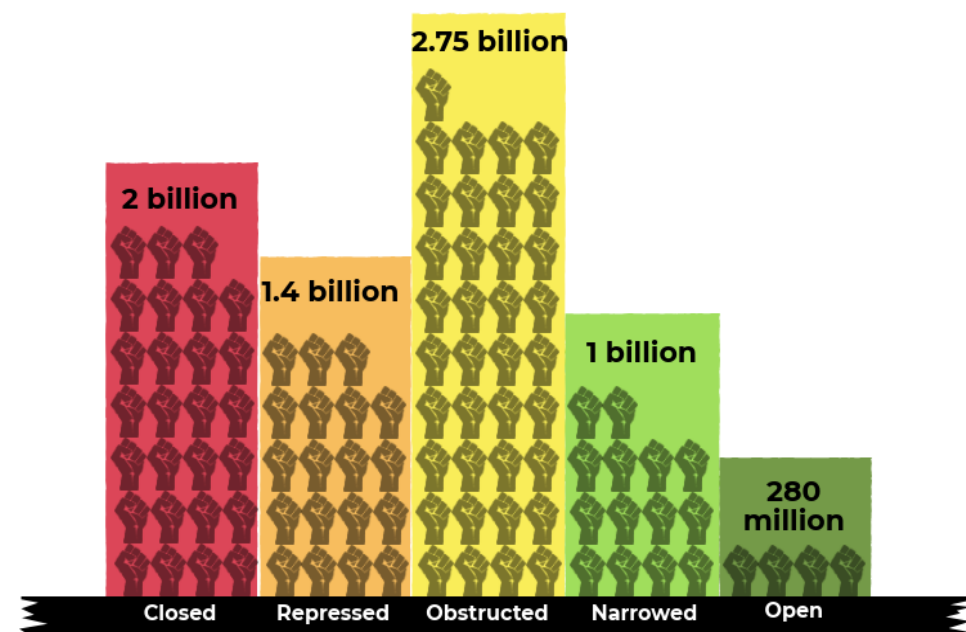
A Continuing Civic Space Crisis

Data from the CIVICUS Monitor shows that civil society is under serious attack in 111 countries, almost six in 10 countries worldwide. This is up from 109 countries in our last update in March 2018. This means that repression of peaceful civic activism continues to be a widespread crisis for civil society in most parts of the

world, with just four per cent of the world's population living in countries with open space for civil society (civic space). In just the past few months, we have seen blatant attacks on protesters calling for justice on the streets of Bangladesh, assassination of rural activists defending their right to land in Guatemala¹ and vilification of civil society organisations (CSOs) supporting refugees in the Mediterranean.² The litany of violations is long and growing.

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Number of People Per Ratings Category



As societies fracture under the weight of rising social and economic inequalities and increasing dominance of political leaders seeking to exploit societal divisions for their gain, civil society is bearing the brunt of a consequent drop in respect for the basic freedoms of association, peaceful assembly and expression. In different regions of the world, issues including the exploitation of natural resources,³ migration⁴ and corruption⁵ are also fuelling popular mobilisations and, in turn, repression of those mobilisations. In countries such as Eritrea and Syria, there is now little or no space for meaningful citizen activism and engagement. In a growing cohort of countries where democratic freedoms have long been considered

established, such as Hungary, India and the USA, this space is gradually reducing, a trend felt in particular by journalists and human rights defenders (HRDs). Even in some of the world's most open countries, such as Australia⁶ and Germany,⁷ challenges to civic space are growing.

In an attempt to capture these dynamics on a global scale, over 20 organisations⁸ joined forces on the CIVICUS Monitor to provide an evidence base for action to improve civic space on all continents. Together, we have now been tracking conditions for civil society for over two years and we have posted over 1,400 civic space updates in the last two years,⁹ data that is now analysed in this report.

In order to draw comparisons at the global level and track trends over time, we produce civic space ratings for 196 countries. Each country's civic space is categorised as either closed,

repressed, obstructed, narrowed or open, based on a methodology that combines several sources of data on the freedoms of association, peaceful assembly and expression.¹⁰

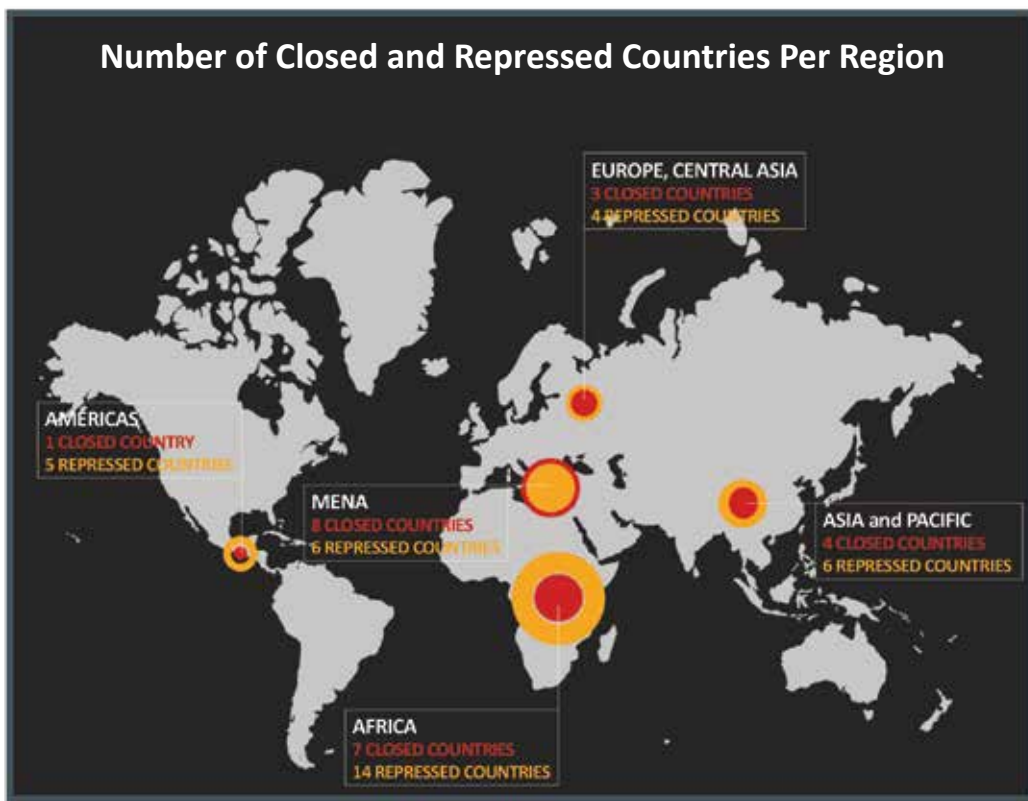
Latest Civic Space Ratings Breakdown

Countries by Civic Space Rating, March 2018 and November 2018



Following an update of our ratings in November 2018, the CIVICUS Monitor continues to tell a worrying story. The data shows that there are now 23 countries with closed civic space, 35 countries in the repressed category and 53 in the obstructed category. This means that civic space remains under serious threat in almost six out of 10 of the world's countries. Just 44 countries receive an open rating,

while 41 countries are rated narrowed. In terms of population, over a quarter of all people on the planet live in countries with closed civic space, while just four per cent live in countries with open civic space. At the regional level, countries in Central and Eastern Africa, the Middle East and North Africa (MENA), Central Asia and parts of South East Asia continue to have the worst civic space conditions.



Ratings have changed for 18 countries since our last update in March 2018: ratings have improved in seven countries and worsened in nine. Notably, while Africa remains home to some of the worst conditions for civic activism, ratings have improved for four countries in the region, demonstrating the resilience of civil society and the importance of positive political transitions. Ethiopia moves from closed to repressed and both the Gambia and Liberia move from repressed to obstructed.** Somalia's rating also improves from closed to repressed, due to some modest civic space progress. While this progress is still tentative, these are important bright spots for civil society

in an otherwise difficult environment for civil society in Africa. This is illustrated by the fact that there are still seven closed and 21 repressed countries in the region, and by the three ratings downgrades for Gabon, Senegal and Tanzania.

While our downgrading of Nicaragua¹¹ to repressed in September 2018 pointed to a worsening situation for civic freedoms in the Americas this year, the region also recorded positive moves, with the rating for Canada improving to open and Ecuador moving from repressed to obstructed. Worrying signs for civic space continue to be recorded in Europe and Central Asia (ECA). Azerbaijan's rating drops to closed,

** In this report, the Africa region includes all countries on the continent except Algeria, Egypt, Libya, Morocco and Tunisia that are classed as part of the MENA region

Ratings Changes November 2018

OPEN	Canada Lithuania	Declining ↓
NARROWED	Ecuador	Austria Italy
OBSTRUCTED	Liberia	Senegal Nauru
REPPRESSED	Gambia	Papua New Guinea
	Ethiopia Somalia	Tanzania Gabon Kuwait
CLOSED	↑ Improving	Azerbaijan

in the midst of a continuing shutdown of all space for dissent, while both Austria and Italy move from open to narrowed, a consequence of the negative influence of right-wing governments on the space for civic activism. Two countries in the Pacific – Nauru and Papua New Guinea – both drop from narrowed to obstructed, partly due to increased restrictions on the freedom of expression in the context of the detention of refugees by Australia in both countries. In MENA, the situation for civic space remains dire, with none of its 19 countries rated open or narrowed. There was just one change in the region in this period, with Kuwait moving from obstructed to repressed due to the continued targeting of the freedom of expression particularly online.

Civic Space Dynamics

Of the three freedoms that we track on the CIVICUS Monitor, the freedom of expression is most commonly targeted by repressive regimes. This conclusion is based on our analysis of 1,433 civic space reports¹² posted on the CIVICUS Monitor in the two years since October 2016. This analysis shows that attacks on journalists and censorship feature most commonly, appearing in over a quarter of all reports. As the graph below shows, states also regularly violate the right to the freedom of peaceful assembly through the use of excessive force, the detention of protesters and the banning of protests. Completing our list of top 10 violations reported on the CIVICUS Monitor are incidents of

Top 10 Global Civic Space Violations



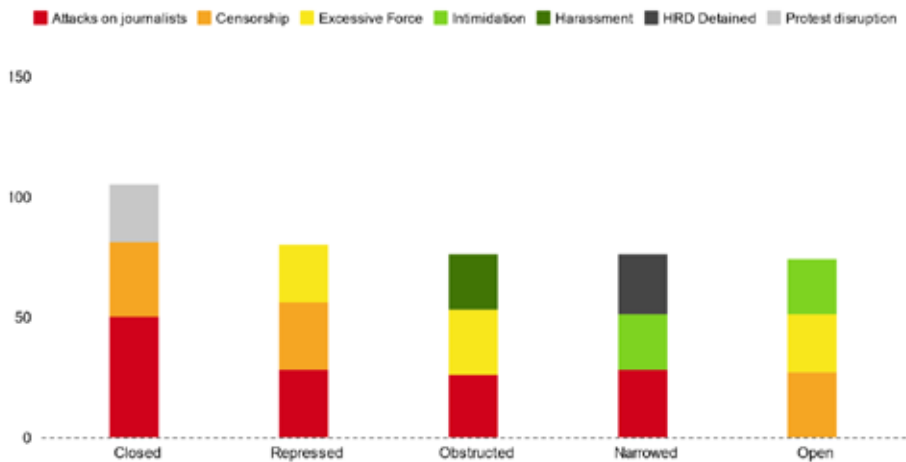
Based on analysis of 1,433 civic space updates published on the CIVICUS Monitor since 24 October 2016. The numbers above represent the number of times this violation was referenced in one report. Based on this we see that attacks on journalists are referenced in over one-quarter of all reports published on the CIVICUS Monitor in this period.

harassment, intimidation and detention of civil society activists, and the introduction of repressive laws that fail to adhere to international law on civic space.

At a time when a growing number of political leaders are attacking the media, this data underscores the reality that it is becoming harder for journalists to do their job, and for the public to access reliable and impartial information. Attacks on journalists take many forms, including targeting on social media, being dragged through the courts¹³ in vexatious lawsuits and physical beatings while trying to report on protests.¹⁴ While the perpetrators of many of these attacks are rarely identified or brought to justice, states and their agents bear the bulk of the responsibility for the

perilous situation faced by journalists today. Censorship is perhaps a less blatant, yet equally effective tool used by states to silence critics and suppress dissent. It can happen through state authorities blocking access to news websites,¹⁵ selectively shutting down TV stations¹⁶ or seizing hard copies of books.¹⁷ The frequency with which these tactics are used does not appear to depend on overall civic space conditions in a country. When we look at which civic space violations are reported most commonly for countries in each of our five ratings categories, we find that attacks against journalists and censorship are at the top of the list, regardless of the underlying level of freedom experienced by civil society.

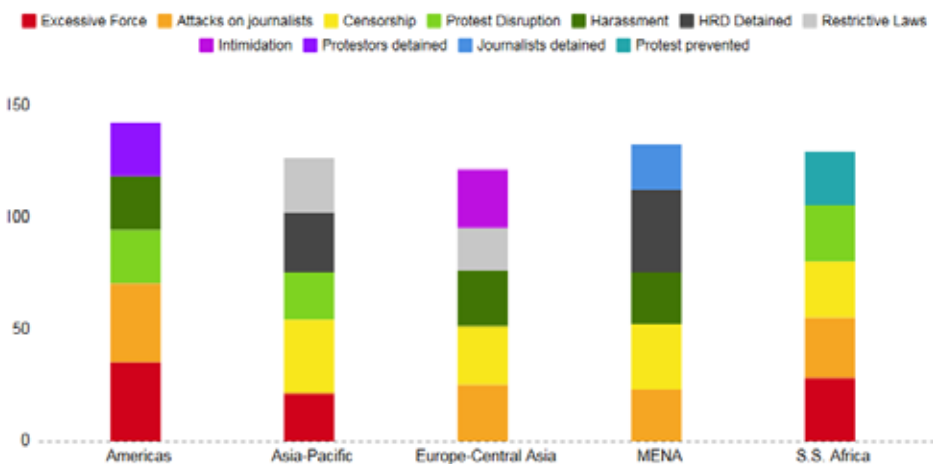
Top 3 Violations Per Ratings Category



Based on analysis of civic space updates published on the CIVICUS Monitor since 24 October 2016: 210 updates for closed countries, 411 for repressed, 371 for obstructed, 309 for narrowed and 128 for open. The numbers above represent the percentage of reports in which that violation was referenced. The three most commonly reported violations are displayed for each ratings category.

Regional Differences and Similarities

Top 5 Violations Per Region



Based on analysis of civic space updates published on the CIVICUS Monitor since 24 October: 332 updates for Americas, 203 for Asia-Pacific, 387 for Europe and Central Asia, 194 for MENA and 312 for Africa. The numbers above represent the percentage of reports in which that violation was referenced per region. The five most commonly reported violations are displayed for each region.

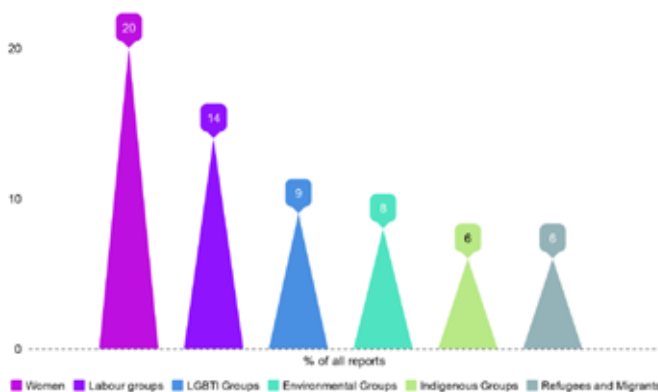
Across the five regions included in our analysis, we see some common trends, but also some regional differences. For instance, in the Americas, attacks on journalists are the most commonly reported violation, featuring in 35 per cent of all CIVICUS Monitor reports in the past two years. Mexico, the USA and Venezuela are three of the countries in which this violation has been most frequently reported. In Asia and Pacific, attacks on journalists feature less frequently in CIVICUS Monitor posts, while censorship is the number one violation reported, featuring in 33 per cent of posts. It is no surprise the most reports about censorship in Asia and Pacific focus on the government of China's attempts to control the public narrative.¹⁸ Censorship is also reported as a problem in countries such as Cambodia and Pakistan. Censorship tops the list as well in ECA, where intimidation and harassment of activists are also reported with worrying frequency. Such violations are creating climates of fear for journalists and activists in many countries, including in Italy, Kazakhstan

and Serbia. In MENA, the detention of activists is the most commonly reported violation, appearing in 37 per cent of CIVICUS Monitor posts and reflecting the wholesale incarceration of HRDs in countries such as Bahrain, Egypt and the United Arab Emirates (UAE). In Africa, the use of excessive force against protesters tops the list, with 28 per cent of posts featuring this type of civic space violation. This reflects a concerning trend involving the indiscriminate use of teargas, baton charges and live ammunition in countries including Nigeria, Togo and Uganda.

An Uneven Crisis

The attack on civic space does not affect all civil society groups in the same way or to the same degree. Our monitoring clearly shows that civic actors such as journalists, human rights defenders (HRDs) and those leading protests on the ground are likely to bear the brunt of the assault on fundamental freedoms. Digging deeper, we also see that some other societal groups are more likely to be involved in the contestation for civic space.

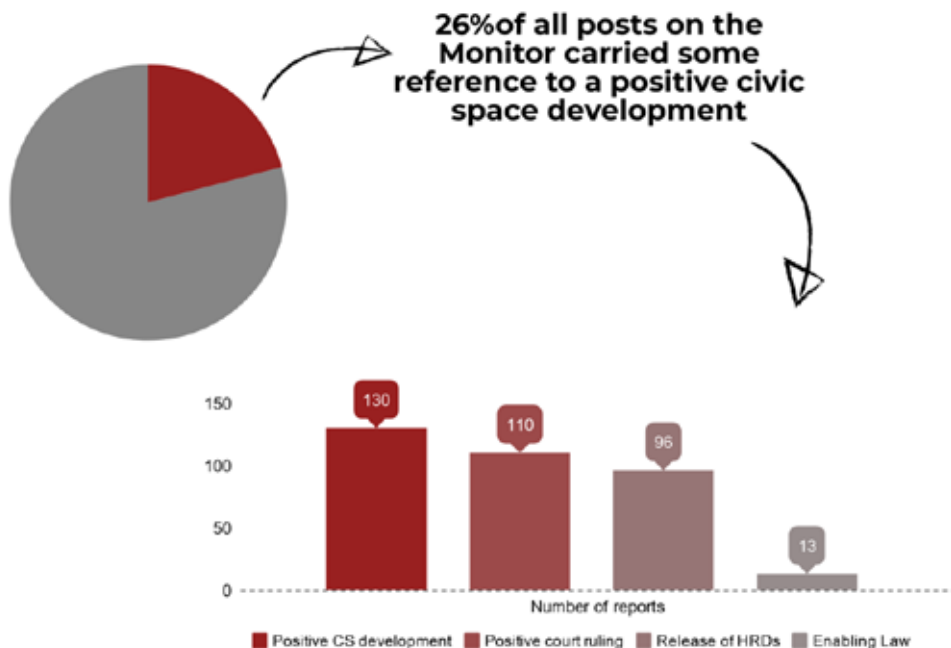
Groups Commonly Involved in Civic Space Incidents



By a large margin, women,¹⁹ including groups advocating for women's rights and women HRDs, is the group most commonly mentioned in reports on the CIVICUS Monitor, featuring in one in five of all posts. This holds true in all regions except Africa, where groups representing labour²⁰ were more often referenced. Labour groups, including trade unions, feature in 14 per cent of all posts on the CIVICUS Monitor. Other groups regularly mentioned include Lesbian Gay Bisexual Transgender Intersex (LGBTI) groups²¹ (nine per cent of posts) and environmental groups (eight per cent).²²

Bright Spots

Our monitoring also documents improvements in civic space conditions.²³ While violations dominate, the CIVICUS Monitor has documented many instances where civic space is opening up and progress is being achieved in improving respect for fundamental freedoms. In countries including Ecuador, Ethiopia and Malaysia, changes in political leadership have led to an improving environment for civic activism.



Our analysis of the 1,433 posts on the CIVICUS Monitor also shows that almost one in 10 carried some news of an improvement in civic space. These included the overturn of a ban²⁴ on a popular newspaper in Somalia, Macedonia's new prime minister encouraging CSOs to be "vigilant correctors" of the government²⁵

and the rejection by Dutch voters in a referendum of a proposal to increase state surveillance powers. The CIVICUS Monitor has also documented dozens of court rulings that have defended or expanded civic space, as well as instances where HRDs have been released from detention or acquitted of charges against

them.²⁶ We have also reported the passing of a number of enabling civil society laws, although these are still few in proportion to the number of repressive laws that are still being introduced.

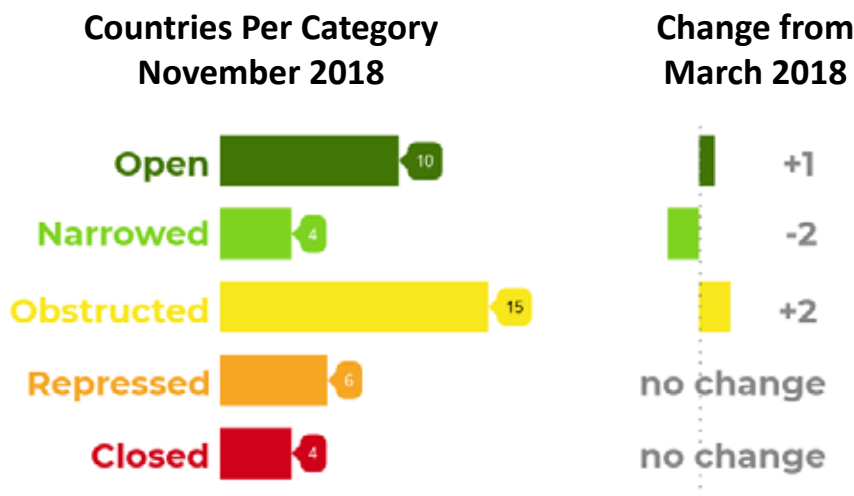
The following sections provide additional detail on civic space trends for each region.

Asia and Pacific

Ratings Overview

The state of civic freedoms in Asia remains challenging. In China, censorship²⁷ aided by new technologies has reached unprecedented levels since

President Xi Jinping took power, while Pakistan experienced an assault on the media ahead of its July 2018 elections.²⁸ In Myanmar, the repressive practices of previous military governments are returning,²⁹ with HRDs being prosecuted. In Vietnam, hundreds of activists are being detained by the one-party state as a means of maintaining control and silencing dissent. In Bangladesh, mass citizen protests have been met with violence³⁰ by state and non-state actors, while in Thailand, the military junta has continued to criminalise peaceful protests as it seeks ways to remain in power.³¹



Based on ratings on the CIVICUS Monitor 1 March 2018 and 21 November 2018 for 38 countries in the Asia and Pacific region. The CIVICUS Monitor did not have a country rating for Taiwan in March 2018 but added a rating in June 2018.

This dismal picture is reflected in the ratings compiled by the CIVICUS Monitor. Out of 23 countries in Asia, four countries are rated closed, six repressed and 10 obstructed. A staggering 94 per cent of people in Asia live in countries with closed, repressed or obstructed civic space. Civic space in Japan and South

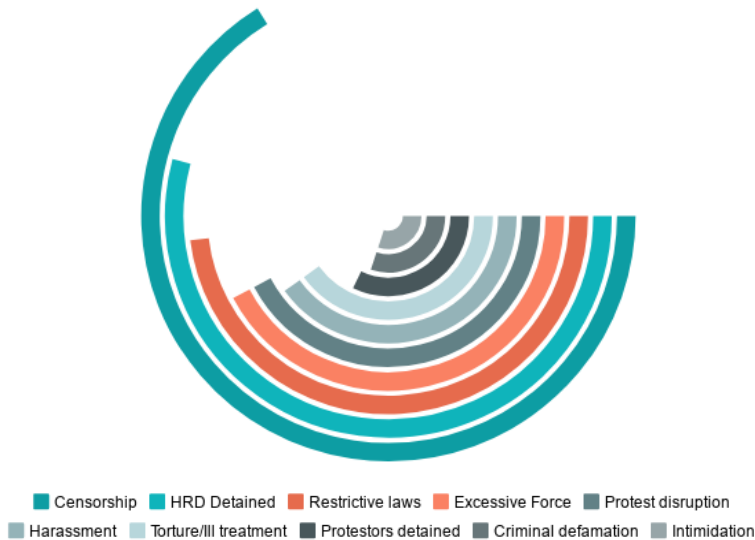
Korea is rated narrowed, while Taiwan is the only country that is rated open.

In the Pacific, the story is more positive, with seven countries rated open and two rated narrowed, although Nauru and Papua New Guinea are downgraded to join Fiji in the obstructed category.

The downgrading of Nauru is due in large part to increasing restrictions on media freedom. Nauru imposes a non-refundable visa fee of around US\$6,000 on foreign journalists entering the country, restricting media freedom and hampering independent scrutiny of Nauru's policies and practices. There is a particular challenge relating to the media's ability to report on the Australian-

run refugee detention centres in Nauru, about which there have been widespread reports of abuse. Media freedom³² continues to deteriorate in Papua New Guinea, with journalists subject to harassment and attacks. Environmental, land rights and anti-corruption activists have also faced threats³³ and arrests³⁴ for opposing development projects and extractive industry developments.

Top 10 Violations: Asia and Pacific



Based on analysis of civic space updates published on the CIVICUS Monitor since 24 October 2016: 203 updates for Asia-Pacific. The number above represent the percentage of reports in which that violation was referenced.

Civic Space Restrictions

CSOs and activists in many Asia and Pacific countries continue to operate in a difficult environment. This is borne out by CIVICUS' regular monitoring of the situation since October 2016, which reveals that censorship is the most common civic space violation across the region. Governments are continuing to

prevent information from reaching the public, silencing activists and the media and prosecuting or attacking some journalists because of their reporting.

Activists and government critics are also regularly detained and prosecuted or face intimidation and harassment from both state and non-state actors. Activists who have taken to the streets to protest have

had their activities disrupted, primarily by security forces. Our monitoring also shows the worrying use of both excessive and lethal force against protesters. Groups particularly experiencing violations of their civic freedoms in Asia and Pacific include women, labour groups, environmental groups and land rights groups.

Censorship and Attacks against Journalists

Analysis of research undertaken by the CIVICUS Monitor between October 2016 and 2018 shows that in Asia and Pacific, government censorship is occurring in at least 20 countries. China has the largest and most sophisticated online censorship operation,³⁵ which has increased under Xi Jinping. Through the use of the ‘Great Firewall’, the government selectively blocks critical outlets and social media sites such as Facebook, Google, Instagram, Twitter and YouTube, and has also blocked the encrypted messaging app, WhatsApp.³⁶ North Korea continues to have some of the tightest censorship controls and maintains a strict system of surveillance on communications within the country.³⁷ In Pakistan, the military escalated its censorship of the media ahead of the 2018 elections, with Geo TV taken off the air and the circulation of *Dawn*, Pakistan’s most-respected English-language daily newspaper, blocked for refusing to follow the military line.³⁸ Ahead of Cambodia’s July 2018 elections, Prime Minister Hun Sen shut down dozens of news outlets, ordered the blocking of websites and issued regulations restricting

journalists from expressing their opinions or publishing news that affected “political and social stability”.³⁹ In Asia, the CIVICUS Monitor has also documented acts of censorship in Bangladesh, Thailand and Vietnam, and in the Pacific in Fiji, Nauru and Papua New Guinea.

As well as restrictions on access to information, our research also showed that journalists continue to face various risks for undertaking their work, with reports of journalists detained in 12 countries and attacks against journalists in 10 countries. In Bangladesh, in August 2018, journalists covering protests were attacked by mobs allegedly linked to the ruling party,⁴⁰ while in Nepal, journalists have been threatened and attacked for exposing illegal businesses.⁴¹ Other countries where attacks by both state and non-state actors have occurred include Afghanistan, Bangladesh, Pakistan and Papua New Guinea. In at least six countries, journalists were killed.

Detention of Human Rights Defenders

Another major civic space violation documented in Asia and Pacific is the detention of HRDs, recorded in 16 countries, with large numbers detained in both China and Vietnam. In China, police often detain HRDs outside formal detention facilities, sometimes incommunicado and for long periods, in a practice known as ‘residential surveillance in a designated location’ (RSDL). The practice brings increased risks of torture and other ill treatment

of detainees. HRD and anti-censorship advocate Zhen Jianghua was detained in September 2017 and placed under RSDL outside the protection of the law.⁴² He was not formally arrested until March 2018. In Vietnam, more than 100 activists are in detention facing long periods of imprisonment for their activism.⁴³ Environmental activist and blogger Le Dinh Luong was sentenced to 20 years' imprisonment in August 2018 for seeking compensation for farmers and fishers affected by a 2016 toxic spill in the central coastal region that destroyed livelihoods and the environment.⁴⁴ Other countries where HRDs are detained include India, Myanmar, Nepal and Thailand. Many have been jailed for crimes related to criminal defamation, charges of national security, separatism and terrorism, and links to banned groups. Attacks against HRDs were also reported in 14 countries in the region.

Restrictions on Peaceful Protests

The CIVICUS Monitor has also documented civic space violations around peaceful protests in 21 countries in the region, including the prevention and disruption of protests and the detention of protesters. In the West Papuan region of Indonesia, security forces have systematically dispersed peaceful protests calling for human rights accountability and independence from Indonesia.⁴⁵ In Vietnam, police have used excessive force on numerous occasions over the last two years, primarily against protesters

demanding accountability for the 2016 toxic spill,⁴⁶ or protesters mobilising against a repressive cybersecurity bill.⁴⁷ In Myanmar, scores of peaceful protesters have been prosecuted since May 2018 for demanding the protection and safe movement of civilians trapped by armed conflict in Kachin State,⁴⁸ while in Thoothukudi, India in May 2018, police fired live ammunition into a crowd protesting against pollution, killing at least 10 people.⁴⁹ The use of excessive or lethal force by security forces against protests was also documented in 16 other countries in the region, including Bangladesh, Indonesia, the Philippines and Vietnam.

Positive Developments

Positive civic space developments have also been documented. In June 2017, legislation was passed in Mongolia to protect the LGBTI community from hate crimes after sustained advocacy by civil society.⁵⁰ In March 2018, the government of Sri Lanka decided to withdraw restrictive amendments to their NGO law after pressure from civil society,⁵¹ while in September 2018, a number of political prisoners were released in the Maldives following its elections.⁵² In Thailand, the courts dismissed charges of defamation brought against migrant workers by a poultry company that had accused them of labour abuses,⁵³ while in the Solomon Islands, a new Whistleblowers Protection Act was passed in July 2018 that promises to protect from reprisals activists who expose corruption.⁵⁴

Percentage of all Reports which include Good News Stories



Based on 203 updates on the CIVICUS Monitor for 38 countries in the Asia-Pacific region.

Country of Concern: Bangladesh

In the last two years, our research has shown that the Bangladesh authorities have increased their use of repressive laws to crack down on the freedom of assembly and target and harass HRDs and journalists,⁵⁵ including photojournalist Shahidul Alam, arrested in August 2018 on charges of spreading propaganda and false information.⁵⁶ Civic space conditions have deteriorated further ahead of national elections scheduled for late 2018. Members of the student wing of the ruling party have attacked with impunity student activists, academics and journalists.⁵⁷ Scores of activists and government critics have been detained around protests and some are facing criminal defamation charges under Section 57 of the Information and

Communication Technology (ICT) Act, which has been systematically used to silence dissent. A new Digital Security Act passed in September 2018 incorporates Section 57 of the ICT Act and contains other measures that are overly broad and vague, and inconsistent with Bangladesh's international human rights obligations.⁵⁸ The authorities have also embarked upon intensive and intrusive surveillance and monitoring of social media and have attempted to weaken opposition parties by arresting their members and dispersing their gatherings. Cases of enforced disappearances continue to be reported.⁵⁹

Bright Spot: Malaysia

The May 2018 elections in Malaysia saw a new ruling coalition come into power after 61 years of rule by the former ruling party, bringing with them commitments

to democratic and civic space reforms. Since then, scores of activists and other government critics who had faced prosecution under the Sedition Act and the Peaceful Assembly Act for expressing themselves or participating in peaceful protests have been acquitted by the courts or have had their charges dropped.⁶⁰ The government has also promised to ratify international human rights treaties, including the International Covenant on Civil and Political Rights, and repeal or revise an array of restrictive laws used by the previous regime to silence dissent.⁶¹ The authorities have also made commitments to undertake media reforms and enhance press freedom. In September 2018, the Prime Minister announced the establishment of the Independent Police Complaints and Misconduct Commission, a police oversight body, to handle cases of police misconduct in the context of civic space violations.⁶²

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Civic Space Restricted Online: Repressive Cyber Laws in South and East Asia

Abstract

People and civil society organisations in both South and East Asia are confronted with repressive laws that undermine their fundamental freedoms. Cyber laws, in particular, are becoming a widely used instrument to stifle freedom of expression in the online sphere, tighten grip to power, silence criticism and harass human rights defenders. This paper looks at how online spaces become increasingly restricted in South and East Asia, analysing causes, challenges and ways forward.

Cyber Security in South Asia: Validating Danger as Security

Anjuman Ara Begum*

The latest blow on internet freedom in the name of cyber security in South Asia took place in Bangladesh on 19 September 2018. On that day, the Digital Security Bill with controversial provisions was passed in the Parliament and later became a law of the land after receiving the assent of the President. The draft legislation created a stir together with fear and concern among the free thinkers, journalists, both national and international watchdogs about its impact on online freedom. Without addressing any of the serious concerns, the passed legislation has effectively created a chilling effect on the already curbed

online freedom and free expression in the country.¹ One of the particular concerns of the legislation is that section 32 prescribes up to 14 years of imprisonment and/or a fine of Tk25 lakh (approx. US\$30 thousand) on certain charges. A total of 9 persons have already been arrested since this new law has come into effect.²

This is not the first time that a South Asian country passes a regressive cyber law. Parallel to the ever-growing popularity of the social media and increasing cyber demography, the easy access to Internet services, specially mobile internet through smart phones,

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has had an irresistible exertion from among the South Asian governments to control and monitor Internet use aiming at political gain. Cyber legislations, administrative policies and user rules, etc., are continuously camouflaged as progressive and security requirements despite being outrightly rigorous and repressive. Instead of strengthening open and responsible governance – the basic requirement of democracy – such state measures are constantly posing a threat to the dissidents, free thinkers, writers, journalists and political opponents often leading to self-censorship and shrinking space for dissent. Governments have also failed to provide adequate protection for online activists targeted by vigilantes for their online expression.

In addition to the serial targeted killings of bloggers in Bangladesh, the sudden serial disappearances of online activists in Pakistan within two weeks of the New Year 2017, followed by lynching of Mashal Khan months later over rumours of ‘blasphemy’³ and the murder of blogger Yameen Rashid in Maldives,⁴ portray a frightening and appalling record of online freedoms in the entire South Asia. Effective investigation and providing justice to the victims along with fixing accountability for such crimes are often elusive, fostering and strengthening day-by-day a culture of impunity.

Bangladesh

In Bangladesh, cyber space provided a platform for activism and expression of religious and secular views that have

traditionally been termed as ‘anti-Islamic’. Since the 2000s, micro blogging became a popular trend among the young generation to express liberal values. Parallel to its popularity, online activists started facing systematic targeting, often threatened and killed for expressing dissatisfaction with governance, highlighting systemic failures and religious fanaticism. Prior to the Digital Security Law of 2018, the Bangladesh Government, since 2000, passed a series of cyber laws. The Bangladesh Telecommunication Act (BTA) passed in the year 2001⁵ was followed by the Bangladesh Information and Communication Technology (ICT) Act in 2006.⁶ An amendment to the Bangladesh Telecommunication Act (BTA) in 2010 allowed Government interception of electronic voice or data communications from any individual or institution without court orders under the guise of ‘state security’. The Bangladesh Telecommunication Regulatory Commission established as the Telecom regulatory body under the BTA, arbitrarily cracked down on dissenting voices for critiquing the Government and its public policies, by blocking online access.

Moreover, in continuation of the regressive cyber governance in Bangladesh, the 2013 amendment to the ICT under Section 57 increased the punitive measures from 10 to 14 years. This section over a short span turned out to be controversial for its widespread abuse, becoming a tool of repression.⁷ Section 57 is ambiguous in nature and

broadens the scope of its application and criminalises even lawful expression and content. In this amendment, the erstwhile safeguards requiring the police to seek permission before making ICT related arrests were terminated, sanctioning the police to arrest without warrant, imparting non-bailable status to crimes committed under this section. A total of 1,417 cases on cybercrime charges were filed with police between 2012 and June 2017, and during that period only 179 of them have been dismissed so far.⁸

In the year 2016, arbitrary crackdown on dissenting voices critiquing the Government and its public policies has led to blocking online access to about 35 websites. Scores of journalists, writers, online activists have been booked, denied bail, fair trial and other due process guarantees under section 57. The regressive use of this provision along with serial killings of bloggers such as Nazimuddin Samad and Avijit Roy by Islamist groups has led to mass self-censorship and enforced migration of active bloggers to ensure security to their lives.

In 2015, digital security legislation with restrictive provisions was introduced to curb online freedom of expression. The Digital Security Act, 2018 is the outcome of this process. This Act is another example of the state's systematic effort to stifle dissent and free expression in Bangladesh. With unduly lengthy imprisonment sentences, imprecisely defined and over inclusion of offences qualifying as cyber offences without the requirement of mens rea to cause serious

harm, authorising low ranking police officers with the power to investigate, and conduct search and seizure without normative digital evidentiary standards in place and without any judicial oversight only confirms the extent to which the Government is willing to go to in order to empower its state machinery against dissent.

The State apparatus lacks political will to bring the killers of online activists before trial along with discreet support from the cross section of the society. In a bizarre move, Bangladesh Government mandated biometric registration for purchasing of mobile sim cards, imposing mass surveillance on its citizens, citing national security and maintenance of peace rationales. The Government currently having direct access to its citizen's communications with a Government-assignment identity to link each mobile SIM, needless to say, will force people to keep their communications in check to mainly pro-Government narratives.

India

The laws passed in South Asia and their deliberate inclusion of restrictive standards for online expression grossly neglect normative human rights standards. India was one of the first countries in South Asia to promulgate a law that probably inspired other South Asian countries to follow. The Information Technology Act was passed in the year 2000, later amended in 2009 to include penal provisions in the likes of vaguely drafted Section 66 A that stipulated imprisonment and fine as

punishment for sending “... information that is grossly offensive or has menacing character”, false information for the “for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will...”.⁹ Essentially, this became a tool in the hands of the state to prosecute innocent people on mere pretexts, thus legitimising arbitrary arrests and detention of individuals merely exercising their constitutional right of free expression. Series of arrests ensued for lawful expression.

In 2012, a school girl was arrested for writing her Facebook post against the general strike (bandh) observed for Bal Thackeray’s funeral.¹⁰ Her friend who ‘liked’ the post was also arrested. Poets, cartoonists and professors expressing displeasure against state policies and leaders have been conveniently booked under Section 66A. A welcome decision by the Supreme Court in the year 2015 scrapped Section 66A opining that the provision was “unconstitutionally vague” and that it “arbitrarily, excessively and disproportionately’ invades the right of free speech.¹¹

However, arrests over social media posting continue. The arrests of Tawseef Ahmad Bhat and Anwar Sadiq over Facebook posts allegedly supporting Kashmiri independence and insulting a martyr respectively evidence the use of sedition laws to facilitate online censorship. Similarly, anti-defamation and sedition laws have also been used

to justify arrests of individuals over their social media expressions.¹²

Pakistan

Pakistan too is not lagging behind from passing draconian cyber laws. In 2015, the Pakistan Parliament passed the draconian Prevention of Electronic Crimes Bill 2015.¹³ The legislation empowers the Government to censor any “anti-government, anti-Islam content” on account of broadly defined offences, stipulates unreasonably harsh punishments and enables arrest without any judicial oversight. Pakistan is the only other country apart from Bangladesh that also requires biometric registration to purchase mobile SIM. Freedom House, an independent research and advocacy organisation on political freedom and democracy, reported declining trend in Pakistan in 2018 and ranked it among the ‘not free’ countries for Internet freedom on their Internet Freedom Index and rightfully so.¹⁴

Attacks and harassment of online activists and freethinkers are often reported. In January 2017, five human rights activists also known for their pro-minority rights and religious freedom stance on social media, Waqas Goraya, Asim Saeed, Salman Haider, Ahmad Raza Naseer and Samar Abbas disappeared for three weeks. Subsequently, a blasphemy complaint was also filed against them. Blasphemy laws are a formal part of the Pakistan Penal Code, often punishable by death and in a lot of cases, individuals accused with blasphemy offences are often lynched by the public. One such example being Mashal Khan, a 23-year-old journalism

student. He was accused of blasphemy for offending Islam on social media and was beaten and shot dead by a mob at Abdul Wali Khan University in Mardan district of Pakistan. Mashal had an active online presence where he openly advocated for religious freedom and posted anti-establishment views.

Apart from targeting online activists, the government of Pakistan also repeatedly blocks websites and filters internet content deemed blasphemous. YouTube was banned in Pakistan thrice over anti-Islamic content in 2008, 2010 and from 2012–2015. In 2010, the government also temporarily banned Facebook and Wikipedia along with a few other websites for blasphemous content. Clearly the state conveniently uses blasphemy laws as a silencing tool for dissenting voices in the online sphere.

Maldives

Maldives does not have cyber laws as yet. However, unauthorised Internet surveillance is widely prevalent and allegedly severe. Authorities regularly monitors social media platforms, chat rooms, etc., and filter web content without any legal sanction or accountability process. Shutting down of Facebook pages is often reported. Websites are often blocked to ‘securitise’ discourse and to block criticism of Islam. Following Rilwan’s disappearance case, an investigation was ordered against a Facebook page titled “Dhivehi Atheists/ Maldivian Atheists” for anti-

Islamic activities. Rilwan, an admired blogger and activist has been missing since August 2014.¹⁵ Yameen Rasheed, another prominent online activist vocal against radicalisation and corruption, was murdered in April 2017. He was known to have been facing numerous death threats but despite filing police complaint, received no protection.¹⁶ Several activists reported facing online harassment and life threats, and alleged that the police reportedly do not act on such complaints.¹⁷

Nepal

In a setback to the adoption of one of the most liberal constitutions in the world, Nepal denied the right to freedom of expression to foreigners. Nepal deported a Canadian citizen for criticising government policies over Twitter and claimed that freedom of expression is reserved only for the citizen of Nepal. The case is now pending final verdict from the judiciary.¹⁸

Furthermore, Article 47 of the Electronic Transaction Act, 2008 criminalises content “contrary to the public morality or decent behaviour or any type of material that may spread hate...”¹⁹

Without any checks on the loosely defined provision, it has been used as tactic to promote online censorship in Nepal. One of the many examples is that of journalist Manoj Kumar Rai, the chief editor of *Gaunle*. He was arrested for publishing material criticising a self-proclaimed self-declared religious guru, on Facebook.²⁰

A new set of Criminal Code Acts 2018 along with the Civil Code Acts 2018 became law of the land on August 17, 2018, replacing 15 laws including 55-year-old civil and criminal laws. Some provisions of the Act, especially Sections 293 to 308 relating to privacy and defamation, are restrictive to the press freedom and criminalise expression.²¹

Sri Lanka

In Sri Lanka, the government has begun policy level discussions at the initiative of the Information and Communication Act on Internet privacy laws and data protection. This is reportedly in the drafting process. This is not to say that Internet blockages and arrests of anti-establishment journalists under anti-terrorism laws have not been executed.²² However, contrary to the overall South Asian trend, Sri Lanka has bettered in terms of free expression by reversing website bans, strengthening social media activism post advent of the new presidential regime under President Sirisena.

Conclusion

The online platforms not only offer opportunities of e-commerce, it provides a voice and an audience to the common people to express views, the power to critique without any filter and to some extent, anonymity. It is now a popular tool for dissidents and political opponents. It is because of this very public nature of the web where ideas are easily articulated with a mere click of a button, cyber space

becomes a soft target of state surveillance and restriction in the name of cyber security laws, policies and regulations branding 'danger' as 'security'.

Trends in South Asia, if persisting and not countered at the right moment, will soon further suppress the already shrinking freedom available in cyberspace. In the world of corporate news and predominance of 'alternative facts' or the fake news, it's time to save the cyberspace for truth, democracy and freedoms by resisting the draconian cyber 'security' legislations.

In this era of 'digital age' and the ever expanding role of Internet, state must liberalise and upgrade its traditional duties and responsibilities towards upholding Internet freedoms to fit international human rights standard, particularly Article 19 of the International Covenant on Civil and Political Rights, 1977. States must address Internet freedom with a holistic approach, adopt rules and politics strictly adhering the rule of law principles, as well as ensure fair trial for any digital crimes.

Social media companies and search engines play a crucial role in upholding online freedoms. These companies must be brought under accountability mechanisms and enhance their understanding of human rights standards. Companies must refrain from creating an atmosphere of intimidation that reinforces self-censorship or even forcing users to quit the platform altogether.

Contextualising Cyber Laws in East and Southeast Asia: An Added Concern for Online Civic Space

*Dominique Calañas**

In countries where an atmosphere of repression is already prevalent, authoritarian governments further suppress freedoms by complementing cyber laws with existing repressive legislation that hinder freedom of expression offline. Citing the proliferation of fake news and national security concerns has proven to be a fashionable way to expand restrictions on freedom of expression in the cyberspace. This belies a grave misunderstanding of current threats found in the Internet that leads to the enforcement of ineffective legislation and disproportionate sanctions. As a result, cyber laws further propagate a culture of self-censorship, exacerbating the rising trend of digital authoritarianism in East and Southeast Asia.²³

Added Repression, New Justifications

Myriad laws restricting the “traditional” practice of freedom of expression in Southeast and East Asia exist under the guise of preserving national interests, national security, or protecting a nation’s moral or religious beliefs.²⁴ Cambodia’s Press Law targets journalists publishing information deemed to compromise national security; Indonesia’s Broadcast Act limits broadcast content; Timor-Leste’s Media Law prohibits content that

may impinge on the right to honour and reputation; Singapore’s Undesirable Publications Act enables authorities to ban publication deemed “obscene”.²⁵ While majority of East and Southeast Asian countries’ respective Constitutions guarantee freedom of expression, this is often circumvented by provisions found in other laws – usually embedded in Criminal Codes – in the form of extremely broad provisions touching on defamation, incitement, criticism of government organs, and religious expression. These “offline” laws infringing on traditional media of expression prove insufficient for authoritarian regimes striving to keep their grip on power, especially with the power of the Internet. Its borderless nature has facilitated a freeway of ideas; it now serves as a primary source of information, a means of conducting business, and a way to communicate with others.²⁶ However, with the expansion of cyberspace has come the escalation of cybercrime.²⁷ While these cyberlaws are justified by States as a means of responding to an alarming increase of cybercrimes,²⁸ oppressive governments misuse the fake news–national security trend as justification to extend “traditional” repressive laws into the cyber realm, effectively curbing freedom of expression. Where it should promote a

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safe space for Internet users for any kind of expression, it has done the opposite by repressing views and opinions crucial for a vibrant and progressive civil society. This is the all-familiar scenario one finds in ASEAN countries: Cambodia's Cybercrime Law explicitly prohibits books and any other content deemed to create national insecurity, be it online or offline. Laos' Decree on Information Management on the Internet 2014 prohibits online content convincing people to attack the state or the government, or impinges on the peace, independence, sovereignty, democracy, or prosperity of the country.²⁹ In Myanmar, the Electronic Transactions Law prohibits using electronic technology that may endanger state security, law and order, community peace and tranquillity, national solidarity, the national economy or national culture.³⁰

Meanwhile in East Asia, China takes on an interesting stance in its Cybersecurity Law as it extends the notion of sovereignty in cyberspace, often dubbed as "cyber sovereignty". China's communist ideals are "protected" in cyberspace from any foreign influence by this law.³¹ Mirroring China's Cybersecurity Law, "distorting national history" is a basis for crime in Vietnam's new Cyber Security law, adding to the already repressive atmosphere promulgated by Decree 72.³² Moreover, in Thailand, the National Council for Peace and Order's (NCPO) announcement No.97/2014 (amended by announcement No. 103/2014) punishes individuals disseminating information that could lead to social divisions and panic among

the public.³³ The Announcement has been used as a ground to suspend the outspoken TV digital channel. This order further consolidates vague and arbitrary provisions found in the controversial Computer Crimes Act of Thailand (CCA). Similar reasoning for such laws can be found in Indonesia's Electronic Information and Transactions,³⁴ Singapore's Computer Misuse and Cybersecurity Act, and The Philippines' Cybercrime Prevention Act of 2012.³⁵

Emblematic Case: Thailand's Lèse-Majesté

In countries like Thailand, consequences can be dire should one "criticise" the royal family. On December 2015, Thanakorn Siripaiboon was charged on several counts – sedition, charges under the Computer Crime Act, and lèse-majesté – for having shared "seditious" infographic content about a military corruption controversy, for making a "sarcastic" remark about King Bhumibol Adulyadej's favourite pet dog, and for clicking "Like" on a doctored photo of the King.³⁶ Thanakorn was denied bail twice by the Bangkok Military Court before his bail was granted on March 2016 with the condition of barring him from leaving the country. As of August 2018, the trial is still on-going against Thanakorn. He could face up to a maximum of 37 years of imprisonment should he be found guilty of all charges.³⁷ His case highlights how the right to freedom of expression is curtailed when it concerns both monarchy and military rulers.³⁸

Ineffective Legislation and Disproportionate Sanctions

Extremely broad, overly vague, and arbitrary provisions plague most cyberlaws in the region, leading to an overall ineffective legislation. Indonesia's revised Law on Electronic Information and Transactions Law (ITE), for instance, attempts to define cyberbullying as constituting threats of violence or frightening information, and acts causing physical, mental and/or financial damages.³⁹ This definition remains contested, as there is no standard definition of cyberbullying, nor of bullying in other legal instruments. This may lead to multiple interpretations, becoming a "multipurpose Act" to suit any situation.⁴⁰ As demonstrated in the early-mentioned case, Thailand's *lèse-majesté* clause has been interpreted broadly over the recent years. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression stated in 2011 that Thailand's *lèse-majesté* laws were "vague and overly broad, and the harsh criminal sanctions are neither necessary nor proportionate to protect the monarchy or national security".⁴¹ Overly broad provisions found in Vietnam's draft Cyber Security Law also enables abuse, as authorities are able to decide when expression should be deemed "illegal".⁴² Furthermore, in Thailand, there are recent legislative proposals to introduce a Cyber Security Bill. If promulgated, it would allow authorities to access and

seize computers or any equipment that are privy to cyber security threats, without a court order.⁴³

Invasive Monitoring and Surveillance

The very existence of a cyber monitoring and surveillance programme "follows that any capture of communications data is potentially an interference with privacy; the collection and retention of communications data amounts to an interference with privacy whether or not those data are subsequently consulted or used".⁴⁴ Using surveillance programmes, repressive governments routinely target activists and infect their computers and phones with malicious spyware that leads to the silencing of civil society and effectively cracking down on legitimate human rights work.⁴⁵

Invasive cyber monitoring and surveillance are often administered by powerful and influential committees. Cyber monitoring in China is controlled by the Cyberspace Administration of China (CAC), now a commission from its former status as "leading group". The commission is nominally headed by Xi Jinping himself, but entrusts key functions to trusted members of the politburo. This leading group is in charge of issuing notices and directives if websites are found noncompliant to censorship rules. A censorship directive may touch on any topic. After a campaign to arrest almost 200 lawyers and activists in China, the CAC published a censorship directive saying, "All websites must, without exception, use

as the standard official and authoritative media reports with regards to the detention of trouble-making lawyers by the relevant departments”.⁴⁶

Neighbouring countries have followed China’s censorship committee model. Cambodia’s Cybercrime Law authorises a “telecommunications inspections officials” to monitor any mode of communication on the approval of “legitimate authority”. This “authority” is undefined, in practice implying that the government may intrude on any mode of communication without a warrant.⁴⁷ The Korea Communications Standards Commission (KCSC) government body has similar functions, with the ability to monitor private content in social networks and mobile applications.⁴⁸ In Thailand, NCPO Orders 12/2014 and 17/2014 require all social media and Internet service providers to work with, and report content that violates these terms to the National Broadcasting and Telecommunications Commission (NBTC).

Disproportionate Sanctions

East Asian governments often extend defamation clauses coupled with disproportionate penalties existing in criminal law to cyberspace. This is the case for the Philippines’ Cybercrime Prevention Act, which prescribes up to 12 years of imprisonment for anyone found guilty on online defamation grounds. Criminalisation for defamation in South Korea mirrors this kind of legislation, but with significantly higher fines when defamation is done online. In Indonesia, Article 27 of Indonesia’s ITE

Law criminalises anyone who distributes electronic information that contains threatening content, or information that incites violence. Individuals accused under defamation under ITE Law can be detained for 50 days without trial, be imprisoned for up to four years, or fined up to Rupiah 1,000,000,000 (US\$70,000).⁴⁹ The Philippines’ Cybercrime Prevention Act penalises anyone who commits defamation online; penalties exceed those prescribed by Article 355 of the Penal Code, meaning that penalties can reach up to 12 years of imprisonment.⁵⁰ Similar provisions can be found in Thailand’s CCA and Singapore’s Computer Misuse and Cybersecurity Act.

Emblematic Case: Crackdown on dissent in Laos

In March 2016, Somphone Phimmasone, Lodkham Thammavong, and Soukan Chaithad were arrested for Facebook posts criticising the Lao Government for its human rights violations, corruption, and environmental policy.⁵¹ The three repeatedly criticised the government while they were working in Thailand. They were also amongst the 30 people who protested in front of the Lao embassy in Bangkok.⁵²

Months later, after a report assumed that the three were victims of enforced disappearance,⁵³ they appeared on state television, apologising for allegedly endangering national security. *“From now on I will behave well, change my attitude and stop all activities that betray the nation,”* said Somphone Phimmasone.⁵⁴ Laos, one of the last single-party

communist state in the world, controls media and Internet tightly. At the time of writing, Laos ranks 170th out of 180 countries for press freedom.⁵⁵

Self-censorship and Rising Digital Authoritarianism

Censoring content not only infringes freedom of information, but also propagates a culture of self-censorship. China engages the most in censoring content. The Golden Shield Project, commonly known as “The Great Firewall,” serves as the state’s virtual border in cyberspace. It effectively censors content by mandating companies to follow rules and regulations set forth in the Cybersecurity Law. Tech giants such as Facebook, Google, and YouTube, have received backlash for kowtowing to Beijing for complying with such rules. Moreover, mandating tech companies to abide by these censorship rules perpetuates a self-censorship culture. A concrete manifestation of this is the censored search engine tool made by Google itself for China’s perusal, dubbed “Project Dragonfly”. Google employees have expressed concern in a letter to the tech giant, saying that the company may have violated its own ethical procedures. The letter garnered at least a thousand signatures from Google’s own employees.⁵⁶

The same trend can be found in Singapore where threats come in the form of cancelling registration licenses. Individual news sources receiving 50,000 unique visits are mandated to register under the Info-Communications

Media Development Authority. This means complying with censorship rules or risking losing their performance bond. In South Korea, the Network Act allows the Government to monitor and censor online content. This is also the same with Malaysia’s Communications and Multimedia Act, empowering the Government to block and shut down “unfavourable” websites and online content. In Thailand, where the ruling government is of a military junta, the CCA was used to charge nine (9) Resistant Citizen activists for creating a Facebook page critical of the NCPO. They were denied bail on the basis that the offending speeches had been deliberately planned.⁵⁷

Self-censorship further contributes to the rising digital authoritarianism in the region. Where cyberlaws are meant to put user and data protection in the heart of policy-making, oppressive regimes use this as a tool to silence civil society and undermine legitimate human rights work. While cyber threats are a very real concern, cyberlaws must become a mechanism to address prevalent threats that endanger freedom of expression online, rather than a government tool to silence its people.

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Shrinking Space for Civil Society in Kazakhstan

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Abstract

Shrinking civic space in Kazakhstan is highly threatening to civil society organisations, media and activists. Communication at all levels is highly monitored by the Government and its agents. But a state cannot become truly developed and prosperous without a strong civil society. This article highlights the challenges faced by civil society and the need to reclaim fundamental freedoms and civic space.

Media Freedom and Freedom of Expression

Freedom of expression in Kazakhstan continues to be increasingly restricted. This includes the new controversial media legislation¹ significantly hampering the ability for journalists to work freely.

Inside Kazakhstan there has been stark objection to a provision that makes the procedure for obtaining information from state bodies on issues of public interest more complicated and time-consuming. Another problematic provision requires journalists to obtain consent to publish information considered to contain private, family or other secrets. These undefined terms may be widely interpreted and could be used to obstruct investigative reporting on corruption-related issues. The media law further requires that any

online media commentary should be identifiable, implying that no free and anonymous discussion is possible.

Besides, the Kazakh legislation equates postings on social media with actual media, implying that any social media post could evoke punishment that is applicable to published media. There have been several cases on lawsuits against journalists, and closure of media in relation to independent reporting. This includes the ratel.kz news site that was blocked in late March 2018. This was a case relating to the former Minister of Finance Zeinulla Kakimzhanov. It was stated that the ratel.kz had consciously spread false information, thereby having damaged the reputation of the former Minister. The information related to a series of news articles on alleged corrupted business

schemes. Subsequently, ratel.kz and its Facebook site were closed down by court order in May, cancelling the registration of the media.²

The freedom of the internet in Kazakhstan is also deteriorating at a rapid speed. In November 2017 Kazakhstan announced that an automatic system for monitoring internet content is planned to be introduced by the end of 2018. According to the Ministry of Information and Communication, this system would be used to monitor “the entire internet” for the purpose of tracking down information considered illegal under national legislation.³ The Ministry of Information and Communications monitors online and other media resources in accordance with regulations adopted in 2016. There are concerns that the Government's monitoring results in undue restrictions on freedom of expression since national legislation sets out broad and vague criteria for deeming information unlawful. For example, it is against national law to disseminate information containing calls for “extremist” activities, “riots” or unauthorised protests. The owners of internet sites and other media resources may also be requested to remove content and sites may be blocked without a court ruling.

In the beginning of April 2018, the Minister of Information and Communications, Dauren Abaev threatened to block access to the popular Telegram messaging app, unless Telegram agreed to delete material shared on the Telegram channel

of the banned DCK (Democratic Choice of Kazakhstan) movement.⁴ For several weeks, internet users in Kazakhstan had been experiencing periodical lack of access to different internet sites and apps, usually lasting for several hours. The outage often coincided with live video streaming or communication from the exiled politician and businessman Mukhtar Ablyazov (leader of the DCK). It has also been observed that a number of websites have become inaccessible in Kazakhstan, including the encrypted ProtonMail. Online surveillance in Kazakhstan has been widely criticised for a number of years. It is proven that the Kazakhstani authorities' security services (KNB) are utilising tools that can intercept phone calls and large amounts of online data, utilising the SORM-technology, as well as software that can infect target PCs and mobile devices belonging to people under surveillance.⁵ Such methods lead to widespread self-censorship and persecutory fears, not only among common citizens, but especially among journalists and members of civil society.

There are several other articles in Kazakhstan's Criminal Code that are cause for serious concern due to their utilisation to silence independent reporting, dissent and views opposing the official government position. These include Articles 130, 131, 174 and 274 of the Criminal Code.⁶

Articles 130 and 131 punish libel, defamation and insult injuring the honour and dignity of another person. These articles are being used to prosecute

journalists. Based on the monitoring of the NGO Adil Soz (International Foundation for the Protection of Free Speech), statistics indicate that Articles 130 and 131 have been used in 2018 to charge 15 individuals, of whom 3 were found not guilty.⁷ Most of these charges relating to freedom of speech have been against journalists. The usage of libel laws in Kazakhstan has been widely criticised by the international community as they hamper free speech and investigative journalism in the country.⁸

Article 174 punishes incitement to social, national, tribal, racial, class or religious discord. The frame of punishment is up to seven years of imprisonment or deprivation of liberty, and, if connected with a criminal group, up to 20 years of imprisonment. Article 174 has received widespread criticism, because it has been and is being used actively to prosecute citizens who express their dissent. According to Adil Soz, statistics reveal that Article 174 has been used at least on five occasions from late 2017 until August 2018.⁹ Among the hi-profile cases in recent years is the prosecution of Max Bokayev and Talgat Ayan for their role in the country-wide Land Reform Protests in 2016. Talgat Ayan was released in April 2018, but Max Bokayev remains imprisoned.¹⁰

Article 274 punishes “knowingly spreading false information”. This article has also been widely used in targeting free speech in the country. Most recently, this article has been used in an attempt to silence a

lawyer working on a highly debated case regarding the rape of a young boy by other schoolchildren. On 24 July in Astana, the lawyer Bauyrzhan Azanov was questioned by the police, and accused of distributing false information. Azanov had posted his opinion of the case on his Facebook page. The General Prosecutor stated in his justification of opening the case that: *“the information distributed by the lawyer Azanov is deliberately distorted and false, which gave the public a false perception of the corrupted state of justice, of the bodies conducting the criminal procedures, the mother of the harmed child, and other persons who have suffered psychological-emotional and social stress; threatening to destabilise the internal political situation (the peace and stability of society), causing a threat to violation of public order, causing substantial harm on the rights and legitimate interests of the society and state.”* Now this case is dismissed.¹¹

A worrying trend of targeting foreign journalists and trainers of journalists has also begun in Kazakhstan over the last six months of 2018. On 15 September, Ukrainian journalist Aleksandr Gorokhovskiy was conducting a fact-check journalistic training organised by the media “Uralsk Week” (in the city of Uralsk, Western Kazakhstan), when police interrupted the training. Gorokhovskiy was subsequently taken to court and received a fine for violating the labour code of Kazakhstan, despite not receiving any payment for conducting the training.¹² The French journalist Vincent Prado was detained in a similar

case on 27 September in the city of Aktau (North-Western Kazakhstan) whilst conducting video interviews for a French media assignment. At the time of Prado's detention, he was talking with witnesses to the shootings in Zhanaozen in 2012. The initial reason for detention was reported as "violations of rules of accreditation of foreign journalists", as Prado had indicated in his media accreditation form that he was planning to report from "Kazakhstan, including Almaty and Astana". Prado was subsequently fined and prohibited from filming, photographing and use of dictaphone in Mangystau Region.¹³ This was a clear violation of the rules of accreditation of foreign journalists in Kazakhstan. In November, the Ministry of Foreign Affairs acknowledged that Prado had not violated any rules.

In an ongoing case, Shymkent-based (Southern Kazakhstan) blogger Ardak Ashim was forcibly incarcerated in a psychiatric facility for one month. The conclusions of the so-called "forensic examination" stated that Ardak Ashim had been "suffering from a prolonged mental disorder since 2015". On 15 March after her home had been searched by the authorities, Ardak Ashim was detained on charges of "inciting social discord" (the notorious Article 174 of the Kazakh Criminal Code). Police officers also questioned Ashim on alleged connections with the banned Democratic Choice of Kazakhstan (DCK) movement. On 31 March, Ashim was once again taken for interrogation by the police, and she was subsequently sent to the psychiatric

facility. The authorities also claimed that in 2004 Ashim had been treated in a hospital for a "post-concussion syndrome", something relatives of the blogger deny. On the evening of 5 May Ashim was released from the psychiatric mental facility. On 10 May, the Abai District Court in Shymkent ruled to exempt her from responsibility of "inciting social discord", as she was in a "state of insanity" while she committed the alleged crime, and the judge demanded further psychiatric treatment. Ardak Ashim's forced one-month stay in a psychiatric facility was met by international criticism.¹⁴

In Uralsk, on 19 April police opened an investigation against the media outlet "Uralsk Week" relating to its YouTube channel. The investigation was based on a video highlighting issues related to a harmful gas odour affecting the health of residents in the village of Sulukol. Below the video, one commentator had posted a call for a rally related to DCK. The comment was later deleted. The publisher of "Uralsk Week", Tamara Islyamova, editor Lukpan Akhmedyarov, as well as journalists Raul Uporov and Maria Mednikova were subsequently interrogated, along with RFE/RL correspondent Sanat Urnaliev. Following the interrogations, everybody received an official warning about participating in DCK activities.¹⁵

Freedom of Association

Freedom of association in Kazakhstan has lately been negatively impacted by the tense situation caused by the banning of the DCK movement and the targeting of

its alleged supporters by the authorities. On 13 March 2018, a local court in Astana ruled in favour of a request from the General Prosecutor's Office to declare the DCK Movement of the opposition as "extremist" and ban its activities in Kazakhstan. The DCK was founded in spring 2017 by Mukhtar Ablyazov, a business executive and vocal critic of President Nazarbayev who fled the country in the late 2000s. Kazakhstan's Government has since then sought Ablyazov's extradition. In June 2017, he was convicted in absentia and sentenced to 20 years imprisonment on multiple charges, including organising and leading a criminal group and embezzlement. The decision to ban the DCK makes it unlawful to publicly express support for the movement or to disseminate its materials in the media or on the Internet in Kazakhstan. Following this ruling, spreading and producing material about the DCK in the mass media, telecommunication, social networks, message channels and video hosting sites, became a criminal offence. One of the main outlets of information from DCK came from a Telegram channel that had around 100000 subscribers by the end of March. The authorities were so concerned of the Telegram channel, that they published a warning on the state-funded news site *nur.kz*, alerting people to leave the DCK Telegram channel, in case they were added to the group.¹⁶

As soon as the court banned the DCK, the authorities initiated measures against members and supporters of the movement, including opening criminal cases against

them. A senior representative of the General Prosecutor's Office, Erlan Abayev stated that cases on "inciting social discord" and "making public calls for the seizure of power" had been initiated against several DCK members in different parts of the country. On 13 March, three supporters of the DCK were detained in their homes in Almaty on charges of financing the activities of a banned group. One of them was Akmaral Tobylova, who said that she did not understand why she was under investigation since all she had done was to discuss the DCK's programme on social media and had posted greeting cards on Facebook with the DCK symbol on International Women's Day. While investigators requested a local court to sanction her with pre-trial detention for two months, the court placed her under house arrest for that period, taking into consideration that she then pregnant. The two other individuals who were detained the same day as Tobylova declined to speak to the media and human rights defenders; therefore, no further information about their case and situation is available.¹⁷

From mid-March 2018, the authorities began to actively seek out activists, bloggers and others, who were thought to sympathise with DCK, using information from subscribers to the Telegram-channel of DCK. Several people received administrative warnings about their alleged affiliation with DCK.

From 16 March, law enforcement authorities also visited and detained a number of other alleged DCK supporters, as well as civil society activists and bloggers

in different parts of the country, warning them about the possible consequences of disseminating DCK materials. As of late March, KIBHR had learned about more than 25 such cases.

The latter includes the 58-year-old activist from Uralsk, Bakiza Khalelova who in September 2018 was restricted from participating in DCK. The court also prohibited Khalelova from using social media, banning her from commenting, posting, or sharing any information on social media, as well as forbidding her from participating in trainings, seminars, flash mobs, demonstrations or forums on political, social or ecological themes.¹⁸

In August, in the city of Aktau, Ablovas Dzhumaev was sentenced to three years of imprisonment for incitement to discord (Article 174), and propaganda or calls to violently seize power (Article 179). Dzhumaev had already been arrested in early March after allegedly participating in an online forum of DCK. Media reported on a lack of proper investigation and other irregularities.¹⁹

The Kazakh authorities also targeted alleged DCK supporters outside the country. The well-known blogger Muratbek Tungishbaev who had been living in exile in Ukraine and Kyrgyzstan for several years, was arrested on 10 May in Bishkek by the Kyrgyz security services (GKNB). The Kazakh authorities subsequently sought his extradition. On 26 June, Tungishbaev was handed over to the Kazakh authorities. He is accused

of spreading illegal information on DCK on Telegram and online social networks. Tungishbaev is currently incarcerated in a pre-trial detention facility in Kazakhstan.²⁰

A new Law on lawyers and legal assistance is threatening the independence of the legal profession in Kazakhstan. Representatives of Kazakhstan's legal community are concerned that the recently adopted Law on the Activities of Lawyers and Legal Assistance may result in increased regulation and control of the legal profession and undermine its independence.²¹ Following a fact-finding mission to Kazakhstan in December 2017, the International Commission of Jurists (ICJ) stressed that any reform of the legal profession should be consistent with international law and standards on the role of lawyers. ICJ called for the adoption of the draft law to be postponed to ensure further discussion and more active participation of the legal profession in its development.²² In a letter to Kazakhstan's government in January 2018, the UN Special Rapporteur on the independence of judges and lawyers voiced similar concerns stating that the draft law is inconsistent with the international legal standards, and that a number of provisions of the draft "jeopardise the independence of the legal profession". He called for a revision of these provisions, as well as for ensuring that lawyers are able to discharge their professional functions without intervention or interference of any sort.²³ Unfortunately, the Law was adopted in July 2018 without any changes.

In terms of freedom of religion, the new draft legislation is currently under consideration, aiming to introduce new restrictions on religious practice and religious communities. This draft law has been widely criticised at home and abroad for containing provisions that violate freedom of religion in Kazakhstan. The draft bill that passed the initial hearings in the Majilis (Parliament) in May 2018, aims to introduce banning certain head coverings and an increasingly systematised control of “radical” religious associations. Further, the religious trends the authorities are concerned about are vaguely defined in the proposed draft law as “a set of religious views, ideas, and doctrines that threaten the protected human rights and freedoms aimed at weakening and (or) destroying moral foundations, spiritual and cultural values.” If adopted, the draft law risks moving Kazakhstan towards policies that will disproportionately affect Muslims and certain religious minorities.²⁴

The ongoing persecution of religious groups in Kazakhstan is also a topic of concern. As of July 2018, it has been reported that there have been a total of 79 administrative procedures against members of religious minorities. It has additionally been reported that 59 members of the religious community of Jehovah’s Witnesses have been detained from September 2017 till June 2018, with 10 of them brought to criminal responsibility for religious talks – including in their own homes. There are also ongoing cases of schoolgirls having problems receiving education, because

of refusing to remove their hijabs when attending school.²⁵

Freedom of Trade Unions

Since 2015 the independent trade union movement is under constant pressure. In January 2017, the Confederation of Independent Trade Unions of Kazakhstan (CITUK) was closed by a court ruling.²⁶ This association of independent trade unions was not able to pass the re-registration procedure according to the new Law on Trade Unions that was criticised by ILO and ICFTU. In July 2017, the President of CITUK, Larissa Kharkova, was sentenced on politically motivated charges to four years of restriction of liberty. She was also banned from holding leading positions in any public association for five years.²⁷

The hunger strike of about 400 oil workers in Aktau in January 2017 protesting against the closure of CITUK was claimed illegal by the Court. About 50 oil workers were fined and ordered to pay damage to the employer. Two leaders of the hunger-strike, Nurbek Kushakbayev and Amin Yeleusinov were sentenced to two and a half and two years of imprisonment, respectively, and banned from any trade union activity for two and five years, respectively.²⁸ Dozens of local trade unions were closed by the court rulings.

The situation is not improving in 2018. The only positive sign is the conditional release of Nurbek Kushakbayev and Amin Yeleusinov.

On 19–20 of September 2018 the delegation of ILO visited Kazakhstan and

criticised the new trade union legislation and closure of independent trade unions. However, this does not stop the practice of closure of independent trade unions and prosecution of their leaders.²⁹

On 25 September a criminal case was opened against Yerlan Baltabay, a leader of the local trade union of oil-chemical workers. The trade union office was searched and all documentation was seized.³⁰

In October 2018, the Ministry of Justice for the third time in a row refused to register the CITUK under the new name of the Congress of Independent Trade Unions of Kazakhstan, providing no explanation.³¹

The Almaty City administration sent claims to Court asking to close another 47 local trade unions of members of the closed CITUK.³²

In spite of the fact that the ILO Committee of Experts recommends the Government of Kazakhstan to review the new legislation on trade unions and provide CITUK the possibility to be registered and conduct its activity freely, these recommendations have not been accepted.³³

On 21st of November the ITUC issued a strong statement criticizing the situation of independent trade unions in Kazakhstan".³⁴ Besides, on 2 December the International Trade Union Confederation suspended a membership of the close to the government Federation of Trade Unions of Kazakhstan in ITUC and prohibited participation of its delegation in the ITUC Congress.³⁵

Freedom of Peaceful Assembly

There have been numerous cases of hampered peaceful assembly in Kazakhstan, and currently, it is still not possible for citizens to conduct a demonstration without seeking prior approval from the authorities. In most cases, approval is not given, and protesters are faced with fines and sometimes even imprisonment, for conducting "unsanctioned gatherings". Throughout 2018 there have been multiple attempts for demonstrations in different cities. In almost all of the cases, the attempts to gather resulted in detaining of individuals by law enforcement, including random bystanders, and on some occasion with the utilisation of force by police.³⁶

People with blue balloons stopped by police during Nowruz holiday:

Ahead of the Nowruz spring holiday that is celebrated at the end of March, prosecutors warned that any public display of balloons featuring the symbol of the banned DCK movement would be interpreted as supporting an extremist movement. However, in some cases, law enforcement authorities assessed any display of balloons during the festivities as an expression of support for the banned movement. The police stopped a number of people holding blue balloons (including balloons with Kazakhstan's state symbols) during public Nowruz celebrations in Astana and Almaty on 22 March 2018 and noted down their personal information. In Almaty, a group of police officers and

representatives of the mayor's office forcefully grabbed opposition activist Sahib Zhanabaeva, who was holding several balloons at a spectator stand where she was seated to watch the public celebrations together with a woman in a wheelchair whom she was accompanying. They took her balloons and pushed and dragged her away from the stand, resulting in minor injuries and her clothes and bag being torn.

Organisers of women's rights march threatened: On International Women's Day 8 March 2018, the KazFem movement planned to march along Panfilova Street in Almaty in support of women's rights. However, according to one of the organisers, Veronica Fonova, a police officer arrived at her home the day before and threatened her and the others with negative consequences should they go ahead with the planned event. In a Facebook post, she wrote that the police officer showed her the social media exchanges related to the event and told her that a bus with special police officers would meet them if they attempted to gather for the event. KazFem eventually decided not to hold the march. Fonova warned her friends to be careful with what they write on social media after learning that such exchanges are being monitored.³⁷

Civil society activist convicted for demanding colleagues' freedom: On 21 February 2018, an Almaty court found civil society activist Ashat Bersalimov guilty of holding a picket without obtaining

permission in advance, as required by law, and sentenced him to five days of administrative detention. The charges related to an incident on 16 February when Bersalimov unveiled a poster with the slogan "freedom" outside the Almaty District Court building and called for the release of civil society activists Almat Zhumagulov and Kenzhebek Abishev, who are currently in pre-trial detention on charges of "propagating terrorism".³⁸

Parents fined for demanding justice for their children: On 14 February 2018, a group of citizens, including Sholpan Aitbayeva, Lyubov Yerubaeva, Kenzhenais Rahimbaeva, and Vladlen Tsoi protested outside the Akorda Presidential Palace in Astana without prior permission from local authorities. The three women who participated wanted to draw attention to the cases of their children, whom they consider to have been unjustly convicted of various crimes. Tsoi protested what he considers to be the unlawful seizure of his business by high-ranking officials. As part of the protest, Rahimbaeva chained herself to a lamppost. When the participants were about to end the protest and go home, police detained them. Aitbayeva started feeling unwell, so she was hospitalised. The other three were first taken to a local police station and later to court, where they were fined for alleged "minor hooliganism".³⁹

Throughout May and June of 2018, there were several attempts by people to hold rallies that were successfully hampered by the Kazakh authorities: On 10 May,

in Almaty and Astana police dispersed people attempting to gather at anti-torture demonstrations called for by DCK, with the slogans “Stop torture!” and “Freedom for political prisoners!”. The demonstrations were timed to occur during an European Union Parliament delegation visit to Astana. In Almaty, around 80 people gathered near the Opera, with around 100 bystanders. Special forces officers and police detained about 70 people, including children and elderly people. Ten people were charged with participating in an unsanctioned gathering, and eight of them were held in detention for several days. In Astana, around 60 people gathered in the area of Kosmonavtov Street, where most of the diplomatic community are located. Most of the 60 people gathered were detained by police officers using force, and random bystanders and passers-by were also arbitrarily detained. The police used excessive force to disperse the protesters. At least six people were charged with participating in an unsanctioned gathering, and four people were arrested for three to ten days. There were also gatherings in Aktobe, Semey, Shymkent and Uralsk. In Aktobe, police detained 14 people. In Shymkent and Semey around 20 people were prosecuted for an illegal gathering, and were fined and held for a few days.⁴⁰

The anniversary of the 2016 land reform protests, and attempts to “unsanctioned gatherings”: A week later, on 17 May in Astana, activists Maksat Ilyasuly and Raushan Torbaev were held under administrative arrest for five days. This

happened after they filed a request for permission to hold a demonstration on 21 May, the second anniversary of the country-wide land reform protests of 2016. The two activists never received an official denial of their request.⁴¹

On the 31 May, in Uralsk, on the commemoration day of political prisoners, former policeman Albek Yergaziev protested against the decision to dismiss him from his job. Albek Yergaziev unfolded a poster with the text “Ruling by law is the characteristics of power, not a sign of justice”. Shortly afterwards Yergaziev was taken away by two people in civilian clothing.⁴² On the same day, police in Uralsk detained three pensioners who wanted to lay flowers at the memorial for the victims of political repression. 79 year-old Maiya Lukyanova was detained along with two other pensioners. After being held for several hours by the police, the pensioners were released. However, on 4 July, two of them were detained for five to seven days’ for participating in an unsanctioned gathering.⁴³

Another wave of attempted protests and subsequent arrests occurred on 23 June in Almaty, Astana, Shymkent and Uralsk. Rallies in support of free education called for by the banned DCK movement were dispersed by the authorities. Journalists in several cities were also detained along with the protesters. The police used force to disperse and detain the protesters that included pregnant women, children, and elderly people. In Almaty, police detained more than 60 people on Panfilov street

and took the detainees to different police stations. Among the detainees was a journalist from KIBHR.⁴⁴

In Astana, policemen detained around 30 people demonstrating close to the city administration building. In Shymkent, the police detained tens of people on the Tauke-khan square, close to the city administration's headquarters. All detainees were taken to the police station where they were forced to give written explanations before being released some three to four hours later. Many of the detained were elderly people and minors.

In Uralsk, several journalists were detained and taken for interrogation by the police in the morning of 23 June, depriving them of the possibility of covering gatherings in the city at the time. Among the journalists taken for interrogation were “Uralsk Week” correspondents Nana Iksanova, Maria Melnikova, Liudmila Kalashnikova, publisher of “Uralsk Week” Lukpan Akhmedyarov, and RFE/RL correspondent Sanat Urnaliev. However, no one in Uralsk made an attempt to gather that day.⁴⁵

On 18 September in Almaty, a delegation of MEPs from the European Parliament Foreign Affairs Committee attempted to meet with several members of civil society and relatives of political prisoners in Almaty. In front of the MEPs, two activists were detained by the police when attempting to meet with the delegation. The delegation of MEPs published a statement in concern of the detention of peaceful citizens: “We were particularly disturbed by the detention

of persons attempting to speak to the AFET delegation (Baklan Kumarbekov and Galia Ospanova), and we urge their immediate release. In this regard, we ask the authorities of Kazakhstan to stick to their commitments made under the international conventions and the EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (ratified by the European Parliament in December 2017).”⁴⁶ It is of particular concern that the authorities restricted the peaceful assembly and right to talk with foreign officials in front of the foreign delegation, with no justification given to the seemingly arbitrary detention of these people.

The rights of striking workers have also been violated in Kazakhstan. In late 2017, several hundred miners in the Karaganda Region in central Kazakhstan went on strike to demand pay increases and improvements in benefits. Among those protesting were employees at mines belonging to the “Arcelor Mittal Temirtau” metal mining company in the city of Shakhtinsk. While in negotiations with the workers, the mining company also filed a lawsuit with a local court, requesting that the workers' peaceful protest be deemed unlawful. On 14 December, the court ruled in favour of the company, concluding that the workers had not given advance notice of the strike according to law, and the court ordered them to end the strike, which it did the following night.⁴⁷

The Zhanaozen shootings of 2012 also remains an uncomfortable reminder of the risks of striking workers in

Kazakhstan. The strike ended in violence, leaving at least 16 people dead. Court interference to ban strikes and interference in workers' rights to strike is highly problematic, and raises concern of the possibility of people in Kazakhstan to freely address problems related to their often challenging working conditions, and to legally conduct strikes.⁴⁸

Over the past 10 years, civil society in Kazakhstan has greatly weakened. To this end, the state made maximum efforts, closing down opposition political parties, eliminating independent media, persecuting human rights defenders and activists, liquidating independent trade unions, blocking social networks. Unfortunately, people are rooted in the fear and disbelief that something can be changed. The countries of Western democracy also demonstrated their desire to adhere to the tactics of the “real politic”, putting in the first place questions of regional security and trade relations with the leadership of a country rich in natural resources. However, the world is changing despite the attempts of some authoritarian governments to preserve that ground. A state cannot become truly developed and prosperous without a strong civil society, and changes will occur. However, to speed up these processes, there should be an understanding: within the country from citizens, that in order to achieve results, efforts should be made and need to pass through difficult tests; on the part of the world community, that the suppression of civil rights and freedoms will sooner or later lead to

shocks. And then it will take much more forces and means to achieve peace than now to help civil society.

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Redrawing Battle Lines in the Struggle for Civic Space: Insights from the Philippines

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Abstract

This article critically examines how Filipino civil society should reclaim its shrinking civic space. The Philippines is becoming susceptible to the more insidious threat of “cyber manipulation” that attempts to control the public sphere through the distortion of facts, diversion of public attention from controversial issues, and harassment of government critics.

Current Context of Civic Space in the Philippines

In August of 2017, the Philippine President Rodrigo Duterte made headlines by remarking in a speech that he would order police officers to shoot human rights advocates should they be found “obstructing justice”.¹ This kind of offhand attack had come to characterise Duterte’s public statements about his critics – the prevalence of which caused concern among local and international civil society organisations (CSOs) who warned of a chilling effect on freedoms in the Philippine civic space.²

Once hoped to be empty election rhetoric, Duterte’s brazen threats have instead proven to be forewarnings of policies and political manoeuvres that would plunge the Philippines into “its worst human rights crisis” in recent history.³ Despite existing constitutional protections against assaults on civic freedoms, these attacks have not only risen, but have also been

carried out with great impunity, as exemplified in the following cases:

- A spike of extrajudicial killings in the name of a “war on drugs” claiming thousands of lives estimated anywhere between a police count of 4,500 casualties to a 20,000-strong death toll according to human rights observers⁴ - including the killings of 34 lawyers and 11 government officials.⁵
- The declaration and extension of martial law in the southern region of Mindanao following an Islamic State-inspired attack on Marawi City.⁶
- The arrests of activists, church volunteers,⁷ and peace consultants.⁸
- A government petition tagging activists – including the UN Special Rapporteur on the rights of indigenous peoples – as “terrorists”.⁹
- The deportation of foreign critics of Duterte’s administration.¹⁰

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- The killings and forced disappearances of community leaders and environmental activists.¹¹
- At least 85 attacks on journalists, including 9 killings, 12 attempted slayings, and 11 death threats since Duterte took office.¹²
- Online harassment and violent threats to critics of Duterte.¹³
- Multiple attacks on media institutions perceived to be critical of Duterte:
 - The Rappler news website was subjected to a ban from the

Presidential palace, a Securities and Exchange Commission investigation, a government libel case, and tax evasion charges.¹⁴

- The ABS-CBN media company also received threats to block the renewal of its licence to operate.¹⁵

International observers have taken note of these red flags as can be seen in multiple index indicators of shrinking civic space in the Philippines compiled by Medina-Guce and Galindes in Table 1 herein.

TABLE 1. Indicators Cited by Global Indices on Shrinking Civic Spaces in the Philippines¹⁶

Reasons/ Indicators	EIU: Democracy Index	Freedom House: World Freedom Index	CIVICUS: Civic Space Tracking	Reporters Without Borders: World Press Freedom Index
Facets/Characteristics				
Power consolidation	x			
Threats against opposition		x		
Preferential application of rule of law towards elites		x		
Limitations in freedoms of association and assembly		x		
Violence and killings (Journalists & activists)			x	x
Legislative limitations on demonstrations and assemblies			x	
Use of media for political programs				x
Specific events/activities cited				
Indefinite Martial Law in Mindanao	x			
Surge of extra-judicial killings		x	x	
Pronouncements against and threats to media			x	

Despite civil society fears both imagined and actualised, the day-to-day perception of the Philippine civic space presents as one generally free from major constraints. A 2017 Social Weather Stations survey among adult Filipinos found a majority of 55% did not fear speaking up about any topic including disapproval of the government, with 21% disagreeing with this position, and 24% undecided.¹⁷ A variety of ideological viewpoints can be observed in the different forms of media in the country, with socio-political discourse – while heated – still remaining especially active on social media. Far from the chilling effect on activism and dissent predicted by many political observers, Duterte’s policies and posturing appear to have galvanised groups previously thought to be disengaged from civic participation. The rise in engagement in youth groups and student movements has particularly provided a welcome boost to human rights and civil society alliances.¹⁸

There is, however, no guarantee that these bright spots would remain constant should the violent assaults on civil society continue. The CIVICUS Monitor classifies the civic space in the Philippines as “obstructed” while also describing the Filipino civil sector as “highly vibrant and diverse”¹⁹ – two seemingly contradictory descriptions that nonetheless paint a picture of a contested space requiring constant vigilance to ensure that power dynamics do not shift partial obstructions to full-on repressions. In addition to directly observable and combatable attacks in this space, Filipino rights defenders are also faced with more subtle

but nonetheless dangerous threats that necessitate innovations in paradigms of protection, resistance, and dissent. This paper proposes a “redrawing of battle lines” along three tracks: threats to democracy, platforms for discourse, and targets of engagement.

Between Populist Strongmen and Democratic Backsliding

It is inevitable that Duterte would loom large over any discussion about the crackdown on the Philippines’ civic space considering that his statements and policies have been catalysts for the alarming state of rights and freedoms in the country as described in the previous section. Nonetheless, an authoritarian bogeyman narrative perpetuates the treacherous notion that unseating one problematic leader will solve the country’s woes altogether. This stance masks the more realistic possibility that another populist strongman may instead come into power as has been the case throughout Philippine history.²⁰ Moreover, assigning the bulk, if not all, of the blame on the President ignores myriad other factors, limiting the range of interventions that can be conceived to defend and uphold civil society. A holistic view of the country’s context must accordingly be taken into account, beginning with the nature of the democracy in which civic space is under threat.

Many countries with a history of recent democratisation rely on “formal democratic institutions rather than

substantive democratic processes, values, and relationships” that can lead to a phenomenon called “democratic backsliding” wherein political and civil rights are vulnerable to infringement by opportunistic political forces.²¹ The Philippines is one such case given its hard-fought but arguably nominal democracy that replaced Ferdinand Marcos’ dictatorship but also unwittingly served as camouflage for the authoritarian tendencies of the country’s subsequent leaders.²² While Duterte’s government may very well be the most overtly brutal administration since the Marcos era over a generation ago, it did not dismantle Philippine society overnight, and instead appears to continue to exploit cracks in a long-eroded democracy to impinge on tenuous freedoms.

A broader framing of the civic space problem should therefore be employed; one which takes the Philippines’ backsliding democracy into account rather than assigning blame to individual personalities or political parties. This comprehensive perspective reveals that two tracks of action are urgently required in the preservation of civic space: the bolstering of crumbling democratic institutions, and the cultivation of a meaningful culture of democracy.

Organisations and social movements in the Philippines have been vigilant in their efforts on the first track, pushing back against attacks on bodies such as the Supreme Court²³ and the Commission on Human Rights.²⁴ Medina-Guce and Galindes propose that this responsiveness

needs to be accompanied by policies and behaviour change measures aimed at building institutional capacity to assert democratic values in the long-term.²⁵

Civil society can further complement direct formal interventions by cultivating a meaningful culture of democracy. Baker, et. al. suggest that one strategy to “pry open civic space under backsliding regimes” is:

“Indirect resistance and actions, such as charity provision, artistic expression, and local-level political involvement, since strategies that do not overtly confront the regime are less threatened and can still provide a space for community involvement, expression, and problem-solving.”²⁶

Artistic expression may be especially effective in shifting norms due to its power to engage mass audiences outside of adversarial political discourse. In addition to creatively conveying democratic values, popular culture can serve as “Trojan horses” of dissent, disguising protest statements in songs, films, stories, and internet memes, as well as providing alternative avenues for civic participation. Artists and artists groups in the Philippines have become steadily engaged in creative expressions of dissent²⁷ particularly against the administration’s policies²⁸ and misogyny.²⁹ Creative actions have escalated to organised movements as in the case of initiatives such as AHRT! Artists for Human Rights, gathering advocates in solidarity towards creative interventions protecting rights and liberties,³⁰ as well as a 300-strong artist statement condemning

claims by the Philippine military asserting that university film screenings about martial law were hotbeds for “communist recruitment” – an act of “red-tagging” or labelling government critics as communist state enemies.³¹

These creative interventions are increasingly at risk of more concrete state pushback. Even a massively popular *teleserye* (soap opera) “*Ang Probinsyano*”, came under fire from the Department of Interior and Local Government that is currently considering legal action against the show’s alleged “grossly unfair and inaccurate portrayal of our police force”.³² Nonetheless, creative forces in Philippine civil society need to continue working for strategic, substantial, and sustained cultural change in order to shift social norms and perhaps even help inoculate the Philippines against future despotism.

Beyond Offline and Online

In recent years, civic space in the Philippines has come to be equated more so with the digital realm than any actual physical location. Given that 94% of Filipinos have access to the internet, online conversations – political and otherwise – are commonly interwoven with face-to-face interactions and lead to tangible repercussions³³ giving the impression that there is no longer a palpable distinction between online and offline spaces in the Philippines. This view conflating both spaces is simultaneously true and false. It is accurate in the sense that unlike other countries where internet penetration is

low, the Philippines has a digital space that is extensively accessed by a vast majority of its population (especially with regards to social media³⁴), and consequently offers opportunities for engagement across most, if not all social groups in the country. Despite this outward inclusivity, digital space remains characterised by limitations, opportunities, and escalations that cannot be fully equated with anything outside of the internet. Actors in Philippine civil society must form an understanding of the often contradictory dynamics between online and offline spaces in order to navigate, defend, and reclaim digital civic space.

The paradox of a “vibrant” but “obstructed” civic space in the Philippines³⁵ is evident in its digital extension. Social media in particular is simultaneously lauded as a frontier for public engagement, and condemned as a hotbed for vicious political disputes. Notably, both perspectives suggest a semblance of internet freedom for Filipinos who are able to engage online without restriction or censorship. Despite the potential for the misuse of the 2012 Cybercrime Prevention Act towards suppressing dissent, Freedom House notes in its 2018 assessment of civil liberties in the Philippines that:

“The internet is widely available. Rights groups have expressed concern about threats against and censorship of anonymous online criticism and the criminalization of libelous posts, but this has yet to have a major impact on private discussion.”³⁶

As such, the Philippines does not appear to be subject to the overt “cyber repression” typical of authoritarian governments, but has instead become susceptible to the more insidious threat of “cyber manipulation” that attempts to control the public sphere through the distortion of facts, diversion of public attention from controversial issues, and harassment of government critics.³⁷ These tactics are not unique to the internet, having evolved from long-established “black propaganda” communication practices perennially employed by political actors.³⁸ What has been alarming, however, is that new digital tools and platforms allow for the proliferation of these subterfuges at an unprecedented rate and scale. When coupled with the ubiquity of internet use in the Philippines, these online machinations can quickly shift public opinion and behaviour, leading to significant offline consequences that are difficult to combat or correct.

Online content manipulation tactics like “troll armies” and “fake news” are evident in cyberspace but cannot simply be compartmentalised as digital problems. While these activities are intended to blur the boundaries between reality and strategic fiction, they must also be recognised as manifestations of tensions rooted in deeper issues in society. Fake news, for example, proliferates because of gaps in institutional capacity to regulate emerging media platforms,³⁹ disseminated by polarised social groups prone to “confirmation bias” – a tendency to read, share, and believe things that

confirm a pre-existing view of the world.⁴⁰ Meanwhile, it can be argued that the phenomenon of “online trolling” – especially with regards to incitement to hatred and violence against state critics – “could not have gained traction if [the message of trolls] did not resonate with public opinion”.⁴¹ These tactics are therefore resistant to technological quick fixes like platform-based filters or blocks which only mask but do not address the roots of these issues.

Cyber manipulation takes advantage of social pain points that are exacerbated but not caused by the emergence of new technology. Accordingly, it can be combated through a comprehensive approach where online interventions such as commenting codes of conduct, and responsive web-based fact-checking, are complemented by offline and multi-platform actions such as community organising, capacity building, creative engagement, and strategic litigation of online offenders. The blurring of online and offline spaces necessitate that civil space defenders develop both the savvy to operate in the new media landscape, as well as the discernment to distinguish between technological threats and deeper societal issues.

Battles on the Front Lines and the Home Fronts

In many ways, the shrinking civic space in the Philippines can be tied to the fragmentation of the country’s civil society sector. Research suggests that

in the face of increased political and social polarisation, Filipino CSOs tend to “scatter and fragmentise” rather than band together as a solid bloc – possibly due to already conflicted inter-CSO relationships as well as the relative weakness and transience of civil society institutions.⁴² The tendency towards fragmentation is especially evident in the digital civic space wherein selective media consumption, social media blocks, filters, and content algorithms create echo chambers that can further polarise social groups.⁴³ While it is to be expected that CSOs respond to threats with strategies for self-preservation, care must also be taken so that attempts to create safe spaces do not result in silos that may insulate from attacks but also isolate from potential allies. As Medina-Guce and Galindes, propose:

“There is an emerging challenge, therefore, for civil society to go beyond their thematic, issue-based interventions and begin problematizing the quality of the civic space as a whole, and the empowerment of civil society that can truly create its own democratic spaces.”⁴⁴

In this light, it is important to recognise that a collection of organisations should not be equated with civil society itself. Individuals affiliated with CSOs might bear the brunt of direct attacks on civil liberties,⁴⁵ but other segments of society also play a large role in determining the future of the Philippine civic space. To borrow from military parlance, the former group are the “frontliners” –

active participants in the civic space – in contrast, the latter group can be called the “home front” – those who may not be directly or formally involved in civic action – but have a stake in issues nonetheless. Interventions to defend civic space heavily focus on frontliners threatened with violence, with the ancillary intention of shielding the home front from the “chilling effect” thought to be associated with such attacks.⁴⁶ Certain frontliner efforts can backfire, however, resulting in civic space shrinking on the home front.

The distinction between frontliners and the home front in the Philippines is perhaps best exemplified in the conflicts surrounding the issue of “trolls” in public discourse. As mentioned in the previous section, “trolling” is primarily considered an online phenomenon, and a tool for the cyber manipulation of the civic space. In the Philippines, the term “troll” has come to be associated with “keyboard warriors” who are reportedly paid to post political propaganda on fake social media accounts; to a certain extent, the word is also applied to genuine supporters who also circulate the same content.⁴⁷ Although much of the literature associates both aspects of the “troll” label primarily to supporters of Duterte, in general practice, it is applied to people across the entire political spectrum.

“Online trolling” is a well-documented tactic used in political campaigns all over the world. But in the Philippines, the weaponisation of the very word itself poses a threat to civic participation on

the home front. Rather than denoting manipulations by the state and other political actors, the term “troll” has come to be used by many Filipinos – civil space defenders included – as shorthand for “someone who does not agree with my beliefs”. Not only does this usage obscure the real threat of orchestrated misinformation, it encourages the fragmentation of Philippine society that further compromises its civic space.

It is unfortunate therefore, that the virulent cyber attacks on government critics believed to be perpetuated by “professional trolls” have elicited a moral panic in civil society, sparking a defensive attitude that ultimately fails to distinguish between paid operatives and legitimate users of social media.⁴⁸ As such, a sense of moral and intellectual elitism pervades the front lines of political discourse – with supporters of various political affiliations quick to dismiss any dissenting opinion as the paid statement of a “troll”. The implication of which, Cabañes and Cornelio point out, is that “labelling those who do not agree with one’s political leanings ‘trolls’ is saying that they are not worth engaging, thereby completely closing the possibility of any meaningful dialogue,” and excludes the “felt experiences of many people that were being neglected in broader public discourses.”⁴⁹ Rather than a “chilling effect”, this aspect of the “troll” phenomenon produces an “othering effect” where it is alienation, rather than fear, that restricts civic participation. CSOs must therefore be mindful that strong statements supporting front line defenders does not come across as

combative to the very people they need to engage.

Conclusion

Victories in the civic space cannot be won only through head-on confrontations against obvious oppressors using outdated tactics. Civil society needs to redraw its battle lines, and reframe strategies to expand beyond strongman narratives, simple delineations of online and offline media, and frontline defender paradigms, in order to halt the shrinking of civil space and perhaps even gain ground to reclaim lost freedoms in the Philippines.

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Shrinking of Democratic and Civic Space in Bangladesh

*Zaman Ashraf**

Abstract

Bangladesh, a country which fought with such fervour for democracy and social justice towards its Independence in 1971, is today curbing on the fundamental rights promised in its Constitution. By providing an historical perspective, this article looks at how civic space is rapidly shrinking in Bangladesh, affecting in particular the rights to freedom of expression, peaceful assembly and association.

“Equality”, “human dignity” and “social justice” in a “democracy” were the key pledges that the provisional Government of Bangladesh made to the people on 10 April 1971. These pledges did not have their places in the Constitution of Bangladesh when it was adopted in 1973. So was the call from the political parties for forming a national government to draft the Constitution to establish the spirit of unity as a newly-born nation state. The Second Amendment to the Constitution of Bangladesh¹ was enacted in less than a year since the adoption of the Constitution itself. It made provisions of curbing fundamental rights and imposing the state of emergency. Rejection and division resulted in crackdowns against the dissidents of largely left-wing activists – in the colonial style of curtailing fundamental

rights. The system of rigging elections² became the signature of independent Bangladesh. The “right and opportunity to take part in public affairs directly or through freely chosen representatives”, by casting vote having equal access to the democratic systems were denied. The ruling party rigged the first parliamentary election in the post-independent Bangladesh despite the fact that the party itself had high popularity in the country immediately after Independence. The people's dream for enjoying “equality”, “human dignity”, and “social justice” started diminishing faster.

Democratisation process in Bangladesh experienced a massive blow/crackdown at the very early stage in the hands of the most reputed democratic

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politician.³ The Fourth Amendment⁴ brought fundamental changes into the Constitution of Bangladesh. A one-party system was established repealing a multi-party system; the presidential form of government was introduced in place of the parliamentary system; the powers of the *Jatiya Sangsad* (National Parliament) were severely curtailed; the Judiciary lost much of its independence; the Supreme Court was deprived of its jurisdiction over the protection and enforcement of fundamental rights. This Amendment was preceded by the adoption of the Special Powers Act – 1974⁵ to curb dissents in a systemic arbitrary fashion. The political leadership unilaterally banned all political parties except the ruling party in the Fourth Amendment.⁶ Prime Minister Sheikh Mujibur Rahman made himself the President of the state for another five years. It was done without any form of electoral or democratic process. Rather, the constitutional amendment, without any debate or discourse in the Parliament, was used as a tool to confirm tenure in the presidential office, jumping from the office of the Prime Minister.⁷ This amendment also replaced the Westminster form of democracy to an all-powerful presidential system. The seed of “authoritarianism” sprouted from there and took its roots in the following decades.

The shift, from democratic norms toward an authoritarian system, curtailed the freedom of press in a massive scale. A presidential decree banned all newspapers of the country keeping only four – two vernacular and two

English national dailies – under the governmental ownerships.⁸ Two national dailies – *The Dainik Ittefaq* and *The Bangladesh Observer* – became state property overnight without any money being paid to their original owners. Such arbitrary actions not only made hundreds of journalists jobless, but conceded irreparable impact in the arena of freedom of press, freedoms of expression and opinion, and democratisation in Bangladesh.

Gross human rights violations such as enforced disappearances, extrajudicial killings, torture, and arbitrary detention became the way of governance in the name of national security in post-independent Bangladesh. Newly created paramilitary force – the Jatiya Rakkhi Bahini⁹ (National Security Force) – and the Bangladesh Police were actively responsible for gross human rights violations in the country.¹⁰ The Jatiya Rakkhi Bahini is the first ever institution created in independent Bangladesh guaranteeing statutory impunity.¹¹ The people's struggle for getting rid of the arbitrary repressions of the state machineries continued since the inception. Likewise, draconian legislations of the British colonial era that continued to be promulgated under the Pakistani regime were further tightened with new amendments and promulgations in independent Bangladesh.

Freedom of Expression

Bangladesh, since Independence in 1971, never offered safe and unrestricted civic space including freedom of expression,

freedom of press, freedom of assembly and association. The newspapers – both dailies and periodicals – had faced censorship of various degrees under successive governments, having occasional opportunity to enjoy the freedom of press on thematic issues. The governments had used the intelligence agencies and non-state actors to intimidate and threaten the personal life and liberty of independent journalists and writers. Tools like deprivation of advertisements, and cancellation of declaration of the newspapers were frequently used against newspapers for criticising the influential people in power. The Government banned books and national or international newspapers and periodicals for its own convenience. Under the military dictatorship in the 1980s, the country experienced enhanced form of stifling including arbitrary detention of renowned poets and journalists and a ban on newspapers and various publications,.

Freedom of expression was widened briefly after the parliamentary democratisation process was reintroduced in 1991. Through the insertions of draconian provisions¹² in the criminal laws and promulgation of new repressive laws, the people's confidence on democratically elected governments started to diminish faster.

The proclamation of the state of emergency on 11 January 2007 was marred by massive violation of human rights in the hands of the armed forces. Curbing the freedom of expression through militarised tactics was a way of governance. Summary of

a classified telegram message from the Chargé d' Affaires of the Embassy of the United States¹³ sent to her colleagues in November 2007, reads:

"Bangladeshi media are under pressure. The Caretaker Government and especially the military apply pressure – usually discreetly but sometimes not – to limit coverage that is critical or provokes opposition to their policies. In recent months, authorities have shut down an all-news channel that aggressively covered anti-government protests and have placed restrictions on lively television talk shows. Journalists report phone calls from military intelligence and other officials who suggest how to play the day's news, leading media outlets to practice self censorship."

Bangladesh's private television news channel – CSB News – had broadcasted the students' protests against the armed forces under the state emergency in August 2007. The students of the University of Dhaka chased the military out of the campus for torturing students at the university. The CSB News channel defied the military authorities' warning of not to show footage of protests against the army. The military-controlled Government shut down the CSB News on 6 September 2007. The news channel, in a publicly released statement, claimed that four senior officials from the Bangladesh Telecommunication Regulatory Commission (BTRC) visited the station accompanying security forces and shut down the TV station.¹⁴

The legacy of the military controlled emergency regime of 2007 and 2008 has been visible through forced closure of print and electronic media and by adoption of draconian legislations under the incumbent Government. Bangladesh's authoritarian government hardly cares about the legality of its actions although it pursues laws for justification of undemocratic actions.

The closure of the Daily Amardesh, a national vernacular daily, twice, on 2 June 2010 and on 11 April 2013, had no legal merit at all. The Government managed to use a former employee of the newspaper to file a fabricated “fraud case” against the acting editor of the daily, Mahmudur Rahman, while shutting down the Daily Amardesh.¹⁵ On 10 June 2010, a High Court Bench declared the shut down illegal, and this brought the newspaper to return to publication. However, on 11 April 2013, the Government shut down the newspaper again using an executive decision and deploying the law-enforcement agencies. Mahmudur Rahman was arbitrarily arrested again on 11 April 2013 and detained in prison¹⁶—for 1,322 days – till 23 November 2016. The newspaper still remains closed till the date of writing this report. Mahmudur has been facing around 140 trumped up cases including cyber crime, defamation, arson, bomb blast, and sedition. The members of the Bangladesh Awami League – ruling party – and police officers have registered all these cases against him. Among the 140 cases, 36 were registered for alleged defamation of British Labour

Party Member of Parliament Tulip Siddiq – Prime Minister Sheikh Hasina’s niece. Mahmudur Rahman lives in exile since the ruling party terrorists attacked¹⁷ him in an attempted lynching at the Kushtia District Court premises on 22 July 2018.

The spree of trumped up cases against *The Daily Star* Editor Mahfuz Anam in 2016 is one of numerous instances of arbitrary abuse of the criminal justice mechanism beyond legality or rationality. Mahfuz made an introspective remark on 3 February 2016 in a TV talk show¹⁸ about lapse in his editorial judgement in publishing reports based on unverified information circulated by the Task Force for Interrogation¹⁹ (TFI) during the military controlled emergency regime in 2007–2008. *The Daily Star*²⁰ published seven reports on alleged corruption involving Khaleda Zia and her two sons, and three similar reports involving Sheikh Hasina without verifying the information provided by the TFI.

Two days later Prime Minister Sheikh Hasina's son Sajeeb Ahmed Wazed Joy made a Facebook post²¹ terming *the Daily Star's* report “unpatriotic and anti-Bangladesh activities”, leading to Hasina's arrest during the military controlled regime contradicting his mother's position.²² Sajeeb accused Mahfuz of publishing those reports “. . . in support of a military dictatorship in an attempt to remove (Sajeeb's) mother from politics. Sajeeb termed Mahfuz Anam edited newspaper reports as “treason” committed by the editor of a major newspaper to run

" - - a false smear campaign to assist in a military coup". As the Facebook post of Sajeeb went viral, the members of the ruling party – Bangladesh Awami League – started registering cases against Mahfuz Anam. A total of 83 cases were registered, including 67 criminal defamation and 16 sedition cases, in around two weeks time.²³ Mahfuz challenged the legality of filing so many cases on the same ground and a High Court Bench stayed 72 cases on 11 April 2016.²⁴ He did not have to face detention in any of those cases.

The Information and Communication Technology (Amendment) Act of 2013 has been one of the major weaponised tools being consistently used against dissidents in Bangladesh. The Government of Bangladesh Awami League amended the ICT Act of 2006 on 19 August 2013 in a hurry as an Ordinance. The amendment was approved at a time when prominent human rights advocate Adilur Rahman Khan, secretary of Odhikar, was in arbitrary detention since 10 August for 62 days in the first ever cyber crime case filed in the history of Bangladesh.²⁵ The Government, in Section 57, increased the punishment from 10 years to 14 years imprisonment for offences covered by the amended Act. The provision reads:

" . . . If any person deliberately publishes any material in electronic form that causes to deteriorate law and order, prejudice the image of the State or person or causes to hurt religious belief the offender will be punished for maximum 14 years and minimum 7 years imprisonment."

The amended provision is similar to the clauses of the Special Powers Act of 1974. It made the offence "non-eligible for bail" unlike the ICT Act of 2006; there it was "non-cognisable" and the police were not empowered to arrest anyone "without prior approval from an authority or court". Thus, the ICT (Amendment) Act of 2013 made some of the offences "cognisable". The law-enforcing agencies were given enhanced power to arrest anyone accused of violating the law without a warrant.²⁶

Human rights groups criticised the amended provision as tools to take Bangladesh "towards the medieval age".²⁷ The amendment resulted registration of numerous cases leading to arbitrary detention and imprisonments of critiques of the Government.²⁸ Amidst criticism from human rights groups, in 2018, the Government repealed Sections 54, 55, 56, 57, and 66 of the ICT (Amendment) Act of 2013 by adopting the Digital Security Act (DSA) of 2018 in September.

The Government enacted the Digital Security Act²⁹ using the excuse of ensuring "security of digital devices" and protecting people from "digital crimes". Sections 8, 28, 29 and 31 of the DSA can be used for "hurting religious values, create communal hatred or bad feelings; disrupt law and order; spreading defaming information; and causing disturbance on economic activity, national security, defence and sovereignty" allowing the police to ask the BTRC to block or shut down the digital space or seize the devices used for such acts.

If police officer “believes” that anyone may commit or assist in committing or think of committing a crime in future under the DSA, then the police can arrest and detain the person(s), raid any place or seize any device or material without any warrant, according to Sections 42 and 43 of the DSA.

Section 32 of the DSA protects the Official Secrets Act of 1923³⁰ – a draconian colonial law being used for committing and hiding corruption by the bureaucrats and ruling politicians and barring governmental transparency in Bangladesh; a journalist can be punished with a minimum of 14 years to maximum 25 years of imprisonment, or, and, a fine of BDT 2.5 million, or both, for publishing report based on “official secret” under the colonial law – such as an exclusive corruption scam or any secretly planned unlawful actions of the government, under this provision.

Editors' Council³¹ expressed its concern by saying, "... A frightening aspect of the DSA is the enormous arbitrary power given to the police who may arrest a journalist just on suspicion of a so-called crime that he thinks may be committed in the future. The police are allowed to make such arrests that have been made mostly non-bailable, without any warrant. In practical terms, this will bring journalism under police control ...".

The definitions of "tarnishing the State's image" or "the spirit of liberation war", or "the “father of the nation's image", and so on, under the DSA are vague and highly

broad leaving plenty of rooms for violating the rights of the citizens extensively. Likewise, it has included “defamation” as a crime with enhanced penalties superseding Section 499 of the Penal Code of 1860. Part Four of the DSA has provisions of creating a Digital Security Council headed by the Prime Minister as its Chairperson³² and comprising two Ministers, five senior Secretaries, the chiefs of Bangladesh Police and DGFI,³³ and the Director General of the Digital Security Agency to be created under the law.

The Government's addiction of curbing civic space is also reflected in the Broadcast Bill of 2018 approved in the Cabinet on 15 October 2018. The Government claims that it wishes to “bring discipline in broadcast media”. It made provision of jailing individuals for airing any “misleading and false” information regarding the 'Liberation War' in broadcast media. The punishment for committing crime under the Bill is up to three years imprisonment, and, or, a fine of BDT50 million (US\$597,000) or both. Continuation of committing the crime will make a broadcaster liable of paying a fine of BDT100,000 per day, according to the Bill. The Bill empowers the Government to establish a Broadcast Commission having unilateral authority to issue or revoke broadcasting licence of media.³⁴ Critiques observe that there is no specific way to determine “misleading information about the Liberation War”; the sole purpose is to stifle the free speech in private television talk-shows, prior to the parliamentary elections scheduled on 30 December 2018.

Freedom of Peaceful Assembly and Association

The incumbent Government of Bangladesh has been constantly using multiple forces including the State and non-state actors to restrict the freedom of peaceful assembly and association. After assuming to the office in January 2009 the Government used two types of forces: i) the law-enforcement agencies; and ii) the goons of various wings of the ruling party. The law-enforcement agencies include: the regular Police, the Detective Branch (DB) of Police, Special Branch (SB) of Police, Rapid Action Battalion (RAB), Directorate General of Forces Intelligence (DGFI), and National Security Intelligence (NSI). The goons of the ruling party include: the members of the Bangladesh Awami League, its student wing – Bangladesh Chhatra League (BCL), youth wing – Awami Jubo League (AJL), workers wing – Jatiya Sramik League (JSL), and so on. The incumbent Government consistently used both – the state actors and the non-state actors – together to deal with those who are not affiliated to the ruling party. Whenever the opposition tried to host peaceful protests and rallies against the Government or to communicate with their supporters through public meetings,³⁵ the Government systematically used the two state and non-state actors³⁶ to complement each other in driving away their targets.³⁷

The police behave subjectively in allowing permissions for holding peaceful assemblies in the country. Whenever the

ruling party and groups having allegiance with the ruling party, they host public meetings, the police never ask any questions. Instead, all cooperation from the law-enforcement agencies is provided to meet the requirements of the pro-ruling party hosts.

The scenario is not the same when the opposition political parties and independent groups plan for hosting public meetings. The fate of opposition political meetings remains at the mercy of the police. On 24 September 2018, Bangladesh Nationalist Party (BNP), the main opposition political party, sought permission from the Dhaka Metropolitan Police (DMP) to hold a public meeting at Sohrawardi Uddyan³⁸ or at Naya Paltan³⁹ on 27 September. The DMP officers rejected the application saying that on a weekday permission for public meeting cannot be given. The top police officers reportedly suggested the BNP to move its meeting to 29 September suggesting it a public holiday. Meanwhile, the ruling party – Bangladesh Awami League – wished to host its public meeting on the same date in the city. Then, the police kept the BNP waiting till 28 September and refused to give permission for the second time. However, the ruling party was allowed to host its meeting on its expected date and venue. On 29 September, the BNP again sought permission for hosting the meeting on 30 September that was granted 26 hours before the scheduled time of meeting based on 22 conditions.⁴⁰ Among the conditions, the police asked

the BNP to: install high-resolution CCTV cameras inside and outside the venue; set up archways and use metal detectors at the entry points; scan meeting-bound vehicles with (the BNP's own) scanners; arrange fire extinguishers at the venue; not to hamper public safety; not to carry sticks; not to make speech hurting religious sentiments; not to hold procession on, and from, the way of the meeting venue; and finish the meeting by 5.00p.m.

The Government uses the police who arbitrarily arrest and detain the opposition supporters before and after the public meetings despite peaceful participation. The ruling party members physically attack the members of the opposition as well. Such attacks do not lead to any legal remedy for the victims due to their allegiance with the opposition.

The way the Government handled the Quota Reforms Movement⁴¹ is a pointer to the pattern of brute forces that the incumbent regime unleashed against any peaceful assembly and valid public demands. Students of several public and private universities and colleges demanded for reforming the exiting quota system in the top public jobs recruited under the Bangladesh Civil Service (BCS). They argued that reserving 56 per cent first class cadre and non-cadre public job deprives the country's administration to recruit people with merits in a competitive world. The Government is accused of abusing the 30 per cent “freedom-fighter”

quota to recruit the grandchildren of the country's “war heroes” for partisan political gains. The ordinary people supported the students' demands by extending supports to the leaders and activists of the Quota Reforms Movement.

On several occasions the police used tear gas, baton charge, water cannons, and shotgun bullets at the students while they held peaceful protests in Dhaka and other jurisdictions of the country. The Detective Branch of police once abducted⁴² three students from the Dhaka streets for leading the movement. At the time abduction onlookers made a Facebook Live of the scene and online activists demanded release using social networking platforms. Few hours later, the DB police released the three abducted student leaders.

The Police handed over the matter to the ruling party's student wing – Bangladesh Chhatra League (BCL) who started violent attacks⁴³ on the supporters of the Quota Reforms Movement. The BCL goons and police jointly unleashed violence against the students by sexually abusing girls,⁴⁴ beating teachers and leftist political party leaders.⁴⁵ The terrorist attacks of the BCL⁴⁶ goons were not limited to the capital city. Rather, the ruling party members were violent across the country. In the Rajshahi University campus the BCL men replicated their signature violence. Photos and videos show that the BCL men beating Md. Torikul Islam, a postgraduate student of the Rajshahi University, with

hammer, bamboo sticks, and other local weapons.⁴⁷ The police were onlookers when the BCL men were breaking the right leg and spine of Torikul.⁴⁸ The police detained over 20 leaders and activists of the Quota Reforms Movement⁴⁹ while the BCL goons enjoy impunity till the date of writing this report.

The Government used similar systemic violence against the school children who took to the streets for their Road Safety Movement to demand justice⁵⁰ after several students were crushed by a bus in Dhaka on 29 July 2018. The school students peacefully took to the streets to discipline the traffic in Dhaka and elsewhere in Bangladesh. The juvenile boys and girls checked the valid documents including the fitness certificates, route permits, driving licence of the vehicles during their protests. High profile ministers, bureaucrats, military and police officers were found using vehicles without valid documents regarding their official and private vehicles or violating traffic rules during the school children's protests.⁵¹

On the sixth and seventh day of the protest the ruling party goons of the BCL captured the streets wearing helmets, carrying machetes, rods, and firearms.⁵² Under police cordon, the ruling party goons attacked on the students causing severe injuries to numerous teenaged protesters. Journalists of local and international media faced attacks⁵³ by the ruling party goons⁵⁴ under police cordon. The Government used brute

force by deploying its armed goons and police to chase away the teenagers⁵⁵ from the streets fearing people's uprising. The Sheikh Hasina regime has guaranteed blanket impunity to the perpetrators of the attacks.

Bangladesh Government has established a pattern in recent years by branding civil society activists as “anti-state” actors and foreign agents for extending moral support and exposing the truth. Shahidul Alam, a globally acclaimed photographer and writer, is one among many examples. Shahidul had used his Facebook to broadcast live video for exposing the violence unleashed by the BCL in collaboration with the Police on 5 August 2018. He gave a live interview to Al Jazeera⁵⁶ to explain the human rights situation including extrajudicial executions, enforced disappearances, and corruption. Hours after Shahidul's interview, the Detective Branch abducted him from his apartment and later reported him to be arrested in a cyber crime case. Shahidul alleged that he was “hurt to bleed” in police custody. Following several rejections of Shahidul's bail petitions in the Metropolitan and Sessions Court of Dhaka, a High Court Bench granted him bail and he was released on 20 November after 108 days arbitrary detention.

Rights activists of Bangladesh have to face “hate speech” from the ruling political elites under the incumbent Government. After Shahidul Alam's arbitrary detention, rights activists and academic scholars across the globe demanded his release.

In response the prime minister's son and her Adviser for Information and Communications Technology Affairs, Sajeeb Ahmed Wazed Joy made a Facebook post.⁵⁷ He accused Shahidul of spreading “fear and panic” using “fantastical and provocative lies during the students’ road safety movement. Sajeeb continuously writes against the civil society actors and politicians. He made attacking posts against prominent jurist-cum-politician Dr Kamal Hossain and journalist Mahfuz Anam.⁵⁸

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The Asian Forum for Human Rights and Development (FORUM-ASIA) is the largest membership based human rights and development organisation in Asia with a network of 67 members in 21 countries across the region. FORUM-ASIA works to promote and protect all human rights for all, including the right to development, through collaboration and cooperation among human rights organisations and defenders in Asia and beyond. FORUM-ASIA seeks to strengthen international solidarity in partnership with organisations and networks in the global South.

FORUM-ASIA was founded in 1991, and established its Secretariat in Bangkok in 1992.

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“Victories in the civic space cannot be won only through head-on confrontations against obvious oppressors using outdated tactics. Civil society needs to redraw its battle lines [...] in order to halt the shrinking of civil space and perhaps even gain ground to reclaim lost freedoms in the Philippines.” – Micheline Rama, DAKILA

Civic Space is what makes democracy work within a society, ensuring a democratic and accountable state. In many ways civic space is a crucial interface between people, society and the state being a source of legitimacy for the latter. Without the liberal values of freedom, human rights, justice and peace, there would be no civil society organisations and civic space arenas that make democracy and development work for all. In this context, FORUM-ASIA Working Paper Series 5 seeks to highlight the experiences and perspectives on civic space from local and global contexts.

With the emergence of populist authoritarianisms, hyper-nationalism and crony capitalist networks across Asia and beyond, civic space and civil society organisations are under attack for exercising or promoting rights, freedoms and justice. Such concerted attack on human rights defenders and civil society organisations is termed generally as ‘shrinking of civic space’. The revitalisation of civic space requires protection of civil society organisations as well as civic activists demanding accountability from the states and promoting human rights.

This working paper has included the context and contours of civic space from national, regional and global perspectives. We hope that such an analytical and experiential approach to knowledge will help us to promote solidarity actions and advocacy for human rights and sustainable development in Asia and beyond.

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